

EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (WITHDRAWAL) ACT 2018 (EXIT DAY) (AMENDMENT) (NO. 3) REGULATIONS 2019

2019 No. 1423

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Exiting the European Union 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 These Regulations amend the definition of “exit day” in section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) from 31 October 2019 to 31 January 2020, and consequently amend section 20(2) of the 2018 Act. Various provisions of the 2018 Act, including the repeal of the European Communities Act 1972, and a wide range of primary and secondary legislation, take effect or come into force on “exit day”.
- 2.2 The purpose of these regulations is to reflect the extension to the period specified in Article 50(3) Treaty on European Union (“TEU”), which was agreed between the United Kingdom and the European Council. These are the third set of regulations to amend the definition of “exit day” in the 2018 Act.
- 2.3 On 29 October 2019, the European Council adopted a decision in agreement with the United Kingdom (European Council Decision (EU) 2019/1810, OJ L 278 I, 30 October 2019, p. 1) which extended the period provided for in Article 50(3) TEU to 31 January 2020, or earlier if the Withdrawal Agreement is ratified and comes into force before this date. This European Council decision and the United Kingdom’s agreement to it constitute a binding agreement to extend the Article 50 period in EU and international law. This means the United Kingdom remains a Member State until 11.00 p.m. on 31 January 2020 regardless of the passage of these Regulations at the domestic level.
- 2.4 The European Communities Act 1972 will be repealed on “exit day” and a large volume of EU exit legislation preparing the United Kingdom statute book for the moment EU law ceases to apply is due to take effect or come into force on “exit day”. These Regulations are necessary to bring domestic law in line with the agreement at the international level: in particular it will ensure that there is no gap in the statute book where EU law ceases to have effect in the United Kingdom following the repeal of the ECA and prevent the possibility that new United Kingdom rules would replace EU rules prematurely.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The urgent timescale of this instrument has meant that it has not been possible to comply with the 21 day rule. This instrument could not have been made and laid any

sooner because the European Council decision, which changed the day that the Treaties will cease to apply to the United Kingdom, was only agreed on 29 October 2019. A change to the definition of “exit day” in domestic legislation is necessary prior to 11 p.m. on 31 October 2019 to ensure that our domestic statute book can function effectively. The consequences of delaying the legislation to comply with the 21 day rule would be severe, it would create confusion across the United Kingdom statute book, as well as the repeal of the European Communities Act 1972 while the UK was still a member state, causing serious problems and uncertainty for citizens and businesses.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The instrument has the same extent as the provisions it amends.
- 4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland and, so far as concerning its application to the repeal in section 1 of the 2018 Act, also the Isle of Man, the Channel Islands and Gibraltar.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Exiting the European Union James Duddridge MP has made the following statement regarding Human Rights:

“In my view the provisions of the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 3) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Article 50(3) TEU provides that where a Member State gives notice of intention to withdraw from the European Union, the EU Treaties cease to apply to that Member State from the date of entry into force of a Withdrawal Agreement, or failing that, two years after the notification, unless the European Council unanimously decides to extend the two-year period, in agreement with the Member State.
- 6.2 The United Kingdom gave notice of the intention to withdraw from the European Union on 29 March 2017. The European Council, by Decision (EU) 2019/476¹, in agreement with the United Kingdom, initially decided to extend the period under Article 50(3) TEU until 12 April 2019. That period was further extended until 31 October 2019 by European Council Decision (EU) 2019/584 taken in agreement with the United Kingdom.² The definition of “exit day” in section 20(1) and (2) of the 2018 Act was amended to reflect both these extensions.³

¹ European Council Decision (EU) 2019/476 taken in agreement with the United Kingdom of 22 March 2019 extending the period under Article 50(3) TEU (OJ L 80 I, 22.3.2019, p. 1).

² European Council Decision (EU) 2019/584 taken in agreement with the United Kingdom of 11 April 2019 extending the period under Article 50(3) TEU (OJ L 101, 11.4.2019, p. 1).

³ See The European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019 and The European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019).

- 6.3 Section 20(4) of the 2018 Act, as amended by section 4 of The European Union (Withdrawal) (No.2) Act 2019, requires that a Minister of the Crown must by regulations amend the definition of “exit day” to ensure that the day and time specified in the definition are the day and time that the EU Treaties are to cease to apply to the United Kingdom. By virtue of section 20(3), the power only applies if the day or time at which the Treaties are to cease to apply to the United Kingdom in accordance with Article 50(3) TEU is different from that specified in the definition of “exit day” in section 20(1) of the 2018 Act.
- 6.4 Section 2 of the European Union (Withdrawal) Act 2019 amended the procedure for the power to amend the definition of “exit day” in paragraph 14 of Schedule 7 to the 2018 Act. As a result, regulations amending the definition of “exit day” under section 20(4) of the 2018 Act are now subject to the negative resolution procedure only.
- 6.5 On 29 October 2019, a further extension of the period provided for under Article 50(3) was agreed between the United Kingdom and the European Council. As a result, the EU Treaties will now cease to apply to the United Kingdom at 11.00 p.m. on 31 January 2020, unless the Withdrawal Agreement is ratified and comes into force before this date. In accordance with Article 50(3) TEU, in the event that the Withdrawal Agreement agreed between the EU and the United Kingdom on 19 October 2019 is ratified and enters into force on an earlier date, the United Kingdom’s withdrawal from the EU would take place on the first day of the month following completion of the ratification procedures or on 1 February 2020, whichever is earliest.
- 6.6 These regulations amend the definition of “exit day” in the 2018 Act to reflect this further extension agreed on 29 October 2019 to ensure that “exit day” in domestic legislation is in line with the new day on which the EU Treaties cease to apply to the United Kingdom i.e. 31 January 2020.
- 6.7 These regulations ensure that provisions of the 2018 Act operate by reference to the new day and time on which the EU Treaties cease to apply to the United Kingdom, 31 January 2020. Section 1 of the 2018 Act repeals the European Communities Act 1972 on “exit day”, which means that EU law will no longer flow into the domestic law of the United Kingdom.⁴ Section 1 has been commenced and the repeal of the ECA will therefore have effect on “exit day”. Similarly sections 2 to 4 of the 2018 Act, provide for the saving and incorporation of EU law into domestic law (known as “retained EU law”) on and after “exit day”.⁵ However, unlike section 1, no day has yet been appointed for the commencement of sections 2 to 4.
- 6.8 Furthermore, the 2018 Act amended the Interpretation Act 1978, providing that the term “exit day” when used in other enactments will, unless the contrary intention appears, have the same meaning as that used in the 2018 Act. Equivalent provision is made in the Legislative Reform (Scotland) Act 2010 and the Interpretation Act (Northern Ireland) 1954 for Scottish and Northern Irish enactments respectively. There is also a range of primary and secondary legislation that gives effect to the United Kingdom’s withdrawal from the EU. This includes regulations made under section 8 of the 2018 Act that make provision to prevent, remedy or mitigate deficiencies in retained EU law. A number of these come into force or have provisions that take effect by reference to “exit day”. Without these regulations, this

⁴ Section 1 (repeal of the European Communities Act 1972) of the 2018 Act was commenced by regulation 2 of The European Union (Withdrawal) Act 2018 (Commencement No. 4) Regulations 2018 (SI 2019/1198).

⁵ Sections 2 to 4 of the 2018 Act have not yet been commenced and so no saving or incorporation will take place should exit day prematurely pass.

legislation would come into force and take effect by reference to the current definition of “exit day”, 11.00 p.m. on 31 October 2019.

7. Policy background

What is being done and why?

- 7.1 The Government is required to make these regulations in accordance with section 20(4) of the 2018 Act to reflect the further extension of the period in Article 50(3) TEU in domestic law. These Regulations do not by themselves extend the Article 50 process. The extension to the Article 50 period was agreed between the United Kingdom and the EU by correspondence between the European Council and the Prime Minister of the United Kingdom, in accordance with Article 50(3) TEU, on 28 October 2019. The European Council Decision giving effect in EU and international law to that agreement was adopted and had effect from 29 October. The purpose of these Regulations is to amend the definition of “exit day” in the 2018 Act to ensure that the United Kingdom statute book continues to function effectively and to avoid any confusion to individuals and businesses.

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 20(4) of the 2018 Act.

9. Consolidation

- 9.1 No consolidation has been undertaken.

10. Consultation outcome

- 10.1 No consultation has been undertaken.

11. Guidance

- 11.1 No guidance will be published.

12. Impact

- 12.1 During the agreed extension the United Kingdom will remain a member of the European Union, and therefore retain the rights and obligations of a Member State. Any contributions to the EU budget would be made on the basis of existing arrangements, and therefore there are no direct costs to businesses that arise from this legislation.
- 12.2 An Impact Assessment has not been prepared for this instrument because it extends the United Kingdom’s existing rights and obligations as a Member State. An Impact Assessment was prepared for the 2018 Act, which contains the power under which this SI is to be made.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small 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 The Department for Exiting the European Union. Email: secondarylegislation@dexeu.gov.uk can be contacted with any queries regarding the instrument.

15.2 Parliamentary Under Secretary of State for Exiting the European Union James Duddridge MP at the Department for Exiting the European Union can confirm that this Explanatory Memorandum meets the required standard.