

EXPLANATORY MEMORANDUM TO

THE PROTECTING AGAINST THE EFFECTS OF THE EXTRATERRITORIAL APPLICATION OF THIRD COUNTRY LEGISLATION (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1660

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations are made to address inoperabilities and deficiencies of retained EU law and domestic law arising from the withdrawal of the United Kingdom from the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Regulations amend provisions in the following retained EU legislation:

Council Regulation (EC) No 2271/96 of 22 November 1996 (the “Blocking Regulation”) which forbids EU persons from complying with any requirement of the trade sanctions legislation of third countries specified in its Annex to the extent that that legislation purports to have extraterritorial effects, unless exceptionally, such persons are authorised so to comply by the Commission. It also allows EU persons to recover damages from other EU persons who have complied with the relevant third country extraterritorial sanctions legislation in contravention of the Blocking Regulation and nullifies the effect in the EU of any foreign court rulings based on the relevant sanctions.

Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018, which lays down criteria for the application of the provision whereby persons may be authorised to comply with the third country legislation.

Why is it being changed?

- 2.3 EU law retained on exit day will contain deficiencies arising out of the UK’s exit from the EU which need to be corrected for the law to continue to function effectively. The changes being made include changes to the provisions relating to EU persons and to powers exercisable by the European Commission – provisions which are inappropriate or redundant upon exit.

What will it now do?

- 2.4 After EU exit the legislation will, for instance, enable the Secretary of State acting by domestic secondary legislation to amend the list of third country legislation, compliance with which by UK persons is proscribed, and will permit the Secretary of State to authorise such persons to comply with that legislation. Additionally, the obligation on EU persons affected by trade sanctions legislation to provide

information to the Commission becomes an obligation on the part of UK persons to provide information to the Secretary of 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 Minister for Trade Policy, George Hollingbery, has made the following statement regarding Human Rights:

“In my view the provisions of the Protecting Against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 These regulations are made to address inoperabilities and deficiencies of retained EU and domestic law arising from the withdrawal of the United Kingdom from the EU.

6.2 The EU legislation comprises Council Regulation (EC) No 2271/96 of 22 November 1996 (the Blocking Regulation), and Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018, which lays down criteria for the application of the provision whereby persons may be authorised to comply with the third country legislation. Both require amendment if they are to function after EU exit.

6.3 The relevant domestic legislation is the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996, as amended. This is being amended to reflect the changes being made to the EU legislation.

7. Policy background

What is being done and why?

7.1 It is necessary to amend domestic and directly applicable EU legislation for it to continue to function after EU exit. This instrument amends one domestic instrument and two retained EU regulations to remedy deficiencies arising from withdrawal.

7.2 Regulation 2 of the proposed legislation amends a provision of the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996.

- 7.3 Regulation 3 makes changes to the EU legislation. Amongst other things, it substitutes references in the Blocking Regulation to the Commission with references to the Secretary of State and references to the Community or to a Member State with references to the United Kingdom. The changes made to the Blocking Regulation by paragraph 2(b)(i) of Regulation 3 mean that the power to amend the list of third country legislation with which persons may not comply, set out in the annex of the Blocking Regulation, will now be exercised by the Secretary of State, by regulations made by statutory instrument. The changes made to that Regulation by paragraph 6 of Regulation 3 mean that the power exercisable by the Commission to grant authorisations to persons to comply with the list of proscribed extraterritorial legislation will in the retained Regulation be exercised by the Secretary of State by regulations made by statutory instrument. Paragraph 12 amends the list of persons subject to the Blocking Regulation, essentially replacing references to EU persons with UK persons in the retained instrument. Paragraph 13 determines the applicable procedure as regards secondary legislation made under the Blocking Regulation after exit day.
- 7.4 Regulation 4 makes changes to Commission Implementing Regulation (EU) 2018/1101. For instance, it ensures that applications for authorisation post-exit should be made to the Secretary of State in place of the Commission.
- 7.5 Regulations 5 and 6 make transitional and related provision. For instance, authorisations in favour of UK persons made prior to exit day, are to be treated as if they were authorisations made by the Secretary of State.

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

- 8.1 This instrument is being made using the powers in section 8 and paragraph 21(b) of Schedule 7 to 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 currently no plans to consolidate the legislation being amended by this statutory instrument.

10. Consultation outcome

- 10.1 This instrument provides for the technical amendment of deficiencies arising from withdrawal from the EU and the continued operation of the legislation being amended after the UK exits the EU. No consultation was necessary.

11. Guidance

- 11.1 The Government will publish on gov.uk, before the UK leaves the EU, guidance on how the Blocking Regulation will apply after EU exit and how to apply for authorisations.

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 it provides for the continued operation of the legislation being amended after the UK exits the EU. Therefore, the instrument should have no, or no significant, impact, compared to the present situation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This instrument provides for the continued operation of the legislation being amended after the UK exits the EU. Therefore, the instrument should have no, or no significant, impact, compared to the present situation.

14. Monitoring & review

- 14.1 The Blocking Regulation currently provides that the Commission is to regularly report on the effects of the extraterritorial third country legislation. This will become a requirement on the part of the Secretary of State in the retained version – pursuant to the changes being made by this SI.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no additional review clause is required.

15. Contact

- 15.1 Tristan Breslin at the Department for International Trade can be contacted with any queries regarding the instrument. Telephone: 020 7215 5691 or email: tristan.breslin@trade.gov.uk.
- 15.2 Vic Platten at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Hollingbery MP at the Department for International Trade 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/ESIC
Appropriateness	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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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 Trade Policy, George Hollingbery, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Protecting Against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate. This is the case because these Regulations are made to address inoperabilities and deficiencies of retained EU law and domestic law arising from the withdrawal of the United Kingdom from the EU.”

2. Good reasons

2.1 The Minister for Trade Policy, George Hollingbery, 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. This is the case because these Regulations are made to address inoperabilities and deficiencies of retained EU law and domestic law arising from the withdrawal of the United Kingdom from the EU.”

3. Equalities

3.1 The Minister for Trade Policy, George Hollingbery, has made the following statement:

“The 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 Trade Policy, George Hollingbery, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, George Hollingbery, 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.