

EXPLANATORY MEMORANDUM TO
THE TIMESHARE, HOLIDAY PRODUCTS, RESALE AND EXCHANGE
CONTRACTS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018

2018 No. 1397

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument: amends the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ('the 2010 Regulations').

Explanations

What did any relevant EU law do before exit day?

- 2.2 The 2010 Regulations simplified and expanded measures regulating the sale, marketing and content of timeshare contracts to better protect consumers. The Regulations also extended the scope of consumer protections to encompass new timeshare products emerging on the market as well as the resale of timeshares. The 2010 Regulations apply to holiday accommodation contracts, including timeshare contracts. Traders are required to provide consumers with key information before entering into a contract and the contract itself must comply with certain formalities. The 2010 Regulations also provide consumers with rights to withdraw from and terminate contracts.

Why is it being changed?

- 2.3 To address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

What will it now do?

- 2.4 This instrument amends the 2010 Regulations to ensure that the protections for UK consumers purchasing timeshares or related products remain the same following the UK's departure from the EU to the extent that this is possible. The instrument also widens the scope of the 2010 Regulations, so they apply to certain contracts governed by the law of an EEA state – putting those contracts in the same position as contracts governed by the law of non-EEA third countries. The instrument changes language requirements so that information and contracts must be provided in English rather than and the official language of an EEA state.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 Scotland and Northern Ireland

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 Parliamentary Under Secretary of State for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding Human Rights: “In my view the provisions of the Timeshare, Holiday Product, Resale and Exchange contracts (Amendment etc.) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument amends the 2010 Regulations to address deficiencies and ensure that the Regulations will operate effectively after the withdrawal of the United Kingdom from the European Union. The 2010 Regulations transposed into UK law the Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts Directive 2008/122/EC, which was adopted in February 2009. The 2010 Regulations replaced entirely the previous regime in the UK by repealing the Timeshare Act 1992 and revoking the Timeshare Regulations 1997.

7. Policy background

What is being done and why?

7.1 Following the UK’s decision to exit the European Union, this instrument amends EU-derived legislation on timeshare and other long-term holiday accommodation contracts, using the powers granted by the European Union (Withdrawal) Act 2018.

7.2 This instrument amends current Regulations on timeshare to ensure this legislation operates effectively once the UK leaves the EU and that the protections for UK consumers purchasing timeshares or related products remain the same following the UK’s departure from the EU.

7.3 This instrument amends references to the EEA and Member States and references which assume the UK’s membership of the EU or EEA so that the legislation operates effectively after exit.

7.4 Part 2 of the instrument amends what constitutes a holiday accommodation contract to which the 2010 Regulations apply. The 2010 Regulations will continue to apply to holiday accommodation contracts which are to any extent governed by the law of the UK or a part of the UK. However, as the UK will no longer be a member of the EEA, this part of the instrument will change the definition of a ‘third country’ to constitute a country outside of the UK instead of outside of the EEA. This means that certain holiday accommodation contracts governed by the law of an EEA state will now be regulated in the same way as similar contracts governed by the law of a third country. Since the UK will no longer be a member of the EEA, it is no longer appropriate to exclude EEA contracts from the 2010 Regulations.

- 7.5 The instrument also sets out that both the contract and pre-contractual information must be provided in English and may in addition be provided in another language. Currently the 2010 Regulations allow a consumer who is resident in or a national of an EEA state to require the contract and the information to be drawn up in an official language of that EEA state.
- 7.6 By ensuring as far as possible the continuity of protections for UK consumers buying long term holiday accommodation products these Regulations will give certainty to businesses and provide fairness to consumers.
- 7.7 This instrument applies to consumer protection which are a transferred matter for Northern Ireland under 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 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 current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 As this instrument makes only minor changes to the current Regulations and aims to maintain existing protections so far as possible, no consultation was needed.

11. Guidance

- 11.1 No guidance is necessary as the aim of the instrument is to continue the measures set out in the 2010 Regulations for consumers buying long term holiday accommodation products as far as possible after EU Exit.

12. Impact

- 12.1 There is no, or no significant, impact on UK business, charities or voluntary bodies.
- 12.2 There is no impact on the public sector.

12.3 The statutory instrument does not represent a policy change and will have no, or no significant, impact on UK business, charities, voluntary bodies, or the public sector. Businesses in the UK will experience very little change resulting from the regulatory change and will therefore face negligible direct cost. As the regulation has a net direct impact on UK business or civil society organisations of less than £5 million annually, it qualifies for the de minimis threshold and a full regulatory impact assessment is not required.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 Although the 2010 Regulations amended by this instrument apply to activities that are undertaken by small businesses, this instrument will result in very little change in policy and so small businesses will not be impacted.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Adam Stevens at the Department for Business, Energy and Industrial Strategy.
Telephone: 020721564794 / Adam.Stevens@beis.gov.uk can answer any queries regarding the instrument.

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

15.3 Kelly Tolhurst, The Parliamentary Under Secretary of State 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. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Timeshare, Holiday Product, Resale and Exchange contracts (Amendment etc.) (EU Exit) Regulations 2018 does no more than is appropriate”.

1.2 This is the case because: this instrument brings into effect necessary changes to ensure the law remains operable and UK consumers retain key protections. It ensures the requirements relating to timeshare and other long-term holiday accommodation contracts in place before exit day continue to apply in the UK after exit day.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Small Business, Consumers and Corporate Responsibility, 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”.

2.2 These are that this instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU and makes necessary changes with regards to timeshare to ensure the law remains operable and UK consumers retain key protections. The policy rationale for the changes are set out section 7 of this Explanatory Memorandum.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement:

“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 Parliamentary Under Secretary of State for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the [draft] instrument, I, Kelly Tolhurst 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.