EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DESIGNATION ORDERS) (REVOCATION) (EU EXIT) REGULATIONS 2018

2018 No. 1011

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.

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to revoke the totality of Designation Orders on exit day which will become redundant in consequence of the repeal of the European Communities Act 1972 ("ECA"). It is important these redundant Designation Orders are revoked to ensure the UK's statute book remains coherent and tidy.

Explanations

What did any relevant EU law do before exit day?

2.2 This SI does not make any changes to EU law. It solely amends domestic law connected to the UK's processes for implementing EU obligations via the ECA.

Why is it being changed?

2.3 After the repeal of the ECA the UK will no longer implement obligations under the EU Treaties via the ECA and will therefore not require the orders which designate authorities to use the power in section 2(2) of the ECA.

What will it now do?

2.4 The forthcoming Withdrawal Agreement Bill will implement the UK's withdrawal agreement with the EU. Other legislative changes will be provided for by domestic legislation in the usual fashion.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid for sifting on the 23 July 2018. The Sifting Committees considered the instrument and confirmed on the 6 September 2018 that they are content for it to remain subject to 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 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 United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The ECA is the main piece of legislation which gives effect to EU law in the UK. It is the statutory 'conduit pipe' through which the UK implements EU legislation.

6.2 On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

6.3 However, following the UK's exit from the EU, the supremacy of EU law in UK law will come to an end.

6.4 The EUWA achieves this legal severance by repealing the ECA on the day the United Kingdom leaves the European Union.

6.5 In order to ensure that the domestic legal system continues to function correctly outside the EU, the EUWA converts EU law as it stands at the moment of exit into domestic law before the UK leaves the EU and preserves laws made in the UK to implement EU obligations. Importantly, the EUWA also confers temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left or, as in the context of this SI, laws that require amending as a consequence of the EUWA. The consequential power of section 23(1), used to revoke the Designation Orders that become redundant after exit day, is an exercise of such power.

7. Policy Background

What is being done and why?

7.1 The purpose of the ECA was to create a mechanism for the UK to implement in domestic law all of its international law obligations that flow from EU membership. Section 2(2) of the ECA gives wide powers to make delegated legislation in order to implement EU law, and for related purposes. The power in section 2(2) ECA to make regulations to implement obligations derived from the EU Treaties is only available to "designated" authorities in relation to specific functions.

7.2 Authorities are "designated" with the power to make delegated legislation by Order in Council, known as 'Designation Orders', in relation to a specific matter or purpose. For ease of reference, we attach to this EM an Annex which details the content of the designation orders revoked by regulation 2(1) of the European Communities (Designation Orders) (Revocation) (EU Exit) Regulations 2018.

7.3 While the ECA will be repealed on exit day, section 2 of the EUWA preserves all domestic legislation made pursuant to the UK's EU obligations. Without any further

action, therefore, Designation Orders will continue to form part of domestic law, as with other legislation made under the ECA.

7.4 Once the ECA is repealed the Designation Orders will serve no purpose as the UK will no longer be implementing its obligations via the ECA. The purpose of the SI is therefore to revoke the totality of Designation Orders from exit day. This revocation is being done under section 23(1) of the EUWA in consequence of the repeal of the ECA.

7.5 Although this revocation will not have effect until exit day we are bringing this legislation forward to ensure that we manage parliamentary time and are clear we are preparing for all scenarios. This instrument may be delayed or revoked before the implementation period starts, if it is not required.

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 European Union (Withdrawal) Act 2018. The Minister has made any relevant statements and they are published in Part 2 of the Annex to this Memorandum.

9. Consolidation

9.1 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 This instrument was not subject to consultation.

11. Guidance

11.1 Guidance is not being provided in relation to this 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 An Impact Assessment has not been prepared for this instrument because we expect it to have no impact on businesses.

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 Andrew Quigley at the Department for Exiting the European Union email: andrew.quigley@dexeu.gov.uk can be contacted with any queries regarding the instrument.

15.2 James Gerard, Deputy Director for the Parliamentary Team, 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 for Exiting the European Union, Mr Chris Heaton-Harris MP at the Department for Exiting the European Union 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 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. Sifting statement(s)

1.1 The Parliamentary Under-secretary of State 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:

"In my view the European Communities (Designation Orders) (Revocation) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)"

1.2 This is the case because: the instrument makes minor technical revocations on exit day of legislation which will be redundant.

2. Appropriateness statement

2.1 The Parliamentary Under-secretary of State 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:

"In my view the European Communities (Designation Orders) (Revocation) (EU Exit) Regulations 2018 does no more than is appropriate".

2.2 This is the case because: the instrument makes minor technical revocations on exit day of legislation which will be redundant.

3. Good reasons

3.1 The Parliamentary Under-secretary of State 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:

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

3.2 These are: that, following the repeal of the European Communities Act, to leave these Designation Orders on the UK statute book would be confusing and redundant.

4. Equalities

4.1 The Parliamentary Under-secretary of State for Exiting the European Union, Mr Chris Heaton-Harris MP 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."

4.2 The Parliamentary Under-secretary of State 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:

"In relation to the instrument, I, the Parliamentary Under-secretary of State for Exiting the European Union, 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."

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.