
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by sections 8(1), 8B(1) and (2) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (“the Withdrawal Act”), and section 41(1) and (5) of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Chapter 9 of Part 2 of these Regulations (extradition) is also made in part in reliance on various powers in the Extradition Act 2003 (c. 41).

Part 2 of these Regulations amends the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/742) (“the law enforcement regulations”), and Part 3 amends the Criminal Justice (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/780) (“the criminal justice regulations”). These instruments were the means by which amendment was made to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union, and to make savings and transitional provision in respect of certain law enforcement matters and procedures which had begun but not been completed before the end of the transitional period.

The purpose of these Regulations is to amend the law enforcement regulations and the criminal justice regulations in light of Title V and, in so far as it relates to police and judicial cooperation, Title VII of Part 3 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“the withdrawal agreement”). Title V makes provisions in respect of ongoing police and judicial cooperation in criminal matters, relating to certain EU instruments for law enforcement cooperation and information exchange. Title VII makes provision in respect of data and information processed or obtained before the end of the transition period or in relation to ongoing proceedings under the withdrawal agreement. Similar provisions are made in Title III and Title IV of Part 3 of the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union (“the EEA EFTA separation agreement”). These provisions are referred to in both agreements as “other separation issues”.

Generally, the other separation issues preserve the application of particular EU measures in respect of any matters or procedures begun (but not completed) before the end of the transition period. In addition, they preserve the applicable law on personal data and confidential treatment and restricted use of data and information, in respect of data and information stocks accrued or exchanged in relation to those transitional cases. By virtue of sections 7A and 7C of the Withdrawal Act, rights, powers, obligations, remedies etc as they arise or are created from time to time in the withdrawal agreement are given legal effect in the legal system of the United Kingdom (and sections 7B and 7C make similar provision in relation to the EEA EFTA separation agreement).

Additionally, these Regulations make further provision to address deficiencies in retained EU law (in particular under section 8(2)(a) to (d) and (g) of the Withdrawal Act) arising from the withdrawal of the United Kingdom from the European Union, in relation to EU law in the law enforcement and security sphere that has come into force since the law enforcement regulations were made, or where further deficiencies in existing retained EU law have been identified.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is published with the Explanatory Memorandum alongside this

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020 No. 1408*

instrument on www.legislation.gov.uk; copies may be obtained from the Home Office at 2 Marsham Street, London SW1P 4DF.