*Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2019 No.

# EXITING THE EUROPEAN UNION

# The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) Regulations 2019

*Made - - - -* ***

*Coming into force in accordance with regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(a)(ii) and (b) of Schedule 7, to the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 1(3) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

**Citation and commencement**

**1.** These Regulations may be cited as the European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) Regulations 2019 and come into force on whichever is the later of—

(a) exit day, and

(b) the day after the day on which these Regulations are made.

**Interpretation**

**2.** In these Regulations—

"beneficiary" has the meaning given in Article 2(10) of Regulation 1303/2013 as it had effect in EU law immediately before exit day or Article 2(4) of Regulation 1083/2006 as it had effect in EU law immediately before exit day (as appropriate);

"Cohesion Fund" has the meaning given in Article 177 of the Treaty on the Functioning of the European Union;

"cooperation programme" has the meaning given in Article 1(2) of Regulation 1299/2013 as it had effect in EU law immediately before exit day;

"ESIF Regulations" means the Regulations listed in Schedules 1 and 2 as they had effect in EU law immediately before exit day;

(**a**) 2018 c. 16.

"European Regional Development Fund" has the meaning given in Article 176 of the Treaty on the Functioning of the European Union;

"European Social Fund" has the meaning given in Article 162 of the Treaty on the Functioning of the European Union;

"managing authority" means an authority or body designated as a managing authority in accordance with Article 123 of Regulation 1303/2013 as it had effect in EU law immediately before exit day;

"operation" has the meaning given in Article 2(9) of Regulation 1303/2013 as it had effect in EU law immediately before exit day or Article 2(3) of Regulation 1083/2006 as it had effect in EU law immediately before exit day (as appropriate);

"Regulation 1083/2006" means Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, as it has effect by virtue of Article 152 of Regulation 1303/2013;

"Regulation 1299/2013" means Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal(**a**);

"Regulation 1303/2013" means Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006(**b**).

**Disapplication of retained direct EU legislation**

**3.**—(1) The retained direct EU legislation listed in Schedule 1 shall cease to have effect insofar as it applies to each of the funds mentioned in paragraph (2).

(2) The funds are the European Regional Development Fund, the European Social Fund and the Cohesion Fund.

**Revocation of retained direct EU legislation**

**4.** The retained direct EU legislation listed in Schedule 2 is revoked.

**Transitional provision for existing ERDF and ESF operations**

**5.**—(1) Regulations 3 and 4 do not affect the operation of a relevant document or any agreement entered into in connection with the funding to be provided under the terms of a relevant document before exit day.

(2) Any reference to the ESIF Regulations (as they have effect from time to time) included in a relevant document immediately before exit day is to be read, on or after exit day, as a reference to those Regulations as they had effect in relation to the beneficiary and operation to which the document relates immediately before exit day.

(3) Any reference to the 2007-13 Regulations (as they have effect from time to time) included in a relevant document immediately before exit day is to be read, on or after exit day, as a reference

(**a**) OJ L 347, 20.12.2013, p. 259–280.

(**b**) OJ L 347, 20.12.2013, p. 320–469, relevant amendments are article 272 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

to those Regulations as they had effect in relation to the beneficiary and operation to which the document relates immediately before exit day.

(4) Paragraphs (2) and (3) do not apply to any variation or amendment to a relevant document which is to have effect on or after exit day.

(5) Any authority or body designated before exit day, as—

(a) a managing authority, certifying authority or audit authority for the purposes of Article 123 of Regulation 1303/2013 or Article 59(1) of Regulation 1083/2006, or

(b) an intermediate body for the purposes of Article 36(3), or Article 123(6) or (7) of Regulation 1303/2013 or Article 59(2) of Regulation 1083/2006,

may continue to exercise any powers, rights and remedies it has by virtue of the ESIF Regulations or the 2007-13 Regulations as they had effect in relation to the beneficiary and an operation and any expenditure incurred by the beneficiary under a relevant document immediately before exit day.

(6) Nothing in these Regulations affects the application of paragraph 37(1) and (2) of Schedule 8 to the European Union (Withdrawal) Act 2018 to anything done in connection with the ESIF Regulations or the 2007-13 Regulations before exit day.

(7) In this regulation—

(a) "2007-13 Regulations" means—

(i) Regulation 1083/2006,

(ii) Regulation 1828/2006,

(iii) Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999, as it has effect by virtue of Article 13 of Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006,

(iv) Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999, as it has effect by virtue of Article 26 of Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006,

(b) "financial engineering instrument" has the meaning given in Article 44 of Regulation 1083/2006,

(c) "financial instrument" has the meaning given in Article 2(11) of Regulation 1303/2013 as it had effect in EU law immediately before exit day,

(d) "holding fund" has the meaning given in Article 44 of Regulation 1083/2006,

(e) "Regulation 1828/2006" means Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund, as it has effect by virtue of Article 152 of Regulation 1303/2013, and

(f) "relevant document" means (subject to paragraph (8))—

(i) a document setting out the conditions for support for funding from the European Regional Development Fund or European Social Fund in accordance with Article 125(3)(c) of Regulation 1303/2013 or Article 13(1) of Regulation 1828/2006 which has been provided to a beneficiary immediately before exit day,

(ii) a funding agreement setting out the terms and conditions for contributions from programmes to financial instruments in accordance with Article 38(7) of Regulation 1303/2013 which has been provided to a beneficiary immediately before exit day,

(iii) a funding agreement setting out the terms and conditions for contributions from programmes to financial engineering instruments in accordance with Article 43 of Regulation 1828/2006 which has been provided to the duly mandated representative of a financial engineering instrument immediately before exit day,

(iv) a funding agreement setting out funding arrangements and objectives in accordance with Article 44(1) of Regulation 1828/2006 which has been concluded with a holding fund immediately before exit day,

(v) a funding agreement setting out terms and conditions for contributions to a venture capital fund, guarantee funds, loan funds or urban development funds in accordance with Article 44(3) of Regulation 1828/2006 which has been concluded with a holding fund immediately before exit day.

(8) A document is not to be treated as a relevant document for the purposes of this Regulation where it has been provided in respect of funding from the European Regional Development Fund under a cooperation programme.

**Transitional provision for cooperation programmes**

**6.**—(1) Regulations 3 and 4 do not affect any right or remedy of a managing authority for a co-operation programme based in the UK in relation to an act or omission by a beneficiary which occurred in connection with funding from the European Regional Development Fund provided before exit day.

(2) The Secretary of State, the Treasury, or a devolved authority may give, or make arrangements for the giving of financial assistance to any person under such conditions as they consider appropriate for the purpose of—

(a) ensuring the operability of an operation (whether or not commenced) which a monitoring committee approved as eligible for funding from the European Regional Development Fund under a cooperation programme before exit day;

(b) ensuring the operability of an operation in respect of which an application for funding from the European Regional Development Fund under a cooperation programme was made to a managing authority before exit day;

(c) enabling the United Kingdom to continue to participate in a cooperation programme which was approved before exit day.

(3) Financial assistance may not be given under paragraph (2)(b) unless the operation was eligible for funding from the European Regional Development Fund before exit day.

(4) In this Regulation, "monitoring committee" means a committee set up in accordance with Article 47(3) of Regulation 1303/2013 as it had effect in EU law immediately before exit day.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

*Name*
Parliamentary Under Secretary of State
Date Department for Business, Energy and Industrial Strategy

# SCHEDULE 1

Regulation 3

## Regulations and decisions disapplied insofar as they apply to the European Regional Development Fund, European Social Fund and Cohesion Fund

**1.** Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

**2.** Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds.

**3.** Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.

**4.** Commission Delegated Regulation (EU) 2015/1076 of 28 April 2015 laying down, pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, additional rules on the replacement of a beneficiary and on the related responsibilities, and minimum requirements to be included in Public Private Partnership agreements funded by the European Structural and Investment Funds.

**5.** Commission Delegated Regulation (EU) 2015/1516 of 10 June 2015 establishing, pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, a flat rate for operations funded by the European Structural and Investment Funds in the Research, Development and Innovation sector.

**6.** Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund.

**7.** Commission Delegated Regulation (EU) 2016/568 of 29 January 2016 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the conditions and procedures to determine whether amounts which are irrecoverable shall be reimbursed by Member States concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund.

**8.** Commission Implementing Regulation (EU) No 184/2014 of 25 February 2014 laying down pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, the terms and conditions applicable to the electronic data exchange system between the Member States and the Commission and adopting pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation

goal, the nomenclature of the categories of intervention for support from the European Regional Development Fund under the European territorial cooperation goal.

**9.** Commission Implementing Regulation (EU) No 288/2014 of 25 February 2014 laying down rules pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund with regard to the model for operational programmes under the Investment for growth and jobs goal and pursuant to Regulation (EU) No 1299/2013 of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal with regard to the model for cooperation programmes under the European territorial cooperation goal.

**10.** Commission Implementing Regulation (EU) No 215/2014 of 7 March 2014 laying down rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund with regard to methodologies for climate change support, the determination of milestones and targets in the performance framework and the nomenclature of categories of intervention for the European Structural and Investment Funds.

**11.** Commission Implementing Regulation (EU) No 1011/2014 of 22 September 2014 laying down detailed rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for submission of certain information to the Commission and the detailed rules concerning the exchanges of information between beneficiaries and managing authorities, certifying authorities, audit authorities and intermediate bodies.

**12.** Commission Implementing Regulation (EU) No 1232/2014 of 18 November 2014 amending Commission Implementing Regulation (EU) No 215/2014 in order to adapt references therein to Regulation (EU) No 508/2014 of the European Parliament and of the Council and correcting Implementing Regulation (EU) No 215/2014.

**13.** Commission Implementing Regulation (EU) 2015/1974 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, under Regulation (EU) No 1303/2013 of the European Parliament and of the Council.

**14.** 2014/190/EU: Commission Implementing Decision of 3 April 2014 setting out the annual breakdown by Member State of global resources for the European Regional Development Fund, the European Social Fund and the Cohesion Fund under the Investment for growth and jobs goal and the European territorial cooperation goal, the annual breakdown by Member State of resources from the specific allocation for the Youth Employment Initiative together with the list of eligible regions, and the amounts to be transferred from each Member State's Cohesion Fund and Structural Funds allocations to the Connecting Europe Facility and to aid for the most deprived for the period 2014-2020 (notified under document number C(2014) 2082).

**15.** 2014/660/EU: Commission Implementing Decision of 11 September 2014 on the model of funding agreement for the contribution of the European Regional Development Fund and the European Agricultural Fund for Rural Development to joint uncapped guarantee and securitisation financial instruments in favour of small and medium-sized enterprises.

**16.** Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments.

**17.** Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information and communication measures for operations and the system to record and store data.

# SCHEDULE 2

Regulation 4

## Regulations and decisions revoked

**1.** Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal.

**2.** Regulation (EU) No 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006.

**3.** Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006.

**4.** Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006.

**5.** Commission Delegated Regulation (EU) No 481/2014 of 4 March 2014 supplementing Regulation (EU) No 1299/2013 of the European Parliament and of the Council with regard to specific rules on eligibility of expenditure for cooperation programmes.

**6.** Commission Delegated Regulation (EU) No 522/2014 of 11 March 2014 supplementing Regulation (EU) No 1301/2013 of the European Parliament and of the Council with regard to the detailed rules concerning the principles for the selection and management of innovative actions in the area of sustainable urban development to be supported by the European Regional Development Fund.

**7.** Commission Delegated Regulation (EU) 2015/2195 of 9 July 2015 on supplementing Regulation (EU) No 1304/2013 of the European Parliament and of the Council on the European Social Fund, regarding the definition of standard scales of unit costs and lump sums for reimbursement of expenditure by the Commission to Member States.

**8.** 2014/366/EU: Commission Implementing Decision of 16 June 2014 setting up the list of cooperation programmes and indicating the global amount of total support from the European Regional Development Fund for each programme under the European territorial cooperation goal for the period 2014 to 2020 (notified under document number C(2014) 3776).

**9.** 2014/388/EU: Commission Implementing Decision of 16 June 2014 setting up the list of regions and areas eligible for funding from the European Regional Development Fund under the cross-border and transnational components of the European territorial cooperation goal for the period 2014 to 2020 (notified under document number C(2014) 3898).

**10.** 2014/99/EU: Commission Implementing Decision of 18 February 2014 setting out the list of regions eligible for funding from the European Regional Development Fund and the European Social Fund and of Member States eligible for funding from the Cohesion Fund for the period 2014-2020 (notified under document C(2014) 974).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b) and (d)) arising from the withdrawal of the United Kingdom from the European Union.

Regulation 3 disapplies the retained EU law specified in Schedule 1 insofar as it applies to the European Regional Development Fund, European Social Fund and Cohesion Fund (the Funds) and regulation 4 revokes retained EU law specified in Schedule 2.

Regulations 5 and 6 set out transitional provisions for funding agreements entered into before exit day in relation to the Funds and ensures funding can continue to be provided to persons in relation to co-operation programmes under Commission Regulation (EU) 1299/2013 which (whether or not commenced) were approved before exit day, or were applied for before exit day but approved after that day and were of a type that would have been approved before exit day.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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