EXPLANATORY MEMORANDUM TO

THE FLAGS (NORTHERN IRELAND) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 455

1. Introduction

1.1 This explanatory memorandum has been prepared by the Northern Ireland 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 The purpose of these regulations is to amend the Flags Regulations (Northern Ireland) 2000 (SR 2000/347) ("the 2000 Regulations") which make provision for when flags may be flown on Government buildings in Northern Ireland. In particular those Regulations require the flying of the Union flag, and where a building has two flagpoles, the European flag, on Europe Day (May 9th). These Regulations remove those requirements and take effect on the day after the date on which they are made.

Explanations

2.2 (Please see para 2.1 above). These Regulations amend domestic legislation which relates to the EU. The 2000 Regulations deal with the flying of the Union flag and (where relevant) the Europe flag on Europe Day on Northern Ireland Government buildings. These arrangements are no longer appropriate, as a result of the United Kingdom's withdrawal from the European Union.

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 under paragraph 3 of Part 1 of Schedule 7 to the European Union (Withdrawal) Act 2018 on 25 July 2018. The House of Lords Secondary Legislation Scrutiny Committee and the European Statutory Instrument Committee recommended on 4th September and the 5th September respectively, that these regulations should be subject to the affirmative procedure rather than the negative procedure. The Regulations will therefore be laid before Parliament in accordance with the affirmative 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 extends only to Northern Ireland, and is not a financial instrument, 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 Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 As the instrument does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Flag flying from Northern Ireland Government buildings is regulated by the Flags Regulations (Northern Ireland) 2000 ('the 2000 Regulations'): these list the buildings and days on which the Union flag, and in certain circumstances, other flags, should be flown. The Flags (Northern Ireland) Order 2000 ("the 2000 Order") gives the Secretary of State for Northern Ireland the power to make and amend flag regulations in Northern Ireland. The 2000 Regulations were updated by the Flags Regulations (Northern Ireland) (Amendment) 2002 (S.R. 2003/553) and by section 67 of the Justice (Northern Ireland) Act 2002, which applied the flag flying requirements to court buildings in Northern Ireland.

6.2 Article 3(2) of the Flags (Northern Ireland) Order 2000 defines a Government building as 'a building wholly or mainly occupied by members of the Northern Ireland Civil Service'.

6.3 One of the designated days in the 2000 Regulations on which the Union flag must be flown is Europe Day (May 9th). The regulations further stipulate that if a designated building has more than one flag pole, the European flag must be flown alongside the Union flag on Europe Day.

6.4 Flag flying from Government buildings in the rest of the United Kingdom is not regulated by legislation: the Department for Digital, Culture, Media and Sport issue, on an annual basis, a list of designated flag flying days. This includes Europe Day.

6.5 An amendment to the 2000 Regulations is required in order to remove the requirement for Northern Ireland Government buildings and court buildings to fly the Union flag (and where applicable, the European flag) on Europe Day.

6.6 These Regulations are being made under section 8(1) (dealing with deficiencies arising from withdrawal) of the European Union (Withdrawal) Act 2018. In accordance with section 8(2)(e) of that Act, the Regulations make provision for arrangements which are no longer appropriate as a result of the withdrawal of the United Kingdom from the European Union.

7. Policy background

What is being done and why?

7.1 The 2000 Regulations are being amended to remove the requirement to fly the Union flag (and where applicable, the European flag) from Northern Ireland Government buildings and court buildings on Europe Day following the United Kingdom's withdrawal from the European Union.

7.2 If the 2000 Regulations are not amended, Europe Day will remain as a designated flag flying day in Northern Ireland following the United Kingdom's withdrawal from the European Union. This will mean that there will be a continuing legal obligation to fly the Union flag and where applicable (i.e. if a building has two flag poles) to fly the European flag from Northern Ireland Government buildings and court buildings on Europe Day.

7.3 This instrument is required as it would be inappropriate and unnecessary to retain the legal obligation to observe Europe Day in Northern Ireland once the United Kingdom ceases to be a member of the European Union. In addition, the instrument will also ensure Northern Ireland reflects custom and practice in the rest of the United Kingdom regarding Europe Day, which will cease to be a designated day in Great Britain following the United Kingdom's withdrawal from the European Union. The non-legislative guidance for UK Government Buildings has been updated to reflect this position[1].

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made under section 8(1) of the European Union (Withdrawal) Act 2018 to address deficiencies arising from the withdrawal of the United Kingdom from the European Union as those provisions are no longer appropriate as a result of the UK no longer being a member of the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Not relevant.

10. Consultation outcome

10.1 Consultation is not considered necessary, as the instrument is making a minor, technical change resulting from the United Kingdom's withdrawal from the European Union.

11. Guidance

11.1 The change to the 2000 Regulations brought about by this instrument can be notified in the Belfast Gazette. A notice is placed in the Belfast Gazette annually listing the dates of 'fluctuating' flag flying days (Commonwealth Day; Official Celebration of Her Majesty's Birthday; and Remembrance Day), alongside a reminder that the flag flying days to be observed annually by Northern Ireland Government buildings and court buildings are listed in the 2000 Regulations.

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 it has no impact on business or charities.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

[1] https://www.gov.uk/guidance/designated-days-for-union-flag-flying

14. Monitoring & review

14.1 Monitoring of this legislation is not considered necessary.

14.2 As this instrument is made under the European Union (Withdrawal Act) 2018, no review clause is required.

15. Contact

15.1 Andrew Scholes at the Northern Ireland Office, email: Andrew.scholes@nio.gov.uk can be contacted with any queries regarding the instrument.

15.2 Bilal Zahid, Deputy Director for Constitutional Policy and Rights Policy at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Penrose, Minister of State at the Northern Ireland 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 clauses 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 clauses 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 clauses 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 clauses 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 clauses 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 clauses 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 clauses 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. Appropriateness statement

1.1 The Minister of State at the Northern Ireland Office, John Penrose, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate". This is the case because the Regulations deal only with the issue of the flying of flags on Europe Day. They remove the requirement for the Union flag to be flown and (where there are two flagpoles available) for the European flag to be flown on Europe Day (May 9th). This is within the vires set out in section 8(1) of the European Union (Withdrawal) Act 2018 – specifically at section 8 (2) (e). The flying of these flags on Europe Day on Government buildings and court houses in Northern Ireland is no longer appropriate after the United Kingdom's withdrawal from the EU. These arrangements for not flying flags on Europe Day will be mirrored in the rest of the UK, through guidance issued by the Department for Digital, Culture, Media and Sport."

2. Good reasons

2.1 The Minister of State at the Northern Ireland Office, John Penrose 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. These are: that the Regulations focus only on the requirements for flying flags in Northern Ireland which arise as a result of the UK's decision to leave the European Union and relate only to the flying of the Union flag and the European flag on Europe Day. Without these Regulations the requirement to fly these flags on Europe Day would still be in place despite it no longer being appropriate given the United Kingdom's withdrawal from the European Union."

3. Equalities

3.1 The Minister of State at the Northern Ireland Office, John Penrose, has made the following statement(s) "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."

3.2 The Minister of State at the Northern Ireland Office, John Penrose has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2019, I, John Penrose , Minister of State at the Northern Ireland Office, 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. This Act does not

extend to Northern Ireland, and as the Flags (Northern Ireland) (Amendment) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland."

4. Explanations

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