

2020 No. 1470

EXITING THE EUROPEAN UNION

COMPETITION

**The State Aid (Revocations and Amendments) (EU Exit)
Regulations 2020**

Made - - - - *4th December 2020*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) and section 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

In accordance with paragraphs 1(3) and 8F(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020.

(2) Subject to paragraphs (3) and (4), these Regulations come into force on IP completion day(b).

(3) Paragraphs 3(3), 7(8)(b) and (c), 7(9) and 8 of Schedule 1 come into force immediately after IP completion day.

(4) Paragraphs 17 and 18 of Schedule 2 come into force immediately before IP completion day.

(5) Paragraph 2 of Schedule 1 does not extend to Northern Ireland.

Interpretation

2. In these Regulations—

“TFEU” means the Treaty on the Functioning of the European Union;

“Withdrawal Act” means the European Union (Withdrawal) Act 2018.

Cessation of Treaty rights

3. Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—

(a) 2018 c. 16. Paragraph 21 of Schedule 7 was amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1) section 41(4) and Schedule 5, Part 2, paragraphs 38 and 53(1) and (2).

(b) For the meaning of “IP completion day”, see Schedule 1 to the Interpretation Act 1978 (c. 30).

- (a) continue to be recognised and available in domestic law by virtue of section 4(1) of the Withdrawal Act; and
- (b) are derived from—
 - (i) Article 107(1) or 108(3) of the TFEU;
 - (ii) Article 346(1) of the TFEU, so far as Article 346(1) relates to Article 107(1) or Article 108(3) of the TFEU;
 - (iii) Article 61(1) or 62(1) of the EEA agreement^(a); or
 - (iv) Article 123 of the EEA agreement, so far as Article 123 relates to Article 61(1) or 62(1) of the EEA agreement;

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

Revocation of Annex to the EEA Agreement

4. Annex 15 of the EEA agreement, so far as it forms part of domestic law by virtue of section 3(1) of the Withdrawal Act, is omitted.

Revocation of EU regulations

5. The following Regulations, so far as they form part of domestic law by virtue of section 3(1) of the Withdrawal Act, are revoked—

- (a) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
- (b) Commission Regulation (EC) No 1627/2006 of 24 October 2006 amending Regulation (EC) No 794/2004 as regards the standard forms for notification of aid;
- (c) Commission Regulation (EC) No 1935/2006 of 20 December 2006 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
- (d) Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
- (e) Commission Regulation (EC) No 1147/2008 of 31 October 2008 amending Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.10 of its Annex 1;
- (f) Commission Regulation (EC) No 257/2009 of 24 March 2009 amending Regulation (EC) No 794/2004 as regards the supplementary information sheet for notification of aid to fisheries and aquaculture;
- (g) Commission Regulation (EC) No 1125/2009 of 23 November 2009 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.2, Part III.3 and Part III.7 of its Annex I;
- (h) Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest;
- (i) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;

(a) For the meaning of “EEA Agreement”, see Schedule 1 to the Interpretation Act 1978 (c. 30).

- (j) Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector;
- (k) Commission Regulation (EU) No 372/2014 of 9 April 2014 amending Regulation (EC) No 794/2004 as regards the calculation of certain time limits, the handling of complaints, and the identification and protection of confidential information;
- (l) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty;
- (m) Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- (n) Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector;
- (o) Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- (p) Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid;
- (q) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union;
- (r) Commission Regulation (EU) 2015/2282 of 27 November 2015 amending Regulation (EC) No 794/2004 as regards the notification forms and information sheets;
- (s) Commission Regulation (EU) 2016/246 of 3 February 2016 amending Annex I to Regulation (EC) No 794/2004 as regards the forms to be used for the notification of State aid in the agricultural and forestry sectors and in rural areas;
- (t) Commission Regulation (EU) 2016/2105 of 1 December 2016 amending Annex I to Regulation (EC) No 794/2004 as regards the form to be used for the notification of State aid to the fishery and aquaculture sector;
- (u) Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs;
- (v) Council Regulation (EU) 2018/1911 of 26 November 2018 amending Regulation (EU) 2015/1588 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid;
- (w) Commission Regulation (EU) 2018/1923 of 7 December 2018 amending Regulation (EU) No 360/2012 as regards its period of application;
- (x) Commission Regulation (EU) 2019/289 of 19 February 2019 amending Regulation (EU) No 702/2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union; and
- (y) Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments.

Revocation of EU decisions

6.—(1) The following decisions, so far as they form part of domestic law by virtue of section 3(1) of the Withdrawal Act, are revoked—

- (a) Council Decision (2010/787/EU) of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;
- (b) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest; and
- (c) any other EU decision which forms part of domestic law on and after IP completion day by virtue of section 3(1) of the European Union (Withdrawal) Act 2018 and is made under—
 - (i) the procedural regulation or predecessor legislation; or
 - (ii) Article 108(2) of the TFEU or Article 88(2) of the Treaty establishing the European Community.

(2) In this regulation—

“predecessor legislation” means—

- (a) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid; and
- (b) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty;

“procedural regulation” means Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

Amendments to legislation

7.—(1) Schedule 1, which makes amendments to retained EU law, has effect.

(2) Schedule 2, which makes amendments to other legislation, has effect.

Transitional and savings provisions

8. Schedule 3, which contains transitional and savings provisions, has effect.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

4th December 2020

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

Amendments to retained EU law

PART 1

Amendments to EU regulations

Amendments to Regulation (EC) No 1184/2006

1.—(1) Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of and trade in certain agricultural products^(a) is amended as follows.

- (2) In Article 1, omit “and of Article 108(1) and (3)”.
- (3) Omit Article 3.

Amendments to Regulation (EC) No 1370/2007

2.—(1) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No. 1191/69 and 1107/70^(b) is amended as follows.

- (2) In Article 5a, in paragraph 2—
 - (a) omit the comma after “decide”;
 - (b) omit “in compliance with State aid rules.”.

Amendments to Regulation (EU) No 575/2013

3.—(1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012^(c) is amended as follows.

- (2) In Article 31—
 - (a) in paragraph 1(b), for “are considered State aid by the Commission”, substitute “amount to financial support provided by the state”;
 - (b) in paragraph 1(c), for “pursuant to State aid- rules existing at the time”, substitute “amounting to financial support provided by the state in the United Kingdom, or pursuant to state aid rules in a third country, at the time”.
- (3) In Article 242(19), omit “subject to any applicable rules relating to State aid (as defined in the law of the United Kingdom after exit day)”.

Amendment to Regulation (EU) No 1305/2013

4.—(1) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005^(d) is amended as follows.

- (2) Omit Article 81.

(a) EUR 1184/2006.

(b) EUR 1370/2007, as amended by S.I. 2020/504.

(c) EUR 575/2013, as amended by S.I. 2018/1401, S.I. 2019/264, S.I. 2019/710 and S.I. 2019/1232.

(d) EUR 1305/2013, as amended by S.I. 2019/748, S.I. 2019/764 and S.I. 2019/1422.

Amendment to Regulation (EU) No 1307/2013

5.—(1) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009(a) is amended as follows.

(2) Omit Article 13.

Amendment to Regulation (EU) No 1308/2013

6.—(1) Regulation 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007(b) is amended as follows.

(2) Omit Article 211.

Amendments to Regulation (EU) No 1303/2013

7.—(1) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006(c) is amended as follows.

(2) In Article 37—

- (a) in paragraph (1), omit “State aid and”;
- (b) in paragraph (2), in point (b), omit “possible State aid implications,”;
- (c) in paragraph (4)—
 - (i) omit “without prejudice to applicable Union State aid rules, and”;
 - (ii) omit “within the limits of applicable Union State aid rules and”;
- (d) in paragraph (7), omit “applicable Union State aid rules shall be respected and”;
- (e) in paragraph (9), omit “, subject to applicable Union State aid rules,”;
- (f) omit paragraph (12).

(3) In Article 42(3), omit “State aid rules are complied with and that”.

(4) In Article 43a, omit paragraph (4).

(5) In Article 61, omit paragraph (8).

(6) In Article 62, omit “State aid and”.

(7) In Article 65(8), omit point (e).

(8) In Article 71—

- (a) in paragraph (1), omit “or within the period of time set out in State aid rules, where applicable,”;
- (b) in paragraph (2), omit the final sentence;
- (c) omit paragraph (3).

(9) In Annex 11, in the table in Part 2, omit row 5.

(a) EUR 1307/2013, as amended by section 5 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c. 2) and by S.I. 2019/207 and S.I. 2020/91.

(b) EUR 1308/2013, as amended by S.I. 2019/821, S.I. 2019/831 and S.I. 2019/1422.

(c) EUR 1303/2013, as amended by S.I. 2019/748, S.I. 2019/785 and S.I. 2019/1422.

Amendment of Commission Regulation (EU) 808/2014

8.—(1) Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(a) is amended as follows.

(2) In Annex 1, omit paragraph 13.

Amendment to Regulation (EU) No 1144/2014

9.—(1) Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008(b) is amended as follows.

(2) Omit Article 27.

Amendments to Regulation (EU) 2019/943

10.—(1) Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)(c) is amended as follows.

(2) In Article 5, in paragraph 2—

(a) in point (c)—

(i) after “the Commission”, insert “before IP completion day”;

(ii) after “Articles 107, 108, and 109 TFEU”, insert “as those Articles had effect in EU law immediately before IP completion day”.

(b) in the final sentence, omit “, without prejudice to Articles 107 and 108 TFEU,”.

(3) In Article 12—

(a) in paragraph 2, omit “Without prejudice to Articles 107, 108 and 109 TFEU,”;

(b) in paragraph 3, in the last sentence, omit “Without prejudice to Articles 107, 108 and 109 TFEU,”;

(c) in paragraph 4, omit “Without prejudice to Articles 107, 108 and 109 TFEU,”.

(4) In Article 20, in paragraph 3, omit “as a part of the State aid process”.

(5) In Article 21, in paragraph 1, omit “in accordance with Article 107, 108 and 109 of the TFEU”.

PART 2

Amendments to Transparency Regulations

Amendments to the Financial Transparency (EC Directive) Regulations 2009

11.—(1) The Financial Transparency (EC Directive) Regulations 2009(d) are amended as follows.

(2) In regulation 2(1)—

(a) in the definition of “compensation”, for “Article 87”, substitute “Article 107(1)”;

(b) in the definition of “entrusted”, for “Article 86(2)”, substitute “Article 106(2)”;

(a) EUR 808/2014, as amended by S.I. 2019/770.

(b) EUR 1144/2014, as amended by S.I. 2019/821 and S.I. 2019/831.

(c) EUR 2019/943, as amended by S.I. 2020/1006.

(d) S.I. 2009/2331, amended by S.I. 2011/1043 and S.I. 2011/1275.

- (c) in the definition of “Financial Transparency Directive”, after “certain undertakings”, insert “(as that Directive applies to the United Kingdom under Article 10 of the Northern Ireland Protocol)”;
 - (d) after the definition of “Financial Transparency Directive”; insert —
 - ““Northern Ireland Protocol” means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;”;
 - (e) in the definition of “public undertaking operating in the manufacturing sector”, after “Community”, insert “(as that Regulation had effect in EU law immediately before IP completion day)”;
 - (f) in the definition of “services of general economic interest”, for “Article 86(2)”, substitute “Article 106(2)”;
 - (g) in the definition of “Treaty”, for “establishing the European Community”, substitute “on the Functioning of the European Union”.
- (3) In regulation 2(2), for “Article 296”, substitute “Article 346(1)”.
- (4) After regulation 2(2), insert—
- “(3) In these Regulations a reference to Article 106(2), Article 107(1) or Article 346(1) of the Treaty is a reference to that Article as it applies to the United Kingdom under Article 10 of the Northern Ireland Protocol.”.
- (5) For regulation 3(5)(b), substitute—
- “(b) in relation to any public funds which—
- (i) were received by a public undertaking prior to IP completion day in relation to services supplied by a public undertaking which were not liable to affect trade between Member States (within the meaning of the Treaty as it applied to the United Kingdom prior to IP completion day) to an appreciable extent; or
 - (ii) are received by a public undertaking on or after IP completion day in relation to activities carried out by a public undertaking which are not liable to affect that trade between Northern Ireland and the European Union which is subject to the Northern Ireland Protocol (within the meaning of Article 10 of the Northern Ireland Protocol) to an appreciable extent.”.
- (6) In regulation 6(3)—
- (a) in sub-paragraph (a), for “the European Union”, substitute “retained EU law”;
 - (b) for sub-paragraph (b), substitute—
 - “(b) in relation to —
 - (i) services which were supplied by an undertaking prior to IP completion day and which were not liable to affect trade between Member States (within the meaning of the Treaty as it applied to the United Kingdom prior to IP completion day) to an appreciable extent; or
 - (ii) activities carried out by an undertaking on or after IP completion day and which are not liable to affect that trade between Northern Ireland and the European Union which is subject to the Northern Ireland Protocol (within the meaning of Article 10 of the Northern Ireland Protocol) to an appreciable extent.”;
 - (c) in sub-paragraph (e), for “Article 86(2)”, substitute “Article 106(2)”.

SCHEDULE 2

Regulation 7(2)

Amendments to other legislation

PART 1

Amendments to primary legislation

Banking Act 2009

- 1.—(1) The Banking Act 2009(a) is amended as follows.
- (2) In section 3(1)(b), for the definition of “extraordinary public financial support” substitute—
““extraordinary public financial support” means financial assistance that is provided by the Treasury or the Bank of England in order to preserve or restore the viability, liquidity or solvency of a bank, a banking group company or a group which includes a bank, other than—
 - (a) ordinary market assistance offered by the Bank of England on its usual terms, or
 - (b) a liquidity facility which is provided—
 - (i) to a bank that is facing temporary liquidity problems but is solvent, and
 - (ii) by the Bank of England on its own initiative and on its own terms,and for the purposes of this definition “group” (other than in “banking group company”) has the meaning given in subsection (2)(b);”.
- (3) Omit section 145A(c).
- (4) Omit section 256A(d) (and the italic heading before it).

Financial Services Act 2012

2. Omit section 103 of the Financial Services Act 2012(e).

Financial Services (Banking Reform) Act 2013

3. Omit paragraph 11 of Schedule 2 to the Financial Services (Banking Reform) Act 2013(f).

PART 2

Amendments to subordinate legislation

Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003

- 4.—(1) The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003(g) is amended as follows.
- (2) In the Schedule, for the definition of “aid” in paragraph 1, substitute—
““aid” means a measure which—

-
- (a) 2009 c. 1.
 - (b) Section 3 was amended by S.I. 2014/3329, S.I. 2016/1239, S.I. 2018/1394 and S.I. 2019/1212.
 - (c) Section 145A was inserted by section 103 of the Financial Services Act 2012 (c. 21) and amended by S.I. 2014/3329.
 - (d) Section 256A was inserted by paragraph 11 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c. 33) and amended by S.I. 2014/3329.
 - (e) 2012 c. 21.
 - (f) 2013 c. 33.
 - (g) S.I. 2003/1370, amended by S.I. 2012/1809; there are other amending instruments but none is relevant.

- (a) fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement, and
- (b) is specific within the meaning of Article 2 of that Agreement, irrespective of whether the recipient deals in goods or services;”.

Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003

5.—(1) The Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003(a) is amended as follows.

(2) In the Schedule, in paragraph 4—

- (a) the existing text is renumbered as sub-paragraph (1);
- (b) in sub-paragraph (1), omit “(within the meaning of Article 87 of the EC Treaty)”;
- (c) at the end, insert—

“(2) In this paragraph “aid” means a measure which—

- (a) fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement, and
- (b) is specific within the meaning of Article 2 of that Agreement, irrespective of whether the recipient deals in goods or services.”.

Water Mergers (Determination of Turnover) Regulations 2004

6.—(1) The Water Mergers (Determination of Turnover) Regulations 2004(b) are amended as follows.

(2) In the Schedule, for paragraph 1, substitute—

“**1.** In this Schedule “aid means a measure which—

- (a) fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement, and
- (b) is specific within the meaning of Article 2 of that Agreement, irrespective of whether the recipient deals in goods or services.”.

Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005

7.—(1) The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005(c) are amended as follows.

(2) For regulation 2(2), substitute—

“(2) Paragraph (1) shall not apply in relation to a partially guaranteed scheme where—

- (a) the scheme was in existence immediately prior to IP completion day; and
- (b) the application of paragraph (1) immediately prior to IP completion day would have given rise to State aid that was incompatible with the internal market within the meaning of Article 107 of the Treaty as it had effect in the United Kingdom immediately prior to IP completion day.”.

(a) S.I. 2003/2712.

(b) S.I. 2004/3206, amended by S.I. 2012/1809; there are other amending instruments but none is relevant.

(c) S.I. 2005/277, amended by S.I. 2010/196; there are other amending instruments but none is relevant.

Water Industry (Determination of Turnover for Penalties) Order 2005

8.—(1) The Water Industry (Determination of Turnover for Penalties) Order 2005(a) is amended as follows.

(2) In article 2(1), for the definition of “aid” substitute—

““aid” means a measure which—

- (a) fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement, and
- (b) is specific within the meaning of Article 2 of that Agreement, irrespective of whether the recipient deals in goods or services.”.

Pension Protection Fund (Entry Rules) Regulations 2005

9.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(b) are amended as follows.

(2) For regulation 2(1A), substitute—

“(1A) Paragraph (1)(d) shall not apply in relation to a scheme where—

- (a) the scheme was in existence immediately prior to IP completion day; and
- (b) the application of paragraph (1)(d) immediately prior to IP completion day would have given rise to State aid that was incompatible with the internal market within the meaning of Article 107 of the Treaty as it had effect in the United Kingdom immediately prior to IP completion day.”.

Mobile Roaming (European Communities) Regulations 2007

10.—(1) The Mobile Roaming (European Communities) Regulations 2007(c) are amended as follows.

(2) In regulation 6—

- (a) in paragraph (4), omit “(within the meaning of Article 107 of the Treaty on the Functioning of the European Union)”;
- (b) at the end, insert—

“(5) In this regulation “aid” means a measure which—

- (a) fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement, and
- (b) is specific within the meaning of Article 2 of that Agreement, irrespective of whether the recipient deals in goods or services.”.

Community Infrastructure Levy Regulations 2010

11.—(1) The Community Infrastructure Levy Regulations 2010(d) are amended as follows.

(2) In regulation 2(1), in the definition of “discretionary charitable relief”, omit “or 45”.

(3) In regulation 41—

- (a) in paragraph (1), omit the definition of “State aid”;
- (b) in paragraph (2), omit “or 45”.

(4) In regulation 42A—

- (a) in paragraph (1), omit “Subject to paragraphs (5) and (6),”;

(a) S.I. 2005/477, amended by S.I. 2012/1809; there are other amending instruments but none is relevant.
(b) S.I. 2005/590, amended by S.I. 2010/196; there are other amending instruments but none is relevant.
(c) S.I. 2007/1933, amended by S.I. 2012/1809; there are other amending instruments but none is relevant.
(d) S.I. 2010/948, amended by S.I. 2014/385; there are other amending instruments but none is relevant.

- (b) omit paragraph (5) and (6).
- (5) In regulation 42B(4), omit “, and subject to regulation 42A(5),”.
- (6) In regulation 42C(3), omit sub-paragraph (b) and the “or” before it.
- (7) In regulation 43(2)—
 - (a) after sub-paragraph (a), insert “or”;
 - (b) omit sub-paragraph (c) and the “or” before it.
- (8) In regulation 44, omit paragraph (5).
- (9) Omit regulation 45.
- (10) In regulation 46—
 - (a) in paragraph (1)(a)(i), omit “or 45 (or both)”;
 - (b) in paragraph (2)(a)(i), omit “or 45 (or both)”.
- (11) In regulation 54A—
 - (a) in paragraph (1), omit “Subject to paragraphs (10) and (11),”;
 - (b) omit paragraphs (10) and (11).
- (12) In regulation 54B(4), omit “, and subject to regulation 54A(10),”.
- (13) In regulation 54D(3), omit sub-paragraph (b) and the “or” before it.
- (14) In regulation 55(3)(c), omit paragraph (iii) and the “and” before it.

Climate Change Agreements (Administration) Regulations 2012

12.—(1) The Climate Change Agreements (Administration) Regulations 2012(a) are amended as follows.

- (2) In regulation 17, omit paragraphs (1) and (2).

Electricity Capacity Regulations 2014

13.—(1) The Electricity Capacity Regulations 2014(b) are amended as follows.

- (2) In regulation 26—
 - (a) omit paragraph (3)(a);
 - (b) omit paragraph (5);
 - (c) in paragraph (7), for “Paragraphs (5)(a) and (6) are” substitute “Paragraph (6) is”.
- (3) In regulation 28—
 - (a) in paragraph (1), for “26(5) or (6)” substitute “26(6)”;
 - (b) in paragraph (4), for “26(5)(a) or (6)” substitute “26(6)”.

Payment of Pension Levies for Past Periods Regulations 2014

14.—(1) The Payment of Pension Levies for Past Periods Regulations 2014(c) are amended as follows.

- (2) In regulation 3(7), after “794/2004”, insert “(as it had effect in the United Kingdom immediately prior to IP completion day)”.

(a) S.I. 2012/1976, to which there are amendments not relevant to these Regulations.
 (b) S.I. 2014/2043, amended by S.I. 2014/3354 and S.I. 2019/862.
 (c) S.I. 2014/2939.

Bank Recovery and Resolution (No. 2) Order 2014

- 15.**—(1) The Bank Recovery and Resolution (No. 2) Order 2014(a) is amended as follows.
- (2) In article 161(3), omit sub-paragraph (b).
 - (3) In article 168(3), omit sub-paragraph (b).

Open Internet Access (EU Regulation) Regulations 2016

- 16.**—(1) The Open Internet Access (EU Regulation) Regulations 2016(b) are amended as follows.
- (2) In regulation 24—
 - (a) in paragraph (4), omit “(within the meaning of Article 107 of the Treaty on the Functioning of the European Union)”;
 - (b) at the end, insert—
 - “(5) In this regulation “aid” means a measure which—
 - (a) fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement, and
 - (b) is specific within the meaning of Article 2 of that Agreement, irrespective of whether the recipient deals in goods or services.”.

Capital Requirements (Amendment) (EU Exit) Regulations 2018

- 17.**—(1) The Capital Requirements (Amendment) (EU Exit) Regulations 2018(c) are amended as follows.
- (2) In regulation 86, omit paragraphs (a) and (b).

Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

- 18.**—(1) The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019(d) are amended as follows.
- (2) Omit regulation 68.
 - (3) Omit regulation 113.

Intra-EU Communications (EU Regulation) Regulations 2019

- 19.**—(1) The Intra-EU Communications (EU Regulation) Regulations 2019(e) are amended as follows.
- (2) In regulation 9—
 - (a) in paragraph (4), omit “(within the meaning of Article 107 of the Treaty on the Functioning of the European Union)”;
 - (b) at the end, insert—
 - “(5) In this regulation “aid” means a measure which—
 - (a) fulfils the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement, and

(a) S.I. 2014/3348, amended by S.I. 2016/1239 and S.I. 2017/80.
(b) S.I. 2016/607.
(c) S.I. 2018/1401.
(d) S.I. 2019/821.
(e) S.I. 2019/980.

- (b) is specific within the meaning of Article 2 of that Agreement, irrespective of whether the recipient deals in goods or services.”.

SCHEDULE 3

Regulation 8

Transitional and savings provisions

Claims before a court or tribunal relating to State aid infringement before IP completion day

1.—(1) In this paragraph, “State aid breach” means a breach or alleged breach of—

- (a) the prohibition in Article 107(1) of the TFEU; and
- (b) the obligation in Article 108(3) of the TFEU.

(2) The cessation of the rights, powers, liabilities, obligations, restrictions, remedies and procedures provided for by regulation 4 and the revocations provided for by regulations 5, 6 and 7 do not affect the ability of any person on or after IP completion day—

- (a) to continue any existing claim (or defence to such a claim) in relation to a State aid breach which occurred before IP completion day in proceedings before a court or tribunal in the United Kingdom; or
- (b) to begin any new claim (or defence to such a claim) in relation to a State aid breach which occurred before IP completion day in proceedings before a court or tribunal in the United Kingdom which the person could have made before IP completion day.

(3) If a person has acquired a right to begin proceedings from another person (whether by operation of law or otherwise), the reference in subparagraph (2)(b) to proceedings which a person could have made before IP completion day includes proceedings which that other person could have begun before IP completion day.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (the Act) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of State aid. The main amendments made by these Regulations are revoking direct EU legislation and Treaty provisions that will become retained EU law on IP completion day. This will not affect the application of EU State aid law under Article 10 and Annex 5 of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement which will have effect in domestic law under section 7A of the Act.

Regulation 3 provides that the rights, powers, liabilities, obligations, remedies and procedures relating to State aid which continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018 cease to be recognised and available in domestic law.

Regulation 4 revokes Annex 15 of the EEA agreement, regulations 5 and 6 revoke direct EU regulations and decisions insofar as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018.

Regulation 7 introduces Schedules 1 and 2 which make consequential amendment to other retained EU law and UK domestic legislation and regulation 8 introduces Schedule 3 which makes transitional provision and savings.

An impact assessment has not been produced for this instrument as no, or no significant impact on the private or voluntary sector is foreseen.

© Crown copyright 2020

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK202012071039 12/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/1470>

ISBN 978-0-34-821679-0



9 780348 216790