EXPLANATORY MEMORANDUM TO

THE ECODESIGN FOR ENERGY-RELATED PRODUCTS AND ENERGY INFORMATION (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2020 ("the SI") serve the following purposes:

2.2 This SI fixes deficiencies in retained EU Ecodesign and Energy Labelling legislation to ensure that this law remains fully operable in the UK after the end of the transition period. With regards to energy labels specifically, some of the requirements apply during the transition period (and will become retained EU law) and some of the requirements apply after the transition period (and will not form part of retained EU law). This SI makes fixes to address this.

2.3 Secondly, this SI amends the Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019 ("the first EU Exit SI") to take into account changes made to EU Ecodesign and Energy Labelling legislation since the first EU Exit SI was laid.

2.4 Thirdly, this SI will implement the Northern Ireland Protocol (NI Protocol) and deliver unfettered access for qualifying NI goods on the GB market. To ensure full legislative implementation of the NI Protocol, it amends the first EU Exit SI and underlying legislation so that certain UK-wide provisions are limited to GB only and bespoke fixes for Northern Ireland (NI) are implemented where necessary. EU Ecodesign and Energy Labelling Regulations will continue to apply directly in NI after the transition period.

2.5 Finally, this SI will account for labelling and marking requirements from the end of the transition period. It limits the recognition of CE marking to 12 months from 1 January 2021. In addition, it ensures that energy labels bear the UK flag and text from 1 January 2021 in place of the EU flag and any EU language text.

Explanations

What did any relevant EU law do prior to exit?

2.6 The European Commission ("the Commission") regulates the energy efficiency of energy-related products under two overarching pieces of legislation.

2.7 The EU Ecodesign Directive (2009/125/EC) sets minimum energy performance standards (MEPS), along with other requirements such as resource efficiency, for energy-related products. MEPS mandate the energy efficiency requirements of a product within certain timeframes and have the effect of pushing the least energy efficient products off the market. Over time, this raises the average energy efficiency

of all products in a product category. There are 28 products regulated under this Directive at an EU level.

2.8 The EU Energy Labelling Framework Regulation (EU) 2017/1369 mandates the use of energy labels to provide consumers with information on a given product's energy performance. It obligates suppliers to provide accurate energy labels to dealers who, in turn, are required to make them clearly visible to consumers at the point of sale.

2.9 Taken together, Ecodesign and Energy Labelling policy helps reduce the carbon footprint of energy-related products; support informed purchasing decisions; promote competition amongst manufacturers to develop more energy efficient products; reduce energy use and consumer energy bills; and encourage the uptake of the most energy efficient products.

2.10 These requirements were made at an EU level and applied in the UK as the UK was a Member State.

Why is it being changed?

2.11 Changes are being made to the law to account for the UK's new relationship with the EU as a third country. Furthermore, changes are being made to ensure legal clarity to stakeholders to support their continued compliance whilst also ensuring that non-compliant products do not enter into circulation in the UK which could undermine the net benefits of the policy. Additional changes pertaining to the NI Protocol, unfettered access, limiting recognition of the CE marking to 12 months and UK energy labels also need to be implemented through this SI.

What will it now do?

2.12 This SI will now do the following:

Fix deficiencies in retained EU Ecodesign and Energy Labelling legislation

2.13 These amendments are set out in Parts 4, 5 and 7 of this SI. These amendments either completely remove redundant EU terminology and references or replace them with the relevant UK reference. This is to ensure that the legislation is operable and makes sense in a UK context post-transition period. Without these amendments the legislation would be unclear in parts and could lead to stakeholder confusion. These amendments will apply across GB.

Amendments to product-specific retained EU law in the UK after the transition period

2.14 The below amendments are made in Part 2 and Part 4 of this SI.

2.15 Commission Regulation (EU) 2019/1783 ("Power Transformer Amendment Regulation")

- The first EU Exit SI, which will come into force at the end of the transition period, includes amendments to the law as it stood when the first EU Exit SI was laid. However, since the first EU Exit SI was made, this Regulation has come into force and applies before the end of the transition period.
- In some instances, the effect of the changes by the Power Transformer Amendment Regulation is that the amendments to be made by the first EU Exit SI will no longer match up against retained EU law. This SI fixes these deficiencies.

2.16 Commission Regulation (EU) 2019/424 ("the Server Regulation")

- This Ecodesign Regulation sets MEPS for servers and data storage products. The Server Regulation came into force on and applied from 7 April 2019, with the exception of Article 9, which applied from 1 March 2020.

2.17 Commission Regulation (EU) 2019/1782 ("External Power Supplies")

- This Regulation sets MEPS for external power supplies (EPS). The EPS Regulation came into force and applied from 1 April 2020.

2.18 Circumvention clause

- All new EU Ecodesign Regulations contain a provision which explicitly prohibits products being placed on the market which are designed to deliberately alter their performance during performance tests to achieve a more favourable energy efficiency rating (defeat devices). This prevents defeat devices being placed on the market that might undermine CO2 and energy bill savings.

2.19 Repeal of Energy Labelling requirements for luminaires

- Commission Regulations (EU) 2019/2015 and 2019/2020 ("the new Lighting Regulations") set Ecodesign and Energy Labelling requirements for lighting. The Ecodesign requirements in the new Lighting Regulations will not apply until September 2021. The Energy Labelling Regulation also amends the existing Energy Labelling Regulation for lighting (Commission Regulation 874/2012) to repeal existing Energy Labelling requirements for luminaires. This amendment took effect on 25 December 2019 and so energy labelling requirements for luminaires are repealed in the UK.

Implementing the NI Protocol

2.20 Amendments are made through this SI to the first EU Exit SI; the Ecodesign for Energy-Related Products Regulations 2010 ("the UK Ecodesign Regulations"); the Energy Information Regulations 2011 ("the UK Energy Labelling Enforcement Regime"); and the EU Energy Labelling Framework Regulation to implement the NI Protocol for Ecodesign and Energy Labelling. Regulations 3 and 5 along with Schedules 1 and 3 of the first EU Exit SI will be limited to GB only. These sections put obligations on suppliers, importers or authorised representatives regarding the pre-conditions for placing a product on the market.

2.21 EU Ecodesign and Energy Labelling Regulations will continue to apply automatically in NI without amendment.

2.22 To allow products from GB to circulate in the NI market, this SI will make allowances for the UK(NI) mark, as defined and implemented in The Draft Product Safety and Metrology etc. (Amendment etc.) (UK(NI) indication) (EU Exit) Regulations 2020. This mark must accompany products that have been CE certified by UK bodies that are destined for the NI market.

2.23 A decision is pending from the Commission regarding NI market surveillance authority (MSA) access to the 'closed' compliance section of the EU Product Database (EPREL) following a technical discussion held on 29 July 2020.

Implementing Unfettered Access for NI Goods

2.24 This SI will introduce the term "qualifying Northern Ireland goods", as defined in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018, to make allowances for the unfettered access of these goods.

2.25 In order to allow for NI goods to move freely into the GB market without additional checks or controls beyond those which currently exist, this SI will allow qualifying NI goods which meet EU Ecodesign and Energy Labelling requirements to circulate on the GB market, even where these requirements differ from those in GB after the transition period. There are obligations in the Ecodesign requirements on importers, manufacturers, and the manufacturer's authorised representative (where applicable) to confirm a product meets the relevant regulatory requirements and can be placed on the market by completing a declaration of conformity. An NI based distributor takes on the legal obligations of an importer, and must ensure that the manufacturer or their authorised representative has fulfilled their regulatory obligations, including supplying a Declaration of Conformity in the same way as other businesses placing products on the GB market. The declaration of conformity will allow UK MSA to differentiate between qualifying NI goods placed on the GB market from EU goods placed directly on the GB market, which do not qualify for unfettered access treatment, by allowing UK MSA to trace the technical documentation back to a NI-based distributor.

Energy Labelling Deficiencies

2.26 Part 6 of this SI will fix deficiencies in new EU Energy Labelling requirements where some of the requirements apply from 1 November 2020 (and so will become retained EU law) and some of the requirements apply after the transition period on 1 March 2021 (and so will not form part of retained EU law). This applies to the following EU product Regulations:

- Commission Delegated Regulation (EU) 2019/2013 for electronic displays
- Commission Delegated Regulation (EU) 2019/2017 for household dishwashers
- Commission Delegated Regulation (EU) 2019/2016 for household refrigeration
- Commission Delegated Regulation (EU) 2019/2014 for household washing machines and washer dryers

2.27 The requirements that come into force on 1 November 2020 are for manufacturers to provide new energy labels alongside products. The requirements that come into force on 1 March 2021 (which will not be retained EU law) are for dealers and retailers to display these new energy labels. This deficiency will be fixed by implementing the 1 March 2021 requirements, which will allow the requirements that come into force before the end of the transition period to function properly.

2.28 These EU Delegated Regulations will also be amended to remove requirements relating to EPREL in GB as GB MSAs will not have access to this post-transition period. These requirements are instead replaced by a requirement for manufacturers to provide the technical product information sheet (as set out in Annex V of the relevant product-specific EU Regulations) in hard copy on request from MSAs.

Post-Transition Period Labelling and Marking Requirements

2.29 Finally, this SI will set out when recognition of CE marking for goods placed on the GB market ends. This will occur after 12 months from 1 January 2021. The first EU

Exit SI made allowances for 'UK CA' marking, which should be used on products placed on the GB market from 1 January 2021. For products placed on the NI market, the CE marking will continue to be used after the standstill period in line with the NI Protocol. There will be an additional 'UK NI' mark, for products manufactured in GB and destined for the NI market.

2.30 This SI will also mandate that from 1 January 2021, all products newly placed on the GB market that are subject to Energy Labelling requirements, use a UK, rather than EU energy label. The energy label will bear the UK flag and contain only English language text.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this SI includes Scotland and Northern Ireland.

3.3 The powers under which this SI is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this SI is not limited either by the Act or by the SI.

4. Extent and Territorial Application

4.1 The territorial extent of this SI is the United Kingdom. Part 3 of this SI extends to Northern Ireland only. Part 6 of this SI extends to England, Wales and Scotland only. Any amendment made by Part 2 of this SI has the same extent as the provision amended. The remainder of this SI extends to the United Kingdom.

4.2 The territorial application of this SI is the United Kingdom, as above.

5. European Convention on Human Rights

5.1 The Minister of State for Energy and Clean Growth, Kwasi Kwarteng, has made the following statement regarding Human Rights:

"In my view the provisions of the Ecodesign for Energy-Related Products and Energy information (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This SI is being made under powers in sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. It corrects deficiencies in retained EU law arising from the UK's withdrawal from the EU and implements the NI Protocol and unfettered access for NI goods.

6.2 The EU Ecodesign Directive is not directly applicable in the UK. It is implemented domestically by the Ecodesign for Energy-Related Products Regulations 2010. These Regulations transpose the EU Directive and create domestic obligations and a related enforcement regime to ensure that UK MSAs have powers to enforce these obligations. The Office for Product Safety and Standards ("OPSS") exercise the Secretary of State's function as MSA responsible for Ecodesign.

6.3 The Energy Labelling Framework Regulation is directly applicable in the UK. The Energy Information Regulations 2011 outline the UK's enforcement regime to ensure that UK MSAs have the powers to enforce energy labelling obligations. The MSAs are the Secretary of State; the local weights and measures authority (Trading Standards) in England, Wales and Scotland; and the Department for the Economy in Northern Ireland. The functions of the Secretary of State are carried out by OPSS.

6.4 The first EU Exit SI, made on 8 March 2019, comes into force at the end of the transition period. It addresses failures in retained EU Ecodesign and Energy Labelling provisions that were in force and applied before 29 March 2019 to ensure they could operate properly in the event that the UK left the EU without a negotiated agreement on 29 March 2019. It also gives the Secretary of State the power, formerly vested in the Commission, to introduce measures to improve the environmental performance of energy-related products placed on the UK market.

6.5 As the first EU Exit SI amended regulation in force before the original exit day of 29 March 2019, this SI is necessary to ensure any provisions in Ecodesign and Energy Labelling legislation that entered into force after the first EU Exit SI was made and apply before 1 January 2021 still operate properly after the end of the transition period, along with other requirements as outlined in Section 2.

7. Policy background

What is being done and why?

7.1 The first EU Exit SI accounted for the period up to 29 March 2019. However, following the extension of Article 50, new EU Ecodesign and Energy Labelling measures have come into force in the UK and this SI ensures these remain operable in the UK after the end of the transition period.

7.2 In order to uphold high product standards which can contribute towards the UK's environmental objectives and lower consumer energy bills amongst other benefits, deficiencies in this retained EU law need to be fixed. This will provide legal clarity and ensure continued policy operability at the end of the transition period.

7.3 The policy also needs to account for Northern Ireland's unique relationship with the EU under the terms of the NI Protocol, as well as the provision of unfettered access of goods between NI and GB.

7.4 This SI also fixes deficiencies in new EU Energy Labelling requirements for four products where some of the requirements apply during the transition period with others applying afterwards. The requirements for suppliers to create and supply the new energy labels comes into force on 1 November 2020, while the requirement for retailers to display the labels only applies from 1 March 2021. This SI ensures the March 2021 requirements will come into force in the UK so that the Regulation functions as intended.

7.5 Finally, this SI allows for the standstill approach that has been agreed for CE marking, so that CE marking will only be accepted on the GB market for 12 months after the end of the transition period.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This SI is being made using the powers in section 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union; and to implement the terms of the NI Protocol. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans to consolidate the first EU Exit SI.

9.2 There are no plans to consolidate the package of product-specific EU Regulations that came into force between 29 March 2019 and the end of the transition period.

10. Consultation outcome

10.1 The Department held two stakeholder meetings on 6 March and 22 July 2020 to discuss updates to the Ecodesign and Energy Labelling regimes. This SI was discussed at both events to inform stakeholders of its purpose. Stakeholders were in agreement with the policy team about the need for this SI and responded positively to its purposes. However, they raised concerns about the limited timeframe being granted to implement the required change from EU to UK energy labels and wrote to the Secretary of State to this end on 14 September 2020.

10.2 Before the package of EU Ecodesign and Energy Labelling Regulations were adopted between September 2018 and January 2019, consultations were held at EU level with stakeholders, including in the UK. In addition, the Department consulted separately with UK stakeholders before voting in favour of these Regulations.

10.3 A formal consultation has not been deemed necessary in so far as this SI does not make substantive changes to the product requirements in the package of EU Regulations.

11. Guidance

11.1 No guidance has been produced for this SI.

11.2 A technical notice entitled "Energy-Using Products: Ecodesign and Energy Labelling" was published on 12 October 2018 under the wider "Meeting climate change requirements from 1 January 2021" technical notice. It was updated on 9 September 2020 to inform stakeholders of the implications of the UK leaving the EU in October 2019 with no agreement in place. It can be accessed here.

11.3 OPSS issued an e-alert to stakeholders on 17 September outlining their enforcement approach to UK energy labels in particular. This message notified stakeholders that, subject to the passage of this SI, compliance with the law is expected from 1 January 2021 and that OPSS will take a proportionate and pragmatic approach to any non-compliance, as they always have done; and provided contact details for queries pertaining to compliance.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies apart from the short timeframes being given to businesses to comply with UK Energy Labelling requirements.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this SI because it has a relatively low level of impact per business and will not materially impact trading practices or consumers. This is due to the fact this SI does not introduce substantial new requirements. For the energy labelling flag change, a De Minimis Self-Certification was completed that calculated the Equivalent Annual Net Direct Costs to Business (EANDCB) at £1.95m. Some minor familiarisation with the applicable legislation may be required but this is not expected to incur a significant cost.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses as this SI does not make substantive amendments to any requirements. While we consider a larger percentage of the workforce for small businesses is required to process this change (due to less staff available to share the work between), the total hours required will be low and the volume of labels to be printed low compared to a larger company.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the monitoring of this legislation will be ongoing to ensure the legislation continues to work as intended.

14.2 As this SI is made under the EU (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Laura Gritt at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding this SI. Telephone: 02072 154 541 or email: laura.gritt@beis.gov.uk.

15.2 Sam Balch, Deputy Director for Home Retrofit and Energy-using Products, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Energy and Clean Growth, Kwasi Kwarteng, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State for Energy and Clean Growth, Kwasi Kwarteng, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Ecodesign for Energy-related Products and Energy Information (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate".

1.2 This is the case because this SI goes no further than:

- making appropriate fixes to ensure that retained EU law is clear and operable, by fixing deficiencies to EU product-specific legislation that has come into force or been revoked since 29 March 2019;
- rectifying any amendments to EU law that no longer have the effect intended when they were made by a previous statutory instrument;
- implementing the NI Protocol and Unfettered Access for the policy area;
- implementing the decision to replace the EU flag and languages with the UK flag and English-only text on energy labels; and
- implementing the 12 month CE marking standstill after the transition period.

2. Good reasons

2.1 The Minister of State for Energy and Clean Growth, Kwasi Kwarteng, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this SI, and I have concluded they are a reasonable course of action".

2.2 This SI fixes deficiencies in provisions of retained EU law that have come into force since 29 March 2019. It also corrects any amendments to EU law that no longer have the effect intended when they were made by a previous statutory instrument. If this SI is not made, the legislation would be unclear, and incomplete in parts.

3. Equalities

3.1 The Minister of State for Energy and Clean Growth, Kwasi Kwarteng, has made the following statement(s):

"The draft SI does not, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Minister of State for Energy and Clean Growth, Kwasi Kwarteng, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft SI, I, Kwasi Kwarteng have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.