Department for Business, Energy & Industrial Strategy

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Darren Jones MP
House of Commons
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13 November 2020

Dear Darren,

Product Safety & Metrology Etc. (Amendment etc.) (UK (NI) Indication) (EU Exit) Regulations 2020

On 13 October 2020, the Department for Business Energy and Industrial Strategy laid the draft affirmative Statutory Instrument before Parliament. We expect this to be debated in the Commons on Monday 16th November at 4.30pm.

To help inform those debates, the enclosed factsheet sets out the scope and purpose of this Instrument. The Instrument makes amendments to the existing (but not yet in force) Product Safety & Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, to implement the Northern Ireland Protocol in the Withdrawal Agreement and to re-correct deficiencies arising out of the United Kingdom's withdrawal from the European Union.

This will ensure there continues to be an effective product safety and metrology regime in the UK where we can continue to remove unsafe or non-compliant products from the market and which provides certainty to consumers, businesses and enforcing authorities.

If you would like to discuss further, please do not hesitate to contact me.

Yours sincerely,

PAUL SCULLY MP
Minister for Small Business, Consumers & Labour Markets
Minister for London

FACTSHEET:

THE PRODUCT SAFETY AND METROLOGY ETC. (AMENDMENT ETC.) (UK(NI) INDICATION) (EU EXIT) REGULATIONS 2020

CONTEXT:

- Following the UK's exit from the EU on 31 January 2020, after which the UK and EU entered a Transition Period ("TP"), we are finalising preparations to ensure that the UK has a robust domestic regulatory framework in place for product safety and legal metrology.

- This Statutory Instrument makes amendments to the existing (but not yet in force) Product Safety & Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, correcting deficiencies and implementing the Northern Ireland Protocol in the EU Withdrawal agreement.

- This factsheet focuses on the Product Safety and Metrology etc (Amendment etc) (UK(NI) Indication) (EU Exit) Regulations 2020, which was laid in draft on the 13 October and which we expect to be debated in both Houses shortly. This Instrument will implement the more significant elements of the Protocol in terms of manufactured goods and is being made under the powers in the EU Withdrawal Act 2018.

BACKGROUND:

- The UK is committed to having effective systems in place to deliver product safety and legal metrology (weights and measures), ensuring that only safe, accurate and legally compliant products are placed on the UK market, now and in the future.

- In preparation for a no deal exit from the EU, in 2019 the Department for Business, Energy and Industrial Strategy made a number of items of legislation to ensure the UK had a functioning product safety legal framework, in the event of leaving the EU without an agreement.

- The most notable one of these was the 2019 Regulations titled Product Safety & Metrology (Amendment etc.) (EU Exit etc) Regulations 2019. At the end of the TP those regulations will amend over thirty pieces of product safety and metrology legislation, correcting deficiencies ranging from the removal of invalid EU references (such as to EU bodies or institutions) to setting out the need for a domestic system of conformity assessment rooted in UK, rather than EU, law and institutions. It also introduced a UK conformity mark to be used when goods are placed on the UK market and sets out the form of the mark as a 'UKCA' marking.

- Pursuant to the Withdrawal Agreement, the UK exited the EU on 31 January 2020 and entered an 11-month Transitional Period. During this time the UK continues to follow EU rules. At the end of this period, the earlier items of legislation will come into force. For the Instruments to correctly take effect, they must be amended to reflect the UK's current position, which includes the Withdrawal Agreement and implementation of the Northern Ireland Protocol.

- The Department has brought forward a package of legislation during 2020 to make these necessary amendments to support the implementation of the UK's own product safety and metrology regime from the end of the TP and to complete the picture of how goods from the EU and from Northern Ireland will be treated on the market in Great Britain.

AIMS OF THIS STATUTORY INSTRUMENT:

This Instrument will:

- Set a 12-month time limit for the continued recognition of goods that meet EU requirements. This sunset provision allows for recognition of these goods to continue for a period of twelve months following the end of the transition period; without these amendments there would be no end date set out in legislation for the recognition of goods meeting EU requirements.

- Provide for transitional arrangements allowing business time to prepare. These include:
    - Allowing for the UKCA marking to be affixed to a label on the product or packaging or on an accompanying document, until 31 December 2022;
    - Allowing new Importers to set out their details on a document accompanying their product(s), until 31 December 2022.

- Allow for an approved body for pyrotechnic articles only to be based in any country. This is in recognition of there being no current UK notified body to assess pyrotechnic products.

- Provide for how Northern Ireland Qualifying Goods will be able to access the GB market to achieve the commitments made on unfettered access.

- Introduce the visual aspect of the UK(NI) marking, and penalties for its misuse for goods on the NI market. An image of the marking is set out in Schedule One to the SI. Penalties for misuse of the marking are also introduced.

ADDITIONAL INFORMATION:

- The Department has not undertaken a public consultation on this Instrument, as its provisions are limited to addressing failures in retained EU and UK law to operate effectively as a result of EU Exit and to and implement the requirements of the Withdrawal Agreement with the EU, and in order to minimise any sensitivities with ongoing negotiations with the EU.

- The Department has undertaken informal engagement with a cross-representation of stakeholders via structured interviews.

- We estimate that in total over 100,000 businesses may need to familiarise themselves with these changes, and we are publishing individual product guides later this week to enable them to do so. This total includes manufacturers, retailers/wholesalers, Notified Bodies, and local authorities. Our best estimate is that there are around 85,000 UK retailers and wholesalers operating in sectors affected by this Instrument plus around 14,000 manufacturers, Notified Bodies, and other relevant organisations.

AVAILABLE GUIDANCE:

- The Instrument can be found here: https://www.legislation.gov.uk/ukdsi/2020/9780348213393/contents
- Updated product specific guidance will be available on the: OPSS website
- Guidance is available on:
    - Placing Manufactured Goods on the Market in GB from 1 January 2021
    - Using the UKCA Mark from 1 January 2021
    - Moving Goods under the Northern Ireland Protocol
    - https://www.gov.uk/guidance/using-the-ukni-marking-from-1-january-2021