

EXPLANATORY MEMORANDUM TO

THE EUROPEAN ECONOMIC INTEREST GROUPING (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1299

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is being made under section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law and other deficiencies. It will ensure that any European Economic Interest Grouping (“EEIG”) registered in the UK immediately before exit day has a clear legal identity and can operate effectively on and after that day.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (“the EC Regulation”) was introduced to help businesses in Member States establish and maintain links with businesses in other Member States. The EEIG is a form of association between companies or other legal bodies, firms or individuals from different EU countries who need to operate together across national frontiers. It carries out tasks for its member-owners and is quite separate from its owners' businesses, its aim being to facilitate or develop the economic activities of its members and not to make a profit for itself.

Why is it being changed?

- 2.3 One of the key requirements in the EC Regulation is that all members of an EEIG should have their registered or statutory office and their central administration in the Community. An EEIG must also be registered in a Member State. When the UK leaves the EU, EEIGs registered in the UK will no longer meet these requirements: the UK members of an EEIG will no longer have their registered or statutory office in the Community and, the EEIG, being registered in the UK, will no longer be registered in the Community. To ensure EEIGs registered in the UK continue to have a clear legal identity post-exit, this statutory instrument amends the EC Regulation so that any EEIGs registered in the UK immediately before exit day will be automatically converted to a new UK corporate form: a UK Economic Interest Grouping (UKEIG). It also amends the EC Regulation so that the members of a UKEIG registered in the UK will no longer all need to have their registered or statutory office and central administration in a Member State. The European Economic Interest Grouping Regulations 1989 and the Registrar of Companies (Fees) (European Economic Interest Grouping and European Public Limited Liability

Company) Regulations 2012 will also be amended to take account of the conversion into the new corporate form. The ability for new registrations under the framework is being removed.

What will it now do?

- 2.4 This instrument provides a framework for any EEIGs registered in the UK immediately before exit day to operate as the new corporate form UKEIG on and after that day. It preserves the EEIG framework, unchanged as far as possible and appropriate, for the affected companies on a UK only basis (i.e. no ability to transfer registered office to another Member State).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 This statutory instrument was laid for sifting under the European Union (Withdrawal) Act 2018. The European Statutory Instruments Committee (ESIC) and Secondary Legislation Scrutiny Committee (SLSC) considered the instrument on the 13th November 2018 and agreed that the instrument should follow the negative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst has made the following statement regarding Human Rights:

“In my view the provisions of the European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The EC Regulation entered into force in 1985.
6.2 EEIGs registered in the UK are governed by the directly applicable provisions of the EC Regulation and by the European Economic Interest Groupings Regulations 1989 and the Registrar of Companies (Fees) (European Economic Interest Grouping and European Public Limited Liability Company) Regulations 2012.
6.3 This instrument makes amendments to this legislation along with any required consequential amendments. It also includes transitional arrangements in respect of any EEIGs that had completed a transfer to another Member State but had not been removed from the register before exit day.

7. Policy background

What is being done and why?

- 7.1 The EEIG is a legal structure that facilitates an association of members from more than one Member State which come together to undertake a specific activity. The purpose of an EEIG is to facilitate or develop the economic activities of its members, not to make profit for itself. It must have at least 2 members (either a company/legal body or certain natural persons) from different Member States.
- 7.2 There are approximately 300 EEIGs registered in the UK and they are used for many different purposes in a wide variety of industries. An example is the International Port Community Systems Association founded to carry out functions on behalf of Port Community System Operators operating throughout Europe. Members of EEIGs registered in the UK range from individual persons to global pharmaceutical companies.
- 7.3 Nearly a third of EEIGs registered in the UK do not have current registered addresses held by Companies House. We think many of these are likely to be dormant; the project for which they were set up may have finished and the members have not wound up the entity.
- 7.4 The EC Regulation requires that an EEIG's registered office be within the Community. Once the UK leaves the EU we will no longer fulfil the requirements of the framework and so UK registered EEIGs would no longer qualify as EEIGs and their legal status would be unclear.
- 7.5 EEIGs with their official address in the UK have the option to transfer their registered office to another Member State if they want to continue operating as an EEIG. Some may also need to attract an additional member in order to fulfil the requirements of an EEIG if they currently have only one member from a Member State other than the UK.
- 7.6 However, if any EEIGs registered in the UK take no action, they will have no clear legal status on and after exit day. This lack of legal identity could impact not only on the corporate entity itself but also its employees and its supply chain e.g. staff could not be paid because bank accounts were frozen or contracts could be declared invalid.
- 7.7 To ensure that this situation does not arise, this instrument provides for any UK EEIGs still on the company register on exit day to be automatically converted to a new corporate form.
- 7.8 The new corporate form preserves the current framework, unchanged as far as possible and appropriate, for the affected companies on a UK only basis (i.e. no ability to transfer registered office to another Member State). The automatic conversion includes an automatic name change of the company designation from EEIG to UKEIG. This will minimise the burden on the entities and ensures that the appropriate changes are made on day 1 to reduce any possible confusion or doubt over the companies' status.
- 7.9 The intention is that a UKEIG will be a temporary stage for entities, allowing them more time to take more appropriate action, rather than a long term corporate choice. Without the European features, and with so few converted entities to a UKEIG we do not believe it will be an attractive long term corporate vehicle. The ability for new registrations under the framework is therefore being removed. The instrument does

not include a sunset provision (the intention is to give any remaining entities the time they need to make their own arrangements).

- 7.10 This instrument applies to Company Law which is a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no plans to consolidate the European Economic Interest Grouping Regulations 1989 at this stage. As explained earlier, it is not expected that the UKEIG will be an attractive long-term corporate vehicle after exit day and it is unlikely that the Regulations will require further significant amendment.

10. Consultation outcome

- 10.1 We have not been able to publicly consult in order to minimise sensitivities in advance of negotiations with the EU. Informal consultation has taken place with some representatives of EEIGs registered in the UK in the form of one to one discussions to gather information about the plans of EEIGs and explore the attractiveness of automatic conversion. From the discussions it seems likely that many EEIGs registered in the UK will have made their own preparations in advance of exit day.
- 10.2 The stakeholders we spoke to believed that automatic conversion, while not right for them, could be useful for those EEIGs that did not take any action, and that there was probably no existing UK form that would be suitable for all entities.

11. Guidance

- 11.1 Guidance on EEIGs was published in 2014 and can be found here.

<https://www.gov.uk/government/publications/european-economic-interest-groupings-eeigs>

This guidance will be updated and made available before exit day.

12. Impact

- 12.1 The impact on business is less than £5 million due to the small number of entities in scope. The direct impacts of this policy on businesses can be considered as arising from the familiarisation costs of understanding what an automatic conversion to another corporate form involves, costs of changing the details of EEIG's notepaper, websites, logos etc and the costs of informing relevant parties about the change. There is no significant impact on charities or voluntary bodies.
- 12.2 There is no impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because of the low level of impact on business (less than £5 million).

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 Any administrative impacts following automatic conversion such as the change of corporate name on notepaper are expected to be commensurate with the size and scale of the business. We therefore do not expect any disproportionate impact to small businesses.

14. Monitoring & review

- 14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Sarah Pooley Dod at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 4326 or email: sarah.pooleydod@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Andrew Death, Deputy Director at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kelly Tolhurst, the Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy, Kelly Tolhurst has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument does not amount to a policy change. It makes no significant changes to the nature of EEIGs, other than to correct technical deficiencies arising from withdrawal of the UK from the EU. The instrument operates to maintain the status quo as far as is possible but providing for an automatic conversion of entities registered in the UK that would no longer fulfil the requirements of the EU framework.

2. Appropriateness statement

- 2.1 The Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy, Kelly Tolhurst has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate.”.

- 2.2 This is the case because the instrument does not amount to a policy change but operates to maintain the status quo as far as is possible. It remedies a failure of retained EU law to operate effectively in that the legal status of entities registered in the UK would be unclear as the UK is no longer a Member State. This is further detailed in paragraph 2.3 of the Explanatory Memorandum.

3. Good reasons

- 3.1 The Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy, Kelly Tolhurst has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.”.

- 3.2 Without this instrument, EEIGs with their official address in the UK would have no clear legal identity. This instrument aims to ensure they have legal certainty whilst maintaining the status quo as far as possible.

4. Equalities

4.1 The Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy, Kelly Tolhurst has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”.

4.2 The Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy, Kelly Tolhurst has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Kelly Tolhurst, The Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

4.3 This legislation complies with the requirements of the Public-Sector Equality Duty (PSED).

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.