

## **EXPLANATORY MEMORANDUM TO**

### **THE EUROPEAN UNION (WITHDRAWAL) ACT 2018 (EXIT DAY) (AMENDMENT) (NO. 2) REGULATIONS 2019**

**2019 No. 859**

#### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Exiting the European Union and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### **2. Purpose of the instrument**

- 2.1 These Regulations amend the definition of “exit day” in section 20(1) of the European Union (Withdrawal) Act 2018 (hereafter “the 2018 Act”) from 12 April 2019 at 11.00 p.m. to 31 October 2019 at 11.00 p.m., and consequently amend section 20(2) of the 2018 Act. Various provisions of the 2018 Act, including the repeal of the European Communities Act 1972, and a wide range of primary and secondary legislation, take effect or come into force on “exit day”.
- 2.2 The definition of “exit day” in the 2018 Act was previously amended by the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019 after an extension to the period specified in Article 50(3) Treaty of European Union (“TEU”) was agreed between the United Kingdom and the European Council on 22 March 2019. “Exit day” is currently defined as 11.00 p.m. on 12 April 2019.
- 2.3 On 11 April 2019, the European Council adopted decision European Council Decision (EU) 2019/584, OJ No. L 101, 11.04.2019, p.1 to extend the period provided for in Article 50(3) TEU in agreement with the UK. This extension will be until 31 October 2019 at 11.00 p.m. unless the withdrawal agreement is ratified and comes into force before this date, in which case, in line with Article 50(3) TEU, the extension would be terminated early. This decision shall cease to apply on 31 May 2019 in the event that the United Kingdom has not held elections to the European Parliament in accordance with applicable EU law and has not ratified the Withdrawal Agreement by 22 May 2019. The United Kingdom agreed to this decision by a letter dated 11 April 2019 from the Permanent Representative of the United Kingdom to the EU, in accordance with Article 50(3) TEU. This European Council decision and the United Kingdom’s agreement to it constitute a binding agreement to extend in EU and international law. This means the UK remains a Member State until 31 October 2019 regardless of the passage of these Regulations at the domestic level. To reflect that, the Government will also now delay commencement of the repeal of the European Communities Act 1972, and other provisions of the 2018 Act which likewise require commencement. However, these Regulations are necessary to bring domestic law in line with the agreement at the international level and thus avoid serious problems and uncertainty for citizens and businesses.
- 2.4 A large volume of EU exit legislation preparing the UK statute book for the moment EU law ceases to apply is due to enter into force on “exit day.” These Regulations are necessary to avoid a clash in domestic law; contradictory provisions would apply both

EU rules and new UK rules simultaneously, and in some cases new UK rules would replace EU rules prematurely.

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

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

- 3.1 The urgent timescale of this instrument has meant that it has not been possible to comply with the 21 day rule. This instrument could not have been made and laid any sooner because the European Council decision, which changed the day and time that the Treaties will cease to apply to the United Kingdom, was only agreed on 11 April 2019. A change to the definition of “exit day” in domestic legislation is necessary before 11.00 p.m. on 12 April 2019 to ensure that our domestic statute book can function effectively. The consequences of delaying the legislation to comply with the 21 day rule would be severe. There would be a clash in domestic law; contradictory provisions would apply both EU rules and new UK rules simultaneously, and in some cases new UK rules would replace EU rules prematurely. A rejection of these Regulations would cause serious problems and uncertainty for citizens and businesses.

#### *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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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

- 4.1 The instrument has the same extent as the provisions it amends.
- 4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland and, so far as concerning its application to the repeal in section 1 of the 2018 Act, also the Isle of Man, the Channel Islands and Gibraltar.

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

- 5.1 The Parliamentary Under Secretary of State at the Department for Exiting the European Union, James Cleverly MP has made the following statement regarding Human Rights:

“In my view the provisions of the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019 are compatible with the Convention rights.”

### **6. Legislative Context**

- 6.1 Article 50(3) TEU provides that where a Member State gives notice of intention to withdraw from the European Union, the EU Treaties cease to apply to that Member State from the date of entry into force of a withdrawal agreement, or failing that, two years after the notification, unless the European Council unanimously decides to extend the two year period, in agreement with the Member State. The Prime Minister gave notice of the United Kingdom’s intention to withdraw on 29 March 2017, and following an agreement pursuant to Article 50(3) on 22 March 2019 between the United Kingdom and the European Council (European Council Decision 2019/476, OJ No. L 80 I, 22.03.2019, p.1) the Treaties were due to cease to apply at 11.00 p.m.

on 12 April 2019. This was reflected in the definition of “exit day” in section 20(1) of the 2018 Act (as amended by the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019).

- 6.2 Section 20(4) of the 2018 Act provides that a Minister of the Crown may by regulations amend the definition of “exit day” to ensure the day and time specified in the definition are the day and time that the EU Treaties are to cease to apply to the United Kingdom. By virtue of section 20(3), the power only applies where the day and time when the Treaties are to cease to apply to the United Kingdom is different from that specified in the definition of “exit day”.
- 6.3 The European Union (Withdrawal) Act 2019 received Royal Assent on 8 April 2019. Section 2 of that Act amended paragraph 14 of Schedule 7 to the 2018 Act so that regulations amending the definition of “exit day” under section 20(4) of the 2018 Act are subject to the negative resolution procedure.
- 6.4 As provided for under Article 50(3) TEU, a further extension was agreed on 11 April 2019 between the United Kingdom and the European Council. As a result, the EU Treaties will now cease to apply to the United Kingdom on 31 October 2019 at 11.00 p.m. unless the withdrawal agreement is ratified and comes into force before this date, in which case, in line with Article 50(3) TEU, the extension would be terminated early. This decision shall cease to apply on 31 May 2019 in the event that the United Kingdom has not held elections to the European Parliament in accordance with applicable EU law and has not ratified the Withdrawal Agreement by 22 May 2019. These regulations amend the definition of “exit day” in the 2018 Act to reflect this further extension to 11.00 p.m. on 31 October 2019 and align “exit day” with the new day and time on which the EU Treaties cease to apply to the United Kingdom.
- 6.5 Section 1 of the 2018 Act repeals the European Communities Act 1972 on “exit day”, whilst the saving and incorporation of EU law into domestic law (known as “retained EU law”) by section 2 to 4 of that Act take effect on and after “exit day”. The amendment to the definition of “exit day” will ensure that the repeal of the European Communities Act 1972 will not operate by reference to 12 April 2019 at 11.00 p.m., but instead by reference to 31 October 2019 at 11.00 p.m. These sections of the 2018 Act have yet to be commenced.
- 6.6 Furthermore, the 2018 Act amended the Interpretation Act 1978, providing that the term “exit day” when used in other enactments will, unless the contrary intention appears, have the same meaning as that used in the 2018 Act. Equivalent provision is made in the Legislative Reform (Scotland) Act 2010, and Interpretation Act (Northern Ireland) 1954 for Scottish and Northern Irish enactments respectively. There is a range of primary and secondary legislation that gives effect to the United Kingdom’s withdrawal from the EU. This includes regulations made under section 8 of the 2018 Act that make provision to prevent, remedy or mitigate deficiencies in retained EU law. A number of these come into force or have provisions that take effect by reference to “exit day”. Accordingly, this legislation would come into force and take effect by reference to the current definition of “exit day”, 11.00 p.m. on 12 April 2019.

## **7. Policy background**

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

- 7.1 The objective of these Regulations is to ensure the correct functioning of the domestic statute book and to reflect in domestic law the further negotiated extension of the period in Article 50(3) TEU by amending the definition of “exit day”. These Regulations do not themselves extend the Article 50 process. The extension was agreed, as a matter of EU and international law, between the United Kingdom and the EU by a European Council decision and letter from the Permanent Representative of the United Kingdom to the EU, in accordance with Article 50(3) TEU, on 11 April 2019.

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

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 20(4) of the 2018 Act.

## **9. Consolidation**

- 9.1 No consolidation has been undertaken.

## **10. Consultation outcome**

- 10.1 No consultation has been undertaken.

## **11. Guidance**

- 11.1 No guidance will be published.

## **12. Impact**

- 12.1 During the agreed extension the United Kingdom will remain a member of the European Union, and therefore retain the rights and obligations of a Member State. Any contributions to the EU budget would be made on the basis of existing arrangements, and therefore there are no direct costs to businesses that arise from this legislation.
- 12.2 An Impact Assessment has not been prepared for this instrument because it extends the United Kingdom’s existing rights and obligations as a Member State. An Impact Assessment was prepared for the 2018 Act, which contains the power under which this SI is to be made.

## **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 Department for Exiting the European Union. Email: secondarylegislation@dexeu.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Parliamentary Under Secretary of State at the Department for Exiting the European Union, James Cleverly MP at the Department for Exiting the European Union can confirm that this Explanatory Memorandum meets the required standard.