

<b>Title: The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019</b>  <b>IA No: MoJ028/2018</b>  <b>RPC Reference No: N/A</b>  <b>Lead department or agency: Ministry of Justice (MoJ)</b>  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date: 26/03/2019</b>			
	<b>Stage: Final</b>			
	<b>Source of intervention: EU Exit</b>			
	<b>Type of measure: Secondary Legislation</b>			
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<b>Summary: Intervention and Options</b>			<b>RPC Opinion: N/A</b>	

**What is the problem under consideration? Why is government intervention necessary?**

The Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 (“the Regulations” or “the SI”) will address failures in retained EU law to operate effectively arising from the UK’s withdrawal from the EU by amending the domestic legislation which implemented five EU criminal justice measures (note the territorial extent of the Regulations and this impact assessment is described at paragraph 9). The five measures are as follows:

- Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (“VCD”),
- Directive 2011/99/EU of the European Parliament and the Council of 13 December 2011 on the European Protection Order (“EPOD” and the orders made under it are referred to as “EPOs”),
- Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (European Supervision Order Framework Decision or “ESOFD” whilst the orders made under which are referred to as “ESOs”),
- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (“MRFP”) and
- Council Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (“TAC”).

**What are the policy objectives and the intended effects?**

To ensure that the statute book continues to function effectively in those areas addressed by the Regulations in the event that the UK exits the EU without any agreement for a new relationship that replaces these arrangements.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The following options are considered in this impact assessment.

**Option 0.a: Do not legislate (Do nothing): UK Parliament would not legislate** to address failures of retained EU law or to address legislative deficiencies arising from the UK’s withdrawal from the EU in the area covered by the proposed SI (criminal justice) which legislates for VCD in relation to the whole of the UK, but only in relation to England Wales and Northern Ireland in respect of the other measures.

**Option 0.b: Retain Existing arrangements (Static acquis):** This option is a baseline and existing arrangements will cease to be available on exit day by virtue of the UK having withdrawn from the EU.

**Option 1: Legislate** the UK would legislate to address failures of retained EU Law/laws implementing EU law so that the domestic statute operates effectively. **This is the Government’s preferred option, reflected in the accompanying SI.**

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date: n/a**

Does implementation go beyond minimum EU requirements?	No			
Are any of these organisations in scope?	<b>Micro</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Lucy Frazer \_\_\_\_\_ Date: \_\_\_\_\_ 28/03/2019 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

Description: Legislate (the Government's preferred option)

## FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

Description and scale of key monetised costs by 'main affected groups'				
Costs have not been monetised.				
Other key non-monetised costs by "main affected groups"				
<b>Against Option 0.a:Do nothing and Option 0.b Static acquis</b>				
The proposed technical amendments to legislation under Option 1, may require adjustments in operational guidance and procedure with any associated training and communication, by the affected groups; the costs of both <b>0.a</b> and <b>0.b</b> are similar. Any such cost is anticipated to be de minimis and will be funded from within existing provisions (as these groups are public funded). This, set against the uncertainty and reputational damage in the event of 'no deal' which under both baselines <b>0.a</b> and <b>0.b</b> (as legal framework in this area with EU will no longer function correctly) would lead to additional cost, will be minimal, and the savings provisions will provide certainty for individuals in proceedings.				
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	n/a	n/a	n/a
High	n/a	n/a	n/a	n/a
Best Estimate	n/a	n/a	n/a	n/a
Description and scale of key non-monetised benefits by 'main affected groups'				
None				
Other key non-monetised benefits by 'main affected groups'				
<b>Against Option 0.a:Do nothing and Option 0.b Static acquis</b>				
Legislating Option 1, will provide legal and operational certainty for the public sector as under both baselines <b>0.a</b> .do nothing and <b>0.b</b> static acquis in a no deal the legal framework that underpins the UKs cooperation with EU would no longer function correctly and same considerations would arise, the domestic legislative framework would be defunct (under <b>0.b</b> static acquis unilateral application is not possible). That could otherwise incur costs (including from litigation) who might otherwise be unclear about liabilities and for persons (who might otherwise need further interrogation of the legal landscape to determine the real position). Legislation also provides the opportunity, which Government has taken in its proposed SI, to make transitional and saving measures so that those involved in a procedure that is initiated before UK exit but not completed by that point, and those that are subject of a procedure completed sometime prior to UK Exit but still extant at that point can be clear about the consequences of UK exit in their own case, without further action or cost (i.e. time wasted by parties involved) Only the Government's preferred option allows this action to promote and orderly withdrawal and provide security for those involved. It will also be clear to courts and other authorities in how to deal with requests from remaining EU Member States, with consequent if unquantifiable societal benefits.				

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	N/A
The options are assessed under the scenario that the UK leaves the EU without a deal in March 2019. This assumption is to prepare for all scenarios and is not an indication of an expected outcome.		

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m n/a</b>
Costs: n/a	Benefits: n/a	Net: n/a	

# Evidence Base (for summary sheets)

## A. Background

1. There are five EU laws operative in the criminal justice arena in relation to which we have identified the need for amendments to domestic legislation in order to rectify what would otherwise be deficiencies in the operation of that domestic legislation. Those changes identified are brought forward in the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 (“The Regulations” or “the SI”). The EU measures are as follows:
  - a) **Victims of Crime Compensation** - *Council Directive 2004/80/EC of 29 April 2004 relating to compensation of crime victims (“VCD”)* requires each EU Member State to have a national scheme to provide compensation to victims of violent intentional crime and provides for communication/liaison between the competent authorities of each EU Member State to facilitate victims who are resident in a Member State different from the one where they suffered harm to access the national compensation schemes where the injury occurred.
  - b) **European Protection Orders (EPO)**- *Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order (EPOD)* established between EU Member States a system to facilitate the mutual recognition of certain kinds of “protective orders” made in criminal proceedings (for example, in England and Wales, a restraining order) so such orders could be transferred from one EU Member State to another and be enforceable there.
  - c) **European Supervision Orders (ESO)** - *Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures between Member States as an alternative to provisional detention*, established a system to facilitate between EU Member States the mutual recognition of decisions on supervision measures (for example, bail granted subject to conditions) so the responsibility for the supervision of that measure could be transferred from one EU Member State to another.
  - d) **Mutual recognition of financial penalties (MRFP)** - *Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties* provides for certain financial penalties (of over €70) that are imposed in one Member State to be recognised and enforced in another (including fines imposed on conviction for certain offences, victim compensation and court costs).
  - e) **Taking Account of Convictions (TAC)** - *Council Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings* established a system under which any known prior conviction obtained in another EU Member State is to be taken into account (for example, when passing sentence) to the extent national law requires national convictions to be taken into account.

## What the Regulations Do

2. The Regulations are being made to address what would otherwise be deficiencies in retained EU law, arising from the UK’s withdrawal from the EU (without a deal). Amending legislation is therefore considered appropriate to correct these deficiencies, and make relevant transition provision for certain cases or requests that are ongoing at the time of Exit. The mutual cooperation between EU Member States on which four of these five (i.e. all except TAC) EU Directives and Council Framework Decisions (“FDs”) are based will cease as between the UK and the EU Member States, since these Directives and FDs are constructed to apply between EU Member States, and so cannot apply to the UK when it is no longer an EU Member State.
3. Whilst TAC is not reciprocal in the same way, retaining the implementing legislation for TAC would require domestic courts to continue to distinguish between individuals with prior convictions from EU Member States and those with convictions from non-EU Member States, thus treating one group of

individuals different to the other. While this was a requirement when the UK was a member state of the EU, it will no longer be appropriate or necessary when the UK is not itself an EU Member State, and as such, the Regulations make the necessary amendments to place individuals with prior convictions obtained in the EU in the same position as those with prior convictions obtained in any other country outside the UK.

4. In relation to Victims of Crime Compensation (“VCD”), the Regulation will repeal The Victims of Violent Intentional Crime (Arrangements for Compensation) (European Communities) Regulations 2005. Those Regulations cover mutual assistance **only** and would not be workable after the UK exits the EU because the reciprocal arrangements under the Directive apply only between Member States and when the UK is no longer an EU Member State this will clearly not apply to the UK. The UK would retain its compensation schemes and anyone eligible including some foreign nationals, would continue to be able to access and benefit from those schemes. The Criminal Injuries Compensation Authority (CICA) will continue to offer advice to those who seek it, on how the schemes in other countries operate and how to access those schemes. When the EU law is no longer applicable to UK the UK will revert to using the 1983 European Convention on Compensation of Victims of Violent Crime (which has been ratified by 18 EU Member States as well as non-EU countries) to offer some assistance. This means CICA will still be able to continue to help UK nationals apply for compensation from participating countries’ schemes. UK nationals will potentially still be eligible to apply for compensation from non-Convention EU Member States (eligibility depending on whether there are nationality criteria) CICA would continue to offer advice to those (including UK nationals or EU applicants) who seek it.
  - a. The overall number of applications for assistance is low - CICA helped 59 victims apply for compensation from another EU country in 2017/18. While, neither the awarding body nor the victim is under an obligation to inform CICA of the outcome of the application it is known that at least 24 were rejected and CICA is aware of only two where an award was made.
  - b. In terms of awards by CICA from applicants to the GB schemes, in 2017/18 only four were to victims with EU/EEA addresses. These awards could be to British nationals living in other EU/EEA countries at the time an award was made.
  - c. It is not known how many British nationals applied for compensation from EU compensation schemes because victims can apply directly.
5. In relation to European Protection Orders (EPO), the Regulations will revoke the Criminal Justice (European Protection Order) (England and Wales) Regulations 2014 and the Criminal Justice (European Protection Order) (Northern Ireland) Regulations 2014. The EPOD will no longer have any effect after Exit since it applies only to EU Member States, which the UK will no longer be. Savings and transitional provisions in Part 3 provide that EPOD - derived domestic restraining orders that were made before exit day can be varied or discharged on or after exit day, and requests for recognitions or other changes to European protection order received, but not processed, before exit day, can be processed after exit. Note the Explanatory Memorandum for these Regulations states that there have been only four requests made to the UK to accept an EPO since the EPOD was implemented in 2015 and the UK has made only four requests to other EU Member States in the same period. Since the Explanatory Memorandum was published, however, additional EPOs have been made and received by England & Wales and Northern Ireland. As at 21<sup>st</sup> March 2019, there have been 5 EPO orders made and 6 EPO orders received by England & Wales and NI authorities since EPOD was implemented in 2015.
6. In relation to European Supervision Orders (ESO), the Regulations will repeal Part 7 of, and Schedule 6, to the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 which give effect in England and Wales and Northern Ireland to the Framework Decision. This is because the ESO Framework Decision provides for and relies upon ongoing communication through the central (or relevant) authorities of the requesting and requested EU Member States. The requesting Member State retains jurisdiction over any transfer made, so if there is a breach, the requested EU Member State must revert to the requesting EU Member State to determine next steps. Once the UK is no longer an EU Member State, the Framework Decision will cease to apply. Note, the Explanatory

Memorandum for these Regulations states that the UK has made only two requests for supervision of other EU Member States since implementation of this FD in 2014, and that the UK has received two requests in the same period. Since the Explanatory Memorandum was published, however, additional ESOs have been made and received by England & Wales and Northern Ireland. As at 21<sup>st</sup> March 2019, there have been 2 ESOs issued by England & Wales and Northern Ireland, and 9 ESOs received by England & Wales and Northern Ireland from EU Member States.

7. In relation to Mutual Recognition of Financial Penalties (MRFP), the EU measures established a framework for transmission of certain financial penalties between EU Member States. That framework will not apply to the UK after Exit and the UK cannot therefore issue requests for enforcement of penalties to remaining EU Member States with any expectation they would be acted on (and neither could remaining EU Member States address requests to the UK). Consequently, the Regulations will repeal the provisions in the Criminal Justice and Immigration Act 2008 and the Courts Act 2003 that implemented the MRFP, upon EU Exit.
8. Savings provisions are made in relation to this measure for transitional cases (i.e. for requests received prior to exit but not concluded by then). Note numbers of requests are low: an average of around 520 requests have been received per year in England and Wales for the last seven years. The measure in principle applies to any criminal offence in relation to which financial penalties can be imposed and is not restricted to driving offences although states can refuse to accept an offence if it is not one in their country (there are 39 offences listed in Schedule 19 of the CJI Act 2008 and requests by member states to accept one of these cannot be refused by receiving member states for lack of dual criminality – these include criminal damage, arson, computer related crime, murder and grievous bodily injury). In the last 6 years, England and Wales sent out an average of about 475 per year to other EU Member States with Poland making up (25% of total), Lithuania (14% of total) and France (8% of total).
9. In relation to Taking Account of Convictions (TAC), the amendments in the Regulations will provide that post UK Exit all individuals who have prior convictions from outside the UK, whether from EU or non-EU countries, are treated the same. The Regulations includes transitional provisions, which provide that the amendments do not apply to criminal proceedings that have already been instituted in England and Wales or Northern Ireland before Exit day.
10. The Regulations amend in Part 2 the law in the United Kingdom and in Parts 3, 4, 5 and 6 the law in England and Wales and Northern Ireland, although not every provision of Parts 3, 4, 5 and 6 extend to both England and Wales and Northern Ireland. With one exception, amendments, revocations and modifications made by the SI have the same extent within the United Kingdom as the provisions to which they relate. Regulation 29 extends only to England and Wales and Northern Ireland. This assessment of impacts has the same territorial scope.

## **B. Policy Rationale and Objectives**

11. The conventional economic rationales for Government intervention are based on efficiency and equity arguments. The Government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or where there are failures with existing Government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more disadvantaged groups in society).
12. The Government continues to prepare for all scenarios arising from the UK's withdrawal from the EU, including a scenario in which the UK leaves the EU without a deal in March 2019.
13. Should the UK leave the EU without agreement on a future relationship in March 2019 – the 'no deal' scenario – the purpose of the SI is to address failures in retained EU law to operate effectively and

other deficiencies arising from the withdrawal of the UK from the EU by amending the domestic legislation which implemented the five EU criminal justice measures. If the Government were not to intervene by amending the relevant legislation, the effect would be that that existing legislation would be inoperable, save for TAC, since reciprocity with the EU is required.

14. The associated policy objectives are to:

- a. ensure that the statute book continues to function effectively in the area of criminal justice in scope of the SI should the UK leave the EU without a deal in March 2019 by tidying up defunct provisions on the statute book; and
- b. make necessary transitional and saving provisions once the UK is not an EU Member State to promote an orderly exit.

## C. Affected Stakeholder Groups, Organisations and Sectors

15. The groups most likely to be affected by the options in this IA are as follows:

- Her Majesty's Courts and Tribunals Service (HMCTS), including London Collection and Compliance Centre (LCCC) and Criminal Injury Compensation Authority (CICA))
- Department of Justice Compensation Services
- Her Majesty's Prisons and Probation Service (HMPPS)
- defendants and victims
- Northern Ireland Prison and Probation Services
- Northern Ireland courts
- The providers of legal services
- Crown Prosecution Service (CPS) and Public Prosecution Service for Northern Ireland
- Police and Police Service of Northern Ireland

## D. Options

- **Option 0.a: Do not legislate (Do nothing): UK Parliament would not legislate** to address failures of retained EU law or to address legislative deficiencies arising from the UK's withdrawal from the EU in the area covered by the proposed SI (criminal justice) which legislates for VCD in relation to the whole of the UK, but only in relation to England Wales and Northern Ireland in respect of the other measures.
- **Option 0.b: Retain Existing arrangements (Static acquis):** This option is a baseline and existing arrangements will cease to be available on exit day by virtue of the UK having withdrawn from the EU.
- **Option 1: Legislate** the UK would legislate to address failures of retained EU
- Law/laws implementing EU law so that the domestic statute operates effectively. **This is the Government's preferred option, reflected in the accompanying SI.**

### Option 0.a/Baseline: Do nothing

16. This option would lead to the legislation that implemented these measures remaining on the statute book, whilst in respect of four of the five measures, it would have no effect. This would mean that the deficiencies arising from EU Exit would not be corrected and would mean UK legislation retained provisions which were no longer appropriate possibly, in some cases, giving individuals a misleading impression of what may or may not be possible. There would be ambiguity as to the applicability of each measure, potentially creating confusion for courts, defendants and victims, for example that UK courts (central authorities) had the power to request the courts of another EU Member State to act on requests when they did not. It would also not allow savings provisions to be made, which are

necessary to promote an orderly EU Exit. It would mean inoperable law remained on the statute book.

### **Option 0.b/Baseline: Static acquis**

17. This option is the static acquis as expected to be before EU exit in March 2019 – including existing domestic and EU legislation.

### **Option 1: Legislate - the UK would legislate to address failures of retained EU Law/laws implementing EU law so that the domestic statute operates effectively. This is the Government's preferred option.**

18. Under Option 1, the UK would legislate to address failures of retained EU law to operate effectively, and other legislative deficiencies arising from the UK's withdrawal from the EU, in the area of criminal justice. The measures only apply to EU Member States and so cannot apply to the UK when it is no longer an EU Member State. As well as the substantive amendments legislation allows savings and transitional provisions to be made to provide for an orderly Exit from the EU and allowing the parties involved to be clear about how UK exit may impact their case. It will create a functioning statute book ready for UK Exit.

## **E. Cost and Benefit Analysis**

19. Under either baseline option 0.a **Do nothing** or 0.b **Static acquis**, in the event of 'no deal', the legal framework which underpins the UK's cooperation with European partners in this area would no longer function correctly. For the most part this is not expected to result in direct or monetised costs. Note, however, the uncertainty and reputational damage noted elsewhere in this assessment which could lead to additional cost and the argument that only by pursuing Option 1 (**legislating**) can Government make saving provisions to provide certainty for those individuals involved in proceedings which start, or applications that are made, prior to UK Exit but are not concluded by that time.

20. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

21. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the United Kingdom with the aim of understanding what the overall impact on society might be from the options under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, both positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.

22. As noted above, the primary rationale for intervention in this instance is to promote legal certainty and the UK's orderly Exit from the EU; however, in this case, there is no measure of legal certainty or way to quantify the impact of legal certainty on economic interaction so all costs and benefits are non-monetisable in nature. What is true, however, is that the changes under Option 1 will remove any doubt for stakeholders on how the law applies post EU Exit, so that there can be no confusion flowing from the statute book, plus that Option allows savings provisions to be made in certain cases which set out clearly how, in the relevant cases, their case is impacted by Exit.

23. Additionally, we do not monetise impacts from coming out of the measures in the first place, as this is not relevant and is a consequence of UK Exit from EU not from the SI presented and analysed in this IA. We estimate that the impact of Option 1 would fall below the threshold due to the low reliance on the measures considered in this document.

24. This cost benefit analysis section will first compare the Option 1 against the Option 0.a/ **Do nothing** baseline, before comparing Option 1 against Option 0.b/ **Static acquis** baseline.



## **Cost and benefit analysis, Option 1 against 0.a/Do nothing (do not legislate)**

25. The Government does not consider there to be reckonable additional costs of Option 1, compared to 0.a **Do nothing**. The cost of legislating is minimal and will be met from within existing provision. Option 0.a would, however, leave redundant and obsolete legislation on the statute book with possible consequent confusion and reputational damage. This reduces risk of time wasted by parties involved. Indeed, in the sense that revoking means stopping doing any time wasting activity the monetised impacts are likely to be positive. Certainly, those involved and benefiting from savings provisions are likely to consider the certainty provided by Option 1 has a value.
26. If UK did not legislate (Option 0.a and Option 0.b) it would likely require some communication to explain why and what parties involved might do now. This is likely to occur under each option considered here but for the Options 0.a and 0.b would be ongoing whereas Option 1 would chiefly be able to deal with this issue by standardising communications to reflect the new position at the point of Exit.
27. Technical changes to legislation may require some changes to operational guidance with some slight operational costs for communications of changes for wind-down and training within the public sector. These will all be absorbed within existing provision.

## **Benefits of Option 1**

28. Revoking and amending the relevant legislation will give all parties (notably courts, victims and defendants), greater clarity. The legislation would be more transparent and easier to understand after UK's Exit from the EU. The amendments themselves as well as the savings and transitional provisions give additional legal and operational certainty providing for an orderly EU Exit. They better contribute to achieving justice and fairness by not leaving cases which have commenced hanging unfinished i.e. procedures (for example requests) initiated but not completed before exit day.
29. Providing clarity in this way and avoiding uncertainty, means the risk of reputational damage would be limited. If no action was taken for transitional cases (cases still in the system at the time of UK Exit), those involved may not be clear of whether, for example, their EPO is still enforceable, in this instance meaning a vulnerable party did not know if they remained protected and a potential abuser not knowing they remained at risk of enforcement proceedings. Only by legislating can Government make such saving/transitional provisions.
30. Falling back on the terms of the Council of Europe Convention on the Compensation of Victims of Violent Crimes Directive in relation to VCD means there would be fewer cases of assistance to obtain access to compensation schemes to victims of violent intentional crime for CICA to process. However, the reduction in caseload would be very small and note any net reduction would be smaller still since UK can rely on the Council of Europe Convention in many cases (noted above). If not clear in the legislation, those involved may be confused about the assistance available and waste time and effort leading to reputational damage for Government. Only by taking this action can there be an orderly Exit from the EU.

## **Cost and benefit analysis, Option 1 against 0.b/Static acquis (Retain existing arrangements):**

31. This is a [baseline](#) and existing arrangements will cease to be available on exit day by virtue of the UK having withdrawn from the EU. As noted earlier, four of the measures rely on reciprocity to function which will not be present when the EU law does not bind EU and remaining Member States to comply. Indeed it is noted, for example, that unilateral application is not possible since there can be no obligation on reciprocity to UK requests and there is no legal basis for EU Member States to make a request of the UK since the EU laws provide that the request must be directed at a [nother] Member State which the UK will not be. The fifth EU measure amended by this SI (TAC) would maintain a discrimination based on an EU nationality status which is inappropriate when UK is no

longer an EU Member State (and the remaining Member States will not be required to apply the same rule to UK nationals). Beyond this, this baseline Option (0.b) gives rise to the same considerations as noted above for Option 0.a, since it essentially means leaving the domestic legislative framework intact which, as noted there, would mean it is defunct.

## **Benefits of Option 1**

32. As the costs and consequences of Option 0.b is similar to that of Option 0.a likewise so are the comparative benefits of Option 1 in that respect, discussed above. Essentially, with Option 1 domestic legislation would be more transparent and easier to understand after UK's Exit from the EU. There would be avoidance of costs by providing legal and operational certainty. The savings and transitional provisions, only possible under Option 1, would give additional legal and operational certainty providing for an orderly EU Exit. They will better contribute to achieving justice and fairness by not leaving cases which have commenced before Exit day with no certainty to how they could conclude.

## **F. Wider Impacts**

33. The proposed Regulations do not amend, repeal or revoke any part of the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

34. The Government has considered the possible impact in respect of the eight relevant protected characteristics: (Disability; Sex; Gender reassignment; Race; Age; Religion or belief; Sexual orientation, and pregnancy and maternity). The assessment concluded that the SI will have no, and certainly no tangible, adverse impact on any particular persons or groups. Indeed, given the aim of the SI is to improve legal certainty it would assist all groups, including those with protected characteristics, navigate the criminal justice system post-Exit.

## **G. Enforcement and Implementation**

35. Following the UK's Exit from the EU, the amendments made in the SI would be made and followed by the courts of England and Wales and Northern Ireland and (for VCD only) Scotland. The Government will be publishing the Criminal Procedure (Amendment) (EU Exit) Regulations 2019, which makes further changes to the Rules of Court and changes to Rules will be made and followed by courts.

36. The Regulations will be brought into force on Exit day. Should the UK withdraw from the EU with a deal – that is, the Withdrawal Agreement is agreed and ratified – the Government would defer, revoke or amend the relevant secondary legislation, likely through the Withdrawal Agreement Bill, so that it does not come into force at that time.

## **H. Monitoring and Evaluation**

37. As this instrument is made under the European Union (Withdrawal) Act 2018, no review is required.

## **I. Business Impact Target**

38. This measure is out of scope of the Business Impact Target.