

EXPLANATORY MEMORANDUM TO
THE CONSUMER PROTECTION (ENFORCEMENT) (AMENDMENT ETC.) (EU
EXIT) REGULATIONS 2020

2020 No. XXXX

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 Command of Her Majesty.
- 1.2 The memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Statutory Instrument amends a previous Statutory Instrument that was introduced by the Government to ensure the UK's consumer protection regime continues to work effectively after the UK's withdrawal from the EU.
- 2.2 The Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/203) ("**2019 Exit Regulations**") deal with the collective redress regime for consumer protection. The aim of the 2019 Exit Regulations is to allow the UK collective redress regime to function effectively once the cross-border arrangements in the EU's CPC Regulation (2017/2394) and Injunctions Directive (2009/22/EC) no longer apply to the UK at the end of the transition period.
- 2.3 The principal purpose of this instrument is to amend the **2019 Exit Regulations** as a result of subsequent changes in the EU law and domestic law to which those Regulations relate. This instrument also amends other Exit Regulations in the consumer protection area, in connection with the Northern Ireland (NI) Protocol and to replace references to "exit day" with "IP completion day".
- 2.4 This instrument additionally amends Part 8 of the Enterprise Act 2002 (c. 40) in response to the Fourteenth Report of session 2019-21 of the House of Lords and House of Commons Joint Committee on Statutory Instruments (JCSI) relating to the Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/484).

Explanations

What did any relevant EU law do before exit day?

- 2.5 EU law relevant to the 2019 Exit Regulations includes Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 345, 27.12.2017, p. 1) ("the CPC Regulation").
- 2.6 The CPC Regulation provides reciprocal arrangements for Member States to cooperate in investigations and enforcement actions in the case of cross-border infringements of consumer laws causing collective harm to consumers.

- 2.7 The 2019 Exit Regulations revoked the previous CPC Regulation, and made consequential changes to domestic law, notably Part 8 (enforcement of certain consumer legislation) of the Enterprise Act 2002, to allow domestic legislation on collective redress to function effectively in relation to EU-derived consumer law after EU exit. The amendments were made as a result of the CPC Regulation ceasing to apply to the UK on exit day (and instead now at the end of the transition period).

Why is it being changed?

- 2.8 The principal reason for this instrument is that since making the 2019 Exit Regulations the EU's CPC Regulation (Regulation (EC) No 2006/2004²) in force at the time of making those Regulations – which the 2019 Exit Regulations will revoke - has been replaced by a new CPC Regulation (Regulation (EU) 2017/2394³). In addition, Part 8 of the 2002 Act (and other domestic legislation) has been amended by the Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/484) which implement the new CPC Regulation. It is necessary to update the 2019 Exit Regulations so that, when they come into force, they will revoke the new CPC Regulation and to ensure that they amend Part 8 of the 2002 Act and other domestic legislation as they now stand. Importantly, the draft Exit Regulations update the 2019 Exit Regulations but do not substantially alter their approach except for the transitional provisions which now allow EU-based enforcement bodies to be able to continue any legal proceedings begun in UK courts prior to the IP completion day.
- 2.9 The amendments to other Exit Regulations are made as a result of legislation relating to crystal glass, footwear and textiles being specified in, or deriving from legislation specified in, Annex 2 to the Protocol on Ireland / Northern Ireland of the EU withdrawal agreement which had not been agreed when those Exit Regulations were first made. In addition, those Exit Regulations contain various references to “exit day”, in the context of transitional provisions, which need to be updated to “IP completion day”.
- 2.10 Finally, this instrument provides an opportunity for the Department to rectify the drafting reported by the JCSI in relation to the Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 in its Fourteenth Report of session 2019-21.

What will it now do?

- 2.11 As a result of this instrument, the 2019 Exit Regulations will expressly revoke the current CPC Regulation. Furthermore, the 2019 Exit Regulations will function effectively in amending domestic legislation as it has been updated. In doing so, the post-transition period collective redress regime will extend to those consumer laws which are being retained in the UK to which the CPC Regulation has expanded.
- 2.12 In relation to transition arrangements, this instrument allows any body in an EU Member State which is engaged, on IP completion day, in ongoing court proceedings under Part 8 of the Enterprise Act 2002 to continue those proceedings.
- 2.13 In relation to the other Exit Regulations, this instrument ensures that the EU and EU-derived legislation to which the Protocol on Ireland / Northern Ireland of the EU withdrawal agreement applies is not substantively amended so far as material to that Protocol. This instrument also makes consequential changes to ensure that legislation functions effectively both in a Great Britain and in a Northern Ireland context. In the case of textiles, more limited changes are made to the Textile Products (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1398) since Regulation (EU) No 1007/2011⁴,

as direct EU legislation, will continue to apply for the purpose of the Protocol by virtue of section 7A of the European Union (Withdrawal) Act 2018.

- 2.14 Finally, this instrument amends sections 218ZB(4) (online interface orders) and 218ZC(8) (interim online interface orders) of the Enterprise Act 2000, which were inserted by the Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020. Those sections provide that where a court in one Part of the United Kingdom makes an order under Part 8 of the 2002 Act that order is, in another part of the United Kingdom, to be treated as an order made by the court in that other part of the United Kingdom. The amendments specify the court in the other part of the United Kingdom which is to be treated as having made that order. As those sections mirror the existing sections 217(12) (enforcement orders) and 218(11) (interim enforcement orders), which are also relied on to implement the CPC Regulation, the Department considers that these sections should be similarly amended to ensure a consistent statutory regime.

3. Matters of special interest to Parliament

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

- 3.1 The amendments made in response to the Fourteenth Report of session 2019-21 of the House of Lords and House of Commons Joint Committee on Statutory Instruments (JCSI) in relation to the Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/484) are of interest to that Committee.

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 The territorial application of this instrument includes Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom. Consumer law enforcement policy is transferred to Northern Ireland, but the Northern Ireland Department for the Economy has agreed that implementation can be carried forward on a UK basis.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement regarding Human Rights:

“In my view the provisions of the Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16)) to remedy deficiencies in retained EU law, except in relation to the provisions in response to the Fourteenth Report of session 2019-21 of the House of Lords and House of Commons Joint Committee on Statutory Instruments (JCSI) (which are made under section 2(2) of the European Communities Act 1972 (c. 68) which is saved with modification until IP completion day pursuant to section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)).

7. Policy background

What is being done and why?

- 7.1 This instrument is intended to update previous EU Exit Regulations in light of the EU and domestic legislative developments indicated in section 2 of this Memorandum. It is not intended to alter the policy approach of those instruments, which was explained in the Memoranda which accompanied those instruments when they were laid. Rather, the intention is that those Regulations continue to function effectively.

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 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 for consolidation.

10. Consultation outcome

- 10.1 The Department wrote to the Department for the Economy, Northern Ireland, to seek agreement with the Northern Ireland Executive to lay this instrument. The Department for the Economy confirmed on 28 April 2020 that this SI should include Northern Ireland provisions which relate to areas that are devolved to Northern Ireland that fall within the remit of the Department for the Economy and officials have subsequently updated their counterparts in Northern Ireland on all material changes to this instrument.

11. Guidance

- 11.1 The Department will publish guidance if necessary.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument as net impacts to business are expected to be comfortably below £5m. The purpose of this instrument is largely technical and is to amend previous exit-related SIs considering developments in EU law and the Withdrawal Agreement. A 'de minimis' self-certification has been prepared to accompany this instrument and there is a reasonable expectation that the aggregate impacts would be below the £5m threshold.

13. Regulating small business

- 13.1 The legislation applies to enforcement in respect of activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018 and impacts of the measure are not expected to be significant (under £5 million annualised net business impact), no review clause is required.

15. Contact

15.1 Aditi Arora at the Department for Business, Energy and Industrial Strategy, Telephone: 020 7215 3984 or email: Aditi.Arora@beis.gov.uk can be contacted with any queries regarding this instrument.

15.2 David Marshall, Deputy Director for Consumer Policy and Enforcement, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Paul Scully, Minister for Small Business, Consumers and Labour Markets, 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. Appropriateness statement

1.1 The Minister for Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2020 does no more than is appropriate”.

1.2 This is the case because the changes made by this instrument are limited to the changes considered appropriate to deal with the deficiencies outlined in section 2.5-2.9 of this Explanatory Memorandum.

2. Good reasons

2.1 The Minister for Small Business, Consumers and Labour Markets, Paul Scully, 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”.

2.2 These are that the changes to the law outlined in section 2 of this Explanatory Memorandum are narrow and technical, principally made to enable the 2019 Exit Regulations to function in light of the changes in UK and EU law since that law was made, as well as changes to other Exit Regulations required in light of the Withdrawal Agreement and to correct deficient drafting reported by the JCSI in its Fourteenth Report of session 2019-21 in relation to the Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/284). Failure to make amendments relating to the NI Protocol will (unless another legislative vehicle is found) result in breach of the Withdrawal Agreement as EU-derived legislation which is required to remain in force in respect of Northern Ireland will be modified by previous Exit SIs.

3. Equalities

3.1 The Minister for Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement(s):

“The draft 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.”

3.2 The Minister for Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, the Minister for Small Business, Consumers and Labour Markets Paul Scully, 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. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.