EXPLANATORY MEMORANDUM TO

THE ECODESIGN FOR ENERGY-RELATED PRODUCTS (AMENDMENT) REGULATIONS 2017

2017 No. 1143

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 (Amendment) Regulations 2017 ("the 2017 Regulations") amend the Ecodesign for Energy-Related Products Regulations 2010 ("the 2010 Regulations"). The purpose of the amendments is to comply with changes to European Union ("EU") law that affect:

a) restrictions on the placing on the market or putting into service by manufacturers, authorised representatives or importers of certain energy-related products unless they comply with ecodesign requirements, which are imposed by the 2010 Regulations;

b) the scope of the enforcement powers of the authorities responsible for market surveillance to cover these changes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

The 2010 Regulations:

4.1 Directive 2009/125/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-related products ("the Ecodesign Directive") is the legal framework within which the European Commission ("the Commission") brings forward implementing measures in relation to specific energy-related products or product groups to require improved environmental performance. It revoked and replaced the earlier Directive 2005/32/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-using products.

4.2 The 2010 Regulations implement the Ecodesign Directive by creating domestic obligations and a related enforcement regime for Ecodesign requirements for energy-related products. The 2010 Regulations give control and enforcement powers to the

market surveillance authorities ("MSAs"). The MSAs are the Secretary of State for the Department for Business, Energy & Industrial Strategy (Regulatory Delivery Department) and the local weights and measures authority (Trading Standards) in England, Wales and Scotland and the Department for the Economy in Northern Ireland.

4.3 Under the 2010 Regulations, a manufacturer must not place on the market or put into service an energy-related product unless the manufacturer has assessed that product complies with the applicable implementing measure, made a declaration of conformity and affixed the CE marking, or unless equivalent Member state or EEA state rules are adhered to. Energy-related products are specified in Schedule 1 to the 2010 Regulations, alongside the Commission Regulations which are the applicable implementing measures setting the Ecodesign requirements for those products. The 2010 Regulations can be easily amended to incorporate new products where product-specific EU Regulations have been passed.

4.4 The 2017 Regulations insert three new entries into paragraph 4 of Schedule 1 of energy-related products along with the applicable implementing measures. These amendments are necessary in order to implement Commission Regulations (EU) Nos 2016/2281[1], 2015/1185[2] and 2015/1189[3] by extending the domestic enforcement regime, including the MSAs' enforcement powers, to these products.

5. Extent and Territorial Application

5.1 The extent of this instrument is to the UK.

5.2 The territorial application of this instrument is to the UK.

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

What is being done and why

7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Ecodesign Directive

7.2 The Ecodesign Directive provides coherent EU-wide rules for Ecodesign and ensures that disparities among national laws do not become obstacles to intra-EU trade. It defines conditions and criteria for setting requirements for environmentally relevant product characteristics (such as energy efficiency), through implementing measures.

[1] air heating products, cooling products, high temperature process chillers and fan coil units
[2] Solid fuel local space heaters
[3] Solid fuel boilers

7.3 Implementing measures under the Ecodesign Directive have so far taken the form of EU Regulations, although other forms are possible, including voluntary agreements. In most cases the EU Regulations put in place minimum energy efficiency standards for products. Products that do not meet these standards cannot then be placed on the market or put into service in the EU single market.

7.4 Currently agreed minimum performance standards (and those for the related policy of energy labelling) are estimated to lead to savings of 9 million tonnes of CO_2 in 2020 and to save the average dual-fuel household around £100 on their annual energy bills by 2020. These measures are estimated to have a net present value of around £23 billion to the UK for the period 2015 – 2030. They represent one of the most cost-effective ways to meet our carbon targets and reduce energy consumption. On the basis of new analysis which is carried out regularly and is still subject to quality assurance we do expect these figures to be revised downwards although savings will still be sizable.

Domestic legislation

7.5 Effective enforcement under the 2010 Regulations by the designated MSAs is essential to ensure delivery of the desired economic and environmental benefits. It protects businesses that are compliant from unfair competition from non-compliant goods. It also helps to ensure that consumers benefit from the anticipated financial savings through lower energy bills, as well as protecting the environment.

Need for 2017 Regulations

7.6 The 2017 Regulations are required to implement EU law by ensuring the scope of the enforcement regimes in the 2010 Regulations extend to Commission Regulations (EU) Nos 2016/2281, 2015/1185 and 2015/1189.

Consolidation

7.7 The Regulations do not consolidate any other legislation.

8. Consultation outcome

8.1 No consultation on the 2017 Regulations is necessary as the scope of the 2010 Regulations is still limited to energy-related or energy-using products. The Department for Business, Energy and Industrial Strategy consults on draft product-specific EU Regulations prior to these being adopted as EU law.

9. Guidance

9.1 Guidance is available on the GOV.UK single government website to assist those who are placing on the market products that are covered by product-specific EU Regulations made pursuant to the Ecodesign Directive. It is available at https://www.gov.uk/guidance/placing-energy-related-products-on-the-uk-market .

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. EU Ecodesign Regulations set requirements that affect business. These EU Regulations are in force and have direct effect in the UK. The 2017 Regulations allow the UK to enforce the relevant EU Regulations and businesses will only be impacted if it is proven that their product does not comply with these EU Regulations.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as an assessment of costs and benefits was carried out prior to each of the product-specific EU Regulations concerned being passed at EU level.

11. Regulating small business

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

11.2 Businesses will only incur penalties if it is proven that their product does not comply with the relevant EU Ecodesign legislation. This EU legislation is directly applicable in the UK.

12. Monitoring & review

12.1 Each product-specific EU Regulation has a review clause in it, normally 5 years after entry into force.

13. Contact

13.1 This explanatory memorandum provides additional details compared with explanatory memorandums for similar regulations to assist readers. If you have any queries regarding this explanatory memorandum or the accompanying statutory instrument please contact Arthur Montagu at the Department for Business, Energy and Industrial Strategy, Telephone: 020 72151537 or email: arthur.montagu@beis.gov.uk