# EXPLANATORY MEMORANDUM TO

# THE UNITED KINGDOM INTERNAL MARKET ACT 2020 (SERVICES EXCLUSIONS) REGULATIONS 2023

## 2023 No. 1263

## 1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

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

## 2. Purpose of the instrument

2.1 This instrument is being made to add to, amend, and remove services that are excluded from the market access principles of mutual recognition and non-discrimination in Part 2 of the UK Internal Market Act 2020 ("UKIMA") and listed in Schedule 2 to UKIMA. This will ensure the appropriate coverage for services within scope.

2.2 The changes to the scope of application of one or both of the market access principles include clarifying the wording of a current exclusion, removing exclusions for service sectors which are not necessary, and adding new exclusions where there are strong policy or legal reasons to do so. An exclusion from Part 2 (Market Access: Services) of UKIMA means that the market access principles do not apply to that service sector or requirement.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 In accordance with section 18(8) of UKIMA, the Secretary of State has sought the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland to the instrument.

3.2 Welsh Ministers consented to the instrument. However, consent from all Devolved Governments has not been provided within the period of one month beginning the day on which it was sought. In reliance on section 18(9) of UKIMA, the Secretary of State may make the instrument without that consent. As this instrument is made without the consent of these Governments, the Secretary of State has published an explanatory statement in accordance with section 18(10) of UKIMA.

## 4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales, Scotland and Northern Ireland (the United Kingdom).

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

## 5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Lord Malcolm Offord of Garvel, has made the following statement regarding Human Rights:

"In my view the provisions of the United Kingdom Internal Market Act 2020 (Services Exclusions) Regulations 2023 are compatible with the Convention rights."

## 6. Legislative Context

6.1 Part 2 of UKIMA governs the movement of service providers in all parts of the UK. All services and new or newly amended requirements regulating the provision of services within scope of UKIMA are subject to the two market access principles (mutual recognition and non-discrimination) in Part 2, unless their service sector, or relevant requirement, is explicitly excluded under Schedule 2.

6.2 The Provision of Services Regulations 2009 ("the 2009 Regulations") also governs the regulation of services. The market access principles established in Part 2 of UKIMA complement the principles-based services framework established by the 2009 Regulations. Both the 2009 Regulations and the UKIMA contain a mutual recognition principle; the UKIMA mutual recognition principle applies to new authorisation requirements that came into force or otherwise had effect from 31 December 2020. UKIMA also applies to authorisation requirements that substantively change an existing authorisation requirement (that was in force or had effect on 30 December 2020) in a part of the UK, and to existing authorisation requirements that have not changed, but where a corresponding authorisation requirement in another part of the UK has been substantively changed after 30 December 2020.

6.3 In February 2021, a formal public consultation was conducted on the exclusions from the principles of mutual recognition and non-discrimination for Part 2 of UKIMA. Following this consultation in which UK regulators, service providers, UK Government Departments, Devolved Administrations, and any other interested party were given the opportunity to respond, this instrument is making changes to ensure that the appropriate service sectors are within scope of the legislation. This will provide clarity and certainty for regulators and businesses operating in these sectors.

## 7. Policy background

***What is being done and why?***

7.1 The consultation on Schedule 2 of UKIMA was conducted for three main reasons. Firstly, to establish whether there are any instances in which regulators previously disapplied the requirement to recognise authorisations under the 2009 Regulations for an overriding reason relating to public interest (e.g., the protection of the environment or the protection of consumers). In such a case, an explicit exclusion may need to be added to Part 1 of Schedule 2 (services to which mutual recognition does not apply).

7.2 Secondly, to establish whether any other changes needed to be made to Schedule 2 to reflect the UK's circumstances following exit from the European Union.

7.3 Thirdly, the consultation asked for any other ways in which the internal market for services could be further strengthened.

7.4 As stated in Section 6.3, following information provided through the consultation from UK regulators, service providers, UK Government Departments, and Devolved Administrations, the purpose of this instrument is to amend Parts 1 and 2 of Schedule

2 (which list the services that are excluded from the market access principles – see below).

7.5 This instrument is being made to change the scope of the exclusions from Part 2 of UKIMA. This includes adding exclusions to Part 1 of Schedule 2 for gas, electricity, water, waste, heat networks and qualifications-awarding services; amending the entry for the "social services" exclusion in Parts 1 and 2 of Schedule 2; removing the exclusions for financial services, electronic communications services and temporary work agencies from Parts 1 and 2 of Schedule 2, and; removing the exclusions for postal services and services of a statutory auditor from Part 2 of Schedule 2.

***Explanations***

*What did any law do before the changes to be made by this instrument?*

7.6 Part 2 of UKIMA governs the movement of service providers in the UK and establishes two market access principles of mutual recognition and non-discrimination.

7.7 The mutual recognition principle provides that a person authorised to provide services in one part of the UK (Scotland, Wales, Northern Ireland, England), is not required to meet additional authorisation requirements to provide those services in another part of the UK.

7.8 The non-discrimination principle provides that a regulatory requirement will be of no effect in relation to a service provider if it discriminates against that service provider directly or indirectly.

7.9 The scope of Part 2 of UKIMA is narrowed through Schedule 2 to the Act, which lists certain services and requirements which are excluded from either, or both, of the market access principles.

*Why is it being changed?*

7.10 All new or newly amended authorisation or regulatory requirements relating to the provision of services will be in scope of UKIMA's market access principles unless they are excluded or otherwise out of scope. This instrument makes necessary changes to the exclusions listed in Schedule 2 to ensure the appropriate service sectors are excluded.

7.11 The instrument will therefore provide clarity and certainty for regulators and businesses operating in these sectors.

7.12 Please see below for an assessment of each of the specific changes being made through the instrument.

*Adding new exclusions to Part 1 of Schedule 2 – Services to which Section 19 (mutual recognition) does not apply:*

7.12.1 Excluding services connected with the supply of gas and electricity, and water and sewerage and waste sector services. The instrument will take all these services out of scope of the mutual recognition principle in section 19 of UKIMA. The reason for these changes is to provide continuity for the service sectors, as under the 2009

Regulations, regulators do not currently apply the mutual recognition principle to these services.

7.12.2 Excluding services connected with the construction and operation of heat networks and the supply of thermal energy. This instrument will take certain services in connection with this sector out of scope of the mutual recognition principle in section 19 of UKIMA. The reason for this change is because of the different ways the service is regulated in the UK; there are sound policy objectives for different regulatory approaches within the UK, and the mutual recognition principle could undermine these objectives.

7.12.3 Excluding services in respect of the award and authentication of academic or vocational qualifications. The instrument will take certain services in connection with this sector out of scope of the mutual recognition principle in section 19 of UKIMA. The reason for this change is because of the different ways the service is regulated in the UK; there are sound policy objectives for different regulatory approaches within the UK, and the mutual recognition principle could undermine these objectives.

*Amending current exclusions in Schedule 2:*

7.12.4 Amending the current social services exclusion in Parts 1 and 2 of Schedule 2. The instrument will amend the social services exclusions in order to clarify that the private provision of children's social care and childcare services are within scope of the existing exclusion in Schedule 2.

*Removing exclusions from Schedule 2:*

7.12.5 Removing the current financial services and electronic communication services exclusions in Parts 1 and 2 of Schedule 2, and the current postal services exclusion in Part 2 of Schedule 2. This instrument will bring financial services and electronic communication services in scope of Part 2 of UKIMA and postal services in scope of the non-discrimination principle in Part 2 of UKIMA. The reason for these changes is because the exclusions are no longer needed in a post-EU context, and the regulation of these service sectors operates UK-wide.

7.12.6 Removing the current services of temporary work agencies exclusion in Parts 1 and 2, and the current statutory auditor exclusion in Part 2 of Schedule 2. This instrument will bring services of temporary work agencies in scope of Part 2 of UKIMA, and services of a statutory auditor in scope of the non-discrimination principle in Part 2 of UKIMA. The reason for these changes is because exclusions are no longer needed in a post-EU context, and there is little to no divergence in the UK (the services are reserved for GB and NI generally replicate these laws).

*What will it now do?*

7.13 Adding new exclusions to Part 1 of Schedule 2 will mean that the mutual recognition principle will not apply to those service sectors.

7.14 Amending the current social services exclusion will not alter the scope of the exclusion.

7.15 Removing the identified current exclusions from Schedule 2 will mean that the mutual recognition and non-discrimination principles will now apply to those service sectors.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## 9. Consolidation

9.1 This instrument does not amend another instrument. No consolidation applies.

## 10. Consultation outcome

10.1 A full public consultation was conducted to look at the exclusion of certain services from the mutual recognition and non-discrimination principles under Part 2 of the UKIMA. The consultation sought views from UK service regulators, service providers, policy makers, the Devolved Administrations, businesses, and individuals associated with the provision of a service. The territorial extent of the consultation was UK-wide. The 10-week consultation was open from 25 February 2021 – 7 May 2021 and responses were submitted via email and through Citizen Space.

10.2 The consultation sought: information about any current cases in which the requirement to recognise authorisations issued by a regulator in another part of the UK is disapplied under the 2009 Regulations; information about why it may be appropriate to formalise such instances under the UKIMA in the form of specific exclusions from the mutual recognition principle under Schedule 2; and views on how the exclusions list at Schedule 2, derived from the 2009 Regulations, could be amended to reflect the fact that the UK has now left the European Union.

10.3 The responses received were used to inform the policy for this instrument. Please see below for the specific reasons stakeholders gave for the changes this instrument is making.

10.4 UK regulators and policy makers in the utility and energy sectors submitted evidence suggesting they currently do not recognise authorisations from other parts of the UK. Under the 2009 Regulations, regulators disapply the mutual recognition provision based on an overriding reason relating to public interest ("ORRPI"), namely the protection of consumers and public safety (gas and electricity sectors), and the protection of the environment (water and sewerage and waste sectors). Stakeholders suggested the addition of the exclusions to UKIMA Part 1 of Schedule 2 will provide continuity to these sectors.

10.5 Qualifications-awarding services regulators in different devolved jurisdictions submitted evidence as to why they should not recognise authorisations from different parts of the UK. The Scottish Government submitted evidence as to why regulators should not recognise heat network authorisations in other parts of the UK.

10.6 Service providers in the financial sector suggested that this service did not need to be explicitly excluded from the UKIMA as the regulation of the sector operates UK-wide.

10.7 UK Government Departments suggested that the temporary work agencies, statutory audit, postal and electronic communications services exclusions were not needed due to how these services are provided in the UK.

10.8 Consultation with the Devolved Administrations has been ongoing and was conducted throughout and following this public consultation. The Devolved Administrations support the addition of exclusions.

10.9 The Government Response to the public consultation is published on gov.uk here: https://www.gov.uk/government/consultations/uk-internal-market-the-continuity-of-exclusions-from-the-principles-of-mutual-recognition-and-non-discrimination-for-services.

## 11. Guidance

11.1 Guidance is not required for this instrument. Guidance for regulators on Part 2 of the UKIMA is available on gov.uk here: https://www.gov.uk/government/publications/complying-with-the-uk-internal-market-act-2020/trade-in-services-guidance-for-regulators-on-complying-with-the-uk-internal-market-act-2020.

## 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 this instrument does not impose any new requirements and no significant impact is anticipated on business.

## 13. Regulating small business

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

13.2 This instrument does not impose any new requirements on small businesses.

## 14. Monitoring & review

14.1 The approach to monitoring of this legislation is provided by section 22 of UKIMA. This instrument is within scope of the required review under the UKIMA, which requires that, during the permitted period, the Secretary of State must carry out a review into any use that has been made of the powers conferred by section 18(2) and 21(8) of UKIMA, prepare a report of the review, and lay a copy of the report before Parliament. The review must take place with the permitted period beginning with the third anniversary of the passing of the UKIMA and ending with the fifth anniversary.

14.2 The instrument does not include a statutory review provision and, in line with the requirements of the section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015, Lord Malcolm Offord of Garvel has made the following statement: “As the obligatory review of the use of the power conferred by section 18(2) of the UKIMA will encompass this instrument, it is not appropriate in the circumstances for this instrument to make provision for a separate review”.

## 15. Contact

15.1 Rosalind Tickle at the Department for Business and Trade, Telephone: 07920 543509 or email: servicesregulations@beis.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Lindsay Jamieson, Deputy Director for the UKIM Services Policy, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Malcolm Offord of Garvel at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.