EXPLANATORY MEMORANDUM TO

THE EUROPEAN STRUCTURAL AND INVESTMENT FUNDS COMMON PROVISIONS AND COMMON PROVISION RULES ETC. (AMENDMENT) (EU EXIT) (REVOCATION) REGULATIONS 2020

2020 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 Command of Her Majesty.

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

2. Purpose of the instrument

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 revoke the Statutory Instrument 2019/625 made on 18 March 2019. Statutory Instrument 2019/625 (SI 625) disapplied the common provision regulations on European Structural and Investment Funds insofar as they applied to the European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), and European Territorial Cooperation Fund (ETC) (together the Funds). SI 625 was passed so that, in the event of there being no Withdrawal Agreement, projects supported by the Funds could continue to operate domestically under HM Government's funding guarantee by including transitional provisions for projects agreed before exit and by creating a power to pay out the HM Government funding guarantee to relevant recipients for the continued delivery of projects under the cross-border ETC programmes.

Article 138 of the Withdrawal Agreement as embodied in The European Union (Withdrawal Agreement) Act 2020 (c.1) states that all applicable European Union law will continue to apply to the UK for all programmes and activities committed under the MFF 2014-2020. Such 'programmes and activities' include the Funds. The effect is, therefore, that the common provision regulations will continue to apply to the Funds. We are therefore looking to revoked SI 625 in order to avoid confusion where SI 625 says that the regulations are disapplied whereas the Withdrawal Agreement states that they do apply.

Explanations

What did any relevant EU law do before exit day?

2.1 Regulation 1303/2013 on the European Structural and Investment Funds (ESI Funds), set out the rules common to the ERDF, ESF, ETC (collectively known as Structural Funds), and the Cohesion Fund, as well as the rules for the European Agricultural Fund for Rural Development (EAFRD), and the European Maritime and Fisheries Fund (EMFF). Regulation 1303/2013 as it applies to EAFRD and EMFF was amended in a separate statutory instrument made under the European Union (Withdrawal Act) 2018.

2.2 This instrument seeks to revoke an existing European Structural Funds Statutory Instrument (SI) No. 625 that was laid on 18 March 2019 and comes into force on 1 January 2021. This original SI was planned for a no deal exit. Its function was to repeal the relevant EU regulations, fund-specific regulations and delegated and implementing acts setting out further rules which governed Structural Fund programmes, upon a no deal exit, relying instead on transitional provisions for projects agreed before exit..

2.3 *Why is it being changed?*

On 23 January 2020 the UK passed the European Union (Withdrawal Agreement) Act 2020 which implements the Withdrawal Agreement (WA) with the EU. The WA maintains the EU regulations for European Structural and Investment Funds (ESIF) until those programmes close; this may be up to 2026. The original SI therefore contradicts the intent and purpose of the WA.

2.4 *What will it now do?*

Over half of EU funding is channelled through the ESI Funds. They are jointly managed by the European Commission and the EU Member States. BEIS sets the policy and coordinates management of four of these funds across the UK: the European Regional Development Fund (ERDF) (which includes the European Territorial Cooperation Fund (ETC)); the European Social Fund (ESF); the European Agricultural Fund for Rural Development (EAFRD); and the European Maritime and Fisheries Fund (EMFF). The Cohesion Fund is not applicable to the UK.

ERDF and ESF which are collectively known as European Structural Funds, aim to reduce regional disparities, increase economic competitiveness, improve employment opportunities and promote social inclusion.

Under Article 138 of the WA, the UK will continue to have access to ERDF, ESF, EAFRD and EMFF until the end of the current (2014-20) funding cycle. Projects typically last up to three years; closure of those programmes then takes on average 2-3 years, meaning that some ESIF projects will continue expenditure until 2023 (with closure into 2025 and beyond).

The WA confirms that the UK can continue to participate in these current programmes but does not bind us to take part in the future (2021-2027) programmes.

BEIS originally laid an SI in March 2019 (SI 625) that removed the EU regulations for Structural Funds from UK law in the event of a no deal exit (the HMG funding guarantee was to be managed through the terms of the Funding Agreements instead and would match the flows of ESIF). It was designed to come into force on Exit day in a No Deal., Unrepealed, it would now come into force on the last day of the Transition Period (TP).

BEIS are revoking this No Deal SI because it is not compatible with the arrangements set out under Article 138 of the WA. The No Deal SI (SI 625) disapplies the regulations for the funds when it comes into force at the end of the TP, while the WA maintains those same regulations until programme closure (i.e. well after the TP ends). If SI 625 was kept, it would confuse the statute book and could raise questions as to whether we were living up to our legal obligations in the WA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument revokes an earlier Statutory Instrument (SI 2019/625) made through the affirmative procedure which provided transitional powers to enable the payment of the ETC guarantee by HM Government and the Devolved Administrations.

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 This instrument applies to all of the United Kingdom.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is all of the United Kingdom

4.2 The territorial application of this instrument is for all of the United Kingdom

4.3 Devolved Administrations were involved in the preparation of this instrument.

5. European Convention on Human Rights

5.1 The Parliamentary Undersecretary of State, Lord Callanan has made the following statement regarding Human Rights:

"In my view the provisions of the European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made in order to revoke the Statutory Instrument 2019/625 made on 18 March 2019 and which disapplied retained EU law in relation to the European Regional Development Fund, European Social Fund and Cohesion Fund (the Funds) in order to guarantee funding in a no deal exit scenario.

As the Withdrawal Agreement has now been signed by the UK, the original SI 625/2019 is no longer required and should be repealed in order to not confuse the statute book.

This instrument will also allow the UK to continue to apply EU Regulation No. 1303/2013, supplementary fund-specific regulations and associated delegated and implementing legislation for ESI Funds until the end of the current programmes.

Policy background

7. What is being done and why?

7.1 The EU Regulations for Structural Funds and the Cohesion Fund are designed to reduce social and economic disparities in the EU, and are the main funding tools designed to deliver the EU's Cohesion Policy. They come under the wider family of European Structural and Investment Funds (ESIF), which also includes EAFRD and

EMFF which are not dealt with by this instrument. These EU regulations set out the rules governing these funds and give powers to the Secretary of State or a Devolved Authority to ensure the operability of a project approved as eligible by the above regulations.

7.2 The UK has been allocated about £9.5bn of funding under Structural Funds for the 2014-2020 period. The funds currently support growth, low carbon, transport, research, innovation, SMEs, employment opportunities, and social inclusion.

7.3 Structural Fund programmes are managed and delivered by government organisations designated as Managing Authorities (MAs) in England and the Devolved Administrations, which are responsible for drawing up operational programmes. These programmes set out the levels of funding available for certain activities and how the programmes will be run, within the parameters set by the EU regulations.

7.4 The need for continued regional investment in the event of a no deal exit, and the nature of the projects supported by these funds, led to the introduction of legislation so that these funds could operate domestically under a no deal until their planned closure, even though they would cease to be funded by the EU.

7.5 As the UK signed the Withdrawal Agreement which maintains the EU regulations for ESIF until programme closure (which could be until 2026 given that programmes run until 2023 and then generally take 2-3 years to wind up) SI 625 contradicts the intent and purpose of the WA.

7.6 It is proposed that the UK Shared Prosperity Fund (UKSPF) will be set up as the domestic successor to ESIF for new programmes beginning after 2020.

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.

9. Consolidation,

9.1 This instrument will not be consolidated

10. Consultation outcome

10.1 No formal consultation was required as existing policy is not changing; however, all Devolved Administrations and delivery leads were consulted in the preparation of this instrument. Devolved Administration have all provided consent letters from their ministers to the laying of this SI.

11. Guidance

11.1 N/A

12. Impact

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

12.2 There is no impact on the public sector.

12.3 An impact assessment has not been prepared for this instrument because this instrument does not change HM Government, or Devolved Administration policy.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring this legislation is to engage with delivery partners and beneficiaries throughout the delivery of existing projects under existing funding agreements.

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

15. Contact

15.1 Ewan Evans at the Department for Business, Energy and Industrial Strategy Telephone: 07919698553 or email: ewan.evans@beis.gov.uk can be contacted with any queries about the instrument.

15.2 Tim Abraham, Head of European Engagement and Transition at the Department for Business, Energy and Industrial Strategy confirms that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan at the Department for Business, Energy and Industrial Strategy 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 14, 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 15, 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 This is not applicable to this instrument (this instrument is subject to the affirmative procedure).

2. Appropriateness statement

2.1 The Parliamentary Undersecretary of State, Lord Callanan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 "In my view The European Structural and Investment Funds Common Provisions and Common Provision Rules etc. (Amendment) (EU Exit) (Revocation) Regulations 2020 does no more than is appropriate.

2.3 This is the case because it remedies deficiencies in retained EU law, as set out in section 2.1, and because it provides for the removal of legislation that is superseded by the Withdrawal Agreement."

3. Good reasons

3.1 The Parliamentary Undersecretary of State, Lord Callanan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

3.3 These are for the reasons set out in section 7 of this Explanatory Memorandum.

4. Equalities

4.1 The Parliamentary Undersecretary of State, Lord Callanan has made the following statement:

4.2 "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.

4.3 The Parliamentary Undersecretary of State, Lord Callanan has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.4 "In relation to the instrument, I, Lord Callanan 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.".

4.5 No impact on equalities is expected.

4.6 The Parliamentary Undersecretary of State, Lord Callanan has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.7 "In relation to the instrument, I, Lord Callanan, 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.