EXPLANATORY MEMORANDUM TO

THE INTERNAL MARKET INFORMATION SYSTEM REGULATION (AMENDMENT ETC.) REGULATIONS 2021

2021 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 Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The main purpose of this instrument is to implement the Commission Decision dated 16 October 2020 granting the United Kingdom ("UK") acting in respect of Northern Ireland access to networks, information systems or databases established on the basis of Union law ("the Decision") made under article 13(5) of the Protocol on Ireland / Northern Ireland ("the NI Protocol"). A further purpose is to correct deficiencies arising out of the UK's withdrawal from the European Union ("EU").

2.2 This instrument does this by amending Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ("IMI Regulation"), which constitutes retained EU law. The amendments are made in order to revoke those provisions which are now redundant and/or inoperable, and in order to amend those provisions that should be retained for the purposes of the NI Protocol and the Decision. The instrument also revokes other retained EU law.

Explanations

What did any relevant EU law do before exit day?

2.3 The Internal Market Information System (IMI) is an online electronic system established to provide for the practical and secure distribution and exchange of information and administrative cooperation between EU Member States in respect of specific EU Single Market legislation for which the Department for Business, Energy and Industrial Strategy and other Government Departments have lead responsibility. The Annex to the IMI Regulation sets out the legislation, in accordance with which administration cooperation is required through the use of the IMI. The IMI is also used through pilot projects for other legislation set up by the Commission.

2.4 The IMI Regulation sets out the framework for the administration of the IMI system by government officials and those bodies exercising regulatory authority of EU Member States. It requires that each Member State has a national coordinator to look after the effective functioning and correct use of the IMI system and that all communications are handled securely in line with the relevant data protection rules.

Why is it being changed?

2.5 When the Implementation Period ended on 31 December 2020, the UK ceased to be part of the EU Single Market and ceased to be entitled to access any network, any information system and any database established on the basis of EU law under the Withdrawal Agreement, subject to a limited number of exceptions. For this reason, the UK should not continue to be bound by those provisions of the IMI Regulation that now constitute retained EU law after the end of the Implementation Period and which are now inoperable due to access to the IMI database being blocked to the UK as from this date, save for the limited use provided for in the NI Protocol and the Decision.

2.6 Article 13(5) of the NI Protocol provides that full or partial access can be granted to any network, any information system and any database established on the basis of EU law where the EU considers that such access is strictly necessary for the UK to comply with its obligations under the NI Protocol because access to the relevant information cannot be achieved by other means. The Decision was made under Article 13(5) and granted limited access to the IMI system to the UK in respect of Northern Ireland for the purposes of the provisions of:

a) Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) 764/2008 ("the MRG Regulation");

b) Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 ("the RCO Directive"); and

c) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons. This Directive was repealed and replaced by Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 ("the CAPA Directive").

What will it now do?

2.7 This instrument amends the IMI Regulation as the majority of its provisions no longer apply to the UK. This instrument will now only apply to the UK in respect of Northern Ireland for the purposes of the Decision, while revoking those provisions to which the UK is no longer bound and no longer has access.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument is intended to come into effect the day after the day it is made. This is because it provides for a continuation of obligations and does not impose any new or onerous obligations so there is no issue with early commencement.

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 varies between provisions. For the purposes of Standing Order No. 83P, this instrument does not apply to England only, or England and Wales only.

3.3 The powers under which this instrument is made cover the entire UK.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument varies between provisions.

4.2 Part 1 and Chapter 1 of Part 3 extend to all of the UK. Chapter 1 of Part 3 revokes redundant retained EU law relating to the IMI Regulation. Part 2 extends to Northern Ireland and amends the IMI Regulation in line with the terms of the Decision. Chapter 2 of Part 3 extends to England, Wales and Scotland and revokes those provisions in the IMI Regulation and retained EU law that no longer apply to those parts.

4.3 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

5.1 The Lord Callanan has made the following statement regarding Human Rights:

"In my view the provisions of the Internal Market Information System Regulation (Amendment etc.) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 converted and preserved EU law at the end of the Implementation Period into domestic law. By virtue of Section 3 of the European Union (Withdrawal) Act 2018, the IMI Regulation is therefore retained EU law.

6.2 This instrument removes redundant and/or inoperable provisions in the IMI Regulation that are no longer applicable to the UK due to the UK's withdrawal from the EU and makes changes to the IMI Regulation to give effect to the NI Protocol and the Decision, which now apply solely to Northern Ireland in respect of:

a) Article 8 of the MRG Regulation relating to the Internal Market Problem Solving Network (SOLVIT) and the problem solving procedure provided for under the Regulation. The Regulation sets out a framework for ensuring that goods lawfully marketed in one EEA state can be sold in any other EEA state, as long as they are safe and respect the public interest. This Regulation replaces Regulation 764/2008 which is included in the Annex to the NI Protocol.

b) Articles 5 and 7 of the RCO Directive relating to co-operation, consultation and exchange of information through use of the IMI system. The Directive sets out a procedure for the return to an EEA state of objects that are national treasures possessing artistic, historic or archaeological value unlawfully removed from that EEA state by another EEA state. This Directive is included in the Annex to the NI Protocol.

c) Article 18 of the CAPA Directive relating to mutual exchange of information on firearms transfer authorisations. The Directive sets out minimum standards for civilian firearms acquisition and possession in EEA states. This Directive repealed and replaced Council Directive 91/477/EEC which is included in the Annex to the NI Protocol.

6.3 This instrument also revokes EU legislation relating to use of the IMI that constitutes retained EU law.

6.4 In addition to the changes set out above, this instrument will remove obligations on the UK in respect of use of IMI for the purposes of:

a) The Directive 2006/123/EC on Services in the Internal Market.

b) Directive 2005/36/EC of the European Parliament and of the Council (2): Articles 4a to 4e, Article 8, Article 21a, Article 50, Article 56 and Article 56a.

c) The Directive 2011/24/EC on the application of patients' rights in cross-border healthcare.

d) The Regulation (EU) No 1214/2011 of the European Parliament and of the Council of 16 November 2011 on the professional cross-border transport of euro cash by road between euro-area Member States.

e) The Directive 96/71 concerning the posting of workers in the framework of the provision of services.

f) The Directive 2014/67/EC on the enforcement of Directive 96/71 concerning the posting of workers in the framework of the provision of services.

g) The Regulation 2016/1191/EC on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union.

h) The Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery.

i) The Regulation 2016/679/EC on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

j) Directive 2006/22/EC on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC.

k) Directive (EU) 2020/1057 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012.

l) Regulation (EU) 2020/1055 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector.

7. Policy background

What is being done and why?

7.1 All the amendments introduced by this instrument are technical operability changes and do not include any policy changes.

7.2 This instrument is necessary to ensure that redundant legislation and inoperable provisions are removed from the UK statute book.

7.3 This instrument is also necessary to ensure that the UK meets its international obligations under the NI Protocol and the Decision to securely exchange information and maintain administrative cooperation with EU states in accordance with those obligations.

7.4 This instrument makes changes to the IMI Regulation to apply solely to Northern Ireland for the purposes of the Decision to ensure that IMI can be used in respect of the mutual recognition of goods, return of cultural objects and firearms transfer authorisations.

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. The instrument is also made using the power in section 8C of the European Union (Withdrawal) Act 2018 to implement the NI Protocol. In accordance with the requirements of that Act, the Minister had made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 The Devolved Administrations of Scotland and Wales have been sighted on the proposals of this instrument and there has been engagement with the Northern Ireland Executive. This has included the sharing of the draft legislation for the proposed instrument. No other consultation has been considered necessary.

11. Guidance

11.1 No guidance is considered necessary.

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.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Government will monitor and review the continued relevance and applicability of any legislation to which the IMI system is applicable.

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

15. Contact

15.1 Christine Korcz at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 2833 or email: chris.korcz@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gregory Dyke, Deputy Director, Economic Partnerships Directorate at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan, Minister for Business, Energy and Corporate Responsibility 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 Minister for Business, Energy and Corporate Responsibility, Lord Callanan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Internal Market Information System Regulation (Amendment etc.) Regulations 2021 does no more than is appropriate".

1.2 This is the case because this instrument uses powers under the European Union (Withdrawal) Act 2018 only to make changes necessary to address deficiencies arising from the withdrawal of the UK from the EU and to implement the Withdrawal Agreement, the Protocol on Ireland/Northern Ireland and the Commission Decision dated 16 October 2020 granting the UK acting in respect of Northern Ireland access to networks, information systems or databases established on the basis of Union law.

2. Good reasons

2.1 The Minister for Business, Energy and Corporate Responsibility, Lord Callanan, 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 This is the case because this instrument addresses deficiencies arising from the withdrawal of the UK from the EU and to ensure that the UK complies with its obligations under international law. The policy rationale for the changes is set out at Section 7, Policy Background, to the explanatory memorandum.

3. Equalities

3.1 The Minister for Business, Energy and Corporate Responsibility, Lord Callanan, 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.

3.2 The Minister for Business, Energy and Corporate Responsibility, Lord Callanan, 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 Callanan, 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.

"The Equalities Acts do not extend to Northern Ireland, and as measures of the Internal Market Regulation (Amendment etc.) Regulations 2021 extend to Northern

Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment, and victimisation in Northern Ireland."

4. Explanations

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