

EXPLANATORY MEMORANDUM TO

THE GROCERIES CODE ADJUDICATOR ACT 2013, SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015 AND ENTERPRISE ACT 2016 (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1046

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 amends UK primary legislation to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. The three Acts amended by this instrument are: the Groceries Code Adjudicator Act 2013¹; the Small Business, Enterprise and Employment Act 2015²; and the Enterprise Act 2016³. Further detail on the scope of these amendments is given in section 7 of this memorandum, but the amendments do not go further than addressing deficiencies arising from EU Exit.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument does not amend any EU law.

Why is it being changed?

- 2.3 Not applicable.

What will it now do?

- 2.4 Not applicable.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument makes only minor amendments to the three Acts listed in paragraph 2.1, to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. There are no resulting changes to policy and the Sifting Committees have confirmed that the instrument can proceed via the negative resolution procedure.
- 3.2 The proposed negative SI was presented to the Sifting Committees for consideration on 23 July 2018 under the same name as given in the title to this memorandum, with

¹ <http://www.legislation.gov.uk/ukpga/2013/19/contents>

² <http://www.legislation.gov.uk/ukpga/2015/26/contents>

³ <http://www.legislation.gov.uk/ukpga/2016/12/contents>

the European Statutory Instruments Committee recommending the negative procedure in their First Report of Session 2017-19⁴, and the Secondary Legislation Scrutiny Committee making no recommendation to upgrade in their 39th Report of Session 2017-19⁵.

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)

- 3.3 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 whole of the United Kingdom.
4.2 The territorial application of this instrument includes Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Rt Hon Lord Henley, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:
“In my view the provisions of the Groceries Code Adjudicator Act 2013 etc. (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 This instrument is being made to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. It is done so using the power in section 8 of the European Union (Withdrawal) Act 2018, in order to ensure the correct functioning of the three Acts being amended after the UK leaves the EU.

7. Policy background

What is being done and why?

- 7.1 This instrument makes amendments to: the Groceries Code Adjudicator Act 2013 (“the GCAA”); the Small Business, Enterprise and Employment Act 2015 (“the SBEEA”); and the Enterprise Act 2016 (“the EA”).
7.2 Section 18(3)(b) of the GCAA is amended to substitute reference to “an EU obligation” with “a retained EU obligation”. This amendment is made to ensure that this subsection continues to operate correctly after exit day.
7.3 For the same reason, the reference to “EU obligation” in section 8(2)(c) of the EA is also substituted with “retained EU obligation”.
7.4 The reference to "EU obligation or any other" in section 23(5)(b) of the SBEEA is removed. This section relates to going beyond the minimum required to implement an EU obligation, so will be redundant after exit day.

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmesc/1532/153202.htm>

⁵ <https://publications.parliament.uk/pa/ld201719/ldselect/ldsecleg/183/18302.htm>

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 Not applicable.

10. Consultation outcome

10.1 A consultation was not required for this legislation, as it is simply addressing technical deficiencies arising from the withdrawal of the United Kingdom from the European Union relating to the fact of EU law becoming retained EU law.

11. Guidance

11.1 No guidance is being produced for this legislation, as it is simply addressing deficiencies arising from the withdrawal of the United Kingdom from the European Union.

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 because there is no impact on business as the provisions that are being corrected do not impose any regulatory requirements on business.

13. Regulating small business

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

14. Monitoring & review

14.1 An approach to monitoring of this legislation is not required, as it is simply addressing deficiencies arising from the withdrawal of the United Kingdom from the European Union.

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

15. Contact

15.1 Neal Stewart at the Department for Business, Energy and Industrial Strategy – Telephone: 0300 068 5585 or email: neal.stewart@beis.gov.uk – can be contacted with any queries regarding the instrument.

15.2 Rachel Egan or Joanna Rodin, joint Deputy Director for BRE Frameworks at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lord Henley, Parliamentary Under Secretary of State 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
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 Parliamentary Under Secretary of State, the Rt Hon Lord Henley, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Groceries Code Adjudicator Act 2013 etc. (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, as detailed in paragraph 2.1 and section 7 of the memorandum, the instrument makes only minor changes necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. These changes are uncontroversial and make no changes to policy beyond addressing those deficiencies.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State, the Rt Hon Lord Henley, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Groceries Code Adjudicator Act 2013 etc. (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because the instrument makes only minor changes necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, the Rt Hon Lord Henley, 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 These are amendments to references to EU obligations made to ensure the correct functioning of the Groceries Code Adjudicator Act 2013, the Small Business, Enterprise and Employment Act 2015, and the Enterprise Act 2016, as detailed in paragraphs 7.2 to 7.4 of the memorandum.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State, the Rt Hon Lord Henley, 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”.

- 4.2 The Parliamentary Under Secretary of State, the Rt Hon Lord Henley, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lord Henley, 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”.

5. Explanations

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