EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNIVERSITY INSTITUTE REGULATIONS 2023

2023 No. 1118

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 ("EUI") Convention ("the EUI Convention").

2.2 This instrument restates provisions derived from the EUI Convention retained by virtue of section 4 of the European Union (Withdrawal) Act 2018. The European University Institute (EU Exit) Regulations 2022 ("the 2022 Regulations"), which came into force on 25 November 2022, revoked all the retained EU law deriving from the EUI Convention except where it was appropriate to retain the rights or where that supported a period of reasonable adjustment. Where rights etc. were retained, that instrument established the circumstances after which they would no longer apply. This instrument will ensure that those provisions which the UK has already legislated to retain in the 2022 Regulations, are not removed from UK law under section 2 of the Retained EU Law (Revocation and Reform) Act 2023 ("the REUL Act"). It restates the retained provisions in full and maintains the status quo in respect of the circumstances in which those rights will no longer apply.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The negative procedure was considered appropriate for this instrument because it simply restates in full provisions derived from the EUI Convention, retained by virtue of section 4 of the European Union (Withdrawal) Act 2018, which the UK has already legislated to retain.

3.2 This instrument was laid for sifting on 11th September 2023. At meetings on 17th October 2023, the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee agreed with the government that this instrument should follow the negative procedure. The Minister has considered the decision of the Sifting Committees and has approved and signed the instrument.

3.3 This instrument exercises powers in sections 11(1) and (6), 13(2) and (3), and 20(1) of the REUL Act.

4. Extent and Territorial Application

4.1 The 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 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 UK acceded to the EUI Convention in 1975. The European Communities (Definition of Treaties) Order 1975 (S.I. 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. were either redundant or no longer appropriate. On that basis, and in order to maintain a clear and coherent statute book, the 2022 Regulations removed 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. It also provided for the circumstances in which those rights would no longer apply.

6.3 This instrument restates those provisions in full and will ensure that those provisions which the UK has already legislated to retain are not removed from UK law under section 2 of the REUL Act. It maintains the status quo.

7. Policy background

What is being done and why?

7.1 The EUI Convention states that accession to the Convention is restricted to EU Member States. The UK's formal participation in the EUI as a contracting state (as outlined at 7.5 to 7.10) ceased as a result of exiting the European Union (EU) on 31 January 2020. The UK operated under the terms of an interim arrangement with the EUI until 31 December 2022 while discussions took place to explore the possibilities for future UK participation in the EUI.

7.2 There are currently approximately 35 members of staff employed at the EUI who are affected by the UK legal position, for example because they are UK nationals or they have substantial ties to the UK.

7.3 The 2022 Regulations (which came into force on 25 November 2022) revoked EU law deriving from the EUI Convention save for specific privileges and immunities for those employees on employment contracts existing immediately before the coming into force of those regulations (in particular the legal proceedings immunity and an income tax privilege) to provide a reasonable adjustment period and where this is considered appropriate.

7.4 The sunset of retained EU rights, powers, liabilities etc in clause 2 of the REUL Act would mean that the retained provisions will no longer be law from the end of 2023. This instrument will restate those rights which the UK has already legislated to retain.

Explanations

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

7.5 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.

7.6 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 EUI. The European Communities (Definition of Treaties) Order 1975 (S.I. 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 the Implementation Period completion day (31 December 2020), by the European Union (Definition of Treaties) (Revocation) (EU Exit) Regulations 2018 (S.I. 2018/1012).

7.7 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 on the Privileges and Immunities of the European University Institute'.

7.8 The 2022 Regulations revoked the retained EU law relating to the EUI Convention where it either no longer had any practical application following the UK leaving the EU (and was therefore redundant) or where it was no longer appropriate for it to be retained, to provide legal certainty. The 2022 Regulations saved a specific immunity and a privilege for EUI staff relying on those privileges in UK law, to provide a reasonable adjustment period and withdrawal arrangements.

7.9 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) an income tax privilege relating to salaries, wages and emoluments received from the EUI, derived from article 12(1) of the same Protocol.

7.10 For those on employment contracts existing immediately before 25 November 2022 (when the 2022 Regulations came into force), the legal proceedings immunity is saved in relation to acts done prior to the contracts coming to an end, and the income tax privilege is 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 25 November 2022 (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 on or after 25 November 2022 are to be disregarded when ascertaining the term of the contract. For previous staff, the legal proceedings immunity continues to apply for acts done in service of the Institute prior to 25 November 2022.

Why is it being changed?

7.11 The sunset of retained EU rights, powers, liabilities etc in clause 2 of the REUL Act would mean that the retained provisions would no longer be law from the end of 2023. This instrument will restate those rights which the UK has already legislated to retain.

What will it now do?

7.12 This instrument will restate in full the retained privileges relating to: (1) immunity from legal proceedings in respect of acts carried out in the course of EUI staff members' duties at the EUI; and (2) income tax privilege relating to salaries, wages and emoluments received from the EUI. It will also restate in full the circumstances under which those privileges will no longer apply.

8. European Union Withdrawal, Future Relationship, and REUL Reform

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

8.2 This instrument does however relate to the reform of retained EU law under the powers in sections 11(1) and (6), 13(2) and (3), and 20(1) of the REUL Act 2023 because it restates retained EU law (see section 7.12 for further information). The Minister made the relevant sifting statement required by the REUL Act in the Annex to this Explanatory Memorandum prior to sift.

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. Its purpose is to restate in full retained EU law that would otherwise be revoked under the REUL Act 2023.

10.2 A copy of the draft instrument has been shared with the devolved administrations.

10.3 Ahead of the 2022 Regulations, the Department engaged with staff at the EUI to listen to their concerns. They drew attention to the potential effect of the removal of directly effective rights that were retained. The 2022 Regulations were drafted to allow for a reasonable adjustment period for the application of these rights.

10.4 This instrument restates those rights in full and has also been shared in draft with the EUI. The EUI welcomes the UK's plan to restate these rights. The EUI considers that this instrument is drafted in accordance with the EUI's Protocol on Privileges and Immunities. The EUI noted the potential effect that limiting the privileges and immunities to the prevailing contract term existing before 25 November 2022, without extension or renewal, could affect a small number of EUI staff if those contracts change. The UK understands this. However, this SI restates those rights which the UK has already legislated to retain to provide a reasonable adjustment period. Without this restatement under the REUL Act the retained provisions will no longer be law and the privileges and immunities would be removed from the end of 2023.

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 SI merely restates provisions in place to ensure that staff who are currently at the EUI and UK nationals, or those who have substantial ties to the UK, experience the least disruption as is reasonable and can benefit from a period of reasonable adjustment.

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 restates previously retained EU law.

14.2 As this instrument is made under the REUL Act 2023, no review clause is required.

15. Contact

15.1 Ann Miller at the Department for Education telephone: 07469 413546 or email: Ann.Miller@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Dr Faye Taylor, Deputy Director for International Education at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Halfon, the Minister for Skills, Apprenticeships and Higher Education at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statement required under the Retained EU Law (Revocation and Reform) Act 2023

1. Sifting statement

1.1 The Minister for Skills, Apprenticeships and Higher Education, Robert Halfon, has made the following statement regarding use of legislative powers in the Retained EU Law (Revocation and Reform) Act 2023:

"In my view the European University Institute Regulations 2023 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 this instrument simply restates in full provisions derived from the EUI Convention, retained by virtue of section 4 of the European Union (Withdrawal) Act 2018, which the UK has already legislated to retain.