

EXPLANATORY MEMORANDUM TO
THE NETWORK AND INFORMATION SYSTEMS (AMENDMENT)
REGULATIONS 2018

2018 No. 629

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations correct a number of defects and errors in the Network and Information Systems Regulations (S.I. 2018/506), which came into force on 10 May 2018. That instrument implements a European obligation, namely implementation of Directive (EU) 2015/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and information systems across the Union (“the NIS Directive”). These are minor corrections, one of which is a typographical error, which has the inadvertent effect of excluding the Digital Infrastructure sector from the scope of the Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Network and Information Systems Regulations 2018, which these Regulations amend, were made to implement a European obligation, namely implementation of the NIS Directive. Member States had until 9 May 2018 to bring this Directive into their domestic legislation.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this is the whole of the United Kingdom including the territorial sea adjacent to the UK, the Continental Shelf, the sea (including the seabed and subsoil) in any area designated under section 1(7) of the Continental Shelf Act 1964.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The list of sectors and the thresholds that apply to identify operators of essential services within those sectors are set out in paragraphs 1-10 of Schedule 2 to the Regulations. However, three of the provisions which refer to Schedule 2 (Regulations 8(1), 8(3)(a) and 15(1)(a)) incorrectly refer only to paragraphs 1-9 of Schedule 2. We have therefore amended these Regulations so that they refer to Schedule 2 as a whole, to ensure that the Digital Infrastructure sector is correctly brought into the scope of the Regulations, as required in order to fulfil our obligations under the security of the NIS Directive.
- 7.2 We are also correcting a number of incorrect cross references and other minor errors within the original Regulations. Regulation 12(11) has been amended to correctly refer to paragraph 10, rather than 9 of regulation 12. Regulation 12(14)(c) has been corrected to refer to (12)(b) rather than (11)(b) of regulation 12. Regulation 18(7) has been corrected to include the situation where no steps have in fact been required by a competent authority. Regulation 25 has been amended to reflect the correct date of the Small Business and Enterprise Act 2015 and the reference to the 2015 Directive has been amended to refer to Directive 2016/1148. A number of typographical errors in Regulations 1(3), 3(5), 8(11), 12(7), 18, 19 and Schedule 2 have also been corrected.
- 7.3 This instrument will be issued free of charge to all known recipients of the defective Network and Information Security Regulations 2018.

8. Consultation outcome

- 8.1 As these amending Regulations are limited to correcting mistakes within the original Regulations, and not making any policy changes to the purpose of the Regulations, no stakeholder consultation has been carried out.

9. Guidance

- 9.1 No further guidance is required as a result of this instrument. Existing guidance can be found on the Government's website: <https://www.gov.uk/government/collections/nis-directive-and-nis-regulations-2018>

10. Impact

- 10.1 There is no impact on charities or voluntary bodies. The impact on business is in the digital infrastructure sector, correctly bringing them into the scope of the Regulations. That impact was assessed in the original Impact Assessment for the Network and Information Systems Regulations 2018.
- 10.2 There is no impact on the public sector.
- 10.3 As these amending Regulations are limited to correcting mistakes within the original Regulations, and not making any policy changes to the purpose of the Regulations, no additional Impact Assessment has been carried out.
- 10.4 The original Impact Assessment for the Network and Information Systems Regulations 2018 is published on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 Although a number of the changes were to the monitoring and review provisions, these were typographical errors and the substantive review provisions remain as set out in the original Regulations.

13. Contact

13.1 Stuart Peters at the Department for Digital, Culture, Media and Sport, Telephone: 020 7211 6769 or email: stuart.peters@culture.gov.uk can answer any queries regarding the instrument.