EXPLANATORY MEMORANDUM TO

THE EU EXPORT CREDITS LEGISLATION (REVOCATION) (EU EXIT) (NO2) REGULATIONS 2019

2019 No. 969

1. Introduction

1.1 This explanatory memorandum has been prepared by the Export Credits Guarantee Department 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

2.1 This instrument is made under section 8 of the EU (Withdrawal) Act 2018 ("the EUWA"). It revokes certain direct EU legislation as soon as it forms part of domestic law pursuant to section 3(1) of the EUWA when the United Kingdom leaves the EU because, at that time, (i) that legislation will have no practical application in relation to the United Kingdom or any part of it or be redundant or substantially redundant and/or (ii) the arrangements contained in that legislation will no longer be appropriate.

Explanations

2.2 This instrument will revoke the direct EU legislation specified in paragraphs 2.4, 2.6 and 2.7 below as soon as it becomes part of domestic law pursuant to section 3(1) of the EUWA when the United Kingdom leaves the EU because (i) in some cases, that legislation will, at that time, have no practical application in relation to the United Kingdom or any part of it or be redundant or substantially redundant and/or (ii) the arrangements contained in that legislation will, at that time, no longer be appropriate.

These Regulations revoke and replace the EU Export Credits Legislation (Revocation) (EU Exit) Regulations 2019 (S.I.2019/102) which contained an error in the scope of EU direct legislation which that instrument purportedly revoked. This instrument incorrectly revoked Directive 98/29/EC which harmonises provisions concerning export credit insurance across the European Union. This Directive did not need to be in scope of the Statutory Instrument on the basis that it does not fall within the definition of direct EU legislation for the purposes of section 3(1) of the European Union (Withdrawal) Act 2018. Accordingly, EU Export Credits Legislation (Revocation) (EU Exit) (No.2) Regulations 2019 replace EU Export Credits Legislation (Revocation) (EU Exit) Regulations 2019. With the exception of the removal of references to Directive 98/29/EC, other provisions remain the same.

What did any relevant EU laws do before exit day?

2.3 Regulation (EU) No. 1233/2011 ("**the EU Regulation**"):

a. makes the OECD Arrangement on Officially Supported Export Credits ("the OECD Arrangement") in the form annexed to the EU Regulation applicable within the EU;

b. allows the European Commission to adopt amendments to that form of the OECD Arrangement which reflect changes agreed by participants to the OECD Arrangement;

c. requires Member States to provide to the European Commission annual reports on their activities under their national export credit programmes.

2.4 The OECD Arrangement provides a framework for the orderly use of officially supported export credits and, by that, seeks to foster a level playing field for the provision of those credits. The OECD Arrangement therefore sets out at length the terms on which officially supported export credits may be provided, both in general and in relation to particular types of exports. The OECD Arrangement also specifies circumstances in which participants will notify or consult with other participants regarding the provision of officially supported export credits.

2.5 Council Decision 82/854/EEC:

a. sets out rules for the provision of officially supported export credits in relation to sub-contracts with parties inside or outside the EU; and

b. provides for the exchange of related information between Member States in certain circumstances.

2.6 **Council Decision** 2006/789/EC sets out the procedures in accordance with which Member States shall notify and consult with each other, and with the Commission, regarding credit insurance, credit guarantees and financial credits.

Why are they being changed?

2.7 The measures in the EU Regulation are required in order to apply the OECD Arrangement within the EU given that individual Member States are not party to it. Those measures will cease to be relevant to the United Kingdom once it leaves the EU and carrying into domestic law a statement that the OECD Arrangement will apply in the EU would serve no purpose[1]. After that point, the United Kingdom will apply to become a participant in the OECD Arrangement in its own right and, in the interim, will follow the OECD Arrangement as a matter of policy. Accordingly, the EU Regulation will have no practical application in in relation to the United Kingdom and/or be redundant or the arrangements contained in the EU Regulation will no longer be appropriate. As a result, there will be no need for the EU Regulation to be retained in domestic law.

2.8 After the United Kingdom leaves the EU, it would no longer be appropriate for the United Kingdom to continue to be bound by the rules in Council Decision 82/854/EEC and to be obliged to exchange information with Member States in accordance with that Council Decision.

After the United Kingdom leaves the EU, it would no longer be appropriate for the United Kingdom to be legally obliged to consult with the Commission and Member States concerning the provision of officially supported export credits in accordance with Council Decision 2006/789/EC. If it is in the interests of the United Kingdom to retain any notification and consultation arrangements with the Commission and/or EU Member States after the United Kingdom leaves the EU, those arrangements could be made under the terms of a non-binding memorandum of understanding between the

[1] Indeed, if it were held that, despite its wording, the intent behind carrying the EU Regulation into domestic law was that the UK should be bound by the OECD Arrangement in domestic law, this could result in other participants to the OECD Arrangement being able to take action in the English courts against the UK for any alleged breach of the OECD Arrangement whilst the UK would not have a reciprocal right against them.

United Kingdom and the EU (or through another informal arrangement) rather than by retaining a legally binding obligation to consult in domestic law.

What will we now do?

The policy intention is for the Export Credits Guarantee Department to provide export credit guarantees, insurance and loans, and consult with other national export credit agencies, in accordance with OECD Arrangement, to which the United Kingdom will apply to be a participant in its own right after leaving the EU and which, in the interim, will be followed by the United Kingdom as a matter of policy. There is an extremely low risk of other participants blocking the UK's application. The participants' policy is to encourage more countries to adhere to the Arrangement. The United Kingdom will also continue to follow the terms of all other OECD recommendations, principles and guidelines regarding the provision of export credit support[2].

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This proposed negative Statutory Instrument was presented to for sifting and scrutiny by the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee on 9 May 2019. The sifting committees agreed that the instrument should follow the negative procedure.

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 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom (England, Wales, Scotland and Northern Ireland).

4.2 The territorial application of this instrument is the whole of the United Kingdom (England, Wales, Scotland and Northern Ireland).

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

Regulation (EU) No. 1233/2011

6.1 Regulation (EU) No. 1233/2011 was published in the Official Journal of the European Union ("the Official Journal") on 8th December 2011 and came into force on the following day.

[2] In particular the OECD Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, the OECD Recommendation on Bribery and Officially Supported Export Credits and the OECD Principles and Guidelines to promote Sustainable Lending Practices in the Provision of Official Export Credits to Low Income Countries.

6.2 The EU Regulation made the OECD Arrangement in the form annexed to the EU Regulation applicable within the EU. It also repealed Council Decisions 2001/76/EC and 2001/77/EC, which made an earlier version of the OECD Arrangement applicable within the EU. Those Council Decisions replaced a Council Decision of 4th April 1978, which made an even earlier version of the OECD Arrangement applicable within the EU. The EU Regulation and its predecessors were required because the EU is a participant to the OECD Arrangement rather than individual Member States.

6.3 The EU Regulation confers on the European Commission a power to adopt delegated acts. The European Commission has exercised that power on two occasions in order to replace the version of the OECD Arrangement annexed to the EU Regulation by revised versions of the OECD Arrangement agreed by its participants. This was done by Commission Delegated Regulation (EU) No 727/2013 (published in the Official Journal on 2nd August 2013) and Commission Delegated Regulation (EU) No 2016/153 (published in the Official Journal on 11th February 2016).

6.4 The proposal for the EU Regulation was considered by the European Scrutiny Committee on 7 September as a document not raising questions of sufficient legal or political importance to warrant a substantive report to the House

6.5 This instrument will revoke the EU Regulation as soon as it forms part of domestic law pursuant to section 3(1) of the EUWA when the United Kingdom leaves the EU because, on leaving the EU, the United Kingdom will apply to become a participant in the OECD Arrangement in its own right and, in the interim, will continue to follow the OECD Arrangement as a matter of policy. As a result, the EU Regulation will have no practical application in relation to the United Kingdom or be redundant and/or the arrangements in the EU Regulation will no longer be appropriate, and there should be no need for the EU Regulation to be retained in domestic law.

Council Decision 82/854/EEC

6.6 Council Decision 82/854/EEC was published in the Official Journal on 18th December 1982 and came into force on 1 January 1983.

6.7 Council Decision 82/854/EEC sets out rules for the provision of officially supported export credits in relation to sub-contracts with parties inside or outside the EU and provides for the exchange of related information between Member States.

6.8 This instrument will revoke Council Decision 82/854/EEC as soon as it forms part of domestic law pursuant to section 3(1) of the EUWA when the United Kingdom leaves the EU because, when the United Kingdom leaves the EU, it will no longer be appropriate for the United Kingdom to continue to be bound by the rules in Council Decision 82/854/EEC and to be obliged to exchange information with Member States in accordance with that Council Decision.

Council Decision 2006/789/EC

6.9 Council Decision 2006/789/EC was published in the Official Journal on 18 November 2006.

6.10 Council Decision 2006/789/EC sets out the procedures in accordance with which Member States shall notify and consult with each other, and with the Commission, regarding credit insurance, credit guarantees and financial credits. It codified and replaced Council Decision 73/391/EEC and the several amendments to it.

6.11 This instrument will revoke Council Decision 2006/789/EC as soon as it forms part of domestic law pursuant to section 3(1) of the EUWA when the United Kingdom leaves the EU because, when the United Kingdom leaves the EU, it will no longer be appropriate for the United Kingdom to be legally obliged to consult with the Commission and Member States concerning the provision of officially supported export credits in accordance with that Council Decision.

7. Policy background

What is being done and why?

7.1 This instrument revokes certain EU legislation as soon as it forms part of domestic law pursuant to section 3(1) of the EUWA because, at that time (i) that legislation will have no practical application in relation to the United Kingdom or any part of it or be redundant or substantially redundant and/or (ii) the arrangements contained in that legislation will no longer be appropriate.

7.2 When the United Kingdom leaves the EU:

a. there will be no need for the OECD Arrangement to be made applicable to the United Kingdom by EU legislation as the United Kingdom will apply to participate in the OECD Arrangement in its own right and, in the interim, will follow the OECD Arrangement as a matter of policy;

b. it will no longer be appropriate for the United Kingdom to be bound by EU rules relating to export credit guarantees, insurance and loans which go beyond the requirements of the OECD Arrangement as they are additional requirements in order to harmonise medium and long-term export credit insurance amongst EU Member States; and

c. it will no longer be appropriate for the United Kingdom to be compelled by EU law to consult, or share information with, the European Commission or Member States regarding the United Kingdom's provision of export credit guarantees, insurance and loans.

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 revoke the direct EU legislation specified in paragraphs 2.4, 2.6, and 2.7 above as soon as it forms part of domestic law on the United Kingdom's leaving the EU because, at that time (i) that legislation will have no practical application in relation to the United Kingdom or any part of it or be otherwise redundant or substantially redundant and/or (ii) the arrangements contained in that legislation will no longer be appropriate. 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 None.

10. Consultation outcome

10.1 There is no requirement for a formal consultation. This instrument does not alter the law as it applies in the United Kingdom.

10.2 The Export Credits Guarantee Department has explained the purpose of the statutory instrument to the Devolved Administrations.

11. Guidance

11.1 The Export Credits Guarantee Department does not propose to issue any guidance in relation to this statutory instrument at this time because the instrument will not result in any material change to the Department's operations as far as exporters and banks are concerned.

11.2 However, the Department will inform stakeholders that, on the United Kingdom leaving the EU, it will no longer be bound by the rules in Council Decision 82/854/EEC and procedures in Council Decision 2006/789/EC but it will nevertheless continue to provide export credit guarantees, insurance and loans for medium and long term export credit transactions within the framework of the OECD Arrangement.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because it does not impose any new or amended measures or have any substantial effect on the provision of export credit support by the United Kingdom.

12.2 It introduces no regulatory burdens on businesses or individuals and it does not deregulate business.

12.3 There is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 This legislation does not regulate small business.

13.2 This instrument revokes certain EU legislation which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant as soon as it forms part of domestic law pursuant to section 3(1) of the EUWA. This instrument is limited to that purpose. It does not regulate business and it does not introduce any changes in policy which affect the way that small business is regulated.

14. Monitoring & review

14.1 Monitoring is not proposed because this instrument does not impose any new or amended regulatory measures.

14.2 The United Kingdom currently submits information regarding the United Kingdom's provision of export credit support to the European Commission pursuant to Council Decisions 82/854/EEC and 2006/789/EC and pursuant to the OECD for the purposes of the OECD Arrangement. Once this instrument comes into effect, the United Kingdom will cease to provide such information to the European Commission but will continue to provide it to the OECD.

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

15. Contact

15.1 David Underwood at the Export Credits Guarantee Department (Telephone: 020 7271 8105 or email: david.underwood@ukexportfinance.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Helen Meekings at the Export Credits Guarantee Department can confirm that this Explanatory Memorandum meets the required standard.

15.3 George Hollingbery MP at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

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 77	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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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, Sch 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 Minister of State for Trade Policy, George Hollingbery has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the EU Export Credits Legislation (Revocation) (EU Exit) (No.2) Regulations 2019 do no more than is appropriate". This is the case because, when the United Kingdom leaves the European Union (i) the EU legislation on the provision of export credit support which is revoked by that instrument will have no practical application in relation to the United Kingdom or any part of it or be redundant or substantially redundant and/or (ii) the arrangements contained in that legislation will no longer be appropriate.

2. Good reasons

2.1 The Minister of State for Trade Policy, George Hollingbery 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 instrument, and I have concluded they are a reasonable course of action". These are explained in paragraphs 2.8 to 2.10 of the main body of the explanatory memorandum.

3. Equalities

3.1 The Minister of State for Trade Policy, George Hollingbery has made the following statement:

3.2 "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."

3.3 The Minister of State for Trade Policy, George Hollingbery has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.4 "In relation to the instrument, I, George Hollingbery, 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.