

**EXPLANATORY MEMORANDUM TO**  
**THE STATE AID (REVOCATIONS AND AMENDMENTS) (EU EXIT)**  
**REGULATIONS 2020**

**2020 No. XXXX**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (the Department) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to disapply EU law relating to State aid that is retained in the UK by the European Union (Withdrawal) Act 2018 (the Withdrawal Act). The overall effect is to ensure that EU State aid law does not form part of UK domestic law as retained EU law after the end of the transition period. This instrument does not affect the application of the State aid provisions in the Northern Ireland Protocol.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 State aid is support in any form from any level of government which gives an undertaking (any entity that carries out an economic activity) an advantage that could not be obtained in the normal course of business. Articles 107 to 109 of the Treaty on the Functioning of the European Union (TFEU) and several EU regulations, guidelines and frameworks made under those TFEU Articles govern the control of State aid.
- 2.3 Article 107(1) defines State aid and sets out the general prohibition on giving aid. The prohibition operates by effectively providing that aid is incompatible with the EU internal market insofar as it affects trade between Member States unless the aid has been approved by the European Commission (“the Commission”). Article 107(2) and (3) sets out when the Commission must give approval and those areas where the Commission has discretion over whether to approve aid.
- 2.4 Article 108 sets out the Commission’s role in monitoring the system and its rights to examine aid. Article 108(3) obliges Member States to notify aid in advance and not to award this aid until it has been approved (known as the ‘standstill’ obligation). If a Member State gives aid without prior approval, this is known as unlawful aid. If this comes to the Commission’s attention and they investigate and discover that the aid is incompatible with the internal market, the Commission will order the Member State to abolish the aid measure and recover any aid already granted to the beneficiary with interest.
- 2.5 While the Commission has exclusive competence to examine whether aid is compatible with the internal market, national courts can enforce the Article 108(3) standstill obligation. An interested party (for example, a competitor to an aid beneficiary) can apply to the domestic courts to uphold this right. A national court can

consequently suspend an aid measure until the Commission has considered the compatibility of the measure.

- 2.6 In addition to the TFEU Articles, there are several EU Regulations and Decisions that make provision about the operation of Articles 107 and 108. These broadly consist of procedural regulations and exemptions regulations.
- 2.7 The procedural regulations are the EU Procedural Regulation (2015/1589) (Procedural Regulation) and the EU Implementing Regulation (794/2004) (Implementing Regulation). The Procedural Regulation sets out how the system operates and makes clear the roles and responsibilities of the Commission and the Member States. The Procedural Regulation also sets out the procedures to be followed in notifications and investigations and gives the Commission information gathering powers. The Implementing Regulation sets out in detail how to apply State aid rules in specific areas, for example, how Member States must calculate interest when recovering aid.
- 2.8 The exemption regulations are made up of three block exemptions and four de minimis regulations. These are the General Block Exemption Regulation (GBER), the Agricultural Block Exemption Regulation (ABER), the Fisheries Block Exemption Regulation (FBER), the general De Minimis Regulation, the Services of General Economic Interest (SGEI) De Minimis Regulation, the Agricultural De Minimis Regulation and the Fisheries De Minimis Regulation. Each of these regulations set out the conditions under which an aid measure is exempt from the requirement to notify the Commission in advance. Any aid given under the block exemptions, however, is still a State aid and the Commission monitors compliance rigorously.
- 2.9 There is also a Commission decision taken under Article 106(3) of the TFEU which block exempts aid for SGEI from the requirement to notify. In general an SGEI is a basic public service, carried out in return for compensation, which the market does not provide or does not provide to the extent or at the quality the state desires and is of general and not the particular interest. Examples of SGEIs include postal services, rural transport, and social housing.
- 2.10 Other EU Regulations made under Article 42 and Article 93 TFEU also contain provisions relevant to State aid. These exempt certain categories of funding under the Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP) and certain forms of public service compensation for the operation of public passenger transport services from the State aid requirements under Articles 107 and 108 of the TFEU.
- 2.11 Finally, Commission Directive 2006/111/EC (the Financial Transparency Directive) is also relevant to State aid. This requires EU member states to ensure that financial relations between public authorities and public undertakings are transparent so that it is clear where public funds have been received and what they have been used for. The Financial Transparency Directive has been implemented in the United Kingdom by the Financial Transparency (EC Directive) Regulations 2009. These include obligations requiring public undertakings to maintain records of public funds received and obligations requiring undertakings entrusted with an SGEI or other special or exclusive rights to maintain separate accounts in respect of their activities.

Why is it being changed?

- 2.12 State aid rules regulate distortions of competition within the EU internal market. EU law prohibits State aid in so far as it affects trade between EU Member States, unless approved or falls within an exemption, e.g. research, development and innovation, aid

to small and medium sized businesses, aid for environmental protection etc. At the end of the transition period the EU law on State aid which will be retained by the Withdrawal Act will contain fundamental deficiencies which will make it inoperable in the UK.

- 2.13 Under the previous government, the State Aid (EU Exit) Regulations 2019, laid in January 2019, would have transferred the enforcement functions of the Commission to a domestic regulator (the Competition and Markets Authority), and made substantial corrections to the deficient retained law to give effect to the continued application of State aid law in the UK in event of no deal with the EU. Following the UK's conclusion of the Withdrawal Agreement, the draft 2019 regulations were withdrawn in February 2020 without being made as this approach is no longer appropriate.
- 2.14 This Government's policy is that at the end of the transition period the UK will have its own domestic subsidy control regime. From the end of the transition period, the UK will follow World Trade Organisation (WTO) subsidy rules and will adhere to any international obligations on subsidies agreed under free trade agreements. Therefore, retained EU law on State aid will have no practical application in the UK after the end of the transition period and will become redundant. This instrument will remedy the deficiencies arising from the withdrawal of the UK from the EU by disapplying or revoking the retained EU law on State aid save as far as necessary to give effect to the Withdrawal Agreement. This will not affect the application of the Northern Ireland Protocol. This is consistent with the approach taken in other Regulations to disapply retained EU law that is fundamentally deficient outside the EU Single Market, notably the Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019.

What will it now do?

- 2.15 The instrument will disapply the directly effective TFEU rights relating to State aid and revoke the direct EU legislation relating to State aid preserved in domestic law through the Withdrawal Act. This does not affect the application of the State aid provisions in Article 10 and Annex 5 of the Northern Ireland Protocol. These provisions of the Protocol will be given effect in domestic law by section 7A of the Withdrawal Act. Clauses in the UK Internal Market Bill currently before Parliament will, if necessary, enable regulations to be made setting out how Article 10 should be interpreted for domestic law purposes.
- 2.16 Article 10 of the Northern Ireland Protocol applies EU State aid rules listed in Annex 5 in respect of measures that affect trade between Northern Ireland and the EU (i.e. goods and wholesale electricity markets). At the end of the transition period, the default position will be that the Northern Ireland Protocol will come into force. Key provisions of the Protocol, including Article 10, are however subject to a mechanism for democratic consent in Northern Ireland (Article 18) and may cease to apply if consent is not given.
- 2.17 Annex 5 of the Northern Ireland Protocol includes the Financial Transparency Directive. The Financial Transparency Directive has already been generally implemented in UK domestic law by the Financial Transparency (EC Directive) Regulations 2009. These regulations will continue to have effect after the end of transition period. This instrument makes amendments to the regulations to reflect the scope of the Protocol (also see paragraph 6.6). In addition, this instrument amends

relevant legislation in relation to agriculture, fisheries and transport to remove references to the EU State aid regime which will not form a part of retained EU law in the UK. These include State aid exemptions (Article 8 of the EMFF Regulation (508/2014) and Article 9 of the Rail and Road Regulation (1370/2007) will be covered in a separate instrument) and other references to State aid rules. For example, references in Article 37 of Regulation 1303/2013 (CAP Common Provisions Regulation) requiring that financial instruments must be implemented in accordance with State aid rules have been removed.

- 2.18 The instrument will also make consequential amendments to other retained EU law and UK domestic legislation which refers to State aid rules to ensure they can continue to operate appropriately after the end of the transition period.

### **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 includes Scotland and Northern Ireland.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.
- 4.3 The retained EU law on State aid is incorporated into domestic law under sections 3 and 4 of the Withdrawal Act. This instrument does not affect EU law in so far as it has effect through section 7A of the Withdrawal Act in relation to measures that affect trade between Northern Ireland and the EU. This means that at the end of the transition period the EU law on State aid may continue to apply directly in the UK in respect of State aid measures which fall within the scope of the Northern Ireland Protocol. As noted in paragraph 2.15, clauses in the UK Internal Market Bill currently before Parliament will, if necessary, enable regulations to be made setting out how Article 10 should be interpreted for domestic law purposes. Accordingly, this instrument will be of no practical application in relation to such measures.

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

- 5.1 The Minister for Small Business, Consumers and Labour Markets has made the following statement regarding Human Rights:

“In my view the provisions of the State Aid (Revocation etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

### **6. Legislative Context**

- 6.1 This instrument is being made using the powers in section 8 and section 8C of the Withdrawal Act. Section 8 provides for a Minister to make such provision as the Minister considers appropriate to prevent, remedy or mitigate: (a) any failure of retained EU law to operate effectively; or (b) any other deficiency in retained EU law, in both cases arising from any aspect of the withdrawal of the United Kingdom from

the EU (including the end of the transition period and any other effect of the Withdrawal Agreement). Section 8C provides for a Minister to make appropriate provision for the purposes of dealing with matters arising out of, or related to, the Northern Ireland Protocol. This instrument is also made under the powers in paragraph 21 of Schedule 7 to the Withdrawal Act, which allow for consequential and transitional provision to be made.

- 6.2 In this context, the section 8 power is being used to revoke and disapply EU law which would otherwise be preserved as retained EU law, and which will contain fundamental deficiencies which will make it inoperable in the UK after the end of the transition period. This retained EU law will have no practical application in relation to the UK and is otherwise redundant after the end of the transition period.
- 6.3 First, the directly effective TFEU rights relating to State aid are being disapplied (so far as they are not given effect in the UK under Article 10 of the Northern Ireland Protocol). These rights would otherwise continue after the end of the transition period to be recognised and available in domestic law in accordance with section 4 of the Withdrawal Act. The main State aid rights are those derived from Articles 107(1) and 108(3) of the TFEU. The two Articles are dependent on each other and together create a prohibition against the granting of State aid unless it has been approved by the Commission. This right could be enforced directly in the national court (known as a breach of standstill claim). The State aid rights derived from these articles are therefore disapplied by regulation 3 of this instrument.
- 6.4 The Department considers that Article 346(1) of the TFEU also has direct effect in relation to State aid insofar as it narrows the scope of Articles 107(1) and 108(3). Article 346(1) enables EU Member States to take certain measures connected with the production of or trade in arms, munitions and war material which are considered necessary for the protection of its essential security interests. It is possible to demonstrate in a national court that an aid measure is covered by Article 346(1) and is therefore not in breach of the standstill obligation. Article 346(1), so far as it operates to restrict the application of Articles 107(1) and 108(3) will be preserved by section 4 of the Withdrawal Act. Regulation 3 of this instrument will disapply Article 346(1) to this extent.
- 6.5 Second, the direct EU legislation preserved by section 3 of the Withdrawal Act (so far as it is not given effect in the UK under Article 10 of the Northern Ireland Protocol) is being revoked. The legislation which would otherwise be preserved by section 3 relevant to this instrument is:
  - Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty and subsequent EU Regulations which amend it;
  - Council Decision (2010/787/EU) of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;
  - Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid and subsequent EU Regulations which amend it;

- Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union;
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (the “General Block Exemption Regulation”) and subsequent EU Regulations which amend it;
- Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (the “Agricultural Block Exemption Regulation”) and subsequent EU Regulations which amend it;
- Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (the “Fisheries Block Exemption Regulation”);
- Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest and subsequent EU Regulations which amend it;
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid and subsequent EU Regulations which amend it;
- Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector;
- Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector;
- Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest;
- Individual decisions of the Commission addressed to the UK;
- Specific provisions relevant to State aid contained in EU Regulations made under Article 42 TFEU, namely Article 211 of Regulation (EU) No 1308/2013 (CAP Common Organisation of the Markets Regulation), Article 13 of Regulation (EU) No 1307/2013 (CAP Direct Payments Regulation), Article 81 of Regulation (EU) No 1305/2013 (CAP Rural Development Regulation) and Article 27 of Regulation (EU) No 1144/2014 (Agricultural Promotions Regulation).

6.6 The section 8C power is being used to amend the Financial Transparency (EC Directive) Regulations 2009. These constitute EU-derived domestic legislation and will continue to have effect in domestic law after the end of the transition period

under section 2 of the Withdrawal Act. These regulations implement the Financial Transparency Directive in the United Kingdom. The Financial Transparency Directive will continue to apply to the UK under Article 10 of the Northern Ireland Protocol, but only in respect of those measures which fall within the scope of the Northern Ireland Protocol (see paragraph 2.17).

- 6.7 This instrument also makes consequential amendments to provisions contained in other retained EU law and UK domestic legislation which cross refer to the State aid rules. These amendments ensure that the provisions will continue to operate appropriately after the end of the transition period when State aid rules will not form part of domestic law.

## **7. Policy background**

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

- 7.1 This instrument is being made to disapply and revoke retained EU State aid rules that are preserved by section 3 and 4 of the Withdrawal Act on and after the end of the transition period. The purpose of the instrument is to provide legal certainty for businesses and granting authorities and reflects the Government's position that EU State aid rules will no longer apply after the end of the transition period. Existing WTO rules, such as the Agreement on Subsidies and Countervailing Measures, will continue to apply after the end of the transition period and Article 10 of the Northern Ireland Protocol and the provisions of the European Union (Withdrawal Agreement) Act 2020 will continue to apply the State aid rules to financial assistance that affect trade between Northern Ireland and the EU. The Government has announced that at the end of the transition period the UK will follow WTO rules and other international commitments. The Government will also consult on whether to go further, including whether legislation is necessary.

## **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 Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.
- 8.2 The instrument is also made under the powers in section 8C of the Withdrawal Act to make appropriate provision for the purposes of dealing with matters arising out of, or related to, the Northern Ireland Protocol, and the powers in paragraph 21 of Schedule 7 to the Withdrawal Act, which allow for consequential and transitional provision to be made.
- 8.3 In accordance with the requirements of the Withdrawal Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 This Instrument does not contain consolidation provisions.

## **10. Consultation outcome**

- 10.1 While a public consultation has not been conducted for this instrument, there have been technical discussions with the devolved administrations and other government departments.

## **11. Guidance**

- 11.1 The UK Government will publish guidance for UK public authorities to explain how the new subsidy control arrangement will apply to the UK from 1 January 2021. This will cover the WTO rules on subsidies and any international commitments made in free trade agreements.

## **12. Impact**

- 12.1 There is no significant impact on business, charities, or voluntary bodies as a result of this SI.
- 12.2 This instrument will have an impact on the public sector (government and local authorities), as they will no longer have to consider the implications of the EU State aid rules when granting aid unless the aid measure falls within scope of the Northern Ireland Protocol. This should mean a reduced administrative burden for public sector aid grantors. They will, however, need to be cognisant of the relevant WTO rules.
- 12.3 As set out in the Better Regulation Executive Guidance, a de minimis self-certification has been prepared in place of a full Impact Assessment as this instrument does not add or reduce costs on business by over  $\pm$ £5m for Net Present Value or Equivalent Annual Net Direct Costs to Business.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses but imposes no burdens on them.

## **14. Monitoring & review**

- 14.1 There are no monitoring or review requirements associated with this instrument.

## **15. Contact**

- 15.1 Daniel Arnold at the Department for Business, Energy and Industrial Strategy - Telephone: 0300 068 5775 or email: Daniel.Arnold@beis.gov.uk - can be contacted with any queries regarding the instrument.
- 15.2 Briony Turner at the Department for Environment, Food and Rural Affairs - Telephone: 07867190319 or email: Briony.Turner@defra.gov.uk - can be contacted with any queries regarding provisions in the instrument relating to agriculture and fisheries.
- 15.3 Eve Cinnirella Deputy Director for Subsidy Control in the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Paul Scully MP, Minister for Small Business, Consumers and Labour Markets at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.



# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-Delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## **Part 2**

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

#### **1. Appropriateness statement**

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

“In my view the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 do no more than is appropriate”.

- 1.2 This is the case because the regulations contain measures to disapply or revoke retained EU law which will have no practical application in the UK after the end of the transition period and will be wholly redundant. See section 2 of the main body of this memorandum for further explanation of the changes made and the reasons for those changes.

#### **2. Good reasons**

- 2.1 The Minister for Small Business, Consumers and Labour Markets, 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 See sections 6 and 7 of the main body of this memorandum for further detail about the changes made by this instrument and the reasons for those corrections. In summary though, the instrument is necessary to provide legal certainty for businesses and granting authorities by ensuring that EU State aid law is not be preserved as retained EU law on and after the end of the transition period.

#### **3. Equalities**

- 3.1 The Minister for Small Business, Consumers and Labour Markets has made the following statement:

“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.”

- 3.2 The Minister for Small Business, Consumers and Labour Markets has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Paul Scully 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.”

- 3.3 In looking at the equalities impact, we need to distinguish between the decision to award aid and the rules which apply to this award of aid. The State aid rules set the conditions under which aid can be granted. They only apply to granting authorities

and undertakings (any entity regardless of form which engages in economic activity) and not to individuals in their private capacity. They are completely separate to a decision of exactly who should benefit from aid, at which point assessment of discrimination for Public Sector Equality Duty (PSED) purposes may become more relevant.

3.4 Public authorities wishing to grant aid, will still be subject to the PSED in respect of their functions, including in making any decisions on subsidies.

#### **4. Explanations**

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