

EXPLANATORY MEMORANDUM TO
ONLINE INTERMEDIATION SERVICES FOR BUSINESS USERS
(ENFORCEMENT) REGULATIONS 2020

2020 No. 609

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.

2. Purpose of the instrument

- 2.1 The Online Intermediation Services for Business Users (Enforcement) Regulations 2020 (“this instrument”) makes arrangements for the domestic enforcement of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (“the EU Online Intermediation Services Regulation”).

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

6. Legislative Context

- 6.1 The EU Online Intermediation Services Regulation aims to promote fairness and transparency between internet platforms and businesses who sell their products or services through these platforms (referred to in the Regulation as ‘providers of online intermediation services’). This is achieved through rules regulating the relationship between platforms and businesses as well as transparency requirements requiring the provision of information about the way that these platforms operate. For example, platforms are required to provide their terms and conditions in plain language and to ensure transparency about the way that they rank businesses. Requirements relating to

transparency about rankings and differentiated treatment also apply to providers of online search engines.

- 6.2 The EU Online Intermediation Services Regulation takes effect on 12 July 2020. This Regulation will have direct effect in UK law during the Transition Period, under the terms of the UK's Withdrawal Agreement with the EU (as implemented into UK law by the European Union (Withdrawal Agreement) Act 2020). This means the UK is required to comply with Article 15 of the Regulation during the Transition Period. This requires the UK to ensure adequate and effective enforcement of the Regulation, to lay down the rules applicable to infringements and to ensure they are implemented. Enforcement measures must be effective, proportionate, and dissuasive. This instrument is intended to ensure compliance with Article 15.

7. Policy background

What is being done and why?

- 7.1 This instrument makes arrangements for the domestic enforcement of the EU Online Intermediation Services Regulation.
- 7.2 As noted above, the EU Online Intermediation Services Regulation imposes rules on the relationship between platforms and businesses within the EU. The Regulation seeks to address concerns raised by the business users of online platforms, for example in terms of ranking, suspension, and termination of services.
- 7.3 This instrument provides that, where a provider of online intermediation services fails to comply with certain provisions of the EU Online Intermediation Services Regulation, this is to be treated as a breach of duty owed by that provider to the business user so that, where loss or damage is caused by the provider, the business user may bring a civil action in respect of that loss.
- 7.4 Article 14 of the Regulation gives eligible organisations the right to bring proceedings against platforms not complying with certain requirements in the Regulation. This instrument ensures that private organisations with rights under Article 14 can bring proceedings for an appropriate remedy (including an injunction) where substantive requirements of the Regulation have been breached, whether or not this has resulted in loss or damage to an individual business. The Government is satisfied that there are private organisations in the UK which could bring proceedings on behalf of affected businesses. This means that all provisions of the Regulation will be capable of being enforced through the UK courts.
- 7.5 This EU Online Intermediation Services Regulation does not require the appointment of a public regulator, though Article 14 refers to a discretion to involve public bodies in enforcement of the Regulation. In the UK, this Regulation will be enforced through the courts by private businesses and organisations. The Government considers this to be a proportionate approach to enforcement, ensuring compliance with the UK's legal obligations during the Transition Period.

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

- 8.1 This instrument does not relate to withdrawal from the European Union. This instrument implements obligations arising from the UK's withdrawal agreement with the EU.

9. Consolidation

9.1 None.

10. Consultation outcome

- 10.1 BEIS has engaged and shared relevant details with the Devolved Administrations in preparation of this legislation. Northern Irish, Scottish and Welsh Government officials have noted the content of this statutory instrument. Scottish officials have provided feedback in relation to Scotland.
- 10.2 A decision was taken not to pursue a formal consultation process for this instrument. This is because the substantive directly applicable rules have been made at the EU level. BEIS engaged with a number of stakeholders who had been involved in the formulation of the policy at an EU level, or who were otherwise interested in the EU Online Intermediation Services Regulation.
- 10.3 Officials from BEIS reached out to representatives from businesses, platforms, and organisations. The response from those present was neutral on the choice of enforcement mechanism. It should be noted that the number of businesses interested in engaging with us was limited due to the extraordinary circumstances stemming from the Covid-19 emergency.

11. Guidance

- 11.1 The European Commission has produced a detailed webpage¹ as guidance on their website which features information addressing many questions relevant to both platforms and businesses.
- 11.2 No further guidance is to be issued by the UK in relation to this instrument.

12. Impact

- 12.1 There is no significant, impact on business, charities, or voluntary bodies as a result of this instrument. The substantive rules this instrument relates to are contained in the EU Online Intermediation Services Regulation, which has direct effect in the UK. The only cost to businesses, charities or voluntary bodies will be the familiarisation costs associated with considering the enforcement method of those rules.
- 12.2 There is no, or no significant, impact on the public sector. Costs to the justice system are also not expected to be significant.
- 12.3 An Impact Assessment has not been prepared for this instrument because, as noted above, we do not foresee any significant impact on businesses, charities, voluntary bodies and the public sector. A *De Minimis* Assessment has been prepared as the impact to businesses falls below the £5m per annum threshold for net direct costs. This confirms that this instrument will not have any disproportionate effects or add any significant burdens to UK businesses.

13. Regulating small business

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

¹ <https://ec.europa.eu/digital-single-market/en/business-business-trading-practices>

- 13.2 Given this statutory instrument applies only to the enforcement of substantive rules contained in a piece of EU law and those rules will apply in any event, no measures have been taken to assist businesses.
- 13.3 Articles 11 (internal complaint-handling system) and 12 (mediation) of the EU Online Intermediation Services Regulation do not apply to small enterprises.
- 13.4 The *De Minimis* self-certification highlights that costs to businesses will arise from the one-off cost for familiarising themselves with the Online Intermediation Services Regulation in the UK. BEIS anticipates costs to be small without any disproportionate impact on small businesses.

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause, in line with section 14 (b) of the Statutory Guidance under s.31 of the Small Business, Enterprise and Employment Act 2015 Lord Callanan has made the following statement:

“In my view it is not appropriate to include a statutory review clause in this instrument. Such a review clause would be disproportionate to the economic impact of this instrument.”

15. Contact

- 15.1 Terrence De Souza at the Department for Business, Energy and Industrial Strategy (Telephone: 020 7215 0476 or email: terrence.desouza@beis.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Anthony Miller, Deputy Director for Services, Investment and Digital, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.