

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN UNION (WITHDRAWAL) ACT 2018 (CONSEQUENTIAL**  
**MODIFICATIONS AND REPEALS AND REVOCATIONS) (EU EXIT)**  
**REGULATIONS 2019**

**2019 No. 628**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Exiting the European Union and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to ensure that the UK statute book accommodates “retained EU law”, a new body of domestic law introduced by the European Union (Withdrawal) Act 2018 (“the EUWA 2018”), coherently and effectively after the UK’s withdrawal from the EU.
- 2.2 This instrument amends the Interpretation Act 1978, the Interpretation and Legislative Reform (Scotland) Act 2010 (“the ILRA 2010”) and the Interpretation Act (Northern Ireland) 1954, which set out general rules of interpretation for legislation.
- 2.3 This instrument makes provision for how non-ambulatory cross-references to European Union legislation up to the point immediately before exit should be read. Non-ambulatory references are references which are not automatically updated.<sup>1</sup> It also makes provision for how cross-references to EU legislation post-exit should be read.
- 2.4 It also adds a number of words and expressions to the ILRA 2010 and the Interpretation Act (Northern Ireland) 1954 and provides general rules of interpretation in light of the introduction of “retained EU law”.
- 2.5 These Regulations repeal and revoke primary and secondary legislations in consequence of the repeal of the European Communities Act 1972 (“the ECA 1972”) and arising from the withdrawal of the UK from the EU. These repeals and revocations are needed to remove redundant provisions of domestic legislation. These Regulations also make transitional and savings provisions in relation to the repeals.

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<sup>1</sup> Provision is made for ambulatory cross-references to European Union legislation, made up to the point immediately before exit, in paragraphs 1 and 2 of schedule 8 to the EUWA 2018: <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

## *Explanations*

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

- 2.6 This instrument does not amend retained direct EU legislation<sup>2</sup> (“RDEUL”), rather it makes general interpretative provision and makes various repeals and revocations to EU-derived domestic legislation.
- 2.7 This EU-derived domestic legislation is domestic law rather than EU law. The legislation being repealed and revoked for the most part gave effect in UK law to the European Union accession treaties. More detailed information on the repeals and revocations is found in section 7 of this explanatory memorandum.
- 2.8 The interpretation legislation amended by this instrument is not EU law; it is domestic legislation, which is being updated in consequence of the EUWA 2018 and the UK’s withdrawal from the EU.

### Why is it being changed?

- 2.9 Provisions are being made relating to cross-references to EU legislation, so that it is clear how these cross-references are to be read on and after exit day.
- 2.10 Certain EU-derived domestic legislation is being repealed or revoked, because it becomes redundant in consequence of the repeal of the ECA 1972 and the UK’s withdrawal from the EU. The repeals and revocations are being made to ensure a clean and tidy statute book after exit, and to ensure that the UK’s legal system continues to function effectively. More information on these changes is included in section 7.

### What will it now do?

- 2.11 The interpretation provisions on non-ambulatory cross-references to EU legislation made up to the point immediately before exit day and cross-references to EU legislation made after exit day provide that where reference is made to EU legislation which forms part of RDEUL by virtue of section 3 of the EUWA 2018, that reference (with limited exception) is to be read as reference to the RDEUL version of the instrument.
- 2.12 The EU-derived domestic legislation that is redundant is being revoked or repealed and will no longer have effect. It will no longer sit on the UK statute book, reflecting the UK’s new status as a non-EU member state.

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

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

- 3.1 This instrument was laid in draft as a proposed negative for sifting before the House of Commons European Statutory Instrument Committee (“ESIC”) and the House of Lords Secondary Legislation Scrutiny Committee (“SLSC”) on 29<sup>th</sup> November 2018.
- 3.2 The SLSC considered the draft instrument on 10<sup>th</sup> December 2018 and agreed that the instrument should follow the negative procedure.

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<sup>2</sup> Retained direct EU legislation is defined in section 20 of the EUWA 2018. It means any EU legislation which forms part of domestic law by virtue of section 3 of the EUWA 2018.

- 3.3 The ESIC considered the draft instrument on 11<sup>th</sup> December 2018. They disagreed with our proposal to lay the instrument under the negative procedure and recommended that the instrument should follow the affirmative procedure. The ESIC report stated:

“The instrument amends Interpretation Acts and provides general rules of interpretation in light of the introduction of “retained EU law”. Despite being technical in nature we consider the cumulative impact of the amendments is such that the additional safeguard of affirmative resolution is appropriate.

The Committee therefore recommends that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure), on the ground that it is of political and legal importance.”

- 3.4 The Government has accepted the recommendation of the ESIC to upgrade the instrument to follow the affirmative procedure.

*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)*

- 3.5 As the instrument is subject to the 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, subject to paragraphs 4.3 to 4.5 below.
- 4.2 The territorial application of this instrument is the United Kingdom, subject to paragraphs 4.3 to 4.5 below.
- 4.3 Regulation 4 amends the Interpretation and Legislative Reform (Scotland) Act 2010 and extends and applies to Scotland.
- 4.4 Regulations 5, 6, 7 and 8 amend the Interpretation Act (Northern Ireland) 1954 and extend and apply to Northern Ireland.
- 4.5 Regulation 9 and the schedule make provision to repeal primary legislation and revoke secondary legislation. The extent and application of these provisions is the United Kingdom (given the extent and application of all the legislation being repealed or revoked is the United Kingdom).

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

- 5.1 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement regarding Human Rights:

“In my view the provisions of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the European Union. Until we leave the EU, 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 law.

- 6.2 However, following the UK's exit from the EU, the supremacy of EU law over UK law will come to an end. The EUWA 2018 achieves this legal severance through the repeal of the ECA 1972 on the day the UK leaves the EU.
- 6.3 In order to ensure that the domestic legal system continues to function correctly outside the EU, the EUWA 2018 converts and saves particular elements of EU law as it stands at the moment of exit into domestic law before the UK leaves the EU and preserves laws made in the UK to implement EU obligations. In doing so, the EUWA 2018 creates a new body of domestic law, known as "retained EU law", which includes RDEUL and EU-derived domestic legislation.<sup>3</sup>
- 6.4 Importantly the EUWA 2018 also confers temporary powers to make secondary legislation to enable corrections and consequential modifications to be made to laws that would otherwise no longer operate appropriately once the UK has left the EU. The use of the correcting and consequential powers at sections 8(1) and 23(1) and (2) of, and paragraph 21(b) of Schedule 7 to, the EUWA 2018 in these Regulations is an exercise of such powers.
- 6.5 To ensure that the newly created retained EU law functions coherently on the UK statute book, changes need to be made to existing pieces of domestic legislation. The Interpretation Act 1978, the Interpretation Act (Northern Ireland) 1954 and the ILRA 2010 set out general rules of interpretation. These Acts need to be amended to ensure that the rules and definitions within them apply, as appropriate, to retained EU law.
- 6.6 These Regulations make clear that the normal rules on laying documents before the Northern Ireland Assembly apply where a duty to lay documents is contained in a piece of RDEUL.
- 6.7 There is a large volume of EU-derived domestic legislation that will no longer be relevant to the UK after its withdrawal from the EU. For instance, the European Communities (Greek Accession) Act 1979 amends the meaning of "the Treaties" and "the Community Treaties" in section 1(2) of the ECA 1972 following the accession of the Hellenic Republic to the European Communities. As the ECA 1972 is being repealed on exit day, this piece of domestic legislation becomes redundant. It is therefore being repealed through these Regulations.
- 6.8 This is the second instrument made by the Department for Exiting the European Union which makes amendments consequential on the EUWA 2018. The first instrument was the European Union (Withdrawal) Act 2018 (Consequential Amendments) Regulations 2018.<sup>4</sup> That instrument amended legislation rendered redundant in consequence of the partial repeals of the European Union Act 2011 and the European Union (Amendment) Act 2008, which were both repealed by the EUWA 2018. That instrument also made consequential amendments to other legislation that sets the rules for making secondary legislation and for laying documents before Parliament, to ensure that that legislation accommodates RDEUL.

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<sup>3</sup> A definition of retained EU law can be found at section 6(7) of the EUWA 2018.

<sup>4</sup> <https://www.legislation.gov.uk/ukdsi/2018/9780111171653/contents>

## 7. Policy background

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

- 7.1 The EUWA 2018 provides the framework for the UK's withdrawal from the EU. The EUWA 2018 repeals the ECA 1972 on the day the UK leaves the EU, and converts and saves particular aspects of EU law as it stands at the moment of exit into a new body of domestic law, called "retained EU law". It also creates temporary powers to make secondary legislation to enable corrections and consequential modifications to be made to laws that would otherwise no longer operate correctly once the UK has left the EU.
- 7.2 These Regulations make corrections and various consequential modifications, repeals and revocations in respect of retained EU law and other EU-derived domestic legislation. This is to ensure that the UK statute book incorporates retained EU law effectively and coherently, and removes from the statute book EU-derived domestic legislation that is made redundant as a result of the EUWA 2018 and the UK's withdrawal from the EU.

### *Treatment of non-ambulatory cross-references to EU legislation made before exit day*

- 7.3 Part 2 of these Regulations makes provision for how non-ambulatory cross-references to EU legislation made up to the point immediately before exit day should be read.
- 7.4 Non-ambulatory cross-references are references that do not automatically update. Provision is made in these Regulations so that up-to-date non-ambulatory cross-references to EU legislation made up to the point immediately before exit day are to be interpreted on and after exit day as references to the RDEUL version of the legislation, assuming the legislation forms part of RDEUL (by virtue of section 3 of the EUWA 2018). Where the EU legislation in question does not form part of RDEUL, or is not up-to-date, the non-ambulatory cross-reference is to be read as a reference to the legislation as it had effect in EU law at the time the reference was made.
- 7.5 For the purposes of these Regulations, a non-ambulatory cross-reference is considered up-to-date where (i) the EU legislation cross-referred to has not been modified between the cross-reference being made and the point immediately before exit day; or (ii) where such a modification has been made, it does not alter the effect of the cross-reference in a way that is relevant.
- 7.6 Provision is made for ambulatory references (which do automatically update) in paragraphs 1 and 2 of Schedule 8 to the EUWA 2018.

### *Treatment of cross-references made to EU legislation on and after exit day*

- 7.7 Provision is made in Parts 2, 3 and 4 of these Regulations (by way of amendment to the Interpretation Act 1978, the ILRA 2010 and the Interpretation Act (Northern Ireland) 1954) so that cross-references to EU legislation in domestic legislation (including RDEUL) after exit day are to be read, where the EU legislation forms part of RDEUL, as the RDEUL version of that legislation.

### *Other consequential amendments to interpretation legislation for Scotland and Northern Ireland*

- 7.8 Part 3 and 4 of these Regulations make consequential amendments to the interpretation legislation of Scotland and Northern Ireland in line with the EUWA

2018 and changes made to the Interpretation Act 1978. This is to reflect the new context post-exit and the relationship between domestic and retained EU law.

- 7.9 Part 3 amends the Interpretation and Legislative Reform (Scotland) Act 2010 (“the ILRA 2010”), which sets out general rules of interpretation for Scottish legislation, including legislation made before 4 June 2010 through the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of Scottish Parliament) Order 1999 (“the 1999 Order”). Part 3 amends the definition of enactment to include RDEUL, inserts the definitions relating to EU exit and updates the EU definitions in the 1999 Order, so that the interpretation rules work post exit.
- 7.10 Part 4 makes similar provision for Northern Ireland interpretation legislation, through amending the Interpretation Act (Northern Ireland) 1954 (“the 1954 Act”). It inserts the new EU-exit related definitions from the EUWA 2018 into the 1954 Act and updates the definition of “statutory provision” to include RDEUL. It also ensures that the normal rules on laying documents before the Northern Ireland Assembly apply where a duty to lay documents is contained in a piece of RDEUL.

*Repeals and revocations of EU-derived domestic legislation*

- 7.11 Part 5 repeals and revokes selected pieces of, or provisions within, primary and secondary legislation. As a member of the EU, the UK has made domestic legislation to enable it to meet its EU obligations; this legislation is called “EU-derived domestic legislation”. The EUWA 2018 provides that EU-derived domestic legislation remains on the statute book after the UK leaves the EU.<sup>5</sup>
- 7.12 This instrument repeals and revokes pieces of EU-derived domestic legislation that have become redundant as a result of the EUWA 2018 or arising from the UK’s withdrawal from the EU. The following paragraphs provide detail of what is being repealed or revoked and why.
- 7.13 The European Communities (Greek Accession) Act 1979 and The European Communities (Spanish and Portuguese Accession) Act 1985 amend section 1(2) of the ECA 1972 following the accession of the Hellenic Republic and the Kingdom of Spain and the Portuguese Republic to the EU. As the ECA 1972 is being repealed, these Acts will be redundant and are being removed from the UK statute book.
- 7.14 The European Union (Croatian Accession and Irish Protocol) Act 2013 was partially repealed in the first set of consequential amendment regulations, insofar as the Act related to approvals under the European Union Act 2011 and the European Union (Amendment) Act 2008.<sup>6</sup> Sections 3-5 gave effect in UK law to the Treaty concerning the accession of the Republic of Croatia to the EU amending the ECA 1972 and making transitional provision concerning the free movement of Croatian workers which is no longer needed as the accession of those states is now complete. The rest of the Act is similarly being repealed as it is redundant.
- 7.15 The European Communities (Amendments) Act 1986 (“the 1986 Act”) is being partially repealed. Sections 1 and 2 of the 1986 Act amends the ECA 1972 in order to implement the Single European Act signed at Luxembourg and The Hague in 1986 and extends certain provisions relating to the European Court. The ECA 1972 is being repealed, so these sections are redundant and are also being repealed.

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<sup>5</sup> Section 2, EUWA 2018

<sup>6</sup> <https://www.legislation.gov.uk/ukdsi/2018/9780111171653/contents>

- 7.16 Section 3(4) of the 1986 Act contains an approval of the Single European Act for the purpose of the European Parliamentary Elections Act 1978 (“the 1978 Act”). The 1978 Act has been repealed but was a precursor to the European Union Act 2011, which legislated so that certain types of EU treaty changes had to be approved by an Act of Parliament before they could be ratified. Transitional and savings provisions have been made in relation to the repeal of approvals made under the 1978 Act to make it clear that repeals approving these Treaties have no effect on the validity of the treaties or anything done in relation to those treaties.
- 7.17 The European Communities (Amendment) Act 1993, which makes provision in consequence of the Treaty of the European Union signed at Maastricht on 7 February 1992, is being repealed in full. Section 1(1) of the Act amended the ECA 1972, so is now redundant. Section 1(2) is another approval for the purposes of the European Parliamentary Elections Act 1978 (see paragraph 7.16).
- 7.18 Section 2 of the 1993 Act has already been repealed. Sections 3 to 5 relate to the provision of financial and economic information to the EU as a result of EU obligations, and the provision of that information in a report to Parliament. Upon withdrawal from the EU, the UK will no longer be obliged to provide the EU with this information. It will no longer make sense for the equivalent information to be required to be provided to Parliament.
- 7.19 Section 6 determines who is eligible to be sent to participate on the UK’s behalf in the European Committee of the Regions. This section becomes redundant on exit day, as the UK will no longer be entitled to send a delegation to represent the UK at the Committee of the Regions.
- 7.20 The repeal of Section 6 of the 1993 Act requires consequential amendments to be made to other pieces of legislation, because Section 6 has been amended numerous times to reflect changes to devolution and local government arrangements. Therefore, the following are also being repealed or revoked, because they simply amend the 1993 Act, which is now being repealed: the Northern Ireland Act 1998 (Amendment of Enactment) Order 2001; paragraph 28 of Schedule 8 to the Scotland Act 1998; paragraph 34 of Schedule 12 to the Government of Wales Act 1998 (“the GOWA 1998”); and paragraph 5 of the Schedule to the Greater London Authority (Miscellaneous Amendments) (No. 2) Order 2001. The Northern Ireland Act 1998 (Amendment of Enactment) Order 2001 is being repealed in full, because the amendment of section 6 of the 1993 Act is the only substantive provision within it.
- 7.21 The restriction on using the deficiencies power in section 8(7)(g) of EUWA 2018 to amend or repeal the devolution acts does not apply to the GOWA 1998 as this is not a protected Act. The amendment to the Scotland Act 1998 falls within both exceptions under section 8(7)(g). The repeal is made by virtue of paragraph 21(b) of Schedule 7 to EUWA 2018 - i.e. it is consequential on the repeal of section 6 of the 1993 Act and the provision which is being repealed modifies another enactment (namely the 1993 Act).
- 7.22 The following Acts are being repealed because they amend the ECA 1972, so become redundant as a result of the repeal of that Act: The European Union (Accessions) Act 1994 (giving effect to the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the EU); The European Communities (Amendment) Act 1998 (making provision consequential on the Treaty signed at Amsterdam on 2nd October 1997); and The European

Communities (Amendment) Act 2002 (making provision consequential on the Treaty signed at Nice on 26 February 2001). Transitional and savings provisions are being made for parts of these Acts, which contain approvals for the purposes of the 1978 Act.

- 7.23 The European Union (Accessions) Act 2003 is being repealed. This Act gave effect in UK law to the accession treaties concerning the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the EU. Section 1(1) amends the ECA 1972 and therefore becomes redundant upon withdrawal from the EU.
- 7.24 Section 1(2) of the 2003 Act approves, for the purposes of the European Parliamentary Elections Act 2002 (“the 2002 Act”), the provisions of the Accession Treaty insofar as they relate to the powers of the European Parliament. As with the 1978 Act, transitional and savings provisions have been made in relation to the repeal of approvals made under the 2002 Act to make it clear that the repeal of approvals have no effect on the validity of the treaties or anything done in relation to anything done in relation to those treaties.
- 7.25 Section 2 of the 2003 Act contained a power to make transitional arrangements for immigration and worker status of individuals arriving from the relevant accession states; the power is no longer needed as the accession of those states is now complete.
- 7.26 The European Union (Accessions) Act 2006 is being repealed. This Act implements the treaty concerning the accession of the Republic of Bulgaria and Romania to the EU. Section 1(1) amends the ECA 1972 and is therefore redundant. Section 2 of the 2006 Act contained a power to make transitional arrangements for immigration and worker status of individuals arriving from the relevant accession states, which is redundant as accession of those states is now complete. Transitional provision is made for Section 1(2) of the 2006 Act, which constitutes another approval for the purposes of the 2002 Act (see paragraph 7.24).
- 7.27 It is important that this redundant and deficient legislation is removed from the UK’s statute book to ensure that it remains coherent and the UK’s legal system continues to function effectively after exit.
- 7.28 The majority of this instrument comes into force on exit day. The provisions which define certain EU-exit related terms are commenced earlier to assist with the interpretation of legislation made pre-exit, following the approach in The European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018 which brought into force equivalent provisions in the Interpretation Act 1978. The rule on how to comply with a duty to lay RDEUL before the Northern Ireland Assembly is also being commenced earlier, following the approach in the The European Union (Withdrawal) Act 2018 (Consequential Amendments) Regulations 2018 which makes equivalent provision for the laying of RDEUL before Parliament.

## **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. The instrument is also made under the power in section



23(1) and (2) of the EUWA 2018 in order to make appropriate provision in consequence of the Act itself. 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 This instrument is not consolidating any other provisions.

## **10. Consultation outcome**

10.1 No public consultation was required as the Regulations make only limited technical changes to existing legislation with no impact on businesses, charities or voluntary bodies.

10.2 We have consulted the Scottish Government, the Welsh Government and the Northern Irish Civil Service (in the absence of a Northern Irish Executive). In particular, we have consulted them on the amendments to the Interpretation Act (Northern Ireland) 1954 and the ILRA 2010; these amendments are made in Part 3 and 4 respectively of the instrument. We have also consulted with the Scottish Government and the Welsh Government on the technical consequential repeals to the Scotland Act 1998 and the Government of Wales Act (1998). No concerns were raised about these changes.

## **11. Guidance**

11.1 Guidance is not being provided in relation to 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 we expect it to have no impact on businesses.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

## **15. Contact**

15.1 Andrew Hodgetts at the Department for Exiting the European Union, email: [andrew.hodgetts@dexeu.gov.uk](mailto:andrew.hodgetts@dexeu.gov.uk) can be contacted with any queries regarding the instrument.

15.2 James Gerard, Deputy Director for Legislation and Constitution, at the Department for Exiting the European Union can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under-Secretary of State for Exiting the European Union, Mr Chris Heaton-Harris MP at the Department for Exiting the European Union 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 Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 do no more than is appropriate”.

1.2 This is the case because the instrument ensures that the UK statute book accommodates “retained EU law”, a new body of domestic law introduced by the European Union (Withdrawal) Act 2018 (“the EUWA 2018”), coherently and effectively after the UK’s withdrawal from the EU.

1.3 Although the instrument modifies and repeals some primary legislation, the provisions are of a technical and consequential nature. Section 8 is only being relied upon to make repeals and revocations to legislation that will become redundant when the UK withdraws from the EU. The restriction on using the deficiencies power in section 8(7)(g) of EUWA 2018 to amend or repeal the devolution acts does not apply to the Government of Wales Act 1998 as this is not a protected Act. The amendment to the Scotland Act 1998 falls within both exceptions under section 8(7)(g). The repeal is made by virtue of paragraph 21(b) of Schedule 7 to EUWA 2018 i.e. it is consequential on the repeal of section 6 of the 1993 Act and the provision which is being repealed modifies another enactment.

#### 2. Good reasons

2.1 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, 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 without this instrument, there would be a lack of clarity on how non-ambulatory cross-references to EU legislation before exit day and cross-references to EU legislation after exit day should be read. There would also be lack of clarity in relation to how retained EU law is to be treated in UK law. Also, many pieces of EU-derived domestic legislation would remain on the UK statute book, despite them being redundant as a result of the UK’s withdrawal from the EU.

#### 3. Equalities

3.1 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement:

“The [draft] instrument does 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”.

#### **4. Explanations**

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