

EXPLANATORY MEMORANDUM TO
THE FREEDOM OF ESTABLISHMENT AND FREE MOVEMENT OF SERVICES
(EU EXIT) REGULATIONS 2019

2019 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy & Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019 ('this Instrument') disapplies provisions on freedom of establishment and the free movement of services which continue as directly effective rights in domestic law, by virtue of section 4 of the European Union (Withdrawal) Act 2018. The Instrument is being made using powers in the European Union (Withdrawal) Act 2018, in order to address deficiencies in retained European Union (EU) law arising as a result of the withdrawal of the United Kingdom (UK) from the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 'Directly effective rights' is the term used to reference provisions of EU law which are sufficiently clear, precise and unconditional to confer rights directly on individuals, which can be relied on in national law without the need for implementing measures. The principle of 'direct effect' is given precedence by rulings from the Court of Justice of the European Union (CJEU).
- 2.3 As a consequence of its membership of the EU, the UK is bound by EU bilateral and multilateral agreements, including: the Agreement on the European Economic Area (the EEA Agreement); the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons (FMOPA); and the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara ('the Ankara Agreement') and subsequent Protocols. In 2009, the UK ratified the Treaty on the Functioning of the European Union (TFEU).
- 2.4 Directly effective rights derived from TFEU Articles are based on reciprocal relationships between EU Member State territories. Directly effective rights derived from EU bilateral and multilateral agreements are based on reciprocal relationships between EU Member State territories and certain non-EU territories.
- 2.5 This Instrument concerns directly effective rights derived from Article 49 TFEU (freedom of establishment), Article 56 TFEU (free movement of services) and Article 57 TFEU (definition of 'services'). Collectively these rights of establishment and free movement of services ensure that nationals from EU Member State territories can be self-employed, own and manage a company, and provide services on a temporary basis under the same conditions as the State's own nationals, and receive services, without facing certain restrictions in the EU Single Market. Freedom of establishment

and free movement of services form part of the EU Single Market, which comprises the free movement of goods, persons, services and capital.

- 2.6 Directly effective rights of establishment and free movement of services extend to legal entities (i.e. companies or firms) and apply on a cross-border basis only. They do not concern a natural person or legal entity of UK origin operating in the UK.
- 2.7 This Instrument also concerns directly effective rights of freedom of establishment and free movement of services deriving from the EEA Agreement, FMOPA, and the Ankara Agreement and the Additional Protocol.
- 2.8 Certain directly effective rights prohibit discrimination on the basis of nationality. Article 18 TFEU prohibits any discrimination on grounds of nationality within scope of the application of EU Treaties and without prejudice to any special provisions contained therein. Prohibitions on the grounds of nationality are also found in Article 4 of the EEA Agreement, Article 2 FMOPA, Article 9 of the Ankara Agreement and Article 41 of the Additional Protocol. These also have a bearing on the application of directly effective rights of establishment and free movement of services.
- 2.9 Rights of establishment and free movement of services in FMOPA and in the Ankara Agreement and the Additional Protocol, have an impact on the immigration regime applied to Swiss nationals and Turkish nationals, respectively, in the UK.

Why is it being changed?

- 2.10 Section 4 of the European Union (Withdrawal) Act 2018 provides that the rights which flow into domestic law by virtue of section 2 (1) of the European Communities Act 1972 will continue to be recognised and available in domestic law. This includes the substance of directly effective rights in relation to free movement of services and establishment. If the UK does not exit the EU under the terms of a Withdrawal Agreement (i.e. a ‘no deal’ scenario), elements of reciprocity contained within directly effective rights of establishment and free movement of services, as derived from Articles in the TFEU, the EEA Agreement, FMOPA, the Ankara Agreement and the Additional Protocol, would cease to function effectively in the UK.
- 2.11 To address any inoperability and to ensure UK law continues to function effectively, with legal clarity, and that the UK is compliant with its World Trade Organisation (WTO) obligations, including the General Agreement on Trade in Services, these rights need to be disapplied.
- 2.12 These directly effective rights of establishment and free movement of services would appear to have limited practical effect, post-exit in a no deal scenario. It is anticipated that disapplication of these rights will have limited direct or practical impact on EU, European Economic Area European Free Trade Association (EEA EFTA), Swiss or Turkish nationals or EU, EEA EFTA, Swiss or Turkish businesses post-Exit. Unless changes to UK law are made in specific areas, the removal of these rights is not expected to prevent those EU, EEA EFTA, Swiss or Turkish nationals who are operating businesses or providing services immediately before exit day from continuing to be able to do so immediately after exit day (where they retain residence rights). Individuals and businesses will be able to check published no deal planning guidance on gov.uk.
- 2.13 This is because UK legislation should be in accordance with EU law at exit day, including these rights. In addition, in practice barriers to establishment and services provision in the UK for third countries are low. A savings or transitional provision is

therefore not included in this Instrument to protect the rights of EU, EEA EFTA, Swiss and Turkish nationals and businesses who are providing services or operating in the UK. Such a provision would have little to no practical effect and could risk placing the UK in breach of WTO law, specifically the ‘most favoured nation’ principle.

- 2.14 Retaining these rights in a no deal scenario would leave a lack of clarity as to whether EU nationals and other nationals within the scope of the EEA Agreement, FMOPA and the Ankara Agreement would have additional rights in the UK compared to other non-EU nationals. It is therefore appropriate to expressly disapply these rights of establishment and free movement of services. This will ensure there is clarity in the law at the point of exit and ensure that UK legislation or policies which would otherwise place restrictions on these rights have effect and cannot be challenged on the basis of these rights.

What will it now do?

- 2.15 Directly effective rights of establishment and free movement of services derived from Articles in the TFEU, the EEA Agreement, FMOPA, the Ankara Agreement and the Additional Protocol will be disapplied. This will have the effect of ensuring that EU nationals will be unable to rely on these rights to challenge any policy or law in the UK which places restrictions on their access to the UK Internal Market.
- 2.16 Directly effective rights of non-discrimination on the basis of nationality derived from those Articles mentioned above at 2.8 will also be disapplied in so far as they relate to the disapplication of directly effective rights of establishment and free movement of services. If the prohibitions on non-discrimination on grounds of nationality were not disapplied, then this could lead to a lack of clarity on the UK Statute Book. Because it is the substance of directly effective rights and not the exact wording that is incorporated by section 4 of the European Union (Withdrawal) Act 2018, the interplay between prohibitions on non-discrimination on grounds of nationality and the more specific directly effective rights concerning establishment and services would be unclear. On the one hand, specific rights of establishment and free movement of services would be disapplied, therefore allowing a future Government to place restrictions on EU, EEA EFTA, Swiss or Turkish nationals. However, on the other hand, leaving in place Article 18 TFEU and its equivalents in the EEA Agreement, FMOPA and the Ankara Agreement and the Additional Protocol could place such restrictions in doubt.
- 2.17 Directly effective rights of establishment and free movement of services derived from Articles in FMOPA have an impact on the immigration regime applied to Swiss nationals in the UK. Articles 4 and 5 of FMOPA give rise to rights of residence/rights of entry in the UK to Swiss nationals who are carrying out an economic service or providing services in the UK. This Instrument ensures that Swiss nationals operating a business or providing services in the UK immediately before exit day will not lose residence rights by virtue of the disapplication of the directly effective rights of establishment and free movement of services. Changes to immigration policy will be delivered through separate legislation. See 6.5 below.
- 2.18 Directly effective rights of establishment and free movement of services derived from Articles in the Ankara Agreement and the Additional Protocol have an impact on the immigration regime applied to Turkish nationals in the UK, providing the legal basis for preferential treatment of Turkish nationals (compared to non-EU/EEA). This

Instrument ensures that Turkish nationals operating a business or providing services in the UK immediately before exit day will not lose residence rights by virtue of the disapplication of the directly effective rights of establishment and free movement of services. Changes to immigration policy will be delivered through separate legislation. See 6.5 below.

- 2.19 This Instrument does not affect financial services and does not affect rights derived from chapters on the Free Movement of Capital in the TFEU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this Instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this Instrument is made cover the entire UK (see section 24 of the European Union (Withdrawal) Act 2018), and the territorial application of this Instrument is not limited either by the Act or by the Instrument.

4. Extent and Territorial Application

- 4.1 The extent of this Instrument is the United Kingdom.
- 4.2 The territorial application of this Instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 Andrew Stephenson, Parliamentary Under Secretary of State, Minister for Business and Industry, has made the following statement regarding Human Rights:

“In my view the provisions of The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The European Communities Act 1972 will be repealed by the European Union (Withdrawal) Act 2018. However, section 4 of the European Union (Withdrawal) Act 2018 provides for EU rights and obligations not falling within sections 2 and 3, including directly effective rights contained within EU Treaties, to be recognised and available in domestic law after exit. Directly effective rights are those provisions of EU treaties which are sufficiently clear, precise and unconditional as to confer rights directly on individuals and which can be relied on in national law without the need for implementing measures.
- 6.2 Where directly effective rights are retained under section 4 of the European Union (Withdrawal) Act 2018, it is the right which is retained, not the text of the treaty provision itself. Provisions on freedom of establishment and free movement of services, which derive from the TFEU, the EEA Agreement, FMOPA and the Ankara Agreement and the Additional Protocol, continue as directly effective rights in domestic law by virtue of section 4.

- 6.3 Section 8 of the European Union (Withdrawal) Act 2018 provides a power to prevent, remedy or mitigate deficiencies in the EU law retained under that Act that arise from the UK's withdrawal from the EU. This Instrument is being made under section 8 to address deficiencies in retained EU law relating to certain provisions on freedom of establishment and free movement of services in the event that the UK leaves the EU in a no deal scenario. These changes include removing preferential access to rights of establishment and free movement of services for EU nationals in a no deal scenario. This Instrument will also ensure that the UK is compliant with its World Trade Organisation obligations.
- 6.4 The disapplication of these establishment and free movement of services provisions in FMOPA and in the Ankara Agreement and the Additional Protocol does not apply to any elements of those directly effective treaty rights that may fall within the scope of the Immigration Acts.
- 6.5 Those immigration elements will instead be disapplied by Schedule 1 to the Immigration and Social Security Coordination (EU Withdrawal) Bill, with consequential, transitional etc. provisions made for EEA and Swiss nationals using regulations made under clause 4(1). A route will be kept open through the immigration rules to ensure Turkish national service providers and their family members currently resident in the UK will be able to continue to reside in the UK where they continue to meet the relevant conditions. The Bill is currently awaiting Report stage in the House of Commons. In the event that both the Bill and this instrument are commenced simultaneously (for example, on exit day) or that this instrument is commenced first, then the Bill will disapply any remaining immigration elements.
- 6.6 The provisions on non-discrimination on grounds of nationality in the TFEU, the EEA Agreement, FMOPA and the Ankara Agreement and Additional Protocol are also disapplied in so far as those provisions relate to the provisions on freedom of establishment and free movement of services.

7. Policy background

What is being done and why?

Background

- 7.1 In preparation for the UK's departure from the EU, the Government is planning for all eventualities, including a no deal scenario. There are deficiencies arising from the direct EU law that have been retained under the European Union (Withdrawal) Act 2018 which need to be remedied.
- 7.2 The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972 and converts into UK law direct EU law, including directly effective treaty rights. The Act gives a Minister of the Crown powers to prevent, remedy or mitigate any failure of EU law to operate effectively.
- 7.3 The Department for Business, Energy and Industrial Strategy is using powers in the Act to ensure that persons benefitting from directly effective rights of establishment and free movement of services derived from Articles in the TFEU, the EEA Agreement, FMOPA and the Ankara Agreement and Additional Protocol, do not have additional rights in the UK in a no deal scenario. See 2.12 and 2.13 for more information.

- 7.4 In order to ensure that directly effective rights of non-discrimination derived from Article 18 TFEU are not relied on to re-assert those rights arising under Articles 49, 56 and 57 TFEU which are disapplied by this Instrument, the Instrument also disapplies directly effective rights of non-discrimination derived from Article 18 TFEU. For the same reason, equivalent or similar non-discrimination rights derived from the EEA Agreement, FMOPA and the Ankara Agreement and Additional Protocol are also disapplied. See 2.14 for more information.

Purpose of this Instrument

- 7.5 This Instrument is intended to reflect the UK's 'Third Country' status in relation to the EU Member States in a no deal scenario, and to provide individuals and business with clarity regarding directly effective rights of establishment and free movement of services.
- 7.6 Amendments to the directly effective rights insofar as they affect the immigration regime applied to Swiss nationals and Turkish nationals will be delivered through separate legislation as explained above at 6.5.
- 7.7 This Instrument does not introduce or implement new powers, enforcement powers, jurisdictions, penalties or appeal rights in UK courts. This Instrument does not enforce restrictions on the establishment of nationals of EU Member States or EU-registered businesses, nor does it subject EU-registered businesses to new regulatory measures.
- 7.8 This Instrument does not prevent a 'continuity approach' being taken by the Government in specific policy areas, but it does enable Government to make policies and legislative changes which depart from the directly effective rights in a no deal scenario.

Devolved Administrations

- 7.9 This Instrument applies to Northern Ireland. The UK Government remains committed to restoring devolution in Northern Ireland. This is important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for the UK's withdrawal from the EU.
- 7.10 This Instrument contains provisions concerning directly effective treaty rights of freedom of establishment and free movement of services, some aspects of which are a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998, for example company law. In the continued absence of a Northern Ireland Executive, to ensure a functioning Statute Book across the 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.
- 7.11 This Instrument applies to Scotland and Wales. As the Treaty rights disapplied by the Instrument could, in a domestic context, impact on both reserved and devolved policy (for example some areas of service activity are devolved), the Government sought the consent of the Devolved Administrations in Scotland and Wales to legislate UK-wide. The Devolved Administrations in Scotland and Wales have confirmed their agreement for the UK Parliament to lay this legislation UK-wide.

Practical Impact

- 7.12 There is one area where the disapplication of directly effective rights of free movement of services will have a direct impact: the use of satellite decoder cards imported from the EU. This Instrument changes the interpretation of section 297 of the Copyright, Designs and Patents Act 1988 ('CDPA'), which makes it an offence to dishonestly receive a programme included in a broadcast made from the UK with the intent of avoiding a charge (e.g. by accessing the programme via a cheaper broadcasting service intended for a non-UK audience).
- 7.13 Case law on free movement of services provides an exemption to section 297 of the CDPA, permitting the import and use of legitimate satellite decoder cards from the EU, even if done so with the intent of avoiding a charge. In the Joined Cases of *FA Premier League and Others v QC Leisure and Others and Karen Murphy v Media Protection Services Limited* (C-403/08), the Court of Justice of the European Union held that the EU rules on free movement of services (Article 56 TFEU) prohibit national legislation that prevents viewers in one EU Member State from importing satellite decoder devices from another Member State in order to watch the services of a foreign broadcaster.
- 7.14 By disapplying Article 56 TFEU, this Instrument removes the exemption in relation to EU Member States. This has the practical effect that the use of legitimate satellite decoder cards from the EU to dishonestly receive such a programme with the intent of avoiding a charge would be considered an offence (as is currently the case for non-EU satellite decoder devices and illegal satellite decoder devices) from exit day.

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 UK 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 The Instrument does not make consolidation of earlier instruments.

10. Consultation outcome

- 10.1 Deficiencies in retained directly effective rights concerning freedom of establishment and the free movement of services, including a lack of reciprocity, arise as a result of the withdrawal of the UK from the EU. The provisions in the Instrument are being made as a direct consequence of the UK's exit from the EU. As discussed above, the only area in which the directly effective rights of establishment or free movement of services have been identified to have a direct impact on UK business is in the case of satellite decoders. As a result, consultation with business was not considered necessary for this Instrument.
- 10.2 Devolved Administrations have confirmed their agreement for the UK Parliament to lay this legislation UK-wide. Consultations took the form of written correspondence and several meetings which centred around technical discussions concerning the implementation and observation of EU Treaties in the devolved sphere, and the practical impacts of the proposed disapplication of directly effective rights of establishment and free movement of services.

11. Guidance

- 11.1 No further guidance is being published alongside this Instrument. The Intellectual Property Office will be updating published guidance on EU Exit Copyright covering the sale and use of the satellite decoder cards from the EU intended for use in the UK, in advance of this Instrument coming into force.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There will be a limited impact on the sale and use of satellite decoder cards intended for use in the EU (see 7.12, 7.13 and 7.14 for more information). Legitimate reasons for the use of satellite decoder cards from the EU in the UK may include, for instance, expatriates from the EU wishing to access broadcasts in their native language.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 An Impact Assessment has not been prepared for this Instrument because the impact of this Instrument has been approved de minimis in line with the Better Regulation Framework. As discussed above, the only area in which the directly effective rights of establishment or free movement of services has been identified to have a direct impact on UK business is in the case of satellite decoders (see 7.12, 7.13 and 7.14 for more information), where the use of legitimate satellite decoder cards from the EU to dishonestly receive a programme with the intent of avoiding a charge would be considered an offence (as is currently the case for non-EU satellite decoder devices and illegal satellite decoder devices) from exit day.
- 12.5 It is not possible to estimate the total direct impact as it will depend on how many, and which, programmes are dishonestly accessed by UK consumers at present, and the awareness of and appetite for legal risk of those consumers. Although there does not appear to be data for the number of foreign satellite decoder devices used by UK consumers, evidence suggests that UK consumers prefer to use other services to view television programmes and we therefore expect the policy change to have limited impact.
- 12.6 In terms of wider impacts, the Instrument makes changes to existing domestic law arising from section 4 of the European Union (Withdrawal) Act 2018. These changes include removing preferential access to directly effective rights of establishment and free movement of services for nationals of EU Member State territories in the UK in a no deal scenario. Disapplying the rights means that businesses and others will not be able to use them to challenge UK laws and regulations in the future.
- 12.7 The disapplication of directly effective rights of establishment and free movement of services from the TFEU, the EEA Agreement, FMOPA, and the Ankara Agreement and the Additional Protocol in a no deal scenario, will mean that the UK Government will be able to depart from these rights in future policy and legislation. Assessment of the impact of future changes would, where required, be made if or when substantive changes to the ability of EU citizens to establish or provide services are proposed.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No steps have been taken to minimise the impact of the requirements on small businesses (employing up to 50 people), as no new requirements are being introduced.

The purpose of the instrument is to avoid legal uncertainty by addressing inoperability and deficiencies arising as a result of the UK leaving the EU, including a lack of reciprocity once the UK is no longer a Member State. The instrument also ensures the UK's compliance with its World Trade Organisation obligations, in particular the General Agreement on Trade in Services. These changes ensure that the directly effective rights disapplied by the Instrument do not restrict the ability of UK authorities to make regulatory changes in a no deal scenario.

14. Monitoring & review

- 14.1 As this Instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Simon Squire at the Department for Business, Energy & Industrial Strategy, telephone: 02072150599, or email: Simon.Squire@beis.gov.uk, can be contacted with any queries regarding the Instrument.
- 15.2 Rhian Doleman at the Intellectual Property Office, telephone: 01633814818, or email: rhian.doleman@ipo.gov.uk, can be contacted with any queries regarding the changes on the sale and use of satellite decoder cards from the EU intended for use in the UK.
- 15.3 Anthony Miller, Deputy Director, at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Andrew Stephenson, Parliamentary Under Secretary of State at the Department for Business, Energy & Industrial Strategy 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

Andrew Stephenson, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019 does no more than appropriate”.

This is the case because the Instrument makes only changes necessary to address deficiencies arising from the withdrawal of the UK from the EU in a scenario in which the UK leaves the EU without an agreement. This Instrument does no more than is necessary to cease directly effective rights of establishment and free movement of services, and directly effective rights of non-discrimination insofar as they have an impact on directly effective rights of establishment and free movement of services, where there is not reciprocity arising from the withdrawal of the UK from the EU. Further details are provided in paragraphs 2.10, 2.11 and 2.12 of this explanatory memorandum.

2. Good reasons statement

Andrew Stephenson, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, 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.”

This is the case because the Instrument makes amendments to UK legislation to correct deficiencies in retained EU law and to ensure the UK is compliant with its World Trade Organisation obligations, in particular the General Agreement on Trade in Services, in a scenario in which the UK leaves the EU without an agreement.

3. Equalities statement

Andrew Stephenson, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, has made the following statement:

“This 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.”

Andrew Stephenson, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Instrument, I, Andrew Stephenson, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, 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.”

4. Explanations statement

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