EXPLANATORY MEMORANDUM TO

THE PRODUCT SECURITY AND TELECOMMUNICATIONS INFRASTRUCTURE (SECURITY REQUIREMENTS FOR RELEVANT CONNECTABLE PRODUCTS) (AMENDMENT) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Science, Innovation and Technology and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Feryal Clark MP, Parliamentary Under-Secretary of State for AI and Digital Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Irfan Hemani, Deputy Director for Cyber Security Technology Policy at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Anis Islam at the Department for Science, Innovation and Technology; Telephone: 07702614488 or email: productsecurity@dsit.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument forms a part of the product security regulatory regime created by Part 1 of the Product Security and Telecommunications Infrastructure Act 2022 ("the 2022 Act"). The primary purpose of this instrument is to add three new categories of products to the list of excepted products at Schedule 3 to the Product Security and Telecommunications Infrastructure (Security Requirements for Relevant Connectable Products) Regulations 2023 ("the 2023 Regulations"). This will result in removing regulatory obligations from relevant persons involved in the making available of products that fall in scope of Regulation (EU) 2018/858, Regulation (EU) No 168/2013, or Regulation (EU) No 167/2013 in Great Britain. This instrument will ensure that undue burden is not placed on the industry linked to those products, as the government intends to bring forth sector specific regulatory frameworks to address the cyber security of certain vehicles. This instrument also adds a word that was omitted from paragraph 3(3) of Schedule 1 to the 2023 Regulations. See section 5 for further context.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland, except for the amendments to the 2023 Regulations made by regulation 4 which has a territorial application of England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The government has indicated that products will be excepted from the product security regulatory regime if:

- It is deemed inappropriate to include them prior to further investigation.
- They are already covered by robust legislation; or
- Where they will be covered by future legislation that is particularly relevant to that product category.

5.2 The government committed to excepting "automotive vehicles" in the 2021 government response to the call for views on consumer connected product cyber security legislation, as the security of these products will be addressed by future legislation that is particularly relevant to the sector. The government's 'Connected and Automated Vehicles: Process for assuring Safety and Security' programme will put in place the processes, systems, and capabilities necessary for Government assurance of the safety and cyber security of self-driving vehicles by 2025. The government is also exploring options for mandating UN Regulation No. 155 on cyber security in Great Britain as its requirements are more appropriate for vehicles and more extensive. The automotive industry and its supply chain are already beginning to comply with UN Regulation No. 155 as it has been mandatory for new types of passenger and goods vehicles in the European Union from July 2022. In addition, agreement is expected to be reached in June 2024 at the World Forum for Harmonization of Vehicle Regulations to extend the scope of UN Regulation No. 155 to 2 and 3 wheeled and light 4 wheeled vehicles. This gives the government another route to address the cyber security for those vehicles, that is supported by industry and aligns with internationally recognised harmonised requirements, that must be considered carefully. These vehicles will therefore be excepted from the product security regulatory regime. These vehicles are already exempted in Northern Ireland under the relevant rules that apply. It is not appropriate for agricultural and forestry vehicles to be in scope of this regime without further consultation with the sector. The primary purpose of this instrument is therefore to amend the 2023 Regulations and except the products that fall in scope of the relevant regulations listed in section 6.1 of this memorandum in Great Britain. The reason for this is to ensure that unnecessarily duplicative regulatory burden is not imposed on the automotive industry. Finally, this instrument will insert a word that was omitted in error from the 2023 Regulations.

What was the previous policy, how is this different?

5.3 The product categories that fall in scope of the Regulations listed in section 6.1 of this memorandum will be in scope of the product security regulatory regime when it comes into force on 29th April 2024 in Great Britain. This instrument will except these products in line with policy intentions.

6. Legislative and Legal Context

How has the law changed?

6.1 The legislation which creates the product security regulatory regime is comprised of Part 1 of the 2022 Act and the 2023 Regulations. This instrument amends Schedule 3 to the 2023 Regulations and excepts from the regulatory regime, in relation to Great Britain, products that fall in scope of Regulation (EU) 2018/858, Regulation (EU) No 168/2013 and Regulation (EU) No 167/2013. This instrument also inserts a word that was omitted in error from paragraph 3(3) of Schedule 1 to the 2023 Regulations.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The legislation which creates the product security regulatory regime, comprising of the 2022 Act, the 2023 Regulations and these instruments have been subject to extensive public consultation as well as direct engagement with industry, international partners, academia, cyber security subject matter experts, and civil society organisations. In May 2019, the government launched a consultation on legislative proposals for the cyber security of consumer connectable products. Responses to the consultation demonstrated widespread support for the introduction of a mandatory cyber security baseline aligned with priority security requirements as outlined in the 2018 Code of Practice for Consumer IoT Security. This code outlined thirteen outcome-focused guidelines, widely considered to be good practice in IoT security to support manufacturers of consumer connectable products. Uptake of the guidelines was lower than expected and this highlighted the need for further government intervention. The Call for Views on proposals outlined the government's intention to except automotive vehicles, which is a broad term that includes the range of products that will be excepted by this instrument. The devolved administrations were engaged with during the development of both the 2022 Act and the 2023 Regulations and are aware of the government's intention to except "automotive vehicles".

8. Applicable Guidance

8.1 Non-statutory guidance to support industry to comply with the product security regulatory regime is publicly available on the Office for Product Safety and Standards (OPSS) website. OPSS will be enforcing this regulatory regime, and the guidance will be updated once this instrument is made. Link: www.gov.uk/guidance/regulations-consumer-connectable-product-security

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the full impact assessment published alongside the 2023 Regulations assesses the impact of the product security regulatory regime, including key impacts, net effects benefits and costs, as if the amendments made by this instrument were already in place. In addition, the impact of this instrument is predicted to be of low-level on business and the low economic effects of the changes being applied.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument is removing obligations on businesses by adding categories of products to the list of excepted products in Schedule 3 to the 2023 Regulations.

9.3 This legislation does not impact small or micro businesses

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Department for Science, Innovation and Technology will do so as part of standard policy making procedures.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015. Feryal Clark has made the following statement "in my view a review provision is not appropriate for this instrument as it is removing obligations on businesses and will therefore have minimal impact on business". Further, this instrument amends the 2023 Regulations which includes a review clause at regulation 10 of those Regulations.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

11.1 The main purpose of this instrument is to remove regulatory obligations by inserting three new categories of products to be excepted from the product security regulatory regime through the amendment to the 2023 Regulations made by regulation 4. In relation to the amendment to the 2023 Regulations made by regulation 3, the department confirms that it has complied with the requirement in paragraph 4.7.6 of Statutory Instrument Practice and has consulted the Statutory Instrument Registrar on the use of the free issue procedure in relation to this instrument.

11.2 The original Explanatory Memorandum for this instrument has been withdrawn and this revised Explanatory Memorandum laid in its place on the request of the Parliamentary Business and Legislation (PBL) Cabinet Committee. This revised Explanatory Memorandum has been updated to reflect that, Feryal Clark MP, Parliamentary Under-Secretary of State for AI and Digital Government is now the responsible minister for this instrument.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for AI and Digital Government has made the following statement regarding Human Rights:

"In my view the provisions of the Product Security and Telecommunications Infrastructure (Security Requirements for relevant Connectable Products) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").