EXPLANATORY MEMORANDUM TO

THE TOYS (SAFETY) (PERMITTED USES FOR COBALT) (ENGLAND AND WALES AND SCOTLAND) REGULATIONS 2026

2026 No. 986

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business, Innovation, Science and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Kate Dearden MP, Minister of State (Minister for the Future of Work) at the Department for Business, Innovation, Science and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Sophie George, Deputy Director for Product Sectors and Metrology Policy, Office for Product Safety and Standards at the Department for Business Innovation, Science and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Emma Dyke at the Department for Business, Innovation, Science and Trade can be contacted by email at the following address with any queries regarding the instrument: OPSSBriefingHub@businessandtrade.gov.uk. Alternatively, the department can be contacted by telephone: 0121 345 1201.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends Appendix A to Schedule 2 (particular safety requirements) to the Toys (Safety) Regulations 2011 (Toys Safety Regulations), to permit the presence of cobalt in toys and toy components made of stainless steel, as an impurity in the nickel contained in stainless steel; in toy components which are intended to conduct an electric current, and in neodymium-based magnets used in toys if those magnets cannot be swallowed or inhaled.

4.2 This instrument also makes a supplemental and consequential amendment to update the reference to Directive 2009/48/EC to Commission Directive (EU) No. 2026/192, for the purpose of continuing to recognise CE marked toys in Great Britain.

Where does the legislation extend to, and apply?

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

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 This amendment is being made because scientific assessment determined there to be sufficient evidence to form the opinion that cobalt presents a tolerable level of risk for these specific uses in toys. Cobalt metal in all forms has a harmonised classification as a Category 1B carcinogen, Category 2 mutagen, and a Category 1B reproductive toxicant via all routes of exposure under the GB Classification, Labelling and Packaging (CLP). Additionally, cobalt metal is classified as a Category 1 skin and respiratory sensitiser.

5.2 Owing to its classification as a Category 1B carcinogen and a Category 1B reproductive toxicant, the presence of cobalt is currently prohibited in toys or toy materials when accessible at concentrations exceeding 0.1% or 0.3%, respectively, unless a derogation is laid down in Appendix A following a derogation request to the regulator. Cobalt is also subject to restricted migration limits which must be respected in addition to the carcinogenic, mutagenic or reprotoxic (CMR) prohibition or any derogations.

5.3 When a substance is classified as a CMR, an interested party can seek a derogation for particular uses if three statutory requirements are met: that the substance is safe for the specific uses to be exempted; that the substance is not prohibited for use in consumer articles by the REACH Regulation (which regulates chemicals more widely); and that no suitable alternative substances or mixtures are available.

5.4 In September 2022, the Scientific Advisory Group for Chemical Safety (SAG-CS) published a final opinion[1], in which the group agreed that cobalt presented a tolerable level of risk in light of the exposures identified when used in "toys and toy components made from stainless steel" and in "toy components which are intended to conduct an electric current" providing that migration levels listed in the Toys Safety Regulations are not exceeded.

5.5 The Office for Product Safety and Standards (OPSS) also received a derogation request from a representative of the toy industry for the use of cobalt in toys, in which no suitable alternative substances or mixtures were shown to be available. Consequently, cobalt will be permitted for use in: toys and toy components made of stainless steel, as an impurity in the nickel contained in stainless steel; in toy components which are intended to conduct an electric current; and in neodymium-based magnets used in toys if those magnets cannot be swallowed or inhaled.

5.6 The Secretary of State is therefore satisfied that all three statutory requirements under regulation 39D have been met.

5.7 The same restrictions on the use of cobalt in toys are in place in the EU and apply to Northern Ireland under the Windsor Framework. This instrument will bring the approach in Great Britain in line with that of Northern Ireland.

5.8 The instrument also makes a supplemental and consequential amendment to update the reference to the EU Directive 2009/48/EC on the safety of toys to reference the amendment made by Commission Directive (EU) 2026/192 for the purpose of continuing to recognise CE marked toys in Great Britain. A footnote reference is

[1] https://assets.publishing.service.gov.uk/media/651547336a423b000df4c50d/sag-cs-opinion-09-cobalt-in-toys.pdf

being added for clarity around the version of the EU Directive that is being referred to.

What was the previous policy, how is this different?

5.9 There is no change of policy. The Government is responsible for ensuring only safe toys are placed on the market in Great Britain. This instrument makes technical amendments to the Toys (Safety) Regulations 2011 to reflect the most up-to-date scientific evidence on the safe use of certain substances in toys.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends Appendix A of Schedule 2 (particular safety requirements) to the Toys (Safety) Regulations 2011 to permit the use of cobalt in toys for the following uses: toys and toy components made of stainless steel, as an impurity in the nickel contained in stainless steel; in components which are intended to conduct an electric current; and in neodymium-based magnets used in toys if those magnets cannot be swallowed or inhaled.

6.2 The Secretary of State may by Regulations amend Appendix A to Schedule 2 to allow substances or mixtures classified as carcinogenic, mutagenic or toxic for reproduction of the categories laid down Section 3 of Appendix B of Schedule 2 to be used in toys, in components of toys or micro-structurally distinct parts of toys.

6.3 This change is being made through the amending powers of Regulation 39D (2) and (3) and meets all three requirements as set out in the Toys (Safety) Regulations.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 A formal consultation was not undertaken given the instrument is limited to making technical amendments to the Toys Safety Regulations in order to reflect scientific assessment of the potential risks to human health of a substance in toys.

7.2 The Department for Business, Innovation, Science and Trade has, however, undertaken engagement with stakeholders, including trade associations and key members of the toy industry. Additionally, cobalt was assessed by SAG-CS, following an exemption application submitted directly by industry.

8. Applicable Guidance

8.1 OPSS has published, and regularly updates, a guide on the Toys (Safety) Regulations 2011 on gov.uk to support businesses, enforcement agencies and consumers [2].

[2] https://www.gov.uk/government/publications/toys-safety-regulations-2011/toys-safety-regulations-2011-great-britain

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 impacts are expected to be de minimis with minor administrative costs for business anticipated.

Impact on businesses, charities and voluntary bodies

9.2 The is no, or no significant, impact on business, charities or voluntary bodies because the impact of this instrument is limited to familiarisation costs for businesses associated with adapting to the updated legislation.

9.3 The legislation does not disproportionately impact small or micro businesses.

9.4 No specific action is proposed to minimise the regulatory burdens on small businesses. The legal requirements on the toy industry do not differentiate between businesses in terms of their size and are dependent on the type and nature of products being manufactured and placed on the market. Therefore, we are unable to take any mitigating actions to reduce burdens on small businesses.

9.5 There is no, or no significant, impact on the public sector because the impact of this instrument is limited to businesses in the toy industry.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kate Dearden MP has made the following statement: "A review would not be appropriate, given the technical nature of the amendments. However, to ensure that toys placed on the market in Great Britain are safe, the government keeps the regulatory framework under constant review, including the use of specific chemicals in particular products."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

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").