

**EXPLANATORY MEMORANDUM TO**  
**THE COMPETITIVENESS OF ENTERPRISES AND SMALL AND MEDIUM-SIZED**  
**ENTERPRISES (REVOCATION) (EU EXIT) REGULATIONS 2019**

**2019 No. XXXX**

**1. Introduction**

This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Act.

**2. Purpose of the instrument**

This instrument revokes Regulation (EU) No 1287/2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME), in order to address failures of retained EU law as provided for by the European Union (Withdrawal) Act 2018.

*Explanations*

What did any relevant EU law do before exit day?

- 2.1 The COSME Regulation relates to an EU Programme to support small and medium sized enterprises (SMEs). The Regulation sets out the obligations of the European Commission to Member States and vice versa, as well as actions that seek to: (i) improve access to finance; (ii) enhance access to markets; (iii) improve framework conditions for enterprises; and (iv) promote entrepreneurship and entrepreneurial culture.
- 2.2 Funding for COSME is allocated to financial intermediaries in Member States on a competitive basis to stimulate extra lending to SMEs. UK participation in COSME has been mainly focused on the access to markets component, which is delivered through the Enterprise Europe Network (EEN) by UK Research and Innovation (UKRI) in England, Wales and Northern Ireland, and by Scottish Enterprise in Scotland. The UK also participates in the smaller elements of COSME (framework conditions and promoting entrepreneurship), though the access to finance element (Loan Guarantee Facility and Equity Facility for Growth) has not been heavily used in the UK, since UK SMEs already enjoy relatively well-developed access to finance.

Why is it being changed?

- 2.3 The COSME Regulation will be retained UK law as a result of the UK's withdrawal from the EU. On exit the Regulation will be redundant, as the obligations it imposes are relevant only between Member States and the European Commission.

What will it now do?

- 2.4 This instrument will revoke the COSME Regulation in its entirety under the negative resolution procedure. This revocation will address failures of retained law and will maintain a coherent statute book to avoid any unnecessary confusion as to the application of that Regulation.

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

#### *Matters of special interest to the Joint Committee on Statutory*

3.1 None.

#### *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 all of the United Kingdom.

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

### **5. European Convention on Human Rights**

5.1 Kelly Tolhurst, Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding Human Rights:

“In my view the provisions of The Competitiveness of Enterprises and Small and Medium-sized Enterprises (Revocation) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

### **6. Legislative Context**

6.1 Section 8(1) of the European Union (Withdrawal) Act 2018 provides for the Secretary of State to deal with deficiencies arising from the withdrawal of the UK from the EU. This includes law which continues to form part of domestic law under sections 2 and 3 of that Act (namely, saving for EU-derived domestic legislation and the incorporation of direct EU legislation).

### **7. Policy background**

#### *What is being done and why?*

7.1 The EU Regulation for COSME is designed to support SMEs across the Union. The Regulation will no longer be applicable following the UK's withdrawal from the EU. The appropriate action is to revoke the Regulation under the negative resolution procedure in order to ensure a coherent statute book. This instrument does not implement new policy. Not proceeding with this instrument preserves legislation which no longer applies to the UK on exit, as the UK will no longer be a Member State. This could lead to misunderstanding over whether the COSME Regulation continues to have effect in the UK.

7.2 The subject matter of the Regulation is devolved to Scotland, Wales and Northern Ireland, hence this instrument is being made on behalf of and with the consent of the Devolved Administrations.

## **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 Consultation was not viewed as necessary because this instrument makes purely technical changes to revoke redundant retained EU law. Officials have engaged with Devolved Administrations in the preparation of this instrument.

## **11. Guidance**

11.1 Not applicable.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies from the revocation of the COSME Regulation.

12.2 There is no, or no significant, impact on the public sector from the revocation of the COSME Regulation.

12.3 There are no wider impacts or transfer across wider sectors arising from this instrument and it will not affect consumers, wider society, the environment or the rest of the economy.

12.4 A De Minimis Self Certification has been prepared for this instrument and not a full Impact Assessment because of the reasons given at 12.1, 12.2 and 12.3.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses but this instrument does not represent a change in policy.

13.2 In the event the Withdrawal Agreement is implemented, UK SMEs will continue to participate in COSME until the programme end. In August and October 2016, the Chancellor stated that, in the event of a No Deal, the Government would guarantee funding for certain EU projects that were successful in securing EU funding before exit day. Funding for such ongoing COSME projects is to be provided in accordance with those statements.

## **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 William Kerr at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 4238 or email: William.Kerr@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nick French, Deputy Director for EU Funding and SME Policy, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kelly Tolhurst, Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy 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 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: 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 statements

- 1.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Competitiveness of Enterprises and Small and Medium-sized Enterprises (Revocation) (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, in addressing deficiencies in retained EU law, the instrument makes changes of a technical nature in that it revokes redundant provisions which operate only between Members States and the European Commission.

#### 2. Appropriateness statement

- 2.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Competitiveness of Enterprises and Small and Medium-sized Enterprises (Revocation) (EU Exit) Regulations 2019 do no more than is appropriate to prevent, remedy or mitigate deficiencies in retained EU law arising from the withdrawal of the UK from the EU.”

- 2.2 This is the case because, in addressing deficiencies in retained EU law, the instrument makes changes of a technical nature in that it revokes redundant provisions which operate only between Members States and the European Commission. If the COSME Regulation were left on the statute books, this could cause confusion as to whether the COSME Regulation applies in the UK post exit.

#### 3. Good reasons

- 3.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, 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 This is the case because, in addressing deficiencies in retained EU law, the instrument makes changes of a technical nature in that it revokes redundant provisions which operate only between Members States and the European Commission. If the COSME Regulation were left on the statute books, this could cause confusion as to whether the COSME Regulation applies in the UK post exit.

#### **4. Equalities**

- 4.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statements regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“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.”

“In relation to the instrument, I, Kelly Tolhurst, 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.