EXPLANATORY MEMORANDUM TO

THE RIGHTS, EQUALITY AND CITIZENSHIP PROGRAMME (REVOCATION) (EU EXIT) REGULATIONS 2019

2019 No. 1339

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice 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 addresses deficiencies that arise in retained EU law and puts in place transitional arrangements that may be needed, following the UK's departure from the EU without a withdrawal agreement being in place.

2.2 This instrument revokes Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013, establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 (the Regulation), as retained in domestic law under the European Union (Withdrawal) Act 2018 ("the Act"). That Regulation establishes an EU programme on rights, equality and citizenship for 2014 to 2020, which aims to protect and promote people's specific rights and freedoms under EU law.

2.3 In line with the terms of the government guarantee in relation to EU-funded programmes (the "HMG guarantee") given in 2016 and extended in July 2018 (notified to Parliament in written statement HCWS926), the instrument contains transitional provisions which will enable the Secretary of State to provide financial assistance in relation to UK participants in the Rights, Equalities and Citizenship Programme ("the Programme"), if the European Commission ceases to provide funding to UK participants on or after exit day because of the UK's withdrawal from the EU.

Explanations

What did any relevant EU law do before exit day?

2.4 The Regulation is the funding instrument for the Programme. It sets up the framework for the operation and administration of the Programme and establishes the budget for that programme.

Why is it being changed?

2.5 The Regulation being revoked put in place internal EU conditions, methods and procedures for EU funding to be provided under the Programme. As the Regulation generally deals with internal EU mechanisms, on exit, it will become redundant and serve no purpose as "retained EU law" under section 3 of the Act. The instrument therefore revokes the Regulation.

2.6 Whilst the revocation of the Regulation does not affect the validity, for the purposes of EU law, of grants awarded under the Programme, in the event that the UK leaves the EU without a withdrawal agreement, the UK will leave the EU budget on Exit day, meaning UK organisations would no longer receive future funding for projects under EU programmes, such as the Programme, without further action.

2.7 To mitigate this, the HMG Guarantee was announced by HM Treasury. The Home Office will, however, be responsible for delivering any payments due under the Guarantee in respect of the Programme, and would need spending powers in order to make such payments.

What will it now do?

2.8 This instrument revokes the Regulation. It also makes transitional provision creating a power for the Secretary of State to make payments to enable the delivery of the HMG Guarantee.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee for Statutory Instruments

3.1 This instrument is made using the urgent procedure as provided for in paragraph 5(2) of Schedule 7 to the Act. The Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

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 Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the 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 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 The Parliamentary Under Secretary of State at the Ministry of Justice, Chris Philp MP has made the following statement regarding Human Rights:

"In my view the provisions of the Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The Regulation is the instrument establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020, as retained in domestic law under the European Union (Withdrawal) Act 2018 ("the Act"). That Regulation establishes an EU programme on rights, equality and citizenship for 2014 to 2020, which aims to protect and promote people's specific rights and freedoms under EU law.

6.2 The Regulation will constitute "retained EU law" as defined in section 6(7) of the Act (namely "direct EU legislation" under section 3 of the Act).

6.3 This instrument will be made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the Act which allow regulations to be made to prevent, remedy or mitigate deficiencies in retained EU law.

7. Policy background

What is being done and why?

7.1 The Act repeals the European Communities Act 1972 on the day the UK leaves the EU. The Act ends the supremacy of European Union (EU) law in the UK, converts EU law as it stands at the moment of exit into domestic law, and preserves laws made in the UK to implement EU obligations. It creates 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, so that the domestic legal system continues to function correctly outside the EU.

7.2 This instrument revokes the Regulation which gives effect to the Rights, Equality and Citizenship Programme.

7.3 This instrument contains transitional provisions to enable the delivery of the HMG Guarantee. In 2016 the Chancellor announced that the government would guarantee funding to organisations delivering projects awarded through EU direct bid grant funds, such as the Programme, including where such projects continue beyond the UK's departure from the EU. This was extended, as notified to Parliament by Written Ministerial Statement in July 2018, to cover the payment of awards under successful competitive bids, both while the UK remained part of the EU, and in certain circumstances after the UK's departure from the EU when the UK will become a "third county". The HMG Guarantee will only be needed if the EU and UK fail to put in place a negotiated agreement for EU exit.

7.4 The Regulation establishes the frameworks for the operation of the Programme and sets the internal EU priorities and processes for managing the funding from the EU Budget. After leaving the EU, the UK will no longer be a Member State and, subject to the terms of any withdrawal agreement that is put in place, will have no ongoing commitment to pay into, or right to receive money from, the EU Budget. As such, the Regulation should be revoked.

7.5 The purpose of the instrument is to provide a legal basis for delivery of the HMG Guarantee for the Programme, including in the following circumstances: where UK organisations successfully bid directly to the European Commission on a competitive basis while the UK remains in the EU, and in respect of successful bids where UK organisations are able to participate as a third country in competitive grant programmes from Exit day until the end of 2020.

Rights, Equality and Citizenship Programme

7.6 The Rights, Equality and Citizenship Programme is an EU competitive grant programme run directly by the European Commission. It has a budget of €439 million and runs through the 2014-2020 Multiannual Financial Framework (MFF). The Programme funds activity under the headings of its nine objectives, as set out in Article 4(1) of the Regulation, and which are split into two groups. Group 1, taking 57% of the funds, aims to promote the effective implementation of the principle of

non-discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, and to respect the principle of non-discrimination on the grounds provided for in Article 21 of the Charter of Fundamental Rights; to prevent and combat racism, xenophobia and other forms of intolerance; to promote and protect the rights of persons with disabilities; to promote equality between women and men and the advance gender mainstreaming. Group 2, taking 43% of funds, aims to prevent and combat all forms of violence against children, young people and women, as well as violence against other groups at risk, in particular groups at risk of violence in close relationships, and to protect victims of such violence; to promote and protect the rights of the child; to contribute to ensuring the highest level of protection of privacy and personal data; to promote and enhance the exercise of rights deriving from citizenship of the Union; to enable individuals in their capacity as consumers or entrepreneurs in the internal market to enforce their rights deriving from EU law, having regards to the projects funded under the Consumer Programme.

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. 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 The Ministry of Justice has no plans to consolidate the legislation covered by this instrument.

9.2 Consultation

9.3 A formal consultation on this instrument has not been carried out but the department is working with the devolved administrations to deliver the guarantee.

10. Guidance

10.1 The Ministry of Justice is not producing any specific guidance on this instrument at this stage. Further information regarding the HMG guarantee can be found in the Chief Secretary to the Treasury's Written Ministerial Statement – HCWS926 and in the "Guidance on how to prepare for Brexit if there's no deal", specifically the guidance on "The government's guarantee for EU-funded programmes if there's no Brexit deal" published December 2018[1].

11. Impact

11.1 The impact on business, charities or voluntary bodies is that the Secretary of State may provide financial assistance in relation to projects awarded through the Programme in the event that the EU ceases to provide funding as a result of exit. It does not represent a policy change.

[1] https://www.gov.uk/government/publications/the-governments-guarantee-for-eu-funded-programmes-if-theres-no-brexit-deal/the-governments-guarantee-for-eu-funded-programmes-if-theres-no-brexit-deal

11.2 The impact on the public sector is as described in 11.1, to the extent that they have been awarded funding through the Programme. It does not represent a policy change.

11.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12. Regulating small business

12.1 The legislation applies to activities that are undertaken by small businesses but does not represent a policy change and will not result in changes for small businesses, including micro-entities.

13. Monitoring & review

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

14. Contact

14.1 David Cutter at the Ministry of Justice Telephone: 07547 968726 or email: Daivd.Cutter@justice.gov.uk can be contacted with any queries regarding the instrument.

14.2 Linda Kennedy, Deputy Director for EU Exit Planning & Preparedness, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

14.3 Chris Philp MP, Parliamentary Under Secretary of State at the Ministry of Justice, 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. Appropriateness statement

1.1 Parliamentary Under Secretary of State at the Ministry of Justice, Chris Philp MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the instrument revokes certain retained EU law on the basis that it is redundant or concerns arrangements relating to the EU which are no longer appropriate after exit. The transitional provisions, which provide new spending powers for the Secretary of State, do no more than is appropriate to allow the Secretary of State to deliver the HMG Guarantee in respect of the Programmes.

2. Good reasons

2.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Chris Philp 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".

2.2 These are set out in sections 7.1 to 7.5 in the main Explanatory Memorandum.

3. Equalities

3.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Chris Philp 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."

3.2 The Parliamentary Under Secretary of State at the Ministry of Justice, Chris Philp MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Chris Philp 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.".

4. Explanations

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

5. Urgency

5.1 The Parliamentary Under Secretary of State for Justice, Chris Philp MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view. by reason of urgency, it is necessary to make the Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019 without a draft of the instrument containing the regulations being laid before, and approved by a resolution of each House of Parliament."

5.2 This is because there is a need to ensure that this instrument comes into force on exit day. The government has concluded that the urgent procedure provided for in paragraph 5(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 ensures that this instrument is in place for exit day. The government considers it important to have this instrument in place on exit day to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book on and after exit day. If this instrument is not in place by exit day, payments to programme participants will not be made in time. Failure to make payments could result in projects failing or being delayed. Using this procedure still allows for parliamentary scrutiny and approval.