

EXPLANATORY MEMORANDUM TO
THE PROVISION OF 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 Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The Provision of Services Regulations (Amendment etc.) (EU Exit) Regulations 2018 amends the Provision of Services Regulations 2009. In addition, this Statutory Instrument revokes parts of the Provision of Services (Insolvency Practitioners) Regulations 2009 and the Provision of Services (Insolvency Practitioners) Regulations (Northern Ireland) 2009, and makes amendments to the Insolvency Practitioner Regulations 2005 and the Insolvency Practitioner Regulations (Northern Ireland) 2006. It revokes Commission Decision 2009/739/EC. These changes 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 The EU Services Directive (2006/123/EC) aims to develop the Single Market in services by breaking down barriers to cross-border trade within the European Union (EU). Specifically, the Directive aims to simplify administrative procedures and remove obstacles for services activities; enhance mutual trust between Member States through effective administrative cooperation; and improve the quality of service providers and strengthen consumer rights in the Single Market.
- 2.3 The Directive ensures that Member States comply with a set of overarching principles when developing new measures that would impact upon EEA service providers. By setting out principles on the regulation of service provision in the Single Market, it makes it easier for businesses to establish themselves in other European Economic Area (EEA) Member States or to provide services cross-border or on a temporary basis.
- 2.4 The Services Directive applies to a wide range of non-financial services including the activities of most regulated professions, tourism services, leisure services, and business-related services.
- 2.5 The Services Directive is implemented into United Kingdom (UK) law by the Provision of Services Regulations 2009 (“the Regulations”). The Regulations set out the following requirements:
 - 2.5.1 The Regulations prevent Competent Authorities (meaning bodies with a supervisory or regulatory role, including local authorities, national regulators and professional

bodies) from imposing discriminatory, disproportionate or unnecessary requirements on EEA businesses who seek to provide services on either a permanent or temporary basis in the UK.

- 2.5.2 The Regulations set out obligations on Competent Authorities to ensure effective administrative cooperation with their counterparts in other Member States.
 - 2.5.3 The Regulations require Competent Authorities to notify the Secretary of State for Business, Energy and Industrial Strategy of some new measures.
 - 2.5.4 The Regulations require the Government to maintain an online facility to operate as the UK's Point of Single Contact.
 - 2.5.5 The Regulations set out the duties of businesses, detailing the requirements for contact details and other information to be made available for service recipients.
- Additional legislation bundled with this Statutory Instrument*
- 2.6 The obligations of the Services Directive in respect of private sector insolvency practitioners are implemented within the UK's insolvency regime.
 - 2.7 Under domestic legislation insolvency practitioners wishing to operate in the UK need to hold professional liability insurance or an equivalent guarantee which will compensate insolvent estates and/or third parties in the event that they commit fraud or are dishonest and their behaviour leads to losses. This must meet the requirements in the Insolvency Practitioners Regulations 2005. However, due to the provisions of the Services Directive, essentially equivalent EEA insurance must be accepted for these purposes even if it does not strictly meet the domestic bonding requirements.

Why is it being changed?

- 2.8 Article 1.1 of the Services Directive identifies that the purpose of the Directive is to facilitate service provision within the EU whilst maintaining a high quality of services. When the UK leaves the EU, the Services Directive will no longer apply to the UK or to EEA businesses or individuals providing services in the UK. However, the EU (Withdrawal) Act 2018 preserves UK law implementing EU Directives on Exit, including the Provision of Services Regulations 2009, as 'retained EU law'. This means that Regulations which implement the Services Directive would need to be amended to remedy any failures of retained EU law, and to provide contingency for the unlikely event of a 'no deal' scenario. How the Regulations would need to be amended is explained at 7.1 and 7.2.
- 2.9 Furthermore, Part 3 of this Instrument, will also revoke the Provision of Services (Insolvency Practitioners) Regulations 2009 and the Provision of Services (Insolvency Practitioners) Regulations (Northern Ireland) 2009. It also makes amendments to the Insolvency Practitioners Regulations 2005 and the Insolvency Practitioner Regulations (Northern Ireland) 2006. This is to reflect how in a 'no deal' scenario, the Insolvency Practitioners Regulations need to be amended because the Services Directive will no longer apply to the UK. Therefore, the laws around insurance will be amended to ensure that EEA insolvency practitioners are on a level playing field with those in the UK, by ensuring they meet the same insurance requirements and do not gain an unfair advantage. The changes made are explained at 7.13.

What will it now do?

- 2.10 This instrument makes technical fixes to correct deficiencies in retained EU law.
- 2.11 The Regulations will be amended to ensure that the deregulatory principles of the current Regulations (as explained at 2.2, 2.3 and 2.5) will apply for the benefit of UK nationals, and businesses established in the UK and formed under UK law only (hereafter referred to as “UK businesses”). For example, the Regulations will continue to ensure that UK Competent Authorities cannot make the access to, or provision of, service activity subject to an authorisation scheme or requirement unless it can be justified against specific criteria of proportionality and a public interest objective.
- 2.12 A detailed explanation of what the amended Regulations will do is outlined in section 7, ‘Policy Background’.
- 2.13 In addition, amendments to domestic insolvency legislation will mean that the Secretary of State for Business, Energy and Industrial Strategy no longer has to recognise “essentially comparable” EEA insurance arrangements that do not fully meet the criteria applied to UK insolvency practitioners.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 This Instrument will be laid for sifting on 12 November 2018 as a proposed negative Instrument pursuant to the European Union (Withdrawal) Act 2018. Accordingly, it contains relevant information for those Committees.

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 As it is proposed that the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent and application of this instrument is the United Kingdom.
- 4.2 The territorial extent and application relating to the insolvency provisions outlined in Part 3, make separate provisions for Great Britain and Northern Ireland respectively, in order to make the same changes in both jurisdictions, as agreed with Northern Ireland officials.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, Richard Harrington, has made the following statement regarding Human Rights:

“In my view the provisions of the Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Provision of Services Regulations 2009 implemented a significant piece of European legislation, the Services Directive (as outlined at 2.2). The Directive was

subsequently incorporated into the EEA Agreement. Therefore, the Regulations which transpose the Directive apply in relation to the EEA states of Iceland, Liechtenstein and Norway in addition to the EU Member States. The impetus behind the Directive was to ensure that both service providers and recipients benefit more easily from the fundamental freedoms guaranteed in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU). These are the freedom of establishment and the freedom to provide services across borders.

- 6.2 In order to achieve this the Services Directive highlights key aims, as outlined in Recital 1 and 116. These are: to simplify administrative procedures and remove obstacles for services activities; enhance mutual trust between Member States through effective administrative cooperation; and improve the quality of services providers and strengthen consumer rights in the Single Market.
- 6.3 The Services Directive seeks to achieve these aims by requiring Member States to establish a domestic legal framework to allow service providers to exercise the freedom of establishment and the freedom to provide services, whilst maintaining a high quality of service, as outlined in Article 1 of the Directive. Freedom of establishment, where the Directive is concerned, means that individuals or businesses can set up their place of business to provide services in any EEA country. Freedom to provide services means that any measure that restricts an EEA service provider's ability to provide services, such as licenses and authorisation schemes, must be justified by the Competent Authority intending to do so against set criteria.
- 6.4 The Services Directive is applied across the services in scope and sets out principles that must be adhered to when Competent Authorities regulate services at Member State level. In the UK's case, these principles are captured in the Regulations. The Directive does not go as far as to prevent differences in the way services are regulated; it only ensures Competent Authorities comply with the overarching principles of the Directive when regulating services within scope. Therefore, service sectors within scope, may still be regulated differently between Member States, as well as within Member States as much the regulation of services is conducted by Competent Authorities, rather than by the Regulations themselves.
- 6.5 There are areas of services activity which are regulated by their own specific legislation such as the insolvency practitioner's legislation.
- 6.6 This Instrument will amend the Regulations which implement the Services Directive through exercise of the powers in Section 8 of the European Union (Withdrawal) Act 2018. This power provides that a Minister of the Crown may, by way of regulation, make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.
- 6.7 Additionally, this Instrument makes the following technical amendment to correct deficiencies in primary legislation. The Regulations amended the Employment Agencies Act 1973 to allow for information to be shared with other EEA authorities pursuant to Part 9 of the Provision of Services Regulations 2009. This Instrument will amend the Employment Agencies Act 1973 to revoke this permission.
- 6.8 Part 3 of this Instrument will revoke the Provision of Services (Insolvency Practitioners) Regulations 2009 and the Provision of Services (Insolvency Practitioners) Regulations (Northern Ireland) 2009. It also makes amendments to the

Insolvency Practitioners Regulations 2005 and the Insolvency Practitioner Regulations (Northern Ireland) 2006.

- 6.9 Part 4 will revoke Commission Decision 2009/739/EC, which was established to aid administrative cooperation between Member States using the online Internal Market Information (IMI) system. When the UK leaves the EU, the UK will no longer have access to the IMI system. The provisions of this Decision will therefore have no practical application or will otherwise be redundant and it is appropriate to remove it.

7. Policy background

What is being done and why?

- 7.1 The UK will leave the EU on 29 March 2019 and this means the Services Directive will no longer apply (as explained at 2.6). However, the European Union (Withdrawal) Act 2018 will retain EU-derived domestic legislation. This includes the Provision of Services Regulations 2009 and amendments to the Insolvency Practitioners Regulations (as explained at 6.8), which were implemented to reflect the reciprocal rights and obligations provided for by the Directive. As the Directive will no longer apply to the UK, the Regulations will need to be amended to correct deficiencies that result from the UK being outside the EU's regulatory framework for services. Correcting these deficiencies also ensures that the UK meets its commitments under World Trade Organisation (WTO) rules; specifically, the WTO's 'most favoured nation' (MFN) principle, which prevents countries from discriminating between their trading partners outside of negotiated deals.
- 7.2 This Instrument will make amendments to ensure that cross-cutting regulatory principles that apply to the provision of services continue to operate effectively when the UK leaves the EU in March 2019. This includes amending or revoking EEA-specific provisions in the Regulations which implement or reflect cross-border, intra-EU provisions of the Services Directive. This Instrument will remove provisions which have no practical application or are otherwise redundant or substantially redundant as a result of the UK's withdrawal from the EU. For instance, Part 2, Regulation 9 outlines that service providers must give certain information about professional rules applicable in an EEA state in which the provider is established to a service recipient when asked for it. Post-exit, the reference to EEA state will be redundant; UK regulated service providers will still be obligated to provide relevant information about applicable professional rules.
- 7.3 The Regulations will continue to benefit the service activities in scope. The Regulations will protect UK businesses and consumer rights by maintaining obligations on UK Competent Authorities to ensure that their regulation of service activity is proportionate and justified in the public interest.
- 7.4 The sections below explain the changes and their implications to the Regulations in more detail, with a focus on the two main stakeholder groups the Regulations affect: UK businesses, and UK Competent Authorities.

Implications for UK Competent Authorities

- 7.5 Part 4 of the Regulations place obligations on UK Competent Authorities as to how they regulate EEA service providers; this will be removed. This, amongst the removal of other protections for EEA service providers, will mean that UK Competent Authorities will be able to regulate EEA businesses in the same way they regulate

third country service providers. This means that regulators will have the choice to impose more restrictive requirements on EEA service providers, in line with their new status as third country service providers (within the scope of the UK's WTO commitments).

- 7.6 The amended Regulations will remove reciprocal arrangements, such as provisions for administrative cooperation between Competent Authorities in the EEA found in Part 9 of the Regulations. When the UK leaves the EU, UK Competent Authorities and businesses will lose access to the IM System as this is part of the Single Market infrastructure. UK Competent Authorities could choose to contact EEA Competent Authorities directly if information is needed in future.
- 7.7 Additionally, Part 6, Regulation 33, will be amended to remove the reciprocal arrangements for accepting professional liability insurance. In the current Regulations, UK Competent Authorities cannot require that service providers seeking to provide services in the UK take out professional liability insurance or a guarantee, if the service provider already holds equivalent or essentially comparable insurance in another EEA country. Under a 'no deal' scenario, UK Competent Authorities would have the choice to recognise EEA equivalent or comparable insurance, but will no longer be required to do so.

Implications for UK businesses operating in the UK

- 7.8 The amended Regulations will continue to benefit UK businesses by placing obligations on UK Competent Authorities and the way they regulate access to, or exercise of, the services in scope of the Regulations, as outlined in Part 3, of the Regulations. For example, Competent Authorities will continue to be required to design their licensing forms and authorisation schemes in a way that is proportionate and justified by a public interest objective.
- 7.9 Additionally, to benefit businesses seeking to provide services in the UK, the UK Government will continue to host a Point of Single Contact on GOV.UK, as set out in Part 8, Regulation 32. The Point of Single Contact will continue to store information to make it easier to provide services in the UK. This information will continue to include authorisation procedures and the requirements service providers have to comply with when they want to provide services.
- 7.10 To benefit service recipients, businesses providing services in the UK will continue to be required to provide information to service recipients and to respond to complaints as set out in Part 2 of the Regulations. Access to general information about requirements is important because it enables recipients to make an informed choice when considering a service provider.
- 7.11 In regard to the amendments to insolvency practitioners legislation, the regulations will be changed so that the Secretary of State no longer has to recognise "essentially comparable" EEA insurance arrangements that do not fully meet the criteria applied to UK insolvency practitioners.

Devolved Administrations

- 7.12 This instrument covers some areas of service activity where responsibility is devolved through the devolution settlements for Northern Ireland, Scotland and Wales.
[Devolved Administrations have confirmed their agreement for UK Parliament to lay this legislation UK wide. To confirm]

7.13 This Instrument contains provisions in Part 3 relating to the insolvency legislation bundled with this Instrument that apply to Northern Ireland, relating to transferred matters for Northern Ireland. 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 Ministers to take the necessary actions to prepare Northern Ireland for exit. With exit day less than six months away, 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 United Kingdom from the European Union. 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 UK Government officials have met regularly with their counterparts in Devolved Administrations to discuss the proposed amendments to the provisions of the Regulations and how proposed amendments could impact service provision in devolved areas.

11. Guidance

11.1 In 2009, the Government published guidance for businesses and Competent Authorities with detailed advice on the principles of the Regulations and suggested direction for the application of the Services Directive. In a scenario where the UK leaves the European Union on 29 March 2019 without a formal agreement, the published guidance will be updated to reflect the changes that are made to the Provision of Services Regulations 2009 by this Instrument.

12. Impact

12.1 There is no, or no significant, impact on UK 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 as it makes technical fixes to existing Regulations. These technical fixes will, in part, remove preferential access to EEA service providers to the UK services market and where provisions have no practical effect.

12.4 The changes to the Regulations will mean that regulators will now have the choice to impose more restrictive requirements on European Economic Area service providers, in line with their new status as third country service providers. However, as the UK services market is one of the most liberalised in the world, it is envisaged that additional barriers to entry for EEA services providers into the UK services market will be limited.

13. Regulating small business

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

13.2 No steps have been taken to minimise the impact of the requirements on small businesses (employing up to 50 people), as no new requirements are being introduced. The purpose of the Instrument is to retain existing requirements where possible and ensure the Regulations are operable should the UK leave the EU without a deal.

14. Monitoring & review

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

15. Contact

15.1 Rebecca Schapira at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the Instrument. Telephone: 020 7215 1393 or email: rebecca.schapira@beis.gov.uk.

15.2 Kate Ecart at the Insolvency Service can be contacted with any queries regarding the Insolvency Practitioners Regulations. Telephone 020 7637 6253 or email kate.ecart@insolvency.gsi.gov.uk.

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

15.4 Rt. Hon. Richard Harrington, 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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Rt. Hon. Richard Harrington, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Provision of Services (Amendment etc.) (EU Exit) Regulations should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure).”

- 1.2 This is the case because it complies with the requirement for the negative procedure under Schedule 7 to the EU (Withdrawal) Act 2018. The instrument contains only technical amendments to UK legislation and makes no changes to policy beyond addressing those deficiencies.

2. Appropriateness statement

- 2.1 The Rt. Hon. Richard Harrington, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Provision of Services (Amendment etc.) (EU Exit) Regulations does no more than is appropriate.”

- 2.2 This is the case because this instrument makes technical amendments to UK legislation to ensure that provision of services and service activity in scope in the UK will continue to operate against guiding principles when the UK leaves the EU (as explained at 2.7, 2.8, 2.9 and 6.1 of the main body of the Explanatory Memorandum).

3. Good reasons

- 3.1 The Rt. Hon. Richard Harrington, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy 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.”

- 3.2 This is the case because this instrument makes technical amendments to UK legislation to ensure that provision of services and service activity in scope in the UK will continue to operate against guiding principles when the UK leaves the EU (as explained at 2.7, 2.8, 2.9 and 6.1 of the main body of the Explanatory Memorandum).

4. Equalities

4.1 The Rt. Hon. Richard Harrington, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy has made the following statement(s):

“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.

4.2 The Rt. Hon. Richard Harrington, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I 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. This Act does not extend to Northern Ireland, and as the provisions relating to insolvency practitioners extend only to Northern Ireland, I have given equivalent due regard to the impacts in Northern Ireland.”

4.3 When the policy was introduced in 2009, an assessment was undertaken to understand if the policy derived from the Services Directive would negatively impact any individuals or groups of individuals in keeping with the requirements on Government Departments in the Equalities Act 2010. The 2009 Impact Assessment found no such impacts. It is not considered that there are any equalities implications in amending the Regulations as this instrument will only make technical fixes and will not introduce new policy.

5. Explanations

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