

EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION (DEFINITION OF TREATIES ORDERS)
(REVOCAION) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Exiting the European Union and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Committees on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to revoke the totality of Specification Orders on exit day which will become redundant in consequence of the repeal of the European Communities Act 1972 (c. 68) ("ECA 1972"). It is important these redundant Specification Orders are revoked to ensure the UK's statute book remains coherent and tidy.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This SI does not make any changes to EU law. It solely amends domestic law connected to the UK's processes for implementing EU obligations via the ECA 1972.

Why is it being changed?

- 2.3 After the repeal of the ECA 1972 the UK will no longer implement obligations under the EU Treaties via the ECA 1972 and will therefore not require the orders which declare that a treaty, agreement or other texts specified in the order is to be regarded as one of the "EU Treaties" for the purpose of the ECA 1972.

What will it now do?

- 2.4 The forthcoming Withdrawal Agreement and Implementation Bill will implement the UK's withdrawal agreement with the EU. Other legislative changes will be provided for by domestic legislation in the usual fashion.

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union

- 3.1 This instrument is being laid for sifting under the EU (Withdrawal) Act 2018 (c. 16) ("EUWA 2018").

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 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 UK.
4.2 The territorial application of this instrument is the 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 The ECA 1972 is the main piece of legislation which gives effect to EU law in the UK. It is the statutory ‘conduit pipe’ through which the UK implements EU legislation.
6.2 On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
6.3 However, following the UK’s exit from the EU, the supremacy of EU law in UK law will come to an end.
6.4 The EUWA 2018 achieves this legal severance by repealing the ECA 1972 on the day the United Kingdom leaves the European Union.
6.5 In order to ensure that the domestic legal system continues to function correctly outside the EU, the EUWA 2018 converts EU law as it stands at the moment of exit into domestic law before the UK leaves the EU and preserves laws made in the UK to implement EU obligations. Importantly, the EUWA 2018 also confers 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 or, as in the context of this SI, laws that require amending as a consequence of the EUWA 2018. The consequential power of section 23(1), used to revoke the Specification Orders (technically termed ‘Definition of Treaties Orders’) that become redundant after exit day, is an exercise of such power.

7. Policy background

What is being done and why?

- 7.1 The purpose of the ECA 1972 was to create a mechanism for the UK to implement in domestic law all of its international law obligations that flow from EU membership. Those obligations flow from treaties to which the UK is a signatory, and so the ECA 1972 creates a mechanism for implementation of the “EU Treaties”. A core group of treaties such as the Treaty on European Union and the Treaty on the Functioning of the European Union are specifically listed and defined as EU Treaties in the Act.

However, the EU also enters into a great many other treaties in its areas of competence, sometimes alongside the Member States, and the ECA 1972 contains a delegated power (in section 1(3) ECA) to specify additional international and EU agreements as “EU Treaties” so that they can be implemented via the ECA 1972. These are known as “Specification Orders”.

- 7.2 The EUWA 2018 will preserve these Specification Orders, as with other legislation and implementation of EU treaties made under the ECA 1972. The EUWA 2018 also incorporates the definition of EU Treaties, as it stood on exit day, into the Interpretation Act 1978 (c. 30) so references across the statute book to “EU Treaties” will still include the treaties specified in these orders despite these orders being revoked.
- 7.3 Once the ECA 1972 is repealed the Specification Orders will serve no purpose as the UK will no longer be implementing its obligations via the ECA 1972. The purpose of the SI is therefore to revoke the totality of Specification Orders made under section 1(3) of the ECA 1972 from exit day. This revocation is being done under section 23(1) of EUWA 2018 in consequence of the repeal of the ECA 1972.
- 7.4 Although this revocation will not have effect until exit day we are bringing this legislation forward to ensure that we manage Parliamentary time and are clear we are preparing for all scenarios. This instrument may be delayed or revoked before the implementation period starts, if it is not required.

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 arising from withdrawal but is being made under the power to make consequential provision in section 23(1) of the European Union (Withdrawal) Act 2018. The Minister has made any relevant statements and they are published in Part 2 of the Annex to this Memorandum.

9. Consolidation

- 9.1 This instrument is not consolidating any other provisions.

10. Consultation outcome

- 10.1 This instrument was not subject to consultation.

11. Guidance

- 11.1 Guidance is not being provided in relation to this 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 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 EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Alice Cardy at the Department for Exiting the European Union, email: alice.cardy@dexeu.gov.uk can be contacted with any queries regarding the instrument.

15.2 James Gerard at the Department for Exiting the European Union can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under-secretary of State for Exiting the European Union, Mr Chris Heaton-Harris MP at the Department for Exiting the European Union 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/ESIC
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 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 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 Parliamentary Under-secretary of State for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 “In my view the European Communities (Definition of Treaties Orders) (Revocation) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”. This is the case because: the instrument makes minor technical revocations on exit day of legislation which will be redundant.

2. Appropriateness statement

2.1 The Parliamentary Under-secretary of State for Exiting the European Union, Mr Chris Heaton-Harris MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 “In my view the European Communities (Definition of Treaties Orders) (Revocation) (EU Exit) Regulations 2018 does no more than is appropriate”. This is the case because: the instrument makes minor technical revocations on exit day of legislation which will be redundant.

3. Good reasons

3.1 The Parliamentary Under-secretary of State for Exiting the European Union, Mr Chris Heaton-Harris MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.2 “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, following the repeal of the European Communities Act 1972, to leave these Specification Orders on the UK statute book would be confusing and redundant.

4. Equalities

4.1 The Parliamentary Under-secretary of State for Exiting the European Union, Mr Chris Heaton-Harris MP has made the following statements “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.”

4.2 The Parliamentary Under-secretary of State for Exiting the European Union, Mr Chris Heaton-Harris MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 “In relation to the instrument, I, the Parliamentary Under-secretary of State for Exiting the European Union, Mr Chris Heaton-Harris 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.