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Eighth Delegated Legislation Committee

DRAFT CONFORMITY ASSESSMENT (MUTUAL
RECOGNITION AGREEMENTS) (AMENDMENT)
REGULATIONS 2022

Tuesday 13 December 2022

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The Committee consisted of the following Members:

Chair: DEREK TWIGG

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| † Carter, Andy (<i>Warrington South</i>) (Con) | † Moore, Damien (<i>Southport</i>) (Con) |
| † Evans, Dr Luke (<i>Bosworth</i>) (Con) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Gideon, Jo (<i>Stoke-on-Trent Central</i>) (Con) | † Morrissey, Joy (<i>Beaconsfield</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) |
| † Hunt, Tom (<i>Ipswich</i>) (Con) | Sambrook, Gary (<i>Birmingham, Northfield</i>) (Con) |
| † Levy, Ian (<i>Blyth Valley</i>) (Con) | † Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| † Lewis, Clive (<i>Norwich South</i>) (Lab) | † Wright, Sir Jeremy (<i>Kenilworth and Southam</i>) (Con) |
| † Linden, David (<i>Glasgow East</i>) (SNP) | |
| † McDonald, Andy (<i>Middlesbrough</i>) (Lab) | Stella-Maria Gabriel, <i>Committee Clerk</i> |
| † Malhotra, Seema (<i>Feltham and Heston</i>) (Lab/Co-op) | † attended the Committee |

Eighth Delegated Legislation Committee

Tuesday 13 December 2022

[DEREK TWIGG *in the Chair*]

Draft Conformity Assessment (Mutual Recognition Agreements) (Amendment) Regulations 2022

9.25 am

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 Conformity Assessment (Mutual Recognition Agreements) (Amendment) Regulations 2022.

It is a pleasure to serve with you in the Chair, Mr Twigg. The regulations were laid before the House on 21 November 2022 and implement a trade agreement with Switzerland, a country with which the UK has strong economic and historical ties. Switzerland is the UK's 10th largest trading partner and our bilateral trade in goods was worth £38 billion in 2021. Members will appreciate the importance of supporting such international trade relationships while protecting our product safety and legal metrology system, which is among the strongest in the world.

The UK signed the mutual recognition agreement with Switzerland on 17 November 2022 to reduce technical barriers to trade related to conformity assessment. The MRA promotes trade in goods between the UK and Switzerland by helping businesses to simplify their conformity assessment arrangements. Product safety legislation in the UK and Switzerland—indeed, in most countries—often requires products to be assessed against minimum essential requirements, sometimes by a conformity assessment body, or CAB, external to the business. MRAs can reduce barriers by allowing the conformity assessment to be undertaken by a body based in the UK prior to export to the relevant country, which in this case is Switzerland. Likewise, they enable procedures carried out by recognised overseas CABs and appointed bodies to be recognised in respect of our domestic regulations.

The products in scope of the MRA cover many areas, from rules on noise-emitting equipment for use outdoors to measuring instruments and much in between. For example, if a small UK business that manufactures potentially noisy outdoor equipment such as lawnmowers is considering exporting that equipment to Switzerland, it might find it can get all its advice and approvals from a single UK-based CAB. If that means the business reduces its costs, it can of course pass that saving on to its customers.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): Will the Minister clarify whether the MRA will make any difference for the five sectors to which it applies or in effect continues the temporary arrangements we currently have for those sectors with the Swiss?

Kevin Hollinrake: It makes a difference in that it makes the arrangements permanent. We have a three-year deal; the MRA makes the temporary arrangements permanent and formalises the UK-Switzerland relationship in terms of conformity assessment bodies.

Seema Malhotra: I understand that the MRA may make temporary arrangements permanent but I am trying to understand whether anything is different under it for the five sectors to which it applies. Will anything affect businesses that are currently trading under the temporary arrangements for products that they export to Switzerland? Or does the MRA in effect continue the current temporary arrangements, even it makes them permanent?

Kevin Hollinrake: As I understand it, nothing is different, but I will check with my officials and come back to the hon. Lady before the end of the debate.

The outdoor equipment manufacturer I referred to will be able to continue to access international markets more easily when assessment is facilitated in the way I described, thereby increasing its exporting potential and customer choice. The MRA benefits that the UK experienced for years as an EU member are maintained through the provisions of the new MRA with Switzerland.

The statutory instrument we are considering implements the MRA by amending an earlier set of regulations made last year: the Conformity Assessment (Mutual Recognition Agreements) and Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2021.

Andy McDonald (Middlesbrough) (Lab): The Minister is explaining to us that this is putting the UK and Switzerland in the same position as now, making a temporary arrangement permanent. On a point of clarification, is there any differential between the relationship with Switzerland on those matters, as compared with that with the rest of the EU? Is there any difference or are similar arrangements being made?

Kevin Hollinrake: The rest of the EU uses the CE mark. If we want to export products to the EU, we use the CE mark. That is a European certification process. These are relationships simply between the UK and Switzerland, not with the rest of the European Union. We have a separate arrangement for that.

The 2021 regulations are amended by the instrument we are considering so that they are also included in the Swiss MRA. I will return briefly to that point when discussing the territorial scope and the specifics of the regulations.

I will now consider each of the areas in greater detail. For goods coming into the UK that are in the scope of the MRA, we have committed to recognising the results of conformity assessment procedures carried out by recognised Swiss CABs and appointed bodies against our domestic regulations. The statutory instrument makes clear that assessments carried out by a recognised body based in Switzerland should be treated as equivalent to those carried out by a UK-approved or appointed body when products are placed on the market in Great Britain.

Seema Malhotra: It is important to be clear about where there is simply continuity rather than giving the impression of something new happening. To clarify, the SI means continuity of importing into the UK, without further checks, for goods made in Switzerland and

tested for conformity against UK standards by a conformity assessment body in Switzerland. It is simply a continuity of arrangements under the Swiss temporary measures for the five sectors to which it applies.

Kevin Hollinrake: As I understand it—she may want to clarify—that is a continuation of the hon. Lady's earlier question. Everything will be the same and the only difference is that UK manufacturers should affix a new Swiss mark to their products.

The Secretary of State will add Swiss bodies recognised under the agreement to the UK's register of CABs, known as the UK market CAB database, which is a publicly available resource used by the UK's market surveillance bodies and regulators to verify the status of CABs that approve products sold in the UK. Having all the CABs competent to assess for the domestic market in one place creates a one-stop shop for our UK enforcement authorities and businesses, helping them quickly to find and verify the credentials of CABs. The draft regulations do not change the substance of the requirements for third-party assessment, nor do they amend any requirement related to a product's specifications or product safety credentials.

Turning to goods in scope of the UK-Swiss MRA that are assessed by UK CABs, the SI provides for the Secretary of State to designate CABs as competent to assess that goods comply with certain regulatory requirements of Switzerland under the MRA, as set out in a schedule to the SI. To give an example, that means that where a UK-based CAB wishes to be recognised by the Swiss authorities as competent to test and assess, for example, for Switzerland's radio equipment requirements, the body can apply to the UK Accreditation Service to be accredited as competent to test against those Swiss requirements. The Secretary of State may then designate the body under the UK's MRA with Switzerland to assess radio equipment for export to Switzerland. Once the CAB is designated, a UK manufacturer that uses the CAB's services to assess its products for the domestic market has the option to use that same body, rather than a Swiss one, to do its assessment. The manufacturer can continue to place products on the Swiss market efficiently and without extra costs, potentially passing savings on to consumers.

The Secretary of State, or a person authorised to act on their behalf, may also disclose information to other parties to an MRA, where required by an MRA. We may, for example, pass on information related to goods originating in Switzerland that have been suspended by UK enforcement authorities under commitments to co-operate in the MRA with Switzerland. Disclosure will be made in accordance with data protection legislation.

Let me turn to the territorial scope of the draft regulations. They extend to the whole of the UK, apart from regulation 5, on recognition of conformity assessment by Swiss CABs, which extends to Great Britain only. Northern Ireland will continue to recognise the results of conformity assessment procedures done under the MRA between the European Union and Switzerland. That is in accordance with the terms of the Northern Ireland protocol to the withdrawal agreement. Regulations 6 and 7 of the 2021 regulations, to which I referred earlier, deal respectively with the Secretary of State's power to designate UK-based bodies under these agreements and to information sharing. The powers extend to the whole

of the UK, which means that CABs across the UK can be designated under the MRA and the Secretary of State will be able to share relevant information as required under the MRA.

In conclusion, the SI will provide certainty about the UK's approach to recognising and designating CABs for products in scope of the MRA. We introduced the draft regulations to give effect to provisions that keep barriers to trade low while preserving our robust safety rules. We do so as a Government who are committed to ensuring that consumers are protected from unsafe products as we look to deliver a product safety regime that is simple, flexible and fit for the opportunities ahead of us. I commend the draft regulations to the Committee.

9.36 am

Seema Malhotra: It is a pleasure to serve under your chairmanship, Mr Twigg. I thank the Minister for his opening remarks and his generosity in taking the questions put to him.

I have a number of questions for the Minister, which may or may not surprise him. Exporting businesses in the eight sectors that fall under the EU CE mark are currently also covered by the Swiss temporary measures, which are due to expire, and I am sure he will be aware that they will be concerned about what happens next.

On commercial products, the letters CE mean that the manufacturer or importer affirms the goods' conformity with European health, safety and environmental protection standards. Eight sectors are not included in the UK MRA that we are considering today because they must use the rules of a third territory—the EU—over which neither the UK nor Switzerland has control. It is important to understand the basics of this SI. Because it effectively continues, in part, some of the arrangements that we currently have, it has consequences for the clarity about what needs to happen for goods being exported or imported in those other sectors.

I do not oppose the draft regulations. Out of the 13 sectors covered by the Swiss temporary measures in place since Brexit, when we came out of the EU agreement that covered us and Switzerland, three sectors were covered by the EU-Swiss FTA. Thirteen sectors were covered by the Swiss temporary arrangements, which are expiring, and five are now being covered by the MRA. In a sense, for goods under those eight sectors, we will be in a more difficult trading position with Switzerland on 1 January than we will have been on 31 December.

Businesses have practical questions. I am sure the Minister has been through the detail of what he is speaking to today, but to go back to some of the basics, as the Minister said certain products require a conformity assessment to be carried out by a designated body to ensure they meet the requirements to be legally placed on a specified market. I thank the Minister for explaining how conformity assessment bodies will be designated and authorised to deliver services under the MRA. That point is absolutely critical. It means that there may be a number of companies, which, without further arrangements, will not be able to export their goods to Switzerland as of 1 January. There is talk of 300 companies for which there are issues relating to exporting and extra costs in the UK.

[Seema Malhotra]

Mutual recognition agreements allow a country to recognise assessment results carried out in the other country against its own standards. That is why I wanted to clarify with the Minister that he was talking about goods being manufactured in Switzerland and being assessed as conforming with UK standards by equivalent assessment bodies in Switzerland. That would be the mutual way in which such work was undertaken.

The MRA allows for certain goods to be tested in the UK against Swiss regulations. The goods can then be sold in Switzerland without additional testing in Switzerland. Equally, that works the other way around. It is important to note that MRAs are about recognising conformity assessments carried out in another country. They are not about recognising the product requirements themselves, rather conformity against our safety standards.

The SI implements the UK-Switzerland mutual recognition agreement, which is designed to keep the benefits found under the current Swiss temporary arrangements, as the Minister clarified. In a sense, it is about preventing any additional barriers to trade in the relationship between the EU and Switzerland in the five areas that the Minister mentioned. Those include electrical equipment, radio equipment, noise-emitting equipment for outdoor use and so on.

The MRA sets out the conditions under which each country will accept conformity assessment results from the other. If it is not yet clear why the UK had to reach the MRA with Switzerland that we are debating today, the EU and Switzerland have an MRA, but following Brexit that no longer applies to the UK. The Government have attempted to retain as much as possible of its coverage.

The UK-Switzerland free trade agreement included mutual recognition of conformity assessment, effectively carrying forward arrangements for three sectors from the EU-Swiss agreement. Those accounted for some 70% of UK-Switzerland trade previously covered by the EU-Swiss agreement. Most of the remaining 30% of trade that the UK does with Switzerland was then covered by the Swiss temporary arrangements, covering 13 sectors. These were based on the Swiss being content that UK regulations did not diverge from Swiss regulations.

However, the Swiss Government have said that the temporary arrangements will expire at the end of 2022. Without a replacement agreement, UK exports to Switzerland that need third-party conformity assessment would need to use a Swiss conformity assessment body. To address that, I understand from the Minister's remarks that the UK Government have had to secure an MRA with Switzerland covering five of the sectors included in the Swiss temporary measures. Those sectors also use the Swiss CH mark, which the Minister was referring to. I thank him for clarifying that the MRA is happening because the channel through which products have been confirmed is the Swiss CH mark, not the EU CE mark, which is a parallel channel. I would be grateful if the Minister could clarify whether this means that the UK is committing to not have any divergence in standards for products under the five sectors covered by the MRA with Switzerland.

The other eight sectors covered by the Swiss temporary measures use only the EU CE mark domestically; there is no standalone Swiss marking. As I have mentioned,

they are covered by the MRA we are discussing because they are not subject to Swiss standalone marking, so the assessment would be against EU standards, which neither Switzerland nor the UK has any control over. The explanatory memorandum for the MRA states that existing conformity assessment certificates

“issued in the UK before 31 December 2022 in the eight sectors currently covered by temporary measures, but which are not captured in the Agreement text, will no longer be valid for entry of products not already placed on the Swiss market.”

Paragraph 5.2 of the explanatory memorandum for the MRA gives the Government's advice on what businesses will need to do in those circumstances. The explanatory memorandum for the draft SI states that the Conformity Assessment (Mutual Recognition Agreements) and Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2021 are amended

“to ensure that specific products assessed by bodies in Switzerland recognised under the MRA can be placed on the market in Great Britain; and, to enable the Secretary of State to designate and monitor UK conformity assessment bodies to assess products against Swiss requirements.”

For businesses that may be exporting into the eight remaining sectors, I would be grateful if the Minister could clarify whether it will now be slower and more costly to export goods to those sectors in Switzerland. The explanatory memorandum suggests that there is a cost of £2,300 for the 300 businesses that the Government believe will be affected. How has that cost been calculated, and will the Minister expand on where the additional costs come from? I am keen to understand that, because the explanatory memorandum also states that the Government are keen to spread awareness of the arrangements so that businesses are aware of what could happen to them from 1 January in relation to the eight sectors, which account for less than 30% of our trade. What comprises the estimated cost of £2,300 for the 300 businesses that the Government think will be affected? How are the Government informing the 300 affected businesses of the impending cost? What position will they be in if, for example, cash flow and income are tight?

Businesses are definitely having a difficult time at the moment, because the cost of doing business is rising, with increases in material costs, energy costs and labour costs. We are seeing an increase in business deaths every quarter and businesses are incurring costs, so I would be grateful if the Minister could give the Committee any further clarity on the size of the 300 affected businesses. Are they small businesses, medium-sized businesses or large businesses? Large businesses may be more able to assume the costs. Small businesses may be doing most of their exporting to Switzerland, as some countries have more arrangements for bilateral trade. Are there small businesses trading with Switzerland that are going to be hit by this—that could see their businesses affected quite dramatically from 1 January—and what advice does the Minister have for them?

The SI is unaffected by the UK Government's announcement on 14 November that they will continue to recognise the EU CE mark in many sectors until the end of 2024. The Minister and I debated that announcement just last week. If the SI is unaffected, could the Minister explain whether the Government approached the Swiss authorities to seek any further extension of the Swiss temporary measures, bearing in mind that the Government

are now extending the recognition of the EU CE mark for another two years? If so, when did they do so, and what was the outcome of those discussions?

In relation to the eight sectors that fall outside the UK MRA, what assessment have the Government made of the UK's competitiveness in those markets for businesses that may be developing and exporting products? I am sure the Minister has asked these questions of his officials. Does he also estimate that we might otherwise be likely to see a drop in exports to Switzerland in those sectors, if there are extra costs associated with being able to export into the Swiss market? I am sure there has been some attempt to ask that question as well, because obviously we do not want to see any further drop in exports from UK businesses to Switzerland.

Paragraph 5.2(b) of the explanatory memorandum to the MRA says:

“If a business is: exporting to Switzerland, but not the EU; and in sectors where third party conformity assessment is required”—

which I believe refers to those eight sectors—

“it will need to use a Swiss or other EU-approved CAB to place products on the Swiss market for those sectors.”

Will the Minister clarify where he would expect the Swiss conformity assessment body that would cover those eight sectors to be located? It is a genuine question: would that be in the UK, or would that have to happen when those products reach Switzerland, and be done there by CABs authorised by Switzerland or the EU? It is not clear to me what is implied by needing to use a Swiss or other EU-approved CAB to place products on the Swiss market for those sectors. Otherwise, we would effectively have a process for authorising CABs for exports and imports under the MRA, and a separate arrangement in the UK for CABs to be looking at exports and imports in the other eight sectors not covered by the MRA. I would be grateful for that clarity, because if we in this House are clear, it will be easier for the businesses that are having to make decisions—possibly very quickly, if they are not aware of these arrangements; there are probably just two weeks to go—to be clear as well.

The explanatory memorandum to the MRA suggests that the five sectors covered collectively by the MRA represent £400 million of bilateral trade. That is good news, although we want it to be more. However, will the Minister clarify—I could not find the figures—how many millions of bilateral trade are covered collectively by the eight sectors remaining outside of both the MRA and the FTA? If the Minister does not have those figures to hand, I am sure that he will be able to come back to me in writing.

Reflecting on paragraph 5.2 in the explanatory memorandum, what about goods with certificates issued before 31 December 2022 that have not yet been exported to Switzerland? There may be goods sitting in warehouses now, ready to go, but they may not go before 1 January; then they may not be able to go unless they are certified in a different way. How long could the conformity assessment process take if it needs to go through a new Swiss body?

The Government stated in paragraph 6.3 of the explanatory memorandum that this new arrangement “provides for regulatory autonomy”. I think that we all understand “regulatory autonomy” and what the Minister

has described as some of the benefits for UK businesses arising from the potential for “regulatory autonomy” and divergence. I just want to be clear on something.

First, coming back to a question that I have already asked the Minister, for the five sectors covered under the MRA, is the UK committing to not diverging from current standards, and if there is divergence, will that affect their inclusion under the MRA?

Secondly, could the Minister say how many representations he has had from businesses that trade with Switzerland that have requested and sought that we diverge in our standards? There may be some very good reasons for that, and it would be helpful for us to understand what approaches are being made to the Department in relation to either conformity or divergence from standards that are recognised under some of our mutual agreements. I would be grateful if he could say how many representations he has had from businesses requesting divergence, as referenced in paragraph 6.3 of the explanatory memorandum to the MRA.

I have a couple of final points. The explanatory notes and the memorandum suggest—I think the Minister clarified this—that this process effectively only applies to Great Britain, because under the terms of the Northern Ireland protocol the EU-Swiss MRA, which covers all sectors, will continue to apply. For example, a business based in, say, Thirsk and Malton producing goods for export to Switzerland would have three arrangements under which it might deal with those exports: one under the FTA; one under the UK MRA; and one under these third-party conformity assessments for the eight sectors not included, for which there need to be a separate check. If that business decided to produce its goods in Northern Ireland, they could all be exported to Switzerland under the EU-Swiss MRA. I would just be grateful if the Minister could just clarify that that is effectively what this arrangement means.

Will the Minister also clarify where businesses exporting to Switzerland in the eight sectors that are not covered by the MRA or the FTA are geographically located in the UK? Are they concentrated in any particular area, or are they broadly spread across the country? If there is an impact on trade with Switzerland from some challenges of exporting and challenges to competitiveness in those eight sectors, which would see increased process to go through, that could have a disproportionate impact if there is a cluster or an area that is more affected than others. That would be important for communication purposes, so that businesses have the best possible information in order to make commercial decisions about what they need to change in terms of processes.

I raised this point with the Minister last week, and have not yet had a clear answer—perhaps the answer will be “shortly”. Has there been any further progress on the product safety review that has been promised by Ministers since spring this year?

10 am

Kevin Hollinrake: I appreciate the shadow Minister's points, which were extensive and exhaustive. I want to clarify: these regulations relate to only UK companies or Swiss companies who are trading with each other. They do not relate to wider exports to the European Union or European Union exports to the UK. That is the point.

[Kevin Hollinrake]

Using the hon. Lady's example, if a company in Thirsk and Malton decided to move to Northern Ireland, and only wanted to export to Switzerland, then it could use a Swiss-based conformity assessment body to have its products verified. It could use the Swiss mark. If a Swiss company wanted to export its products to Northern Ireland, it could use the CE mark. That is how it would work, because of the different arrangements in Northern Ireland and the rest of the United Kingdom.

The hon. Lady asks if the process will be slower or more costly. That is the absolute opposite of what the regulations are about. They are about UK companies, or Swiss companies, who want to trade with each other, who want to use a different mark, because they are only trading with Switzerland or the United Kingdom.

Seema Malhotra: Will the Minister give way?

Kevin Hollinrake: I will not, because of the pressure of time. I have a lot to go through and she has asked a lot of questions, which I want to cover.

Seema Malhotra: It is just to clear up a misunderstanding.

Kevin Hollinrake: Okay.

Seema Malhotra: That question was about whether there will be a slower or more costly process in relation to the eight sectors that are not covered by the MRA.

Kevin Hollinrake: I think the hon. Lady asked both questions. Those sectors are still covered by the CE mark. It is not possible to distinguish a separate Swiss mark from the CE mark, so those eight sectors would still be covered by the CE mark. Nothing would change for companies that are trading in those sectors, so there will be no greater cost; there will be less cost for companies who are just trading bilaterally between the UK and Switzerland. The conformity assessment will be done once, not twice. If companies in that particular sector need to trade with Switzerland, that would have had to

be done twice. These provisions are only for companies that are trading only between the UK and Switzerland. That is the key part of this statutory instrument.

On divergence in standards—another point raised by the hon. Lady—the regulations are made with the principle of divergence in mind. We can diverge, but if a company is exporting to Switzerland, it must have regard to Swiss regulations. It has to make sure that the product conforms with the Swiss safety regulations and other conformity regulations. That is the point. We can diverge, certainly, but if a company is exporting to Switzerland, it has to make sure that its products conform with Swiss rules. That is the point. Divergence is possible under these provisions.

The trade level in the five sectors is very hard to quantify. I cannot give the hon. Lady a number on that. She asked about the extent of trade covered by those five sectors and it is not possible to separate that out—*[Interruption.]* No, the figures relate to the three sectors—the 70%. If the hon. Lady wants to write to me to explore the details further, perhaps that will be swifter than arguing about it here.

As for the number of businesses we engage with, we engage with businesses all the time. I do not have those figures to hand.

Our trade with Switzerland is significant, and technical agreements on trade and goods such as the MRA that this SI will implement will serve an important function in facilitating and encouraging that trade. I have set out how the SI will preserve such measures to keep barriers to trade with Switzerland low while maintaining our robust product safety framework. In supporting the SI, we are ensuring that our manufacturers and consumers benefit from maintaining the arrangements to minimise the duplication of conformity assessment requirements between ourselves and Switzerland. I commend the SI to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Conformity Assessment (Mutual Recognition Agreements) (Amendment) Regulations 2022.

10.5 am

Committee rose.