EXPLANATORY MEMORANDUM TO

THE GEO-BLOCKING REGULATION (REVOCATION) (EU EXIT) REGULATIONS 2019

2019 No. XXXX

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.

2. Purpose of the instrument

2.1 The Instrument revokes the "retained EU law" version of the Geo-Blocking Regulation (Regulation 2018/302) and revokes the Geo-Blocking (Enforcement) Regulations 2018. These revocations are being made in order to address deficiencies arising as a result of the UK's withdrawal from the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 'Geo-blocking' is the term used to describe traders discriminating against customers on the basis of the nationality or location of the customer, for example by automatically re-directing customers to country-specific versions of their website with different terms and conditions. The Geo-Blocking Regulation prohibits certain forms of geo-blocking. This includes mandating access to all versions of a website in the EU, non-discrimination between EU customers when distance shopping (online or otherwise), and non-discrimination in payment terms accepted.

Why is it being changed?

2.3 In the event of a "no deal" exit from the EU, the Geo-Blocking Regulation would lose important elements of reciprocity necessary for it to function effectively in the UK. Regulators in other EU states would be very unlikely to enforce the Regulation on behalf of UK customers as the framework for cross border cooperation[1] will be repealed in a "no deal" exit from the EU.[2] UK civil and commercial judgments would no longer be automatically enforced in EU member state courts. The UK Government cannot unilaterally enforce the Geo-Blocking Regulation across the EU without help from Regulators in other EU Member States, as UK regulators will not be able to effectively enforce these rules in EU jurisdictions.

2.4 Therefore, if we did not revoke the Geo-Blocking Regulation, UK traders would continue to have obligations to EU customers under the Regulation while UK customers are unlikely to receive any of its benefits.

2.5 To avoid this asymmetry of enforcement obligations in the EU's favour, we are revoking the Geo-Blocking Regulation in the UK.

[1] Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)

[2] The Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018, Regulation 8

What will it now do?

2.6 The Geo-Blocking Regulation will be revoked, along with the Statutory Instrument dealing with its enforcement in UK law, and its rules will no longer have effect in the UK. UK traders operating in the EU will still be subject to its rules when dealing with EU residents and nationals. Paragraphs 7.3 to 7.5 provide further explanation.

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.

3.3 The powers under which this Instrument is made cover the entire UK (see section 8(1) of the European Union (Withdrawal) Act 2018) and the territorial application of this Instrument is not limited either by the Act or by the Instrument.

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 Regulation (Revocation) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The Geo-Blocking Regulation is an EU regulation, which came into effect on 3 December 2018. It does not apply to transactions that take place entirely within one EU member state. It prohibits certain forms of discrimination in the context of trade in the Single Market, specifically:

- blocking access to, or forced redirection away from, a website on the basis of an internet 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 (excluding copyrighted materials, such as e-books, streamed movies and music, and video games), or services delivered in a specified location; and
- discrimination in payment terms on the basis of a customer's location.

6.2 The Geo-Blocking (Enforcement) Regulations 2018, which came into force on 3 December 2018, enabled the domestic enforcement of the Geo-Blocking Regulation. They amended Schedule 13 to the Enterprise Act 2002, allowing certain regulators to

use the Enterprise Act 2002's enforcement regime in Part 8 of that Act to pursue claims against breaches of the Geo-Blocking Regulation. The relevant regulators are the Competition and Markets Authority, every local weights and measures authority in Great Britain, and the Department for the Economy in Northern Ireland.

6.3 Changes made to the Enterprise Act 2002 by the Geo-Blocking (Enforcement) Regulations 2018 will be undone by a separate instrument, the Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018.

7. Policy background

What is being done and why?

7.1 The Instrument is intended to make necessary changes in the event of a "no deal" exit by revoking both the "retained EU law" version of the Geo-Blocking Regulation and the Geo-Blocking (Enforcement) Regulations 2018.

7.2 In the event of a "no deal" exit from the EU, the Geo-Blocking Regulation will, under the European Union (Withdrawal) Act 2018, be copied into UK law as "retained EU law". BEIS's view is that, notwithstanding the fact the text is copied across in its entirety, the Geo-Blocking Regulation cannot properly function on a unilateral basis. This is because in a "no deal" scenario:

- EU regulators will no longer be obliged to bring actions against businesses through EU mechanisms for cross border cooperation;
- UK civil and commercial judgments would no longer be automatically enforced in EU member state courts;
- It is not practicable for a UK-based enforcer to unilaterally enforce consumer protection cases against entities which have little to no connection to the UK.[3]

7.3 Unfortunately, it is not possible to replicate the Geo-Blocking Regulation's benefits for UK consumers in domestic law. For the reasons set out above, effective enforcement outside of the UK would be highly difficult. The provisions of the Geo-Blocking Regulation do not apply to transactions occurring solely within one country, therefore there is limited or no benefit to retaining a version of the Geo-Blocking Regulation which only applies to the UK.

7.4 In summary, EU traders would not have obligations to treat UK customers in line with the Geo-Blocking Regulation. UK businesses, which the rules would still apply to under the retained EU law version of the Geo-Blocking Regulation and against whom those rules could be enforced, would continue to have obligations to EU customers.

7.5 As the Geo-Blocking Regulation would lose key aspects of reciprocity necessary for its proper functioning in a "no deal" scenario, even if the Geo-Blocking Regulation were not revoked, a "no deal" exit from the EU would lead to a loss of protection for UK customers, whilst imposing the same level of obligation for UK traders.

7.6 Regulation 1 of the Instrument sets the commencement date as 21 days after they are made or Exit Day[4], whichever is later. We intend to have the Instrument come into force as soon as possible after Exit Day.

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[3] See Government guidance, "Consumer rights if there's no Brexit deal": https://www.gov.uk/government/publications/consumer-rights-if-theres-no-brexit-deal--2/consumer-rights-if-theres-no-brexit-deal

[4] Section 20(1), European Union (Withdrawal) Act 2018

7.7 Regulation 2 revokes the "retained EU law" version of the Geo-Blocking Regulation. This will mean the substantive rules of the Geo-Blocking Regulation no longer apply in the UK.

7.8 Regulation 3 revokes the Geo-Blocking (Enforcement) Regulations 2018. The main purpose of the Geo-Blocking (Enforcement) Regulations 2018 was to amend Schedule 13 of the Enterprise Act 2002 in order to provide a regime for enforcing the Geo-Blocking Regulation in the UK. As noted above, those changes to the Enterprise Act 2002 will be undone by separate Regulations.[5] The Geo-Blocking (Enforcement) Regulations 2018 currently allow customers to pursue claims arising from the Geo-Blocking Regulation directly against traders As the Geo-Blocking Regulation will be revoked this provision will no longer be appropriate, and therefore will be revoked also.

7.9 This Instrument applies to consumer protection which does not relate to product safety, which is a transferred matter for Northern Ireland under Section 4(1) of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit, where we want Devolved Administration Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day, absent a Northern Ireland Executive. With exit day approaching, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that, in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such Instrument.

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 UK from the EU. 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 This Instrument does not make any consolidation of earlier Instruments.

10. Consultation outcome

10.1 Lord Henley, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy wrote to ministers in the Scottish and Welsh governments on 18 January 2019 seeking their consent to lay this Instrument. A letter was sent to the Permanent Secretary to Northern Ireland Department for the Economy on 22 January 2019, requesting they take note of this Instrument and offer comments. These letters followed contact between officials from Her Majesty's Government and those from each of the Devolved Administrations on this topic since August 2018.

[5] See section 6

10.2 Interested business groups[6] were consulted on this policy during meetings in September 2018. The response was neutral, with no strong views being expressed on the policy.

11. Guidance

11.1 A Technical Notice[7] was published on 12 October 2018. The purpose of this notice was to provide clarity to consumers, business customers, traders and regulators on the repeal of the Geo-Blocking Regulation, in the event of a "no deal" exit from the EU.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. This Instrument will remove pre-existing obligations placed upon UK traders. The obligations will only have been in place for approximately four months. Our analysis is that there will only be limited familiarisation costs to businesses caused by this Instrument. As this Instrument completely removes the Geo-Blocking Regulation rules which previously operated in the UK, companies will be free to adjust their practices accordingly. If businesses choose not to familiarise themselves with the rules change and continue to follow the Geo-Blocking Regulation rules then they will be free to do so, and no sanctions would follow as a result of this Instrument. BEIS's analysis is that one-off familiarisation costs for the estimated approximately 75,000 businesses affected will be less than £1.2 million. Wider impacts that might result from the lack of cross border enforcement of the Geo-Blocking Regulation have not been included because, as explained in paragraph 7.5, these changes result from a "no deal" exit from the EU, not this Instrument.

12.2 There is no, or no significant, impact on the public sector. Costs of enforcing the Geo-Blocking Regulation were relatively modest and will no longer be necessary if this Instrument comes into effect.

12.3 An Impact Assessment has not been prepared for this instrument because the impact of this Instrument has been approved as de minimis, in line with the Better Regulation Framework. As noted above, the overall cost to business of the Instrument has been assessed as less than £1.2 million. There will be no additional government costs arising from this Instrument, as explained in the previous paragraph. As the overall costs are estimated to be substantially below £5 million, the Impact Assessment has been prepared as de minimis.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken was to publish guidance on gov.uk on 12 October 2018.[8] Otherwise no other measures were taken due to the low impact[9] of this Instrument.

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[6] Confederation of British Industry, Federation of Small Businesses, British Retail Consortium, Association for UK Interactive Entertainment

[7] https://www.gov.uk/government/publications/geo-blocking-of-online-content-if-theres-no-brexit-deal/geo-blocking-of-online-content-if-theres-no-brexit-deal

[8] See section 11

[9] See Section 12

14. Monitoring & review

14.1 As this Instrument repeals the underlying legislation and there is, therefore, no ongoing legislation to review, there are no plans to monitor this legislation.

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

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, Deputy Director for Services, Investments and Digital, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising 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 Parliamentary Under Secretary of State, Lord Henley has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Geo-Blocking Regulation (Revocation) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because in the event of a "no deal" exit from the EU, the reciprocal elements of the Geo-Blocking Regulation would no longer have effect in the UK as described in more detail in sections 2, 6 and 7 of the Explanatory Memorandum. Given that the benefits of the Geo-Blocking Regulation require reciprocal obligations on traders and enforcers across the EU, the only appropriate action that can be taken is the revocation of the Geo-Blocking Regulation.

2. Good reasons

2.1 The Parliamentary Under Secretary of State, 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".

2.2 These are: as explained in section 2, in the event of a "no deal" exit from the EU, the reciprocal elements of the Geo-Blocking Regulation would no longer have effect in the UK. Given that the benefits of the Geo-Blocking Regulation require reciprocal obligations on traders and enforcers across the EU, there is good reason to revoke this law which will not continue to function as intended after a "no deal" exit from the EU.

3. Equalities

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

"In relation to the 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."

4. Explanations

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