

EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNIVERSITY INSTITUTE (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education 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 instrument makes provision in connection with the UK's membership of the European University Institute Convention (EUIC) and EU Exit.

2.2 This instrument removes from domestic law any rights, powers, liabilities, obligations, restrictions remedies and procedures ("rights etc.") which might derive from the UK's membership of the EUIC and which would otherwise, despite the UK's exit from the EU and that Convention, remain on the statute book as 'retained EU law' by virtue of section 4 of the European Union (Withdrawal) Act 2018 (the "Withdrawal Act"). It is important that any rights that might be retained in this way are removed to ensure the UK's statute book remains clear and coherent.

2.3 The UK will automatically fall out of the EUIC upon exit day irrespective of this instrument. The UK will no longer be an EU member state as a result of EU Exit, which is a condition of joining the EUIC. The purpose of this instrument is simply to ensure that no remaining rights derived from the UK's participation in the Convention are retained on the statute book. This is to ensure that the statute book reflects the practical reality and any such retained rights would cease to have any practical application from exit day, given that the effect of exit is that the UK is no longer a participant.

Explanations

What did any relevant EU law do before exit day?

2.4 The Convention Setting up a European University Institute is an international agreement. Details of the activities of the European University Institute (EUI) and the UK's involvement in these are set out at section 7 to provide further background context.

Why is it being changed?

2.5 When the UK leaves the EU, the UK will cease to be a party to the EUIC as it will no longer be a member state. The Government will explore options for ongoing engagement with the EUI.

2.6 As a result of section 4 of the Withdrawal Act, any rights etc. that are derived from the EUIC will be retained in UK law as 'retained EU law' beyond exit day. As the UK will no longer be a party to the EUIC, these rights etc. – to the extent that it may be

arguable that they exist (for example, a right to admission to the EUI) - will no longer have any practical use. They will be redundant.

- 2.7 This instrument will remove any rights etc. that may be derived from the EUIC from the UK statute book using the power at section 8 of the Withdrawal Act to address deficiencies in ‘retained EU law’ arising from the withdrawal of the UK from the EU.

What will it now do?

- 2.8 From EU Exit day, the statute book will be clear that those rights etc. will cease to have effect in domestic law.

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. A statement regarding use of legislative powers in the Withdrawal Act is contained in Part 2 of the Annex to this memorandum.

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.
- 4.3 This instrument removes law derived from an international agreement, the EUIC, as it extends and applies to the whole of 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 By virtue of section 4 of the Withdrawal Act, certain rights etc. derived from the EUIC will continue to have effect in domestic law on and after exit day as ‘retained EU law’. Upon EU Exit, the UK’s membership of the EUIC will automatically cease and so these retained rights etc. will have no practical use and be redundant. On that basis, and in order to maintain a clear and coherent statute book upon and beyond EU Exit, the instrument removes those redundant rights etc. from domestic law.
- 6.2 Participation in international agreements, such as the EUIC, is a reserved matter and is determined at the UK level.

7. Policy background

What is being done and why?

- 7.1 The EUI in Florence is an international centre for postgraduate and post-doctoral studies and research with a European focus. It is not an EU institution. The six founding members of the European Communities (Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany) established the EUI in 1972 and the UK joined in 1975. Currently only EU member states may accede to the Convention.
- 7.2 The United Kingdom, as a signatory to the EUIC, participates in the governance of the Institute, contributes to the EUI's operational budget and provides grants for up to 20 students at any one time to undertake post-graduate study at the Institute. The European Communities (Definition of Treaties) Order 1975 (SI 1975/408) designates the Convention as an "EU Treaty" as defined in section 1 of the European Communities Act 1972.
- 7.3 The UK's membership of the EUIC will cease as a result of the UK exiting the European Union so the primary purpose of the instrument is to remove redundant legislation from the UK statute book and provide legal certainty. The Government will explore options for ongoing engagement with the EUI.

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 Withdrawal Act 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 No consolidation is being done.

10. Consultation outcome

- 10.1 No formal consultation has taken place
- 10.2 International agreements are a reserved matter; however the Government has held informal discussions with the Devolved Administrations and has shared a copy of the draft instrument with them.

11. Guidance

- 11.1 No guidance has yet been prepared. The Government will provide guidance to UK students at the EUI if the UK leaves the EU without a deal.

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 there will be no significant impact. The Government will work to ensure that UK students currently at the EUI, and any who are successful in their applications for places in the 2019/2020 academic year, will be able to complete their studies.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans to monitor or review the SI.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Pamela Wilkinson at the Department for Education Telephone: 44 (0) 774 7622762 or email: pamela.wilkinson@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Shahid Omer, Deputy Director for Higher Education, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Skidmore MP, Minister of State for Universities, Science, Research and Innovation at the Department for Education 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

16. Sifting statement(s)

- 16.1 The Minister of State for Universities, Science, Research and Innovation at the Department for Education, Chris Skidmore, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view The European University Institute (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 16.2 This is the case because it does not meet the criteria for the affirmative procedure to apply as set out in the Withdrawal Act. The instrument is technical in nature, removing from the UK statute book redundant legislation that does not have any practical application when the UK is no longer a party to the EUIC following the UK’s exit from the EU. Sections 2, 6 and 7 of the explanatory memorandum provide further detail on the nature of this instrument.

17. Appropriateness statement

- 17.1 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view The European University Institute (EU Exit) Regulations 2019 does no more than is appropriate”.
- 17.2 This is the case because the instrument removes from domestic law rights etc. that will not have any practical application following the UK’s exit from the EU. It will ensure that the statute book is clear and coherent upon and beyond Exit from the EU.

18. Good reasons

- 18.1 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act:
- “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 18.2 This is the case because, without this instrument, any rights etc. arising from EUIC membership would remain on the UK statute book but would not have any practical application as the UK would no longer be a member state of the EU and thus a participant in the EUIC. The instrument will ensure that the statute book is clear and coherent upon and beyond Exit from the EU.

19. Equalities

- 19.1 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statements:

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

- 19.2 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Chris Skidmore, Minister of State for Universities, Science, Research and Innovation 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”.

- 19.3 The instrument is unlikely to have any impact on equalities. The instrument is technical in nature and removes from domestic law rights etc. that will not have any practical application following the UK’s exit from the EU.

20. Explanations

- 20.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.