

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND WINDSOR FRAMEWORK

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PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE SAFETY OF TOYS AND REPEALING DIRECTIVE 2009/48/EC

Submitted by the Department for Business and Trade 9 November 2023

SUBJECT MATTER

1. If adopted by the European Parliament and Council, this proposed EU Regulation would revoke the Toy Directive 2009/48/EC/ and introduce new specific safety requirements that toys must meet to be placed on the EU market or Northern Ireland under the terms of the Windsor Framework.
2. Directive 2009/48/EC contains a general prohibition on substances in toys that are carcinogenic, mutagenic or toxic for reproduction (CMRs). This is under Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (Text with EEA relevance). However, the Directive does not create general prohibitions for other harmful classifications. The proposed EU Regulation would create a general prohibition on CMRs with regards to the following additional classifications:
 - endocrine disruptors
 - specific target organ toxicity
 - respiratory sensitisers
3. As a result, if chemicals meet any of these classifications it will result in generic bans for use in the manufacture of toys. However, the amendment does allow for derogations to these bans in specific circumstances where there is sufficient evidence to demonstrate that they do not pose a risk to children, and there are no suitable alternatives available.
4. Under the current Directive there are limits in place for some specific chemicals when used in toys intended for children under the age of 36 months. The proposed EU Regulation will also require these limits to apply to all toys, and not just those intended for younger children.
5. Additionally, the proposed EU Regulation would create a new requirement for a digital product passport (DPP) for all toys at EU borders, including toys sold online. This would oblige all economic operators to attach a 'data carrier' to all toys that links to the specifications and safety information of the product. This

is a move from the current paper based requirements though the information to be provided digitally is largely the same. The intention is that the DPP would be easily accessible to both market surveillance authorities and the consumer. However, differentiated data access by stakeholder group is intended, to balance transparency and security. For toys, economic operators would also have to register all DPPs in an EU registry.

SCRUTINY HISTORY

6. No recent relevant scrutiny history.

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for the Department for Business and Trade has responsibility for toys safety policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. The Devolved Administrations have been consulted on this Explanatory Memorandum. Product safety is a reserved matter for Scotland and Wales and consumer safety in relation to goods is reserved in respect of Northern Ireland. They have not raised any issues.
9. If adopted by the European Parliament and the Council, the proposed EU Regulation would replace the current EU Toys Directive and would apply directly in all EU member states and in Northern Ireland under the terms of the Windsor Framework. As such Northern Ireland has an interest. The Northern Ireland Executive Office have been contacted regarding this matter and have not raised any issues. The Department of Business and Trade will continue to seek to engage with the Devolved Administrations as this proposal progresses.
10. Under the Government's commitments to Northern Ireland's unfettered access to the rest of the UK market, toys that meet the technical requirements to be placed on the market in Northern Ireland will be able to be placed on the GB market.

LEGAL AND PROCEDURAL ISSUES

Legal Base

11. The EU proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which is to be used for measures aiming at the establishment and functioning of the internal market. Directive 2009/48/EC (which the Commission proposes to repeal by this regulation) was itself based on Article 95 of the Treaty establishing the European Community (now Article 114 TFEU).

Timetable for adoption and implementation

12. This proposed EU Regulation provides a transition period of 30 months after publication for the majority of its provisions including bringing in new requirements. Entry into force is to occur 20 days after publication. Publication is expected within the next 12 months meaning that the new requirements are not expected to become applicable until early 2027.
13. While not stated in the proposal, our understanding is that the proposed EU Regulation will follow the Ordinary legislative Procedure and the Council will adopt the proposal under QMV voting rules.

POLICY IMPLICATIONS

14. The UK will make its own decision on revisions to chemical classifications or specific usage limits as well as on the implementation of a digital product passport or similar mechanism in due course. The implementation of the proposal will not change the requirements for products placed on the GB market. However, for GB manufacturers placing products in the EU market they will need to comply with these amendments from the commencement date.
15. These changes would apply in relation to toys placed on the Northern Ireland market 30 months after the date that the proposed EU Regulation enters into force. Under the Government's commitments to Northern Ireland's unfettered access to the rest of the UK market, toys that meet the technical requirements to be placed on the market in Northern Ireland would be able to be placed on the GB market.
16. On 24th October a consultation on the future of the UK's Product Safety Regulatory framework concluded. That consultation sought views on proposals to modernise the framework to ensure that it remains fit for purpose to provide protection for consumers now and in the future. In particular, it explored proposals to ensure the regulatory framework is agile and able to deal with new and emerging issues, for example supporting innovation and the changing way consumers buy and use products. It is intended that sector specific legislation, such as that covering toys, will also be reviewed to fit within any emerging changes that might be considered for the framework as a whole. Therefore, while the Government will consider the benefits and risks of adopting similar measures as set out in the EU's proposal it will need to be done in the light of any wider considerations as a result of analysis of the responses received to the consultation on the Product Safety Review.

CONSULTATION

17. There has been no consultation undertaken by the UK Government on this change. In accordance with the Windsor Framework, the changes made by this proposed EU Regulation would be automatically applicable in Northern Ireland.

FINANCIAL IMPLICATIONS

18. The impact on those that would need to comply with the proposed changes, thereby including Northern Ireland, has been considered as part of the EU's assessment of impact ahead of agreeing these changes. Assessment of any impact in GB, including the impact on the wider UK internal market, will be completed at the time any such proposals are presented for GB.

A handwritten signature in black ink, reading "Kevin Hollinrake". The signature is written in a cursive style with a large initial 'K' and 'H'.

Kevin Hollinrake

Parliamentary Under Secretary of State

Department for Business and Trade