

## EXPLANATORY MEMORANDUM TO

### THE ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMER DISPUTES (EXTENSION OF TIME LIMITS FOR LEGAL PROCEEDINGS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. 1139

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument amends four pieces of EU-derived legislation which extend the time limit for bringing court proceedings where a consumer is engaged in non-binding alternative dispute resolution (ADR). These are: the Prescription and Limitation (Scotland) Act 1973, the Limitation Act 1980, the Foreign Limitation Periods Act 1984 and the Limitation (Northern Ireland) Order 1989.
- 2.2 The instrument removes references to the ADR Directive (2013/11/EU) within these pieces of legislation and makes amendments to ensure that the applicable statutory time limit for launching court proceedings will only be extended in cases where the consumer is resident in the UK and uses the services of an ADR provider authorised within the UK.
- 2.3 The amendments substantively mirror amendments already made to section 140AA (extension of time limits because of alternative dispute resolution in certain cross border or domestic contractual disputes) of the Equality Act 2010 by the Equality (Amendment and Revocation) (EU Exit) Regulations 2019 (S.I. 2019/305) (“the Equality Exit Regulations”).
- 2.4 This instrument also amends the Equality Exit Regulations for full consistency of drafting and to insert a transitional provision into those Regulations.

#### *Explanations*

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

- 2.5 The relevant statutory provisions amended by this instrument were inserted by the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (S.I. 2015/1392) to implement the requirement of the ADR Directive that parties who attempt to settle a consumer dispute through non-binding ADR are not subsequently prevented from initiating judicial proceedings as a result of the expiry of time limits during the ADR procedure.
- 2.6 The relevant statutory provisions will continue to apply to disputes within the scope of the ADR Directive until the end of the transition period.

##### Why is it being changed?

- 2.7 The relevant provisions are being amended in consequence of the ADR Directive no longer applying to the UK after the end of the transition period; and to ensure

consistency with the amendments made to section 140AA of the Equality Act 2010 by the Equality Exit Regulations.

*What will it now do?*

- 2.8 The amendments limit extensions of the time limit to disputes which involve a consumer resident in the UK (the trader may be a UK or EU trader as at present) and in which the ADR is carried out by an entity approved under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (S.I. 2015/542). Extensions which begin before the instrument comes into force are unaffected.

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

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

- 3.1 This instrument was laid for sifting before the Sifting Committees on 21 April 2020. The European Statutory Instruments Committee of the House of Commons recommended that the instrument be upgraded to the affirmative procedure because the Committee considered that the amendments made by the instrument are not so routine as to displace the presumption of an affirmative procedure for the amendment of primary legislation. The Minister for Small Business, Consumers and Corporate Responsibility, Paul Scully, has accepted this recommendation.

*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 powers under which this instrument is made cover the entire United Kingdom (see section 24 (extent) of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

### **5. European Convention on Human Rights**

- 5.1 The Minister for Small Business, Consumers and Corporate Responsibility, Paul Scully, has made the following statement regarding Human Rights:
- “In my view the provisions of The Alternative Dispute Resolution for Consumer Disputes (Extension of Time Limits for Legal Proceedings) (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.

### **6. Legislative Context**

- 6.1 This instrument amends primary and subordinate legislation. It is made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.
- 6.2 The instrument amends the following primary legislation:
- a) section 14 of the Prescription and Limitation (Scotland) Act 1973;

- b) section 33B of the Limitation Act 1980;
  - c) section 1B of the Foreign Limitation Periods Act 1984;
  - d) article 51B of the Limitation (Northern Ireland) Order 1989.
- 6.3 This instrument also amends the Equality Exit Regulations in relation to section 140AA of the Equality Act 2010 to ensure full consistency between this instrument and those Regulations.

## **7. Policy background**

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

- 7.1 This instrument amends statutory provisions under which the time limits within which consumers may take court proceedings can be extended to allow consumers to pursue non-binding ADR. That extension is for 8 weeks from the completion of the ADR procedure. These provisions were introduced to implement the EU ADR Directive and allow consumers to pursue ADR without jeopardising their ability to initiate court proceedings.
- 7.2 The amendment would limit these provisions to consumers resident in the UK.
- 7.3 The instrument is made because the ADR Directive, to which the relevant legislation refers, will not apply to the UK after the end of the transition period.
- 7.4 The instrument also ensures consistency with the amendments already made to the equivalent section 140AA of the Equality Act 2010 by the Equality Exit Regulations for which the Government Equalities Office is responsible.
- 7.5 The Department considers that a very low number of cases will be affected by this instrument and that there will be no impact on UK consumers.

## **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 There are no plans for consolidation.

## **10. Consultation outcome**

- 10.1 As this instrument aims to maintain existing protections so far as possible, no consultation was deemed necessary.
- 10.2 The Department wrote to the Department for the Economy, Northern Ireland, to seek agreement with the Northern Ireland Executive to the making of this instrument. The Department for the Economy confirmed its agreement on 10 February 2020.

## **11. Guidance**

11.1 No guidance has been produced for the measures in this instrument.

## **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 An Impact Assessment has not been prepared for this instrument because these technical amendments do not bring about a wider policy change or impose any new liabilities or obligations on any relevant business or persons.

12.4 The only impact on business is to lower costs, because fewer businesses will need to engage in ADR cases once these provisions are limited to consumers resident in the UK. Most disputes involving consumers resident in the UK will not be affected, and the transitional provisions ensure that any extensions which have already taken place will also be unaffected by this instrument.

## **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 further 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 simply to retain existing requirements where possible.

## **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 Widad Chhibi at the Department for Business, Energy and Industrial Strategy  
Telephone: 020 7215 8338 or email: [Widad.Chhibi@beis.gov.uk](mailto:Widad.Chhibi@beis.gov.uk) can be contacted with any queries regarding the instrument.

15.2 David Marshall, Deputy Director for Consumer Policy and Enforcement at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard

15.3 Paul Scully, 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	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. Appropriateness statement**

- 1.1 The Minister for Small Business, Consumers and Corporate Responsibility, Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Alternative Dispute Resolution for Consumer Disputes (Extension of Time Limits for Legal Proceedings) (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because the changes made by this instrument are limited to changes considered appropriate to deal with the deficiencies outlined in Section 2.7 of this Explanatory Memorandum and do not bring about a wider policy change or impose any new liabilities or obligations on any relevant business or persons.

#### **2. Good reasons**

- 2.1 The Minister for Small Business, Consumers and Corporate Responsibility, Paul Scully, 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 These are that this instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU, as outlined in Section 2.7. The changes made by this instrument are considered appropriate as explained in section 2 and 7 of this Explanatory Memorandum. The Department has therefore concluded that the making of this instrument constitutes a reasonable course of action.

#### **3. Equalities**

- 3.1 The Minister for Small Business, Consumers and Corporate Responsibility, Paul Scully, has made the following statement(s):

“The draft instrument does 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 instrument amends section 140AA of the Equality Act 2010 through the Equality Exit Regulations. The amendments are, however, limited to such amendments as are necessary to ensure full consistency between the amendments made to the relevant primary legislation by this instrument and the amendments made to section 140AA by the Equality Exit Regulations. This includes the insertion of a transitional provision to ensure that any extensions occurring before those Regulations come into force are unaffected by those Regulations.

3.3 The Minister for Small Business, Consumers and Corporate Responsibility, Paul Scully, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, The Minister for Small Business, Consumers and Corporate Responsibility, Paul Scully, 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. Explanations**

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