

EXPLANATORY MEMORANDUM TO
THE LAW ENFORCEMENT AND SECURITY (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

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1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 The United Kingdom (UK) currently participates in around 40 European Union (EU) measures that support and enhance security, law enforcement and judicial cooperation in criminal matters. A number of these measures, and the tools they establish, work together to support the identification, pursuit and prosecution of criminals and terrorists. The UK also participates in a number of security-related EU regulatory systems.

2.2 Should the UK leave the EU without an agreement in March 2019 (a ‘no deal’ scenario), the UK’s access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes. This would happen as a result of the UK having ceased to be an EU Member State, following the Article 50 notification made by the UK. This instrument plays no part in the UK leaving the EU, which will happen with or without it.

2.3 The overarching purpose of this instrument (‘the Regulations’) is to make amendments to the UK’s domestic statute book, including retained EU legislation¹, to address deficiencies which arise from the UK ceasing to be an EU Member State. The instrument will do three main things:

- First, the Regulations will revoke or amend retained directly applicable EU legislation and domestic legislation in the area of security, law enforcement, criminal justice and some security-related regulatory systems to ensure that the statute book continues to function effectively in a no deal scenario. Amendments of this nature are made by all of the provisions included in this instrument;
- Second, where necessary, the Regulations include transitional or saving provisions to address ‘live’ or ‘in flight’ cases – i.e. how cases ‘live’ on exit day should be dealt with; or how data received before exit should be treated. Provisions of this nature are included in Parts 3, 4, 6, 8, 11, 12, 14, 15, 17, 18, 20, 22 and 24 of this instrument²; and
- Third, in the case of extradition, the Regulations ensure that the UK has the correct legal underpinning to operate the ‘no deal’ contingency arrangement (the 1957 Council of Europe Convention on Extradition) that would be used in lieu of the European Arrest Warrant (EAW). These changes are made in Part 14 of this instrument.

2.4 In summary, the instrument covers three linked policy areas:

¹ As retained by the European Union (Withdrawal) Act 2018.

² Part 3 – Counter-Terrorism (Regulation 6); Part 4 – Cross-border Surveillance (Regulation 10); Part 6 – Eurojust (Regulation 22); Part 8 – European Criminal Record Information System (ECRIS) (Regulations 27, 28, and 32); Part 11- Europol (Regulation 40); Part 12 – Exchange of information and intelligence between law enforcement authorities and disclosure in foreign proceedings (Regulations 44 - 47); Part 14 – Extradition (Regulation 57); Part 15 – Firearms (Regulations 60, and 65); Part 17 – Joint Investigation Teams (Regulation 72); Part 18 – Mutual Legal Assistance in Criminal Matters (Regulations 83-86, 96-98, and 102); Part 20 – Proceeds of Crime (Regulations 111 and 113); Part 22 – Schengen Information System (SIS II) (Regulations 120-121); and Part 24 – Miscellaneous (Regulations 135, 138, and 139).

- security, law enforcement and judicial cooperation in criminal matters currently underpinned by EU legislation in Parts 2-4, 6-12, 14, 16-23, and Chapters 3 and 4 of Part 24;
- security-related EU regulatory systems for which the Home Office is responsible (drug precursors and psychoactive substances, explosive precursors, and firearms) in Parts 5, 13 and 15; and
- domestic legislation affecting the police and affecting investigatory powers made deficient by EU exit, in Chapters 1 and 2 of Part 24.

Security, law enforcement and judicial cooperation in criminal matters currently underpinned by EU legislation (Parts 2-4, 6-12, 14, 16-23, and Chapters 3 and 4 of Part 24)

- 2.5 Parts 2-4, 6-12, 14, 16-22 and Chapters 3 and 4 of Part 24 of the Regulations address deficiencies in connection with EU measures made under Chapters 4 and 5 of Title V of the Treaty on the Functioning of the European Union. These measures are often referred to as having a Justice and Home Affairs or “JHA” legal base. They all relate in some way to law enforcement and security in their subject matter, and in many cases interact with each other at an operational level.
- 2.6 The effect of the UK’s withdrawal from the EU is that the arrangements provided for in these EU measures – for example, extradition under the EAW – would no longer be available. Once the UK ceases to be an EU Member State, and in the absence of any alternative agreement (i.e. in a ‘no deal’ scenario) the UK would no longer have access to practical cooperation measures like the European Investigation Order (EIO), databases like the Schengen Information System (SIS II), or agencies like Europol, nor could the UK continue to expect reciprocal action from Member States on the terms set out in those EU measures.
- 2.7 The appropriate legislative response is therefore to revoke the relevant retained EU law to ensure that the domestic statute book operates effectively following the UK’s withdrawal from the EU. Transitional or saving provisions are also established where necessary to address ‘live’ or ‘in flight’ cases – i.e. how cases ‘live’ on exit day should be dealt with; or how data received under EU measures before exit should be treated. These transitional and saving provisions are found in Parts 3, 4, 6, 8, 11, 12, 14, 17, 18, 20, 22 and 24 of the instrument in respect of security, law enforcement and judicial cooperation matters.³
- 2.8 There are exceptions to this general position on revocation, in particular:
- Part 2 (Child Pornography) of the Regulations makes amendments to the retained EU legislation, so as to confirm that obligations to take measures to prevent and combat sexual abuse of children continue to apply within the UK.

³ Part 3 – Counter-Terrorism (Regulation 6); Part 4 – Cross-border Surveillance (Regulation 10); Part 6 – Eurojust (Regulation 22); Part 8 – European Criminal Record Information System (ECRIS) (Regulations 27, 28, and 32); Part 11- Europol (Regulation 40); Part 12 – Exchange of information and intelligence between law enforcement authorities and disclosure in foreign proceedings (Regulations 44 - 47); Part 14 – Extradition (Regulation 57); Part 17 – Joint Investigation Teams (Regulation 72); Part 18 – Mutual Legal Assistance in Criminal Matters (Regulations 83-86, 96-98, and 102); Part 20 – Proceeds of Crime (Regulations 111 and 113); Part 22 – Schengen Information System (SIS II) (Regulations 120-121); and Part 24 – Miscellaneous (Regulations 135, 138, and 139).

- Part 19 (Passenger Name Record Data) of the Regulations will amend the retained Passenger Name Record (PNR) Directive Regulations to maintain most of the legislative framework governing the way the UK would treat PNR data from other countries. This includes retaining the data protection safeguards provided for in the PNR Directive but removing data sharing obligations that apply among EU Member States, as the latter represents a reciprocal arrangement which will lapse when the UK withdraws from the EU. This will enable the UK Passenger Information Unit to cooperate with EU Member States on the same terms as they would cooperate with the UK as a non-EU third country.
- 2.9 Additionally, Part 14 (Extradition) of the Regulations provides the necessary legislative underpinning to operate the ‘no deal’ contingency arrangement for extradition with EU Member States in a ‘no deal’ scenario, namely use of the 1957 Council of Europe Convention on Extradition. This will allow extradition requests from EU Member States to be administered based on extradition arrangements under the 1957 European Convention on Extradition.
- 2.10 Part 18 (Mutual Legal Assistance in Criminal Matters) of the Regulations will revoke the Criminal Justice (European Investigation Order) Regulations 2017 (‘the EIO Regulations’), but also reverse a series of consequential amendments that were made when the EIO Regulations were implemented, in order to restore the ability to execute investigative measures (e.g. hearing witnesses in the UK by telephone) in response to requests from EU Member States.
- 2.11 Part 23 (Serious Crime and Fraud) makes amendments to revoke legislation which implemented another type of EU measure in the law enforcement sphere, the EU Regulation which establishes an exchange, assistance and training programme for the protection of the euro against counterfeiting – a programme that would cease to be available to the UK after exit in a ‘no deal’ scenario.
- 2.12 In addition, some of the Parts in this first group also contain minor and technical amendments to domestic legislation, to ensure that the relevant law continues to operate effectively after the UK has withdrawn from the EU.

Security-related EU regulatory systems (drug precursors and psychoactive substances, explosive precursors, and firearms) in Parts 5, 13 and 15.

- 2.13 Amendments concerning security-related EU regulatory systems (drug precursors and psychoactive substances, explosive precursors, and firearms) are covered in Parts 5, 13 and 15 of this instrument.
- 2.14 The effect of the UK’s withdrawal from the EU is that the UK would no longer be bound by EU regulatory regimes, and the UK can no longer expect reciprocal action from Member States on the terms provided for in those regimes.
- 2.15 The Regulations will maintain the existing regulatory regimes in the UK in significant part, while making amendments to address deficiencies in the statute book resulting from the UK’s withdrawal from the EU. This includes:
- Part 5 (Drug Precursors and Psychoactive Substances) will make minor amendments to the regulatory regime governing psychoactive substances to ensure that the definition of a prohibited ingredient no longer refers to

substances prohibited by EU legislation, but to substances prohibited under domestic legislation.

- Part 13 (Explosive Precursors) will make amendments which ensure that the existing regulatory regime continues to operate in substantially the same manner as before exit day, but adjusts terminology which assumes that the UK is an EU Member State. In the case of Northern Ireland, the Regulations will transfer a power for the European Commission to amend annexes containing regulated explosive precursors to the Secretary of State for Northern Ireland (powers for Ministers to amend such lists in Great Britain already exist).
 - Part 15 (Firearms) will retain necessary safeguards and controls on the possession etc, of firearms and shotguns, while removing provisions reflecting reciprocal arrangements which will no longer apply once the UK has withdrawn from the EU, such as those relating to the European Firearms Pass (EFP).
- 2.16 Part 5 (Drug Precursors and Psychoactive Substances) amends the retained EU law which governs the trade in drug precursors within the EU (intra-community trade), and between the EU and third countries (extra-community trade). The Regulations amend the existing regime so that trade in drug precursors with EU Member States is governed in the same way as the rest of the world (as in a ‘no deal’ scenario, the UK will no longer be able to participate in intra-community trade). The intra-community trade rules are retained in amended form for internal UK purposes. The Regulations also transfer powers from the European Commission to the Secretary of State to amend the lists of regulated drug precursors and makes technical amendments to adjust references to the UK as an EU Member State.

Domestic legislation affecting the police and affecting investigatory powers made deficient by EU exit in Chapters 1 and 2 of Part 24

- 2.17 Chapter 1 (Miscellaneous amendments to police legislation) and Chapter 2 of (Miscellaneous amendments to investigatory powers) of Part 24 of the Regulations constitute a miscellaneous group of amendments that seek to ensure that legislation in this area remains operable on exit. In the main, the deficiencies are not linked to a particular EU measure but derive from the assumption that the UK is an EU Member State or a member of the EEA. The amendments in Regulation 126 and Regulation 130 are a notable exception, because they relate to the UK’s implementation of a particular instrument, namely the Electronic Commerce Directive.

Explanations

What did any relevant EU law do before exit day?

- 2.18 The UK currently participates in around 40 EU measures that support and enhance security, law enforcement and judicial cooperation in criminal matters, and in a number of security-related EU regulatory systems. A body of EU law, including Council Decisions, Directives, and EU Regulations, mostly but not exclusively with a ‘Justice and Home Affairs’ legal base, governs cooperation on these matters among participating countries.

Why is it being changed?

- 2.19 Should the UK leave the EU without an agreement in March 2019 (a ‘no deal’ scenario), the UK’s access to EU security, law enforcement and criminal justice tools and measures would cease, and the UK would no longer be bound by EU regulatory regimes. The overarching purpose of this instrument is to make amendments to the UK’s domestic statute book to reflect this.

What will it now do?

- 2.20 The Regulations make amendments to the UK’s domestic statute book, including retained EU legislation, to address deficiencies which arise from the UK ceasing to be an EU Member State. This includes revoking or amending retained directly applicable EU legislation and domestic legislation in the area of security, law enforcement, criminal justice and some security-related regulatory systems.
- 2.21 The practical effect of these amendments is summarised in Section 12 (Impacts) of this Explanatory Memorandum.

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.
- 3.3 Please see paragraphs 4.3 and 4.4 below for further details of the application of the provisions in this instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.3 The precise extent of each provision of this instrument varies, as set out in regulation 2 (Extent), and the territorial application of this instrument is not limited. In most cases, any amendment, repeal or revocation made by this instrument has the same extent within the UK as the provision to which it relates, with the exception of certain provisions relating to the Proceeds of Crime Act 2002 (‘POCA’) and the Criminal Finances Act 2017 (‘CFA’). Regulation 107(5) and (8) of this instrument relates to provisions in POCA which were inserted by the CFA, but which have not yet commenced in Northern Ireland; accordingly, regulation 107(5) and (8) extends and applies to England and Wales and Scotland only. Similarly, the provisions in the CFA 2017 which are amended by regulation 109(1) to (3) of this instrument make changes to POCA but are not yet commenced in Northern Ireland. Accordingly, Regulation 109(1) and (3) of this instrument extends and applies to Northern Ireland only. Regulation 109(4) makes amendments to section 27 of the CFA, which itself only extends to Northern Ireland, so no further provision is required.

4.4 Any saving or transitional provision in this instrument has the same extent within the UK as the provision to which it relates, with the exception that regulation 72 (saving provision – investigation teams operating in the UK after exit day) extends and applies to England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire, has made the following statement regarding Human Rights:

‘In my view the provisions of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.’

6. Legislative Context

6.1 On 29 March 2019 the UK will cease to be an EU Member State, as a result of the Article 50 notification made by the UK.

6.2 The EU (Withdrawal) Act 2018 (‘the Act’) was introduced to ensure that the UK has a functioning statute book on exit day. The Act ends the supremacy of EU law in UK law, retains EU law (as it stands at exit) into domestic law, and preserves laws made in the UK to implement EU obligations.

6.3 The Act also created temporary powers to make secondary legislation, including the power in section 8, which enables corrections to be made to legislation that would otherwise fail to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU.

6.4 This instrument will utilise the power contained in section 8 of the Act in order to address failures of retained EU law to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU. It will also rely upon other relevant powers in the European Union (Withdrawal) Act 2018 and the Extradition Act 2003.

6.5 If the Regulations are made, failure of retained EU law to operate effectively, and other legislative deficiencies arising from the UK’s withdrawal from the EU without an agreement (a ‘no deal’ scenario), would be addressed and rectified. In the case of extradition, the Regulations would also provide the correct legislative underpinning to operate the ‘no deal’ contingency arrangement for extradition with EU Member States (use of the 1957 Council of Europe Convention on Extradition).

6.6 The practical impact of making these Regulations would be to remove legal and operational uncertainty for the public sector, reduce legal uncertainty for business, provide the correct legal underpinning for extradition arrangements with EU Member States post-exit, and provide for transitional and saving provisions. For further detail please see Section 12 (Impacts) of this Explanatory Memorandum.

7. Policy background

7.1 The Government’s view remains that withdrawing from the EU with an agreement is in the UK’s best interests. However, the Government is preparing for all scenarios relating to the UK’s withdrawal from the EU, including the scenario in which the UK leaves the EU without a deal in March 2019.

7.2 As part of these preparations, the Government is implementing a cross-Government programme of secondary legislation, which will ensure that, without prejudice to the

outcome of negotiations, there is an effectively functioning statute book on exit day. This instrument is part of that programme of secondary legislation, making amendments to the UK's domestic statute book, including retained EU legislation, to address the deficiencies which arise from the UK ceasing to be an EU Member State.

- 7.3 The practical impact of a 'no deal' exit on security, law enforcement and criminal justice cooperation with EU Member States is outside the scope of the provisions found in this instrument. The Government has separately published '*EU Exit: Assessment of the security partnership*'⁴ providing its assessment of the implications of a 'no deal' scenario in this policy area compared against the proposed Future UK-EU Security Partnership (as set out in the Political Declaration). Should the UK leave the EU without an agreement in March 2019 (the 'no deal' scenario), the UK's access to EU security, law enforcement and criminal justice tools would cease. This loss of access would be by virtue of the UK having ceased to be an EU Member State, following the Article 50 notification made by the UK.
- 7.4 The assessment outlined that in a 'no deal' scenario there would not be an implementation period, and the UK would no longer be able to cooperate with the EU using EU law enforcement and criminal justice mechanisms such as the European Arrest Warrant (EAW) or the Schengen Information System (SIS II), a Europe-wide IT system which enables the sharing of alerts on wanted/missing persons and objects for law enforcement purposes. The UK would rely instead on alternative, non-EU mechanisms, where they exist. The assessment concludes that these mechanisms, which include Interpol and Council of Europe Conventions, would not provide the same level of capability as those envisaged in a deal scenario, and would risk increasing pressure on UK security, law enforcement and judicial authorities.
- 7.5 For the most part, contingency arrangements for security, law enforcement and criminal justice cooperation with EU Member States in a 'no deal' scenario do not require amendments to the UK's domestic legislation, as the relevant non-EU mechanisms that would be reverted to – such as Council of Europe Conventions, Interpol and bilateral channels – are already in use, including with non-EU countries. However, this instrument does legislate to ensure that the correct legal underpinning is in place to support use of the contingency arrangement for extradition to and from EU Member States (use of the 1957 Council of Europe Convention on Extradition). The impacts of reverting to this contingency arrangement (which already exists and is in use with countries outside the EU) are summarised in Section 12 (Impacts) of the Explanatory Memorandum, and in the Impact Assessment⁵ published alongside this instrument.

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 UK from the EU. The instrument also relies on the powers in section 23(1) and (2) of, and paragraph 21

⁴ 'EU Exit: Assessment of the security partnership (November 2018) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759760/28_November_EU_Exit_-_Assessment_of_the_security_partnership_2.pdf

⁵ Impact Assessment for The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 - <https://www.legislation.gov.uk/ukdsi/2019/9780111178102/impacts>

of Schedule 7 to, the Withdrawal Act 2018. 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.

- 8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003. These powers are being used in relation to changes made in Part 14 of the Regulations, concerning extradition.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 For security, law enforcement and criminal justice, the Home Office has fully engaged with operational partners and the Devolved Administrations on preparations for a scenario in which the UK withdraws from the EU without a deal in March 2019.
- 10.2 For the most part, the Regulations make changes to address failures of retained EU law to operate effectively, or to address other legislative deficiencies arising from the UK's withdrawal from the EU. For extradition, the Regulations will provide the legislative underpinning for the UK to transition its cooperation with EU Member States to a non-EU mechanism, and partners have been consulted on this as part of wider preparations for a 'no deal' scenario.
- 10.3 For the regulatory systems (drug precursor chemicals, firearms and explosive precursors) the Regulations are also seeking to address failures of retained EU law to ensure it operates effectively. As there is not a significant impact on businesses, the Home Office has not undertaken a formal consultation exercise. In addition, the impact of 'no deal' was communicated to licence holders and other stakeholders via Technical Notices published in September. As relevant, the Devolved Administrations and other government departments were consulted during the drafting of the Regulations. The Home Office will continue to informally engage with stakeholders and licence holders after this instrument comes into force.

11. Guidance

- 11.1 Guidance is not being provided in relation to this instrument.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies may arise from some amendments made by this instrument, which may require (in some cases) changes to guidance, with associated costs for training and communication.
- 12.2 The impact on the public sector may arise from amendments made by this instrument, which may require changes to guidance, with associated costs for training and communication.
- 12.3 This instrument will also enable the implementation of the 'no deal' contingency arrangement for extradition to and from EU Member States (use of the 1957 Council of Europe Convention on Extradition).

- 12.4 A full Impact Assessment was submitted with the original Explanatory Memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.
- 12.5 The main ‘real-world’ effect of this instrument, in the context of Justice and Home Affairs cooperation, will be to ensure that the correct legal underpinning - the 1957 Council of Europe Convention on Extradition - is in place for extraditions to and from EU Member States in a ‘no deal’ scenario. For this purpose, Part 14 of the Regulations adjusts the designation of EU Member States under the Extradition Act 2003 from Part 1 to Part 2. This change will give the UK the domestic legal basis to handle European Convention requests in the way set out in that Convention. Were this change not to be made, it is not clear that new incoming extradition requests from EU Member States could be lawfully processed. This could in turn put pressure on the system for outgoing extradition requests (from the UK to EU Member States) – if the UK is unable to cooperate reciprocally. In 2017/18, the UK arrested over 1,400 individuals on the basis of European Arrest Warrants (EAWs) issued by the other 27 EU Member States. In the same period, EU Member States arrested 183 individuals on the basis of EAWs issued by the UK.
- 12.6 Operating extradition arrangements with EU Member States under Part 2 of the Extradition Act 2003 would see the cost per incoming extradition case rising compared to the present operation of the European Arrest Warrant (EAW) under Part 1. However, in a ‘no deal’ scenario, the UK would not be able to use the EAW in any event, by virtue of the UK having withdrawn from the EU.
- 12.7 The Regulations also have a ‘real-world’ effect where they establish transitional provisions, ensuring that there is clarity over whether, and on what terms, cases or requests that are ‘live’ or ‘in flight’ on exit day should proceed. Again, this is particularly significant for extradition (Part 14) where the Regulations confirm that cases will proceed under Part 1 of the Extradition Act 2003 if the requested individual has been arrested before exit day. Further examples of areas where transitional provisions are being put in place by these Regulations include: criminal records requests received through the European Criminal Records Information System (ECRIS), requests from EU Member States for Mutual Legal Assistance in Criminal Matters, asset freezing and confiscation orders issued by EU Member States, and cross-border surveillance operations. In each case, the underlying policy objective is to provide clarity on the conditions under which requests received or cooperation commenced before exit can be completed (usually linked to having reached a particular procedural stage in an ongoing process), and thus to provide legal certainty. Were these amendments not to be made, operational partners who currently operate the relevant EU tools and measures would face uncertainty over how to treat cases and requests that are ‘live’ or ‘in flight’ at the point of exit, and would also face a higher risk of legal challenge.
- 12.8 A number of saving provisions are included in the Regulations for a similar reason – to put beyond doubt that certain obligations persist in a ‘no deal’ scenario. The saving provisions in the Regulations mostly relate to data protection - i.e. confirming that the data protection rules under which information was received by the UK pre-exit will continue to apply to that information post-exit. For example, provisions of this nature are included in relation to data and information received via Europol, Eurojust, Schengen Information System (SIS II), ECRIS, and Financial Intelligence Units (FIU’s), as well the Swedish Initiative and the Passenger Name Record (PNR)

Directive. The ‘real-world’ effect of these saving provisions may in practice be limited, as the UK’s Data Protection Act 2018 would in many cases impose equivalent obligations in any event. Including them in these Regulations will nonetheless ensure that no unintended ‘gaps’ arise and put the legal position beyond doubt. This will in turn provide clarity for operational partners and reduce the risk of successful legal challenge.

- 12.9 Where the Regulations address deficiencies in domestic law or retained EU law arising from the UK’s withdrawal from the EU, they do so with the underlying policy objective of providing continuity as far as possible, and thus the ‘real-world’ effect of such changes is limited. To illustrate, the Regulations make a series of amendments to ensure that definitions are no longer tied to EU law (for example, in Part 5 (Drug Precursors and Psychoactive Substances), the definition of ‘prohibited ingredients’ used in food in respect of psychoactive substances). They also amend EEA references to reflect that the UK is no longer a member of the EEA (for example in amendments to the Serious Crime Act 2007, the Local Government (Miscellaneous Provisions) Act 1982, the Licensing Act 2003, the Police Pensions (Additional Voluntary Contributions) Regulations 1991 and the Police Pensions Regulations 2015) and remove references to the European Communities Act 1972 (for example in the Policing and Crime Act 2017 and in the Investigatory Powers Act 2016). Examples of more substantive corrections include ensuring that, as part of the licensing regime for explosive precursors in Northern Ireland, the Secretary of State can make amendments to the list of controlled substances and limit values (Part 13 - Explosive Precursors), and ensuring that the UK cooperates with EU Member States on the same terms as they would cooperate with the UK as a third country (for example in respect of PNR data in Part 19 (Passenger Name Record Data), and in respect of Drug Precursors in Part 5 (Drug Precursors and Psychoactive Substances)). In these cases, the real-world effect is not so much from making the changes in the Regulations, but from what the effect of not addressing those deficiencies would be (e.g. leaving a ‘gap’ in the licensing regime).
- 12.10 Where the Regulations revoke retained EU law or connected domestic law, this is not expected to have a ‘real-world’ effect, because the underlying EU instruments would cease to be available to the UK upon withdrawal from the EU in any event. For example, in a ‘no deal’ scenario, the UK’s membership of Europol would cease on 29 March 2019 by virtue of the UK having ceased to be an EU Member State (i.e. as a result of the Article 50 notification). Relevant ‘retained’ EU law on the UK’s domestic statute book would then become obsolete in the sense that even if, for example, the ‘retained’ Europol Regulation were left on the UK statute book, this would not preserve the UK’s membership of Europol. By way of further illustration, the same principle applies to the revocation of the Council Decision establishing the European Criminal Records Information System (ECRIS) (Part 8) or the Council Implementing Decision which currently delivers the UK’s access to the Schengen Information System (SIS II) (Part 22). Where revocation could have a ‘real-world’ effect on cases and requests that are ‘live’ or ‘in flight’ at the point of exit, this is addressed through the transitional and saving provisions described above.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 See paragraph 12.1 concerning the impacts on businesses. The changes made by the instrument applies to small businesses in the same way that it applies to other businesses.

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 Rachel Vickerstaff at the Home Office Telephone: 0207 035 3267 or rachel.vickerstaff@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rob Jones at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service at the Home 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 clauses 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/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 clauses 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 clauses 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 clauses 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 clauses 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

	7	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 clauses 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, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 Not applicable. The instrument is being made under the draft affirmative procedure.

2. Appropriateness statement

- 2.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

‘In my view The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate.’

- 2.2 This is the case because the instrument is being made to address deficiencies in retained EU law and makes appropriate transitional and saving provisions as detailed.

3. Good reasons

- 3.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd 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 that the instrument is being made to address deficiencies in retained EU law and makes appropriate transitional and saving provisions as detailed.

4. Equalities

- 4.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP has made the following statement(s)

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

- 4.2 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

‘In relation to the draft instrument, I, the Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, 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 paragraph 2 of the main body of this explanatory memorandum.

6. Criminal offences

6.1 Not applicable. The instrument does not create a new criminal offence or penalty.

7. Legislative sub-delegation

7.1 Not applicable. The instrument does not create a sub-delegated power.

8. Urgency

8.1 Not applicable. The instrument is not being made under the urgent procedure, provided for in paragraphs 4 or 14, Schedule 7 of the European Union (Withdrawal) Act 2018.