

EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION BUDGET, AND ECONOMIC AND MONETARY POLICY
(EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to prevent EU legislation relating to the EU budget and economic policy relating to member states from becoming part of domestic law on and after exit day, and to restate in a clearer and more accessible way the obligations of the Bank of England which derive from Article 123 of the Treaty on the Functioning of the European Union and which become part of EU retained law.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EU budget legislation forms the package of rules and regulations on the EU budget, including the requirement on the UK to pay into the EU budget each month, the nature and timing of these payments and charges for late payments. It also covers rules around investigating fraud against the EU budget and investigations conducted by the European Anti-Fraud Office (OLAF).
- 2.3 The list of legislative acts relating to the budget covered by this instrument is as follows:
- Council Regulation No 1553/89 (EEC, Euratom) on the definitive uniform arrangements for the collection of own resources accruing from value added tax;
 - Council Regulation No 2988/95 (EC, Euratom) on the protection of the European Communities financial interests;
 - Council Regulation No 1287/2003 (EC, Euratom) on the harmonisation of gross national income at market prices;
 - Commission Delegated Regulation No 1268/2012 (EU) on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union;
 - Regulation No 883/2013 (EU, Euratom) of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF);
 - Council Regulation No 1311/2013 (EU, Euratom) laying down the multiannual financial framework for the years 2014-2020;

- Council Decision 2014/335 (EU, Euratom) on the system of own resources of the European Union;
 - Council Regulation No 608/2014 (EU, Euratom) laying down implementing measures for the system of own resources of the European Union;
 - Council Regulation No 609/2014 (EU, Euratom) on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements;
 - Commission Implementing Decision 2018/194 (EU, Euratom) establishing models for statements of accounts for entitlements to own resources and a form for reports on irrecoverable amounts corresponding to the entitlements to own resources pursuant to Council Regulation No 609/2014 (EU, Euratom);
 - Commission Implementing Decision 2018/195 (EU, Euratom) establishing forms for reporting on fraud and irregularities affecting entitlements to traditional own resources and on inspections relating to traditional own resources pursuant to Council Regulation No 608/2014 (EU, Euratom); and
 - Regulation 2018/1046 (EU, Euratom) of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.
- 2.4 The list of legislative acts relating to economic and monetary policy covered by this instrument is as follows:
- Council Regulation 3603/93 (EC) specifying definitions for the application of the prohibitions referred to in Article 104 and 104b of the Treaty. This specifies definitions relevant to what is now Article 123 of the Treaty on the Functioning of the European Union.
 - Council Regulation 1466/97 (EC) on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies. This requires e.g. the United Kingdom to submit its convergence programme to the European Council and to the Commission by the end of April each year.
- 2.5 The relevant Treaty provisions concerning economic and monetary policy are Articles 119, 120, 121, 123, 125 and Protocol 15 of the Treaty on the Functioning of the European Union.

Why is it being changed?

- 2.6 As the UK will not be a Member State after exit day, it will no longer be appropriate for EU law regarding the EU budget to apply to the UK. To the extent that any rules with respect to the EU budget need to apply to the UK in a deal scenario, they would apply through any Withdrawal Agreement that would be legislated for separately.
- 2.7 Furthermore, as the UK will not be a Member State after exit day, it will no longer be appropriate for most of the EU law relating to economic and monetary policy to apply to the UK. It would not be appropriate, for example, for the United Kingdom to be required to submit convergence reports each year. It is however appropriate to restate the Article 123 principles in domestic law. This is to maintain the separation of monetary and fiscal policy, which is a key part of the UK's macroeconomic framework.

What will it now do?

- 2.8 These Regulations will prevent the EU law regarding the EU budget and much of the EU law regarding economic and monetary policy from becoming part of domestic law on and after exit day, as the UK already has its own fiscal and monetary policy frameworks. The relevant EU law will therefore not impose any requirements on the UK.
- 2.9 However, these Regulations also re-state Article 123 principles so as to prevent the Bank of England providing overdraft facilities or any other type of credit facility in favour of central government, regional, local or other public authorities, other bodies governed by public law, or public undertakings of the United Kingdom, or purchasing debt instruments directly from them. This reproduces the current position under Article 123.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 This instrument is being laid for sifting to the EU (Withdrawal) Act 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 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 Under section 3 of the European Union (Withdrawal) Act 2018, direct EU legislation, so far as operative immediately before exit day, will form part of domestic law on and after exit day. Without taking any action, this would include all direct EU legislation (i) relating to the EU budget, including the requirement to make payments into the EU budget as a Member State, and (ii) relating to economic and monetary policy, including the requirement to submit convergence reports no later than the end of April each year.
- 6.2 Under section 4 of the European Union (Withdrawal) Act 2018, certain rights and obligations which, immediately before exit day, are recognised in domestic law by virtue of s. 2(1) of the European Communities Act 1972, continue in domestic law on and after exit day. Without taking any action, this would include obligations under Articles 119, 120, 121, 123, 125 and Protocol 15 of the Treaty on the Functioning of the European Union, which concern economic and monetary policy.

- 6.3 The Treasury is making these Regulations to prevent direct EU legislation regarding the EU budget and economic and monetary policy forming part of domestic law on and after exit day in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018, in particular to redress deficiencies within the meaning of section 8(2)(d).
- 6.4 The Regulations also have the effect that certain rights and obligations (etc.) concerning economic and monetary policy which become part of EU retained law by virtue of section 4 of the European Union (Withdrawal) Act 2018 cease to be part of domestic law. The Regulations also restate in a clearer and more accessible way the obligations of the Bank of England which derive from Article 123 of the Treaty on the Functioning of the European Union and which become part of EU retained law.
- 6.5 The Regulations restate in a clearer and more accessible way the obligations of the Bank of England which derive from Article 123 of the Treaty on the Functioning of the European Union and which become part of EU retained law.

7. Policy background

What is being done and why?

- 7.1 The UK will leave the EU on 29 March 2019. At that point, it will cease to be an EU Member State and should cease to accrue new obligations that would apply to Member States from this point.
- 7.2 To the extent that any payments will be made to the EU under the draft Withdrawal Agreement, these will be provided for through separate primary legislation to implement the agreement in domestic law.
- 7.3 If this legislation is not made before withdrawal, EU legislation requiring the UK to pay into the EU budget each month will become part of domestic law on exit day. This would be entirely inappropriate, as it would maintain an ongoing obligation to pay into the EU budget each month (the first payment being due in April 2019) even though the UK had left the EU.
- 7.4 It is necessary for these Regulations to be in force before exit day to prevent the UK from accruing a new obligation to pay into the EU budget from the start of April.
- 7.5 If this legislation is not made before withdrawal, EU legislation requiring the UK to submit convergence reports by the end of April each year, will also become part of domestic law on exit day. This would also be entirely inappropriate once the UK is no longer a Member of the Union.
- 7.6 Furthermore, Article 123 of the Treaty on the Functioning of the European Union prohibits the European Central Bank and the central banks of the Member States from providing credit facilities to the Governments of member states, and the purchase directly of debt instruments from them. This is commonly known as the monetary financing prohibition (MFP).
- 7.7 The Regulations retain the MFP but restated in a clearer and more accessible way the obligations of the Bank of England which derive from Article 123 of the Treaty on the Functioning of the European Union and which become part of EU retained law. Retaining the MFP maintains the separation of monetary and fiscal policy, which is a key part of the UK's macroeconomic framework.

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 Not applicable.

10. Consultation outcome

- 10.1 No consultation has been carried out with respect to this instrument.

11. Guidance

- 11.1 The Government has no plans to produce guidance to accompany 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 it prevents obligations being imposed on the UK in domestic law which would not be appropriate after exit day, and retains existing obligations upon the Bank of England. There is no direct impact on business, charities, voluntary bodies or the public sector.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that monitoring is not necessary, as there is no, or no significant, impact on business, charities or voluntary bodies.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Timothy Chorley at HM Treasury Telephone: +44 (0)20 7270 2423 or email: Timothy.Chorley@hmtreasury.gov.uk; and Swasti Gupta at HM Treasury Telephone: +44 (0)20 7270 2756 or email: Swasti.Gupta@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Claire Dartington and Marie-Anne Barnes, Deputy Directors for European Finances; and Daniel Gallagher, Deputy Director for Macroeconomic Coordination and Strategy at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Economic Secretary to the Treasury at HM Treasury 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
Appropriateness	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(s)

- 1.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019 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: it meets the requirements for a negative instrument, as it is uncontroversial that EU legislation relating to the EU budget and most legislation relating to economic and monetary policy should not become part of UK law on exit day. Nor is it controversial that the MFP should be retained but stated in a clearer and more accessible way.

2. Appropriateness statement

- 2.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019 does no more than is appropriate”.

- 2.2 This is the case because: it prevents EU legislation relating to the EU budget and much of the EU legislation relating to economic and monetary policy becoming part of UK law on exit day, and restates in a clearer and more accessible way the obligations of the Bank of England which derive from Article 123 of the Treaty on the Functioning of the European Union and which become part of EU retained law. Retaining these obligations maintains the separation of monetary and fiscal policy, which is a key part of the UK’s macroeconomic framework.

3. Good reasons

- 3.1 The Economic Secretary to the Treasury, John Glen 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: as set out in subparagraph 7.3, if this legislation is not made before withdrawal, EU legislation requiring the UK to pay into the EU budget each month will become part of domestic law on exit day. This would be entirely inappropriate, as it would maintain an ongoing obligation to pay into the EU budget each month (the first payment being due in April 2019) even though the UK had left the EU.

- 3.3 Further, as set out in subparagraph 7.5, if this legislation is not made before withdrawal, EU legislation requiring the UK to submit convergence reports by the end

of April each year will also become part of domestic law on exit day. This would also be entirely inappropriate once the UK is no longer a Member of the Union.

- 3.4 Furthermore, as set out in subparagraph 7.7 this legislation retains the obligations of the Bank of England which derive from Article 123, but restates them in a clearer and more accessible way. Retaining these obligations maintains the separation of monetary and fiscal policy, which is a key part of the UK's macroeconomic framework.

4. Equalities

- 4.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 4.2 The Economic Secretary to the Treasury, John Glen 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, John Glen MP, Economic Secretary to the Treasury, 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.