

EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION WITHDRAWAL (CONSEQUENTIAL MODIFICATIONS)
(EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to ensure that the UK statute book works coherently and effectively following the end of the transition period.
- 2.2 It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day. As part of this, the instrument clarifies how cross references to EU legislation should be read.
- 2.3 The instrument makes technical repeals to redundant provisions within primary legislation arising from the European Union (Withdrawal) Act 2018 (“EUWA”). These are primarily repeals of *amending* provisions, in particular relating to the European Communities Act 1972 (“the ECA”), where EUWA has already provided for the repeal of the *amended* provisions. The purpose of the repeals in these Regulations is to tidy up the statute book and they have no substantive effect.
- 2.4 The instrument amends the Interpretation Act 1978 (and the devolved equivalents) in relation to the interpretation of references to “*relevant separation agreement law*”. The instrument also amends EUWA to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read. It also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019¹(S.I. 2019/628) (“the 2019 Regulations”) and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013.
- 2.5 The instrument makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies, whether the retained version or the version applied by the Withdrawal Agreement. The instrument provides a general gloss to ensure that the correct interpretation of the EU instrument applies. SIs being prepared by other departments in order to implement the Withdrawal Agreement, including the Northern Ireland Protocol are relying on these glosses. These SIs are required for IP completion day.

¹ as amended by the Direct Payments to Farmers (Legislative Continuity) Act 2020 (Consequential Amendments) Regulations 2020 (S.I. 2020/463).

Explanations

What did any relevant EU law do before IP completion day?

- 2.6 This instrument does not amend retained direct EU legislation (“RDEUL”) or relevant separation agreement law, but makes general interpretative provision and makes various repeals to redundant EU-derived domestic legislation.
- 2.7 The EU-derived domestic legislation that is being repealed is domestic law rather than EU law. The provisions being repealed amended the ECA and other Acts repealed by EUWA. More detailed information on the repeals is found in section 7 of this explanatory memorandum.
- 2.8 The interpretation legislation amended by this instrument is not EU law; it is domestic legislation, which is being updated in consequence of EUWA and WAA.

Why is it being changed?

- 2.9 Certain provisions within primary legislation are being repealed because they are redundant in consequence of EUWA. These are primarily repeals of amending provisions, in particular relating to the ECA, where EUWA has already repealed the amended provisions. The repeals are being made to ensure a clean and tidy statute book after IP Completion Day and to ensure that the UK’s legal system continues to function effectively. More information on the changes is included at section 7.
- 2.10 Domestic interpretation legislation is being amended to clarify how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day. Transitional provision is also needed to clarify how ambulatory and non-ambulatory references to EU legislation in pre-exit legislation are to be read after IP completion day.

What will it now do?

- 2.11 These Regulations make a further amendment to the Interpretation Act 1978 to incorporate RDEUL and relevant separation agreement law. Equivalent amendments are being made to the Interpretation and Legislative Reform (Scotland) Act 2010, the Interpretation Act (Northern Ireland) 1954 and Amendment of Legislation (Wales) Act 2019.
- 2.12 The Regulations clarify the interpretation of certain EU-related definitions included in Scottish interpretation legislation by virtue of the 2019 Regulations.
- 2.13 Ambulatory references to direct EU legislation that forms part of relevant separation agreement law are to be read as that legislation applies under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 2.14 Non-ambulatory references to direct EU legislation which does not form part of relevant separation agreement law and which are intended to relate to a time before IP completion day will continue to do so.
- 2.15 Non-ambulatory references to direct EU legislation which forms part of relevant separation agreement law are to be read as that EU legislation applies under the terms of the Withdrawal Agreement.
- 2.16 The EU-derived domestic legislation that is redundant is being repealed and will no longer have effect. It will no longer sit on the UK statute book, reflecting the UK’s status as a non-EU member state.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments].

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 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom, subject to the paragraphs 4.2-4.5 below.

4.2 Regulations 5 and 6 amend the Interpretation and Legislative Reform (Scotland) Act 2010 and extend and apply to Scotland.

4.3 Regulation 7 amends the Interpretation Act (Northern Ireland) 1954 and extends and applies to Northern Ireland.

4.4 Regulation 8 amends the Legislation (Wales) Act 2019 and extends and applies to Wales.

4.5 Regulation 9 and the Schedule make provision to repeal primary legislation. The extent and application of these provisions is the United Kingdom (given the extent and application of all the legislation being repealed or revoked is the United Kingdom).

5. European Convention on Human Rights

5.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office, has made the following statement regarding Human Rights:

“In my view the provisions of the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 The UK left the EU on 31 January 2020 at 11pm (“exit day”), following which the supremacy of the EU law over UK law came to an end. EUWA achieved this legal severance through the repeal of the ECA on exit day.

6.2 The Withdrawal Agreement agreed between the UK and the EU came into force on exit day. The Withdrawal Agreement aims to ensure an orderly withdrawal of the UK from the EU. WAA implemented the Withdrawal Agreement and provides the vehicle for the Government to give effect to the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement.

6.3 The UK and the EU agreed in the Withdrawal Agreement that the UK’s exit from the EU would be followed by a time-limited transition period (“the Transition Period”). The Transition Period started on exit day and ends at 11pm on 31 December 2020 (“IP Completion Day”). Although the ECA was repealed on exit day, certain parts of the ECA are kept in force by EUWA and EU law continues to apply during the Transition Period under the terms set out in the Withdrawal Agreement.

- 6.4 To ensure that the domestic legal system continues to function correctly outside the EU, EUWA converts and saves particular elements of EU law as it stands at the end of the Transition Period. In doing so, EUWA creates a new body of domestic law, known as “retained EU law”. Retained EU law is made up of three categories, RDEUL, EU derived domestic legislation and other directly effective EU law rights.² Retained EU law was created before the Withdrawal Agreement was agreed and before WAA came into force. Retained EU law was originally due to apply from exit day. WAA amended EUWA to provide for the Transition Period and to provide that retained EU law comes into effect on IP Completion Day instead of exit day.
- 6.5 In addition, WAA establishes “relevant separation agreement law”. Relevant separation agreement law includes (1) provisions of domestic law that give effect to the Withdrawal Agreement or the EEA EFTA Separation Agreement and (2) provisions of the Withdrawal Agreement and the EEA EFTA Separation Agreement (and the EU law applied by them) which take effect directly in domestic law via the provisions of EUWA.
- 6.6 The provisions of EUWA and the amendments made to EUWA by WAA mean that it is possible for EU instruments to form part of retained EU law for some purposes and have effect as relevant separation agreement law for other purposes. This means that after IP Completion Day, references to EU instruments in domestic legislation can have a dual meaning. For example, referring to the original version of the EU instrument that has effect as relevant separation agreement law for some purposes and referring to the domesticated version of the EU instrument that forms part of RDEUL for other purposes.
- 6.7 EUWA and WAA provide temporary powers to make provisions that Ministers consider appropriate in consequence of those Acts. These Regulations are made in exercise of the consequential powers at section 23(1) and (2) of, and paragraphs 21(b) and 26 of Schedule 7 to EUWA and section 41(1) and (2) of WAA.
- 6.8 The 2019 Regulations amended the Interpretation Act 1978, the Interpretation and Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954, which set out general rules of interpretation for legislation. That instrument also provided for how cross-references to EU legislation post-exit and non-ambulatory cross-references to EU legislation up to the point immediately before exit should be read. It added a number of words and expressions to the Interpretation and Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954 and provided general rules of interpretation in light of the introduction of “retained EU law”. It also repealed and revoked primary and secondary legislation in consequence of the repeal of the ECA and arising from the withdrawal of the UK from the EU.
- 6.9 These Regulations make further provision relating to the interpretation of certain EU-related definitions and non-ambulatory references. In light of the introduction of “relevant separation agreement law”, these Regulations make provision for how references to EU instruments that have effect as relevant separation agreement law should be interpreted. This includes amendments to the Interpretation Act 1978 and equivalent amendments to the devolved authorities’ interpretive legislation. In addition, these Regulations make further changes to the Interpretation Act 1978 on the general rules of interpretation to ensure that the rules and definitions apply, as appropriate, to retained EU law.

² A definition of retained EU law can be found at section 6(7) of EUWA.

- 6.10 The Regulations also make consequential amendments to the 2019 Regulations and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013. They make further repeals which are necessary to remove provisions of legislation which are redundant in consequence of EUWA and revoke provisions of the 2019 Regulations which are being replaced by provisions made by these Regulations

7. Policy background

What is being done and why?

- 7.1 These Regulations make various consequential amendments and repeals in respect of retained EU law, relevant separation agreement law and other EU-derived domestic legislation. This is to ensure that the UK statute book operates effectively and coherently in relation to EU-derived domestic legislation, and removes from the statute book domestic legislation that is made redundant as a result of EUWA.

Amendment of Interpretation Act 1978

- 7.2 As discussed above at paragraph 6.4, EUWA ensures that direct EU legislation, which applies to the UK by virtue of the ECA, is converted and saved to the UK statute book as RDEUL. An example of such legislation would be EU Regulations. To ensure that RDEUL functions effectively in UK law, the Interpretation Act 1978 was amended by EUWA to clarify that the definition of “enactment” included RDEUL.
- 7.3 In addition, WAA establishes “relevant separation agreement law” which includes (1) provisions of domestic law that give effect to the Withdrawal Agreement/EEA EFTA Separation Agreement and (2) provisions of domestic law that give effect to the Withdrawal Agreement and the EEA EFTA Separation Agreement. In light of the introduction of relevant separation agreement law, regulation 2 makes amendments to the Interpretation Act 1978 to provide for how references in UK legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be interpreted as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.4 As part of this, regulation 2 amends existing interpretive provisions that have already been made for references to RDEUL. This is to provide for situations where references to EU instruments in domestic legislation have a dual meaning. For example, referring to the original version of the EU instrument that has effect as relevant separation agreement law for some purposes and referring to the domesticated version of the EU instrument that forms part of RDEUL for other purposes. Where there is a dual meaning, the interpretive provision applicable to references to EU legislation that have effect as relevant separation agreement law will apply to the extent that the EU legislation takes effect as relevant separation agreement law. The interpretive provision for references that form part of RDEUL can then apply to the extent the instrument forms part of RDEUL.
- 7.5 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without

these provisions it would be unclear what version of an EU instrument cross references to EU legislation was being referred to.

- 7.6 These Regulations make a further amendment to the Interpretation Act 1978, to make it clear that the new definition of “enactment” (including RDEUL) applies to any statutory reference to “enactment”. Without this change, there could have been questions about whether references to “enactment” found in subordinate legislation made *prior* to the Interpretation Act 1978 were covered.

Amendment of European Union (Withdrawal) Act 2018

- 7.7 Regulation 3 makes amendments to EUWA to provide how existing ambulatory references to EU instruments that will have effect as relevant separation agreement law are to be interpreted after IP Completion Day. Ambulatory references are references to EU instruments that automatically update when the EU instrument is updated.
- 7.8 EUWA already makes interpretive provision for ambulatory references to EU instruments that will form part of RDEUL and those instruments that will not form part of RDEUL. The introduction of “relevant separation agreement law” by WAA means that this additional interpretive provision is needed. Regulation 3(2)(b) inserts new paragraph 1A into Schedule 8 of EUWA which sets out that existing ambulatory references to EU instruments that will take effect as relevant separation agreement law are to be read as a reference to the instrument as it has effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.9 As part of the amendments to EUWA, regulation 3 amends existing interpretive provisions for ambulatory references. This is to provide for instances where the EU instrument referred to has a dual meaning. For example, the EU instrument forms part of RDEUL for some purposes and relevant separation agreement law for other purposes. In these instances the interpretive provision for relevant separation agreement law applies to the extent that the legislation referred to takes effect as relevant separation agreement law; the interpretive provision for RDEUL can then apply to the extent that the legislation referred to forms part of RDEUL. If these provisions were not made it would be unclear what version of an EU instrument ambulatory references were referring to, the original version that has effect as relevant separation agreement law or the domestic version that forms part of RDEUL.
- 7.10 The 2019 Regulations made provision for how non-ambulatory cross-references to EU legislation up to the point immediately before “exit” should be read. Non-ambulatory references are references to an EU instrument in the form it was in when the reference was made (regardless of whether the EU instrument has been subsequently amended). This is in contrast to ambulatory references, which are references to EU instruments that automatically update when the EU instrument is updated. This provision made by the 2019 Regulations needs updating as a result of the introduction of relevant separation agreement law and as a result of RDEUL applying from IP Completion Day rather than exit day. Regulation 3(2)(d) inserts new interpretive provisions into EUWA for how non-ambulatory cross-references to EU legislation up to the point of IP Completion Day should be read. This replaces the previous provisions made by the 2019 Regulations. As part of this, regulation 10 of these Regulations revokes the provisions of the 2019 Regulations that are being replaced by these provisions.
- 7.11 Regulation 3(2)(d) inserts new paragraph 2A of Schedule 8 to EUWA to set out that after IP Completion Day, existing non-ambulatory references to EU legislation should

be read in accordance with “one or more” of the three interpretive provisions set out (new paragraph 2A(1) of EUWA). The flexibility of “one or more” of the interpretive provisions applying is built in to provide for instances where references to EU instruments have more than one meaning, for example, referring to the EU instrument as it has effect as relevant separation agreement law for some purposes and referring to the EU instrument as incorporated into RDEUL for other purposes.

- 7.12 The three interpretive provisions created by new paragraph 2A(1) of EUWA set out that following IP Completion Day, non-ambulatory cross references to EU instruments that have effect as relevant separation agreement law should be read as a reference to the version of that legislation that has effect under the terms of the Withdrawal Agreement/EEA EFTA separation agreement. Up-to-date non-ambulatory cross references to EU legislation should be read as references to the retained version of that legislation (as retained under section 3 of EUWA or as the case may be retained under section 1 of the Direct Payments to Farmers Act 2020). All other non-ambulatory cross references to EU legislation should be read as a reference to the legislation in the form it was in at the time the reference was made.

Amendment of reference to “exit day” with “IP completion day”

- 7.13 The 2019 Regulations were made before the Withdrawal Agreement was made and before WAA was enacted. WAA contains a number of important provisions that affect the 2019 Regulations, including amending EUWA to provide that retained EU law comes into effect on IP Completion Day instead of exit day and delaying the commencement of EU-exit SIs until IP Completion Day.
- 7.14 Regulation 5(1) of the 2019 Regulations updated the definition of “statutory provisions” in the Interpretation Act (Northern Ireland) 1954 to include retained EU law. The 2019 Regulations made it clear that this didn’t affect any references to “statutory provisions” contained in legislation made before “exit day” unless there was a contrary intention. Regulation 5 of the 2019 Regulations was originally due to come into force on exit day, but commencement was delayed by WAA to IP Completion Day.
- 7.15 Whilst the commencement of regulation 5 of the 2019 Regulations was delayed until IP Completion Day, regulation 5 still refers to “exit day” rather than IP Completion Day. Regulation 4 of these Regulations updates the reference in regulation 5 of the 2019 Regulations so that it refers to “IP Completion Day” rather than “exit day”. This is needed to ensure that the 2019 Regulations operate effectively on IP Completion Day.

Amendment of Interpretation and Legislation Reform (Scotland) Act 2010

- 7.16 Regulation 5 of the Regulations makes amendments to the Interpretation and Legislative Reform (Scotland) Act 2010 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2.
- 7.17 The amendments made to the Interpretation and Legislative Reform (Scotland) Act 2010 provide for how references in Scottish legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those

instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.

- 7.18 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. Again, this is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning. Where there is a dual meaning, the interpretive provision applicable to references to EU legislation that have effect as relevant separation agreement law will apply to the extent that the EU legislation takes effect as relevant separation agreement law. The interpretive provision for references that form part of RDEUL can then apply to the extent the instrument referred to forms part of RDEUL.
- 7.19 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

Interpretation of “the Treaties”, “the EU Treaties” and “the Communities”

- 7.20 Regulation 6 makes transitional provision for certain definitions relating to the EU which were added to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, which sets out general rules of interpretation for Scottish legislation made before 4 June 2010.³ In essence, this regulation saves the pre-IP Completion Day meaning of terms including “Treaties”, “EU treaties” or “Communities” for a number of limited purposes, for example as such terms may apply to pre-exit matters.
- 7.21 At present, references to EU Treaties will, after IP Completion Day, become references to the EU Treaties as they stood immediately before IP completion day. However, there are certain situations where pre-IP completion day legislation refers to “the Treaties” or “the EU treaties” and on or after IP completion day the expression will need to be interpreted in relation to a time before IP completion day. This regulation retains the existing position and ensures that the interpretation of the reference to the EU Treaties on and after IP completion day is unaffected by the new definition of EU Treaties as applying as they stood immediately before IP completion day.
- 7.22 The new definition of “the Communities” includes the words “but a reference to any or all of those Communities is to be treated as being or including (as the context requires) a reference to the EU”. Those words reflect the effect of the gloss in section 3(6) of the EU (Amendment) Act 2008. But they go wider than that gloss as the section 3(6) gloss does not apply to Acts passed or instruments made before the passing of the 2008 Act (19 June 2008) in their application to a reference to any or all of the Communities in relation to a time before the passing of that Act. Provision is needed to ensure that the “but a reference...” wording in the new definition does not apply in such a pre-19 June 2008 case.

³ Regulation 1(2)(b)(3), 4(5)(a) and (b) of the 2019 Regulations added these terms to The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of Scottish Parliament) Order 1999 by amending section 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. S.I. 1999/1379 was revoked by article 8 of that Order but subject to savings specified in section 55(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Interpretation of the Interpretation Act (Northern Ireland) 1954

- 7.23 Regulation 7 of the Regulations makes amendments to the Interpretation Act (Northern Ireland) 1954 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2.
- 7.24 The amendments made to the Interpretation Act (Northern Ireland) 1954 provide for how references in Northern Ireland legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.25 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. This is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning.
- 7.26 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

Amendment of Legislation (Wales) Act 2019

- 7.27 Regulation 8 of the Regulations makes amendments to the Legislation (Wales) Act 2010 to create interpretive provision for “relevant separation agreement law” which was introduced by WAA. These provisions are equivalent to the interpretive provisions created for “relevant separation agreement law” in the Interpretation Act 1978 by regulation 2(1)-(4) of these Regulations
- 7.28 The amendments made to the Legislation (Wales) Act 2010 provide for how references in Northern Ireland legislation to EU instruments that have effect as relevant separation agreement law are to be interpreted after IP Completion Day. This makes it clear that after IP Completion Day, references to EU instruments that have effect as relevant separation agreement law are to be read as those instruments are applied and have effect under the terms of the Withdrawal Agreement/EEA EFTA Separation Agreement.
- 7.29 As part of this, these Regulations amend existing interpretive provisions that have already been made for references to RDEUL. This is to provide for circumstances where references to EU instruments in domestic legislation have a dual meaning.
- 7.30 These interpretive provisions are needed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland and Northern Ireland operates effectively. They also underpin and provide the foundation for all other SIs that are being prepared by other departments that are needed for IP completion day. Without these provisions it would be unclear what version of an EU instrument was being referred to.

Repeals

- 7.31 Regulation 9 and the Schedule repeal provisions within primary legislation that have become redundant as a result of EUWA. EUWA repealed a number of *amended* provisions of legislation, and these Regulations repeal the *amending* provisions that lay behind them. Their existence in the statute book has no practical effect in light of the repeals already provided for in EUWA. The purpose of the repeals in these Regulations is merely to tidy up the statute book to ensure that it is clear and effective on IP completion day.
- 7.32 Most of the amending enactments repealed by the Schedule to these Regulations amend the ECA. The ECA is repealed by section 1 of EUWA and the continuing effect of regulations made under section 2(2) of the ECA is provided for by section 2 of EUWA. These Regulations include a saving provision in regulation 3(2) to make clear that the repeals are not intended to interfere with the operation of any related saving or transitional provision where the amending enactment is repealed by EUWA.
- 7.33 The following paragraphs explain what is being repealed.
- 7.34 Section 32(3) of the Criminal Law Act 1977 amends paragraph 1(1)(d) of Schedule 2 to the ECA, which sets the maximum daily fine that regulations under section 2(2) of that Act can impose. Section 65(10)(e) sets out the territorial extent of that provision. As the ECA is being repealed, these provisions will be redundant and are being removed from the UK statute book.
- 7.35 Paragraph 12, in Part 1 of the Table, in Schedule 4 to the Customs and Excise Management Act 1979 amends sections 6(5) & (6) of the ECA (agricultural levies of the EU to be levied collected and paid etc as if they were EU customs duties), by updating references to legislation (including replacing a reference to the Customs and Excise Act 1952 with a reference to the Customs and Excise Management Act 1979). As the ECA is being repealed, these amending provisions are redundant and are therefore also being repealed.
- 7.36 Paragraphs 3 to 5 in Schedule 2 to the Customs and Excise Duties (General Reliefs) Act 1979 make several amendments to the ECA, including provisions on the form and procedure for orders made under section 5(1) or (2) of that Act (customs duties) 2 and related reporting requirements to Parliament. Again, the repeal of the ECA makes these sections redundant and so they are also being repealed.
- 7.37 Paragraph 4 of Schedule 1 to the Agricultural Statistics Act 1979 amends section 12 of the ECA (furnishing of information to Communities) by substituting a reference to the Agriculture Act 1947 with a reference to the Agricultural Statistics Act 1979. As the ECA is being repealed, this provision is redundant and is also being repealed.
- 7.38 Paragraph 8 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 amends section 11 of the ECA (offence of making a false statement before the European Court). This provision updates a reference in section 11 of the ECA to the “False Oaths (Scotland) Act 1933” with a reference to the “Criminal Law (Consolidation) (Scotland) Act 1995”. This amending provision is redundant on the repeal of the ECA and so is also being repealed.
- 7.39 Paragraph 1(3) in Schedule 7 to the Justice (Northern Ireland) Act 2002 amends section 12(2) of the Northern Ireland Act 1998, which relates to the procedure to be followed where the Northern Ireland Assembly wishes to reconsider a Bill referred to the ECJ. In particular, it changes references to Northern Ireland Law Officers. As

- section 12 of the Northern Ireland Act 1998 is repealed by EUWA⁴, this amending provision is redundant and is also being repealed.
- 7.40 Section 103(2), and paragraph 1(1)(b) and 10(b) of Schedule 6 to, the Railways and Transport Safety Act 2003 make references to section 2 of the ECA. These are redundant on the repeal of the ECA and are therefore also being repealed.
- 7.41 Paragraph 3 of Schedule 27 to the Criminal Justice Act 2003 amends para 1 of Schedule 2 to the ECA (maximum term of imprisonment section 2(2) regulations can impose). On the repeal of the ECA, this provision is redundant and is therefore also being repealed.
- 7.42 Paragraphs 97 and 110 of Schedule 9 to the Constitutional Reform Act 2005 amend section 34 of the Scotland Act 1998 and section 12 of the Northern Ireland Act 1998 respectively. These provisions substitute “Supreme Court” for “Judicial Committee” in relation to ECJ references. As section 34 of the Scotland Act 1998 and section 12 of the Northern Ireland Act 1998 are repealed by EUWA⁵, the amending provisions are redundant and so are also being repealed.
- 7.43 Section 20 of the Legislative and Regulatory Reform Act 2006 (“LRRRA 2006”) enables new order-making powers to be exercised together with and by the same instrument as the power to make an order under section 2(2) ECA. Section 29 provides for the procedure which applies. These sections are being repealed, as after the UK leaves the EU, powers under section 2(2) ECA will no longer apply, and the sections will therefore become redundant.
- 7.44 Section 27(1) and (2) makes consequential amendments to the ECA, changing the word “regulations” to “order, rules, regulations or scheme”. Section 28 amends the ECA by inserting a provision to allow subordinate legislation to make ambulatory references to EU legislation. As the ECA is repealed, these provisions are redundant and are also being repealed.
- 7.45 The LRRRA 2006 also amends the Interpretation Act 1978 and the Scotland Act 1998. Section 26(1) inserts definitions of the “EEA agreement” and “EEA state” into the Interpretation Act 1978. As the definitions are being repealed and replaced by EUWA⁶, this provision is redundant and is also being repealed. Section 27(4) makes a consequential amendment to paragraph 15(3) of Schedule 8 to the Scotland Act 1998, reflecting a change made to the ECA, so that the word “regulations” is changed to “order, rules, regulations or scheme”. Paragraph 15 of Schedule 8 to the Scotland Act 1998 is repealed by EUWA making the amending provision redundant too.⁷
- 7.46 Section 12(2)(b) of the Wales Act 2017 amends section 113(2)(a) of the Government of Wales Act 2006 (“GOWA 2006”), which relates to ECJ references, to replace the term “Clerk” with “Presiding Officer”. Section 20 of the Wales Act 2017 gives Welsh Ministers an automatic right to make regulations under section 2(2) of the European Communities Act 1972 implementing EU law by inserting a new section 58B into, and amending section 59 of, the GOWA 2006. Sections 113, 58B and the relevant parts of section 59 of the GOWA 2006 are repealed by Part 3 of Schedule 3 of

⁴ See paragraph 52 in Part 3 of Schedule 3 to EUWA.

⁵ See paragraphs 11 and 52 of Part 3 of Schedule 3 to EUWA.

⁶ See paragraph 22 of Schedule 8 EUWA.

⁷ Paragraph 15 of the Scotland Act 1998 is repealed by Part 3 of Schedule 3 to EUWA.

EUWA, which makes the amending provisions contained in the Wales Act 2017 redundant and so these are also being repealed.

Revocations

- 7.47 Regulation 10 of these Regulations revokes regulation 2 of the 2019 Regulations.
- 7.48 Regulation 2 of the 2019 Regulations made interpretive provision for non-ambulatory references to direct EU legislation. Regulation 2 is not yet in force and was made before the enactment of WAA and the introduction of relevant separation agreement law. These Regulations replace the interpretive provision for non-ambulatory references provided by the 2019 Regulations with updated provisions to include interpretive provision for non-ambulatory references to relevant separation agreement law (regulation 3(2) and new paragraph 2A of Schedule 8 to EUWA).

Amendment of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013.

- 7.49 Art 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order cross refers to the interpretation provisions for non-ambulatory cross references to EU law provided by regulation 2 of the 2019 Regulations.
- 7.50 Regulation 2 of the 2019 Regulations is being revoked by regulation 10 of these Regulations and updated interpretive provision for non-ambulatory cross references to EU instruments is being provided by new paragraph 2A of Schedule 8 to EUWA introduced by regulation 3 of these Regulations.
- 7.51 Regulation 11 updates the cross reference to Article 1 of the Financial Services and Markets Act 2000 (Qualifying EU Provisions Order) to refer to the updated interpretive provisions in new paragraph 2A of Schedule 8 to EUWA.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 23(1) and (2) of, and paragraphs 21 and 26 of Schedule 7 to, EUWA and section 41(1) and 41(2) of WAA. The Minister has made any relevant statements 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 No public consultation was required as the Regulations make only limited technical changes to existing legislation with no impact on businesses, charities or voluntary bodies.

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.

- 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 No specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018 and the European Union (Withdrawal Agreement) Act 2020, no review clause is required.

15. Contact

- 15.1 The Transition Taskforce at the Cabinet Office, email: tff-legislation@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Marianne Ainsworth-Smith, Deputy Director for Parliamentary Engagement and Legislation within the Transition Taskforce, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office 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 14, 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 15, 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. Appropriateness statement

- 1.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at Cabinet Office, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because the instrument ensures that the UK statute book accommodates “retained EU law” coherently and effectively after the UK’s withdrawal from the EU.
- 1.3 Although the instrument repeals some primary legislation, these are of a technical and consequential nature and simply remove provisions made redundant by EUWA and in particular, by the repeal of the ECA.

2. Good reasons

- 2.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office, 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”.

- 2.2 These are that without this instrument there would be a lack of clarity about how certain EU-related terms and references to EU legislation in domestic legislation should be interpreted when the UK leave the EU. Also, many provision of EU-derived domestic legislation would remain on the UK statute book, despite being redundant as a result of EUWA

3. Equalities

- 3.1 The Chancellor of the Duchy of Lancaster, Michael Gove MP, at the Cabinet Office 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. Explanations

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