

## Product Liability & Safety Post-Brexit: Draft Legislation Published

The UK Government has over 10,000 civil servants currently preparing for Brexit. Whilst the terms of Brexit remain uncertain, the Government is nevertheless pushing forward with proposals to make necessary legal changes. Below is a summary of the changes to the UK's product liability and safety laws that will potentially be implemented on the day of Brexit.

A draft statutory instrument amending UK product liability and safety laws has been put before Parliament for approval. The '[Product Safety and Metrology etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)' (the "**SI**"), once approved, is due to come into force on the day of Brexit. A copy is available [here](#).

The SI will ensure that current EU requirements relating to product safety and labelling, as implemented into UK law, are amended in a manner which will apply to products on the market in the UK once the UK is no longer in the EU. The 35 Schedules in the SI set out amendments to each UK law governing particular types of products or risks. [Changes to the Consumer Protection Act \(the "CPA"\) and the General Product Safety Regulations \(the "GPSR"\)](#) are also covered. Certain EU obligations are retained and these are set out in Part 5 of the SI.

The amendments mean that the expected shift in scope and process so that product safety laws in the UK are focused to the UK market and UK consumers will occur. Unsurprisingly, many of the amendments in the SI confirm that references to the "EEA" and "Member State" are to be replaced with references to the "UK".

The following proposed amendments are noteworthy. Specific changes that apply to particular product groups (e.g. machinery, radio, pressure equipment etc.,) can be reviewed in the relevant Schedule of the SI, a summary of which is below.



### THE MARKET

- The definitions of "[placing on the market](#)" and "[making available on the market](#)" are now restricted to the UK market alone, as opposed to the EEA market as a whole. This is aimed at ensuring that UK product safety laws are focused on goods sold to customers in the UK.



### THE SUPPLY CHAIN

- The definition of "[producer](#)" in the GPSR will be limited to individuals established in the UK, rather than in any EU Member State.
- "[Authorised representatives](#)" must be based in the UK if they are appointed post-Brexit. This requirement will not apply to appointments made before the day of Brexit.

Authorised Representatives who were mandated pre-Brexit and who have a continuing mandate can be based in any EEA Member State.

- The definition of "**Importer**" under the CPA will apply only to importers of products into the UK, rather than into the EU. Significantly, a UK importer that is only importing into another EEA Member State will not be caught by the CPA.



## UK COMPLIANCE

- The European CE marking regime, which signifies compliance with product safety laws, is to be replaced in the UK with a new "**UK Conformity Assessed**" marking ("**UKCA**"). Guidance on the use of this marking can be found [here](#). If Britain exits the EU without a deal, in most cases CE marking will still be used for products being placed on the UK market. Where a product requires a third party assessment of conformity, and if that assessment is carried out by a UK conformity assessment body post-Brexit, the new UKCA marking should be applied (where required by legislation).



## POWERS OF THE UK SECRETARY OF STATE

- The **Secretary of State** will take on the role of EU authorities for the regulation of product safety. It will issue **UK Standards, Guidelines and provide a UK database** of product safety and market surveillance information to replace the current EU structures, such as reporting to Rapex.
- The current EU standards published in the Official Journal of the EU and the European Commission's guidelines will no longer be relevant on the day of Brexit. However, there is currently no indication of where and when these standards will be published in the UK and therefore, in practice, it is likely that EU guidelines will still be followed until the UK guidance is produced.

---

## COMMENT

The amendments introduced by the SI are not controversial and largely follow an 'EU format' but with a UK focus. That said, changes to compliance processes will need to be implemented to ensure that UK products have UK markings and the relevant UK guidance and processes are followed where there is a question over product safety.

Given the multitude of legal drafting required for Brexit, it is perhaps not surprising that this SI has yet to be formally approved by the UK Parliament. The amendments, if approved, will take effect on the day of Brexit. Whether this will be in a scenario of a "no deal" or a "deal" is yet to be seen.

---

**For any questions on Brexit planning, contact our team:**



**John Leadley**  
Partner  
+44 20 7919 1337  
john.leadley  
@bakermckenzie.com



**Kate Corby**  
Partner  
+44 20 7919 1966  
kate.corby  
@bakermckenzie.com



**Louise Oakley**  
PSL  
+44 20 7919 1160  
louise.oakley  
@bakermckenzie.com



**Laura Pattison**  
Associate  
+44 20 7919 1553  
laura.pattison  
@bakermckenzie.com

Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This communication has been prepared for the general information of clients and professional associates of Baker & McKenzie. You should not rely on the contents. It is not legal advice and should not be regarded as a substitute for legal advice. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

[Privacy Policy](#)

© 2019 Baker McKenzie