

EXPLANATORY MEMORANDUM TO
THE COMPANIES AND STATUTORY AUDITORS ETC. (CONSEQUENTIAL
AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 523

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 Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument is being made using powers in the European Union (Withdrawal Agreement) Act 2020 to replace references to “exit day” with “IP completion day” in EU Exit related Regulations.

2.2 It will ensure that the United Kingdom statute book will function correctly and provide clarity and a smooth transition for business after the Transition Period (TP).

Explanations

What did any relevant EU law do before IP completion day?

2.3 The Companies Act 2006 provides the framework for company law, accounting and reporting in the UK, supplemented by various secondary legislation. This legislation reflects the UK’s current status as a Member State of the EU and an EEA state. It provides for preferential treatment of EEA companies and EEA “regulated markets” as compared to non-EEA companies and markets. It provides a framework to enable UK entities to be part of certain EU specific corporate forms.

Why is it being changed?

2.4 Following the passage of the European Union (Withdrawal Agreement) Act 2020, the UK entered the TP. Before this, the Government’s policy was to make legislation to prepare for a possible ‘no deal’ exit. Statutory instruments that were made therefore contain references to “exit day” which, at the time of drafting, was intended to mean the day the UK left the EU without a deal.

2.5 In the event, the UK left the EU with a deal on 31 January 2020 and entered the TP that will last until the 31 December 2020. Therefore, “exit day” now means 31 January 2020. However, the provisions in the statutory instruments should not now have effect from “exit day” (11pm on 31 January 2020) but from 11pm on 31 December 2020 (the end of the TP, referred to in legislation as “IP completion day”) While the European Union (Withdrawal Agreement) Act 2020 has changed the coming into force date of the statutory instruments, it will not change the meaning of references to “exit day” within the statutory instruments. We therefore need to make a number of amendments to ensure that the provisions in our statutory instruments apply as originally intended.

What will it now do?

2.6 The instrument replaces references to “exit day” with “IP completion day” so that the provisions will apply by reference to 11pm on 31 December 2020 rather than 11pm on 31 January 2020. This ensure that the statutory instruments made (see paragraph 6.3 of this Explanatory Memorandum) have the effect originally intended. For example:

- European Economic Interest Groupings (EEIGs) and Societas Europaea (SEs) that are registered in the UK at IP completion day will be automatically converted to a new UK corporate form at that time rather than retrospectively from 31 January 2020 (as would be the case without this instrument). This fulfils the original policy intention by ensuring that they have a clear legal identity in UK law once the UK is no longer bound by the EU frameworks on EEIGs and SEs. A number of other consequential actions or requirements will then take place or apply subsequent to IP completion day rather than 31 January 2020; for example the Registrar will issue a new certificate of registration and SEs registered in Member States with branches in the UK will have to register these under the Overseas Companies Regulations 2009 (2009/1801).
- Transitional provisions for certain groups of companies will apply from IP completion day rather than from 31 January 2020. These relate to the notification of additional information about overseas companies and about changes in corporate directors and secretaries; to permitted disclosure of information to credit reference agencies, credit institutions and financial institutions; and to the definition of regulated market in relation to subsidiaries acting as dealers in authorised securities and to investment companies. The amendments ensure that the transitional provisions do not apply before they are needed and reduce their value to those affected.
- The changes made to Part 15 of the Companies Act in relation to preparation and filing of accounts in the UK will have effect for financial years beginning on or after 31 December 2020 rather than 31 January 2020. These changes include the removal of some exemptions for EEA incorporated companies and groups from preparing and filing accounts in the UK.
- With regards to International Accounting Standards (IAS), the SI ensures that IAS as enshrined in EU law at IP completion day rather than on 31 January 2020 form the basis of “UK-adopted international accounting standards” for use in financial years beginning after 31 December 2020. The SI also includes provisions such that companies must begin to apply UK-adopted international accounting standards rather than EU-adopted IAS for accounts relating to financial years beginning on or after 31 December 2020 instead of 31 January 2020.

2.7 Separately, the SI also amends the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019 and the Statutory Auditors, Third Country Auditors and International Accounting Standards (Amendment) (EU Exit) Regulations 2019 to change how EEA auditors will be treated after the end of the TP. This is to avoid two effects that are no longer required:

- First, similar to the effects above, provisions in both these instruments would have commenced on 31 January 2020 rather than IP completion day as is now intended.

- Secondly and more specifically for the first of these two instruments, the effect would have been to introduce a transitional framework for EEA auditors and audit firms needing to seek recognition either to practice as statutory auditors in the UK or as a member of a required majority of recognised owners or managers of an audit firm in the UK. Some of these transitional measures and allowances for the continued application of the previous framework were time limited (to the end of 2020) and others would have applied indefinitely. These planned transitional measures will now not be needed because the TP has provided sufficient additional time and flexibility for firms to adjust to the new requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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, save where the amendments amend the European Public Limited-Liability Company (Amendment etc.) Regulations 2018 in respect of those that in turn amend the employment involvement regulations: the amendments to the European Public Limited-Liability Company (Employee involvement) (Great Britain) Regulations 2009 (SI 2009/2401) relates only to Great Britain and the amendments to the European Public Limited-Liability (Northern Ireland) Regulations 2009 (2009/2402) relate only to Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister of Climate Change and Corporate Responsibility Martin Callanan, has made the following statement regarding Human Rights:

“In my view the provisions of the Companies, Statutory Auditors etc. (Consequential Amendments) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 The Companies Act 2006 supplemented by a body of secondary legislation sets out the framework for company law in the United Kingdom.

6.2 This instrument amends a number of technical provisions that were made under the European Union (Withdrawal) Act 2018 to correct deficiencies in retained EU law, ensuring that they will apply as originally intended. These provisions will come into force on IP completion day by operation of Paragraph 1 of Schedule 5 of the European Union (Withdrawal Agreement) Act 2020.

- 6.3 This instrument makes amendments to the Companies Act 2006 and other secondary legislation by making amendments to the following EU Exit secondary legislation:
- The European Public Limited-Liability Company (Amendment etc.) Regulations 2018,
 - The European Economic Interest Grouping (Amendment) (EU Exit) Regulations 2018;
 - The Accounts and Reports (Amendment) (EU Exit) Regulations 2019;
 - The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019;
 - The Companies Limited Liability Partnerships and Partnership (Amendment etc.) (EU Exit) Regulations 2019;
 - The International Accounting Standards and European Public Limited Liability Company (Amendment etc.) (EU Exit) Regulations 2019;
 - The Statutory Auditors, Third Country Auditors and International Accounting Standards (Amendment) (EU Exit) Regulations 2019.

7. Policy background

What is being done and why?

- 7.1 In 2018 and 2019 the Department laid a number of statutory instruments amending the Companies Act 2006 and secondary legislation in preparation for the UK leaving the EU. In line with Government policy these instruments were drafted to prepare for a possible “no deal” exit. Statutory instruments that were made therefore contain references to “exit day” which, at the time of drafting, was intended to mean the day the UK left the EU without a deal.
- 7.2 As set out in paragraph 2.5, “exit day” is now defined as 31 January 2020, and a number of provisions should instead have effect from IP completion day. We therefore need to make amendments to ensure that the provisions in our statutory instruments continue to apply as originally intended.
- 7.3 This instrument applies to company law which is a transferred matter for Northern Ireland under section 4 for the Northern Ireland Act 1998. The Companies Act 2006 provides for a single company law regime applying to the whole of the UK, so that companies are UK companies rather than GB companies or Northern Ireland companies. EU Exit legislation which amends the Companies Act or legislation made under it therefore applies to the whole of the UK. This does not affect the legislative competence of Northern Ireland: company law remains a transferred matter, and the Companies Act could be separately amended or repealed in Northern Ireland if that were so desired.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because it is being made using powers in the European Union (Withdrawal Agreement) Act 2020 to amend, consequent on the Withdrawal Agreement, provisions made under the European Union (Withdrawal) Act 2018 that address

failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU.

9. Consolidation

9.1 This is not a consolidation

10. Consultation outcome

10.1 There has been no consultation.

11. Guidance

11.1 Specific guidance for this instrument is not required as the primary purpose is to ensure that the statutory instruments listed in paragraph 6.3 function as intended on IP completion day.

12. Impact

12.1 The purpose of this instrument is primarily to ensure that the instruments it amends (as set out in paragraph 6.3) function as originally intended. It does not place any new obligations on companies. Neither will it have any impact on charities, voluntary bodies or the public sector. As such, an Impact Assessment has not been prepared for this instrument. De minimis impact assessments were conducted for the seven instruments it amends, and in each case concluded that the impact would fall below £5m per annum.

12.2 The instrument also removes transitional arrangements (described in paragraph 2.7) which are no longer needed because of additional time and flexibility provided by the TP. As such and based on the de minimis assessment that was conducted for the original audit instruments, we are satisfied that the amendments made in this statutory instrument would have no material impact on the position for business. Therefore, an Impact Assessment has not been carried out.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. However, as set out in paragraph 12.1 above and elsewhere in this Explanatory Memorandum, it amends legislation already made to ensure that it functions as intended and does not place any new obligations on business. It will not therefore have any disproportionate impact on small business.

14. Monitoring & review

14.1 Though made under the European Union (Withdrawal Agreement) Act 2020, this instrument amends provisions made under the European Union (Withdrawal) Act 2018 for which no review clause is required. Consequently, no review clause is included for this instrument.

15. Contact

15.1 Elizabeth Beecher at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 4527 or email: elizabethmary.beecher@beis.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Andrew Death, Deputy Director for Business Frameworks, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Climate Change and Corporate Responsibility, Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.