EXPLANATORY MEMORANDUM TO

THE POSTAL AND PARCEL SERVICES (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018

2018 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.

2. Purpose of the instrument

2.1 These Regulations are made in exercise of the 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.

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Postal Services Directive 97/67/EC established a regulatory framework for European postal services and was amended by Directive 2002/39/EC and Directive 2008/6/EC. The Directive opened the sector to competition and defined a universal postal service as a right of access to postal services for users. It provided that a minimum range of services of specified quality must be provided in all EU countries at affordable prices for the benefit of all users, irrespective of their geographical location. The Directive has been implemented in the United Kingdom by the Postal Services Acts 2000 and 2011.

2.3 Article 22 of the Directive required Member States to designate one or more national regulatory authorities for the postal sector. This has been implemented in the UK through the Postal Services Regulations 1999 (S.I.1999/2107).

2.4 The European Commission Decision of 10 August 2010 established the European Regulators Group for Postal Services (ERGP). The group, consisting of Member State National Regulatory Authorities (NRA), provides advice to the European Commission, and aims to facilitate consultation, coordination and cooperation between Member States, on postal services.

2.5 Regulation (EU) 2018/644 on cross-border parcel delivery services aims to increase price transparency and regulatory oversight of cross-border parcel delivery services. It gives NRAs the data they need to monitor cross-border markets and check the affordability of prices, as necessary. The European Commission will publish public list prices to increase peer competition and tariff transparency.

Why is it being changed?

2.6 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.

What will it now do?

2.7 These Regulations will amend provisions in the Postal Services Acts 2000 and 2011 and revoke the EU Parcel Delivery Regulation, the Postal Services Regulations 1999 and Commission Decision of 10 August 2010 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.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument was presented to the Sifting Committees on 20 July 2018. The Sifting Committees made the following recommendations on 5 September 2018, as published on GOV.UK:

"The Lords Sifting Committee agreed with the Government that this statutory instrument does not have to have a debate in parliament, though one may still occur. However, the Commons Sifting Committee disagreed with the Government and recommended that this statutory instrument needs to be debated in parliament."

The Commons Sifting Committee made this recommendation because the instrument revokes the European Commission Decision of 10 August 2010, which established the ERGP. The Sifting Committee concluded that although the revocation of the decision may be a necessary consequence of the UK leaving the EU, the Government should provide further information on the effect of the UK's non-participation in that group, and possible alternatives for future arrangements, recognising that the UK will maintain an interest in effective postal and parcel services between the UK and the EU after it ceases to be a Member State.

Consequently, Kelly Tolhurst, the Minister for Small Business, Consumers and Corporate Responsibility, has agreed for this instrument to be made affirmative and subject to pre-scrutiny ahead of being laid.

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 Wales, 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 Kelly Tolhurst, the Minister for Small Business, Consumers and Corporate Responsibility, has made the following statement regarding Human Rights:

5.2 'In my view the provisions of the Postal and Parcel Services (Amendment etc.) (EU Exit) Regulations 2018 are compatible with the Convention rights.'

6. Legislative Context

6.1 These Regulations address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the EU. They make amendments to the Postal Services Acts 2000 and 2011, revoke the Postal Services Regulations 1999, the Commission Decision of 10 August 2010 establishing the European Regulators Group for Postal Services and revoke Regulation (EU) 2018/644 on cross-border parcel delivery services.

7. Policy background

What is being done and why?

7.1 The Postal Services Acts 2000 and 2011 and Regulation 2018/644 on cross-border parcel delivery services, alongside the Postal Services Regulations 1999 and Commission Decision of 10 August 2010 establishing the European Regulators Group for Postal Services ('ERGP'), are measures related to the regulation of postal services which contain references to European legislation or obligations under EU legislation which need to be amended in order for the legislation to operate effectively after the UK's withdrawal from the EU.

7.2 Specifically, these Regulations remove references to the Postal Services Directive 97/67/EC in the Postal Services Act 2000 as the UK will no longer be subject to the terms of the Directive once it withdraws from the EU.

7.3 These Regulations also amend references to EU obligations in the Postal Services Acts 2000 and 2011 and replace them with relevant references to retained EU law obligations to maintain any remaining obligations under the retained EU law, where relevant, in relation to postal services following the withdrawal from the EU. The Regulations also remove obligations relating to sharing information with and retained obligations to the European Commission in the Postal Services Act 2011 that will no longer be applicable after the withdrawal from the EU.

7.4 Regulation 2018/644 on cross-border parcel delivery services (EU Parcel Delivery Regulation) is revoked in full. The EU Parcel Delivery Regulation is a directly applicable European regulation that in substance requires parcel delivery operators with over 50 employees to provide specific company information and data on domestic and cross-border parcel operations, including pricing structures, to NRAs (Ofcom in the UK). The NRA must provide the public list of tariffs to the European Commission for publication on an EU-wide portal. The Regulation permits NRAs to conduct assessments of cross-border prices, in accordance with principles to be set out in guidance by the European Commission, the results of which much also be submitted to the European Commission. It also requires Member States to lay out penalties applicable to infringement of the EU Parcel Delivery Regulation.

7.5 After the United Kingdom leaves the EU the obligation to provide information to the European Commission would no longer apply. In principle, the information requirement on UK cross-border parcel delivery providers with over 50 employees would remain, however, the purpose for gathering this information by Ofcom will no longer apply after EU exit and it is considered that Ofcom already has the powers to request such information where necessary under the Postal Services Act 2011.

7.6 Article 7 of the EU Parcel Delivery Regulation also includes an obligation on traders to provide consumers with certain information on cross-border parcel delivery

services. However, such an obligation is already contained in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Therefore, the EU Parcel Delivery Regulation will become substantially redundant following the UK's exit from the EU.

7.7 The Postal Services Regulations 1999 are revoked in full. Ofcom's and the Secretary of State's functions in regulating the postal sector are set out in the Postal Services Act 2011 and the Postal Services Act 2000, and there is no need to specifically 'designate' them under separate Regulations. In addition, Regulation 1(2) states that the 1999 Regulations have effect for implementing the Postal Services Directive and Regulation 1(3) defines the Postal Services Directive 97/67/EC. References to the implementation of the Directive cease to be relevant after the UK's withdrawal from the EU. These Regulations are therefore redundant.

7.8 The European Commission's Decision of 2010 will not be directly relevant to the UK after its withdrawal from the EU since the UK will no longer be entitled to formally participate, as membership of that Group is limited to the NRAs of Member States. There is therefore no need to retain it after the UK leaves the EU.

7.9 The Group does not make binding rules or take decisions. Its role is advisory, and it facilitates the sharing of best practice. Ofcom intends to seek observer status, similar to the way Switzerland participates at present. Observer status would remove Ofcom's right to vote, though the impact of that would likely be minimal given the cooperative nature of the forum, but would still enable a level of involvement where it can engage in strategic discussions, negotiations and best practice sharing after we leave the European Union.

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

8.1 This instrument is being made using powers in the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom 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 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 No consultation was required as the instrument makes only minor changes and does not represent a policy change.

11. Guidance

11.1 It is not necessary to issue specific guidance with respect to these Regulations.

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal.

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 the statutory instrument does not represent a policy change and will have minimal impact on business, charities, voluntary bodies, or the public sector. Businesses will experience no change resulting from the regulatory change and will therefore face negligible direct cost. As the regulation has a net direct impact on business or civil society organisations of less than £5 million annually, it qualifies for the *de minimis* threshold and a full regulatory impact assessment is not required.

13. Regulating small business

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

13.2 Although the postal services legislation, mainly the Postal Services Act 2011, amended by these Regulations applies to small businesses, there will be no change in policy and small businesses will not be affected. The revocation of the EU Parcel Delivery Regulation will also have no impact since it does not apply to small businesses.

14. Monitoring & review

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

15. Contact

15.1 Linda Stephens at the Department for Business, Energy and Industrial Strategy, tel: 020 7215 6139 or email: Linda.Stephens@beis.gov.uk, can answer any queries regarding this 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 Kelly Tolhurst, Minister for Small Business, Consumers 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 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 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 Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Postal and Parcel Services (Amendment etc.) (EU Exit) Regulations 2018 do no more than is appropriate."

1.2 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 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.

2. Good reasons

2.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, 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 The reasons are that 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 are set out in paragraphs 7.1 to 7.8 of this Explanatory Memorandum.

3. Equalities

3.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement:

"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 Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Kelly Tolhurst, 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.

3.3 The amendments and revocations made by these 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."

4. Explanations

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