

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

AND

THE SOCIAL SECURITY (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 These instruments amend or remove provisions (e.g. descriptions, references) in the UK's social security legislation which will be deficient or inoperable following the United Kingdom's withdrawal from the European Union ('EU'). They also amend the Social Security Administration Act 1992¹ to make necessary consequential changes to the power to implement reciprocal agreements. These are technical amendments in order to reflect the UK's position as an independent state of the EU.
- 2.2 The Northern Ireland regulations make corresponding amendments to analogous Northern Ireland legislation.

What did any relevant EU law do before exit day?

- 2.3 British domestic legislation contains various instances of references to EU law and to the UK as a Member State of the EU, which will no longer be the case once the UK withdraws from the EU. The EU (Withdrawal) Act 2018 contains a power to make secondary legislation to 'fix' legal inoperabilities and other deficiencies that will arise on exit in retained EU law, so that the converted law continues to operate effectively post exit. This includes both domestic law and directly applicable EU law. The EU (Withdrawal) Act 2018 also contains a power to make amendments as a consequence of that Act.

Why is it being changed?

- 2.4 These instruments make minor changes to domestic legislation to reflect that the UK is no longer a Member State from exit day.

What will it now do?

- 2.5 This falls into two groups:

¹ <http://www.legislation.gov.uk/ukpga/1992/5/contents/enacted>

- 1) Where the UK is explicitly/implicitly referred to as a Member State of the EU – in these instances an amendment would be made to reflect the UK’s new status as a state independent of the EU.
 - 2) Amending the existing power in primary legislation to implement and give effect to international agreements in the area of social security, in order to extend this from not just implementing agreements with individual states, but also to implement those reached with international/supranational organisations (i.e. the EU). This power to implement an agreement with the EU was not necessary while the UK was a Member State of the EU. This amendment therefore reflects the UK’s new position as independent of the EU.
- 2.6 The Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 (The ‘Northern Ireland Regulations’) make corresponding amendments to analogous Northern Ireland legislation.

3. Matters of special interest to Parliament

Matters of special interest to 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 The territorial application of the Social Security (Amendment) (EU Exit) Regulations 2018 is Great Britain.
- 3.3 The territorial application of the Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 is Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of these instruments is the United Kingdom.
- 4.2 The territorial application of the Social Security (Amendment) (EU Exit) Regulations 2018 is Great Britain.
- 4.3 The territorial application of the Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 is Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Minister for Employment, Alok Sharma, has made the following statement regarding Human Rights:

“In my view the provisions of the Social Security (Amendment) (EU Exit) Regulations 2018 and the Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The EU (Withdrawal) Act 2018² (“the Act”) contains a power to make secondary legislation to ‘fix’ legal inoperabilities and other deficiencies that will arise on exit in retained EU law. This includes both domestic law and directly applicable EU law. It

² <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

also includes a power to make amendments consequential on the provisions in the Act that relate to the UK's withdrawal from the EU.

- 6.2 These instruments make two categories of amendments.
- 6.3 First, they amend section 179 of the Social Security Administration Act 1992³ (and section 155 of Social Security Administration (Northern Ireland) Act 1992⁴). These Acts provide a power to implement and give statutory effect to reciprocal agreements related to social security with countries outside the UK. These instruments amend this existing power to implement international agreements related to social security, so that agreements with international organisations (i.e. the EU) can be implemented, and so that retained direct principal EU legislation (within the meaning of section 7 of the Act) can be amended in order to give effect to such an agreement.
- 6.4 Second, they amend various provisions of UK domestic legislation that contain references to the UK as a Member State of the EU. These will no longer be accurate after the UK has withdrawn from the EU. These include amendments to:
- the definition of “prescribed area” in relation to continental shelf workers. These refer to areas within the territory of Member States other than the UK. The words “other than the UK” will no longer be required when the UK is not a Member State.
 - the meaning of residence within an EU or EEA State, which refer to States other than the UK.
 - legislation concerning the recovery and offsetting of benefits paid by States other than the UK.
- 6.5 The same amendments are being made to the corresponding Northern Ireland legislation.

7. Policy background

What is being done and why?

- 7.1 British domestic legislation contains various instances of references to EU law and to the UK as a Member State of the European Union, which will no longer be the case once the UK withdraws from the EU. The EU (Withdrawal) Act 2018 contains a power to make secondary legislation to ‘fix’ legal inoperabilities and other deficiencies that will arise on exit in retained EU law, so that the converted law continues to operate effectively post exit. This includes both domestic law and directly applicable EU law. The EU (Withdrawal) Act 2018 also contains a power to make consequential changes.
- 7.2 These instruments make minor changes to domestic legislation to reflect that the UK is no longer a Member State from exit day. This falls into two groups:
- 1) Where the UK is explicitly/implicitly referred to as a Member State of the EU – in these instances an amendment would be made to reflect the UK's new status as a state independent of the EU.
 - 2) Amending the existing power in primary legislation to implement and give effect to international agreements in the area of social security, in order to

³ <http://www.legislation.gov.uk/ukpga/1992/5/section/179/enacted>

⁴ <http://www.legislation.gov.uk/ukpga/1992/8/contents>. An updated version of this legislation is available on the Department for Communities Blue Volumes website (<http://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx>).

extend this from not just implementing agreements with individual states, but also to implement those reached with international/supranational organisations (i.e. the EU). This power to implement an agreement with the EU was not necessary while the UK was a Member State of the EU. This amendment therefore reflects the UK's new position as independent of the EU.

- 7.3 The Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 (The 'Northern Ireland Regulations') make corresponding amendments to analogous Northern Ireland legislation.
- 7.4 The Northern Ireland Regulations apply to policy areas which are transferred matters for Northern Ireland under the Northern Ireland Act 1998⁵. 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 in the absence of 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 These instruments are being made using the power in section 8 and section 23 of the European Union (Withdrawal) Act 2018 in order to address deficiencies in social security domestic legislation and consequential changes arising from the withdrawal of the United Kingdom from the EU. 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 Informal consolidated text of instruments is available to the public free of charge via 'the National Archives' website www.legislation.gov.uk.
- 9.2 Informal consolidated text of social security law in Northern Ireland is available free of charge to the public via the Department for Communities website <http://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx>

10. Consultation outcome

- 10.1 A formal consultation has not been carried out by the Department for Work and Pensions. No consultation was considered necessary for these changes as they make minor and technical amendments designed to make existing DWP domestic legislation operate effectively on the day the UK leaves the EU.

⁵ <https://www.legislation.gov.uk/ukpga/1998/47/contents>

10.2 The Department for Communities in Northern Ireland have agreed the text of the Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018.

11. Guidance

11.1 Guidance is not required or being published alongside these instruments.

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 these instruments because they only make purely technical changes to ensure social security law can operate effectively following EU Exit, and as such do not give rise to any new costs and they do not have any financial or economic impact beyond the status quo.

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 EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Paris Rayman-Bacchus at the Department for Work and Pensions Telephone: 0207 340 4342 or email: paris.rayman-bacchus@dwp.gsi.gov.uk can be contacted with any queries regarding the instruments.

15.2 Neil Hodgson, Head of EU Exit Policy at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alok Sharma MP, Minister for Employment at the Department for Work and Pensions 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 Employment, Alok Sharma has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Social Security (Amendment) (EU exit) Regulations 2018 and The Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 do no more than is appropriate. This is the case because they do no more than prevent, repeal or mitigate deficiencies in otherwise retained EU law arising from the withdrawal of the UK from the EU”.

2. Good reasons

- 2.1 The Minister for Employment, Alok Sharma has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

- 2.2 “In my view there are good reasons for the provisions in these instruments, and I have concluded they are a reasonable course of action. These reasons are detailed in Section 7 of this explanatory memorandum.”

3. Equalities

- 3.1 The Minister for Employment, Alok Sharma has made the following statement(s):
“The instruments do 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”.

- 3.2 The Minister for Employment, Alok Sharma has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to these instruments, I, Alok Sharma 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. This Act does not extend to Northern Ireland, and as the Social Security (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland.”

4. Explanations

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