

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT MARKET SURVEILLANCE
(NORTHERN IRELAND) REGULATIONS 2021

Monday 5 July 2021

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The Committee consisted of the following Members:

Chair: CHRISTINA REES

Ali, Tahir (*Birmingham, Hall Green*) (Lab)

Carden, Dan (*Liverpool, Walton*) (Lab)

Caulfield, Maria (*Lewes*) (Con)

Davies, David T. C. (*Parliamentary Under-Secretary of State for Wales*)

† Fletcher, Mark (*Bolsover*) (Con)

Freer, Mike (*Comptroller of Her Majesty's Household*)

† Glindon, Mary (*North Tyneside*) (Lab)

Greenwood, Margaret (*Wirral West*) (Lab)

† Harris, Rebecca (*Lord Commissioner of Her Majesty's Treasury*)

Johnson, Kim (*Liverpool, Riverside*) (Lab)

Morris, James (*Lord Commissioner of Her Majesty's Treasury*)

† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)

Pursglove, Tom (*Corby*) (Con)

Rutley, David (*Lord Commissioner of Her Majesty's Treasury*)

Sultana, Zarah (*Coventry South*) (Lab)

† Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)

† Trevelyan, Anne-Marie (*Minister for Business, Energy and Clean Growth*)

Seb Newman, *Committee Clerk*

† **attended the Committee**

Second Delegated Legislation Committee

Monday 5 July 2021

[CHRISTINA REES *in the Chair*]

Draft Market Surveillance (Northern Ireland) Regulations 2021

4.30 pm

The Chair: I remind hon. Members to sit in the places that are clearly marked. Masks should be worn unless you are speaking or exempt.

The Minister for Business, Energy and Clean Growth (Anne-Marie Trevelyan): I beg to move,

That the Committee has considered the draft Market Surveillance (Northern Ireland) Regulations 2021.

It is a pleasure to serve under your chairmanship, Ms Rees. Members will appreciate the importance of protecting consumers through our robust and effective product safety and legal metrology systems, which are among the strongest in the world. The legislation will form part of our UK framework, maintaining consumer confidence that the goods they buy are safe.

The regulations implement in Northern Ireland the EU regulation on market surveillance and compliance of products 2019/1020, which comes into effect from 16 July; I will refer to the regulation as MSC. MSC replaces the market surveillance provisions for Northern Ireland in the predecessor regulation on accreditation and market surveillance, known as RAMS. It is included in annex 2 to the Northern Ireland protocol and accordingly the market surveillance and compliance of products regulation replaces that obligation under the protocol.

The statutory instrument that we are debating today implements a uniform set of regulatory powers to be available to market surveillance authorities that operate within Northern Ireland. It results in a few minor operational changes and a number of new traceability requirements for businesses placing products on the Northern Ireland market. This is necessary to avoid gaps and inconsistencies in regulatory powers when the RAMS provisions are repealed in Northern Ireland on 16 July. It is worth noting that RAMS, as it now forms part of our domestic law, continues to apply in Great Britain. However, the approach to enforcement is very similar in both regulations. It is risk based and proportionate.

The SI will ensure that consumers in Northern Ireland continue to be protected from potentially unsafe and non-compliant products, whether they are toys, cosmetics, lifts or machinery, via the UK's robust product safety framework. The aim of the SI is to give market surveillance authorities the necessary regulatory powers to ensure that products are safe and compliant in Northern Ireland, as well as enabling them to take action as needed when unsafe or non-compliant products are discovered. It will also provide effective, appropriate and proportionate sanctions for breaches of those regulations.

Market surveillance authorities will monitor and, where appropriate, enforce the requirements of product safety law as outlined in the SI. If I may consider these areas in a little more detail, a range of regulatory powers are already available to market surveillance authorities across the current suite of product legislation, but they are not consistent. Through the SI, MSC will introduce a uniform set of regulatory powers consolidating and simplifying the powers already available to market surveillance authorities, making them expressly available in respect of a range of products to the extent that they are needed.

The powers set out in the SI are drawn from existing goods legislation, including the Consumer Rights Act 2015, the Health and Safety at Work (Northern Ireland) Order 1978 and the Consumer Protection Act 1987. That means that market surveillance authorities will have consistent access to the regulatory tools they already use and are familiar with, such as compliance and recall notices.

Sanctions for market surveillance offences are not new. The SI seeks to ensure that offences remain available to market surveillance authorities and contains offences relating to obstructing an investigation, for breaches of MSC and in respect of the withdrawal of products and recall notices. The offences under the SI will be heard in a magistrates court and will give rise to a maximum fine of up to level 5, which is currently £5,000, or up to level 3, which is £1,000, on a standard scale depending on the offence. There will be no provision for imprisonment. The offences available are expected to result in prosecutions in rare circumstances and only where necessary to protect consumers from non-safe products or address persistent or deliberate non-compliance. The inclusion of criminal offences within the legislation is consistent with existing UK-wide sanctions regimes for products and I can confirm that penalties for such offences are at the lower end of the range of penalties within that regime.

I would like to draw attention to a new requirement in article 4 of MSC. It requires businesses in some product sectors to have a person responsible for compliance established in the EU or Northern Ireland in order to place those products on the market in Northern Ireland or the EU. This person can be a manufacturer, an importer, an authorised representative or a fulfilment service. The requirement in article 4 is directly applicable and the SI provides enforcement mechanisms for a breach of that requirement. Most businesses supplying customers in Northern Ireland or the EU already have the appropriate arrangements in place.

On 11 June, my Department published guidance for businesses and market surveillance authorities on the operation of article 4. That will hopefully have answered the majority of questions that business may have had. My officials will continue to assist business organisations to ensure that MSC does not place a disproportionate burden on trade into Northern Ireland for those businesses that do not already have a person responsible for compliance, while ensuring that the product safety framework itself remains robust and effective. My Department will also offer training on MSC to all market surveillance authorities to support consistent understanding of its application across the regulatory landscape.

In summary, the regulations will implement a new aspect of market surveillance legislation, as required under the protocol, and ensure that there are no regulatory

gaps in the area of product safety. It will ensure that consumers in Northern Ireland remain protected from potentially unsafe and non-compliant products, resulting in the maintenance throughout the UK of a cohesive and effective regulatory regime for manufactured products that will protect all UK customers, including those in Northern Ireland. I urge the Committee to approve the regulations.

4.35 pm

Chi Onwurah (Newcastle upon Tyne Central) (Lab): It is a great pleasure to serve under your chairship, Ms Rees. I thank the Minister for setting out what the regulations do, and I shall not attempt to repeat what she said.

The regulations introduce enforcement powers and offences that are necessary to give effect to the EU market surveillance regulation in Northern Ireland. As the explanatory memorandum says, they provide “for an effective” and

“proportionate...penalty regime for breaches of the Regulation.”

The EU’s new market surveillance regulation, which comes into effect on 16 July, is designed to provide greater protection to consumers in the face of the challenges posed by e-commerce. The intention is that, by extending compliance checks for products sold online, consumers can be assured that the products that they order online meet EU harmonised standards for health and safety. By virtue of the Northern Ireland protocol to the EU-UK trade and co-operation agreement, the market surveillance regulation is directly applicable in Northern Ireland, although certain provisions of the regulation require implementation in domestic legislation, which is what the regulations are designed to do.

Labour will not oppose the regulations, which are designed to provide greater protection to consumers in Northern Ireland and are required to meet the UK’s legal commitments under the EU-UK trade and co-operation agreement and the Northern Ireland protocol. However, I want to raise a small number of important issues on which I would welcome the Minister’s assurances.

First, it is clear that the implementation of the EU market surveillance regulation in Northern Ireland will have an impact on British businesses, especially those that sell their products online from Great Britain directly to consumers in Northern Ireland. As the Minister said, GB business will need an economic operator established in Northern Ireland for compliance activities if they want to sell goods into Northern Ireland. My right hon. Friend the Member for Wolverhampton South East (Mr McFadden) set out the situation very well in a debate on another statutory instrument when he said:

“Brexit was sold as being an end to red tape—nobody said it would be replaced with all this red, white and blue tape that we are debating today.”—[*Official Report, Fifth Delegated Legislation Committee, 24 June 2021; c. 5.*]

Given the additional obligations on British businesses that want to continue to sell their goods across this United Kingdom, will the Minister assure us that the Government will continue to provide all advice and guidance necessary to ensure that all British businesses are prepared for this new obligation when the regulation

comes into force in less than two weeks? Targeted support might be required, and we will be watching carefully to ensure that businesses are not adversely affected by the changes after 16 July. Unfortunately, businesses have been affected adversely by an increase in bureaucracy and red tape, and in their complexity, as a consequence of the withdrawal agreement.

Secondly, the Government have suggested in guidance that the enforcement of the market surveillance regulation in Northern Ireland will be

“proportionate, risk-based and intelligence-led”,

minimising disruption to businesses. They go on to suggest that regulatory checks on goods entering Northern Ireland will continue to take place by exception, and only when there is a high level of risk. The Department for Business, Energy and Industrial Strategy says that goods going into Northern Ireland from Great Britain have a low risk profile and therefore will not be routinely subject to inspection, but given current tensions over the Northern Ireland protocol and uncertainties about its implementation, will the Minister clarify the extent to which that approach has been agreed with the European Union? Is there an agreement that goods arriving into Great Britain will not be routinely subject to regulatory checks?

We are in a bizarre situation when I have to even ask this question, but is the application of the market surveillance regulation in Northern Ireland a protocol commitment that the Government support, or a matter that they wish to reopen with the European Union? Businesses and consumers throughout the United Kingdom need and deserve clarity.

4.41 pm

Anne-Marie Trevelyan: I thank the Committee for its consideration of the regulations and the hon. Member for her comments.

The measures amend the previous regulations from annex 2 of the protocol, so this is not a new set of frameworks. In a risk-based sense, as the hon. Member highlighted, they ensure that Northern Ireland regulators have the correct powers to deal with unsafe or non-compliant goods in a co-ordinated and coherent way. The regulations make that easier to deliver, and build on the existing product regime with which regulators and businesses are already familiar. They will provide continued robust protection for all UK consumers, ensuring that products are safe and compliant.

This uniform set of powers is designed to fit within existing product legislation that applies throughout the UK and includes criminal offences that can be used by market surveillance authorities when required, although we expect those occasions to be very rare. The Government continue to engage closely with businesses and regulators regarding the introduction of the market surveillance regulation. We have published guidance for both and will continue to support them in the coming months. On that basis, I commend the regulations to the Committee.

Question put and agreed to.

4.43 pm

Committee rose.

