EXPLANATORY MEMORANDUM TO

THE CROSS-BORDER PARCEL DELIVERY SERVICES (AMENDMENT) (NO.2) (EU EXIT) REGULATIONS 2020

2020 No. 1036

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations are made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 to remove or replace any references to obligations under EU law that will no longer have effect after the withdrawal of the United Kingdom from the European Union.

2.2 This instrument revokes and replaces The Cross-border Parcel Delivery Services (Amendment) (EU Exit) Regulations 2020 (SI 2020/583) due to the entry into force of that instrument being defective.

Explanations

2.3 The legislation is being changed to remove or replace references to obligations under EU law that will no longer have effect or become redundant after the withdrawal of the UK from the EU.

2.4 Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services (the EU Regulation) seeks to improve cross-border parcel delivery services by improving transparency of prices and regulatory oversight of the sector.

2.5 Under the EU Regulation, Member States were required to lay down an effective, proportionate and dissuasive penalty regime that ensured National Regulatory Authorities (NRAs) could act against breaches of the Regulation. The UK introduced SI No 1429, The Cross-border Parcel Delivery Services (EU Information Requirements) Regulations 2019, to meet its obligations. It formally extended Ofcom's information-gathering, enforcement and penalty powers to cover the EU Regulation explicitly in the Postal Services Act 2011.

2.6 These Regulations will disapply the amendments to the Postal Services Act 2011 made as a result of SI 2019 No 1429 so that the legislation will operate effectively after the UK's withdrawal from the EU. These regulations do not make any policy changes or impose any new liabilities or obligations on any relevant persons. Section 7 sets out the policy background in full.

2.7 These Regulations revoke and replace The Cross-border Parcel Delivery Services (Amendment) (EU Exit) Regulations 2020. Regulation (1) of that instrument purports to bring the Regulations into force 'on exit day'. This is an error. The made

Regulations were based on an earlier draft than that of the laid and approved sifting proposal.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument was laid for sifting as required under the European Union (Withdrawal) Act 2018 on 14 July 2020. On 21 July 2020, the House of Commons European Statutory Instrument Committee (ESIC) recommended that the instrument be made under the negative procedure. On 8 September 2020, the House of Lords Secondary Legislation Scrutiny Committee (SLSC) also recommended that the instrument be made under the negative procedure.

3.2 The instrument is necessary to remove or replace references to obligations under EU law that will no longer have effect or become redundant after the withdrawal of the UK from the EU. It also revokes an earlier instrument due to a defect:

a) at regulation 5, the instrument revokes The Cross-border Parcel Delivery Services (Amendment) (EU Exit) Regulations 2020 due to the provision of the coming into force of that instrument being defective. This instrument replaces the Cross-border Parcel Delivery Services (Amendment) (EU Exit) Regulations 2020 (SI 2020/583).

3.3 In light of this defect, the Department is proposing to adopt the free issue procedure in relation to this instrument. The Department confirms that it will comply with the requirement stated in paragraph 4.7.2 of Statutory Instrument Practice to consult the SI Registrar on the use of the free issue procedure in relation to this instrument.

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)

3.4 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 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 Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement regarding Human Rights:

"In my view the provisions of the Cross-border Parcel Delivery Services (Amendment) (No.2) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations address failures of retained EU law to operate effectively that arise from the withdrawal of the United Kingdom from the European Union. They make

amendments to the Postal Services Act 2011 to remove express references to the EU Regulation that will no longer have any real effect. The EU Regulation will cease to have effect after the end of the Implementation Period by virtue of The Postal and Parcel Services (Amendment etc) (EU Exit) Regulations 2018.

6.2 This instrument revokes and replaces the Cross-border Parcel Delivery Services (Amendment) (EU Exit) Regulations 2020 (SI 2020/583) due to a defect in that instrument. Regulation 1 of SI 2020/583 made provision for the commencement and coming into force of the Regulations on exit day. This is an error. Regulation 1 should have made provision for the commencement and coming into force of the Regulations on IP completion day, as correctly set out in Regulation (1) of the sifting draft, laid on 27 April 2020, and approved by the Sifting Committees.

7. Policy background

What is being done and why?

7.1 The Postal Services Act 2011 (the Act) relates to the regulation of postal services.

7.2 The Act was updated in November 2019, under SI 2019 No 1429, The Cross-border Parcel Delivery Services (EU Information Requirements) Regulations 2019, to ensure UK compliance with Article 8, Penalties, of Regulation (EU) 2018/644 on cross-border parcel delivery services. Article 8 required Member States to lay down rules on the penalties applicable to infringements of the EU Regulation by 23 November 2019.

7.3 Under SI 2019 No 1429, the Act was amended to extend Ofcom's, as the National Regulatory Authority (NRA) for postal services, information-gathering and enforcement and penalty powers to infringements of Articles 4-6 (information requirements) of the EU Regulation.

7.4 The Postal and Parcel Services (Amendment etc) (EU Exit) Regulations 2018, SI No 1417, made on 30 December 2018, which will come into force after the end of the Transition Period, revoke the EU Regulation in full, making the extension of Ofcom's information-gathering and enforcement and penalties powers for the purposes of the EU Regulation redundant. Parliament approved the 2018 Regulations on the basis that after the UK leaves the EU the purpose for gathering the information required under the EU Regulation would no longer apply nor would the obligation to provide information to the European Commission. It was also accepted that the Postal Services Act 2011 provided Ofcom with the powers to request the relevant information where necessary.

7.5 During the development and Parliamentary scrutiny of the 2018 EU Exit SI, the extensions to EU Exit Day were not anticipated. SI 2018 No 1417 does not therefore remove the specific amendments made to the Act under SI 2019 No 1429 because the 2018 EU Exit Regulations were already made.

7.6 These Regulations therefore disapply the amendments to the Act made under SI 2019 No 1429 as the EU Regulation will be revoked, in full, at the end of the Implementation Period. They ensure that the UK's postal regime will operate independently and effectively and aim to meet the Government's objective of preserving existing legislation and frameworks to provide certainty whilst correcting deficiencies as defined in the European Union (Withdrawal) Act 2018.

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 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 does not contain substantive policy changes no public consultation was undertaken. However, discussions were held with Ofcom to inform the development of this instrument.

11. Guidance

11.1 It is not necessary to issue specific guidance with respect to these Regulations as it does not make substantive policy changes.

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 A full Impact Assessment has not been prepared for this instrument because the impact of this SI is small (confidently below <+/- £5m to businesses and more broadly); this instrument addresses failures of retained EU law and does not represent any policy changes. Any policy changes arise due to the revocation of the EU Regulation (which this SI does not do) rather than removal of the references to it. Accordingly, this measure is not politically sensitive. A de minimis assessment has been carried out to demonstrate this.

13. Regulating small business

13.1 The Postal Services Act 2011 applies to activities that are undertaken by small businesses.

13.2 Although the postal services legislation amended by these Regulations applies to small businesses, there will be no change in policy and small businesses will not be affected.

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 Linda Stephens at the Department for Business, Energy and Industrial Strategy, telephone: 020 7215 6139 or email: linda.stephens@beis.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Christopher Blairs, Deputy Director for Competition at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Paul Scully, Minister for Small Business, Consumers and Labour Markets, at the Department for Business, Energy & 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 14, 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 15, 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 Minister for Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Cross-border Parcel Delivery Services (Amendment) (No.2) (EU Exit) Regulations 2020 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 these Regulations do not fall into the category of regulations identified in Schedule 7 Part 1 paragraph 1(2) of the European Withdrawal Act 2018 as requiring approval in draft by resolution of both Houses of Parliament. These Regulations remove or replace references to obligations under EU law that will no longer have effect after the withdrawal of the UK from the EU. We do not consider that there is any reason why they should not be subject to the negative resolution procedure.

2. Appropriateness statement

2.1 The Minister for Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Cross-border Parcel Delivery Services (Amendment) (No.2) (EU Exit) Regulations 2020 do no more than is appropriate".

2.2 This is the case because these Regulations remove or replace any references to obligations under EU law that will no longer have effect or become redundant after the UK's withdrawal from the EU. These Regulations do not change current policy or impose any new liabilities or obligations on any relevant persons.

3. Good reasons

3.1 The Minister for Small Business, Consumers and Labour Markets, Paul Scully, 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 This is because these Regulations address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. These Regulations do not change current policy or impose any new liabilities or obligations on any relevant persons. The policy rationale for the changes is set out in Section 7, Policy Background, of this Explanatory Memorandum.

4. Equalities

4.1 The Minister for Small Business, Consumers and Labour Markets, Paul Scully, 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 Minister for Small Business, Consumers and Labour Markets, Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Paul Scully, 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."

4.3 The amendments made by the Regulations do not raise any issues relevant to the public sector equality duty under section 149(1) of the Equality Act 2010 because they are minor and technical and do not change current policy or impose any new liabilities or obligations on any relevant persons.

5. Explanations

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