EXPLANATORY MEMORANDUM TO

THE ELECTRONIC COMMUNICATIONS AND WIRELESS TELEGRAPHY (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

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 Act.

2. Purpose of the instrument

2.1 This instrument is being made in order to address deficiencies arising from the withdrawal of the United Kingdom from the European Union in legislation relating to electronic communications and wireless telegraphy, to ensure that the legislation continues to operate effectively after exit.

2.2 The instrument amends the following legislation:

- the Communications Act 2003;
- the Wireless Telegraphy Act 2006;
- the Telecommunications Act 1984;
- subordinate legislation relating to electronic communications; and
- EU legislation relating to an in-vehicle emergency call service (eCall).

It also revokes EU legislation relating to electronic communications which is not appropriate to be retained on the UK's statute book after exit from the EU.

Explanations

What did any relevant EU law do before exit day?

2.3 The EU regulatory framework for electronic communications consists principally of a package of four directives (the Framework Directive (2002/21/EC), the Access Directive (2002/19/EC), the Authorisation Directive (2002/20/EC) and the Universal Service Directive (2002/22/EC)).

2.4 The EU framework establishes a harmonised framework for the regulation of electronic communications. It aims to implement an internal market in electronic communications networks and services based on competition and choice, while also ensuring the needs of end-users are met. To this end, it sets out the functions of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework across the EU.

2.5 This instrument also relates to certain directly applicable EU legislation relating to electronic communications. Further information on this legislation can be found in section 6.5 of this memorandum.

Why is it being changed?

2.6 The EU framework is implemented principally by the Communications Act 2003 and (in respect of management of the radio spectrum) the Wireless Telegraphy Act 2006. This instrument amends those Acts to address deficiencies arising from the UK's exit from the EU. These deficiencies are mostly minor and technical in nature, or concern the procedures established to ensure the harmonised application of the regulatory framework across the EU, recognising that the UK will no longer be a part of the EU regulatory system as a result of leaving the EU.

2.7 The instrument also addresses minor and technical deficiencies in the Telecommunications Act 1984, subordinate legislation relating to electronic communications, and EU legislation relating to eCall.

2.8 The instrument revokes certain other directly applicable EU legislation which is not appropriate to be retained on the UK's statute book after exit from the EU. Further information can be found in section 7.31 to 7.37 of this memorandum.

What will it now do?

2.9 This instrument removes requirements for EU consultation on some of Ofcom's proposed regulatory measures, and references to the Commission's ability to require Ofcom to withdraw proposed measures in some circumstances.

2.10 The instrument also ensures that the legislation relating to electronic communications and wireless telegraphy will continue to operate effectively and in substantively the same way as before exit. Further information can be found in section 7 of this memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the entirety of the United Kingdom.

4.2 The territorial application of this instrument is the entirety of the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Digital and the Creative Industries, Margot James, has made the following statement regarding Human Rights:

"In my view the provisions of the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The EU regulatory framework for electronic communications consists principally of a package of four directives (the Framework Directive (2002/21/EC), the Access Directive (2002/19/EC), the Authorisation Directive (2002/20/EC) and the Universal Service Directive (2002/22/EC)). It establishes a harmonised framework for the regulation of electronic communications within the EU, administered by national regulatory authorities.

6.2 The EU framework is implemented principally by the Communications Act 2003 and (in respect of the management of the radio spectrum) the Wireless Telegraphy Act 2006. Ofcom, which is established by the Office of Communications Act 2002, acts as the national regulatory authority in the UK. These Acts were amended to implement the revisions made to the EU framework in 2009 by the Electronic Communications and Wireless Telegraphy Regulations 2011.

6.3 The Communications Act 2003 also makes provision, in particular, for the regulation of broadcasting. This instrument amends deficiencies arising from the UK's exit from the EU so far as they relate to electronic communications and wireless telegraphy; deficiencies which relate to broadcasting are to be addressed in a separate instrument.

6.4 The instrument also addresses a deficiency in the Communications (Access to Infrastructure) Regulations 2016, which make provision for rights and obligations relating to access to infrastructure for the purpose of deploying high-speed electronic communications networks (implementing certain of the requirements of Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks).

6.5 In addition, the instrument addresses the following directly applicable EU legislation relating to electronic communications:

- *Regulation (EC) No 1211/2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office*, which establishes BEREC, a body for cooperation between national regulatory authorities, and between national regulatory authorities and the Commission, and the BEREC Office, a EU body with legal personality which provides professional and administrative support to BEREC.
- *Commission Delegated Regulation (EC) No 305/2013 supplementing Directive 2010/40/EU with regard to the harmonised provision for an interoperable EU-wide eCall* and *Decision No 585/2014 on the deployment of the interoperable EU-wide eCall service*, which relate to the provision of an in-vehicle emergency call (eCall) service in the EU. Commission Delegated Regulation (EC) No 305/2013 establishes specifications for the infrastructure required to receive and handle eCalls; Decision No 585/2014 sets out a requirement to deploy infrastructure in accordance with those specifications and report to the Commission thereon.
- *Regulation (EU) No 283/2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC*, which relates to the availability of financial assistance from the EU Connecting Europe Facility to projects in the field of trans-European networks in the area of telecommunications infrastructure, and lays down guidelines for the deployment and interoperability of such projects.

- *Regulation (EU) 2017/1953 amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of internet connectivity in local communities*, which amended other EU legislation to enable financial assistance from the EU Connecting Europe Facility to be made available to support projects which provide free wireless connectivity in local communities.

7. Policy background

What is being done and why?

7.1 This instrument addresses deficiencies arising from the UK's exit from the EU in legislation relating to electronic communications and wireless telegraphy.

7.2 The EU regulatory framework for electronic communications has already been transposed into UK law, principally in the Communications Act 2003 and (in respect of the management of the radio spectrum) the Wireless Telegraphy Act 2006.

7.3 This instrument amends those Acts to ensure that the law continues to operate effectively, and in substantively the same way as before exit. The deficiencies are for the most part minor and technical in nature, or concern the procedures established to ensure the harmonised application of the regulatory framework across the EU, recognising that the UK will no longer be a part of the EU regulatory system as a result of leaving the EU.

7.4 An example of a minor amendment is Ofcom's duty to secure that its activities contribute to the development of the European internal market (set out in section 4(4) of the Communications Act 2003). This duty will no longer be appropriate once the UK leaves the EU internal market and therefore is removed.

7.5 An example of a technical amendment is that the heading of section 4 is amended from "Duties for the purpose of fulfilling EU obligations" to "Duties in relation to certain regulatory functions", to reflect that the UK will not be subject to EU obligations after exit.

7.6 In some places, technical amendments are needed because the drafting approach taken in UK law relied on the existence of those EU obligations. For example, section 4 of the Communications Act 2003 provides that the duties set out in that section "*give effect, amongst other things to the requirements of Article 8 of the Framework Directive and are to be read accordingly"*, signalling that the duties are to be interpreted in light of that Article. After exit, however, EU directives will no longer impose requirements on the UK.

7.7 Article 8 sets out further detail as to what Ofcom is required to do pursuant to its duties. In particular, it provides that the duty to promote the interests of citizens includes "*ensuring that the integrity and security of public communications networks are maintained"*. This instrument amends section 3 of the Communications Act 2003 to require Ofcom, when performing its duties, to have regard to the desirability of ensuring the security and availability of public electronic communications networks and public electronic communications services, to ensure that this aspect has continued effect.

7.8 The instrument also makes minor and technical amendments to other relevant domestic legislation (the Telecommunications Act 1984, the Electronic Communications and Wireless Telegraphy Regulations 2011, and the

Communications (Access to Infrastructure) Regulations 2016) to ensure that the legislation continues to operate effectively after exit.

7.9 Other amendments are explained further below.

Statutory requirements for EU-related notifications

7.10 The Communications Act 2003 requires Ofcom to notify or provide information to the European Commission, other EU bodies and/or national regulatory authorities in other Member States. These provisions implement EU obligations arising from the UK's participation in the EU regulatory system. In particular, information is provided to the European Commission to enable it to monitor compliance with the EU framework or ensure harmonisation of measures across the EU. These notification requirements are removed as the UK will not be subject to EU obligations after exit. Some provisions are amended to make clear that Ofcom may notify or share information where it considers this appropriate.

7.11 This approach is taken in section 105B of the Communications Act 2003, which requires Ofcom to notify the European Network and Information Security Agency (ENISA) and national regulatory authorities in other Member States of security breaches notified to it when Ofcom considers it appropriate to do so, and to send a copy of the annual report on security breach notifications to ENISA and the European Commission. This provision is amended so that Ofcom may share such information with these bodies as sharing information with bodies with a common interest in security may assist in protecting the security of networks. Ofcom will continue to be subject to statutory duties relating to confidentiality and data protection.

7.12 Similarly, section 25 of the Communications Act 2003 requires Ofcom to share information with the European Commission which is required for the Commission to carry out its functions under the EU regulatory framework. Whilst a requirement to provide such information will not be appropriate after exit day, such sharing may be beneficial to foster cooperation on regulatory matters. Section 25 is amended so that it is clear that Ofcom may provide information to the Commission and BEREC where Ofcom considers this appropriate. Ofcom will again continue to be subject to statutory duties relating to confidentiality and data protection.

EU consultation

7.13 Under the EU regulatory framework, Ofcom is required to consult the European Commission, BEREC and other national regulatory authorities on certain proposed regulatory measures. In the case of certain proposed remedies, if the Commission raises reservations a "standstill" period commences during which Ofcom must cooperate with the Commission and BEREC. In the case of proposed measures involving the definition of relevant markets, a finding that an operator has "significant market power", or in the case of exceptional remedies including functional separation of an undertaking with significant market power (see section 89B), the Commission can veto the proposed measure.

7.14 The Commission's role in these circumstances is to ensure compliance with the EU regulatory framework and harmonisation of national regulatory authorities' regulatory approaches. The requirements to consult in these circumstances are removed as such scrutiny by the Commission will not be appropriate after exit day when the UK is no longer bound by the EU framework.

Consumer and end-user matters

7.15 The EU regulatory framework (in particular the Universal Service Directive (2002/22/EU)) sets out end-user and consumer rights which must be secured and also defines the minimum set of services to which all end-users must have access (universal service).

7.16 These matters are implemented in the Communications Act 2003, relevant subordinate legislation and through conditions set by Ofcom. However, technical amendments are required to ensure that the relevant provisions in the Communications Act 2003 continue to operate effectively after exit.

7.17 Section 51(2) of the Communications Act 2003 is concerned with Ofcom's power to set conditions binding communications providers for protecting the interests of end-users and, in particular, enables Ofcom to make conditions that give effect to relevant EU obligations that provide protection for end-users. This has enabled Ofcom to put in place protections relating to matters such as contract lengths. This instrument amends section 52(2) to ensure that Ofcom will continue to be able to maintain or put in place consumer protection measures which were set out in the relevant part of the Universal Service Directive.

7.18 Section 65 of the Communications Act 2003 (and related provisions in sections 66 and 67) implement requirements relating to universal service, requiring the Secretary of State to make an order that secures compliance with EU obligations, which are set out in the Universal Service Directive. Of particular importance is the requirement to ensure access to a connection that supports functional Internet access. This instrument removes the requirement to make a universal service order to secure compliance with EU obligations, as this will no longer be appropriate after Exit day. The Secretary of State will remain under a statutory duty to make a universal service order, but with flexibility to consider what service provision is most appropriate for the UK.

7.19 Section 65 requires consultation before an order is made, providing opportunity for representations to be made about the requirements or form of any universal service obligation. This instrument does not amend that requirement.

Significant market power

7.20 The instrument also amends provisions in the Communications Act 2003 which relate to the regulation of communications providers with "significant market power" (SMP). SMP regulation is based on competition law principles and enables Ofcom to impose regulatory remedies on providers with SMP to address a lack of effective competition in a particular market.

7.21 Under the EU regulatory framework, SMP is equivalent to the concept of "dominance" in EU competition law. The Communications Act 2003 gives effect to this by providing that SMP is to be construed in accordance with the requirements of the EU regulatory framework.

7.22 Under the Competition Act 1998, the courts must interpret UK competition law so far as possible in a manner that is consistent with EU competition law. After exit, however, the relationship between UK competition law and EU law is to be modified. The Competition (Amendment etc.) (EU Exit) Regulations amend the Competition Act 1998 so that competition regulators and UK courts will continue to be bound by an obligation to ensure no inconsistency with pre-exit EU competition case law when interpreting UK competition law, but may depart from such pre-exit EU case law where it is considered appropriate in the light of specified circumstances. This

supports the Government's policy to make appropriate provision for the UK competition system to operate independently of the EU system.

7.23 This instrument amends section 78(2) of the Communications Act 2003 so that after exit SMP will be construed (so far as appropriate for the purposes of SMP regulation) in the same way as the reference to a "dominant position in a market" in Chapter II of the Competition Act 1998. This ensures continued consistency in the principles applying to both SMP regulation and UK competition law.

7.24 The instrument also removes requirements in section 79(2) and (3) for Ofcom to take "due account" of Commission guidelines and recommendations, which seek to ensure that national regulatory authorities take a harmonised approach to SMP regulation. This is appropriate as the UK will no longer be a part of the harmonised regulatory system, and such guidance could become inconsistent with UK competition law in future.

7.25 The instrument also inserts new section 79(1A) which provides that, when identifying or analysing a market for the purposes of SMP regulation, Ofcom must conduct a forward-looking assessment of a market, taking into account any expected or foreseeable developments that may affect competition in the market. This reflects a principle that is set out in the Commission's guidelines and recommendations, and provides clarity that Ofcom should carry out SMP regulation in substantively the same way as before exit.

Wireless Telegraphy Act 2006

7.26 Part 2 of the Wireless Telegraphy Act 2006 deals with the regulation of radio spectrum. Sections 8 and 9 deal with spectrum licences, in particular Ofcom's powers to make regulations concerning when a licence is required and to attach conditions to licences. These types of licences are subject to the requirements set out in the Authorisation Directive (2002/20/EC) (see sections 8(3A) and 9(1A)) which specifies the types of conditions that may be attached), ensuring harmonisation of such authorisations and consistency across the EU. After exit day, the need for such harmonisation of the authorisation will no longer be applicable to the UK. This instrument accordingly removes these requirements, but Ofcom will still be required to ensure that any provision in regulations or any condition is objectively justifiable, non-discriminatory, proportionate and transparent (see sections 8(3B) and 9(7)).

7.27 Section 30 makes provision in connection with spectrum trading for the transfer (including leasing) of rights of use for radio frequencies. It confers a power on Ofcom to make regulations authorising the transfer of wireless telegraphy licences or grants of recognised spectrum access from the holder to another person. Section 30(1A) requires Ofcom to ensure that such regulations authorise the transfer of a licence or grant where the European Commission has identified that rights to use a particular frequency may be transferred or leased between undertakings, under Article 9b(3) of the Framework Directive (2002/21/EC). This instrument removes section 30(1A) as after exit it would not be appropriate for Ofcom to be required to give effect to the Commission's decisions. Ofcom will instead decide whether it would be appropriate to make such provision.

eCall

7.28 'eCall' is an initiative established by the European Commission as part of the Intelligent Transport System project. It enables a mobile transmission to be sent to emergency services by a vehicle when it is involved in an accident. Commission

Delegated Regulation (EU) No 305/2013 and Decision 585/2014/EU make provision regarding public safety answering points (PSAPs), the infrastructure to enable the proper receipt and handling of eCalls, mandating in-vehicle manufacturing standards and requiring that eCalls are treated as emergency calls. There is other EU legislation concerned with type-approval requirements for the deployment of eCall in-vehicle systems based on the 112 service, but this is not dealt with in this instrument.

7.29 This instrument makes amendments to the eCall legislation so that it will continue to operate effectively after exit. An example is that obligations placed on to "Member States" are now placed on "the Secretary of State". Provisions requiring reporting to the Commission about implementation of the eCall legislation have been removed as this will no longer be appropriate once the UK has left the EU.

7.30 The eCall legislation refers in parts to technical standards. Regulation 5 of this instrument confers a legislative power on the Secretary of State to make provision to replace the standards listed. This will enable the standards to be updated, should this be necessary to ensure the continued effective operation of the eCall technology.

BEREC

7.31 Regulation (EC) 1211/2009 establishes the Body of European Regulators for Electronic Communications (BEREC) and the BEREC Office, an EU body that provides professional and administrative support to BEREC, as a matter of EU law.

7.32 BEREC (and the BEREC Office) are EU bodies and will continue to be established as a matter of EU law after the UK leaves the EU. However, the BEREC Regulation – as converted into retained EU law by operation of the EU (Withdrawal) Act – would have no practical effect in UK law. This instrument therefore revokes it.

7.33 It is anticipated that a new EU Regulation, (re)establishing BEREC and repealing the current BEREC Regulation, will be adopted and enter into force before exit day. If this occurs, the Government's intention is to revoke that new Regulation in place of the current BEREC Regulation.

7.34 The main purpose of BEREC is to ensure the consistent implementation of the EU regulatory framework. BEREC's membership is therefore limited to the national regulatory authorities of EU Member States. Ofcom will not be a member after exit, but as the UK will no longer be part of the EU regulatory framework, this has no significant effect on regulation in the UK.

7.35 However, the Government recognises that Ofcom would benefit from the continued exchange of regulatory best practice with other national regulatory authorities and the exchange of information about electronic communications matters more generally.

7.36 In this respect, it should be noted that the BEREC Regulation presently allows BEREC to invite observers to attend its meetings, and that the new BEREC Regulation is expected to provide that the Board of Regulators, the working groups and the Management Board should be open to the participation of regulatory authorities of third countries where those countries have entered into agreements with the EU to that effect.

Trans-European networks and WiFi4EU

7.37 Regulation (EU) No 283/2014 and Regulation (EU) No 2017/153 provide for financial assistance from the EU Connecting Europe Facility to support projects in the field of trans-European networks in the area of telecommunications infrastructure including

projects that provide free wireless connectivity in local communities. After exit day UK authorities will not be eligible for this funding. This legislation relates to EU financial mechanisms and the legislation – as converted into retained EU law by operation of the EU (Withdrawal) Act – would have no practical effect in UK law. This instrument therefore revokes it.

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 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 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 Informal consultation has been undertaken with Ofcom, whose views have been taken into consideration in development of the instrument. A draft of the instrument was shared with Ofcom and with officials in the devolved administrations.

10.2 Discussions took place with stakeholders in the telecoms sector about their concerns regarding EU exit in relation to telecoms policy on a number of occasions between mid-2017 and mid-2018. In relation to the matters addressed by this instrument, the main area of interest was in relation to EU consultation. Some stakeholders expressed concerns that removal of the requirement for EU consultation on certain Ofcom proposed regulatory measures (and in particular the Commission's ability to require Ofcom to withdraw its proposed measure in some circumstances), while a necessary consequence of EU exit, amounted to loss of a valuable check on Ofcom's decision-making. Those stakeholders proposed that an equivalent function be recreated domestically (for example, requiring the Competition and Markets Authority to approve certain of Ofcom's proposed measures).

10.3 After careful consideration, the Government decided not to adopt this proposal. It is not necessary to recreate the EU consultation procedure after EU exit, since its principal objective is harmonisation of regulatory practice to consolidate the EU internal market. It is clearly desirable that Ofcom's decision-making is of a high standard, but safeguards already exist to ensure this, both in the procedural statutory requirements and in the availability of statutory appeal before the Competition Appeal Tribunal (or judicial review before the Administrative Court) of Ofcom's decisions. In these circumstances, the potential benefits of the proposal (for which there was limited evidence) were considered to be outweighed by its costs (in terms of resource, duplication of responsibility and delay).

11. Guidance

11.1 No guidance is to be issued in relation to this instrument. Ofcom publishes guidance about its approach to exercise of its statutory functions which is revised from time to time and will be updated in light of the amendments made by this instrument in due course.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies. The instrument aims to ensure that the regulatory framework continues to operate in substantively the same way after the UK's exit from the EU, providing certainty for business. Businesses will incur a limited one-off cost when familiarising themselves with the limited changes to the regulatory regime following EU exit.

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

12.3 A full Impact Assessment has not been produced for this instrument as no, or no significant, impact on business and the public sector is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The legislation does not introduce new requirements on small businesses. Instead it corrects deficiencies arising from the UK's withdrawal from the EU in legislation which applies to them. No disproportionate impact on small business is therefore expected.

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 Samira Gazzane at the Department for Digital, Culture, Media and Sport (telephone: 020 7211 2862/07803 495 506 or email: samira.gazzane@culture.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Henry Shennan (Deputy Director, Fixed Telecoms and Market Regulation) at the Department for Digital, Culture, Media and Sport can confirm that this explanatory memorandum meets the required standard.

15.3 The Minister for Digital and the Creative Industries, Margot James, at the Department 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. Appropriateness statement

1.1 The Minister for Digital and Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate."

1.2 This is the case because the instrument corrects legislative deficiencies arising from EU exit. It removes or replace references to obligations related to membership of the EU and the regulatory framework for electronic communications that will become redundant after the withdrawal of the UK from the EU and makes appropriate provision to ensure the continued operation of the regulatory framework. The instrument does not change UK electronic communications policy or impose new liabilities.

2. Good reasons

2.1 The Minister for Digital and Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

2.2 These are that the instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. The policy reasons for the changes are set out in section 7 of this explanatory memorandum.

3. Equalities

3.1 The Minister for Digital and Creative Industries, Margot James, has made the following statement:

"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."

3.2 The Minister for Digital and Creative Industries, Margot James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, the Minister for Digital and Creative Industries, Margot James, 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."

4. Explanations

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