EXPLANATORY MEMORANDUM TO

THE PRODUCT SAFETY AND METROLOGY ETC. (EU WITHDRAWAL AND EEA EFTA SEPARATION AGREEMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 864

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 This instrument creates domestic legislation to support the implementation of the goods provisions of Part Three Title 1 of the EU Withdrawal Agreement and of the European Economic Area (EEA) European Free Trade Association (EFTA) Separation Agreement. This instrument will only apply to goods placed on the United Kingdom (UK) or EU/EEA market before the end of the Transition Period (31 Dec 2020) (TP).

2.2 Article 43 Withdrawal Agreement and Article 41 Separation Agreement require Market Surveillance Authorities (MSAs) in the UK to share relevant information on market surveillance with the EU Commission and EU MSAs/ the EFTA Surveillance Authority and MSAs, regarding goods placed on the market before the end of the TP. As there are in excess of 200 Local Authorities that act as MSAs in the UK, this instrument will ensure that the Secretary of State has the power to pass on relevant market surveillance information on their behalf to the EU /EFTA bodies.

Explanations

What did any relevant EU law do before exit day?

2.3 Until the end of the TP, the UK regulations implementing the EU legislative framework, that set out the requirements that products must meet before they can be placed on the market, continue to apply. These include requirements for MSAs to act if they identify or are informed that a product is unsafe or non-compliant, and to share relevant information with the EU Commission and EU MSAs via the relevant EU databases. These are the Rapid Exchange of Information System (RAPEX) (for serious risk) and Information and Communication System on Market Surveillance (ICSMS) (for compliance testing and non-serious risk).

Why is it being changed?

2.4 EU exit legislation amends the current product safety regulations such that, after the TP, there will no longer be an obligation for the UK or UK MSAs to share information with the EU Commission and EU MSAs via EU databases in domestic legislation. However, for goods placed on the UK or EU/EEA market before the end of the TP, Article 43 Withdrawal Agreement /Article 41 Separation Agreement applies and contains similar information sharing requirements.

What will it now do?

2.5 This instrument provides that, for the purpose of Article 43 Withdrawal Agreement (Article 41 Separation Agreement) only, the Secretary of State will be designated as an MSA. This will enable the Secretary of State (in the form of OPSS) to pass relevant information to the EU Commission and EU MSAs / EFTA bodies on behalf of Local Authority MSAs (or other UK MSAs as necessary).

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

6. Legislative Context

6.1 The majority of the Withdrawal Agreement and Separation Agreement articles on goods are directly applicable by virtue of section 7A of the European Union (Withdrawal) Act 2018. The provisions are also directly effective where they meet the criteria for direct effect in accordance with the normal rules. So, in most cases, the provisions need no further implementation in UK law.

6.2 However, section 7A also envisages regulations being made in some cases where it is necessary or expedient to supplement the direct effect of a provision or otherwise for the purposes of dealing with matters arising out of or related to the provisions. Article 43 relating to market surveillance is such a case and to facilitate and support its operational implementation, the Department of Business, Energy and Industrial Strategy (BEIS) makes provision for this through this SI.

6.3 Article 43 Withdrawal Agreement (Art 41 Separation Agreement) places an obligation on Market Surveillance Authorities (MSAs) in the UK and EU/EEA to exchange relevant information with regard to goods already placed on the market before the end of the Transition Period and in particular to communicate to each other and to the EU Commission (EFTA Surveillance Authority), information on serious risk. This includes "relevant information drawn from networks, information systems and databases established under Union or UK law".

6.4 The policy intention is for BEIS Secretary of State (in the form of the Office for Product Safety and Standards) to undertake a coordinating role to fulfil the functions of this obligation. It would obtain the relevant data via the new UK product safety database that MSAs use to record market surveillance information in accordance with provision in other EU Exit regulations. Guidance will be issued to local MSAs accordingly.

6.5 To ensure the Secretary of State's role as an MSA for this purpose is clear, Regulation 2 provides that the Secretary of State is empowered to act as MSA under the relevant provisions. In this way, the direct applicability of the provisions under section 7A European Union (Withdrawal) Act applies to the Secretary of State and ensures there is no doubt about there being an appropriate data gateway.

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to create domestic legislation to support the implementation of the goods provisions of Part Three Title 1 of the Withdrawal Agreement and of the Separation Agreement. This instrument will only apply to goods placed on the UK or EU/EEA market before the end of the TP.

7.2 Article 43 Withdrawal Agreement and Article 41 Separation Agreement require MSAs in the UK to share relevant information on market surveillance with the EU Commission and EU MSAs/ the EFTA Surveillance Authority and MSAs, regarding goods placed on the market before the end of the TP.

7.3 For operational efficiency and to reduce the complexity of hundreds of Local Authority MSAs fulfilling this obligation individually, the policy is for Local Authority MSAs to notify the BEIS Secretary of State via the Product Safety Database (PSD) that is already operational and that the Secretary of State in the form of OPSS pass the relevant information to the EU/EFTA bodies.

7.4 By giving the Secretary of State a power to act as MSA, this still allows for other agencies, such as the Health and Safety Executive, who are also designated MSAs in the regulations for some of the product safety areas, to share data with the EU/EFTA bodies if appropriate/desirable

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 8B of the European Union (Withdrawal) Act 2018. Section 8B was inserted by section 18 of the European Union (Withdrawal Agreement) Act 2020.

9. Consolidation

9.1 There are no plans to consolidate as this instrument does not amend any legislation.

10. Consultation outcome

10.1 A consultation has not been completed for this instrument. The Department chose not to undertake a public consultation as the provisions of this instrument are limited to supporting the operational implementation of directly applicable provisions of the Withdrawal Agreement and Separation Agreement.

11. Guidance

11.1 The government will publish guidance on goods on the market in due course.

11.2 Support and advice is available by contacting goodsregulation@beis.gov.uk.

12. Impact

12.1 There is no, or no significant, impact on business, 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 impacts, if any, are expected to be low level for business. The impact of this instrument is limited to possible familiarisation costs for business, should they wish to understand what this instrument does, to ensure compliance with Art 43 WA / Article 41 SA.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses as no new operational costs are anticipated.

14. Monitoring & review

14.1 The Department does not intend to monitor this instrument.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Anita Osibona at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 5127 or email: OPSSlegislation@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rebecca Bradfield, Deputy Director for Regulatory Capability, the Office for Product Safety and Standards, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Paul Scully, Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.