

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT PRODUCT SAFETY AND METROLOGY
(AMENDMENT AND TRANSITIONAL
PROVISIONS) REGULATIONS 2022

Wednesday 7 December 2022

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The Committee consisted of the following Members:

Chair: MRS PAULINE LATHAM

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| † Aiken, Nickie (<i>Cities of London and Westminster</i>) (Con) | † Malhotra, Seema (<i>Feltham and Heston</i>) (Lab/Co-op) |
| † Baynes, Simon (<i>Clwyd South</i>) (Con) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Bhatti, Saqib (<i>Meriden</i>) (Con) | † Morris, Grahame (<i>Easington</i>) (Lab) |
| Docherty-Hughes, Martin (<i>West Dunbartonshire</i>) (SNP) | † Morrissey, Joy (<i>Beaconsfield</i>) (Con) |
| † Greenwood, Margaret (<i>Wirral West</i>) (Lab) | † Mumby-Croft, Holly (<i>Scunthorpe</i>) (Con) |
| † Hollinrake, Kevin (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) | † Russell-Moyle, Lloyd (<i>Brighton, Kemptown</i>) (Lab/Co-op) |
| Kawczynski, Daniel (<i>Shrewsbury and Atcham</i>) (Con) | † Stevenson, Jane (<i>Wolverhampton North East</i>) (Con) |
| † Liddell-Grainger, Mr Ian (<i>Bridgwater and West Somerset</i>) (Con) | † Sultana, Zarah (<i>Coventry South</i>) (Lab) |
| † Mak, Alan (<i>Havant</i>) (Con) | George James, <i>Committee Clerk</i> |
| | † attended the Committee |

Fifth Delegated Legislation Committee

Wednesday 7 December 2022

[MRS PAULINE LATHAM *in the Chair*]

Draft Product Safety and Metrology (Amendment and Transitional Provisions) Regulations 2022

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Kevin Hollinrake): I beg to move,

That the Committee has considered the draft Product Safety and Metrology (Amendment and Transitional Provisions) Regulations 2022.

It is a pleasure to serve with you in the Chair, Mrs Latham. Since 1 January 2021, the UK conformity assessment mark, the UKCA, has been used alongside recognition of the EU's CE and reversed epsilon markings. The UKCA marking applies primarily to manufactured goods that are placed on the market in Great Britain, from microwaves to laptops and from pint glasses to electrical equipment. Products requiring the UKCA marking are valued at approximately 25%, or £110 billion, of manufacturing imports.

For most product sectors, recognition of the CE and reversed epsilon markings in Great Britain is due to end at 11 pm on 31 December 2022, but we know that businesses face increasing burdens with cost of living increases and global supply chain challenges. The main objective of the statutory instrument is to provide businesses with additional time to transition to the UKCA regime and give them greater flexibility in how they can legally place products on the market in Great Britain. It is being made using the powers in section 8 of the European Union (Withdrawal) Act 2018 to address deficiencies arising from EU exit. Without the measures implemented by the instrument, industry will have to meet UKCA requirements from 1 January 2023, at a time of economic hardship for many businesses. Following the UK's exit from the European Union, the UKCA marking was introduced in Great Britain to replace the EU's CE marking. As a result of EU exit, we have the autonomy to set our own product regulations and ensure that they work for businesses and consumers throughout the country.

To place products on the market in Great Britain, manufacturers must ensure that products meet the essential safety requirements of relevant product legislation. Compliance is achieved by following a conformity assessment procedure. For lower risk products manufacturers can self-declare compliance, and for higher risk products manufacturers may need to go to a conformity assessment body for product testing.

We have engaged with businesses on the challenges that they have faced in transitioning to UKCA, and the feedback that we received led to the announcement in June 2022 of a range of measures to address key issues. Those transitional measures have been welcomed by businesses, and the SI will implement them. Officials have delivered an extensive programme of domestic and

international engagement to support businesses transitioning to the UKCA regime. They have also engaged with UK conformity assessment bodies and worked closely with the UK Accreditation Service, UKAS, to ensure that the accreditation process is as smooth as possible.

Despite the work that we have undertaken since the introduction of the UKCA, industry engagement has indicated that the current economic circumstances are making it more difficult for businesses to meet UKCA requirements, hence the need for further Government action. Although we recognise that a further extension to recognition of the CE marking may raise questions about the future transition timescales for the mandatory UKCA regime, we believe that the benefits of reducing immediate burdens and costs for industry in the current economic climate outweigh the potential risk of business hesitancy to prepare. UKCA marking remains valid when placing goods on the market in Great Britain, and we will continue to engage closely with industry to provide support and understand how to take a pragmatic approach by improving regulation to the benefit of businesses and customers.

Let me explain what the key elements of the SI do in more detail. It extends the time for existing transitional provisions, allowing certain products meeting EU requirements and markings to be placed on the market or put into service in Great Britain. That will give businesses the option to choose to use the CE marking for a further two years until 31 December 2024.

Secondly, the SI provides that when a manufacturer has undertaken any steps under EU conformity assessment procedures in the period until 31 December 2024 but the goods have not been placed on the GB market, those steps will be taken to have been done under the equivalent UK conformity assessment procedures. That applies for as long as any certificate issued is valid or until 31 December 2027, whichever is sooner.

Thirdly, the SI extends the time for existing labelling easements. That will allow businesses to affix the UKCA marking and to include important information for products imported from European economic area countries and, in some cases, Switzerland on a label affixed to the product or accompanying document, rather than on the product itself. There are different rules for medical devices, construction products, cableways, transportable pressure equipment, unmanned aircraft systems, rail products and marine equipment.

To conclude, recognition of the CE marking in Great Britain is due to end at 11 pm on 31 December 2022 for the product sectors in this instrument. Its main objective is to provide businesses with the additional time to transition to the post-exit independent UK conformity assessment regime requirements to legally place products on the market in Great Britain. I am sure hon. Members will recognise that, at a time of cost of living increases and global supply chain challenges facing UK businesses, it is right that Government provide businesses with more flexibility, so I urge the Committee to approve this SI.

2.36 pm

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Mrs Latham. This statutory instrument raises yet more concerns regarding the Government's post-Brexit preparedness and its

cumulative effect on British businesses, given the continually delayed attempts to get product safety and the product safety regime right for the good of consumers across the country. Uncertainty, lack of clarity and no clear plan seem to define the Government's approach to product safety post Brexit. I do not hold the Minister totally responsible—he is the fourth person in his position since September—but there is a serious point here: uncertainty inevitably incurs costs for businesses and reduces their ability to trade in the UK and across borders.

This is all on the back of a high-tax, low-growth economy after 12 years of Conservative Government failure. Recent research from UK in a Changing Europe has found that implementation of the UK's new trade agreement with the EU has led to a sudden and persistent 25% fall in UK imports from the EU relative to the rest of the world. Ministers have already delayed the transitional provisions twice before. In August 2021, the implementation date was changed from the start of 2022 to January 2023. In June, the Government announced that they would delay some requirements of the scheme beyond the revised date. For a third time, we have a delay. Throughout all these delays, there is clearly no plan for what is next.

The Government have no choice but to extend these transitional provisions, and the Minister is right: it is in the interests of businesses, who otherwise face increasing costs and burdens throughout the transition. He hit the nail on the head when he said that this may raise questions about timescales, because it does. When there are questions about timescales, businesses have to deal with further uncertainty and there is a cost associated with that. My biggest concern now about the effects of the further delay is what is behind it. There does not seem to be a clear plan for how we move forward, when we will reach an end stage, and what the impact will be for business planning and for the product safety regime in the UK.

The UK's departure from the EU has meant changes have been made to product regulations. As the Minister outlined, this includes the introduction of the UK conformity assessment marking to replace the EU's CE marking. The UKCA has been operational in tandem with continued recognition of products meeting EU requirements and markings. As the Minister outlined, on 31 December 2022 these would cease to be recognised in Great Britain under the existing arrangements.

The statutory instrument will extend the transition period. It extends the option for manufacturers to use the EU's CE marking to show that their products are regulation compliant until December 2024, thereby extending the provisions by two years. It also extends the time for labelling easements for products that comply with EU regulations but not UK regulations. Such products would be able to use UKCA marking until December 2027.

To be in such a position with the UK's new regime, six years on from Brexit, is quite significant. The Government need urgently to provide clarity for the future. Clarity would minimise the uncertainty that can deter business investment—perhaps in new products, how those new products will be made or the standard those products need to meet. This is all part of how we need to lower the barriers that can impede British exports and slow down manufacturing. We want to see

a regime that has the certainty to help develop and see the greater international collaboration that is necessary. It should also uphold clear standards on safety, fair trading and environmental protection, all of which command wide and deep support from the British electorate. Can the Minister shed more light on the Government's plan and whether there will be further delay?

I would also welcome clarity about how the Minister is talking to businesses, as he referred to conversations with businesses and stakeholders. That point is important not just for these regulations, but for making Brexit work overall to support the necessary growth in the UK economy.

On news that the Government would propose the extension, the British Chambers of Commerce stated:

“BCC research carried out last year found that only 8% of business were in favour of getting rid of the current EU marking system, called CE, by the start of 2023, and 59% of businesses, affected by the decision, wanted to keep it. They see strong benefits in having a single system for testing and marking of industrial and electrical goods for business... Today's push back is a welcome first step, but much deeper engagement with industry is still needed to devise a plan that works to avoid extra costs for both importing and exporting businesses, and consumers.”

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): The reason we are here, is it not, is that the Government negotiated a defective EU exit deal. We could easily have been included in the CE marking system, as Turkey and others are, and British firms could have been allowed to accredit using the CE mark, which they now cannot. If it is a British-registered marker, they have to use an EU-registered marker if they wish to export. It is the Government's mess that has caused this and it could have so easily been different. We could have exited and still had all the benefits.

Seema Malhotra: I thank my hon. Friend for his remarks. He highlights that the situation that we, businesses and industry find ourselves in is caused not by Brexit but by the choices the Government have subsequently made and how they have made them. I am sure the Minister will think very seriously about how we deal with these self-made barriers.

There are other examples of where the Government have failed—successive Governments, I should say. I have lost track of how many we have had since 2019—

Lloyd Russell-Moyle: Or this year.

Seema Malhotra: Let alone this year. This is a really significant point. There has been a failure to be clear and decisive, to make decisions and act pragmatically, to not be led by ideology and to look at what will make Brexit work for British businesses and consumers. The SI is symptomatic of a system that is failing.

The Minister will want to respond now that he can direct some of his work as a Minister in the Department for Business, Energy and Industrial Strategy. The Government must look to alleviate those issues and work with businesses much more closely, especially in their talks. It is an issue if the Minister says that he is talking to business and industry, but businesses are going out to the media and saying that deeper engagement with industry is still needed just to devise a plan, let alone to implement it.

[Seema Malhotra]

Make UK stated in response to the extension:

“Given this is the third time this has been delayed, we need to ask why the Government is still ploughing ahead with the plans which are only adding costs and extra bureaucracy”.

In addition, a membership survey carried out by Make UK in May this year found that three quarters of respondents wanted the UK to continue to recognise CE marked goods. I would be grateful for clarity from the Minister on how we are moving forward and on what timescales. We want to see all our businesses able to manufacture their goods, to export and import them, to serve the British market and to do all that with certainty.

The Minister will know as well as I do that businesses plan ahead. They plan ahead as to what they are producing, and they must design those products. They also have to order materials. There is an even more serious situation in the supply chain, with problems affecting materials for production and so on. A year or two ahead is very much in line with what businesses need to plan. Businesses in my constituency have talked to me about the issue, including one that exports to 70 nations across the world with its fine manufacturing of steel products, and clarification from the Minister would be extremely helpful.

I want to raise a final point about product safety in general. Concerns have been raised by businesses and, in its latest report, the British Toy and Hobby Association conducted sample testing of 40 toys from third-party sellers via the marketplaces of four of the largest online platforms: Amazon, eBay, Wish and AliExpress. Of those 40 toys randomly selected for testing, 100% were illegal to sell in the UK and 90% were found unsafe for a child to play with, after failing independent safety testing against the UK toy safety regulations.

The British Toy and Hobby Association’s successive reports span four years and more than 550 toys, so that indicates an ongoing problem, showing that there is a level of non-compliance and that unsafe toys are being sold by third parties through the online marketplace supply chain. It is unacceptable. In its recent report, the BTHA has said that the current system is not working to prevent unsafe toys entering the UK market. The BTHA is calling on the Government to close that gap through legislative means before a child is seriously injured or killed by an unsafe toy.

The Government said they would publish their product safety review in spring 2022 outlining how they will regulate the safety of products sold via online marketplaces to protect consumers from harm by unsafe toys. The publication of the review has been delayed several times during the year. As well as highlighting the Government’s reckless unpreparedness for Brexit, the SI also highlights yet another moment when the Government should be taking broader action on product safety in this country, but are not. When do the Government plan to publish the product safety review, which was first promised for spring of this year?

The SI is symptomatic of a Government that are failing to make Brexit work for our businesses and the people of this country—a Government who have become complacent on the issue of product safety standards for consumers, including children. I would welcome assurances from the Minister on the issues I have raised, and

answers to them. I look forward to a complete response that outlines the Government’s plans to ensure that there is clarity and a timeline for what happens as we go forward.

We have a common interest in these issues, which need to be tackled because, in the current low-growth environment, that situation does not help any of us. Anything that can be done to address the barriers to good, effective, increased and safe trade absolutely need to be addressed, and that leadership has to come from the Government.

2.51 pm

Kevin Hollinrake: I thank the hon. Lady for her contribution, and the hon. Member for Brighton, Kemptown for his intervention.

The fact that we are taking a pragmatic approach to the issue should be welcomed, not challenged. Of course, the hon. Lady is there to provide challenge, but it is important, given the current economic circumstances, that we listen to businesses, which is what she encouraged us to do. That is one of the reasons for the delay. We have engaged with and listened to the industry’s concerns and have responded accordingly.

The hon. Lady asks by what mechanisms we do that. We have regular face-to-face meetings; I have meetings and webinars, and correspond all the time with businesses, and it is quite right that we do that. This is a sensible delay, and shows that we can use our autonomy to support businesses and provide flexibility to use either marking for now—UKCA or CE markings.

The hon. Lady is probably underestimating the amount of work that was done by manufacturers in this area. It is our best estimate that 89% of UK manufacturers either had or were planning to introduce the UKCA mark by the end of this year, so it is not as if no progress has been made. It is just that we did not want to disadvantage some businesses that had not managed to make that progress. Significant progress has been made. We do not expect to have to extend the provisions further, but it is right to extend them now and take a pragmatic approach.

The hon. Lady was quite critical of the general UK approach to product standards. I have met representatives of the Office for Product Safety and Standards on a number of occasions, and I have the highest regard for them. They are hard-working, professional civil servants, who take their job seriously and do a fantastic job. She made a good point about products sold online that might not conform to standards, which is a point I raised with the OPSS when we first met: about whether there is a fair and level playing field for other UK businesses when an online marketplace selling into UK customers might not meet relevant standards, and the different responsibilities of those marketplaces. That can be challenged on the basis that they do not believe they are a distributor. We need to look into that and are doing so as part of the product safety review, and I am very interested in the outcome.

Seema Malhotra: Perhaps the Minister was about to say when the Government will be publishing their product safety review due in spring 2022. That commitment was made by Ministers, not civil servants, unless he wants to tell me otherwise. I think we all respect the civil servants,

who are playing their part. This is a question about the Government's priorities and why the measures have been delayed.

Kevin Hollinrake: It was not this Minister who made that promise, so I cannot speak to that particular commitment, but any review should be done properly and not rushed, and we need to get this right. Various things have happened over recent years that have delayed all kinds of things, as I think the hon. Lady would understand, with a pandemic followed by a cost of living crisis and, it is fair to say, some political instability, but we need to move on from that.

Seema Malhotra: Will the Minister give way again?

Kevin Hollinrake: I will, for the last time.

Seema Malhotra: I thank the Minister for giving way. Given that it has been at least six months since spring 2022, will he undertake to provide a new timeline for when he expects the review to be published? Now that he is the Minister, I am sure he can get a briefing on how far away from publication we are, and he could then share with the House whether there are any further issues.

Kevin Hollinrake: The hon. Lady will be used to the phrase “soon”, “very soon” or whichever she wants to use—

Seema Malhotra: Or “shortly”.

Kevin Hollinrake: Yes. We are working to bring the review forward as quickly as possible, but as I say, we want to make sure that we do a good job and not just accelerate it to an arbitrary date, which might mean the review is not as sound as it could be. There are some other things that I have asked the OPSS to look at in my first weeks as Minister for Enterprise, Markets and Small Business.

Seema Malhotra: Will the Minister give way?

Kevin Hollinrake: I will not give way any more. I want to challenge a few of the other points that the hon. Lady made that do not relate to this SI. She talked

about low growth. We have had the third fastest growth in the G7 since 2010, so she needs to reflect on how she defines “low growth”. The only countries that have grown faster than the UK over the last 12 years are the US and Canada, so we have grown faster than Germany and France, for example, and she might want to reflect on that. She also mentioned high levels of tax. We have had to put taxes up to balance the books, because that is what we as a party believe in doing.

The Chair: Order. We need to stick to the regulations.

Kevin Hollinrake: I apologise, Mrs Latham—she started it.

I do not agree that we should stick to the CE marking and not have our own product standards system, because that would miss an opportunity and we would then be locked into the EU rules. Perhaps that is what the hon. Lady would prefer, but we on the Government Benches would not; we want to pursue our own regime that better suits UK businesses and consumers.

This legislation will provide industry with additional time to transition to the post-exit independent UKCA regime requirements for most product sectors. It will give businesses greater flexibility in how they can legally place products on the market in Great Britain by allowing them to use either the CE marking or the UKCA marking until 31 December 2024. Without this legislation, from 1 January next year, businesses that do not comply with UKCA requirements would not legally be able to place their products on the GB market. That would potentially cause short-term market and supply chain disruption, which would not be desirable at all for manufacturers and could cause reduced product availability and could translate into higher costs for commercial supply chains and consumers. We will, of course, continue to engage with industry closely to provide support to businesses and to understand how to take a pragmatic approach to improving regulation to the benefit of businesses and consumers, while maintaining our commitment to higher levels of protection for UK consumers.

Question put and agreed to.

2.58 pm

Committee rose.

