

**2018 No. XXXX**

**EXITING THE EUROPEAN UNION**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Employment Rights (Amendment) (EU Exit) Regulations  
2018**

<i>Sift requirements satisfied</i>	***
<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force in accordance with regulations 1(2) and 1(3)</i>	

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to employment rights and duties(b) and measures relating to working time(c).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(d); and section 2(2) of, and paragraph 1A of Schedule 2, to the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for certain references to provisions of Community instruments to be construed as references to those provisions as amended from time to time.

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Employment Rights (Amendment) (EU Exit) Regulations 2018.

(2) The following provisions of these Regulations, come into force on 1st December 2018—

- (a) in Schedule 1—
  - (i) paragraph 9,
  - (ii) paragraph 11(c), and

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(a) 1972 c. 68. Section 2(2) has been amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and by the European Union (Amendment) Act 2008 (c.7), section 3(3), Schedule, Part 1.  
(b) S.I. 2000/738.  
(c) S.I. 1997/1174.  
(d) 2018 c.16.

- (iii) paragraph 16(c);
- (b) regulation 2(1), as it relates to those provisions.
- (2) The remaining provisions come into force on exit day.
- (3) Any amendment by these Regulations of an enactment has the same extent as the enactment amended.

**Amendments to employment rights legislation**

2.—(1) Schedule 1 (which amends employment rights legislation extending to England and Wales and Scotland, and contains a saving provision) has effect.

(2) Schedule 2 (which amends the Transnational Information and Consultation of Employees Regulations 1999 which extend to the whole of the United Kingdom, and contains saving and transitional provisions) has effect.

*Name*  
Minister for Small Business, Consumers and Corporate Responsibility

Date \_\_\_\_\_  
Department for Business, Energy and Industrial Strategy

**SCHEDULE 1** Regulation 2(1)  
**AMENDMENTS TO EMPLOYMENT RIGHTS LEGISLATION**  
**EXTENDING TO ENGLAND AND WALES, AND SCOTLAND**  
  
**PART 1**  
**PRIMARY LEGISLATION**

**The Employment Rights Act 1996**

- 1. The Employment Rights Act 1996(a) is amended as follows.
- 2. In section 79(b) (entitlement to parental leave - supplemental) omit subsection (3).
- 3. In Schedule 2, in paragraph 10 (validity of provisions deriving from certain regulations) at the end insert “before the repeal of that subsection by section 1 of the European Union (Withdrawal) Act 2018”(c).

**The Employment Relations Act 1999**

- 4. In section 19 of the Employment Relations Act 1999(d) (part-time work) omit subsection (4).

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(a) 1996 c. 18.  
 (b) 1996 c. 18, section 79 was substituted by the Employment Relations Act 1999, section 7 and Schedule 4, Part 1.  
 (c) 2018 c. 16.  
 (d) 1999 c. 26.

## **The Employment Act 2002**

5. In section 45 of the Employment Act 2002(a) (fixed-term work) omit subsection (4).

## **The Employment Relations Act 2004**

6. In section 42 of the Employment Relations Act 2004(b) (information and consultation)—
- (a) omit subsection (5);
  - (b) in subsection (6) for “(2) to (5)” substitute “(2) to (4)”.

## **PART 2**

### **SECONDARY LEGISLATION**

## **The Working Time Regulations 1998**

7. The Working Time Regulations 1998(c) are amended as follows.

8. In regulation 18(d) (excluded sectors)—

- (a) in paragraph (2)—
  - (i) after sub-paragraph (a) insert—

“(aa) to workers to whom the Civil Aviation (Working Time) Regulations 2004(e) apply;”;
  - (ii) omit sub-paragraph (b);
- (b) in paragraph (4) for the words from “Directive 2002/15/EC” to the end substitute “the Road Transport (Working Time) Regulations 2005(f) apply”.

9. In regulation 28(g) (enforcement) in the definition of “relevant road transport worker” for “Council Regulation (EEC) 3820/85” substitute “Council Regulation (EC) No 561/2006(h)”.

## **The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002**

10. The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002(i) are amended as follows.

11. In regulation 3 (treatment of persons in other EEA States as employees)—

- (a) in the heading omit “other”;
- (b) in sub-paragraph (a) omit the words “other than the United Kingdom”;
- (c) in sub-paragraph (b) after “1408/71” insert “as amended from time to time or Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 as amended from time to time on the coordination of social security systems”.

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(a) 2002 c. 22.

(b) 2004 c. 24.

(c) S.I. 1998/1833.

(d) S.I. 1998/1833, Regulation 18, amended by S.I. 2007/2079; there are other amending instruments but none is relevant.

(e) S.I. 2004/756.

(f) S.I. 2005/639.

(g) S.I. 1998/1833, Regulation 28 to which there are amendments not relevant to these Regulations.

(h) Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85. OJ No L 102, 11.4.2006, p.1.

(i) S.I. 2002/2821.

**12.** In regulation 5 (entitlement to statutory paternity pay where person has worked in an EEA State)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (b) for “another” substitute “an”;
  - (ii) for “the other EEA” substitute “the EEA”;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (b) for “another” substitute “an”;
  - (ii) for “the other EEA” substitute “the EEA”.

**13.** In regulation 6 (entitlement to statutory adoption pay where person has worked in an EEA State)—

- (a) in paragraph (b) for “another” substitute “an”;
- (b) for “the other EEA” substitute “the EEA”.

### **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**

**14.** In Schedule 1 (employment tribunals rules of procedure) to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013(a)—

- (a) omit paragraph 33 (evidence from other EU Member States);
- (b) omit paragraph 100 (references to the Court of Justice of the European Union).

### **The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations 2014**

**15.** The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations 2014(b) are amended as follows.

**16.** In regulation 5 (treatment of persons in other EEA States as employees)—

- (a) in the heading omit “other”;
- (b) in sub-paragraph (a) omit “other than the United Kingdom”;
- (c) in sub-paragraph (b) after “1408/71” insert “as amended from time to time or Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 as amended from time to time on the coordination of social security systems”.

**17.** In regulation 7 (entitlement to statutory shared parental pay where person has worked in an EEA State)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (c), for “another” substitute “an”;
  - (ii) for “the other EEA” substitute “the EEA”;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (c), for “another” substitute “an”;
  - (ii) for “the other EEA” substitute “the EEA”.

**18.** In Schedule 2 (modifications for adoptions from overseas) in paragraph 6(1), in the modified version of regulation 7(1)(2)—

- (a) in sub-paragraph (c), for “another” substitute “an”;
- (b) for “the other EEA” substitute “the EEA”.

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(a) S.I. 2013/1237.

(b) S.I. 2014/3134.

## **The Posted Workers (Enforcement of Employment Rights) Regulations 2016**

**19.** The Posted Workers (Enforcement of Employment Rights) Regulations 2016(a) are amended as follows.

**20.**—(1) Regulation 4 (scope of application of Part 2) is amended as follows.

(2) In paragraph (2)—

(a) for the definition of “employer” substitute—

““employer” means a service provider established in the United Kingdom or a Member State which posts or hires out workers in a manner described by paragraph 3 of Article 1 of Directive 96/71/EC(b);”;

(b) in the definition of “posted worker in the construction sector”, in paragraph (a), omit “other than the United Kingdom”.

(3) After paragraph (2) insert—

“(3) For the purposes of the definition of “employer” in paragraph (2), paragraph 3 of Article 1 of Directive 96/71/EC is to be read as if—

(a) in point (a)—

(i) after “post workers to” there were inserted “the United Kingdom or”;

(ii) after “operating in” there were inserted “the United Kingdom or”;

(b) in point (b), after “by the group in” there were inserted “the United Kingdom or”;

(c) in point (c), after “operating in” there were inserted “the United Kingdom or”.”

**21.** In regulation 11 (cross-border enforcement of financial penalties) omit “other than the United Kingdom” in each place it occurs.

### **PART 3**

#### **SAVING PROVISION**

**22.** The amendments made by Part 1 of this Schedule do not affect the validity of any regulations that came into force before exit day and were made under any of the Acts amended by that Part.

## **SCHEDULE 2**

Regulation 2(2)

### **AMENDMENTS TO THE TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES REGULATIONS 1999**

#### **PART 1**

##### **Amendments to the Regulations**

**1.** The Transnational Information and Consultation of Employees Regulations 1999(c) are amended as follows.

**2.** Throughout the Regulations in each place they occur—

(a) for “Member State” substitute “Relevant State”;

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(a) S.I. 2016/539.

(b) OJ No L 18, 21.1.1997, p. 1.

(c) S.I. 1999/3323.

(b) for “Member States” substitute “Relevant States”.

**3. In regulation 2 (interpretation)—**

(a) In paragraph (1)—

(i) for the definition of “European Works Council” substitute—

““European Works Council” means the council, established—

(a) before exit day under and in accordance with regulation 17, or regulation 18 and the provisions of the Schedule, or

(b) where appropriate, under and in accordance with the provisions of the law or practice of a Relevant State other than the United Kingdom which are designed to give effect to Article 6 of, or Article 7 of and the Annex to, the Transnational Information and Consultation Directive,

with the purpose of informing and consulting employees;”

(ii) in the definition of “information and consultation procedure” after “regulation 17” insert “before exit day”;

(iii) omit the definition of “Member State”;

(iv) after the definition of “relevant date” insert—

““Relevant State” means—

(a) a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993; and

(b) the United Kingdom;”;

(v) in the definition of “special negotiating body” after “established” insert “before exit day”;

(vi) in the definition of “UK management” for “is, or would be,” substitute “before exit day was, or would have been,”;

(vii) omit the definition of “UK member of the special negotiating body”;

(b) in paragraph (3) for “regulations 6, 13 to 15” substitute “regulation 6”;

(c) in paragraph (4) omit “regulations 13 and 15 and”;

(d) in paragraph (4B)—

(i) omit sub-paragraph (a);

(ii) in sub-paragraphs (b) and (c) for “regulations 17(4)(c) and” substitute “regulation”;

(e) in paragraph (5) for “are designed” substitute “were designed”.

**4. In regulation 3(4) (controlled and controlling undertaking)—**

(a) for “referred to” substitute “described”;

(b) at the end insert “(whether or not the Regulation applies to that company)”.

**5. In regulation 4 (circumstances in which provisions of these Regulations apply)—**

(a) in paragraph (1) for “7 to 41” substitute “17 to 41”;

(b) in paragraph (2) omit sub-paragraphs (a) and (b).

**6. In regulation 5 (the central management)—**

(a) in paragraph (1)—

(i) for the words before sub-paragraph (a) substitute “This regulation applies where”;

(ii) omit sub-paragraph (a);

(iii) omit the words from “and the central management initiates” to the end;

(b) in paragraph (2), for “the circumstances described in paragraph (1)(b) or (1)(c) apply” substitute “this regulation applies”.

7. In the heading for Part 2, omit the words from “& Request” to the end.
8. In regulation 6(4) (calculation of employee numbers)—
- (a) omit “7 to 10, 19F”;
  - (b) for sub-paragraphs (a) and (b) substitute—
    - “(a) where a request under regulation 7 was made before exit day but no valid request under regulation 9 was made before that day, the last day of the month preceding the month in which the request under regulation 7 was made;
    - (b) where a valid request under regulation 9 was made before exit day (whether or not a request under regulation 7 was made), the last day of the month preceding the month in which the request under regulation 9 was made.”.
9. Omit regulations 7 to 10 (requests for information and to negotiate establishment of a European Works Council or information and consultation procedure).
10. Omit Part 3 (regulations 11 to 15: special negotiating body).
11. Omit regulation 16 (negotiation procedure).
12. In regulation 17 (content and scope of a European Works Council agreement and information and consultation procedure) omit paragraphs (1) to (8).
13. For regulation 18 (subsidiary requirements) substitute—
- “Subsidiary requirements**
18. The provisions of the Schedule continue to apply on and after exit day in any case where they applied before exit day.”.
14. In regulation 18A(1)(a) and (b) (information and consultation) after “established”, in each place it occurs, insert “before exit day”.
15. In regulation 19B(1) (right to training for members of a European Works Council, etc) omit sub-paragraph (a) (and the word “or” after it).
16. In regulation 19E(1)(a) (links between information and consultation of European Works Council and national employee representation bodies) for “have been made” substitute “were made before exit day”.
17. Omit regulation 19F (adaptation).
18. In regulation 20 (failure to establish European Works Council or information and consultation procedure)—
- (a) before paragraph (1) insert—
 

“(A1) In this regulation the central management and the special negotiating body are referred to as “the parties”.”;
  - (b) in paragraph (1)—
    - (i) in sub-paragraph (a) after “agreement” insert “before exit day”;
    - (ii) also in sub-paragraph (a), after “applies” insert “before exit day”;
    - (iii) in sub paragraph (b) after “agreement” insert “made before exit day”;
  - (c) in paragraph (4) after “agreement” insert “made before exit day”;
  - (d) In paragraph (5)—
    - (i) in sub-paragraph (a)—
      - (aa) after “no application” insert “before exit day”;
      - (bb) after “an application” insert “before exit day”;
      - (cc) after “(3)” insert “that applied before exit day”;

- (ii) in sub-paragraph (b) after “application” insert “before exit day”.
- 19.** In regulation 21 (disputes about operation of European Works Council or information and consultation procedure)—
- (a) in paragraphs (1)(a) and 1(b) after “established” insert “before exit day”;
  - (b) in paragraphs (1A)(a) and (4) after “agreement” insert “made before exit day”.
- 20.** In regulation 21A (disputes about failures of management)—
- (a) in paragraph (1)—
    - (i) omit sub-paragraph (a);
    - (ii) in sub-paragraph (c) omit “a member of a special negotiating body or”;
  - (b) in paragraph (3) omit “16(1A),”;
  - (c) in paragraph (10)(c)—
    - (i) omit paragraph (i);
    - (ii) in paragraph (iii) omit “a member of the special negotiating body or”.
- 21.** In regulation 25 (right to time off for members of a European Works Council, etc)—
- (a) in paragraph (1) omit sub-paragraph (a);
  - (b) in paragraph (1A) omit sub-paragraph (a).
- 22.** In regulation 34 (Appeal Tribunal: jurisdiction)—
- (a) omit paragraph (2);
  - (b) in paragraph (3) omit “regulation 13 or 15 or”.
- 23.** In regulation 36 (Industrial Court: jurisdiction)—
- (a) in paragraph (2) omit “10,”;
  - (b) omit paragraph (3);
  - (c) in paragraph (4)—
    - (i) omit “regulation 13 or 15 or”;
    - (ii) omit “those regulations or”.
- 24.** In regulation 38 (CAC: proceedings)—
- (a) omit paragraph (5);
  - (b) in paragraph (6) omit “regulation 13 or 15 or”.
- 25.** In regulation 42 (Article 6 agreements)—
- (a) in paragraph (1)(a) after “made” insert “before exit day”;
  - (b) in paragraph (3) after “made” insert “before exit day”.
- 26.** In regulation 43 (Article 7 European Works Councils)—
- (a) in paragraph (1)(a) after “made” insert “before exit day”;
  - (b) in paragraph (3) after “established” insert “before exit day”.
- 27.** In regulation 44 (Article 3 agreements)—
- (a) in paragraph (1)—
    - (i) omit “Subject to paragraphs (4) and (5),”;
    - (ii) omit “except those in regulation 19F,”;
  - (b) omit paragraphs (4) to (7).
- 28.** In regulation 45 (Article 13 agreements)—
- (a) in paragraph (1)—



- (i) omit “Subject to paragraphs (4) and (5),”;
- (ii) omit “except those in regulation 19F,”;
- (b) omit paragraphs (4) to (7).

**29.** In regulation 45A (agreements signed or revised on or after 5th June 2009 and before 5th June 2011)—

- (a) for paragraph (1) substitute—
  - “(1) Where the conditions specified in paragraph (2) are satisfied, these Regulations shall apply to a Community-scale undertaking or Community-scale group of undertakings as if the amendments listed—
    - (a) in paragraph (3) in relation to the 2010 Regulations, and
    - (b) in paragraph (3A) in relation to the 2018 Regulations, had not been made.”;
  - (b) in paragraph (2)(a) after “procedure” insert “before exit day”;
  - (c) in the introductory text to paragraph (3) for “(1)” substitute “(1)(a)”;
  - (d) after paragraph (3) insert—
    - “(3A) The amendments referred to in paragraph (1)(b) are those made by paragraphs 14, 15, 20, 21(b), 27 and 28 of Schedule 2 to the 2018 Regulations.”;
  - (e) omit paragraph (4);
  - (f) for paragraph (5) substitute—
    - “(5) In this regulation—
      - (a) “the 2010 Regulations” means the Transnational Information and Consultation of Employees (Amendment) Regulations 2010(a), and
      - (b) “the 2018 Regulations” means the Employment Rights (Amendment) (EU Exit) Regulations 2018.”.

**30.** In regulation 46(1)—

- (a) omit “of a special negotiating body or”;
- (b) omit “of the special negotiating body or”;
- (c) after “established” insert “before exit day”.

**31.** Omit regulation 47 (transitionals: special negotiating body).

**32.** In the Schedule (subsidiary requirements) omit paragraph 10.

## PART 2

### SAVING AND TRANSITIONAL PROVISIONS

#### Interpretation

**33.** In this Part—

- (a) “the 1999 Regulations” means the Transnational Information and Consultation of Employees Regulations 1999;
- (b) “the modifications” means the following modifications to the 1999 Regulations—
  - (i) any reference to a “Member State” or “Member States” is to be read as a reference to a “Relevant State” or “Relevant States” (as the case may be);

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(a) S.I. 2010/1088.

- (ii) regulation 2 is to be read as if—
  - (aa) the definition of “Member State” were omitted; and
  - (bb) the following were inserted at the appropriate place—
    - ““Relevant State” means—
    - (a) a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993; and
    - (b) the United Kingdom;”
- (iii) regulation 3(4) is to be read as if—
  - (aa) for the words “referred to” there were substituted “described”;
  - (bb) at the end there were inserted the words “(whether or not the Regulation applies to that company)”;
- (c) terms used which are defined in the 1999 Regulations have the same meanings in this Part as in those Regulations, as they had effect before exit day or as they have effect on and after exit day, as the context requires.

### **Information requests**

**34.** Despite the amendments and revocations made by Part 1 of this Schedule, the 1999 Regulations continue, on and after exit day, to have effect in relation to a request for information made under regulation 7(1) before exit day as they had effect immediately before that day, but subject to the modifications.

### **Ongoing negotiations**

**35.** Despite the amendments and revocations made by Part 1 of this Schedule, the 1999 Regulations continue, on and after exit day, to have effect in relation to ongoing negotiations as they had effect immediately before that day, but subject to the modifications.

**36.** The reference in paragraph 35 to ongoing negotiations is a reference to any case in which the negotiation process for the establishment of a European Works Council or an information and consultation procedure was commenced, but not concluded, before exit day.

**37.** For the purposes of paragraph 36—

- (a) the negotiation process for the establishment of a European Works Council or an information and consultation is commenced on the date on which either—
  - (i) a valid request is made by employees or employees’ representatives under regulation 9(1) of the 1999 Regulations; or
  - (ii) the central management initiates negotiations in accordance with regulation 9(5) of the 1999 Regulations; and
- (b) the negotiation process is concluded on the date on which either—
  - (i) the special negotiating body makes a decision under regulation 16(3) of the 1999 Regulations not to open negotiations with central management or to terminate negotiations;
  - (ii) the central management and the special negotiating body reach a written agreement on the detailed arrangements for the information and consultation of employees in accordance with regulation 17(1) of the 1999 Regulations; or
  - (iii) the provisions of the Schedule to the 1999 Regulations first apply by virtue of regulation 18(1)(b) or (c) of those Regulations.

**38.** The 1999 Regulations (as amended by Part 1 of this Schedule) apply in relation to a European Works Council or an information and consultation procedure established pursuant to this Part of this Schedule on or after exit day as if it had been established before exit day.

**39.** The 1999 Regulations (as amended by Part 1 of this Schedule) apply in relation to an agreement on the establishment of a European Works Council or an information and consultation procedure reached pursuant to this Part of this Schedule on or after exit day as if the agreement had been reached before exit day.

**40.** The 1999 Regulations (as amended by Part 1 of this Schedule) apply in relation to a case where the negotiation process is concluded as mentioned in paragraph 37(b)(iii) on or after exit day as if the case is within regulation 18 of those Regulations.

#### **Complaints and proceedings**

**41.** Despite the amendments and revocations made by Part 1 of this Schedule, the 1999 Regulations continue, on and after exit day, to have effect, in relation to any complaint or application presented under those Regulations before exit day to the Central Arbitration Committee or the Employment Appeal Tribunal, as they had effect immediately before that day but subject to the modifications.

DRAFT

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 8(1) of, and Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained European Union (EU) law to operate effectively and other deficiencies (in particular under paragraphs(a), (d), (e) and (g) of section 8(2) of that Act) arising from the withdrawal of the United Kingdom (UK) from the EU. The powers in section 2(2) of the European Communities Act 1972 are relied upon to make amendments to correct existing technical inaccuracies in the current legislation.

These Regulations make amendments to legislation in the field of employment rights.

Schedule 1 contains amendments to primary and secondary legislation extending to England and Wales, and Scotland. The amendments to primary legislation include the repeal of existing powers for the Secretary to State to make regulations to implement or deal with matters arising out of or related to the UK's obligations under certain EU Directives (which concern provision for parental leave, part time workers, fixed term work and information and consultation). Amendments are also made to secondary legislation to amend or remove references that relate to the UK's membership of the EU. The saving provision in Part 3 of Schedule 1, ensures that these amendments do not affect the validity of any regulations, that came into force before exit day and were made under those Acts amended by Part 1.

Schedule 2 contains amendments to the Transnational Information and Consultation of Employees Regulations 1999 which extend to the whole of the United Kingdom, to amend or remove references that relate to the UK's membership of the EU. Part 2 of Schedule 2 contains saving and transitional provisions.

A full impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen.