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24 October 2019

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

I write following the debate held on Monday 7 October in the Lords Chamber on the Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019. Thank you for your contributions during the debate. I hope I was able to reassure you that the amendments made by the Regulations (to some provisions of earlier product safety and mutual recognition instruments) will ensure the UK will continue to maintain a robust and highly effective product safety and legal metrology regime, in the event of no deal. During the debate I committed to write on a few specific points that were raised, and I set out my responses below.

### **Explanation of the difference between a Notified Body and an Approved Body**

Lord Fox asked for clarification on the phrase 'substantially the same essential requirements' as set out in the Explanatory Memorandum which reads "in the event of the UK leaving the EU without a deal, products placed on the UK market will need to continue to meet substantially the same essential requirements".

The aim of all the product safety no deal legislation is to mirror as closely as is possible the existing EU essential requirements. Where the requirements are not exactly the same, this is due to the fact the UK will no longer be a member state.

On the matter of conformity assessment, the requirements that UK manufacturers will have to meet in a no deal exit remain the same, that is (if not able to be self-certified) products will still have to be assessed by a third-party conformity assessment body and there remain the same obligations on importers and distributors.

Under EU law these bodies are referred to as Notified Bodies because they have to be notified to the European Commission. In a no deal scenario, UK based bodies will no longer be 'Notified' and a new UK system of third-party conformity assessment is required. The government intends to reclassify UK Notified Bodies as UK Approved Bodies.

These bodies will be eligible to assess products against relevant UK requirements and the UK marking may be affixed to indicate compliance, in the same way as they are now.

### **Detail of the amendments being made by the Regulations**

The Regulations amend three existing laws on product safety and mutual recognition, these are the:

- Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019;
- Conformity Assessment (Mutual Recognition Agreements) Regulations 2019;
- The Pressure Equipment (Safety) Regulations 2016.

Key amendments are required because the extension of exit day under Article 50, from a March to October exit, causes confusion in some areas of the earlier Product Safety Regulations. Additionally, the Regulations ensure aspects of a mutual recognition agreement with the Swiss can be fully reflected in UK law, via the earlier Conformity Assessment Regulations. During the debate I acknowledged that this was a very technical instrument and I attach an Annex providing more information on each of the specific amendments being made by the Regulations.

I hope you have found my responses helpful and I would be happy to provide further information on the Regulations.

A copy of this letter will be placed in the Libraries of the House.

Kind regards  


**Lord Duncan of Springbank**

**Annex – Amendments made by the Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019**

Regulation(s) and subject area	Explanation of amendments
<p><b><u>Regulation 2 and Regulation 18</u></b></p> <p><b>Conformity Assessment (Recognition of importers established in Switzerland)</b></p>	<p>Regulation 2 makes changes connected with the implementation of EU obligations and contains two changes to the earlier Mutual Recognition Agreement Regulations. It extends recognition of Authorised Representatives (persons appointed by a manufacturer to perform specific tasks) established in Switzerland to those appointed in relation to noise emissions from equipment used outdoors. It also expressly implements obligations that we currently have as an EU Member State, to treat Swiss importers as if they were in the EU for certain purposes. This means that relevant products entering the EU from Switzerland do not need to be labelled with the address of the importer based in the EU</p> <p>Regulation 18 - revokes the regulation inserted into the Mutual Recognition Agreement Regulations (by Regulation 2(3) of these Regulations, see above). The revocation is needed, because on exit day, the concept of EU importers will no longer apply, as the UK will be a third country and the provision becomes redundant. Post exit importers must be based in the UK. This is revoked immediately before exit day, whereas it should stay in force until exit day. However, "immediately before" means less than seconds before and so will not have any real practical or legal consequences.</p>
<p><b><u>Regulation 3</u></b></p> <p><b>Pressure Equipment (information to identify importers)</b></p>	<p>Regulations made in 2016 implemented an EU Directive on pressure equipment into UK Law. However, the drafting of those regulations included an oversight in the provision concerning importer identification, with a reference only to 'pressure equipment'. This should have referred to 'pressure equipment and assembly'. We have now corrected this.</p>

Regulation(s) and subject area	Explanation of amendments
<p><b><u>Regulation 5</u></b></p> <p><b>Modification of importers' obligations (provision of contact information)</b></p>	<p>The earlier Product Safety Regulations modified an obligation across a range of product safety and metrology legislation so that importers who are based in the UK after exit may for a limited time (18 months after exit) provide their details on a document accompanying the product, rather than the product itself. This modification applied to imports from the EEA.</p> <p>Regulation 5 extends the 18-month transition period to UK imports of relevant products from Switzerland post exit. This will apply to products within the scope of the EU-Swiss MRA and will provide further clarity and continuity for business.</p>
<p><b><u>Regulation 6</u></b></p> <p><b>Toy safety (labelling)</b></p> <p><b>Electromagnetic compatibility (labelling)</b></p> <p><b>Pressure equipment (labelling)</b></p>	<p>Regulation 6 makes a small clarification in the wording of labelling provisions concerning these three product areas, so that importers can put their address on the packaging, instead of on products themselves or the accompanying document in certain situations. This ensures information on packaging meets legal requirements.</p>
<p><b><u>Regulation 7</u></b></p> <p><b>Electrical equipment</b></p> <p><b>Radio Equipment</b></p>	<p>Changes are required to correct current legislation, which reads: before placing the "<i>electrical equipment</i>" on the market the importer sets out the information on the packaging or in a document accompanying the "<i>safety component</i>". The latter reference to safety component is incorrect and it should be to electrical equipment.</p> <p>This drafting error is repeated on the same basis for an equivalent radio equipment provision. These are corrected to now refer to 'electrical equipment' and 'radio equipment' respectively.</p>

Regulation(s) and subject area	Explanation of amendments
<p><b><u>Regulation 8</u></b></p> <p><b>Cosmetics</b></p>	<p>Makes changes to cosmetics provisions on:</p> <p><b>Animal testing:</b> to make clear that historic animal testing data can be relied upon (which maintains the current position in law as it is now and avoids any confusion after exit).</p> <p><b>Carcinogenic, Mutagenic and Reprotoxic substances:</b> to enable the Secretary of State to amend Annexes (rather than Articles of) cosmetics regulations so that lists of permitted and banned chemicals can be updated by the same process as is currently operated in the EU. This process was only recently used at EU level via the publication of the cosmetics 'Omnibus Act' (Regulation 2019/831) and this was therefore not captured in the earlier no deal Product Safety Regulations. This will maintain continuity for stakeholders.</p>
<p><b><u>Regulation 9</u></b></p> <p><b>Personal Protective Equipment</b></p>	<p>This makes small amendments to earlier PPE regulations to ensure certain savings provisions operate in the correct order and provide clarity for the industry over which regulations to follow. These amendments were required as the extension to exit day meant earlier drafting would not work as intended in this respect.</p>
<p><b><u>Regulation 10</u></b></p> <p><b>Noise emissions</b></p>	<p>The amendments allow Authorised Representatives (persons appointed by a manufacturer to perform specific tasks) who are, pre-exit, based in EEA to continue their role post exit. This change brings this in line with changes made to other product safety regulations in this space.</p>
<p><b><u>Regulations 11-13</u></b></p> <p><b>Machinery</b></p> <p><b>Civil Explosives</b></p> <p><b>Simple Pressure Vessels</b></p>	<p>Regulations 11-13 make changes to some provisions for machinery, civil explosives and simple pressure vessels to address an incorrect reference they contain to "<i>notified bodies</i>" post exit, whereas the reference should be to "<i>approved bodies</i>". This ensures the UK system of approved bodies can function effectively for these areas post exit.</p> <p>For machinery it also corrects a reference to "<i>EC Type examination</i>", which should read "<i>Type</i>" only, to ensure this works correctly after exit.</p>
<p><b><u>Regulation 14</u></b></p> <p><b>Pressure Equipment</b></p>	<p>Makes similar changes as above on approved bodies.</p> <p>Amendments also address certification of base materials used in the manufacture of pressure equipment, to maintain the current position in law by allowing an option for materials manufacturers to have their manufacturing processes certified by a competent body. This ensures certainty and continuity for business and avoids unnecessary burdens.</p>

<b>Regulation(s) and subject area</b>	<b>Explanation of amendments</b>
<p><b><u>Regulation 15</u></b></p> <p><b>Measuring Instruments</b></p>	<p>Amendments remove an unintentional obligation included in the drafting of the earlier Product Safety Regulations for the Secretary of State to notify herself of measures that present a risk in respect of measuring instruments.</p>
<p><b><u>Regulation 16</u></b></p> <p><b>Recreational Craft - Manufacturers' Identity Codes (MIC)</b></p>	<p>Makes similar amendment in respect of approved bodies as discussed with Regulations 11-13. This also introduces some changes to make clear in law that post-exit there is no need for manufacturers to reapply for a MIC. This ensures certainty for business and avoids any unnecessary burdens.</p>
<p><b><u>Regulation 17</u></b></p> <p><b>Accreditation</b></p>	<p>Makes minor amendments to a provision concerning peer evaluation for our national accreditation body (UKAS - United Kingdom Accreditation Service) to maintain the current available options for peer evaluation, so that it can be a body approved by the Secretary of State but not necessarily from a single country.</p>