

EXPLANATORY MEMORANDUM TO

- i. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98 (12573/22, COM/2022/459)**
and
- ii. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL for a Single Market Emergency Instrument REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2016/424, (EU) 2016/425, (EU) 2016/426, (EU) 2019/1009 and (EU) No 305/2011 as regards emergency procedures for the conformity assessment, adoption of common specifications and market surveillance due to a Single Market emergency (12576/22, COM/2022/461)**
and
- iii. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2000/14/EC, 2006/42/EC, 2010/35/EU, 2013/29/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU and 2014/68/EU as regard emergency procedures for the conformity assessment, adoption of common specifications and market surveillance due to a Single Market emergency (12572/22, COM/2022/462)**

SUBJECT MATTER

1. The European Commission has published proposals to establish a Single Market emergency instrument. Proposals 2022/461 and 2022/462 will apply to Northern Ireland because they specify the conformity assessment mechanism and market surveillance issues. Proposal 2022/459 sets out the overall framework and sits outside of the Protocol.
2. Following recent crises (i.e. COVID-19 and the war in Ukraine), the proposals concern the creation of three separate, but connected, legal instruments to ensure the continued functioning of the EU Single Market in times of emergency. They will focus on two separate, but interrelated problems: obstacles to free movement of goods, services and persons in times of crisis and shortages of crisis-relevant goods and services.
3. The proposals outline that emergency procedures covered by in-scope EU regulations will only be activated when there is a wide-ranging crisis that severely disrupts the free movement of goods in the Single Market or the functioning of the supply chains that are of vital societal or economic activities in the Single Market. For example, in relation to in-scope product safety regulations, this will allow the application of emergency-response measures such as:

- a. Prioritisation by the notified bodies of the conformity assessment of products designated as crisis-relevant;
- b. Possibility for the national competent authorities to issue temporary authorisations for crisis relevant products, which have not undergone the standard mandatory conformity assessment procedures, provided that the products comply with all the applicable essential requirements and provided that the authorisation is limited to the duration of the Single Market emergency and to the territory of the issuing Member State;
- c. Possibility for the manufacturers to rely on relevant international and national standards as giving rise to a presumption of conformity with essential requirements during an emergency if no harmonised standards are available, or if severe disruption significantly restrict the possibility of making use of applicable harmonised standards, and if the alternative standards ensure an equivalent level of safety;
- d. Possibility for the Commission to adopt implementing acts establishing common specifications or imposing mandatory common specifications for crisis-relevant products;
- e. Prioritisation of the market surveillance activities for crisis-relevant goods.

MINISTERIAL RESPONSIBILITY

4. The Secretary of State for the Department for Business, Energy and Industrial Strategy has responsibility for product safety legislation.
5. The Secretary of State for the Department for the Environment, Food and Rural Affairs has responsibility for fertilizers.
6. The Secretary of State for the Department for Levelling Up, Housing and Communities has responsibility for construction product policy.
7. The Secretary of State for the Department for Transport has responsibility for cableway installations and transportable pressure equipment.

POLICY IMPLICATIONS

8. Annex 2 of the Northern Ireland Protocol includes sectors that are in scope of the proposed regulations (Cableways, Personal Protective Equipment, Gas Appliances, Construction Products, Outdoor Noise, Machinery, Transportable Pressure Equipment, Pyrotechnic, Civil Explosives, Simple Pressure Vessels, Electromagnetic Compatibility, Non-automatic Weighing Instruments, Measuring Instruments, Lifts, Equipment for potentially explosive atmospheres - ATEX, Low Voltage Regulations, and Radio Equipment).
9. The proposal places previous easements used during the Covid-19 pandemic on a statutory footing. The instruments allowing derogations lay dormant unless they are need in emergency circumstances. If the emergency measures were ever activated, no significant trading implications between GB and NI are expected.

10. During times of emergency, the UK will continue to make decisions that benefit the UK interest and the GB market. These decisions will be made by the Government, in accordance with expert groups, to determine what is best for the UK. These proposals are merely for placing prior emergency derogations on a legal footing and will not affect the UK. Emergency provisions, like the proposed legislation, are not currently held in UK product safety legislation but are being considered for future frameworks.

LEGAL AND PROCEDURAL ISSUES

11. Proposals 2022/461 and 2022/462 make amendments to EU regulations and directives, most of which are in-scope of the Northern Ireland Protocol. Amendments to EU regulations would take effect automatically since those are directly applicable in Northern Ireland. That said, further consequential provision may be necessary to properly implement them. The amendments to directives would not take effect automatically and so amendments to legislation applying in Northern would be necessary to implement them. There are no concerns from a perspective of policy effect.

12. The proposals were adopted by the EU Commission on 19 September 2022 and have been passed to the European Parliament and Council of EU. The Competitiveness Council (Internal market and industry) discussed the proposal on 29 September 2022. Once agreed by the EU Parliament and Council, the proposal will be adopted into the Official Journal of the EU.

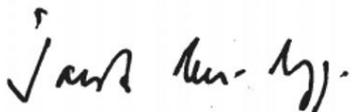
CONSULTATION

13. The Devolved Administrations have been consulted and have not raised issue of concern. Specifically, Northern Ireland Executive, where relevant the legislation is directly applicable, did not raise any concerns.

FINANCIAL IMPLICATIONS

14. There is no data available on the financial implications of these changes.

MINISTERIAL NAME AND SIGNATURE



Rt Hon. Jacob Rees-Mogg MP
Secretary of State
Department for Business, Energy and Industrial Strategy

21.10.2022