

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (UPDATING OF EU REFERENCES) (AMENDMENT)
REGULATIONS 2018

2018 No. 1084

AND

THE SOCIAL SECURITY (UPDATING OF EU REFERENCES) (AMENDMENT)
(NORTHERN IRELAND) REGULATIONS 2018

2018 No. 1085

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These instruments update out-of-date cross-references to European Union ('EU') legislation, and ensure that cross-references to EU legislation are up to date on exit day before the European Communities Act 1972 is repealed by the European Union (Withdrawal) Act 2018. These updates will ensure these cross references then point to the retained version of the EU law pursuant to the European Union (Withdrawal) Act 2018.

2.2 This updating of cross references ensures the UK fulfils its current duty of sincere co-operation, and also ensures that retained EU law functions correctly following the UK's exit from the European Union.

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 As the instruments are 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 territorial extent of these instruments is the United Kingdom.

4.2 The territorial application of The Social Security (Updating of EU References) (Amendment) Regulations 2018 is Great Britain.

¹ <http://www.legislation.gov.uk/ukpga/1972/68/contents>

² <http://www.legislation.gov.uk/ukpga/2018/16/contents>

- 4.3 The territorial application of The Social Security (Updating of EU References) (Amendment) (Northern Ireland) Regulations 2018 is Northern Ireland.
- 4.4 While the process of restoring devolution in Northern Ireland continues, the Social Security (Updating of EU References) (Amendment) (Northern Ireland) Regulations 2018 are being progressed by the Secretary of State for Work and Pensions. The Department for Communities in Northern Ireland has agreed the text of the proposed amendments.

5. European Convention on Human Rights

- 5.1 The Rt. Hon. Alok Sharma MP, Minister for Employment at the Department for Work and Pensions, has made the following statement regarding Human Rights:

“In my view the provisions of The Social Security (Updating of EU References) (Amendment) Regulations 2018 and The Social Security (Updating of EU References) (Amendment) (Northern Ireland) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 DWP’s EU obligations are contained in directly applicable EU legislation, with only consequential provision made in domestic legislation. However, DWP’s domestic legislation contains various instances of out of date cross-references to EU legislation. To ensure that the statute book accurately reflects DWP’s obligations before exit day, these references need to be updated before the European Communities Act 1972, which provide powers to make these updates, is repealed by the European Union (Withdrawal) Act 2018. The Regulations will ensure cross references to EU legislation are up to date when the UK exits the European Union so that by virtue of the EU (Withdrawal) Act's provisions, the cross-references will refer to EU legislation as retained on exit day.

7. Policy background

What is being done and why?

- 7.1 DWP’s domestic legislation contains various instances of out of date cross-references to EU legislation. These need to be updated before the European Communities Act 1972, which provides powers to make these updates, is repealed by the European Union (Withdrawal) Act 2018. These Regulations will ensure cross references to EU legislation are up to date when the UK exits the European Union so that by virtue of the EU (Withdrawal) Act's provisions, the cross-references will refer to the retained EU legislation.
- 7.2 These regulations make no policy changes. This updating of cross references ensures the UK fulfils its current duty of sincere co-operation, and also ensures that retained EU law functions correctly following the UK’s exit from the European Union.
- 7.3 The amendments updating these references span many areas (both primary and secondary legislation), but some examples are:
- The Social Security Contributions and Benefits Act 1992³, Section 122 – this amendment is typical of the one we need and is to ensure that domestic legislation is referring to the most current version of EU Regulations

³ <http://www.legislation.gov.uk/ukpga/1992/4>

1408/1971⁴ and 883/2004⁵. Unlike domestic legislation we need specifically to say that EU legislation applies as amended – in technical terms this makes the reference “ambulatory”.

- The Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983⁶ – this includes a reference to EU Regulation 883/2004 in addition to the EU Regulation 1408/1971 reference.
- The Income Support (General) Regulations 1987⁷: this is to update a provision so that it refers to the Treaty on the Functioning of the European Union rather than the Treaty establishing the European Community.

7.4 The Northern Ireland Regulations make corresponding amendments to Northern Ireland legislation.

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

8.1 These instruments do not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via ‘the National Archives’ website www.legislation.gov.uk. Informal consolidated text of social security law in Northern Ireland is available free of charge to the public via the Department for Communities website <http://iaccess.communities-ni.gov.uk/sspldbluevolumesinternet/users/internetsearchpage.aspx>

10. Consultation outcome

10.1 As these instruments make purely technical changes to UK legislation domestic references to European Union law, and make no policy changes, consultation was not viewed as necessary.

11. Guidance

11.1 Guidance has not been produced as these instruments make only technical changes.

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 these instruments because they only make purely technical changes to references to European Union law, and as such do not give rise to any new costs and do not have any financial or economic impact beyond the status quo.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

⁴ <https://publications.europa.eu/en/publication-detail/-/publication/81312945-046b-4697-9712-905771f1bd77>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R0883>

⁶ <http://www.legislation.gov.uk/ukxi/1983/1598>

⁷ <http://www.legislation.gov.uk/ukxi/1987/1967>

14. Monitoring & review

- 14.1 As these instruments only make technical changes to references to European Union law no monitoring or review of these instruments is required.

15. Contact

- 15.1 Paris Rayman-Bacchus at the Department for Work and Pensions Telephone: 0207 340 4342 or email: paris.rayman-bacchus@dwp.gsi.gov.uk can be contacted with any queries regarding the instruments.
- 15.2 Neil Hodgson, Head of EU Exit Policy at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt. Hon. Alok Sharma MP, Minister for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.