

EXPLANATORY MEMORANDUM TO
THE EUROPEAN INSTITUTIONS AND CONSULAR PROTECTION
(AMENDMENT ETC.) (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 Sifting Committees.

2. Purpose of the instrument

- 2.1 This statutory instrument is being made to address deficiencies in retained EU law arising from the withdrawal of the United Kingdom (UK) from the European Union (EU), ensuring the legislation continues to operate effectively at the point when the UK leaves the EU.
- 2.2 Specifically, the instrument revokes, amends or makes savings in respect of Directly Effective Treaty Rights (“DETRs”) arising from Articles of the Treaty on the Functioning of the European Union and its Protocols (“TFEU”). It also makes amendments or revocations in respect of retained direct EU law (“RDEUL”) which relates to the functioning of institutions and bodies of the European Union and the application of its rules in EU legislation.
- 2.3 This is to ensure that the UK’s statute book remains coherent and tidy to ensure the smoothest possible transition and to ensure that the UK’s legal system continues to function effectively after exit day, in a no deal scenario.

Explanations

What did any relevant EU law do before exit day?

- 2.4 The TFEU sets out the rules that govern the functioning of the institutions of the European Union. The Articles within it provide certain DETRs for EU citizens, such as the right to petition the European Parliament and the right to apply to the European Ombudsman.
- 2.5 This instrument also addresses two Articles which are not directly related to the institutions of the EU but relate to consular protection in non-EU countries. These provide that if an EU citizen is in a country outside of the EU, where their country of nationality does not have diplomatic or consular representation or the ability to provide consular services, then that EU citizen is entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State.
- 2.6 The TFEU includes Protocols which set the rules governing institutions and bodies of the EU. This instrument addresses Protocol (No 3) on the statute of the Court of Justice of the European Union (“CJEU”) and Protocol (No 7) on the privileges and immunities of the European Union. Protocol (No 3) sets out the rights of various

groups and individuals in relation to the CJEU, and also provides some privileges and immunities for persons involved with the CJEU. Protocol (No 7) sets out the privileges and immunities afforded to the EU and to a range of other EU institutions and officials. The privileges and immunities granted to the EU are uniform across Member States. This includes privileges and immunities for Members of the European Parliament (MEPs) and officials and other servants of the European Union.

- 2.7 Privileges and immunities are a standard feature of international law, and are considered necessary for the proper functioning of international organisations. The privileges and immunities that the UK grants to the EU are similar to the privileges and immunities afforded to international organisations in the UK. This is consistent with UK policy to afford such privileges and immunities as are necessary for international organisations to perform their functions.
- 2.8 This instrument also addresses RDEUL that becomes deficient upon exit from the EU, which relates to the institutions and bodies of the EU of which the UK will no longer be a part after withdrawal from the EU (or may form part of in amended form) in a no deal scenario. The RDEUL these Regulations address presently enable the various EU institutions to operate effectively.

Why is it being changed?

- 2.9 This instrument is being laid to address deficiencies arising from the UK's exit from the EU. Some DETRs arising from the TFEU are being removed from domestic law, because they will no longer be appropriate for them to continue after withdrawal from the EU and its institutions, in a no deal scenario.
- 2.10 Any DETRs conferred by the Articles relating to consular protection in a third country are being removed from domestic law. This is because it will no longer be appropriate after exit-day for the UK to be obliged to provide an equivalent level of consular protection to unrepresented EU citizens in third countries, given that the UK will no longer be a Member State.
- 2.11 Certain privileges and immunities are being removed after exit day for the class of individuals identified in section 7 of the Memorandum because it would be no longer be appropriate for those individuals to continue to be granted these privileges and immunities once the UK has left the EU.
- 2.12 For instance, this instrument extinguishes the DETRs which grant privileges and immunities to CJEU judges on exit day (with the exception of privileges and immunities related to pre-exit day acts) to reflect the fact that the UK will no longer be subject to the jurisdiction of the CJEU after exit day. In such circumstances, it would be inappropriate for these DETRs to continue in the UK for the judges in a no deal scenario after exit day. CJEU judges, like all judges of non-UK nationality, will be governed under the rules applicable to judges of third party countries.
- 2.13 Similarly, privileges and immunities are being removed for MEPs after exit day because it is not necessary for the performance of the EU's tasks in the UK that MEPs continue to be granted such rights under domestic law in a no-deal scenario. Further, after exit day the UK will no longer have any MEPs of its own.
- 2.14 Some of the privileges and immunities identified are being saved, so that they continue to apply to the time when those individuals were conducting their duties of official roles relating to the EU institutions.

- 2.15 Upon exit from the EU in a no deal scenario, the UK will cease to be a part of the various European Union institutions and bodies. As such, much of the RDEUL that relates to those institutions and bodies becomes redundant. This deficient RDEUL is being revoked or amended because it will become deficient once the UK is no longer a part of the EU institutions and bodies and in order to ensure the UK's domestic legal system continues to function effectively outside of the EU, providing clarity and certainty of the law.

What will it now do?

- 2.16 DETRs arising from selected Articles of the TFEU will be revoked or amended so that they will not be retained in domestic law after exit day by section 4 of the EUWA. Those DETRs will no longer apply in the UK after exit day in a no deal scenario.
- 2.17 The DETRs relating to consular protection in a third country will no longer be available in domestic law after exit day in a no deal scenario.
- 2.18 Some of the privileges and immunities afforded to various persons, such as Members of European Parliament (MEPs), judges and other judicial officials will no longer no longer apply in the UK after exit day in a no deal scenario. However, these Regulations will ensure that certain privileges and immunities will continue after exit day in respect of acts performed before exit day in their official roles.
- 2.19 The deficient RDEUL in the Schedule to the instrument will be revoked; to reflect the fact that the UK will no longer be a part of the EU institutions and bodies to which the RDEUL relate.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 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 whole United Kingdom.
- 4.2 The territorial application of this instrument is the whole United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement regarding Human Rights: "In my view the provisions of the The European Institutions and Consular Protection (Amendment Etc.) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

- 6.1 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. However, following the UK's exit from the EU, the supremacy of EU law in UK law will come to an end.
- 6.2 The EUWA 2018 provides the framework for the UK's exit from the EU. It repeals the European Communities Act 1972 ("ECA 1972") on the day the UK leaves the EU, and converts EU law as it stands at the moment of exit into domestic law. As part of the process of preserving EU law as it stood on exit day it takes directly applicable EU law and converts it into a new category of law, called retained direct EU legislation ("RDEUL"), in the UK's domestic legal system. Furthermore, the EUWA 2018 preserves the rights, powers, liabilities, obligations, restrictions, remedies and procedures (or DETRs) that flow through section 2(1) of the ECA to ensure that those rights are recognised and exercisable within the UK statute book after exit day.
- 6.3 Importantly, the EUWA 2018 confers temporary powers to make secondary legislation to enable corrections to be made to the retained EU law that would otherwise no longer operate appropriately once the UK has withdrawn from the EU.
- 6.4 This instrument is made in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the EUWA 2018, in order to address deficiencies in retained EU law arising from the withdrawal of the UK from the EU.
- 6.5 The SI has been drafted on the basis of a no deal scenario where we cease to remain part of any of the EU's institutions and bodies. It is important that the Government prepares for an orderly exit from the EU in the event that a withdrawal agreement is not agreed. If a withdrawal agreement is agreed whereby the UK negotiates to remain party to some of those institutions and bodies, then parts of this instrument may be delayed or revoked.

7. Policy background

What is being done and why?

- 7.1 As explained in Section 2, the purpose of this instrument is to amend or revoke some of the Articles of the TFEU that become deficient in the UK as a result of withdrawal from the EU, and to amend or revoke RDEUL which relates to the functioning of EU institution and bodies which the UK will no longer be part of after exit day. The explanations in section 2 of this memorandum explain the background of the TFEU and RDEUL, and introduce why this instrument amends or revokes certain DETRs and RDEUL.

TFEU - Miscellaneous Directly Effective Treaty Rights

- 7.2 The Articles of the TFEU being revoked pertain mostly to rights relating to the functioning of the European Union institutions. Article 15(3) provides citizens of the EU the right to access documents of the EU institutions; upon exit from the EU, these rights will no longer extend to UK citizens so the DETRs from Article 15(3) are being removed from domestic law.

- 7.3 Article 24 relates to citizens' initiatives and rights, including the right to petition the European Parliament (also provided in Article 227), the right to apply to the European Ombudsman (also in Article 228) and the right to write to EU institutions and obtain an answer. These rights will no longer apply for UK citizens after withdrawal from the EU so will cease to be available in domestic law.
- 7.4 The TFEU also sets out requirements that members of the institutions of the Union, members of committees, and the officials and other servants of the Union must not disclose certain types of information even after their roles have finished (Article 339). This provision will no longer apply in the UK after exit day. However, this instrument retains these obligations and restrictions in respect of information obtained before exit day.
- 7.5 Article 340 provides a mechanism for the recovery of damages suffered as a result of action by EU institutions or officials or by the European Central Bank. As the UK will no longer be a Member state, this mechanism will no longer apply in the UK, so these DETRs will cease to be available in domestic law .
- 7.6 This instrument also addresses Articles 20(2)(c) and 23 (paragraph 1) of the TFEU. These establish that citizens of the European Union in countries outside of the EU, where their country of nationality does not have diplomatic or consular representation and cannot provide consular services, are entitled to protection by the diplomatic or consular authorities of any Member State on the same conditions as the nationals of that State. Upon exit from the EU, the UK will no longer be a Member State which means that it will no longer be appropriate for the UK to be obliged to provide an equivalent level of consular protection to unrepresented EU citizens in third countries. Because of this, the DETRs are deficient so are being removed from UK domestic law.

Protocol (No 3) TFEU

- 7.7 Protocol (No 3) on the Statute of the Court of Justice of the European Union makes provisions for the roles of Judges and Advocates-General, the organisation of the CJEU and procedure before the CJEU. The provisions include Article 3 which grants judges immunity from legal proceedings in respect of acts performed in their official capacity and Article 19 which provides rights and immunities to agents, advisers and lawyers who appear before the Court. Because the CJEU will no longer have jurisdiction over the UK, these rights, privileges and immunities become deficient upon exit from the EU in the UK and are no longer necessary for the functions of the CJEU. They are therefore being repealed.
- 7.8 However, the instrument preserves the immunity of judges from legal proceedings in respect of acts performed in their official capacity before exit day (Article 3(1) and (3) of Protocol (No 3)). It also preserves the immunities of agents and advisers and lawyers in respect of acts performed in their official capacity before exit day.
- 7.9 Article 4 of Protocol (No 3) places restrictions on judges so that they may not hold political or administrative office, or engage in any occupation without exemption being granted by the Council.
- 7.10 Article 19 of Protocol (No 3) provides that Member States and those party to the European Economic Area ("EEA") and the European Free Trade Association ("EFTA") shall be represented before the CJEU by an agent, who may be assisted by an adviser or lawyer. It provides that other parties must be represented by a lawyer. As

discussed at paragraph 7.7, Article 19 also provides immunities for agents, advisers and lawyers.

- 7.11 Article 42 of Protocol (No 3) provides that natural or legal persons may institute third-party proceedings to contest a judgment.
- 7.12 Article 56 of Protocol (No 3) confers an individual a right of appeal against decisions of the General Court in certain circumstances and Article 57 confers a person whose application to intervene has been dismissed by the General Court the right to appeal to the Court of Justice.
- 7.13 This instrument removes the provisions detailed above in Protocol (No 3) in the UK after exit day, because they will no longer be relevant for the UK, as a result of the end of the CJEU's jurisdiction over the UK on exit day in a no deal scenario.

Protocol (No 7) TFEU

- 7.14 Protocol (No 7) sets out the privileges and immunities that are afforded to the EU and to a range of other EU institutions and officials. The EU and other institutions covered by Protocol (No 7) are granted such privileges and immunities as are necessary for the performance of their tasks. The privileges and immunities afforded include the inviolability of premises (Article 1) and exemption from taxes (Article 3).
- 7.15 Articles 7, 8 and 9 of Protocol (No 7) grant privileges and immunities to MEPs, in respect of actions taken in the performance of their duties. It would be inappropriate to allow MEPs to continue to fully benefit from retained Protocol 7 rights in a no-deal scenario. In particular, it is not necessary for the performance of the EU's tasks in the UK for such rights to continue to be available in domestic law. Further, after exit day the UK will no longer have any MEPs of its own. It would therefore be inappropriate for these rights to continue to be available after exit day in a no deal scenario. This instrument does not amend Protocol (No 7) rights relating to customs and exchange control. This is because removing these rights could have the effect of increasing or imposing fees or taxation, which is prohibited by section 8(7) of the EUWA 2018. This instrument also makes savings so that MEPs will continue to benefit from these privileges and immunities in respect of the performance of the duties prior to exit day.
- 7.16 Article 11(a) of Protocol (No 7) grants privileges and immunities to officials and other servants of the European Union, including Judges, the Advocates-General, Registrars and Assistant Rapporteurs, in respect of actions taken in their official capacity. Article 11(b) provides that the individuals named in 11(a) and their spouses and dependents are not subject to immigration restrictions. This instrument removes these provisions in the UK after exit day for Judges, Advocates-General, Registrars and Assistant Rapporteurs of the CJEU and the Members of the Court of Auditors (and for their spouses and dependents). This is because those European Courts will no longer have jurisdiction over the UK, and it would be deficient to continue the privileges and immunities. However, certain privileges and immunities are being saved in respect of actions performed by the listed individuals in their official roles or duties before exit day.
- 7.17 The UK recognises that the EU may have residual property, funds, assets and operations in the UK after exit day. Therefore, it is appropriate for the other privileges and immunities derived from Protocol (No 7) to continue to be afforded to the EU after exit day in order to permit the EU a reasonable time in which to wind up its current operations in the UK. This includes the privileges and immunities of other EU

servants and officials, as they are provided for in Article 11. This is consistent with the UK's policy in respect of other international organisations which are leaving the UK. It is envisaged that these privileges and immunities would cease after reasonable period by way of a further SI or primary legislation.

Retained direct EU law

- 7.18 Section 3 of the EUWA 2018 ensures that direct EU law continues to have effect in the UK after exit day by converting direct EU law into RDEUL at the point of exit. This instrument revokes RDEUL that becomes deficient upon exit from the EU; specifically RDEUL relating to the institutions and bodies of the EU the UK will no longer be party to after exit in a no deal scenario. It is important that deficient RDEUL is revoked in order to ensure the UK's domestic legal system continues to function effectively outside of the EU, providing clarity and certainty of the law.
- 7.19 The Schedule to the instrument details the specific Decisions and Regulations that are being revoked which would otherwise become part of the UK statute book as RDEUL on exit day. These instruments relate to the various institutions and bodies of the European Union, of which the UK will no longer be party to after exit day such as the European Atomic Energy Community ("Euratom"), the European Economic and Social Committee ("EESC"), the Translation Centre for the Bodies of the European Union, or the Court of Justice of the European Union (CJEU). The RDEUL relating to these institutions and bodies of the EU focus on their administrative and legal functioning and as such will become irrelevant after exit given that the UK will no longer be a member of them in a no deal scenario.
- 7.20 This instrument also amends EU regulations which carry general application across EU legislation and which will become RDEUL on exit day. The EEC Council Regulation No 1 determines the languages to be used by the EU. Amendments are being made to this regulation to ensure that, as a default rule, references in retained EU law to any official language of the EU are read as a reference to the English language, unless the contrary intention appears in legislation made by Departments or Devolved Administrations. A similar gloss will apply to references in RDEUL relating to the languages of the Euratom. These amendments are introduced because, after exit day, the UK will no longer be required to comply with requirements relating to production of certain documents in the (or one of the) twenty-four official languages of the EU to the extent that those requirements appear in RDEUL.
- 7.21 The EEC, Euratom Regulation 1182/71 of the Council of 3 June 1971 sets out the rules on the interpretation of time periods as they appear in EU law. It makes amendments to provisions within this instrument which will become redundant on exit day. For instance, it removes provisions within Article 2 which requires the UK to inform the European Commission of the days designated as UK public holidays and ensures that references to 'public holidays' in RDEUL are understood to refer to 'public holiday' in any part of the United Kingdom only. Amendments are being made to this Regulation to ensure those time period references continue to apply to RDEUL.
- 7.22 This instrument also revokes Regulation (EU) No 182/2011 which sets out how Member States control, through the Comitology procedures, the European Commission's implementation of EU law. These procedures will become redundant in the UK on exit day because they will only pertain to the procedures of EU law making; so the Regulation is being revoked.

- 7.23 Although the repeals, revocations and amendments detailed in this memorandum will not take effect until exit day we are bringing this legislation forward to ensure that we manage Parliamentary time and are clear that we are preparing for all scenarios. This instrument may be delayed or revoked before or during an implementation period if it is not required.

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 EUWA 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 This instrument is not consolidating any other provisions.

10. Consultation outcome

- 10.1 The Welsh Government has been consulted with regard to these Regulations as per the Intergovernmental Agreement on the EUWA¹. In line with requirements, the Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP wrote to Mr Mark Drakeford, AM, the Cabinet Secretary for Finance in the Welsh Government seeking agreement from the Welsh Government to make this instrument. Consent from the Welsh Government was given in a letter to Mr Chris Heaton-Harris from Mr Mark Drakeford dated 22 November 2018.
- 10.2 The Scottish Government has been consulted with regard to these Regulations as per the Intergovernmental Agreement on the EUWA. In line with requirements, the Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP wrote to Mr Michael Russell MSP, the Cabinet Secretary for Government Business and Constitutional Relations for the Scottish Government seeking agreement from the Scottish Government to make this instrument. The Scottish Government must consult its Parliament with regard to any EU exit Regulations; only after this, can formal Ministerial consent be given. The Scottish Government has agreed, however, for these Regulations to be laid before the committees for sifting before formal Ministerial consent is given.
- 10.3 In the absence of a Northern Irish Executive, the Northern Irish Civil Service has been consulted at an official level. Officials in the Northern Irish Civil Service have indicated that they are content for these Regulations to be laid.

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.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702623/2018-04-24_UKG-DA_IGA_and_Memorandum.pdf

- 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.
- 14.2 In the event the the Withdrawal Agreement is agreed, it may be that provision in the European Union (Withdrawal Agreement) Bill 2018 is required to defer, revoke or amend this instrument.
- 14.3 It is the Government's intention, once the EU has relocated its functions and assets (including the European Medicines Agency and European Banking Agency) outside of the UK, to revoke immunities rights allowed to continue post exit day and introduce new arrangements to reflect the EU's more limited presence in the UK. This is consistent with allowing the EU a reasonable period to wind up its operations but once it no longer requires the privileges and immunities, these can be removed at a later date.

15. Contact

- 15.1 Andrew Hodgetts at the Department for Exiting the European Union, email: andrew.hodgetts@dexeu.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 James Gerard, Deputy Director for Legislation and Constitution, 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/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. Sifting statement

- 1.1 The Parliamentary Under-Secretary of State at the Department 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: “In my view The European Institutions and Consular Protection (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 the revocations and amendments made in respect of Directly Effective Treaty Rights and of retained direct EU law within these Regulations are straightforward recognitions of the consequences of the UK’s withdrawal from the EU; they correct deficiencies that arise as a result of that withdrawal and the ending of the UK’s membership of various institutions and bodies of the EU and do not, in general, reflect policy choices.

2. Appropriateness statement

- 2.1 The Parliamentary Under-Secretary of State at the Department 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: “In my view The European Institutions and Consular Protection (Amendment Etc.) (EU Exit) Regulations 2018 does no more than is appropriate.”
- 2.2 This is the case because they correct deficiencies arising from the UK’s exit from the European Union. The Regulations are being made as part of sensible planning for exit from the EU in a no deal scenario. Further explanation of the policy purpose of this instrument can be found in section 2 of this Explanatory Memorandum.

3. Good reasons

- 3.1 The Parliamentary Under-Secretary of State at the Department 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: “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 that without this instrument, certain Directly Effective Treaty Rights conferring privileges and immunities would continue to apply to particular individuals, such as judges of the CJEU and MEPs, that would no longer be relevant or appropriate, and various pieces of retained direct EU law would continue to apply in the UK statute book in relation to EU institutions and bodies even though UK will no longer be a part of them after exit day, in a no deal scenario.

4. Equalities

- 4.1 The Parliamentary Under-Secretary of State at the Department for Exiting the European Union, Mr Chris Heaton-Harris MP, has made the following statement:
“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 Parliamentary Under-Secretary of State at the Department 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: “In relation to the instrument, I, 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.