EXPLANATORY MEMORANDUM TO

THE CREATIVE EUROPE PROGRAMME AND EUROPE FOR CITIZENS PROGRAMME (REVOCATION) (EU EXIT) REGULATIONS 2019

2019 No. 447

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument addresses deficiencies that would arise in EU Regulations, and puts in place contingency arrangements that may be needed, following the UK's departure from the EU without a withdrawal agreement being in place.

2.2 This instrument revokes Regulation 1295/2013 (establishing the Creative Europe Programme for the period 2014 to 2020) ("the CE Regulation"), Regulation (EU) 2018/596 (amending the CE Regulation) and Council Regulation (EU) No 390/2014 (establishing the Europe for Citizens Programme) ("the EfC Regulation"), as retained in domestic law under the European Union (Withdrawal) Act 2018 ("the Act").

2.3 In line with the terms of the government guarantee in relation to EU-funded programmes (the "HMG guarantee") given in 2016 and extended in July 2018 (notified to Parliament in written statement HCWS926), the instrument will give powers to the Secretary of State to provide financial assistance in relation to England and Northern Ireland to participants in the Creative Europe Programme and the Europe for Citizens Programme ("the Programmes"), if the European Commission ceases to provide funding to UK participants on or after exit day because of the UK's withdrawal from the EU.

Explanations

What did any relevant EU law do before exit day?

2.4 The CE Regulation is the funding instrument for the Creative Europe Programme. It sets up the framework for the operation and administration of the Creative Europe Programme and establishes the budget for that programme.

2.5 Regulation (EU) 2018/596 amends the CE Regulation to make special provision for the European Union Youth Orchestra.

2.6 The EfC Regulation is the funding instrument for the Europe for Citizens Programme. It sets up the framework for the operation and administration of the Europe for Citizens Programme and establishes the budget for that programme.

Why is it being changed?

2.7 The regulations being revoked put in place, or amended, internal EU conditions, methods and procedures for EU funding to be provided under the Programmes. As the

regulations and decisions generally deal with internal EU mechanisms, on exit, they will become redundant and serve no purpose as "retained EU law" under section 3 of the Act. The instrument therefore revokes these regulations.

2.8 Whilst the revocation of the regulations does not affect the validity, for the purposes of EU law, of grants awarded under the Programmes, in the event that the UK leaves the EU without a withdrawal agreement, the UK will leave the EU Budget in March 2019 meaning UK organisations would no longer receive future funding for projects under EU programmes, such as the Programmes, without further action.

2.9 To mitigate this, the HMG Guarantee was announced by HM Treasury. The Department for Digital, Culture, Media and Sport will, however, be responsible for delivering any payments due under the Guarantee in respect of the Programmes, and would need spending powers in order to make such payments.

What will it now do?

2.10 This instrument revokes the CE Regulation and amending regulation, and the EfC Regulation. It also makes transitional provision creating a power for the Secretary of State to make payments to enable the delivery of the HMG Guarantee.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid on 8 February 2018 in draft for sifting under the European Union (Withdrawal) Act 2018. The instrument has been cleared by the Sifting Committees to proceed by way of negative resolution procedure.

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 territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument varies between provisions. Regulations 1 and 2 apply in relation to the United Kingdom, and Regulation 3 applies in relation to England and Northern Ireland only.

5. European Convention on Human Rights

5.1 The Rt Hon Jeremy Wright MP, the Secretary of State for Digital, Culture, Media and Sport, has made the following statement regarding Human Rights:

"In my view the provisions of the Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The CE Regulation is the instrument establishing the Creative Europe Programme for the period from 1 January 2014 to 31 December 2020 to support the European cultural

and creative sectors. It sets up the framework for the operation and administration of the Creative Europe Programme and establishes the budget for that programme. It was amended by Regulation (EU) 2018/596 to make specific provision in relation to funding for the European Union Youth Orchestra.

6.2 Council Regulation (EU) No 390/2014 is the instrument establishing the Europe for Citizens Programme for the period from 1 January 2014 to 31 December 2020 (the EfC Regulation). It sets up the framework for the operation and administration of the Europe for Citizens Programme and establishes the funding envelope and procedures for that programme.

6.3 These regulations will constitute "retained EU law" as defined in section 6(7) of the Act (namely "direct EU legislation" under section 3 of the Act).

6.4 This instrument will be made in exercise of the powers conferred by section 8(1) of the Act which allow regulations to be made to prevent, remedy or mitigate deficiencies in retained EU law.

7. Policy background

What is being done and why?

7.1 The Act repeals the European Communities Act 1972 on the day the UK leaves the EU. The Act ends the supremacy of European Union (EU) law in UK law, converts EU law as it stands at the moment of exit into domestic law, and preserves laws made in the UK to implement EU obligations. It creates temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left, so that the domestic legal system continues to function correctly outside the EU.

7.2 This instrument revokes the Creative Europe Programme regulations, and the Europe for Citizens Programme regulation.

7.3 This instrument creates transitional provisions to enable the delivery of the HMG Guarantee. In 2016 the Chancellor announced that the government would guarantee funding to organisations delivering projects awarded through EU direct bid grant funds, including the Programmes, including where such projects continue beyond the UK's departure from the EU. This was extended, as notified to Parliament by Written Ministerial Statement in July 2018, to cover the payment of awards under successful competitive bids, both while the UK remained part of the EU and, in certain circumstances after the UK's departure from the EU when the UK will become a "third country". The HMG Guarantee will only be needed if the EU and UK fail to put in place a negotiated agreement for EU exit.

7.4 The CE Regulation (as amended by Regulation (EU) 2018/596) and the EfC Regulation establish the frameworks for the operation of the Programmes and set the internal EU priorities and processes for managing the funding from the EU Budget. After leaving the EU, the UK will no longer be a Member State and, subject to the terms of any withdrawal agreement that is put in place, will have no ongoing commitment to pay into, or right to receive money from, the EU Budget. As such, the CE Regulation and EfC Regulations should be revoked.

7.5 The purpose of the instrument is to provide a legal basis for delivery of the HMG Guarantee for the Programmes, including in the following circumstances: where UK organisations successfully bid directly to the European Commission on a competitive

basis while we remain in the EU, and in respect of successful bids where UK organisations are able to participate as a third country in competitive grant programmes from Exit day until the end of 2020.

Creative Europe

7.6 Creative Europe is split into three sub-programmes: Media, Culture and Cross-Sectoral. Media provides support for film, television, new media and video games, offering funding, training and networking opportunities. Culture supports the cultural and creative sectors and funds mainly cross-border collaborative projects and initiatives across all art forms, as well as publishers looking to translate European fiction. Cross-Sectoral supports networking between new business and management models, as well as peer-learning activities. It also support networking among cultural and creative organisations and policy-makers in the creative sectors. On exit day, we expect Creative Europe will have between 160 and 200 live projects that include involvement from a UK organisation. We estimate that €18.9 million has been awarded to UK organisations through these live projects, and that a maximum of €8.9 million will be remaining to pay out after exit, though this figure is dependent on the EU allowing all current projects to continue. However, the value of payments made under the guarantee will be affected by the action taken by the EU in a no deal outcome.

Europe for Citizens

7.7 Europe for Citizens aims to contribute to citizens' understanding of the EU, its history and diversity and foster European citizenship and improve conditions for civic and democratic participation at EU level. Projects typically raise awareness of remembrance, the common history and values of the EU and the EU's aim to promote peace, the values of the EU and the well-being of its people. Projects also encourage democratic and civic participation of citizens at EU level, by developing their understanding of the EU policy making-process, and stimulate interest and involvement in EU policy making. On exit day, we expect Europe for Citizens will have between 15 and 20 live projects that include involvement from a UK organisation. We estimate that €0.5 million has been awarded to UK organisations through these live projects, and that €0.17 million will be remaining to pay out after exit. As above, the value of payments made under the guarantee to provide funding will be affected by the action taken by the EU in a no deal outcome.

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 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 paragraph 21 of Schedule 7 to the Act. 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 The Department for Digital, Culture, Media and Sport has no plans to consolidate the legislation covered by this instrument.

10. Consultation outcome

10.1 The Department for Digital, Culture, Media and Sport has engaged with organisations funded through the Creative Europe and Europe for Citizens programmes to understand the operation of the programmes and funding arrangements with the EU. These discussions have informed our plans to deliver the HMG guarantee. The transitional provisions will allow the Secretary of State to deliver the HMG Guarantee as announced in 2016 and extended in July 2018 (notified to Parliament in written statement HCWS926), as further clarified in the "Guidance on how to prepare for Brexit if there's no deal", specifically the guidance on "The government's guarantee for EU-funded programmes if there's no Brexit deal" published on 3 December 2018[1].

10.2 Some of the activity funded through the Programmes falls within areas of devolved competence. Therefore we have consulted with devolved administrations and they have commented on this instrument, taking into account the "Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks" published on 25 April 2018[2].

10.3 The Department for Digital, Culture, Media and Sport is working with the devolved administrations on arrangements for the delivery of the guarantee in Scotland and Wales using existing spending powers.

11. Guidance

11.1 The Department for Digital, Culture, Media and Sport is not producing any specific guidance on this instrument at this stage. Further information regarding the HMG guarantee can be found in the Chief Secretary to the Treasury's Written Ministerial Statement - HCWS926 and in the "Guidance on how to prepare for Brexit if there's no deal", specifically the guidance on "The government's guarantee for EU-funded programmes if there's no Brexit deal" published on 3 December 2018[3].

12. Impact

12.1 The impact on business, charities or voluntary bodies is that the Secretary of State may provide financial assistance in relation to projects awarded through the Programmes in the event that the EU ceases to provide funding as a result of exit. It does not represent a policy change.

12.2 The impact on the public sector is as described at 12.1, to the extent that they have been awarded funding through the Programmes. The total value of assistance to the public sector is not expected to exceed €1 million. It does not represent a policy change.

12.3 A full impact assessment has not been prepared for this instrument, due to the low expected level of impact on business. A de minimis assessment has been carried out

[1] https://www.gov.uk/government/publications/the-governments-guarantee-for-eu-funded-programmes-if-theres-no-brexit-deal/the-governments-guarantee-for-eu-funded-programmes-if-theres-no-brexit-deal

[2] https://www.gov.uk/government/publications/intergovernmental-agreement-on-the-european-union-withdrawal-bill

[3] https://www.gov.uk/government/publications/the-governments-guarantee-for-eu-funded-programmes-if-theres-no-brexit-deal/the-governments-guarantee-for-eu-funded-programmes-if-theres-no-brexit-deal

for this instrument, confirming that the technical changes made by this instrument will have an impact of less than £5m per year on UK businesses.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses but does not represent a policy change and will not result in changes for small businesses, including micro-entities.

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 Lee Vasey at the Department for Digital, Culture, Media and Sport Telephone: 02072718383 or email: lee.vasey@culture.gov.uk can be contacted with any queries regarding the instrument.

15.2 Debbie Asbury, Deputy Director for Finance, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jeremy Wright, Secretary of State for Digital, Culture, Media and Sport 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. Sifting statement(s)

1.1 The Secretary of State for Digital, Culture, Media and Sport has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Creative Europe Programme and the Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is because the Instrument makes changes of a technical nature and does not make policy changes. Although the Instrument provides a power for the Secretary of State to provide financial assistance in certain circumstances, this is in pursuance of a central policy on the HMG guarantee which has previously been notified to Parliament by HM Treasury.

2. Appropriateness statement

2.1 The Secretary of State for Digital, Culture, Media and Sport has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Creative Europe Programme and the Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019 does no more than is appropriate".

2.2 This is the case because the instrument revokes certain retained EU law on the basis that it is redundant or concerns arrangements relating to the EU which are no longer appropriate after exit. The transitional provisions, which provide new spending powers for the Secretary of State, do no more than is necessary to allow the Secretary of State to deliver the HMG Guarantee in respect of the Programmes.

3. Good reasons

3.1 The Secretary of State for Digital, Culture, Media and Sport 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".

3.2 These are set out in sections 7.1 to 7.5, 10.2 and 10.3 in the main Explanatory Memorandum document.

4. Equalities

4.1 The Secretary of State for Digital, Culture, Media and Sport 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."

4.2 The Secretary of State for Digital, Culture, Media and Sport has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Jeremy Wright, the Secretary of State for Digital, Culture, Media and Sport, 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."

5. Explanations

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