

EXPLANATORY MEMORANDUM TO
THE EUROPEAN PARLIAMENTARY ELECTIONS (AMENDMENT AND
REVOCAION) (UNITED KINGDOM AND GIBRALTAR) (EU EXIT)
REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities 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 Regulations are being made under powers in the European Union (Withdrawal) Act 2018 to remove references in legislation, and to repeal retained EU legislation, related to European Parliamentary elections which are now redundant as a result of the United Kingdom's withdrawal from the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 The Regulations are laid in draft before Parliament for sifting by the Sifting Committees in accordance with paragraphs 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom and Gibraltar.
- 4.2 The territorial application of this instrument is the United Kingdom and Gibraltar.

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 As the UK is no longer an EU member State the UK no longer elects Members of the European Parliament ('MEPs'). To the extent that retained EU law includes provision relating or referring to the holding of European Parliamentary elections in the UK, any rights to vote or stand as candidates in relation to European Parliamentary elections in the UK, and European political parties and European political foundations in the UK, that retained EU law is redundant. These Regulations remedy deficiencies in retained EU law by removing such redundant provisions.

7. Policy background

What is being done and why?

- 7.1 The Regulations are being made under powers in the European Union (Withdrawal) Act 2018 in order to make provision in relation to a small number of outstanding issues in legislation concerning European Parliamentary elections as a result of the UK no longer participating in elections to the European Parliament. The Regulations make technical and consequential changes to ensure the UK's domestic law governing elections works effectively.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 Formerly, the relevant EU law required EU Member States to hold elections to return MEPs. EU law also included provisions in relation to the statute and funding of European political parties. Beneath these requirements in EU law, implementing legislation in the UK gave effect to the provisions in EU law and makes detailed provision for the holding of European Parliamentary elections in the UK. The European Union (Withdrawal) Act 2018 repeals the two main pieces of legislation governing European Parliamentary elections - the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003. The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 (S.I. 2018/1310) were made under powers in the European Union (Withdrawal) Act 2018. These Regulations make further provision as a result of the UK no longer having representation in the European Parliament or participating in European Parliamentary elections. The provisions in this instrument relate to a small number of outstanding provisions concerning the holding of European Parliamentary elections that still form part of UK law.

Why is it being changed?

- 7.3 As the UK no longer takes part in European Parliamentary elections, the provisions in UK law amended or repealed by this instrument, including retained EU law, relating to European Parliamentary elections and European political parties and European political foundations, are no longer applicable.

What will it now do?

- 7.4 These Regulations repeal, revoke or amend legislation, including retained EU law, relating to European Parliamentary elections, European political parties and European political foundations, which are no longer applicable.
- 7.5 The Regulations makes amendments to the following pieces of secondary legislation governing the conduct of elections in order to remove references relating to European Parliamentary elections that are no longer necessary:
- The Representation of the People (Scotland) Regulations 1986 (S.I. 1986/1111);
 - The Representation of the People (Combination of Polls) (England and Wales) Regulation 2004 (S.I. 2004/294);
 - The Police and Crime Commissioners Elections Order 2012 (S.I. 2012/1917);
 - The Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67).

- 7.6 The Regulations also revoke two EU instruments relating to European political parties and European political foundations (Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations and Regulation (EU, Euratom) 2018/673 that amends it). The Regulations also revoke Council Decision (EU, Euratom) 2018/994 concerning the election of the members of the European Parliament. The Regulations ensure these three EU instruments are revoked and do not remain part of the UK's domestic law.
- 7.7 The Regulations revoke the European Parliamentary Elections (Welsh Forms) Order 2014 (S.I. 2014/704) which is no longer needed. The Regulations also make a consequential amendment to the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is being made using the power in section 8 of, and paragraph 21 of Schedule 7 to, 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. The instrument is also made under section 24(3) of that Act. 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 While this instrument amends a number of enactments to remove references to European Parliamentary elections that are no longer necessary it does not in itself create a need for consolidation. Consequently, this instrument does not consolidate the legislation that it amends.

10. Consultation outcome

- 10.1 The Department for Levelling Up, Housing and Communities have shared the draft instrument with the Electoral Commission, representatives of the Association of Electoral Administrators, the Electoral Management Board for Scotland, the Society of Local Authority Chief Executives, the devolved administrations in Scotland, Wales and Northern Ireland, and the Government of Gibraltar.
- 10.2 The Electoral Commission and other bodies with whom we shared the draft instrument were content with the Government's approach in the instrument given that the UK no longer takes part in European Parliamentary elections.
- 10.3 The devolved administrations in Wales and Northern Ireland were consulted about the amendments in this instrument as the subject matter of European Parliamentary elections is no longer a reserved/excepted matter. The administrations were content with the amendments included in this instrument.

11. Guidance

- 11.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of elections. The Electoral Commission will update its guidance as necessary to reflect the changes made by these Regulations.

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 A full Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

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 no specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Peter Richardson at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 0488 or email: peter.richardson@levellingup.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Becca Crosier, Deputy Director for the Elections Division, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kemi Badenoch MP, Minister of State, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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) or	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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement

- 1.1 The Minister of State (Minister for Local Government, Faith and Communities), Kemi Badenoch MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal Act 2018:

“In my view the European Parliamentary Elections (Amendment and Revocation) (United Kingdom and Gibraltar) (EU Exit) Regulations 2022 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: These Regulations are made in exercise of the powers under sections 8 and 24(3) of the European Union (Withdrawal) Act 2018 (“the EU(W) Act”). As explained in section 6 of the main body of this explanatory memorandum, none of the repeals, revocations or amendments to retained EU law made in exercise of the powers in section 8 of the EU(W) Act are considered to fall within paragraph 1(2) of Schedule 7 to the EU(W) Act. These Regulations make technical consequential amendments which remove a number of redundant references to European Parliamentary elections and repeal redundant retained EU law that relates to such elections.

2. Appropriateness statement

- 2.1 The Minister of State (Minister for Local Government, Faith and Communities), Kemi Badenoch MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Parliamentary Elections (Amendment and Revocation) (United Kingdom and Gibraltar) (EU Exit) Regulations 2022 does no more than is appropriate”.

- 2.2 This is the case because: Following exit day the UK no longer participates in elections to the European Parliament. These Regulations do no more than is appropriate in order to provide certainty and clarity as to the effect of the UK’s exit from the EU on electoral, and other relevant, legislation. This includes removing redundant provision relating to European Parliamentary elections, members of the European Parliament, and European political parties and European political foundations, which is no longer appropriate. Further details, including examples of amendments made are set out in section 7 of the main body of this explanatory memorandum.

3. Good reasons

- 3.1 The Minister of State (Minister for Local Government, Faith and Communities), Kemi Badenoch 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: Following exit day the UK no longer participates in elections to the European Parliament. The provisions in these Regulations are a reasonable course of action in order to provide certainty and clarity as to the effect of the UK's exit from the EU on electoral, and other relevant, legislation. This includes removing redundant provision relating to European Parliamentary elections, members of the European Parliament, and European political parties and European political foundations. Further details, including examples of amendments made and the reasons for making them are set out in section 7 of the main body of this explanatory memorandum.

4. Equalities

- 4.1 The Minister of State (Minister for Local Government, Faith and Communities), Kemi Badenoch MP has made the following statement:

“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.

5. Explanations

- 5.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.