

EXPLANATORY MEMORANDUM TO
THE PRESSURE EQUIPMENT (SAFETY) (AMENDMENT) REGULATIONS 2024

2024 No. 490

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

- 2.1 Kevin Hollinrake MP, Minister of State at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Tony Thomas, Deputy Director for Product Safety Policy, Office for Product Safety and Standards, at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Richard Mortimer at the Department for Business and Trade. Telephone: 020 7215 1397 or email: OPSS.enquiries@beis.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 The purpose of this instrument is to reduce costs and administrative burdens and to widen choice for manufacturers wishing to place pressure equipment on the Great Britain market. It amends existing secondary legislation (see section 5 below for further details) to enable pressure equipment manufacturers choosing conformity assessment of their products by UK Approved Bodies using UKCA conformity assessment procedures to take account of certification of permanent joining (welding) personnel, non-destructive personnel, material appraisal, and material manufacturers' quality assurance systems completed by competent bodies based in the European Economic Area (EEA) as well as based in the UK. This will widen choice, and ease supply chain issues, where manufacturing processes take place overseas, and the final destination of a component piece of equipment is not known to be the UK, and where material manufacturers are not minded to apply for certification for the Great Britain market, but are certified for the EEA market.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, and Scotland.

5. Policy Context

What is being done and why?

- 5.1 Pressure equipment is required in the many sectors of the UK economy including energy, healthcare, food production and storage, heating and air conditioning systems. The manufacturing of pressure equipment often involves a series of activities that take place in different countries, and across different trade blocs. Essential safety requirements are specified in legislation for pressure equipment and its manufacture to guard against accidents and fatalities, including the certification of materials, material manufacturers quality assurance systems, permanent joining (welding) personnel and procedures, and non-destructive testing personnel, by competent bodies.
- 5.2 Higher risk categories of pressure equipment cannot be placed on the Great Britain and Northern Ireland markets until they have passed independent third party conformity assessment, demonstrating that they have met the essential safety requirements. Manufacturers wishing to place pressure equipment on the market can broadly choose whether to have their products conformity assessed by a UK approved body and be 'UKCA' marked, or by a European Notified Body and be 'CE' marked. If a product is to be placed on the Great Britain market with a UKCA marking, the legislation requires, save where time-limited transitional provisions apply, that the competent bodies certifying personnel and materials must be based in the UK. In place since the UK left the European Union, these requirements are causing unintentional adverse supply chain issues, and increasing costs, for manufacturers wishing to place pressure equipment on the Great Britain market.
- 5.3 The amendments in this legislation will change the essential safety requirements so that competent bodies certifying personnel and materials can be based either in the UK or the European Economic Area. This will overcome the problems caused by the fact that manufacturing processes can take place in different countries, the final destination of the end product might not be known until the final stage of production, and it may not be possible to retro-certify personnel who have the necessary qualifications or to do the job, or materials used in the manufacturing process, where the certificates were issued by a European based competent body and not one based in the UK.
- 5.4 The instrument is being laid now in order to close a temporal gap in current transitional provisions which allow UK approved bodies, when carrying out UKCA conformity assessment of pressure equipment to take account of certificates issued by relevant European conformity assessment bodies for personnel and materials a) where those certificates were issued before 31 December 2020, and the product was placed on the market after that date, or b) certificates issued before 31 December 2024, but the product is not placed on the market until after that date. Certificates for personnel issued before 31 December 2020 expire after three years. A certificate issued by a European based competent body after 31 December 2020 currently cannot be used for a product being placed on the Great Britain market in 2024, where a UK approved body is carrying out the conformity assessment for UKCA marking.

What was the previous policy, how is this different?

- 5.5 As set out in paragraph 5.2, as the UK left the EU, an independent third-party UK Conformity Assessment framework was established for manufactured goods intended for placing on the Great Britain market. This required certification of personnel and materials in the early stages of manufacturing by a UK-based competent body, rather than an EEA-based competent body. This has proved too constrictive to supply chains

in an industry which is multi-national. Widening the choice of competent body that can certify personnel and materials in the early stages of manufacturing removes barriers to pressure equipment manufacturers, who want to place equipment on the Great Britain market, from choosing UK conformity assessment or withdrawing from the Great Britain market altogether and thus disadvantaging UK consumers, and damaging the UK economy. The amendments ensure a more frictionless manufacturing process and route to market, enabling the UK to benefit from the latest materials, and the latest innovations in pressure equipment manufacturing.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Schedule 2 to the Pressure Equipment (Safety) Regulations 2016 (“the 2016 Regulations”) sets out the essential safety requirements with which certain pressure equipment must be in conformity in order to be placed on the Great Britain market. Paragraph 21 sets out the requirements for permanent joining. This includes requirements for competent third parties needed to approve personnel and procedures for pressure equipment in Categories II, III and IV. Paragraph 22 sets out the requirements for personnel carrying out non-destructive testing including requiring approval from a recognised third party organisation for pressure equipment in Categories III and IV. Paragraph 31 sets out the requirements for material appraisal, and certification of material manufacturers’ quality assurance systems for pressure equipment in Categories III and IV. These provisions all currently require the relevant certifying bodies to be based in the UK. The instrument uses revoke and replace powers under sections 14(1) and (2) of the Retained EU Law (Revocation and Reform) Act 2023 to amend the 2016 Regulations to enable the relevant certifying bodies to be based either in the UK or the EEA. This is done directly in one instance and indirectly, via the introduction of new definitions for “notified body” and “recognised third party organisation” for the purposes of Schedule 2, in others. The instrument also uses the revoke and replace powers to revoke or to revoke and replace a small number of outdated references throughout the 2016 Regulations which were missed when they were amended on EU Exit.

Why was this approach taken to change the law?

- 6.2 As there are currently no powers available to make new legislation in this policy area, the policy objective could only be achieved through small but necessary changes to the 2016 Regulations. The only powers currently available to make such changes are the powers conferred by sections 14(1) and (2) of the Retained EU Law (Revocation and Reform) Act 2023 to revoke and replace assimilated law. (The 2016 Regulations are assimilated law.) The precise drafting approach used is considered to be the clearest and most effective way of achieving the changes given the constraints of the powers.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The issues underpinning these amendments and potential solutions have been discussed informally with representatives of pressure equipment manufacturers through a number of pressure equipment trade bodies and representatives of the UK Pressure Equipment Conformity Assessment Bodies over the past three years. The issues were additionally raised by industry in discussions during the Product Safety Review consultation (ran from August to October 2023) and in the context of recent

discussions about CE marking recognition extension. In addition, relevant Trade Bodies were invited in January to ask members to provide data for the supporting Impact Assessment.

8. Applicable Guidance

- 8.1 The Office for Product Safety and Standards has published and regularly updates on gov.uk a guide for economic operators on the Pressure Equipment (Safety) Regulations 2016.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

- 9.2 The impact on business, charities or voluntary bodies is limited in direct terms to pressure equipment manufacturers wishing to place UKCA marked equipment on the Great Britain market. Indirectly, purchasers and users of pressure equipment, whether oxygen tanks in hospitals, heat pumps in homes, equipment in the energy and food sectors, and the consumers of those services will benefit from equipment made from state-of-the-art materials, lower costs and more frictionless manufacturing processes.
- 9.3 The legislation does impact small or micro businesses. Both those involved in the manufacture of pressure equipment, and those purchasing and using pressure equipment will benefit from equipment made from state-of-the-art materials, lower costs, and more frictionless manufacturing processes.
- 9.4 For the reasons set out in paragraph 9.3, no steps have been taken to exempt small or micro businesses from these regulations.
- 9.5 There is no adverse impact on the public sector as it will benefit in the same way as the private sector, where public bodies are purchasers and users of pressure equipment.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through regular liaison between the Office for Product Safety and Standards, pressure equipment manufacturers' trade associations, pressure equipment conformity assessment bodies, and the market surveillance and enforcement authorities, to ensure the Pressure Equipment (Safety) Regulations 2016 are fit for purpose.
- 10.2 As this instrument is made under the relevant European Union Acts (as defined at 13.1), no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This instrument was laid in draft under its current title for sifting by the Sifting Committees on the 5 March 2024. Both the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee have confirmed agreement with the use of the negative procedure.
- 11.2 It is being made under the negative procedure because the amendment is technical and uncontroversial. Its scope is limited in that its effects are of direct and beneficial impact to pressure equipment manufacturers wishing to place UKCA marked products on the Great Britain market, by widening choice in the pool of available qualified personnel and suitable materials in the early stages of manufacturing.
- 11.3 The instrument will come into force 11 days after laying. The Department apologises for this unintentional breach of the 21-day rule. This occurred due to an oversight in aligning the logistics of obtaining a Ministerial signature for the SI coupled with an aim to move swiftly to bring into legal effect SI provisions which are time critical to industry. Action is being taken internally within the Department to ensure a similar situation does not occur in the future.

12. European Convention on Human Rights

- 12.1 Kevin Hollinrake MP, Minister of State at the Department for Business and Trade, has made the following statement regarding Human Rights:
“In my view the provisions of the Pressure Equipment (Safety) (Amendment) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is made under section 14 of the Retained EU Law (Revocation and Reform) Act 2023 and therefore relates to the reform of assimilated law. The changes are deregulatory as they provide more choice to industry, reducing costs and administrative burdens in the early stages of pressure equipment manufacturing. This accords with the Government’s wider objectives to reduce regulatory burdens in this area. The Minister has made any relevant statements, below, under the 2023 Act.
- 13.2 Kevin Hollinrake MP, Minister of State at the Department for Business and Trade, has made the following statement regarding use of legislative powers in the Retained EU Law (Revocation and Reform) Act 2023:
“In my view the Pressure Equipment (Safety) (Amendment) Regulations 2024 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 13.3 This is the case because: the amendments are technical, uncontroversial and are of immediate benefit to pressure equipment manufacturers wishing to place pressure equipment on the Great Britain market, to the benefit of consumers, and the UK economy as a whole.