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Arguments for changes to the bill as it would affect product safety and quality regulations.

Contents

1 Summary

The points I would like to raise can be summarised as follows:

- Much EU legislation relates to the safety and quality of products.
- The legislation refers to “harmonised standards”, many of which are international (adopted and published by the International Standards Organisation).
- Both the regulations and standards will have been developed with contributions from British representatives of relevant business sector, trade associations and expert organisations such as the British Standards Institute.
- These standards are widely accepted to represent best practice beyond the confines of the single market.
- There are good arguments for maintaining these regulations more or less unchanged as they are widely understood and accepted in the business area, and are not impeding new developments.
- It would be a mistake to allow regulations of this type to lapse under the sunset clause. Removing any regulation should be a conscious step, taken after consideration as to benefits and disadvantages.
- The bill should establish criteria for deciding whether secondary legislation should be assimilated, amended or allowed to lapse, with the involvement of industry.
- A considerable amount of time would be required to thoroughly review these regulations to look for opportunities for improvement. This should be done in a structured way with industry involvement.
- Before allowing any REUL to lapse an SI subject to the affirmative procedure should be laid before parliament.
- Concern has been expressed that regulations could lapse simply because civil servants have overlooked them when compiling the dashboard. Legal provision should be made to avoid that happening.
- Outside the scope of this bill, but as a matter of policy, if the EU amends their equivalent regulations then I think that the UK should seriously consider whether to amend assimilated legislation in the same way. There should be a formal process for considering UK regulations in the light of changes in other jurisdictions, of which the most relevant is the EU.

2 Introduction

I am writing as a private individual offering my personal view. I have 40 years’ experience of working for companies supplying capital equipment to manufacturing industry and industrial machinery is covered by some of the retained legislation.

The concern I have is that the bill appears to give very wide powers to ministers to allow retained legislation to lapse under the sunset clause, or to amend it at will. The bill appears not to contain any stipulation of the criteria or methodology to be used in deciding whether legislation should lapse, be amended or remain unchanged.

I want to start by considering one set of regulations of which I have some experience, and then try to extrapolate some more general conclusions about how decisions regarding the retained EU legislation should be approached.

3 The Supply of Machinery (Safety) Regulations 2008

3.1 Scope

These regulations implement the EU Machinery Directive 2006/42/EC, the amended version of the original 1989 directive. The regulations affect products which include moving parts controlled by powered actuators of some kind, but with various exclusions such as vehicles, most domestic equipment and so on.

These regulations are closely associated with other retained regulations such as the Low Voltage Directive 2014/35/EU and the EMC Directive 2014/30/EU.

The regulations impose obligations on suppliers of, and in some cases customers for, such machinery to ensure that the equipment can be used and maintained safely, and also installed and decommissioned safely. In particular they impose the need for a documented risk assessment for the safety of the machine, establish a set of Essential Health & Safety Requirements, and application of a set of harmonised standards.

3.2 Harmonised Standards

Article 7 of the directive refers to the harmonised standards applicable to machine safety.

There are a considerable number of these standards, but the starting point is *BS EN ISO 12100 - Safety of machinery. General principles for design, risk assessment and risk reduction.*

This standard, like many of the others, is international in scope (adopted by the International Organisation for Standardization), as well as being specifically adopted as a British Standard.

The standards (and the regulations) were developed with input from manufacturers, trade bodies and industry experts, including UK experts, and are widely recognised as representing best practice internationally, not just within the EU single market and the UK.

Machines designed in accordance with these standards are generally presumed to comply with the regulations, and the relevant standards are listed on the declaration of conformance.

A useful list of the standards associated with these regulations can be found at Procter Brothers Ltd's website (which identifies clearly which are also ISO standards and which are also British Standards).

https://www.machinesafety.co.uk/compliance/british-standards

3.3 My Perspective

3.3.1 Benefits of The Regulations

When I first started work in this area in the 1980s it was commonplace when visiting factories to see machines in use where part of the safety system had been disabled in some way. Typically the interlock, which was intended to keep the guard doors closed while the machine was running, would have been partly removed so the machine could be powered up while the doors were open. This would have been done to facilitate some maintenance action that could be done more easily with power on, and never put back afterwards. Obviously such a situation increased the chance of injury to operators and maintenance technicians.

One of the key benefits of the regulations is that the designer is forced to consider the safety of users in all phases of the life of the machine, not just in normal operation. Machines are now designed in such a way that the guard doors can be opened safely while power is still applied to critical items such as sensors which may need to be adjusted while powered on, but movements are disabled. In this way the machine can be maintained safely without defeating the safety system.

This is a small example of a benefit that good regulation, together with good work by concerned manufacturers and users of machines, has helped to bring about. Other examples would be the widespread adoption of redundancy[1] in safety circuits and improvements in the design of machine guarding.

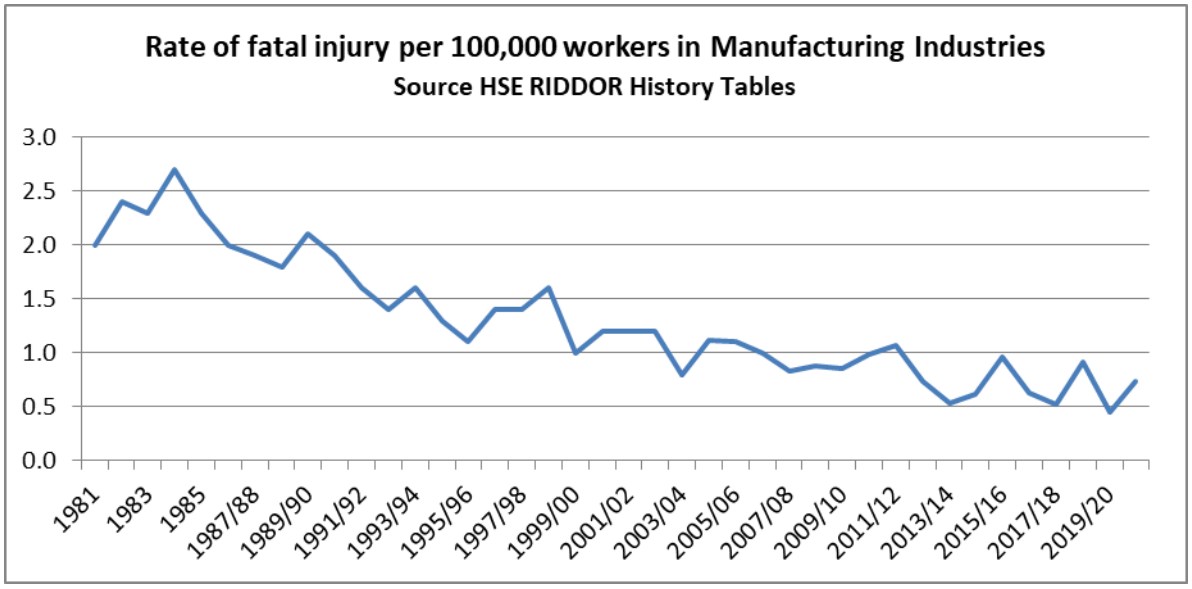
The regulations also provide a common basis of expectations and understanding between manufacturers and users of industrial machines.

The declaration of conformity (or incorporation) and the CE, or UKCA mark signifies that products sold in the EEA have been assessed to meet high safety, health, and environmental protection requirements. This is of particular benefit to smaller user organisations that may lack the in-house resources to make their own assessment of these aspects of a machine.

The EU standards are also widely recognised outside the single market as a benchmark for machine safety.

[1] Redundancy – designing safety critical systems in such a way that the failure of one component does not cause the whole system to become unsafe.

We can also see that the rate of fatal injury in manufacturing reduced significantly during the 1990s and 2000s as machinery was installed in factories which complied with these regulations, and it seems reasonable to assume that the regulations played a part in that reduction.



This chart comes from data in the HSE's RIDDOR History Table filtered for manufacturing industry. The table is available at this URL: https://www.hse.gov.uk/statistics/tables/index.htm#riddor

3.3.2 Flexibility

The regulations and these standards have also been flexible enough to allow for the introduction of new technologies such as "safe plc[2]" systems replacing hard-wired safety circuits using safety relays, or "co-working" where a robot and a person are enabled to work safely in the same area.

I am not aware that these regulations are imposing great limits on innovation within the sector.

3.3.3 Could The Regulations Be Scrapped?

In my view it would be extremely undesirable to scrap the regulations or allow them to lapse under the sunset clause. Scrupulous machine manufacturers and their customers would probably continue to make and buy machinery made in compliance with the EU regulations and harmonised standards, both to maintain good levels of safety for workers, and also to ensure machines could in future be sold on or relocated to plants within the EU or to non-EU countries where the CE mark has value. This wider resale market would mean that machines could be re-sold for a higher price than would otherwise be the case.

However, scrapping the regulations would allow unscrupulous businesses to make, import or buy machinery which was inherently less safe (and consequently cheaper) which could result in an increase in industrial injuries.

Do we really want to go back to machines with defeated safety systems?

Scrapping the regulations would also disadvantage smaller companies and their employees using industrial machinery where the company has no in-house expertise in machine safety and is solely reliant on the machine manufacturer.

Suppliers that had already invested time and effort in introducing UKCA marks would also be rather displeased.

3.3.4 Could The Regulations Be Amended?

There may be scope for some simplification, but I rather doubt whether any significant changes that would result in great benefits to industry could be found easily and quickly. There would also be reluctance in industry to see divergence from European standards that made it necessary to design a product differently for sale in the UK compared to the EU. This would, as a rule, lead to increased costs for UK users of machines.

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[2] PLC – Programmable Logic Controller, a microprocessor-based machine control system, safe plc means the integration of safety controls with the necessary redundancy into the plc.

It may be that examples can be found where the UK can take a different path in terms of standards and regulation, for example in new technologies – although I am sceptical as to whether such divergence would be of net benefit to the UK. In any case industry representatives including trade bodies such as the Manufacturing Technologies Association should be involved in any review process aimed at amending the regulations. I rather suspect such a review would be quite time consuming, and a useful review would probably take well over a year.

It is possible that there are opportunities for whole-system regulation, for example to help reach net zero targets, that would be better than the existing EU regulation but not incompatible with it. Again, opportunities should be explored in full consultation with industry.

4 General Points

From the above discussion I would like to try to extrapolate some general comments about retained legislation.

4.1 Characteristics of Retained Product Quality / Safety EU Legislation

It seems to me likely that many other retained regulations share characteristics of the Safety of Machinery regulations discussed above, such as:

- Being designed to address real issues of product safety and / or quality with input from the relevant business sector.
- Being based on what is widely recognised as best practice within the relevant business sector.
- Citing internationally recognised standards.

4.2 Criteria and Methodology for Decision Making

I suggest that the bill should be amended to set out the criteria and methodology to be adopted in decision making about retained legislation of the kind I am discussing here. I suggest the following:

4.2.1 Criteria

- Does the piece of legislation in question have one or more of the characteristics listed in section 4.1 above? If so it should be assimilated, not allowed to lapse under the sunset clause.
- Is there scope to amend the legislation to offer significant benefits to product purchasers and users, or to manufacturers provided this is not to the detriment of purchasers and users?
- Would amendment create significant problems of compatibility with EU regulations for manufacturers, especially in cases where the UK market alone is insufficient to support a viable business?

4.2.2 Methodology

I suggest that the evaluation of the legislation against the first criterion above could be done by civil servants, who could also ask for the written views of the relevant trade associations. This could probably be done fairly quickly (say a 3 month period for a given regulation).

Evaluation against the second and third criteria should be a second step, and should be done with substantial involvement from trade associations, the relevant statutory bodies such as the Health & Safety Executive, and other organisations such as the British Standards Institution and consumer organisations. It may only be necessary to make this second evaluation if there is a clear desire for it to be done coming from manufacturers or purchasers and users.

4.3 Number of Regulations

According to the retained EU Law dashboard there are over 2400 pieces of retained legislation, more than 300 of which, like the *The Supply of Machinery (Safety) Regulations 2008*, come under the remit of BEIS.

4.4 The Sunset Clause

The sunset clause makes provision for legislation to lapse at the end of 2023 unless ministers decide otherwise. If an individual decision has to be taken each of the 300 BEIS regulations before that date, that is a huge burden for the civil service to undertake in such a short space of time.

I think the date should be moved back to 2026 *unless* it is clear that ministers are going to agree to assimilate the vast bulk of existing regulations.

Apparently there is also some uncertainty about whether the dashboard has in fact captured all the retained regulations, in which case they would lapse by default. Putting the date back to 2026 would allow more time for civil servants to trawl through UK legislation looking for anything that has been missed.

4.5 Changes to EU Legislation

In my view, if the EU decides to amend a directive such as the Machinery Directive, it would make sense for the UK to assess on a case-by-case basis whether it would be appropriate to amend UK law in the same way. A similar set of criteria and methodology could be adopted as I proposed for deciding on other amendments.

5 Parliamentary Scrutiny

5.1 REUL Allowed to Lapse

I think this bill should be amended to ensure that any decision to allow a piece of REUL to lapse should be dealt with by a statutory instrument subject, as a minimum, to the affirmative procedure.

Parliament should be provided with evidence as to why the legislation did not, in the view of ministers, meet the criteria established for assimilation.

5.2 REUL to be Amended

In this case it could be reasonable for the necessary SI to be laid under the negative procedure, unless the amendment could have very significant effects.

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