EXPLANATORY MEMORANDUM TO

THE TEXTILE PRODUCTS (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 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 Act.

2. Purpose of the instrument

2.1 This instrument:

a) amends the Textile Products (Labelling and Fibre Composition) Regulations 2012 (S.I. 2012/1102) ("the Textile Products Regulations"); and

b) amends Regulation (EU) No 1007/2011 of the European Parliament and of the Council on textile fibre names and related labelling and marking of the fibre composition of textile products ("the EU regulation").

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Regulation prescribed labelling or marking to be applied to textile products to inform consumers of the products' textile fibre composition and the presence of non-textile parts of animal origin when placed or made available on the EU market.

2.3 It also empowered the European Commission to recognise new textile fibres and modify technical provisions such as testing methods and tolerances.

2.4 The Textile Products Regulations set out enforcement provisions for the EU Regulation in the United Kingdom (UK).

Why is it being changed?

2.5 The changes are made because, when the UK leaves the EU, the EU regulation will not apply to textile products placed or made available on the UK rather than the EU market. In addition, it will no longer be appropriate for the European Commission to recognise new textile fibres which can be made available on the UK market. This will now be done by a UK Secretary of State.

What will it now do?

2.6 It will set out the labelling or marking that must be applied to textile products when placed or made available on the UK market.

2.7 It will allow a Secretary of State to bring new textile fibre names into UK law and modify the technical provisions through statutory instruments.

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 instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding Human Rights:

"In my view the provisions of the Textile Products (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 to remedy deficiencies in retained EU law, in particular to continue the requirement to label textiles made available on the UK market and transfer decision-making functions from the European Commission to a Secretary of State.

7. Policy background

What is being done and why?

What the EU and UK Regulations do

7.1 The primary policy aim of the EU regulation is to ensure consumers are informed of the fibre composition of textile products. The EU regulation does this by requiring any textile product made available on the EU market to have a label or marking indicating its fibre composition. In addition, textile products that contain non-textile parts of animal origin, such as fur, must be labelled or marked 'contains non-textile parts of animal origin'.

7.2 The EU regulation contains a list of permitted fibre names and methods for testing the composition of fibres. If a textile fibre, when tested using the methods, does not correspond with any of the fibre names listed, it must be described as 'other fibres' on the label.

7.3 The EU regulation also requires Member States to carry out market surveillance to ensure that the requirement to indicate the fibre composition on the label or marking of textile products is being complied with.

7.4 The manufacturer, or if they are not established in the EU, the importer, is responsible for labelling the product and ensuring its accuracy. Subsequently, the distributor must ensure that textile products bear the appropriate labelling or marking prescribed by the EU regulation.

7.5 The EU regulation also provides for manufacturers (located in the UK, EU or elsewhere in the world) to submit new textiles to the European Commission which, after testing, can recognise the new textile and allocate a new textile name which can

be added to the list of permitted names in the EU regulation. If the fibre requires a new name, the EU determines what this should be and amends the EU regulation to make it legal to describe it by the new name, rather than 'other fibres'. It also introduces new test methods in the regulation for the new fibre name.

7.6 The Textile Products Regulations provide sanctions and enforcement powers for UK market surveillance authorities (local authorities' Trading Standards departments) to ensure compliance with the EU regulation.

How the regulations are being amended and why

7.7 This instrument ensures the requirements to indicate the fibre content of textile products and the requirement to indicate 'non-textile parts of animal origin' in textile products continue to apply in the UK after EU exit. It also removes provisions of the EU regulation that will no longer be relevant when the UK exits the EU such as the provisions requiring the label to be in an official language of the EU. After exit, the label must be in English.

7.8 This instrument also amends other provisions in the EU regulation to ensure the legislation operates effectively after EU exit, including amending cross references to EU law so they cross refer to UK law.

7.9 This instrument also transfers the power currently exercised by the European Commission to approve new fabric names, tolerances (the difference between the fibre composition on the product label and the actual composition demonstrated through testing) and testing procedures, to a Secretary of State to modify provisions of the EU regulation as saved into UK law. These modifications will be made by statutory instrument subject to the negative resolution procedure.

7.10 The EU regulation does not specify that a manufacturer or their authorized representative has to be located in the EU in order to apply for a new fibre name. Therefore, any manufacturer or their authorized representative, whether they are based in the UK or not, will be able to apply to a Secretary of State for a new generic fibre name to be brought into law.

7.11 After EU exit, businesses who place a product on the market in the UK will become responsible for meeting the legal obligations arising from placing a product on the market. This would mean that after EU exit they would be obliged to ensure the accuracy of the labelling or marking of products in relation to the fibre composition and presence of 'non-textile parts of animal origin' placed on the market in the UK rather than relying on labelling on products imported from the EU.

7.12 This instrument will also make minor amendments to the UK Textile Labelling Regulations to ensure there are no references to EU process, such as removing the need for the Secretary of State to have regard as to the penalties for breaching the EU regulation in EU Member States. These references, if maintained would serve no practical purpose in UK law. The powers and penalties applicable to breaches of the EU regulation will be retained.

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

8.1 This instrument is being made using the power in section 8(1) of, and paragraph 7 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order 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. 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 current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 As this instrument takes forward the only feasible policy option in a scenario where there is no agreement between the UK and EU no public consultation was undertaken. However, discussions were held with industry experts and business representative groups to explore the changes this instrument brings into effect.

11. Guidance

11.1 Existing guidance for businesses will be updated to explain the changes that this instrument makes by 29 March 2019. This instrument will have no impact on the enforcement provisions including sanctions available for the enforcement of the EU regulation. Consequently, there is no need to produce specific guidance for enforcement agencies.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

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

12.3 An Impact Assessment has not been prepared for this instrument because the impact of the changes this instrument will make falls below £5 million annually and so it qualifies for the *de minimis* threshold. This is because the labelling and marking the EU regulation provides for is not being changed by this instrument.

13. Regulating small business

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

13.2 No steps have been taken to minimise the impact of the requirements on small businesses (employing up to 50 people), as the purpose of the instrument is to retain existing requirements where possible and ensure they are operable after EU exit.

14. Monitoring & review

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

15. Contact

15.1 Rachel Smith at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 1528 or email: Rachel.Smith2@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Mackintosh, Deputy Director for European Consumer Policy, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst, Minister for Small Business, Consumers and Corporate Responsibility, 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/ESIC.
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 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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 13, 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 16, 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 for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Textile Products (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate".

1.2 This is the case because this instrument does not bring into effect a policy change. It ensures the requirements relating to the labelling or marking of textile products in relation to textile fibre composition and non-textile parts of animal origin in place before exit day apply in the UK after exit day.

2. Good reasons

2.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst 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 instrument, and I have concluded they are a reasonable course of action".

2.2 These are that this instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU, and does not change current policy with regards to textile labelling requirements. The policy rationale for the changes are set out section 7 of this Explanatory Memorandum.

3. Equalities

3.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement(s)

"The [draft] instrument does not amend, 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 for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the [draft] instrument, "I, Kelly Tolhurst, 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.