EXPLANATORY MEMORANDUM TO

THE AEROSOL DISPENSERS (AMENDMENT) REGULATIONS 2014

2014 No. 1130

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of the instrument is to implement Commission Directive 2013/10/EU (OJ No L77,20.3.2013, p.20), which amends the Aerosol Dispensers Directive 75/324/EEC on labelling requirements (the "1975 Directive"), which is implemented by the Aerosol Dispensers Regulations 2009 (S.1.2009/2824) (the "2009 Regulations").

2.2 Aerosol dispensers must carry labels to inform consumers of the hazards they present during use and storage. Mandatory labelling requirements are set out in Directive 75/324/EEC and implemented in the UK by the 2009 Regulations.

2.3 The current labelling requirements of the 1975 Directive are out of date as they refer to standards in other Directives which are due to be replaced and revoked by 1 June 2015 and have been superseded by new labelling requirements for substances and mixtures, including aerosol dispensers, in Regulation No.1272/2008 on the classification, labelling and packaging of substances and mixtures (the CLP Regulation) (OJ No L 353, 31.12.2008, p1).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is being made in order to implement Commission Directive 2013/10/EU.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The objective of this instrument, the Aerosol Dispensers (Amendment) Regulations 2014, is to align the labelling requirements in the 2009 Regulations with modern international practice as set out in the new labelling requirements for aerosols brought in by the CLP Regulation. This will ensure that aerosol dispensers carry the correct safety information to better protect consumers. It will also remove legal uncertainty and confusion for business as to whether they should follow the labelling regime for aerosols in the existing 2009 Regulations or that in the CLP Regulation.

7.2 The CLP Regulation uses the criteria for the labelling set out in the Globally Harmonised System of labelling which has been adopted at the international level. This Regulation is already in force and in some cases the UK aerosol industry is already complying with its labelling provisions. The CLP Regulation came into effect for single substances (e.g lighter refills and air dusters) from 1 December 2010 and applies to mixtures from 1 June 2015. In the interim, before the 1975 Directive could be amended to reflect the CLP Regulation, the European Commission issued guidance in 2011 on how the labelling requirements should be applied to single substances aerosol dispensers.

7.3 This is a non-controversial measure and was supported by the European aerosols trade associations and UK business.

7.4 The UK is required to implement the 2013 Directive by 19 March 2014 and to bring the new Regulations into force by 19 June 2014. If the labelling requirements set out in Directive 2013/10/EU are not implemented then UK businesses will be legally required to produce two different sets of safety labelling on their aerosol products – those in the existing 2009 Regulations and those in the CLP Regulation (which has direct effect in the UK). Having two labels on the product could potentially confuse the safety message for the consumer. Also, failure to make the new Regulations would result in the UK failing to meet its EU treaty obligations by not implementing a binding provision.

7.5 The costs to the UK aerosol industry will be limited. There will some transitional costs to UK business from updating the labelling on their products. To allow adequate time for those UK manufacturers not yet complying with the CLP provisions, Directive 2013/10/EU allows that aerosols containing a single substance need not apply its labelling provisions until 19 June 2014.

7.6 Similarly, aerosols containing mixtures need not comply with the new provisions until 1 June 2015. Additionally, such aerosols marked in accordance with the previous labelling regime and placed on the market before 1 June 2015 are not required to be re-labelled until 1 June 2017.

7.7 The new Regulations will be enforced by local authorities' trading standards departments, who were consulted on the proposals. Any familiarisation costs will be minimal as enforcement officers have been aware of the application of the CLP Regulation on other products since 2010.

8. Consultation outcome

8.1 The Department for Business, Innovation and Skills carried out a four week public consultation on the new Regulation which started on 19 February 2014 and ended on 17 March 2014. A shortened consultation was carried out as industry have already been closely involved with the development of Directive 2013/10/EU and are already aware of its provisions and potential impacts. There were nine responses to the consultation. Six explicitly supported the proposals. These responses were from the British Aerosol Manufacturers' Association, the Department for Transport (who considered that the proposals would not impact on transport operations), two large companies and two medium size companies. Three responses criticised the principle of the need for the labelling changes under the CLP Regulation which was out of the scope of the consultation which dealt only with the means of implementation

9. Guidance

9.1 The statutory instrument is self-explanatory and we have therefore decided not to issue guidance.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business. The Government considers that the legislation is not expected to impose a disproportionate cost to small firms.

12. Monitoring & review

12.1 The new Regulations will be reviewed by the UK five years after coming into force, ie in June 2019.

13. Contact

13.1 Christine Knox at the Department for Business, Innovation and Skills Tel: 020-7215 3465 or email: christine.knox @bis.gsi.gov.uk regarding any queries concerning the instrument.