EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (WITHDRAWAL) ACT 2018 (EXIT DAY) (AMENDMENT) REGULATIONS 2019

2019 No. 718

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Exiting the European Union 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 These Regulations amend the definition of "exit day" in section 20(1) of the European Union (Withdrawal) Act 2018 (hereafter "the 2018 Act") from 29 March 2019 at 11.00 p.m. to 22 May 2019 at 11.00 p.m., if the negotiated withdrawal agreement has been approved by the House of Commons by 11.00 p.m. on 29 March 2019, or to 12 April 2019 at 11.00 p.m., if the negotiated withdrawal agreement has not been approved by the House of Commons by 11.00 p.m. on 29 March 2019 and consequently amend section 20(2) of the 2018 Act. "Exit day" is the day by reference to which provisions of the 2018 Act, including the repeal of the European Communities Act 1972, and a wide range of related primary and secondary legislation, take effect or come into force. Amending the definition of "exit day" will ensure the correct functioning of the domestic statute book and avoid a discrepancy between United Kingdom law and EU law on 29th March 2019 at 11 p.m.

2.2 On 22 March 2019, the European Council adopted decision 2019/476 (OJ No. L 80 I, 22.03.2019, p. 1) to extend the period provided for in Article 50(3) TEU. This extension will be until 22 May 2019, in the event that the withdrawal agreement is approved by the House of Commons (by 29 March 2019 at the latest), or until 12 April 2019, in the event that the withdrawal agreement is not approved by the House of Commons by 29 March 2019.

2.3 The United Kingdom agreed to this decision by a letter dated 22 March 2019 from the Permanent Representative of the United Kingdom to the EU, in accordance with Article 50(3) TEU. This European Council decision and the United Kingdom's agreement to it constitute a binding agreement to extend in EU and international law. This means the UK remains a Member State regardless of the passage of these Regulations at the domestic level. To reflect that, the Government will also now delay commencement of the repeal of the European Communities Act 1972, and other provisions of the 2018 Act which likewise require commencement. However, these Regulations are necessary to bring domestic law in line with the agreement at the international level and thus avoid serious problems and uncertainty for citizens and businesses.

2.4 A large volume of EU exit legislation preparing the UK statute book for the moment EU law ceases to apply is due to enter into force on "exit day." Without these Regulations there would be a clash in domestic law; contradictory provisions would

apply both EU rules and new UK rules simultaneously, and in some cases new UK rules would replace EU rules prematurely.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 **Lords' Standing Order 72:** Given the time critical nature of this legislation there will insufficient time for the Committee to report on this instrument in the normal manner and consequently Standing Order 72 will be disapplied.

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 includes Wales, Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the 2018 Act) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The instrument has the same extent as the provisions it amends.

4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland and, so far as concerning its application to the repeal in section 1 of the 2018 Act, also the Isle of Man, the Channel Islands and Gibraltar.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State at the Department for Exiting the European Union, Robin Walker MP has made the following statement regarding Human Rights:

"In my view the provisions of the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Article 50(3) of the Treaty of European Union ("TEU") provides that where a Member State gives notice of intention to withdraw from the European Union, the EU Treaties cease to apply to that Member State from the date of entry into force of a withdrawal agreement, or failing that, two years after the notification, unless the European Council unanimously decides to extend the two year period, in agreement with the Member State. The Prime Minister gave notice of the United Kingdom's intention to withdraw on 29 March 2017, and therefore the EU Treaties were due to cease to apply on 29 March 2019 at 11 p.m. That is reflected in the definition of "exit day" in the 2018 Act.

6.2 "Exit day" is currently defined as 29 March 2019 at 11 p.m. in the 2018 Act. However, as provided for under Article 50(3) TEU, an extension was agreed on 22 March 2019 between the United Kingdom and the European Council. The definition of "exit day" is therefore being changed in the 2018 Act to 22 May 2019 at 11.00 p.m if the negotiated withdrawal agreement has been approved by the House of Commons by 11.00 p.m. on 29 March 2019 or to 12 April 2019 at 11.00 p.m. if the negotiated

withdrawal agreement has not been approved by the House of Commons by 11.00 p.m. on 29 March 2019 to reflect that an extension has been agreed.

6.3 In light of the extension to the two year period in Article 50(3) TEU agreed between the United Kingdom and the European Council, these Regulations amend the definition of "exit day" in the 2018 Act. This reflects that the EU Treaties will cease to apply to the United Kingdom on 22 May 2019 at 11.00 p.m. if the negotiated withdrawal agreement has been approved by the House of Commons by 11.00 p.m. on 29 March 2019 or to 12 April 2019 at 11.00 p.m. if the negotiated withdrawal agreement has not been approved by the House of Commons by 11.00 p.m. on 29 March 2019. This will align exit day with the new day and time on which the EU Treaties cease to apply to the United Kingdom.

6.4 Section 20(4) of the 2018 Act provides that a Minister of the Crown may by regulations amend the definition of "exit day" to ensure the day and time specified in the definition are the day and time that the EU Treaties are to cease to apply to the United Kingdom. By virtue of section 20(3), the power only applies where the day and time when the Treaties are to cease to apply to the United Kingdom is different from that specified in the definition of "exit day". This is the first time the power has been used.

6.5 Section 1 of the 2018 Act repeals the European Communities Act 1972 on "exit day", whilst the saving and incorporation of EU law into domestic law (known as "retained EU law") by section 2 to 4 of that Act take effect on and after "exit day". The amendment to the definition of exit day will ensure that the repeal of the European Communities Act 1972 will not operate by reference to 29 March 2019 at 11 p.m., but instead by reference to 12 April 2019 at 11.00 p.m. or 22 May 2019 at 11.00 p.m. (as the case may be). These sections of the 2018 Act have yet to be commenced.

6.6 Furthermore, the 2018 Act amended the Interpretation Act 1978, providing that the term "exit day" when used in other enactments will, unless the contrary intention appears, have the same meaning as that used in the 2018 Act. Equivalent provision is made in the Legislative Reform (Scotland) Act 2010, and Interpretation Act (Northern Ireland) 1954 for Scottish and Northern Irish enactments respectively. There is a range of primary and secondary legislation that gives effect to the United Kingdom's withdrawal from the EU. This includes regulations made under section 8 of the 2018 Act that make provision to prevent, remedy or mitigate deficiencies in retained EU law. A number of these come into force or have provisions that take effect by reference to "exit day". Accordingly, this legislation would come into force and take effect by reference to the 2018 Act definition of "exit day".

7. Policy background

What is being done and why?

7.1 The objective of these Regulations is to ensure the correct functioning of the domestic statute book and to reflect in domestic law the negotiated extension of the period in Article 50(3) TEU by amending the definition of "exit day". These Regulations do not themselves extend the Article 50 process. The extension was agreed, as a matter of EU and international law, between the United Kingdom and the EU by a European Council decision and letter from the Permanent Representative of the United Kingdom to the EU, in accordance with Article 50(3) TEU, on 22 March 2019.

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 section 20(4) of the 2018 Act.

9. Consolidation

9.1 No consolidation has been undertaken.

10. Consultation outcome

10.1 No consultation has been undertaken.

11. Guidance

11.1 No guidance will be published.

12. Impact

12.1 During the agreed extension the United Kingdom will remain a member of the European Union, and therefore retain the rights and obligations of a Member State. Any contributions to the EU budget would be made on the basis of existing arrangements, and therefore there are no direct costs to businesses that arise from this legislation.

12.2 An Impact Assessment has not been prepared for this instrument because it extends the United Kingdom's existing rights and obligations as a Member State. An Impact Assessment was prepared for the 2018 Act, which contains the power under which this SI is to be made.

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 Act 2018, no review clause is required.

15. Contact

15.1 The Department for Exiting the European Union. Email: secondarylegislation@dexeu.gov.uk can be contacted with any queries regarding the instrument.

15.2 Parliamentary Under Secretary of State at the Department for Exiting the European Union, Robin Walker MP at the Department for Exiting the European Union can confirm that this Explanatory Memorandum meets the required standard.