

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN GROUPING OF TERRITORIAL COOPERATION (EU EXIT)**  
**REGULATIONS 2019**

**2019 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 This instrument is being made using powers in the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law and other deficiencies arising from the withdrawal of the United Kingdom from the EU. It enables UK public authorities to continue to take part in European Groupings of Territorial Cooperation if they wish once the UK has left the EU.

***Explanations***

*What did any relevant EU law do before exit day?*

- 2.2 EC Regulation 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC) (OJ No L 210, 31.7.2006, p.19) (“the EGTC Regulation”) was introduced to enable public authorities from different EU member States to cooperate more effectively and to help manage cross-border activities. EU Regulation 1302/2013 (OJ No L 347, 20.12.2013, p.303) amended the EGTC Regulation to provide further clarification, simplification and improvement of the EGTC framework. The framework provides for public authorities within EU member States at a local, regional or national level, and member States, to be able to come together to establish a legal entity within the EU, and for them to be members of that entity. It also provides for third country participation in an EGTC provided that the third country is a neighbouring country to one of the members. Domestic legislation ensured the effective application of this legislation in the UK.

*Why is it being changed?*

- 2.3 The registered office of an EGTC must be located within the EU and therefore once the UK leaves the EU, EGTCs can no longer be registered in the UK. The UK will no longer be a member State and so will not itself be able to join an EGTC, and public authorities in the UK will no longer be able to participate as public authorities of a member State, but only as public authorities of a third country. The EGTC Regulation, the amending EU Regulation and domestic regulations are therefore being revoked. These Regulations facilitate the ability of UK public authorities to participate in EGTCs within the changed circumstances.

What will it now do?

- 2.4 These Regulations enable the continued participation of public authorities in the UK in an EGTC in the future as third country participants, rather than as entities from a member State. The UK will be unable to participate in future, as it will not be a member State.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Sifting Committees*

- 3.1 This statutory instrument is being laid for sifting to the EU (Withdrawal) Act 2018.

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

**6. Legislative Context**

- 6.1 EGTCs were introduced by the EGTC Regulation, which was amended by EU Regulation 1302/2013. The EGTC framework enables regional and local authorities from different EU member States to cooperate more effectively. Domestically, the European Grouping of Territorial Cooperation Regulations 2015 ensured the effective application of the EGTC Regulation. Section 3 of the European Union (Withdrawal) Act 2018 incorporates directly applicable EU law into UK law.  
6.2 These Regulations make provision to accommodate the change in the UK's status from an EU member State to a third country. They revoke the EGTC Regulation, the amending Regulation 1302/2013, and the preceding domestic regulations as EGTCs will no longer have the ability to register in the UK.

**7. Policy background**

*What is being done and why?*

- 7.1 The EGTC framework was established to make it easier for certain public authorities and member States to manage cross-border activities. An EGTC is a type of legal entity that can act on behalf of its members across member State borders using the legal framework of the member State in which the entity is established (thus avoiding the need to have to negotiate separate administrative/legal frameworks in different member States for the same activity). An EGTC must include members either from at least two EU member States; or from one EU member State and one third country or overseas country or territory (members can include regional or local

authorities, central governments or other bodies operating under public law such as universities, as well as member States themselves), and must be registered within a member State in which at least one of the EGTC's members is established. After the UK has left the EU, it will not be possible to register an EGTC in the UK. There are currently no UK-registered EGTCs.

- 7.2 There are currently no UK public authorities which are members of an EGTC registered elsewhere, however we are aware of at least one UK public authority that would like to participate in an EGTC being set up and this statutory instrument will allow them to continue to do so. The EGTC Regulation provides for third country public authorities to participate in an EGTC and these Regulations will make it possible for them to do so in the future.
- 7.3 Public authorities can be devolved in nature and therefore we have consulted with the Scottish and Welsh Governments during the development of this instrument. Provisions have been included so that an application by a devolved Welsh authority (as defined in section 157A of the Government of Wales Act 2006 c. 32) or a Scottish public authority (as defined in section 126(1) of the Scotland Act 1998 c. 46) must not be approved or rejected by the Secretary of State without agreement from the devolved Ministers (the Scottish or the Welsh Ministers, as appropriate). This will ensure that devolved matters are fully respected in both Scotland and Wales. Due to the recent Court of Appeal decision in *Re Buick*, NI officials are unable to offer any decision relating to this instrument and therefore a specific provision for devolved public authorities in Northern Ireland similar to that provided for Scotland and Wales has not been provided at this time. Consequently, this instrument provides for applications from devolved public authorities in Northern Ireland to be approved by the Secretary of State only.
- 7.4 This instrument applies to Company Law which is a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998. 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. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year 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 is not a consolidation.

## **10. Consultation outcome**

10.1 There has been no consultation.

## **11. Guidance**

11.1 Guidance on EGTCs was published in 2015 and can be found here. This guidance will be updated and made available on exit day.

<https://www.gov.uk/government/publications/european-groupings-of-territorial-co-operation-egtc>.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as there are no EGTCs registered in the UK and no UK public authorities currently participating in an EGTC registered elsewhere.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by 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 Sarah Pooley Dod at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 4326 or email: sarah.pooleydod@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Death at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst, Parliamentary Under-Secretary 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
Appropriateness	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. Sifting statement(s)**

- 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 European Grouping of Territorial Cooperation (EU Exit) Regulations 2019 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 the instrument does not contain policy changes but operates to maintain the status quo as far as is possible providing for the continued participation for UK public bodies in an EGTC in the future as third country participants.

#### **2. Appropriateness statement**

- 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 the European Grouping of Territorial Cooperation (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case because the instrument does not contain policy changes but operates to maintain the status quo as far as is possible. It remedies a failure of retained EU law to operate effectively in that UK public authorities would otherwise be unable to join EGTCs because the current law is contingent on the UK being a member State. This is further detailed in paragraph 2.3 of the explanatory memorandum.

#### **3. Good reasons**

- 3.1 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:

- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.3 Although currently no UK public authorities are participating in an EGTC, these Regulations make it possible for them to do so in the future – we are aware of one UK public authority that would like to participate in an EGTC in reliance on this instrument.

#### **4. Equalities**

- 4.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst 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 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 European Grouping of Territorial Cooperation (EU Exit) Regulations 2019, I, Kelly Tolhurst, Minister for Small Business, Consumers and Corporate Responsibility, 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.”

4.3 This legislation complies with the requirements of the Public-Sector Equality Duty requirements.

## **5. Explanations**

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

## **6. Criminal offences**

6.1 There are no criminal offences created by this instrument.