

**EXPLANATORY MEMORANDUM TO**  
**THE LAW ENFORCEMENT AND SECURITY (SEPARATION ISSUES ETC.) (EU**  
**EXIT) REGULATIONS 2020**

**2020 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
- 1.3 This instrument ensures that the United Kingdom (UK) has a functioning legal framework that reflects the Withdrawal Agreement ('the WA') reached between the UK and the European Union (EU), and the EEA EFTA Separation Agreement ('the SA') reached between the UK and Norway, Iceland and Liechtenstein ('the EEA EFTA States'). It will come into force at the end of the Transition Period (TP).

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to allow for the implementation of the separation provisions relating to law enforcement and criminal justice (LE CJ) cooperation contained within Title V of Part 3 of the WA, and Title III of Part 3 of the SA, and related data provisions within Title VII of the WA and the Title IV of the SA, which will take effect at the end of the TP regardless of the outcome of the UK-EU and UK-EEA EFTA negotiations in the area of LE CJ cooperation. Additionally, this instrument will address a number of deficiencies in retained EU law in this area which would otherwise arise at the end of the TP.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The UK participates in a number of EU LE CJ measures which provide for cooperation in the areas of security, law enforcement and judicial cooperation in criminal matters. A body of EU law, including Council Decisions, Directives, and EU Regulations, governs cooperation on these matters among participating countries. Under the WA and European Union (Withdrawal) Act 2018 ('the 2018 Act'), as amended by the European Union (Withdrawal Agreement) Act 2020 ('the 2020 Act'), this body of EU law continues to apply in the UK during the TP (until the end of 2020). This body of law is converted into domestic law, as "retained EU law", at the end of the TP by the 2018 Act.

Why is it being changed?

- 2.3 In January 2020, the UK ratified the WA with the EU and the SA with the EEA EFTA States ('the Agreements'). Provisions concerning ongoing LE CJ cooperation, contained within Title V of Part 3 of the WA and Title III of Part 3 of the SA, and related data and information protection provisions contained within Title VII of Part 3 of the WA and Title IV of the SA, will take effect at the end of the TP. In order to meet its obligations under the Agreements, this instrument makes amendments to UK

law, where required, to give full effect to the separation provisions in the domestic legal system and ensure the law is clear and accessible to operational partners.

- 2.4 The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 ('the Law Enforcement Regulations') and Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 ('the Criminal Justice Regulations') were approved by Parliament in March 2019 and addressed deficiencies in retained EU law which would arise at the end of the TP, once the EU *acquis* in this area ceases to apply to the UK. The amendments to UK law that are now required to implement the separation provisions referenced in Para. 2.3 are made by amending these Regulations, which would otherwise provide for an outcome where the UK left the EU without an agreement (the UK left the EU under the Withdrawal Agreement). Additionally, since the Law Enforcement Regulations were made, further retained EU law has come into force, and a further deficiency in existing retained EU law has been identified. This instrument therefore makes the necessary amendments to prevent deficiencies arising at the end of the TP.

*What will it now do?*

- 2.5 This instrument performs three functions. Firstly, while the 2020 Act provides for the general implementation of the Agreements, this instrument will make the necessary further, specific amendments to UK law to give full effect to the LECJ cooperation separation provisions contained within the Agreements. These separation provisions require the continued application of particular EU measures in the UK in respect of cases and procedures which are ongoing at the end of the TP. They also place reciprocal obligations on EU Member States and EEA EFTA States. The separation provisions will continue to have effect until these ongoing cases and procedures are completed.
- 2.6 Secondly, the instrument makes amendments to UK law to give full effect to the related provisions within the Agreements that require preservation of relevant law on information and data protection in respect of data stocks accrued prior to the end of the TP under the LECJ measures or exchanged in relation to those ongoing procedures.
- 2.7 Thirdly, at the end of the TP the body of EU law in relation to LECJ cooperation ceases to apply in the UK, except insofar as it is converted into domestic law as "retained EU law" or as required to continue to apply under the WA or SA. This instrument therefore makes further amendments to address deficiencies which would arise at the end of the TP, in relation to retained EU law which has come into force since the Law Enforcement Regulations were made, and to address a further deficiency which has been identified.
- 2.8 The practical impacts of the changes made by this instrument are summarised in Section 12 (Impacts) of this Explanatory Memorandum.

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

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

- 3.1 In its First Special Report of Session 2013-14 (excluding the inert from secondary legislation), the Committee drew attention to the inclusion of material in statutory instruments that has no legal effect and concluded that such material, if included at all, should not be presented as if it were part of the operative text.

- 3.2 The Department acknowledges that this instrument contains such provisions: specifically, cross-references to provisions of the 2018 Act and to the applicable separation provisions of the WA and SA. It is noted that section 8B(5) of the 2018 Act provides that regulations made under section 8B may (among other things) “restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law” by virtue of section 7A or 7B of the 2018 Act and Part 3 of the WA or SA.
- 3.3 The Department considers it appropriate, in the exceptional circumstances of this case, to include such provision to assist law enforcement bodies and operational partners to understand how the complex legal framework will operate at the end of the TP (namely, the combined effect of the WA and SA, the 2018 Act, and the Law Enforcement Regulations and Criminal Justice Regulations). The Department considers this makes the law clearer and more accessible, by clarifying that the legislation must be read in conjunction with relevant parts of the WA, SA and 2018 Act, whilst mitigating the risk that readers or the courts will treat the provisions as operative.

*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)*

- 3.4 The territorial application of this instrument varies between provisions (see paragraphs 4.1 to 4.3 below).
- 3.5 The powers under which this instrument is made cover the UK (see section 24 of the 2018 Act, section 42(1) of 2020 Act, and section 226 of the Extradition Act 2003). The territorial application of this instrument is not limited by the Acts; however, the instrument limits the application of Part 3 to England and Wales and Northern Ireland.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent and application of Part 1 of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial extent and application of Part 2 of this instrument is the same as for each of the provisions in the Law Enforcement Regulations (S.I. 2019/742) being amended by this instrument. Provisions in those regulations have different extent and applications depending on the extent and application of the legislation that is the subject of amendment.
- 4.3 The territorial extent of Part 3 of this instrument is England and Wales and Northern Ireland. The territorial application of Part 3 is the same as for each of the provisions in the Criminal Justice Regulations (S.I. 2019/780) being amended by this instrument. Provisions in those regulations have different application depending on the application of the legislation that is the subject of amendment.

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

- 5.1 The Rt Hon James Brokenshire MP has made the following statement regarding Human Rights:

“In my view the provisions of The Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

## 6. Legislative Context

- 6.1 The UK left the EU on 31 January 2020. In January 2020, prior to the UK's departure from the EU, the UK ratified the WA with the EU and the SA with the EEA EFTA States. Under the terms of the WA, implemented by the 2020 Act (which amends the 2018 Act), the body of EU law relating to LECJ cooperation continues to apply in the UK during the TP (until the end of 2020).
- 6.2 The Agreements include separation provisions concerning ongoing LECJ cooperation, contained within Title V of Part 3 of the WA and Title III of Part 3 of the SA (and related data and information provisions within Title VII of the WA and Title IV of the SA), which will take effect at the end of the TP. The 2020 Act implements the Agreements and includes general implementation of the separation provisions by creating a 'conduit pipe' through which provisions of the WA and SA flow into domestic law and provide that domestic law must be read, and given effect, in a manner compatible with the WA and SA (sections 5, 6 and 26 of that Act, and sections 7A to 7C of the 2018 Act). To the extent required, this instrument makes further amendments to UK law (primarily under powers in section 8B of the 2018 Act) to ensure that separation provisions are given full effect in the domestic legal system and that the law is clear and accessible.
- 6.3 The Law Enforcement Regulations and Criminal Justice Regulations were made in March 2019, to address deficiencies in retained EU law which would have arisen should the UK have left the EU without an agreement. As the UK departed the EU with an agreement – the WA – this instrument modifies those instruments to give effect to the terms of the Agreements. To provide an operable legal framework for the separation provisions, this instrument makes four main types of amendments to the Law Enforcement and Criminal Justice Regulations:
- Making or modifying transitional or saving provisions for non-directly applicable EU measures (e.g. Directives), to ensure that domestic law implementing the applicable EU legal framework continues to apply to ongoing cases and procedures;
  - Revoking transitional or saving provisions for directly applicable EU measures (e.g. Regulations), as the 'conduit pipe' under the 2018 and 2020 Acts ensures the EU measure can be relied upon directly in respect of ongoing cases and procedures;
  - Making or modifying transitional or saving provisions relating to data and information protection obligations in EU measures for law enforcement data stocks; and
  - For clarity, placing signposts to the applicable separation provision – the Article(s) of the WA or SA – and general implementation provisions in the 2018 Act (e.g. sections 7A to 7C of that Act) on the corresponding revocation, transitional, saving, and/or modification provisions in the Law Enforcement Regulations and Criminal Justice Regulations.
- 6.4 As set out in more detail in the table in Annex 2, specifically:
- Part 2, Chapters 1-4 and 6– 12, make provision in respect of law enforcement and security separation provisions within the Agreements (including, where applicable, related data and information provisions).

- Part 3, Chapters 1- 4 make provision in respect of criminal justice separation provisions (including, where applicable, related data and information provisions) within the Agreements.
- 6.5 Changes to UK law in relation to the separation provisions for taking account of convictions (Article 62(1)(g) of Part 3 of the WA), will be made in a separate Ministry of Justice instrument.
- 6.6 Part 2 also makes provisions to address deficiencies in relation to retained EU law which has come into force since the Law Enforcement Regulations were made, and a further deficiency in existing retained EU law which has been identified. Broadly the provisions will, as required, revoke retained EU law, insert transitional and saving provisions, and remove previous drafting which is no longer effective. Specifically, provisions are made in respect of deficiencies arising from:
- Regulations on mutual recognition of freezing and confiscation orders which will come into force in December 2020 (Chapter 1);
  - Eurojust Regulations which came into force in December 2019 (Chapter 3);
  - Prüm, in relation to the UK starting to share DNA data from June 2019 (Chapter 14);
  - Schengen Information System (SIS II) Regulations which came into force in December 2019 (Chapter 15);
  - The EU-Iceland/Norway Surrender Agreement which came into force in November 2019 (Chapters 9 and 16); and
  - The requirement to specify Italy as a “participating country” for relevant parts of the Crime (International Co-Operation) Act 2003, to ensure consistent treatment of EU Member States (EUMS) (Chapter 8).
- 6.7 This information is summarised in the table in Annex 2.

## 7. Policy background

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

- 7.1 The UK left the EU on 31 January 2020. In January 2020, prior to the UK’s departure from the EU, the UK ratified the WA with the EU and the SA with the EEA EFTA States. The Agreements and the provisions contained therein will take effect regardless of the outcome of the UK-EU and UK-EEA EFTA negotiations in the area of LECJ cooperation.

### *Ongoing LECJ cooperation*

- 7.2 The Agreements include separation provisions concerning ongoing LECJ cooperation, contained within Title V of Part 3 of the WA and Title III of Part 3 of the SA, which will take effect at the end of the TP. These provisions provide for the ‘winding down’ of cases and procedures, as specified in the Agreements, which are ongoing at the end of the TP. For example, an European Investigation Order (EIO) received by UK authorities from an EUMS before the end of the TP will be executed by UK authorities under the EIO procedure (and vice versa for an EIO received by an EUMS from UK authorities prior to the end of the TP).
- 7.3 In addition, Title VII of Part 3 of the WA and Title IV of Part 3 of the SA, provide that data and information protection safeguards within EU measures must continue to

apply to data and information obtained before the end of the TP or under the Agreements. For example, where a European Criminal Records Information System (ECRIS) request for criminal record information is made by the UK to an EUMS before the end of the TP, and the information is received after the end of the TP as a result of that request, the restrictions on use of personal data under ECRIS will still apply.

- 7.4 As the Agreements have been ratified by the UK, and are implemented by the 2018 and 2020 Acts, the UK's law enforcement and criminal justice agencies are required to comply with the separation provisions from the end of the TP. To not do so would mean the UK not meeting its legal obligations under the Agreements.
- 7.5 This instrument makes the necessary amendments to UK law to allow for the effective operation of these separation provisions. Not all the provisions require legislation – either because existing UK law allows for their operation, or simply because legislation is not required to operate them. If this instrument were not passed, whilst the rights and obligations arising under the Agreements would be recognised and available in domestic law by virtue of the 2018 and 2020 Acts, some of the provisions would not have the necessary legislation in place to give full effect to them. The practical impact of this is summarised in Section 12 (Impacts) of this Explanatory Memorandum and is assessed in full in the Impact Assessment.

#### Deficiencies

- 7.6 Under the 2018 Act, the body of EU law related to LECJ matters continues to apply in the UK during the TP (until the end of 2020) and will be converted into domestic law, known as 'retained EU law', at the end of the TP. If changes are not made to UK law at the end of the TP, this retained EU law would continue but would create 'deficiencies'. In either a negotiated or a non-negotiated outcome the UK will no longer cooperate with the EU on the basis of this body of law, and LECJ cooperation will instead shift to a different legal basis at the end of the TP.
- 7.7 The Law Enforcement Regulations and Criminal Justice Regulations were made to address such deficiencies as they stood at the time in March 2019. However, new EU law has come into force since these Regulations were made, which will become retained EU law at the end of the TP and will carry deficiencies if not addressed, and a further deficiency has been identified in respect of existing retained EU law. If this instrument were not passed, the UK would not have the necessary legislation in place to address the further deficiencies which would arise at the end of the TP when the UK ceases to cooperate on the basis of the EU LECJ measures as they currently stand. The practical impact of this is summarised in Section 12 (Impacts) of this Explanatory Memorandum and assessed in full in the Impact Assessment.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is being made using the powers in section 8(1), 8B (1) and (2) of the 2018 Act 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, and also to allow for the implementation of the separation provisions relating to LECJ, and related data provisions, contained within Title V and Title VII of Part 3 of the WA, and Title III and IV of Part 3 of the SA. The instrument is also made under section 23(1) and (2) of, and paragraph 21 of Schedule 7 to the 2018 Act, and section 41(1) and (5) of the

2020 Act. In accordance with the requirements of the 2018 Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

- 8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under sections 69(1), 71(4), 73(5), 84(7) and 223(8) of the Extradition Act 2003. These powers are being used in relation to changes made in Chapter 9.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the relevant legislation.

## **10. Consultation outcome**

- 10.1 No public consultation was conducted. This is because it was not considered to be appropriate in light of the nature of the amendments made by this instrument, which are limited to technical amendments to allow for operation of provisions in the Agreements and to correct deficiencies in retained EU law.
- 10.2 The Devolved Administrations were consulted in the drafting of the instrument. The instrument relates to a mixture of excepted and transferred matters in relation to Scotland and Northern Ireland. As the Regulations utilise powers in the 2018 Act, the UK is enabled to make provision for the devolved territories in relation to matters which fall within their legislative competence. However, under the Intergovernmental Agreement on the Withdrawal Act ('the IGA'), the UKG reiterated its commitment to normally do so only with the agreement of the relevant Devolved Administrations. As a result, letters were issued to the Devolved Governments in Scotland and Northern Ireland seeking consent to legislate on their behalf. Legislative consent is not required from Wales, as the Regulations do not make provision in relation to matters within the legislative competence of the Welsh Assembly. However, a letter was sent at senior official level to the Welsh Government to inform them of the Regulations and their purpose. The UK Government has subsequently received consent from the Northern Ireland Government and from the Scottish Government.

## **11. Guidance**

- 11.1 There are no plans to provide guidance on this instrument.

## **12. Impact**

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is to provide legal and operational certainty for the public sector, which could otherwise incur costs, including from the risk of litigation.
- 12.3 By providing this legal and operational certainty, this instrument allows for the implementation of the separation provisions (and related data provisions) contained within the WA and SA that relate to LECJ cooperation, and allows the Government to meet its obligations under those Agreements. These provisions require the continued application of particular EU LECJ measures in the UK in respect of cases and procedures which are ongoing at the end of the TP. These provisions will take effect at the end of the TP regardless of the outcome of UK-EU and UK-EEA EFTA negotiations. Practically, this allows for the "winding down" of existing UK-EU and UK-EEA EFTA cooperation and the smooth transition to new arrangements after the TP. It also has wider unquantified societal benefits in benefits in reducing uncertainty

which could lead to poorer or impeded law enforcement and criminal justice LECJ cooperation between the UK and EU Member States, and ultimately could result in poorer justice outcomes. The instrument will also address a number of deficiencies in retained EU law in this area that would otherwise arise at the end of the TP.

- 12.4 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

**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 Leo Garwood at the Home Office Telephone: 07768 031445 or [Leo.Garwood@homeoffice.gov.uk](mailto:Leo.Garwood@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Julia Labeta at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon James Brokenshire MP, Minister of State for Security at the Home Office can confirm that this Explanatory Memorandum meets the required standard.



# Annex 1

## 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 14, 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 15, 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. Sifting statement(s)**

- 1.1 Not applicable. The instrument is being made under the draft affirmative procedure.

#### **2. Appropriateness statement**

- 2.1 The Minister of State for Security at the Home Office, the Rt Hon James Brokenshire MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 2.2 This is the case because the instrument makes detailed and technical changes to domestic legislation to ensure the separation provisions contained within the Withdrawal Agreement and the EEA EFTA Separation Agreement are given full effect in the domestic legal system, and to provide clarity and certainty to operational partners. This will assist the UK to meet its legal obligations under these agreements. The instrument will also address deficiencies in retained EU law which would arise at the end of the Transition Period.

#### **3. Good reasons**

- 3.1 The Minister of State for Security at the Home Office, the Rt Hon James Brokenshire 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”.

- 3.2 These are that the instrument is being made to ensure the separation provisions contained within the Withdrawal Agreement and the EEA EFTA Separation Agreement are given full effect in the domestic legal system, and to provide clarity and certainty to operational partners. This will assist the UK to meet its legal obligations under these agreements. The instrument will also address deficiencies in retained EU law which would arise at the end of the Transition Period.

#### **4. Equalities**

- 4.1 The Minister of State for Security at the Home Office, the Rt Hon James Brokenshire MP, has made the following statement(s):

“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.”

- 4.2 The Minister of State for Security at the Home Office, the Rt Hon James Brokenshire MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Minister of State for Security at the Home Office, the Rt Hon James Brokenshire MP, 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.”.

**5. Explanations**

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

**6. Criminal offences**

6.1 Not applicable. The instrument does not create a new criminal offence or penalty.

**7. Legislative sub-delegation**

7.1 Not applicable. The instrument does not create a sub-delegated power.

**8. Urgency**

8.1 Not applicable. The instrument is not being made under the urgent procedure, provided for in paragraphs 4 or 14, Schedule 7 of the European Union (Withdrawal) Act 2018.

# Annex 2

## Table summarising the content of this instrument

Chapters of the SI	Part 3 of the WA: separation provisions		Part 3 of the SA: separation provisions		Deficiencies
	Title V – police and judicial cooperation in criminal matters	Title VII – data and information	Title III – police and judicial cooperation in criminal matters	Title IV – data and information	
<b>Part 2 – law enforcement and security</b>					
Ch 1: Freezing and Confiscation Orders	Article 62(1)(c) and (e)	Yes	None	No	Yes
Ch 2: Cross-border Surveillance	Article 63(1)(a)	Yes	Article 52(a)	Yes	None
Ch 3: Eurojust	Article 62(3)	No	None	No	Yes
Ch 4: European Criminal Record Information System (ECRIS)	Article 62(1)(h) and (j)	Yes	None	No	None
Ch 5: Europol	None	Yes	None	No	None
Ch 6: Exchange of information and intelligence between law enforcement authorities	Article 63(1)(d)	Yes	Article 52(b)	Yes	None
Ch 7: Joint Investigation Teams	Articles 62(2) and 63(1)(a)	Yes	Article 50(2) and 52(a)	Yes	None
Ch 8: Mutual Legal Assistance	Article 62(1)(a) and (c)	Yes	Article 50(1)	Yes	Yes

Chapter 9: Extradition	Article 62(1)(b)	No		Article 51	Yes	Yes
Ch 10: European Investigation Orders	Article 62(1)(l)	Yes		None	No	None
Ch 11: Other retained EU law relating to mutual legal assistance in criminal matters and police cooperation	Article 63(1)(a)	Yes		Article 50(3) and 52(a)	Yes	None
Ch 12: Passenger Name Record Data	Article 63(1)(g)	Yes		None	No	None
Ch 13: Financial Intelligence Units and Asset Recovery Offices	Articles 63(1)(c) and (f)	Yes		None	No	None
Ch 14: Prüm	None	Yes		None	No	Yes
Ch 15: Schengen Information System (SIS II)	Article 63(1)(e)	Yes		Article 52(c)	Yes	Yes
Ch 16: International Agreements	No	Yes		Yes	Yes	Yes
<b>Part 3 – criminal justice</b>						
Ch 1 and 2: European Protection Orders	Article 62(1)(k)	No		None	No	None
Ch 3: European Supervision Orders	Article 62(1)(i)	No		None	No	None
Ch 4: Mutual Recognition of Financial Penalties	Article 62(1)(d)	No		None	No	None

