EXPLANATORY MEMORANDUM TO

THE ELECTRONIC COMMERCE (AMENDMENT AND CONSEQUENTIAL PROVISION) REGULATIONS 2026

2026 No. 407

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Science, Innovation and Technology and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Kanishka Narayan MP, Parliamentary Under-Secretary of State for AI and Online Safety at the Department for Science, Innovation and Technology, confirms that this Explanatory Memorandum meets the required standard.

2.2 Will Jones, Deputy Director for Strategy and Analysis, Security and Online Harms Directorate, at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Daniel Wilson at the Department for Science, Innovation and Technology can be contacted by email at the following address with any queries regarding the instrument: SOHOSinternational@dsit.gov.uk. Alternatively, the department can be contacted by telephone: 07826 217 062.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument repeals remaining Country of Origin Principle ("CoOP") provisions from the regulations listed at paragraph 4.4. The CoOP Market (the "eCD").[1] The eCD aims to contribute to the functioning of the EU internal market and recognised the equivalence of the laws of EEA member states concerning the regulation and provision of information society services ("ISS"). ISS are defined as any service normally provided for renumeration, at a distance, by electronic means.[2]

4.2 The CoOP in Article 3 of the eCD provides that, within the "coordinated field", information society services can comply with the law of the EEA state in which the provider of the services is established, rather than the laws of all the EEA states in which the services are received. Rules which fall within the definition of the "coordinated field" are described at paragraph 5.7 below.

[1] https://eur-lex.europa.eu/eli/dir/2000/31/oj/eng.
[2] The Electronic Commerce (EC Directive) Regulations S.I. 2002/2013, reg 2(1).

4.3 The effect of the CoOP provisions was that providers of ISS established in the EEA were not, in principle, subject to UK laws and regulations within scope of the CoOP. The CoOP provisions are being removed as the UK is no longer a member state of the EEA and the reciprocal benefit ended after EU exit.

4.4 This instrument removes CoOP provisions from the following regulations: The Electronic Commerce (EC Directive) Regulations 2002 S.I. 2002/2013; the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007 S.I. 2007/1550; the Extreme Pornography (Electronic Commerce Directive) (Scotland) Regulations 2011 S.S.I. 2011/137 and the Electronic Commerce (Miscellaneous Provisions) Regulations 2018 S.I. 2018/477.

4.5 The instrument also repeals the post-implementation review clause in the Electronic Commerce Directive (Miscellaneous Provisions) Regulations S.I. 2018/477.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) includes England and Wales, Scotland and Northern Ireland and an amendment made by this instrument has the same extent as the provision being amended.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) includes England and Wales, Scotland and Northern Ireland and an amendment made by this instrument has the same territorial application as the provision being amended.

5. Policy Context

What is being done and why?

5.1 In January 2021, the government announced its intention to gradually repeal CoOP provisions from legislation as Parliamentary time allowed.[3] This instrument removes CoOP from the secondary legislation, listed at paragraph 4.4.

5.2 The CoOP was an internal market equivalence measure which allowed providers of ISS established in any EEA country to place their services across the EEA whilst only complying with relevant laws and regulations in the country of their establishment, rather than with similar requirements in all the EEA countries in which the services were provided. It was transposed in the UK on a case-by-case basis where required.

5.3 While the UK was a member state of the European Union, providers of ISS established in the UK benefited from reciprocal CoOP provisions throughout the EEA. The CoOP was therefore placed in the regulations at paragraph 4.4 to ensure compliance with EU internal market regulations. Post Brexit, UK-based providers of ISS no longer enjoy that benefit.

5.4 The new policy objective implemented through this instrument is that in principle providers of ISS established in the EEA should no longer enjoy exclusions from UK laws and regulations previously provided by CoOP provisions to ensure a level playing field for UK providers of ISS because this is no longer a reciprocal benefit offered to UK providers in the EEA. In practice, as explained at paragraph 5.7 *et seq*, the effect of the general CoOP provisions repealed in this instrument is likely to be nugatory and as a matter of good practice they should be removed from the statute book to avoid regulatory confusion.

[3] https://www.gov.uk/guidance/the-ecommerce-directive-and-the-uk.

5.5 The post-implementation review clause in S.I. 2018/477 is being removed because the review requirements is not appropriate. S.I. 2018/477 does not have a significant regulatory impact on business, and a statutory review requirement is disproportionate.

What was the previous policy, how is this different?

5.6 The existing policy contains "general" and "criminal offences" CoOP provisions.

5.7 The "general" CoOP provision in S.I. 2002/2013 provides an exemption for providers of ISS established in the EEA from UK regulations within the "coordinated field", if doing so would restrict the freedom to provide ISS to a person in the United Kingdom from the EEA member state. The coordinated field is the set of legal requirements applicable to providers of ISS where the CoOP applies. Regulations within the coordinated field are requirements in respect of:

- Firstly, taking up of an activity of an ISS such as requirements concerning qualification, authorisation or notification;
- Secondly, the pursuit of the activity of an ISS, such as requirements concerning the behaviour of a service provider and the quality or content of the service including those applicable to advertising and contracts; and
- Thirdly, the requirements concerning the liability of the service provider.4

5.8 At the time of passage the "general" CoOP provision was potentially a broad exemption, from the requirement to comply with regulation applicable to ISS and an immunity from civil and criminal liability, afforded to EEA providers of ISS on the basis that the laws in their country of establishment were deemed to be equivalent. However, the CoOP provision in S.I. 2002/2013 is subject to an extensive list of carve-outs which limit this effect.

5.9 CoOP provision in S.I. 2002/2013 only applies to relevant laws in force before 30 June 2002.5 This means that as the law is progressively amended through new legislation and the development and restatement of the common law in new judgments (including in largely settled areas such as the law of contract or tortious liability), the scope of the CoOP provision gradually shrinks. As a result of this development there are few if any areas of the law applicable to the provision of ISS, to which the general CoOP still applies.

5.10 The general CoOP provision is also subject to a number of carve-outs and derogations listed below.[6] It has never exempted providers of ISSs from complying with UK law on:

- Taxation;
- The UK General Data Protection Regulation;
- E-privacy and electronic communications legislation;
- Cartel law;
- Certain legal services; and
- Betting, gaming or lotteries which involve wagering a stake with monetary value.

5.11 The CoOP also does not exempt providers of ISS from complying with UK law on:

[4] The Electronic Commerce (EC Directive) Regulations S.I. 2002/2013, reg 2(1).
[5] The Electronic Commerce (EC Directive) Regulations S.I. 2002/2013, reg 3(2).
[6] The Electronic Commerce (EC Directive) Regulations S.I. 2002/2013, reg 3(1) and the Schedule.

- Copyright;
- Freedom to choose governing law of contract;
- Contractual obligations concerning consumer contracts;
- Mandatory formal requirements for the validity of real estate contracts; and
- Permissibility of unsolicited commercial communications by electronic mail.

5.12 The CoOP also does not exempt providers of ISSs from laws which diminish the "level of protection for public health and consumer interests established by [EU law as it stood immediately before EU exit day]".[7]

5.13 Furthermore, any UK enforcement authority or a court in any proceedings may derogate from the CoOP provision and apply regulations which would have been exempted, to an EEA-based provider of ISS if it considers this is necessary for and proportionate to preventing serious prejudice to one of the following objectives:

- Public policy, in particular the prevention, investigation, detection and prosecution of criminal offences;
- Protection of public health;
- Public security;
- Protection of consumers, including investors.8

5.14 The "criminal offences" CoOP provisions in the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007 S.I. 2007/1550, the Extreme Pornography (Electronic Commerce Directive) (Scotland) Regulations 2011 S.S.I. 2011/137, and the Electronic Commerce (Miscellaneous Provisions) Regulations 2018 S.I. 2018/477 contain a qualified rule against the prosecution of EEA-based providers of ISS for specified offences relating to encouraging terrorism, extreme pornography, reporting and publication restrictions, human trafficking, prostitution and threatening communications.

5.15 For each of the specified offences, the CoOP means that a prosecution against a provider of ISS established in the EEA will not be instituted unless the relevant derogation condition is met.

5.16 The derogation condition is satisfied if instituting proceedings against an EEA-based ISS provider is necessary and proportionate to prevent a grave prejudice to the public interest. The public interest means the pursuit of public policy, in particular the prevention, investigation, detection and prosecution of a relevant offence. This is a relatively low threshold, and the "criminal offences" CoOP provisions are not an immunity against prosecution.

5.17 Taking account of the limitations described above on both the "general" and "criminal offences" CoOP provisions the effect of the new policy implemented by this instrument is expected to be very limited.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument removes CoOP provisions from the regulations amended by it as described in section 5 above.

[7] The Electronic Commerce (EC Directive) Regulations 2002/2013, reg 4(5).
[8] The Electronic Commerce (EC Directive) Regulations 2002/2013, reg 5(1).

6.2 Section 14(5) of the REUL Act 2023 requires that any changes made to secondary assimilated law under section 14(1) of that Act must not increase the regulatory burden in that subject area. The removal of the CoOP has the potential to bring EEA-based providers of ISS into the scope of further UK laws and regulations (predating 30 June 2002). However, as discussed above at paragraphs 5.6 – 5.17, the effect of the CoOP provisions amended by this instrument is likely to be very limited and their repeal will not impose any new regulatory burden on EEA based providers of ISS which may, at one point have benefitted from them. Moreover, as the CoOP was an EEA market equivalence measure, all providers of ISS benefiting from the CoOP were also subject to regulations deemed equivalent in their member state of establishment. Therefore, repeal of the CoOP provisions in this instrument does not increase the regulatory burden.

6.3 The instrument removes an existing statutory review clause in the Electronic Commerce Directive (Miscellaneous Provisions) Regulations 2018 S.I. 2018/477.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No formal public consultation was undertaken as no significant impacts or costs on businesses or citizens are anticipated and the changes to the law are not expected to have any significant impacts.

7.2 The amendments made by this instrument, including those made to S.S.I. 2011/170 relate to reserved matters within the scope of the respective internet services reservations. There was no requirement to consult with the devolved governments in relation to this instrument.

7.3 This instrument also repeals the post-implementation review clause in S.I. 2018/477. No formal consultation was undertaken on the removal of the statutory review clause, as it was considered disproportionate due to the revocation of the CoOP.

8. Applicable Guidance

8.1 No guidance has been developed as no changes will be required as a consequence of revoking assimilated law in this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the direct impacts on business have been assessed at under £10m per year. A De Minimis Assessment was carried out for this regulation and confirmed that it has no financial impact on businesses. The Equivalent Annual Net Direct Cost to Business (EANDCB) is therefore assessed as £0.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies based in the United Kingdom. The removal of the CoOP from these regulations only affects EEA-based ISS operating in the UK. However, due to the narrow scope of companies

the CoOP is applicable to, we do not expect the impact on EEA-based ISSs operating in the UK to be significant.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this instrument only affects providers of information society services.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Electronic Commerce legislation, including this legislation, will continue to be subject to monitoring by relevant Ministers and officials within the Department for Science, Innovation and Technology as part of normal business.

10.2 As this instrument is only made under the relevant REUL Act 2023, no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument was laid for sifting by the Sifting Committees on 25 February 2026. The Science Innovation and Technology Committee in the House of Commons and the Secondary Legislation Scrutiny Committee in the House of Lords agreed that the instrument should proceed as a negative procedure instrument.

11.2 This instrument is being made now because the enabling powers in the REUL Act 2023 cannot be used after 23 June 2026. Making the instrument at this point ensures that spent legislation can be revoked without the need for further legislative action.

12. European Convention on Human Rights

12.1 As the instrument is subject to the negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is made under sections 14(1) and 20(1)(b) of the REUL Act 2023 and therefore relates to the reform of assimilated law. The instrument only repeals secondary assimilated law which has limited effect and which it is no longer appropriate to maintain on the statute book. The Minister has made any relevant statements, below, under the 2023 Act.

Sifting statement(s)

13.2 The Parliamentary Under-Secretary of State for AI and Online Safety, has made the following statement regarding use of legislative powers in the Retained EU Law (Revocation and Reform) Act 2023:

13.3 “In my view the Electronic Commerce (Amendment and Consequential Provision) Regulations 2026 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

13.4 This is the case because this instrument revokes secondary assimilated law which will make only minor changes to the law as described in sections 5.8 to 5.17 and 6.1 to 6.3 above and which are unlikely to be controversial.