

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Ninth Delegated Legislation Committee

PRODUCT SAFETY, METROLOGY AND MUTUAL  
RECOGNITION AGREEMENT (AMENDMENT)  
(EU EXIT) REGULATIONS 2019

*Monday 7 October 2019*

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**The Committee consisted of the following Members:**

*Chair:* SIR GARY STREETER

- |   |  |
|---|--|
| † Bacon, Mr Richard ( <i>South Norfolk</i> ) (Con)                      | † Mills, Nigel ( <i>Amber Valley</i> ) (Con)   |
| † Costa, Alberto ( <i>South Leicestershire</i> ) (Con)                  | † Morris, Grahame ( <i>Easington</i> ) (Lab)   |
| † Cruddas, Jon ( <i>Dagenham and Rainham</i> ) (Lab)                    | † Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)   |
| † Day, Martyn ( <i>Linlithgow and East Falkirk</i> ) (SNP)              | † Stewart, Iain ( <i>Milton Keynes South</i> ) (Con)   |
| † Duguid, David ( <i>Banff and Buchan</i> ) (Con)                       | † Tolhurst, Kelly ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) |
| † Ford, Vicky ( <i>Chelmsford</i> ) (Con)                               | † West, Catherine ( <i>Hornsey and Wood Green</i> ) (Lab)  |
| † Furniss, Gill ( <i>Sheffield, Brightside and Hillsborough</i> ) (Lab) | † Wragg, Mr William ( <i>Hazel Grove</i> ) (Con)   |
| † George, Ruth ( <i>High Peak</i> ) (Lab)                               |  |
| † Hollinrake, Kevin ( <i>Thirsk and Malton</i> ) (Con)                  | Hannah Bryce, <i>Committee Clerk</i>   |
| McGinn, Conor ( <i>St Helens North</i> ) (Lab)                          | † <b>attended the Committee</b>  |

# Ninth Delegated Legislation Committee

Monday 7 October 2019

[SIR GARY STREETER *in the Chair*]

## Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019

4.30 pm

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

That the Committee has considered the Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019 (S.I., 2019, No. 1246).

It is a pleasure to serve under your chairmanship, Sir Gary. Since the referendum decision to leave the EU, the Department for Business, Energy and Industrial Strategy has undertaken significant work on withdrawal arrangements, preparing for a range of potential outcomes, including no deal. The regulations amend no-deal legislation made earlier this year, predominantly as a result of the article 50 extension. We need to make changes to have an effective and up-to-date system for product safety and legal metrology on exit. The safety of consumers is a key priority for the Government, and I know that priority is shared by Members of all parties.

The instrument will ensure that the drafting in previous regulations will function as intended, and so help to maintain the continuity of product safety protections if the UK leaves the EU without a deal. Primarily, we are making the changes needed to reflect the change from a March to an October exit, but we are taking this opportunity to extend certain transitional arrangements, already agreed by Parliament in respect of products from the European economic area, to certain imports from Switzerland in the event of the UK leaving without a deal.

On the back of our ongoing engagement with stakeholders, the regulations include some minor fixes that they identified and brought to our attention since the previous no-deal product safety regulations were made. The focus of the instrument is not to introduce significant policy changes, but to clarify and simplify the current position. It will not change the system or the approach we take in the UK's rigorous and robust product safety regime. Instead, the changes the instrument makes will ensure that the UK's product safety and legal metrology framework continues to deliver the protections we want.

I turn now to the detail of some of the amendments that the regulations will introduce, starting with the updates to the no-deal product safety legislation already agreed by Parliament. The regulations will amend three previous regulations. First, they will amend a number of product schedules in the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, which were laid in March 2019. Secondly, they will amend the Pressure Equipment (Safety) Regulations 2016. Thirdly, they will amend the Conformity Assessment (Mutual Recognition Agreements) Regulations 2019.

A change in exit day created confusion for the personal protective equipment sector about which regulations to follow. As originally drafted, there was provision for a period between exit day and 21 April 2019 during which particular provisions applied. The new SI will make changes that provide legal clarity for the industry, now that the date has passed. For cosmetics, the regulations will clarify the drafting in relation to the use of data from animal testing that was carried out before such testing was banned. That historical data can be used now, and these regulations retain that position. Let me be clear: there is no intention to change our position on new animal testing, which is rightly banned and will remain so. A further provision ensures that the UK will be able to update the list of prohibited and restricted substances to show what can or cannot be included in cosmetic products, and subject to what conditions. The power to update the list has been transferred to the Secretary of State and would be used only following scientific evidence. This change will ensure ongoing protection for consumers.

The SI restores the position before the unintentional removal of the option for pressure equipment materials to have their manufacturing processes of base materials certified by a competent body. This reinstatement will ensure continuity and certainty for business. The instrument also makes minor amendments to clarify certain provisions to ensure that no-deal legislation works as intended if the UK exits the EU without a deal. Those changes occur in relation to outdoor noise, recreational craft, toys, electromagnetic compatibility measuring instruments and accreditation. An example is an amendment to the electrical equipment provision to change a reference to "safety component" to a reference to "electrical equipment".

A further important provision in the instrument expressly implements the UK's obligations as an EU member state with regard to certain goods being imported from Switzerland. That builds on the main Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 and the subsequent Conformity Assessment (Mutual Recognition Agreements) Regulations 2019. The end result is that, if we leave without a deal, the transitional provisions for goods entering the UK from the EU and the EEA will be extended to certain goods from Switzerland. That will provide further clarity and continuity for business by making it easier to import certain products from Switzerland by allowing UK importers to put their details on accompanying documentation, rather than the product itself, for 18 months after exit, and by extending the recognition of authorised representatives established in Switzerland to those appointed in relation to noise emissions from equipment used outdoors, in line with the existing EU-Swiss mutual recognition agreement.

An impact assessment has not been prepared for the instrument, because the impact for business is expected to be low. It is limited to familiarisation costs to understand the operability fixes and drafting improvements made to the legislation. It has been confirmed that those costs fall below the £5 million de minimis threshold.

The Department did not undertake a public consultation, given that the provisions relating to EU exit are limited to making changes to no-deal legislation to ensure that it operates effectively on exit. However, our ongoing engagement with stakeholders has proved useful in highlighting some inconsistencies in the previous drafting.

We recognise that wider consultation would have been helpful, but the objective of the instrument is to ensure that there is no reduction in consumer protections in respect of product safety after EU exit. Some of the minor changes improve clarity for business, and we welcome and are encouraged by its engagement with the development of the legislation.

I recognise that our product safety exit SIs are unique, particularly in their size and breadth, which has presented challenges to Parliament's scrutiny of them. We have learned lessons and are grateful to the Joint Committee on Statutory Instruments for its comments and input throughout the scrutiny process, including comments highlighted in its report on the drafting inconsistencies in the SI that related to the coming-into-force date. The report draws special attention to defective drafting in the instrument, which is "acknowledged by the Department" and which was flagged up in our voluntary memorandum to the JCSI. It accepted our argument that the commencement provision should still work and that the mistake is unlikely to have had substantive consequences.

The amendments made by the instrument ensure that the drafting of previous regulations functions as intended, which will help to maintain the continuity of product safety protections if the UK leaves the EU without a deal. As I am sure hon. Members recognise, it is essential that the UK has a functioning product safety framework in the event of no deal. Approving the instrument will also contribute to maintaining a positive trading relationship between Switzerland and the UK.

4.39 pm

**Gill Furniss** (Sheffield, Brightside and Hillsborough) (Lab): It is a pleasure to serve under your chairpersonship, Sir Gary. As per the explanatory memorandum, the instrument amends some provisions of an earlier no-deal instrument that was brought to the House in March ahead of the no-deal scenario that the former Prime Minister, the right hon. Member for Maidenhead (Mrs May), threatened us with—leaving the EU on 29 March, deal or no deal. Thankfully, we averted that crisis.

Called a "beast of an SI" by *The Times* on 12 February, that instrument was 636 pages long, weighed 2.5 kg and put together 11 issues that would usually be in separate documents to be sifted through. The Secondary Legislation Scrutiny Committee was damning of the length and scope of that instrument and the Government's approach to bringing it to Parliament. This instrument amends that legislation. In particular, it

"makes amendments to previous no deal legislation in light of the extension to exit day agreed under Article 50 of the Treaty on European Union"

and

"seeks to extend transitional provisions for imports from the EEA to imports from Switzerland and to ensure other provisions operate effectively and as intended. The instrument also amends certain EU-derived legislation, to expressly implement certain provisions of the mutual recognition agreement between the EU and Switzerland, related to importers and authorised representatives, and to make a small correction to legislation implementing the EU safety regime for pressure equipment."

It also includes the amendments and the inconsistency that the Minister kindly referred to.

The instrument has been introduced through the made affirmative procedure under paragraph 5 of schedule 7 to the European Union (Withdrawal) Act 2018, which

means that when matters are deemed urgent, an instrument can be made before it is laid for the House to approve or scrutinise. Why has the Minister introduced the instrument using that procedure?

In passing the Benn Act, the House of Commons has been explicitly against a no deal, which has in fact been legislated against. Why is the Minister proposing the new exit date when that has been explicitly rejected and legislated against by the House?

The product safety regulations made provision for the creation of an independent UK system for checking that products meet the requirements and of a framework for UK marking, so that a manufacturer can indicate if a product conforms with those requirements. Can the Minister enlighten us about the system's progress and when it will come into place?

Consumer bodies such as Which? have been clear that a no-deal Brexit would be a catastrophe for consumer protections and would water down 40-plus years of progress in that respect. I would welcome the Minister's comments on that.

4.41 pm

**Martyn Day** (Linlithgow and East Falkirk) (SNP): I do not wish to say much. Regardless of my opposition in principle and in its entirety to the UK's withdrawal from the EU, I understand that continuity is important and that instruments need to be in place to preserve the framework around the status quo. I make the point, however, which I have made before in several such Committees, that the Government should have done the sensible thing from day one and ruled out no deal, so we did not have to go through all this nonsense and this process. They continue to refuse to do that, despite a majority in the Commons having instructed them to do it.

4.42 pm

**Kelly Tolhurst**: It is nice to be back in Committee opposite the hon. Member for Sheffield, Brightside and Hillsborough debating statutory instruments, as we have many times. I thank her for her constructive questions, as always. I confess that I missed her second one, so I am happy for her to repeat it, but I will answer the others.

The hon. Lady is absolutely right that we debated the big 600-page product safety statutory instrument, but I must highlight that a third of that—200 pages—was made up of long annexes that were transferred. There was synergy in the subjects that were brought together in one instrument because of cross-cutting issues.

The hon. Lady asked why the urgency, given the existence of the Benn Act. As we have made clear—as the Prime Minister has made clear—we intend to leave the European Union on 31 October. We have used these powers less than 35 times in a legislative programme of more than 600 instruments, which is not very much.

If this legislation were not in place, the UK's product safety regime would simply not work as effectively if the UK left without a deal agreed by both sides. The cosmetics changes in the instrument enable us to implement changes in UK law regarding chemicals in cosmetics that have been banned or restricted. If we were to leave the EU without that ability, the UK could be at risk of the dumping of products that would not be satisfactory in the EU and that we would need to restrict over here.

**Grahame Morris** (Easington) (Lab): I hope the Minister will forgive me for seeking some clarification on the scope of the SI. I listened intently to her comments on chemicals and cosmetics and on the issues to do with Switzerland. On product safety, does the statutory instrument cover the safety of imported domestic electrical appliances? Is that within its scope? Specifically, there have been issues with tumble dryers being responsible for many domestic fires, and a major product recall of imported dryers has been widely publicised. Does that come within the scope and purview of the SI?

**Kelly Tolhurst**: I thank the hon. Gentleman for his question. The SI that we are debating relates to amendments to the bigger SI, which covered some of the areas to which he referred. These are amendments to the current regulations, so yes, his comments are relevant in the broader scope of things. He will hopefully be aware that, as the Minister with responsibility in this area over recent months, the issues with tumble dryers, fridge freezers and so forth have been at the forefront of my mind, particularly as we have been scrutinising the legislation coming forward and these amendments. The hon. Gentleman is right to address that.

It is crucial that we have functional legislation if we leave the EU without a deal. The SI ensures that previously laid instruments can serve their intended function. It is vital that we protect consumers by making these changes. We can better ensure that we continue to be in step with the latest scientific advice, thus reducing the risk of cosmetic products with chemicals that are banned at EU level being dumped on the UK market. Without this legislation, there could be additional burdens on business, as some of the provisions address burdens or barriers to trade that could be problematic if not amended.

Additionally, the instrument explicitly implements provision in the existing EU-Swiss mutual recognition agreement and allows importers of certain goods from Switzerland to place their contract details on a document accompanying the product, rather than on the product itself, for a period of 18 months if we leave the EU without a deal. The SI will provide continuity and certainty for business, and maintain consumer confidence in the safety and accuracy of products as the UK exits the EU. I urge the Committee to approve the regulations.

*Question put and agreed to.*

4.48 pm

*Committee rose.*



