

**EXPLANATORY MEMORANDUM TO**

**THE EUROPEAN STRUCTURAL AND INVESTMENT FUNDS COMMON PROVISIONS RULES ETC (AMENDMENT ETC) (EU EXIT) REGULATIONS 2018**

**2018 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committee.

**2. Purpose of the instrument**

- 2.1 This instrument amends retained EU legislation to allow programmes currently funded by the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF) to continue to receive funding for the 2014-2020 programme after EU exit.
- 2.2 The regulations, as they apply to the European Social Fund (ESF) and the European Regional Development Fund (ERDF), will be amended by a separate instrument.

*Explanations*

What did any relevant EU law do before exit day?

- 2.3 The EU regulations that will be amended by this instrument set out additional rules applicable to the ERDF, the ESF, the Cohesion Fund, the EAFRD and the EMFF and, in particular, concern financial instruments, financing arrangements, the calculation of milestones, partnerships, publicity requirements and data handling.

Why is it being changed?

- 2.4 Amendments to the EU regulations are required to correct deficiencies found in the regulations, ensuring that programmes currently funded by the EAFRD and the EMFF remain operable post-exit and are able to continue making payments available to beneficiaries.

What will it now do?

- 2.5 The regulations will continue to set out rules in the event of a no-deal situation on EU exit applying to programmes currently funded by the EAFRD and the EMFF.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Sifting Committees*

- 3.1 This instrument is being laid for sifting by the Sifting Committees.

*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 United Kingdom.  
4.2 The territorial application of this instrument 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 This instrument is being made to amend Regulations (EU) 480/2014, 215/2014, 240/2014, 821/2014, 964/2014, 2015/1076 and 2015/1516 to make them operable in the event of a no-deal on EU exit. This instrument is also being made to revoke Regulations (EU) 184/2014 and 1011/2014 and Commission Decision (EU) 2014/660.

**7. Policy background**

*What is being done and why?*

- 7.1 This instrument does not make any significant policy changes. Its effect is limited to allowing the retained EU legislation to operate effectively in the event of a no-deal situation on exit from the EU. This is being done to enable existing programmes in the UK currently funded by the EAFRD and the EMFF to continue to receive funding for the remainder of the 2014-2020 programme. The application of the legislation to the ESF and ERDF is being dealt with in a separate instrument.
- 7.2 This instrument omits the following provisions which will be deficient following EU exit:
- The requirements for the data exchange system used to transfer information from Member States to the Commission;
  - Additional requirements for the partnership agreement, an agreement between a Member State and the Commission which encompasses all of the European Structural and Investment Funds;
  - Additional requirements for financial instruments which are implemented by the European Investment Bank; and
  - Articles establishing milestones and targets for the performance framework and determining the level of financial corrections the Commission may apply under the performance framework.
- 7.3 Other amendments transfer requirements or obligations that were previously for the Commission, or in some cases Member States, to the relevant authority. The relevant authority for the rural development programme is the Secretary of State in England, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, Scottish Ministers in Scotland and Welsh Ministers in Wales. The relevant authority

for the maritime and fisheries programme is the Managing Authority for that programme. These obligations are:

- Identifying partners and ensuring that those selected are representative of stakeholders;
- Consulting and involving partners when preparing programmes and the procedure for doing this;
- Promoting equality between men and women and non-discrimination when formulating the rules of membership for the monitoring committee; and
- Ensuring that partners are aware of their obligations relating to data protection, confidentiality and conflict of interest.

7.4 This instrument applies to rural development and marine and fisheries which are transferred matters for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

## **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 There are no plans for consolidation.

## **10. Consultation outcome**

10.1 No separate consultation exercise was conducted as this instrument makes technical amendments whose purpose is to maintain continuity of approach in the context of the UK leaving the EU; it does not change the substantive policy.

## **11. Guidance**

11.1 A technical notice titled "Guidance: Receiving rural development funding if there's no Brexit deal" was published on 23 August 2018.  
[<https://www.gov.uk/government/publications/receiving-rural-development-funding-if-theres-no-brexite-deal/receiving-rural-development-funding-if-theres-no-brexite-deal>]

- 11.2 A technical notice titled “Guidance: Commercial fishing if there’s no Brexit deal” was published on 12 October 2018.  
[<https://www.gov.uk/government/publications/commercial-fishing-if-theres-no-brexit-deal/commercial-fishing-if-theres-no-brexit-deal>]

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. Beneficiaries will continue to receive funding similarly to before EU exit. The UK’s involvement in the European Investment Bank would be inoperable as a result of EU exit however domestic finance mechanisms would still be accessible to those seeking funding.
- 12.2 There is no, or no significant, impact on the public sector. There may be a negligible increase in administration cost as notification may go to responsible bodies within the UK rather than European institutions.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is expected to be no, or no significant, impact on business. The instrument relates to the maintenance of existing funding streams.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small business is that no disproportionate impacts are expected to affect small and micro 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 Jenny Hewlett at the Department for Environment, Food and Rural Affairs Telephone: 02078 955438 or email: [jenny.hewlett@defra.gsi.gov.uk](mailto:jenny.hewlett@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Fiona James and Elen Shepard, Acting Deputy Directors for the Common Agricultural Policy EU Exit Preparedness at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice at the Department for Environment, Food and Rural Affairs 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.<br><br>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<br>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 powers in Schedule 2 to create a criminal offence   | Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.  |
| 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:<br>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,<br>b) containing information about the relevant authority’s response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>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 Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Structural and Investment Funds Common Provisions Rules etc (Amendment etc) (EU Exit) Regulations 2018 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 addresses technical deficiencies in EU-derived UK legislation that will arise from withdrawal from the EU.

#### 2. Appropriateness statement

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Structural and Investment Funds Common Provisions Rules etc (Amendment etc) (EU Exit) Regulations 2018 does no more than is appropriate.”

- 2.2 This is the case because the effects of this instrument are limited to making the retained EU legislation operable in the event of a no-deal situation on EU exit.

#### 3. Good reasons

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice 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.”

- 3.2 These are outlined in paragraph 2.3 of this explanatory memorandum.

#### 4. Equalities

- 4.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, 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.”

- 4.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, George Eustice, 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.