

## **STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS**

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### **PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL discontinuing seasonal changes of time and repealing Directive 2000/84/EC**

Submitted by the Department for Business, Energy and Industrial Strategy on 11 October 2018.

#### **SUBJECT MATTER**

1. The proposal concerns the twice-yearly changing of the clocks, often known as 'Daylight Saving'. The Commission is proposing that these twice-yearly changes should be discontinued.
2. The Commission plan to introduce a new Directive, which will repeal the current Directive on summertime arrangements, 2000/84/EC. The current Directive mandates Member States to change from wintertime to summertime on the last Sunday in March and to switch back to wintertime on the last Sunday of October. The Commission proposes that the final mandatory changing of the clocks will take place on 31 March 2019, though this will depend on the progress of the Directive through the legislative process. Each Member State will have to decide whether to stay on permanent summertime or wintertime. If they opt for wintertime, they can then change the clocks back one last time in late October 2019. After that, Member States will retain competence over time zones but will no longer be able to change the clocks twice yearly.
3. British Summer Time (BST) has changed on several occasions over the 20th century, from double summer time during the Second World War (GMT+2) to continuous summer time (GMT+1) all year round between 1968-1971. The British Summer Time Act was passed in 1972 which started the tradition of changing the clocks in late March and late October. The Summer Time Order 2002 implemented Directive 2000/84/EC in the UK, which stipulated that all Member States adjust their clocks on the last Sunday in March and October.

#### **SCRUTINY HISTORY**

4. Not applicable as this is a new proposal.

## **MINISTERIAL RESPONSIBILITY**

5. The Secretary of State for Business, Energy and Industrial Strategy has overall responsibility for this matter because of the implications for business and the implications for the use of energy.
6. This proposal has wide ranging implications so many Ministers have an interest including Secretary of State for Transport, the Secretary of State for Health and Social Care, the Secretary of State for Education, the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Digital, Culture, Media and Sport.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

7. Timescales, time zones and the subject matter of the Summer Time Act 1972 are reserved to Westminster for Scotland and Wales.
8. There is no equivalent reservation or exception for Northern Ireland. However, the Northern Ireland Act 1998 does provide that obligations under EU law are an excepted matter. The Summer Time Order 2002, which implements the last Directive on this subject, is a single instrument which extends to Great Britain and Northern Ireland.
9. The Devolved Administrations have been consulted on this Explanatory Memorandum.

## **LEGAL AND PROCEDURAL ISSUES**

### Legal basis

10. Article 114 of the Treaty on the Functioning of the European Union (TFEU) is the legal basis for the proposal. This is also the legal basis of Directive 2000/84/EC. The Justice and Home Affairs (JHA) opt-in is not applicable to this proposal.

### European Parliament Procedure

11. Ordinary legislative procedure.

### Voting Procedure

12. Qualified majority.

### Impact on United Kingdom Law

13. Directive 2000/84/EC is implemented in the UK by the Summertime Order 2002 which in turn updates the Summer Time Act 1972.

## Application to Gibraltar

14. The territorial scope of the proposed Directive is based on Article 355 of the Treaty on the Functioning of the European Union and, prima facie, includes Gibraltar. Although part of the purpose of the proposed Directive is to promote the free movement of goods, this is only one part of a wider purpose concerning the smooth functioning of the internal market. Our view is therefore that proposed Directive will apply to Gibraltar.

## Fundamental rights analysis

15. No fundamental rights issues arise

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

16. The Commission proposal states that the text has "EEA relevance". If the proposal is adopted, it is therefore likely it would be incorporated into the EEA agreement.

## **SUBSIDIARITY**

17. The EU has competence to bring forward legislative proposals that ensure the proper functioning of the internal market as set out in Article 26 of the Treaty on the Functioning of the European Union (TFEU). In this proposal the Commission states that *"As indicated by evidence, it is important to have Union rules in this area to ensure the proper functioning of the internal market. Given the increased questioning of the current summertime arrangements, the only alternative available to continue ensuring a harmonised approach is a coordinated abolishment of bi-annual clock changes, as outlined in the current proposal."* Article 114 of the TFEU is, in this context, an appropriate legal basis to advance the harmonisation of the single market. Were the Member States to have exclusive competence in this area there is a risk of uncoordinated changes in time across the Union, which could be detrimental to the internal market.
18. However, the Commission have not presented a strong case for the need for legislation to achieve the objective set out in the TFEU on the proper functioning of the internal market. The existing Directive 2000/84/EC already ensures harmonisation of time across the Union and the Commission does not demonstrate how the proposal would enhance this.
19. With regards to proportionality, the Commission states in its proposal that it does not go beyond "what it necessary to achieve the objective of continuing to safeguard the proper functioning of the internal market as regards time arrangements." While the evidence to support maintaining harmonisation of time in the Union is strong, the existing Directive provides for this already and thus the argument for harmonisation alone is not sufficient to justify the proposal under consideration.

## **POLICY IMPLICATIONS**

20. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
21. The practical implications of the proposal in its current form would be that the UK would be required to notify the Commission of our choice of time zone (for example, permanent summertime or wintertime) by 27 April 2019. The UK would then, in October 2019, either stay on summertime (GMT+1) or turn the clocks back and remain on wintertime (GMT) henceforth. The Directive would prevent any further seasonal time changes.
22. The proposal would impact all citizens in the UK and would require public consultation and assessment of the impact on businesses across all sectors of the economy.
23. A further concern is that the Commission proposal does not present a strong evidence base that would strengthen the case as to why the change is necessary and that demonstrates the benefits for the Union, Member States and their citizens.

## **CONSULTATION**

24. We have not carried out a consultation on this issue.

## **IMPACT ASSESSMENT**

25. The European Commission has not produced a full impact assessment to accompany the proposal. They have instead produced a short impact assessment as part of the main document.

## **FINANCIAL IMPLICATIONS**

26. The Commission has stated that the proposal does not require additional resources from the European Union's budget.

## **TIMETABLE**

27. Working group negotiations have commenced in European Council. As noted above, the European Commission wishes for the Directive to take effect from 1 April 2019. In order to achieve this, it is likely that Council would have to agree a General Approach by the end of 2018. Whether this is achievable will depend on the pace of negotiations in Council and in the European Parliament.

A handwritten signature in black ink that reads "Kelly Tolhurst". The signature is written in a cursive style with a horizontal line underlining the name.

**Kelly Tolhurst MP**

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

