

EXPLANATORY MEMORANDUM TO
THE GEO-BLOCKING (ENFORCEMENT) REGULATIONS 2018
2018 No. 1153

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 Geo-Blocking (Enforcement) Regulations 2018 make arrangement for the domestic enforcement of the Geo-Blocking Regulation (Regulation (EU) 2018/302)¹, a piece of EU legislation.

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 England, Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 Lord Henley, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

“In my view the provisions of the Geo-Blocking (Enforcement) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Geo-Blocking Regulation (Regulation (EU) 2018/302) prohibits certain forms of discrimination in the context of trade in the single market. The Geo-Blocking

¹ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (Text with EEA relevance.)

Regulation prohibits: forced redirection away from, or blocking access to, a website on the basis of a web user's location in the EU; discriminatory "terms of access" (which includes, but is not limited to, prices offered) on the basis of a customer's location in the EU when selling goods delivered within the EU, wholly online services, or services delivered in a specified location; and discrimination in payment terms on the basis of the customer's location. The Geo-Blocking Regulation also provides that "passive sales" agreements (agreements that prevent traders from selling goods or services following unsolicited customer requests) that require traders to breach the terms of the Geo-Blocking Regulation are void.

- 6.2 There are caveats to these rules. The provision which forbids discriminatory terms of access when purchasing distance goods does not mandate that traders must offer shipping to all destinations in the EU. The provision which forbids discriminatory terms of access when purchasing wholly online services excludes copyrighted materials, such as e-books, streamed movies and music, and video games. These rules do not apply to transactions that take place entirely within one EU member state.
- 6.3 The Geo-Blocking Regulation takes effect on 3 December 2018, with the exception of the provisions relating to passive sales, which come into force on 23 March 2020.
- 6.4 The Geo-Blocking Regulation will have direct effect in the UK. However, Article 7 requires Member States to designate a body to enforce the Regulation and to lay down effective, proportionate and dissuasive rules setting out the measures applicable to infringements of the Regulation and to ensure that they are implemented.

7. Policy background

- 7.1 The Geo-Blocking (Enforcement) Regulations 2018 make arrangement for the domestic enforcement of the Geo-Blocking Regulation.
- 7.2 As noted above, the Geo-Blocking Regulation imposes rules on the sale of goods and services within the EU. Traders often offer customers in different Member States in the EU different terms based on their location. The Regulation seeks to open a level playing field for customers, allowing them to shop with confidence across the EU.
- 7.3 The measures taken in this Statutory Instrument to implement the requirements of Article 7 are as follows:
- 7.4 Regulation 2 amends Schedule 13 of the Enterprise Act 2002. This allows regulators to use the enforcement regime in Part 8 of the Enterprise Act 2002 to apply for orders against infringing traders. The court may order the trader to cease their infringing behaviour, and the court may attach further conditions at its discretion.
- 7.5 The relevant regulators for the purposes of Regulation 2 are the Competition and Markets Authority, every local weights and measures authority in Great Britain, and the Department for the Economy in Northern Ireland.
- 7.6 Regulation 3 provides that, where a trader breaches the Geo-Blocking Regulation and a customer suffers loss as a result, that customer can bring a claim directly against the trader in relation to that loss.

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.

9. Consolidation

9.1 None.

10. Consultation outcome

- 10.1 BEIS has engaged with the Devolved Administrations throughout the process of preparing this legislation. Northern Irish officials have noted the content of this Statutory Instrument. Scottish and Welsh Government officials have confirmed that they do not consider the Instrument is devolved.
- 10.2 A decision was taken not to pursue a formal consultation process for this statutory instrument. This is because the changes are largely technical in nature (the substantive rules being directly applicable and having been made at the EU level), and because the powers in this statutory instrument draw upon existing powers rather than creating novel ones. Separate consultations were conducted at EU² level on the substantive EU proposals whilst they were in development at an EU level.
- 10.3 To help inform its thinking about implementation, BEIS engaged with stakeholders who had been involved in the formulation of the policy at an EU level, or who were otherwise interested in the Geo-Blocking Regulation.
- 10.4 Officials from BEIS met representatives from four industry organisations. The response from those present was neutral on the choice of enforcement mechanism, with greater interest on other matters connected to the Geo-Blocking Regulation which are beyond the scope of this Instrument.

11. Guidance

- 11.1 The European Commission has produced a detailed Q&A document,³ which addresses many questions relevant to both businesses and customers.
- 11.2 The Business Companion website has been updated to provide high level guidance to businesses and link to the EU Commission Guidance.⁴
- 11.3 A consumer advice service will provide practical assistance to consumers with claims arising from the Geo-Blocking Regulation. As per the requirements of the Geo-Blocking Regulation, this centre will provide practical assistance to consumers and coordinate with other bodies across the EU. BEIS is considering options for this and will be putting measures in place and publishing more details in due course.

12. Impact

- 12.1 There is no, or 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 Regulation, which has direct effect in the UK. The only cost to business, 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. Government officials are working with the relevant regulators to ensure they are adequately resourced. The

² <https://ec.europa.eu/digital-single-market/en/content/results-public-consultation-geo-blocking-and-other-geographically-based-restrictions-when>

³ <https://ec.europa.eu/digital-single-market/en/news/geo-blocking-regulation-questions-and-answers>

⁴ <https://www.businesscompanion.info/en/quick-guides/consumer-contracts/consumer-contracts-distance-sales#Geoblocking>

Government does not expect this to be a significant expenditure. 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.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Henley 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. In addition, the substantive rules contained in the EU Regulation themselves contain a two-year review clause."

15. Contact

- 15.1 Will Garnier at the Department for Business, Energy and Industrial Strategy (Telephone: 0207 215 1087 or email: will.garnier@beis.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Anthony Miller at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Henley at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.