EXPLANATORY MEMORANDUM TO

THE ECODESIGN FOR ENERGY-RELATED PRODUCTS AND ENERGY INFORMATION (AMENDMENT) REGULATIONS 2019

2019 No. 1253

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 purpose of the Ecodesign for Energy-Related Products and Energy Information (Amendment) Regulations 2019 ("the 2019 Regulations") is to amend the Ecodesign for Energy-Related Products Regulations 2010 ("the 2010 Regulations) and the Energy Information Regulations 2011 ("the 2011 Regulations") in order to comply with and reflect changes that have been made to European Union ("EU") law. These changes relate specifically to:

a) The introduction of ecodesign requirements for servers and data storage products;

b) The annulment of energy labelling requirements for vacuum cleaners.

The purpose of the 2019 regulations is therefore to amend the 2010 Regulations so that the UK market surveillance authority can enforce the new ecodesign requirements for servers and data storage products in the UK, and to amend the 2011 Regulations to remove references to the annulled EU regulation setting out energy labelling requirements for vacuum cleaners as it is no longer applicable.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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

6. Legislative Context

The 2010 Regulations

6.1 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 including improved energy efficiency. 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.

6.2 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 Authority (MSA) (the Secretary of State), whose functions are carried out by the Office of Product Safety and Standards (OPSS).

6.3 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 the product complies with the applicable EU implementing measure, made a declaration of conformity and affixed the CE marking. 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. These product-specific Commission Regulations are directly applicable in the UK.

6.4 On 7 April Commission Regulation No 2019/424 ("the Server Regulation") laying down ecodesign requirements for servers and data storage products entered into force. The 2019 Regulations use section 2(2) of the European Communities Act 1972 (ECA) to insert this product group and applicable implementing measure into paragraph 4 of Schedule 1 to the 2010 Regulations. This amendment is necessary to extend the domestic enforcement regime, including the MSA's enforcement powers, to ecodesign requirements set out in the implementing measure for servers and data storage products. Manufacturers and others only need to conform with the substantive ecodesign requirements in regulation 2019/424 from 1 March 2020. This amendment comes into force on that date, therefore.

6.5 In addition, the 2019 Regulations delete 'computer servers' from entry 18 in paragraph 4 of Schedule 1 with effect from 1 March 2020. Entry 18 is the current implementing measure for computers and computer servers ("the Computer Regulation") which came into force in 2013. The Server Regulation partially replaces this regulation by incorporating computer servers into its scope. However, products do not have to meet the ecodesign requirements of the Server Regulation until 1 March 2020. Until then manufacturers of computer servers must still comply with the ecodesign requirements of the Computer Regulation. The deletion of computer servers from entry 18 will, therefore, take effect from 1 March so that it is clear that manufacturers of computer servers must still comply with the requirements of the Computer Regulation until that point.

The 2011 Regulations

6.6 EU Regulation 2017/1369 of the European Parliament and of the Council setting a framework for energy labelling ("the Energy Labelling Regulation") is the legal

framework within which the Commission brings forward EU measures in relation to specific energy-related products in order to better inform consumers about the energy efficiency and other environmental impacts of those products. It revoked and repealed Directive 2010/30/EU which set the former legal framework for energy labelling.

6.7 The 2011 Regulations implement the Energy Labelling Regulation by creating domestic obligations and a related enforcement regime for energy labelling requirements for energy-related products. The 2011 Regulations give control and enforcement powers to the relevant MSAs. The MSAs are the Secretary of State and 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.

6.8 Under the 2011 Regulations, the MSAs are responsible for enforcing obligations which the Energy Labelling Regulation places on suppliers and dealers respectively to place energy-related products on the market with an accurate energy label that complies with the applicable EU measure and to display these labels. Energy-related products are specified in Schedule 1 to the 2011 Regulations, alongside the Commission Delegated Regulations which are the applicable EU measures setting out energy labelling requirements for those products.

6.9 On 18 January 2019 Commission Delegated Regulation No 665/2013 with regard to energy labelling of vacuum cleaners was annulled, following a decision by the General Court of the European Union (case T-544/13RENV). The 2019 Regulations remove this product and the EU regulation from paragraph 1 in Schedule 1 to the 2011 Regulations. This amendment is necessary to ensure consistency with EU law as it exists prior to Exit Day and to make clear to stakeholders that the EU regulation no longer applies in the UK.

7. Policy background

Ecodesign

7.1 EU Ecodesign measures introduced under the Ecodesign Directive set minimum environmental performance standards for energy-related products in order to remove the worst environmentally performing products from the market. This pushes the market towards more energy efficient and resource efficient products, reducing carbon emissions and energy bills. These standards also provide a level playing field for business.

7.2 These standards are set through product-specific EU Ecodesign Regulations which are brought forward by the Commission and agreed by Member States. Once passed and in force these regulations are directly applicable in all Member States including the UK and do not require transposition through domestic legislation.

7.3 Enforcement of these standards is, however, the responsibility of each Member State. The enforcement regime in the UK for Ecodesign is set out through domestic secondary legislation (the 2010 Regulations). To comply with EU law, this legislation must be updated when new Ecodesign Regulations are agreed to extend the enforcement regime to these regulations.

7.4 In September 2018, a new Ecodesign Regulation for servers and data storage products was agreed at EU level and the UK voted in favour of it. This regulation sets minimum energy performance and resource efficiency requirements which servers and data storage products must meet before they can be placed on the market. It came

into force on 7 April 2019. The purpose of the 2019 Regulations is to update 2010 Regulations so that MSAs can enforce these new ecodesign requirements.

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

Energy Labelling

7.6 EU Energy Labelling measures introduced under the Energy Labelling Regulation set energy labels for energy-related products. Energy labels include a comparative scale ranging from A+++ to G which helps consumers to choose the most energy efficient products.

7.7 Similar to Ecodesign, energy labels are set through product-specific Energy Labelling Regulations which once passed and in force have direct effect in the UK. Suppliers and dealers must ensure products regulated by an Energy Labelling Regulation are supplied and sold with energy labels.

7.8 In October 2013, Dyson Ltd applied to the General Court of the European Union seeking the annulment of the Energy Labelling Regulation for vacuum cleaners ("the VC Regulation") on the basis that energy labels for vacuum cleaners do not reflect real life conditions and therefore mislead consumers.

7.9 The General Court ruled in favour of Dyson and annulled the VC Regulation in its entirety. Since the Commission did not appeal this ruling, the annulment took effect from 18 January 2019 with retroactive effect as if the regulation had never existed.

7.10 As with ecodesign requirements, energy labelling requirements are set within EU Energy Labelling Regulations and do not have to be implemented through domestic legislation. As such, the annulment of energy labelling requirements was effective from 18 January, meaning suppliers and dealers of vacuum cleaners can no longer supply products with labels or display them, and requires no further implementation or transposition in domestic legislation.

7.11 However, the domestic legislation (2011 Regulations) that establishes the enforcement regime refers to the VC Regulation. This is a redundant reference and has no legal effect. The purpose of the 2019 Regulation is to use section 2(2) of the ECA to remove this reference to make clear to suppliers, dealers and MSAs that the VC Regulation no longer has effect in the UK.

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

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 These Regulations are not being consolidated with any other legislation.

10. Consultation outcome

10.1 As the 2019 Regulations make minor amendments to domestic legislation to comply with and reflect changes in EU law that have already occurred, no consultation has

been undertaken. The Department for Business, Energy and Industrial Strategy consulted extensively with industry on the draft Commission Ecodesign Regulation for servers and data storage products prior to voting in favour of it at an EU Regulatory Committee.

11. Guidance

11.1 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

11.2 The Office of Product Safety and Standards has issued a notice to stakeholders regarding the annulment of the Energy Labelling Regulation for vacuum cleaners. The Commission's notice is also available in the Official Journal of the European Union at https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561734484782&uri=CELEX:52019XC0313(02)

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal and limited to manufacturers of servers and data storage products. These Regulations allow the UK to enforce a new Ecodesign Regulation that is already in force and manufacturers will only be impacted if it is proven that their product does not comply with the relevant EU Ecodesign Regulation.

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 these Regulations simply allow enforcement of EU requirements that already apply in the UK. The Commission carried out an Impact Assessment for the Ecodesign Regulation for servers and data storage products and prior to voting in favour of the regulation, the Department for Business, Energy and Industrial Strategy carried out a Cost Benefit Analysis which showed a net benefit to the UK.

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.

13.3 The decision was taken not to assist small businesses because these regulations do not directly place requirements on businesses but ensures the MSAs can enforce EU requirements. Small businesses will only be impacted if it is proven that their product does not comply with the relevant EU Ecodesign Regulation. The 2010 Regulations give the MSA a suite of various enforcement tools including stop notices, civil sanctions and criminal sanctions. This allows the MSA the flexibility to deal proportionately with non-compliance on a case by case basis.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is ongoing.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt Hon. Kwasi Kwarteng MP has made the following statement: "A statutory review is

not necessary for this instrument as it amends legislation that is already subject to a statutory review".

15. Contact

15.1 Arthur Montagu at the Department for Business, Energy and Industrial Strategy Telephone: 020 72151537 or email: arthur.montagu@beis.gov.uk can be contacted with any queries regarding the instrument.

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, the Rt Hon. Kwasi Kwarteng MP, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.