EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 505

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 The Civil Legal Aid (Amendment) (EU Exit) Regulations 2019 make regulations under the European Union (Withdrawal) Act 2018 (the "Withdrawal Act"). This instrument makes provision in relation to civil legal aid in England and Wales and Northern Ireland. It repeals the domestic legislation implementing the EU Legal Aid Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (the "EU Legal Aid Directive"). The EU Legal Aid Directive sets requirements for provision of legal aid in cross-border disputes for individuals domiciled or habitually resident in EU Member states.

2.2 The instrument also makes further technical amendments to ensure a functioning domestic statute book when the UK exits the EU and makes changes to procedural requirements for legal aid applications.

Explanations

What did any relevant EU law do before exit day?

EU Legal Aid Directive

Minimum standards for grant of legal aid

2.3 The EU Legal Aid Directive forms a part of a group of EU measures, adopted under the articles of the Treaty establishing the European Community, which deal with civil judicial co-operation. It sets out rules relating to legal aid in EU Member States (other than Denmark) for the purposes of improving access to justice. Its application is limited to cross-border disputes and it applies to all civil and commercial matters (with the exception of administrative matters), including family law (Article 1).

2.4 The EU Legal Aid Directive defines a "cross-border dispute" as "*one where the party applying for legal aid in the context of this Directive is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced*" (Article 2). Broadly, it is therefore relevant for individuals domiciled or habitually resident in EU Member States who: (i) require legal services in relation to proceedings in another Member State; or (ii) wish to enforce a decision or authentic instrument in another Member State. The EU Legal Aid Directive does not apply to Denmark, which has opted out of EU measures in the

Justice and Home Affairs area. Any reference in this explanatory memorandum to a "Member State" does not include Denmark.

2.5 The EU Legal Aid Directive sets out certain circumstances where legal aid is required or considered appropriate (see Articles 3,7, 8, 9, 10 and 11). It also provides that Member States may set certain merits criteria (Article 6) for grant of legal aid and provides that Member States may set means tests for legal aid applications (subject to certain requirements) (Article 5).

2.6 Any means test can be waived insofar as the applicant can prove that they remain unable to pay their legal costs as a result of differences in the cost of living in the Member State in which they reside and the Member State where the court is sitting or where the decision or authentic instrument is to be enforced (Article 5(4)).

2.7 The EU Legal Aid Directive also provides for continuity of legal aid, so an applicant who has benefitted from legal aid in one Member State is entitled to benefit from the most favourable legal aid provided for in another Member State in which the dispute is addressed (Article 9). Each Member State is entitled to establish what that is through domestic legislation. It requires EU Member States to grant legal aid without discrimination to citizens of the EU and those residing lawfully in Member States (Article 4).

EU Legal Aid Directive- transmission of applications between Member States

2.8 The EU Legal Aid Directive also aims to improve access to justice in cross-border disputes, in part, by facilitating the transfer of legal aid applications where an applicant domiciled or habitually resident in one Member State applies for legal aid in another Member State. The EU Legal Aid Directive provides that such an applicant can choose either to apply to the legal aid authority in the Member State where legal aid will be considered (the "receiving authority") directly, or to apply to a designated authority (the "transmitting authority") within his or her own jurisdiction which transmits the application to the receiving authority. The EU Legal Aid Directive therefore contains certain procedural rules relating to transmission of applications between legal aid authorities in the Member State where the applicant is domiciled or habitually resident and the Member State where legal aid will be considered (Articles 13-16). An applicant domiciled or habitually resident in an EU Member State other than the UK is also is also fully entitled to apply for legal aid under the EU Legal Aid Directive using the procedure requirements prescribed under the domestic civil legal aid framework in England and Wales or Northern Ireland.

EU Legal Aid Directive – implementation

2.9 In England and Wales, the scope requirements of the EU Legal Aid Directive are implemented by paragraph 44 of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (the "Financial Resources Regulations") prescribe means criteria for civil legal aid applications. The specific exception relating to differences in cost of living set out at paragraph 2.6 of this explanatory memorandum is set out at regulation 11 of the Financial Resources Regulations. For applications made under the EU Legal Aid Directive, exceptions to the means test for individuals receiving certain benefits are extended to equivalent EU

benefits at regulations 6(3) and 24(2) of the Financial Resources Regulations. The merits criteria are implemented by regulation 31 of the Civil Legal Aid (Merits Criteria) Regulations 2013.

2.10 In Northern Ireland, the scope requirements are implemented, to the extent not already covered by the domestic advice and assistance legal aid scheme, by paragraph 2(d)(xx) of Schedule 2 to the Access to Justice (Northern Ireland) Order 2003 ("the 2003 Order"). The Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 prescribe means criteria for civil legal aid applications, however the specific exception relating to differences in cost of living, as set out in paragraph 2.6 of this explanatory memorandum, is set out at regulation 9. No amendments to existing domestic legislation were required in order to implement the merits criteria set out in the EU Legal Aid Directive in Northern Ireland.

2.11 In England and Wales, applications received using the procedure set out in the EU Legal Aid Directive are allocated by the legal aid authority to an appropriate legal aid provider who would be required to comply with the relevant prescribed procedure for England and Wales. In Northern Ireland, applications received using this procedure would be referred by the legal aid authority to the Law Society of Northern Ireland to identify a suitable legal aid supplier who would be required to comply with the relevant prescribed procedure for Northern Ireland.

Other EU references in domestic law

2.12 Additionally, there are several further EU references within domestic civil legal aid legislation. Section 10(3)(a)(ii) of and Paragraph 2(2)(b) of Schedule 3 to LASPO and Article 12A(3)(a)(ii) of the 2003 Order require the provision of civil legal aid for exceptional cases not normally within scope where not to do so would be a breach of "enforceable EU rights". Section 32(3)(a)(ii) LASPO also provides that the Lord Chancellor may make an order specifying circumstances where foreign legal advice may be provided where not to do so would be a breach of "enforceable EU rights".

2.13 "Controlled work" and "licensed work" are two categorisations of legal aid work. Broadly, "controlled work" covers certain types of assistance including legal help, family mediation, mental health and immigration proceedings and "licensed work" is a higher level of legal aid funding, generally granted where there are Court proceedings and there is the need for representation. The categorisation of the work (as controlled or licensed) dictates the administrative process that must be followed in determining whether an application is eligible for legal aid.

2.14 Regulation 22 of the Civil Legal Aid (Procedure) Regulations 2012 (the "Procedure Regulations") provides that, when applying for "controlled work", an individual must attend a legal provider's premises in person. An exception is provided where the individual is present in or resides in the EU, in which case they may authorise someone else to attend on their behalf.

2.15 Regulation 31 of the Procedure Regulations provides a general rule that an `application for "licensed work" must be made in writing (in a form specified by the Lord Chancellor and signed by the individual and proposed provider). The general rule is that the application must be made in English (except in certain circumstances where it may be in Welsh). However, where an individual resides outside the EU and

is not present in England and Wales when the application is made, the application must (a) be in English or French, (b) include a written statement of the individual's financial resources; and (c) be verified by a statement that the individual believes that the facts stated in the application are true.

Why is it being changed?

2.16 Upon the UK's exit from the EU, Government intervention is necessary because, as retained, the domestic legal aid framework would contain deficiencies that will be difficult to justify or render it unworkable post exit.

2.17 As retained, the legislation identified in paragraphs 2.9 to 2.11 of this Explanatory Memorandum would not operate to implement the requirements of the EU Legal Aid Directive unilaterally, except where civil legal services in the scope of the EU Legal Aid Directive were otherwise within the scope of legal aid in England and Wales and Northern Ireland. However, if no amendment is made, it may cause uncertainty and mislead individuals as to their eligibility for legal aid.

2.18 If amendments are made in England and Wales and Northern Ireland such that the requirements of the EU Legal Aid Directive are all observed unilaterally, those domiciled or habitually resident in EU Member States would continue to benefit from the provision of legal aid under the EU Legal Aid Directive, whereas individuals domiciled or habitually resident in England and Wales and Northern Ireland would not have reciprocal access. Legal aid authorities in EU Member States would no longer be obliged to comply with the requirements of the EU Legal Aid Directive with regards to those individuals domiciled or habitually resident in England and Wales and Northern Ireland.

2.19 The changes implemented by these Regulations set out at paragraph 2.23 below therefore avoid a unilateral arrangement where those domiciled or habitually resident in EU Member States are being treated more favourably than those domiciled in England and Wales and Northern Ireland or third countries.

2.20 As set out in paragraph 2.12 above, LASPO and the 2003 Order require the provision of legal aid for exceptional cases not normally within scope where not to do so would be a breach of "enforceable EU rights". LASPO also provides that the Lord Chancellor may make an order specifying circumstances where foreign legal advice may be provided where not to do so would be a breach of "enforceable EU rights". The term 'enforceable EU rights' will not function effectively once the UK has left the EU because that term will no longer have a clear meaning. These provisions need to be amended to refer to the new terminology relating to retained EU law which have been introduced by the Withdrawal Act.

2.21 Upon the UK's Exit from the EU, it would be difficult to justify conferring the exceptions provided in Regulation 22 of the Procedure Regulations on attendance in person at a provider's office specifically on those who reside or are present in the EU and not those who reside or are present in the United Kingdom. Therefore, the exception regarding attendance at a legal provider's premises in person when applying for "controlled work" will be changed to apply only when the individual is present or resident in the UK.

2.22 The criteria set out in Regulation 31 of the Procedure Regulations for individuals applying for "licenced work" who are resident outside the *EU* and not present in England and Wales will now apply to those resident outside of the *UK* and not present in England and Wales. Upon the UKs exit from the EU, it would be difficult to justify not continuing to confer this benefit on those who are resident in the United Kingdom and excluding those resident in the EU from being subject to the same criteria as those resident in third countries. Those resident in the EU will now be required to meet the same criteria that those in third countries are currently expected to meet when applying for "licensed work" and not present in England and Wales.

What will it now do?

2.23 Under the civil legal aid frameworks in England and Wales and Northern Ireland individuals who are domiciled or habitually resident in EU Member States who (i) require legal services in relation to proceedings in England and Wales or Northern Ireland; or (ii) wish to enforce a decision or authentic instrument in England and Wales or Northern Ireland will be subject to the same scope, means and merits requirements as those who are domiciled or habitually resident in England and Wales, Northern Ireland or third countries. Legal aid provision for those domiciled or habitually resident in the UK participating in proceedings in EU Member States will fall to each Member State's domestic legal aid arrangements.

2.24 The references in LASPO and the 2003 Order will refer to "retained enforceable EU rights" instead of "enforceable EU rights" and the term will be defined with reference to rights retained under the Withdrawal Act. This will enable the proper functioning of the clauses referring to the provision of legal aid for exceptional cases and, in LASPO, provision of foreign legal advice. Where the UK decides to keep an enforceable EU obligation as retained EU law on exiting the EU, a person could rely on those obligations under the provisions set out at paragraph 2.12.

2.25 The current exception regarding attendance at a legal provider's premises in person when applying for "controlled work" will be changed to apply only when the individual resides or is present in the UK. As such, those residing within the EU will now be required to meet the same criteria that those residing in third countries are currently expected to meet when applying for controlled work and not present in the UK. Upon the UK's exit from the EU, it would be difficult to justify excluding those resident in the EU from being subject to this criteria.

2.26 The criteria which currently apply for individuals applying for "licenced work" who reside outside the *EU* and not present in England and Wales will apply to those who reside outside of the *UK* and not present in England and Wales. As such, those residing within the EU will now be required to meet the same criteria that those residing in third countries are currently expected to meet when applying for licensed work and not present in England and Wales.

2.27 With respect to the changes made to the domestic legislation implementing the EU Legal Aid Directive and to the Procedure Regulations, provision will be made for transitional arrangements such that the changes will not apply to applications for legal aid which were made (in accordance with certain procedural requirements)(i) to the legal aid authorities in England and Wales or Northern Ireland either using procedure

set out under the relevant domestic civil legal aid framework or as specified under Article 13(1) of the EU Legal Aid Directive; or (ii) to a transmitting authority (responsible for directing applications to the appropriate destination) in an EU Member State (other than the UK) before exit day.

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 varies between provisions.

3.3 Any amendment or revocation made by these Regulations has the same application as the provision amended or revoked. These Regulations only amend or revoke provision applying to England and Wales only or Northern Ireland only.

4. Extent and Territorial Application

4.1 Any amendment or revocation made by these Regulations has the same extent as the provision amended or revoked. These Regulations only amend or revoke provision extending to England and Wales only or Northern Ireland only.

4.2 Any amendment or revocation made by these Regulations has the same application as the provision amended or revoked. These Regulations only amend or revoke provision applying to England and Wales only or Northern Ireland only.

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 Civil Legal Aid (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 LASPO and relevant subordinate legislation provides the framework for the provision of legal aid in England and Wales and sets the scope, means and merits criteria of civil legal services which may be provided. This legislation provides for legal aid provision where it is required under the EU Legal Aid Directive. LASPO also requires the provision of legal aid for exceptional cases not normally within scope where not to do so would be a breach of "enforceable EU rights", and provides that the Lord Chancellor may make an order specifying circumstances where foreign legal advice may be provided where not to do so would be a breach of "enforceable EU rights".

6.2 The 2003 Order and relevant subordinate legislation in Northern Ireland set out the legal aid framework in Northern Ireland. This legislation also provides for legal aid

provision where it is required under the EU Legal Aid Directive. The 2003 Order also requires the provision of legal aid for exceptional cases not normally within scope where not to do so would be a breach of "enforceable EU rights".

6.3 The Procedure Regulations provide that, when applying for "controlled work", an individual must attend a legal provider's premises in person. However, there is an exception where an applicant is resident or present in the EU, cannot attend in person for good reason and authorises another person to attend on their behalf.

6.4 The Procedure Regulations also provide that an application for "licensed work" must be made in writing in a form specified by the Lord Chancellor and signed by the individual and proposed provider. The application must be in English (or Welsh in certain circumstances) subject to an exception, which stipulates certain further procedural requirements, specifically for individuals who reside outside the EU and are not present in England and Wales when the application is made.

6.5 The domestic legislation set out in paragraphs 2.9-15 of this Explanatory Memorandum is "EU-derived domestic legislation" so continues to have effect in domestic law on and after exit day by virtue of section 2 of the Withdrawal Act.

6.6 Section 8(1) of the Withdrawal Act provides a Minister of the Crown with the power, exercisable by way of regulations contained in a SI, to make such provision as he or she considers appropriate to prevent, remedy or mitigate any failure of retained direct EU law to operate effectively, arising from the withdrawal of the UK from the EU.

7. Policy background

What is being done and why?

7.1 The EU Legal Aid Directive sets out rules relating to legal aid in EU Member States for cross-border disputes in civil and commercial matters. Broadly, this includes standards for the provision of legal aid, either for those domiciled or habitually resident in the UK requiring legal services in relation to court or tribunal proceedings or enforcement in EU Member States, or for those domiciled or habitually resident in EU Members States requiring legal services in relation to court or tribunal proceedings or enforcement in UK. It covers pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings; legal assistance in bringing a case before the court and representation by a lawyer in court and assistance with, or exemption from, certain costs.

7.2 Following the UK's exit from the EU, those who are domiciled or habitually resident in the UK will no longer benefit from the reciprocal arrangements set out in the EU Legal Aid Directive. However, the references to the EU Legal Aid Directive will still remain in domestic legislation and may mislead individuals about their eligibility for legal aid. These Regulations therefore revoke the domestic legislation implementing the EU Legal Aid Directive in England and Wales and Northern Ireland. For avoidance of doubt, these Regulations will only revoke domestic legislation which only applies to matters in scope of the EU Legal Aid Directive. Civil legal services which are otherwise in scope in accordance with domestic legislation will remain available.

7.3 In addition, the changes made by these Regulations avoid a unilateral arrangement where legal aid is made available under the EU Legal Aid Directive for those domiciled or habitually resident in EU Member States without guarantee that this will be reciprocated by EU Member States. For the purposes of the legal aid frameworks in England and Wales and Northern Ireland changes made by these Regulations place those domiciled or habitually resident in EU Member states on a parity with those domiciled or habitually resident in the United Kingdom and third countries.

7.4 The SI replaces references in LASPO and the 2003 Order from "enforceable EU rights" to "retained enforceable EU rights" and defines the term with reference to rights retained under the Withdrawal Act. This will allow the terminology to operate effectively once the UK leaves the EU.

7.5 The amendments to the Civil Legal Aid (Procedure) Regulations 2012 will narrow the exceptions in relation to attendance at premises in person for "controlled work" to those present or resident in the UK. They are also altered to stipulate that the procedural requirements for applications for "licensed work" that applied to those residing outside the EU and not present in England and Wales (that applications may be in English or French, include a written statement of financial resources and verified by a statement that the individual believes that the facts stated in the application are true) now apply to those not resident in the UK or present in England and Wales at the time of an application. The reasons for these changes are set out at paragraphs 2.21 and 2.22 of this explanatory memorandum.

7.6 These Regulations include the transitional provisions set out at paragraph 2.27 in order to ensure a smooth transition upon the UK's exit from the EU.

7.7 This instrument applies to legal aid, which is 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 Withdrawal 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. 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 These regulations amend primary legislation and are not being consolidated. In due course changes will appear on the legislation.gov.uk website.

10. Consultation outcome

10.1 A public consultation was not undertaken for these changes which are minimal and/or technical. This instrument corrects what will be defects in legislation following exit from the EU. Legal Aid is devolved in Scotland and Northern Ireland. Scottish Government Officials have been consulted on these changes and they confirmed that this SI should not address Scottish devolved provision as they intend to make their own changes. We have consulted with Northern Ireland Government Officials who have confirmed that the relevant changes should be made to the domestic legal aid regime in Northern Ireland.

11. Guidance

11.1 Relevant Legal Aid Guidance documents (published on Gov.uk) will be updated accordingly.

11.2 The Northern Ireland Government will update relevant guidance in Northern Ireland.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Ministry of Justice, 102 Petty France, London SW1H 9AJ and is published on https://legislation.gov.uk.

13. Regulating small business

13.1 There are certain aspects of the legislation that apply to activities that are undertaken by small businesses, however the EU Legal Aid Directive applies only to natural persons, rather than companies.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will not be monitored as the change is technical and minimal.

14.2 As this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

15.1 Chris Rant at the Ministry of Justice Telephone: 07394 715019 or email: Chris.Rant1@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Rutherford, Deputy Director for Legal Aid Policy at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under-Secretary of State for Justice, 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:

"In my view the Civil Legal Aid (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because, as detailed in paragraph 7, as retained, following EU Exit, the legal aid framework would contain deficiencies that would otherwise render it unworkable, less effective or difficult to justify post exit. It does not make any policy change.

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:

"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 As detailed in paragraph 7, these are: it will repeal the legislation enacting the EU Legal Aid Directive to provide parity in the scope legal aid services provided to those habitually resident or domiciled in EU Member States, the United Kingdom and third countries and it will correct deficiencies to enable a functioning statue book for the legal aid frameworks in England and Wales and Northern Ireland following exit from the EU.

3. Equalities

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

"The 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.

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:

"In relation to the instrument, I, Lucy Frazer QC 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.".

3.3 The intention of these Regulations is to repeal the legislation enacting the EU Legal Aid Directive in England and Wales and Northern Ireland. These changes are

intended to provide legal certainty and greater clarity regarding legal aid entitlement, and place those domiciled or habitually resident in EU Member states on a parity with those domiciled or habitually resident in the United Kingdom third countries. The changes to the Procedure Regulations aligns administrative requirements for those resident in the EU and third countries. In addition to this, making the technical amendments would allow the terminology in LASPO to operate effectively.

3.4 Individuals anticipated to be most affected are those domiciled or habitually resident in EU Member States involved in civil and commercial proceedings in a cross-border dispute in England and Wales or Northern Ireland.

3.5 The scope of the EU Legal Aid Directive is broad and the technical amendments simply ensure functionality and clarity of the legal aid framework, in addition to this, the procedural amendments merely make practical changes to procedural requirements for legal aid applications. It is difficult to predict or quantify the impact of these amendments, however, from the readily available data, no differential impact (by reference to the protected characteristics) is apparent.

3.6 The proposed instrument does not amend, repeal or revoke any part of the Equality Acts 2006 or 2010 or subordinate legislation made under those Acts.

3.7 Due regard has also been taken on the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.