

EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENTARY ELECTIONS ETC. (REPEAL, REVOCATION, AMENDMENT AND SAVING PROVISIONS) (UNITED KINGDOM AND GIBRALTAR) (EU EXIT) (AMENDMENT) REGULATIONS 2019

2019 No. 1389

1. Introduction

1.1 This explanatory memorandum has been prepared by Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 (S.I. 2018/1310) (“the Principal Regulations”) were made under the powers of the European Union (Withdrawal) Act 2018 (“the EU(W) Act”). The effect of the Principal Regulations is to repeal legislation, and make consequential provision, relating to European Parliamentary elections which are due to come into force on the day that the UK leaves the European Union (“exit day”) which is 31st October 2019.

2.2 The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) (Amendment) Regulations 2019 (“the Regulations”) are being made under powers in the EU(W) Act, and will amend the Principal Regulations so that the provisions in them take effect on 31st December 2020 instead of on the date that the UK leaves the EU. This will mean that legislation relating to European Parliamentary elections will remain in force after exit day to enable necessary functions and processes that are required following the European Parliamentary elections held on 23rd May 2019 to be carried out and completed.

Explanations

What did any relevant EU law do before exit day?

2.3 Before exit day the relevant EU law requires EU Member States to hold elections to return Members to the European Parliament, and set out provisions relating to the election and tenure of Members of the European Parliament (“MEPs”), the cycle of European Parliamentary elections, and the rights for EU citizens resident in another Member State to vote and stand as candidates in European Parliamentary elections.

Why is it being changed?

2.4 Once the UK leaves the EU, the obligation that the UK return MEPs to the European Parliament will cease and the UK will not take part in future European Parliamentary elections. The provisions in UK law, including retained EU law, relating to European Parliamentary elections and European political parties and European political foundations will therefore be redundant. We had not expected that we would take part in the European Parliamentary elections in May 2019. The Principal Regulations were drafted on the basis that the UK would leave the EU before this date. However, as the UK took part in the European Parliamentary poll on 23rd May, there are a number of processes set out in the legislation which need to take place after the poll. It

is therefore necessary for legislation concerning the conduct and administration of European Parliamentary elections in the UK and Gibraltar including provisions in respect of election expenditure in the UK and Gibraltar, to remain in place after exit day in order to ensure the integrity of the electoral system.

What will it now do?

- 2.5 There will be no provision for the UK to hold European Parliamentary elections after exit day. However, as the UK took part in the European Parliamentary poll on 23rd May, there are a number of processes set out in the legislation which need to take place after the poll. It is therefore necessary for legislation concerning the conduct and administration of European Parliamentary elections in the UK and Gibraltar to remain in place after exit day in order to ensure the integrity of the electoral system. The Regulations amend the Principal Regulations so that the provisions will take effect on 31st December 2020 instead of on the date that the UK leaves the EU. This will mean that legislation relating to European Parliamentary elections will remain in force after exit day to enable necessary functions and processes that are required following the European Parliamentary elections on 23rd May 2019 to be carried out and completed. Further details are set out at sub-section 7.3 of this explanatory memorandum.
- 2.6 For the avoidance of doubt, the date of 31st December 2020 has no connection to and no bearing on the date that the UK leaves the European Union. The date of December 2020 is merely an administrative cut-off point relating to functions that are necessary following the conduct of the 2019 European Parliamentary elections.

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 United Kingdom (see section 24 of the EU(W) Act) 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 territorial extent of this instrument is the United Kingdom and Gibraltar.
- 4.2 The territorial application of this instrument is the United Kingdom and Gibraltar.

5. European Convention on Human Rights

- 5.1 The Rt Hon David Lidington CBE MP, Minister for the Cabinet Office, has made the following statement regarding Human Rights:

“In my view the provisions of the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) (Amendment) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Regulations are made under sections 8(1), 23(1) and (6) of, and paragraph 21(b) of Schedule 7 to, the EU(W) Act. The Regulations are also made under section 24(3) of the EU(W) Act in so far as they extend to Gibraltar.
- 6.2 As a result of the UK no longer being a EU Member State the UK will no longer elect MEPs. To the extent that retained EU law includes provision relating to the holding of European Parliamentary elections in the UK and any rights to vote or stand as candidates in relation to European Parliamentary elections in the UK, and provides for European political parties and European political foundations in the UK, the Principal Regulations remedy deficiencies in retained EU law by removing such redundant provisions. The Principal Regulations also make technical consequential amendments and saving provision as a result of the repeal of the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003, by Schedule 9 to the EU(W) Act.
- 6.3 The Regulations amend the coming into force date of the Principal Regulations so that the latter will come into force on 31st December 2020.
- 6.4 It is intended that commencement regulations will be made in due course to bring the commencement of the repeal of the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003 into force on the same date as the Principal Regulations come into force, being 31st December 2020.

7. Policy background

What is being done and why?

- 7.1 The Principal Regulations were made under powers in the EU(W) Act and repeal legislation, and make consequential provision, relating to European Parliamentary elections, as a result of the UK no longer having representation in the European Parliament or participating in elections to the European Parliament. The Principal Regulations are due to come into effect on the date that the UK leaves the EU (31st October 2019).
- 7.2 The Principal Regulations were drafted on the basis that the UK would leave the EU on 29th March 2019 before the European Parliamentary elections were due to be held in the period 23rd to 26th May. It was, therefore, not expected that the UK would take part in the European Parliamentary elections. However, as a result of it not being possible for the Government to secure a deal through Parliament, the UK had not left the EU and therefore it was necessary to take part in the European Parliamentary poll on 23rd May. There are a number of processes set out in the legislation which need to take place after the poll. It is therefore necessary for the European Parliamentary elections provisions to stay in place after exit day to ensure those processes are completed in respect of the 2019 poll. This will ensure the integrity of the electoral system.
- 7.3 The Regulations will ensure that necessary functions and processes that are required following the European Parliamentary poll on 23rd May can be carried out and completed. These include:
- allowing for the relevant electoral officers to store ballot papers and other election documents for 12 months from the date of the poll, or longer in certain circumstances. Without the law remaining in force, electoral officers will have

no legal authority to keep the ballot papers and other documents. The police may need to refer to the documents in the event of an investigation and would not be able to do so if the documents are no longer stored;

- provisions requiring the filing of spending returns by candidates and parties to the Electoral Commission within 6 months after the date of the election. If the law does not remain in place, candidates and parties would not be obliged to make spending returns to the Electoral Commission within 6 months. This is likely to result in less transparency about spending by parties at the European Parliamentary election;
- for the Electoral Commission to be able to investigate any potential offences in relation to breaches of the rules in electoral legislation;
- provisions concerning payments to Returning Officers (ROs) for the costs of running the poll. If these provisions are no longer in force, there would be no provisions in place as to how ROs should submit their expenses claims to Government, and Government would no longer have legal authority to reimburse ROs for their costs incurred in running the poll, or pay them their fee.

7.4 The Regulations extend to Gibraltar. Gibraltar forms part of the South West region in England for the purposes of European Parliamentary elections, and Gibraltar will also no longer take part in those elections once the UK leaves the EU.

7.5 European Parliamentary elections is a non-devolved subject matter in relation to the competence of each of the devolved legislatures and the devolved administrations. The vast majority of provisions in the Principal Regulations relate to reserved matters for Scotland and Wales and excepted matters for Northern Ireland. The Principal Regulations make a small number of consequential changes in domestic legislation covering devolved subject matters in Scotland, Wales and Northern Ireland that are appropriate as a result of the repeal of the European Parliamentary elections legislation. The Regulations do not make any changes to the substance of these devolved provisions although they change the date that the changes come into force (ie it is now 31st December 2020).

7.6 Once the UK leaves the EU, there will be no obligation for the UK to hold European Parliamentary elections and we will no longer have MEPs. The Regulations do not change this position.

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 EU(W) Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the powers in sections 23(1) and (6), 24(3) of, and paragraph 21(b) of Schedule 7 to, the EU (W) Act. In accordance with the requirements of that Act the Minister had made the relevant statements as detailed in Part 2 of the Annex to this memorandum.

9. Consolidation

9.1 The Law Commissions have conducted a review into the desirability and feasibility of reforming and consolidating electoral law. The Government is continuing to work

with the Law Commissions, as well as other stakeholders such as the Electoral Commission, to consider ways to streamline and clarify our electoral system in order to make elections easier to administer and therefore more resilient to errors or fraud. We will consider their proposals in full once we receive the Law Commissions' final report.

10. Consultation outcome

- 10.1 The Cabinet Office have engaged on the proposed change with the Electoral Commission, representatives of the Association of Electoral Administrators, the Electoral Management Board for Scotland, the Society of Local Authority Chief Executives, the Wales Electoral Co-ordination Board, the devolved administrations in Scotland, Wales and Northern Ireland, and the Government of Gibraltar.
- 10.2 The Electoral Commission and other bodies agree with the Government's approach in the instrument and consider that the proposed approach is sensible given that the UK took part in European Parliamentary elections in May 2019.
- 10.3 The devolved administrations in Scotland, Wales and Northern Ireland have raised no issues with keeping in force legislation relating to European Parliamentary elections after exit day to enable necessary functions and processes that are required to be carried out and completed.

11. Guidance

- 11.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of elections. The Electoral Commission will update its guidance in relation to European Parliamentary elections as necessary to reflect the provisions in the Regulations and that legislation governing the conduct of European Parliamentary elections will remain in force until 31st December 2020 so that functions and processes that are required following the European Parliamentary elections on 23rd May 2019 can be carried out and completed.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The instrument will have no impact on the public sector beyond enabling electoral administrators and other bodies, in the normal way, to carry out and complete actions and functions that are required following European Parliamentary elections.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business.

13. Regulating small business

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

14. Monitoring & review

- 14.1 There are no plans to monitor or review these Regulations.

15. Contact

- 15.1 Peter Richardson at the Cabinet Office Telephone: 020 7271 6433 or email: peter.richardson@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Peter Lee, Director, Constitution Group, who covers the Elections Policy area at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon David Lidington CBE MP, Minister for the Cabinet Office, 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 clauses 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/ESIC
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 clauses 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 clauses 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 clauses 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 clauses 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 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, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Rt Hon David Lidington CBE MP, Minister for the Cabinet Office, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) (Amendment) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because following the UK’s participation in the European Parliamentary elections, it is necessary for legislation relating to European Parliamentary elections to remain in force after exit day to enable necessary functions and processes that are required following the European Parliamentary elections held on 23rd May 2019 to be carried out and completed in the normal way. These Regulations do no more than is appropriate in order to provide certainty and clarity on this issue. Further details, including examples of actions and functions that may need to be carried out are set out in section 7 of the main body of this explanatory memorandum.

2. Good reasons

- 2.1 The Rt Hon David Lidington CBE MP, Minister for the Cabinet Office, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are: as the UK took part in elections to the European Parliament on 23rd May 2019 it is necessary for legislation relating to European Parliamentary elections to remain in force after exit day to enable necessary functions and processes that are required following the poll to be carried out and completed in the normal way. The provisions in the Regulations are a reasonable course of action in order to provide certainty and clarity to electoral administrators and other public bodies that the relevant legislation remains in force after exit day and that they will be able to carry out their statutory duties in relation to the European Parliamentary elections. The Regulations will ensure that the necessary processes can be carried out and will uphold the integrity of our electoral system. Further details, including examples of actions and functions that may need to be carried out are set out in section 7 of the main body of this explanatory memorandum.

3. Explanations

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