EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (WITHDRAWAL) ACT 2018 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Exiting the European Union and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 These Regulations make repeals in consequence of the repeal of the European Union Act 2011 (c. 12) ("2011 Act") and the European Union (Amendment) Act 2008 (c. 7) ("2008 Act") by Schedule 9 of the European Union Withdrawal Act (c. 16) ("Withdrawal Act").

2.2 These regulations make transitional and savings provisions in relation to those repeals.

2.3 These consequential repeals are needed to remove redundant provisions following the coming into force of various provisions of the Withdrawal Act via the 'European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018/808'.

2.4 These regulations also make consequential amendments to the Statutory Instruments Act 1946 (c. 36); the Laying of Documents before Parliament (Interpretation) Act 1948 (c. 59); and The Statutory Rules (Northern Ireland) Order 1979/1573 (N.I. 12) to reflect the introduction of a new category of "retained direct EU law" into the UK legal system. These amendments ensure that the normal rules on making secondary legislation and on laying documents before parliament apply to powers and duties contained in retained direct EU legislation. These amendments also provide that normal rules on making secondary legislation apply to instruments made under powers contained in regulations made under the Withdrawal Act.

2.5 These consequential amendments are needed to make it clear that new powers and duties in retained direct EU legislation and new powers in regulations made under the Withdrawal Act fit in with our existing legal frameworks.

Explanations

What did any relevant EU law do before exit day?

2.6 This instrument does not amend any retained direct EU legislation. The majority of the enactments amended by this instrument also do not constitute retained EU law.

2.7 The only enactment affected by these regulations that implements EU law is the European Union (Croatian Accession and Irish Protocol) Act 2013 (c. 5). This Act provides a mechanism for implementing the treaty concerning the accession of the Republic of Croatia to the European Union, signed at Brussels on 9 December 2011 and the Protocol on the concerns of the Irish people on the Treaty of Lisbon, adopted at Brussels on 16 May 2012 by making those treaties "EU Treaties" for the purposes of the European Communities Act 1972 (c. 68) ("the ECA") by amending the ECA. Making these treaties "EU Treaties" for the purposes of the ECA means that any

directly effective rights, obligations, etc under those treaties would automatically flow into UK law under section 2(1) of the ECA and would allow any further implementation of those treaties under the implementation powers in the ECA. We are not repealing or amending this part of the Act in these regulations - so this implementation is unaffected by these regulations.

2.8 Only sections 1 and 2 of this Act (which approved the Treaty concerning the Accession of the Republic of Croatia to the European Union and the Protocol on the concerns of the Irish People on the Treaty of Lisbon in accordance with the requirements of the 2011 Act) are being repealed due to the repeal of sections 1 to 13 of the 2011 Act on the 4 July 2018.

Why is it being changed and what will it do now?

2.9 Section 23(1) of the Constitutional Reform and Governance Act 2010 (c.25) creates an exemption from the CRAG procedures on scrutiny of treaties where the treaty approval procedures in the 2008 Act or the 2011 Act apply instead. That exemption has become redundant in consequence of the repeal of section 5 of the 2008 Act and sections 1 to 13 of the 2011 Act by the Withdrawal Act as no further treaties will go through the 2008 Act or 2011 Act approval processes and is therefore being repealed.

2.10 Sections 1 and 2 of the European Union (Croatian Accession and Irish Protocol) Act 2013 approved the Treaty concerning the Accession of the Republic of Croatia to the European Union and the Protocol on the concerns of the Irish People on the Treaty of Lisbon in accordance with the requirements of the 2011 Act. These approvals are no longer necessary now that sections 1 to 13 of the 2011 Act have been repealed. Sections 1 and 2 of the Act have therefore become redundant as a consequence of the repeal of sections 1 to 13 of the 2011 Act by the Withdrawal Act and are therefore being repealed. The repeal of the sections of the Act approving these Treaties has no effect on the validity of the treaties or anything done in relation to those treaties.

2.11 The European Union (Approvals) Act 2017 (c. 35) provided approval of two draft decisions in accordance with the requirements of the 2011 Act that require certain draft decisions under Art 352 of the Treaty on the Functioning of the European Union to be approved by an Act of Parliament before the UK Government can vote in favour of the decisions. These draft decisions related to (a) allowing Albania and Serbia to participate as observers in the work of the European Union Agency for Fundamental Rights and (b) an agreement between the European Union and the Government of Canada regarding the application of their competition laws. These approvals are no longer necessary now that sections 1 to 13 of the 2011 Act have been repealed by the Withdrawal Act, and so the Act has become redundant in consequence of these repeals and is therefore also being repealed. The repeal of the Act approving those decisions has no effect on the validity of those decisions or anything done in relation to those decisions.

2.12 The Statutory Instruments Act 1946 establishes the rules that apply when making SIs. These rules originally only applied to powers to make SIs that were contained in Acts - so they did not apply to powers to make SIs in retained direct EU legislation or secondary legislation made under the Withdrawal Act. With the coming into force of powers to amend retained direct EU legislation and the ability to sub-delegate regulations made under certain Withdrawal Act powers, it is important that the Statutory Instrument Act 1946 is amended to cover these scenarios so that there is certainty about the proper procedure for making SIs under such powers. The

amendments to the Statutory Instrument Act 1946 make clear that the normal rules will apply where the relevant power to make secondary legislation is contained in retained direct EU law or in a piece of secondary legislation made under the Withdrawal Act.

2.13 These amendments to the Statutory Instruments Act 1946 also tackle an issue that was raised by the Delegated Powers and Regulatory Reform committee in the 12th report of the 2017-2019 session - where the committee raised the concern that SIs made under powers in the Withdrawal Act would not automatically be subject to the Statutory Instruments Act's requirements. They were especially concerned about whether the publication requirements would apply. The effect of these amendments to the Statutory Instruments Act 1946 is that all SIs made by ministers under powers contained in regulations made under the Withdrawal Act will fall under the Statutory Instruments Act 1946 - so all the normal rules for SIs, including the publication rules, will apply to these instruments. The report is available at: https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/73/7304.htm (see paragraph 13 for discussion of the Statutory Instruments Act 1946).

2.14 Section 1 of the Laying of Documents before Parliament (Interpretation) Act 1948 also defines the meaning of references to laying before Parliament. Without amendment, these rules would not apply to duties to lay documents contained in retained direct EU law. The Act will be amended to make clear that the normal rules on laying documents before Parliament apply where a duty to lay documents before Parliament is contained in a piece of retained direct EU legislation.

2.15 The Statutory Rules (Northern Ireland) Order 1979 establishes the rules that apply when making statutory rules (SRs), which are the Northern Ireland version of SIs. Without amendment, these rules would not apply to powers to make SRs in retained direct EU law or in secondary legislation made under the Withdrawal Act. This Order will be amended to make clear that the normal rules for SRs will apply to SRs made by Northern Ireland authorities under new powers inserted into retained direct EU law and under new powers created in deficiencies regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments, the Select Committee on Statutory Instruments or the Committees on the UK's exit from the European Union

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 varies between provisions.

3.3 The territorial application of the provisions in this instrument are the same as the territorial application of the relevant enactment being repealed, revoked or amended. For the majority of the enactments their territorial application is all of the United Kingdom.

4. Extent and Territorial Application

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

4.2 The territorial application of the provisions in this instrument are the same as the territorial application of the relevant enactment, or provision of an enactment, being amended or repealed.

5. European Convention on Human Rights

5.1 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement regarding Human Rights: "In my view the provisions of the European Union (Withdrawal) Act (Consequential Amendments) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 The Withdrawal Act provides the framework for the UK's exit from the EU. It repeals the ECA 1972 on the day the UK leaves the EU, and converts EU law as it stands at the moment of exit into domestic law. As part of the process of preserving EU law as it stood on exit day it takes directly applicable EU law and converts it into a new category of law "retained direct EU legislation" ("RDEUL") in the United Kingdom's domestic legal system.

6.2 Our current rules on the making of statutory instruments and statutory rules are contained in the Statutory Instruments Act 1946 and the Statutory Rules (Northern Ireland) Order 1979. Without amendment those rules would not apply to powers to make secondary legislation contained in RDEUL. Similarly, our interpretation rules for how to interpret a legal duty to lay a document before Parliament which are contained in the Laying of Documents Before Parliament (Interpretation) Act 1948 would only apply to primary and secondary legislation not to RDEUL if they were not amended. These regulations update these enactments so that they apply to RDEUL.

6.3 Schedule 9 of the Withdrawal Act also repeals a number of Acts, some of which have been brought into force, in whole or in part, through the 'European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018/808'. In consequence of these repeals these Regulations repeal various pieces of primary legislation linked to those Acts, and makes some transitional and savings provisions in relation to those repeals.

7. Policy background

What is being done and why?

7.1 The purpose of Schedule 1 of these Regulations is to make repeals in consequence of the partial repeal of the 2008 and the 2011 Acts as brought into force on 4 July 2018. The Regulations also make some transitional and savings provisions in relation to those repeals.

7.2 The 2011 Act prescribed the procedures that must be followed prior to agreeing to certain EU decisions or ratifying certain Treaty changes. It provided for a referendum throughout the UK on any proposed EU Treaty or Treaty change which would transfer powers from the UK to the EU (the so-called "referendum lock"). It provided that Acts of Parliament or parliamentary motions would be required in relation to certain other EU related decisions. Sections 1 to 13 of this Act relating to approvals were repealed on the 4 July 2018 (with the remaining few sections relating to the

ECA being repealed on exit day when the ECA is repealed) because the 2011 Act was redundant in the context of the UK's departure from the EU.

7.3 Section 5 of the 2008 Act contained a similar provision to that in the 2011 Act - requiring Parliamentary approval via an Act of Parliament before any Euratom related treaty changes could be ratified. As with the 2011 Act, this requirement was redundant in the context of the UK's departure from the EU.

7.4 The purpose of Schedule 2 of these Regulations is to make consequential amendments to reflect the creation of the new category of retained direct EU legislation ("RDEUL") by the Withdrawal Act to ensure that existing rules within the Statutory Instruments Act 1946, the Laying of Documents before Parliament (Interpretation) Act 1948 and the Statutory Rules (Northern Ireland) Order 1979 work with this new type of law.

7.5 This new category of retained direct EU legislation derives from the conversion of direct EU legislation into domestic law by section 3 of the Withdrawal Act. Direct EU legislation does not form part of our legal system in the same way as domestic legislation as it is given effect to in the UK via the ECA which will be repealed on exit day. The conversion into retained direct EU legislation therefore ensures that direct EU legislation becomes part of the UK's domestic legal order after exit day and so continues to have effect in our legal system post-exit, ensuring certainty and continuity for businesses and individuals.

7.6 See the explanations statements at section 2 of this explanatory memorandum for details of what is being changed and why.

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

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under the power to make consequential provision in section 23(1) of the Withdrawal Act. The Minister has made any relevant statements and they have been published in Annex A to this Explanatory Memorandum.

9. Consolidation

9.1 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 No public consultation was required as the Regulations make only limited technical changes to existing legislation with no impact on businesses, charities or voluntary bodies.

10.2 We have consulted the Government of Wales and the Northern Irish Civil Service (in the absence of a Northern Irish executive) in relation to the amendments made to the relevant parts of the Interpretation Act 1948 and the Statutory Rules (Northern Ireland) Order 1979 that affect devolved matters.

11. Guidance

11.1 No guidance is required as the Regulations make only limited technical changes to existing legislation with no impact on business, charities or voluntary bodies.

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 An impact assessment has not been prepared for this instrument.

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 Alice Cardy at the Department for Exiting the European Union, email: alice.cardy@dexeu.gov.uk, can be contacted with any queries regarding the instrument.

15.2 James Gerard at the Department for Exiting the European Union can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP 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. 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
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 Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the European Union (Withdrawal) Act 2018 (Consequential Amendments) Regulations 2018 does no more than is appropriate". This is the case because: it makes limited consequential amendments to the affected legislation to ensure that it continues to operate as intended and for there to be continuity and certainty in the law reflecting the coming into force of certain provisions of the Withdrawal Act and the creation of the new category of retained direct EU law (RDEUL).

2. Good reasons

2.1 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

2.3 Redundant legislation will be removed from the UK's statute book ensuring it remains coherent and continues to function as intended following the coming into force of certain provisions in the Withdrawal Act.

2.4 It will make clear what rules will apply to the making of SIs by Ministers under new powers created under the Withdrawal Act and under new powers in RDEUL;

2.5 It will make clear what rules apply to the making of Statutory Rules by relevant Northern Ireland authorities under new powers created under the Withdrawal Act and under new power in RDEUL;

2.6 It will make clear that the normal rules on laying documents before Parliament apply to any duties to lay documents before Parliament contained in RDEUL,

2.7 Clarifying the points in 2.2 to 2.4 will help facilitate preparations for EU exit and assist Parliament in scrutinising relevant new powers and duties by providing certainty about how those new powers and duties fit within current legal frameworks. This will help ensure the UK and devolved statute books are ready in time for exit day

3. Equalities

3.1 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement(s) *"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 Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.3 *"In relation to the draft instrument, I, Mr Chris Heaton-Harris MP, 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 published in section 2 of the main body of this explanatory memorandum.