

**EXPLANATORY MEMORANDUM TO**  
**THE SERVICES OF LAWYERS AND LAWYER'S PRACTICE (REVOCATION**  
**ETC.) (EU EXIT) REGULATIONS 2019**

**2019 No. 375**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to end the preferential practising rights of EU and EFTA lawyers in England and Wales and Northern Ireland. These are provided by a reciprocal European framework consisting of Directives and implementing legislation. The Directives will cease to apply to the UK on EU Exit and the reciprocity on which they depend will accordingly cease. Our instrument will, therefore, revoke the implementing legislation, thereby realigning the position of EU and EFTA lawyers with other “third country” lawyers. This is subject to transitional provision, to give certain EU and EFTA lawyers the time to make the necessary changes to their practice or business structure to comply with the new regulatory framework.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 EU law currently enables EU and EFTA lawyers from one EU or EFTA state (the “home” state) to practise and establish in another state (the “host” state) under their home state professional title (i.e. without having to requalify and join the host state’s legal profession).

In the UK, the European Communities (Services of Lawyers) Order 1978 (‘the 1978 Order’) implements the Lawyers’ Services Directive Council Directive (77/249/EEC) (LSD). The Order allows EU and EFTA lawyers to provide services in the UK on a temporary or “fly in fly out” basis, including legal services normally reserved to advocates, barristers or solicitors (with some restrictions), under their home state professional title.

The European Communities (Lawyer’s Practice) Regulations 2000 (‘the 2000 Regulations’) implement the Lawyers’ Establishment Directive (98/5/EC) (LED) in England and Wales and Northern Ireland. The Regulations allow lawyers who have registered with the relevant legal services regulator, to practise activities that are normally reserved to solicitors and barristers (with some restrictions) under their home state professional title on a permanent basis. Such lawyers, termed “Registered European lawyers” (RELs) may establish joint practices with solicitors or barristers or other lawyers, or may practise as sole practitioners in much the same way as solicitors or barristers. RELs may also seek admission as solicitors or barristers following three years of practice in England and Wales or Northern Ireland, and in the law of England and Wales or Northern Ireland. Alternatively, they may seek to gain admission as

solicitors or barristers through a transfer examination in England and Wales (Northern Ireland does not offer this option).

*Why is it being changed?*

- 2.3 If the UK leaves the EU without a deal, the above EU Directives that allow for reciprocal practice and establishment arrangements will no longer apply to the UK

*What will it now do?*

- 2.4 It will realign EU and EFTA lawyers with lawyers qualified in third countries so that they are subject to the same regulatory framework. The provision of temporary services under the LSD will cease in England and Wales and Northern Ireland should the UK leave the EU without a deal. RELs will also no longer be able to practise under their home state professional title or be able to seek admission as a solicitor or barrister under the ‘three years’ experience’ route in England and Wales and Northern Ireland. However, they will be able to gain admission as a solicitor or barrister (in England and Wales) through alternative examination routes open to third country qualified lawyers.

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

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

- 3.1 We do not consider that this instrument is subject to affirmative resolution procedure for any of the reasons set out in paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018. However, we believe that it should nonetheless be taken forward under that procedure, for two reasons. First, the instrument removes existing individual rights to practise and establish in England and Wales and Northern Ireland. Although this instrument primarily ensures compliance with international obligations (see section 7), this is likely to have an impact on employees, their employers and business owners. Logically, this might entail an overall effect on our economy. Secondly, we are mindful of ensuring consistency with precedent in relation to Parliamentary procedures. For the implementing legislation itself, under s.2(2) of the European Communities Act 1972, the 1978 Order was adopted by affirmative procedure, the 2000 Regulations by negative procedure. Further, the vast majority of powers to make secondary legislation related to the regulation of legal services under the Legal Services Act 2007 (which applies to England and Wales only) are subject to the affirmative procedure. We therefore consider that this procedure is appropriate for this instrument

*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 Northern Ireland.
- 3.3 The application of this instrument is the same as the extent of this instrument. This instrument extends to England and Wales and Northern Ireland

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

- 4.1 The territorial extent of this instrument is England and Wales and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales and Northern Ireland.

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

5.1 The Parliamentary Under-Secretary of State for Justice, Lucy Frazer QC MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Services of Lawyers and Lawyer’s Practice (Revocation etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

## **6. Legislative Context**

6.1. Paragraph 2.2 sets out the current EU law in relation to the provision of legal services and the domestic implementing legislation. This instrument is being made using powers in the European Union (Withdrawal) Act 2018, in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

## **7. Policy background**

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

7.1 The instrument aligns the position of EU and EFTA and third country legal service providers. It also provides transitional arrangements (up to 31 December 2020) so that RELs and EU and EFTA lawyers with ownership interests in legal businesses as well as businesses are given adequate time to make alternative arrangements to comply with the new regulatory framework, such as changing practice or transferring qualifications, re-hiring staff or restructuring businesses.

7.2 Should the UK leave the EU without reaching an agreement, the UK will still be subject to World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) rules. Specifically, ‘most favoured nation’ (MFN) rules prohibit preferential treatment of any signatory state above another (unless one of the permitted exceptions applies). This instrument ensures alignment with the UK’s WTO commitments, and ensures robust regulatory oversight of third country lawyer access to the provision of regulated legal services in England and Wales and Northern Ireland.

7.3 EU and EFTA lawyers who have transferred to the English/Welsh or Northern Irish legal professions through the three years’ practice under the 2000 Regulations or who have taken any transfer examination will be able to retain their English/Welsh or Northern Irish professional title.

7.4 This instrument applies legal services, which are a transferred matter for Northern Ireland under section 4(1) of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than six months away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. 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.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 relating to consequential, transitional or saving provisions. 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 Consolidation is not applicable to this instrument

## **10. Consultation outcome**

10.1 There was no formal consultation process. However, we have engaged with relevant legal services regulatory bodies and devolved administrations throughout the process of drafting the instrument, in the interest of ensuring legal certainty and consistency of policy.

## **11. Guidance**

11.1 Practical guidance is provided in a technical notice on Professional Business services published on 12 October 2018. The technical notice does not include the details of the transitional arrangements for EU and EFTA lawyers registered as RELs in England and Wales and Northern Ireland before Exit day. EU and EFTA lawyers should contact the relevant legal services regulator in England and Wales and Northern Ireland for further advice about the transitional period.

11.2 The Technical Notice is available at:  
<<https://www.gov.uk/government/publications/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal>>

## **12. Impact**

12.1 The impact of this instrument on business, charities or voluntary bodies is not directly quantifiable: it depends on the nature of the work undertaken by EU and EFTA lawyers, on where they are employed, and on the individual choices these agents will make as a result of the European framework being revoked, such as practice, qualification, and business structure. Key affected groups are EU and EFTA lawyers, legal businesses and the wider professional and business services sector. In England and Wales, the Solicitors Regulation Authority (SRA), has identified (as of October 2018), 699 REL registered with the SRA. The Bar Standards Board (BSB) has identified 17 EU and EFTA RELs registered with it, and 20 RELs who are non-practising. The Law Society of Northern Ireland identified 4 RELs, and the Northern Ireland Bar Council identified one REL.

For lawyers, we have identified the cost of losing practice and establishment rights afforded by REL status. These costs are partly mitigated by other practising options: carrying on unregulated activities, undertaking regulated activities under supervision, or transferring to the domestic legal professions under the Qualified Lawyer Transfer Scheme, managed by the SRA and provided privately, or the Bar Transfer Test, managed by the BSB and provided privately (which are also open to third country lawyers and already a popular option for EU and EFTA lawyers). Secondly, our transitional period allows them the time to complete these changes if necessary.

For legal services-specific businesses, the cost would be related to the loss of specialists and of the possibility of temporary “fly in fly out” services, and potentially the need to re-hire or restructure depending on REL business ownership or participation in practice. This is partly offset by our transitional arrangements, and the possibility of reorganising, including becoming an alternative business structure;

For the wider sector, the impact also relates to the loss of specialism and of temporary services, subject to the same mitigating actions.

The benefits we identified are: reputational advantage and compliance with GATS MFN rules, removing the risk of compensatory or retaliatory trade measures; legal certainty for the legal services sector; and transitional arrangements to allow changes in practice and structure to take place more smoothly.

- 12.2 There is no significant impact on the public sector. Relevant regulators will take on the burden of managing and enforcing regulatory rule changes and changes in practice and ownership status, as well as enrolments in transfer examinations. This may be managed by reallocating existing administrative resources or increasing them.
- 12.3 A full impact assessment is submitted with this memorandum and published alongside this memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses that are owned by and/or who employ the services of EU and EFTA lawyers.
- 13.2 This instrument will provide transitional arrangements for such business to make alternative arrangements.

### **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 Martha McCarey at the Ministry of Justice Telephone: +447547969730 or email: [martha.mccarey@justice.gov.uk](mailto:martha.mccarey@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Amelia Wright at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under Secretary of State Lucy Frazer QC MP, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## **Part 2**

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

#### **1. Appropriateness statement**

- 1.1 The Parliamentary Under-Secretary of State for Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Services of Lawyers and Lawyer’s Practice (Revocation etc.) (EU Exit) Regulations 2019 do no more than is appropriate”. This is the case because the instrument amends deficiencies arising from withdrawal from the EU. In this case, the framework for reciprocal arrangements relating to the provision of legal services would no longer be in place. By revoking the 1978 Order and the 2000 Regulations, the instrument ensures compliance with WTO GATS rules. The instrument, additionally, provides for a transition period that would mitigate consequences for those affected by these provisions and allow them a reasonable time to take action to comply with the new regulatory position.

#### **2. Good reasons**

- 2.1 The Parliamentary Under-Secretary of State for Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. These are set out in subparagraphs 7.1, 7.2 and 7.3 of this explanatory memorandum.

#### **3. Equalities**

- 3.1 The Parliamentary Under-Secretary of State for Justice, Lucy Frazer QC 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, and section 75 of the Northern Ireland Act 1998.
- 3.2 The Parliamentary Under-Secretary of State for Justice, Lucy Frazer QC MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.3 “In relation to the draft instrument, I, Lucy Frazer, 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 or section 75 of the Northern Ireland Act 1998.”

#### **4. Explanations**

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