EXPLANATORY MEMORANDUM TO

THE EUROPEAN INSTITUTIONS AND CONSULAR PROTECTION (AMENDMENT ETC.) (EU EXIT) (AMENDMENT) REGULATIONS 2020

2020 No. 1464

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office 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 makes minor technical amendments to the European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018 ('the 2018 Regulations') to ensure that it functions correctly when it comes into force at the end of the Withdrawal Agreement transition period and that the UK's statute book remains coherent.

2.2 Specifically, the instrument amends the 2018 Regulations to substitute non-commencement references to "exit day" with "IP completion day". It also removes redundant saving provisions which are dealt with in the Withdrawal Agreement and will be given effect in UK law after the end of the transition period by the European Union (Withdrawal Agreement) Act 2020 ('the Withdrawal Agreement Act').

Explanations

2.3 The Explanatory Memorandum to the 2018 Regulations sets out the relevant explanations for the 2018 Regulations in full. As set out in paragraphs 2.1 and 2.2, this instrument does no more than necessary to ensure that the 2018 Regulations function correctly and does not make any changes of policy.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was presented to the Sifting Committees on 26 November. Both Committees have confirmed that they are content for this instrument to remain subject to the negative procedure: the European Statutory Instruments Committees on 1 December; and the Secondary Legislation Scrutiny Committee on 3 December.

3.2 Therefore, the requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 relating to the appropriate Parliamentary procedure for these Regulations have been satisfied.

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)

3.3 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 whole UK.

4.2 The territorial application of this instrument is the whole UK.

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 This instrument makes changes to secondary legislation which was made under the European Union (Withdrawal) Act 2018 ('the Withdrawal Act') to correct deficiencies in retained EU law. Minor amendments need to be made as a result of the deferral of the commencement date for the 2018 Regulations to the end of the transition period (by the general gloss in paragraph 1 of Schedule 5 to the Withdrawal Agreement Act). Specifically, the words "exit day" contained in regulations 3 and 6 of the 2018 Regulations are to be replaced with "IP completion day" to ensure that the statute book functions correctly after the end of the transition period. Regulations 4, 5, 7 and 8 are also revoked as these saving provisions are redundant given that they are contained in Part Three of the Withdrawal Agreement (to be given effect in UK law at the end of the transition period by the Withdrawal Agreement Act).

7. Policy background

What is being done and why?

7.1 Amendments to the 2018 Regulations are required in order to ensure that the instrument operates properly when it comes into force at the end of the transition period and that the UK statute book remains coherent. The 2018 Regulations were made to address deficiencies arising from the UK's exit from the EU. When commenced, the 2018 Regulations will amend or make savings in respect of directly effective treaty rights arising from the Treaty on the Functioning of the European Union and its Protocols. These mostly pertain to rights relating to the functioning of the EU institutions as well as consular protection for EU nationals in a third country. The 2018 Regulations also make amendments or revocations in respect of retained direct EU law relating to the functioning of EU institutions and bodies, of which the UK will no longer be part, and the application of rules in EU legislation.

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. The instrument is also made under paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 (power to make incidental, supplementary or consequential provision etc.). 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 Consolidation is not considered necessary for this instrument.

10. Consultation outcome

10.1 As the instrument makes minor technical amendments only to the 2018 Regulations and there is no policy change, consultation is not considered necessary. We have nevertheless informed relevant officials from the devolved administrations. At the request of officials from the Scottish Civil Service, formal notification was also given to the Scottish Parliament who have given their consent.

11. Guidance

11.1 No public guidance is required.

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 European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Gillian Ormiston at the Foreign, Commonwealth and Development Office Telephone: 020 7008 0397 or email: gillian.ormiston@fcdo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Francesca Flessati, Deputy Director, Protocol Directorate, at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The First Secretary of State and Secretary of State for Foreign, Commonwealth and Development Affairs, Mr Dominic Raab MP at the Foreign, Commonwealth and Development Office 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 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 First Secretary of State and Secretary of State for Foreign, Commonwealth and Development Affairs, Mr Dominic Raab MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the European Institutions and Consular Protection (Amendment etc.) (EU Exit) (Amendment) Regulations 2020 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 amendments to the European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018 ('the 2018 Regulations') to ensure that it operates correctly when it comes into force at the end of the transition period. The 2018 Regulations will correct deficiencies arising as a result of the UK's withdrawal from the EU and the ending of the UK's membership of various EU institutions and bodies and do not, in general, reflect policy choices. The 2018 Regulations themselves were subject to the negative procedure. Further detail is provided in sections 2 and 7 of the Explanatory Memorandum.

2. Appropriateness statement

2.1 The First Secretary of State and Secretary of State for Foreign, Commonwealth and Development Affairs, Mr Dominic Raab MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the European Institutions and Consular Protection (Amendment etc.) (EU Exit) (Amendment) Regulations 2020 does no more than is appropriate".

2.2 This is the case because it does no more than is necessary to ensure that the UK statute book operates correctly, and is coherent and tidy, after the end of the transition period. Further explanation can be found in sections 2 and 7 of the Explanatory Memorandum.

3. Good reasons

3.1 The First Secretary of State and Secretary of State for Foreign, Commonwealth and Development Affairs, Mr Dominic Raab 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 reasons are provided in sections 2 and 7 of the Explanatory Memorandum.

4. Equalities

4.1 The First Secretary of State and Secretary of State for Foreign, Commonwealth and Development Affairs, Mr Dominic Raab MP, has made the following statement:

"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".

4.2 The First Secretary of State and Secretary of State for Foreign, Commonwealth and Development Affairs, Mr Dominic Raab MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Dominic Raab 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.