EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNIVERSITY INSTITUTE (EU EXIT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

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

2. Purpose of the instrument

2.1 This instrument makes provision in connection with the UK's former membership of the European University Institute Convention (the EUI Convention).

2.2 This instrument removes from domestic law any rights, powers, liabilities, obligations, restrictions remedies and procedures ("rights etc.") which derive from the UK being party to the EUI Convention and which would otherwise, despite the UK's exit from the EU and that Convention, remain on the statute book as "retained EU law" by virtue of section 4 of the European Union (Withdrawal) Act 2018 (the "Withdrawal Act"). To ensure the UK's statute book remains clear and coherent it is important that any rights relating to the EUI Convention retained in this way are removed, as appropriate.

2.3 The UK's membership of the EUI ceased as a result of the UK exiting the European Union. The purpose of this instrument is to ensure that none of the rights derived from the EUI Convention are retained on the statute book other than where their retention is appropriate or supports a period of reasonable adjustment. Where rights etc. are retained this instrument will establish the circumstances after which they no longer apply.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 A draft statutory instrument, The European University Institute (EU Exit) Regulations 2019, was laid for sifting by the Sifting Committees, drafted on the assumption that any rights, powers, liabilities, obligations, restrictions remedies and procedures which might derive from the UK's membership of the EUI Convention would end on exit day.

3.2 In its 19th Report of session 2017-2019 on 28 February 2019 the House of Commons European Statutory Instruments Committee recommended that the instrument should follow the affirmative procedure. The Committee referred to the Department's statement that it will explore "options for ongoing engagement with the [EUI Convention]" and said that the basis for continued participation of the UK in the EUI is an issue that should be subject to debate in the House. The Committee recommended that: "… the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure) on the ground that it is of political and legal

importance." This SI remained in draft form while negotiations about new agreement with the European University Institute (the EUI) took place and was not laid before Parliament for debate.

3.3 This latest draft of the SI is being laid subject to the affirmative procedure in accordance with the Committee's recommendation. It differs from the draft that was laid for sifting in 2019 in that it saves certain rights as considered appropriate or to support a period of reasonable adjustment.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Skills at the Department for Education Andrea Jenkyns has made the following statement regarding Human Rights:

"In my view the provisions of the European University Institute (EU Exit) Regulations 2022 are compatible with the Convention rights.

6. Legislative Context

6.1 The UK acceded to the Convention Setting up a European University Institute in 1975 (the "EUI Convention"). The European Communities (Definition of Treaties) Order 1975 (SI 1975/408) designates the Convention as an "EU Treaty" as defined in section 1 of the European Communities Act 1972.

6.2 By virtue of section 4 of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"), certain rights etc. derived from the EUI Convention continued to have effect in domestic law on and after exit day (31 January 2020) as 'retained EU law'. Upon EU Exit, the UK's membership of the EUI Convention automatically ceased and these retained rights etc. are either redundant or no longer appropriate. On that basis, and in order to maintain a clear and coherent statute book, the instrument removes those rights etc. from domestic law while providing for certain privileges to continue as considered appropriate or in order to support a period of reasonable adjustment.

6.3 Participation in international agreements, such as the EUI Convention, is a reserved matter and is determined at the UK level.

7. Policy background

What is being done and why?

7.1 The UK's participation in the EUI as a contracting state (as outlined at 7.3 to 7.7) ceased as a result of exiting the European Union so the primary purpose of the instrument is to remove law from the UK statute book which is either redundant or no longer appropriate and to provide legal certainty.

7.2 There are currently approximately 35 members of staff employed at the EUI who are affected by the UK legal position, e.g. because they are either UK nationals or they have substantial ties to the UK. This instrument will retain specific privileges and

immunities for these employees (in particular the legal proceedings immunity and an income tax privilege) to provide a reasonable adjustment period and where this is considered appropriate.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 The EUI in Florence is an international centre for postgraduate and post-doctoral studies and research with a European focus. It is not an EU institution. The six founding members of the European Communities (Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany) established the EUI in 1972 and the UK joined in 1975. Currently only EU member states may accede to the EUI Convention.

7.4 The United Kingdom, as a signatory to the EUI Convention, participated in the governance of the EUI, contributed to the EUI's operational budget and provided grants for up to 20 students at any one time to undertake post-graduate study at the Institute. The European Communities (Definition of Treaties) Order 1975 (SI 1975/408) designates the Convention as an "EU Treaty" as defined in section 1 of the European Communities Act 1972. That Order was revoked, on IP completion day, by the European Union (Definition of Treaties) (Revocation) (EU Exit) Regulations 2018 (S.I. 2018/1012).

7.5 By virtue of section 4 of the Withdrawal Act, certain rights etc. derived from the EUI Convention continued to have effect in domestic law on and after exit day (31 January 2020) as "retained EU law", including the law derived from certain privileges and immunities contained in the protocol to the EUI Convention.

Why is it being changed?

7.6 The UK's membership of the EUI Convention ceased as a result of the UK exiting the European Union. The Government has engaged in negotiations with the EUI to explore the possibility of ongoing engagement with the Institute. It has not been possible to conclude an agreement to define future UK engagement.

7.7 This instrument will revoke the retained EU law relating to the EUI Convention where it either no longer has any practical application following the UK leaving the EU (and is therefore redundant) or where it is no longer appropriate for it to be retained, to provide legal certainty.

What will it now do?

7.8 The EU measures ceased to have effect in the UK when the implementation period expired. The instrument will remove law that is either redundant or inappropriate and provide legal certainty to the UK statute book.

7.9 This instrument will save a specific immunity and a privilege for EUI staff where relying on those privileges in UK law, to provide a reasonable adjustment period and withdrawal arrangements. These privileges relate to: (1) immunity from legal proceedings in respect of acts carried out in the course of their duties at the EUI, described at article 9(1)(a) of the Protocol on the Privileges and Immunities of the European University Institute; and (2) income tax privilege relating to salaries, wages and emoluments received from the EUI, derived from article 12(1) of the same Protocol. For those on employment contracts existing immediately before the coming

into force of these regulations the legal proceedings immunity will be saved in relation to acts done prior to the contracts coming to an end, and the income tax privilege will be saved until the contracts come to an end. The term of the contract for which the saving takes effect, is that which prevails immediately before the Regulations come into force (including any variation legally forming part of the contract term prior to that time). Any extension or other alteration to the term of the contract which commences after the Regulations come into force are to be disregarded when ascertaining the term of the contract. For previous staff the legal proceedings immunity will continue to apply for acts done in service of the Institute prior to the coming in to force of these regulations.

7.10 In all other respects the retained EU Law will be revoked.

8. European Union Withdrawal

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. 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.

8.2 The instrument is also being made under section 90(1)(b) of the Finance Act 2019, in so far as it has the effect of imposing or increasing taxation by removing retained EU law relating to income tax privileges. Use of this power is necessary because section 8 of EUWA may not be used to impose or increase taxation (see section 8(7)(a) of that Act) whereas section 90(1)(b) permits provision to be made for the purpose of relevant taxes in connection with any provision made by regulations under section 8 of EUWA. Income tax is a relevant tax (see section 90(1)(6) of the Finance Act 2019).

9. Consolidation

9.1 No consolidation is necessary for this instrument.

10. Consultation outcome

10.1 No formal consultation has taken place as this instrument is procedural in purpose, which is to revoke retained EU law that would otherwise have no practical application in the UK or is no longer appropriate following the UK's exit from the EU and the expiry of the implementation period.

10.2 A copy of the draft instrument has been shared with the devolved administrations. The Devolved Administrations have consented to Parliament legislating on behalf of the UK as a whole to revoke direct EU legislative provisions relating to the EUI.

10.3 The Department has been engaging with staff at the EUI to listen to their concerns. They have drawn attention to the potential effect of the removal of directly effective rights that were retained. This instrument has been drafted to allow for a reasonable adjustment period for the application of these rights.

11. Guidance

11.1 No guidance is required for this statutory instrument.

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 full Impact Assessment has not been prepared for this instrument because there will be little to no impact. The Government will work to ensure that students and staff who are currently at the EUI and also UK nationals, or who have substantial ties to the UK, will experience the least disruption as is reasonable.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans to monitor or review this instrument as it is for revocation only.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Colin Attrill at the Department for Education Telephone: +44 (0) 20 4534 1662 or email: colin.attrill@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Oscar Tapp Scotting, Deputy Director for International Education at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Andrea Jenkyns, Parliamentary Under Secretary of State for Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement(s)

1.1 The Parliamentary Under Secretary of State for Skills, Andrea Jenkyns has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the European University Institute (EU Exit) Regulations 2022 does no more than is appropriate".

1.2 This is the case because: the instrument revokes direct EU legislative provisions which either ceased to have any practical application or are no longer appropriate following the UK's exit from the EU, while retaining specific privileges for EUI staff to provide a reasonable adjustment period. It will ensure the statute book is clear and coherent.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Skills, Andrea Jenkyns 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: the revocation of retained EU law which either ceased to have any practical application or are no longer appropriate following the UK's exit from the EU.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Skills, Andrea Jenkyns has made the following statement(s):

"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 Parliamentary Under Secretary of State for Skills, Andrea Jenkyns has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Andrea Jenkyns 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.".

3.3 The instrument is unlikely to have any impact on equalities - the instrument simply revokes direct EU legislative provisions which either ceased to have any practical application or are no longer appropriate following the UK's exit from the EU.

4. Explanations

4.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.

5. Criminal offences

5.1 The instrument does not create or amend any criminal offences.