**EXPLANATORY MEMORANDUM TO**

**THE EUROPEAN RESEARCH INFRASTRUCTURE CONSORTIUM (AMENDMENT) (EU EXIT) REGULATIONS 2018**

**2018 No. XXXX**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Act.

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

## 2. Purpose of the instrument

2.1 This instrument amends provisions deriving from EU legislation (Council Regulation (EC) No 723/2009 of 25 June 2009 ("the ERIC Regulation")[1], relating to the framework for a European Research Infrastructure Consortium "ERIC"), which has been retained in domestic law as retained EU law under the European Union (Withdrawal) Act 2018 ("the Act").

***Explanations***

*What did any relevant EU law do before exit day?*

2.2 The ERIC Regulation sets out the legal framework under which an ERIC is created and operates. It covers matters such as the process for applying to the EU Commission to form an ERIC, its organisation, the requirements on an ERIC and the Commission action if the requirements are not complied with.

*Why is it being changed?*

2.3 These amendments address deficiencies in this retained EU law, as a result of the exit of the United Kingdom from the European Union. This instrument amends provisions which are inappropriate or redundant as a result of the withdrawal of the UK from the EU. For example, provisions which relate to the process of applying to the European Commission for the setting up of an ERIC are removed. Other examples are given in section 7.5.

*What will it now do?*

2.4 This instrument makes no policy changes. The amended ERIC Regulation, as it forms part of retained EU law, will ensure that ERICs continue to have the same attributes, such as legal personality, as they had under the ERIC Regulation before exit day.

## 3. Matters of special interest to Parliament

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

3.1 This statutory instrument was presented to the sifting committees for consideration on 20 July 2018 (sift end date 5 September 2018) under the proposed negative resolution

[1] Council Regulation (EC) No 723/2009 has been amended by Council Regulation (EU) No 1261/2013

procedure. The Secondary Legislation Scrutiny Committee response made no recommendations in relation to this statutory instrument. The European Statutory Instruments Committee response recommended this statutory instrument be subject to the affirmative procedure. The Department for Business Energy and Industrial Strategy have accepted the recommendation of the European Statutory Instruments Committee.

***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.

## 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 is the United Kingdom.

## 5. European Convention on Human Rights

5.1 The Minister of State for Universities, Science, Research and Innovation, Sam Gyimah, has made the following statement regarding Human Rights:

"In my view the provisions of the European Research Infrastructure Consortium (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights"

## 6. Legislative Context

6.1 The Act provides for the Secretary of State to deal with deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the EU. This includes law which continues to form part of domestic law by sections 2 and 3 (namely, saving for EU-derived domestic legislation and the incorporation of direct EU legislation).

## 7. Policy background

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

7.1 This instrument does not implement new policy. It corrects deficiencies in retained EU law for ERICs. The ERIC Regulation as it forms part of retained EU law will facilitate UK membership as a non-EU member state in these consortia after the UK leaves the EU, should we so wish to do so.

*What are ERICs and how do they function?*

7.2 ERICs are organisations or structures set up to deliver major international science and research collaborations in the EU. The projects are set up under the ERIC Regulation. Each ERIC has its own set of unique statutes and is established by a European Commission Implementing Decision made under the ERIC Regulation.

7.3 Countries do not need to be a member of the EU to be a member of an ERIC. Countries that are not an EU member and not an associate member of EU Research and Innovation Framework Programmes can be a member provided certain requirements are satisfied. International organisations are also permitted to be members.

*Importance to the UK*

7.4 ERICs allow for pan-European research projects that any single country would be unlikely to have the resources or expertise to undertake alone. UK participation in ERICs currently gives UK scientists and companies access to facilities, data, knowledge and contracts that would otherwise be inaccessible. The outcomes of these projects feed into research communities across the UK including, but not limited to: marine science, astrophysics, human health and welfare, and societal change. This has wider benefits for UK strategies, such as those surrounding climate change, as well as having direct economic benefit for companies winning construction or operating contracts for ERICs. It is therefore crucial that the UK retains the ability to participate in these research projects in the future, should it choose to do so. This will be a significant contribution to the establishment of an ambitious and far reaching relationship with the EU on Science and Innovation and help ensure that UK scientists have access to the world class facilities that underpin the UK's position as a leading scientific nation.

*What the amendments do*

7.5 The amendments made to the ERIC Regulation by this instrument address deficiencies in retained EU law. They will in particular amend provisions which are redundant or inappropriate as a result of the withdrawal of the UK from the European Union, for example:

- Provisions relating to applying to the European Commission for the setting up of the ERIC;
- Operational requirements placed on ERICs, fulfilment of which is ensured by the European Commission under the ERIC Regulation as it has effect in EU law;
- Provisions concerning European Commission actions relating to the control of ERICs.

Provisions are also amended which contain EU references which are no longer appropriate and retained EU law is restated in a clearer form by, for example, replacing a reference to an Article in an EU Directive with a reference to national provisions implementing that Article.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. This instrument is also being made under paragraph 21(b) 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 Not Applicable.

## 10. Consultation outcome

10.1 As this instrument makes purely technical changes to retained EU law, and makes no policy changes, consultation was not viewed as necessary.

10.2 ERICs relate to a reserved matter; however, the draft Statutory Instrument and the draft Explanatory Memorandum were shared with the devolved administrations on 20 June 2018 for comments and questions. No responses have been received.

## 11. Guidance

11.1 Not Applicable.

## 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 A De Minimis Self Certification has been prepared for this instrument. A full Impact Assessment has not been prepared for this instrument because it does not give rise to any new costs and it does not have any financial or economic impact beyond the status quo.

## 13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## 14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

## 15. Contact

15.1 Oliver Payne at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 6129 or email: oliver.payne@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Redwood, Deputy Director for European Programmes at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Universities, Science, Research and Innovation at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard

# Annex A

## 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/ESIC |
| 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.<br><br>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<br>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 23(1) or jointly exercising | Set out the 'good reasons' for creating a criminal offence, and the penalty attached. |

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| | | powers in Schedule 2 to create a criminal offence | |
| Sub-delegation | Paragraph 30, Schedule 7 | Ministers of the Crown exercising clauses 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:<br>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,<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>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 Minster of State for Universities, Science, Research and Innovation, Sam Gyimah, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the European Research Infrastructure Consortium (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate."

1.2 This is the case because they do no more than prevent, remedy or mitigate deficiencies in retained EU law arising from the withdrawal of the UK from the EU, examples of which are mentioned in section 7.5 in the main body of this explanatory memorandum.

### 2. Good reasons

2.1 The Minster of State for Universities, Science, Research and Innovation, Sam Gyimah, 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 reasons are set out by way of example in section 7.5 in the main body of this explanatory memorandum.

### 3. Equalities

3.1 The Minster of State for Universities, Science, Research and Innovation, Sam Gyimah, 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 Minster of State for Universities, Science, Research and Innovation, Sam Gyimah, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Sam Gyimah, 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.

**Minister Sam Gyimah**

**Minister of State for Universities, Science, Research and Innovation**