

## EXPLANATORY MEMORANDUM TO

### THE PREPARATORY ACTION ON DEFENCE RESEARCH AND EUROPEAN DEFENCE INDUSTRIAL DEVELOPMENT PROGRAMME (EU EXIT) REGULATIONS

2019 No. 1114

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence 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 This instrument addresses deficiencies that would arise in an EU Regulation and European Commission Decisions and puts in place contingency arrangements that may be needed, should the UK leave the EU with no deal in place.
  - 2.2 This instrument revokes the European Commission Decisions of 11 April 2017, 9 March 2018 and 19 March 2019 on the financing of the Preparatory Action on Defence Research (the “PADR Financing Decisions”); Regulation (EU) No 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme (the “EDIDP Regulation”) and the Implementing Decision of the European Commission of 19 March 2019 (the “Implementing Decision”), as retained in domestic law under the European Union (Withdrawal) Act 2018 (“the Act”).
  - 2.3 In line with the terms of the Government guarantee in relation to EU-funded programmes (the “HMG guarantee”) given in 2016 and extended in July 2018 (notified to Parliament in written statement HCWS926), the instrument will give powers to the Secretary of State to provide financial assistance in relation to UK participants in the Preparatory Action on Defence Research and the European Defence Industrial Development Programme (together “the Programmes”), in the event that the European Commission ceases to provide funding to UK participants on or after exit day on account of the UK’s withdrawal from the EU with no deal in place.

#### *Explanations*

What did any relevant EU law do before exit day

Preparatory Action on Defence Research (“PADR”)

- 2.4 The PADR is an EU-funded programme managed by the European Commission and implemented by the European Defence Agency, aimed at testing the feasibility of EU-funded defence research cooperation. This programme runs over three years (2017 – 2019) and serves as a test for a potential full-scale EU defence research programme under the next Multi-Annual Framework (2021-2027), i.e. the European Defence Fund. The total targeted budget for the PADR is €90 million over 2017-2019.

- 2.5 The PADR 2017 and 2018 programmes are ongoing and UK companies are participating. The PADR 2019 calls for proposals opened on 21 March 2019; the deadlines for submissions are dependent on the work stream and staggered from 28 August 2019 until 30 January 2020.

*European Defence Industrial Development Programme (“EDIDP”)*

- 2.6 EDIDP was established by Regulation (EU) 2018/1092 from 1 January 2019 to 31 December 2020; it is an industrial programme of the EU aimed at supporting the competitiveness and innovation capacity of the EU’s defence industry.
- 2.7 The programme, with a financial envelope of €500 million, will co-finance the joint development of defence products and technologies. The calls for proposals are based on a two-year work programme agreed in cooperation with EU countries. It was adopted by the European Commission on 19 March 2019. The Implementing Decision adopts the work programme for the EDIDP and its budget and clarifies the provisions for the management and administration of the budget and programme.
- 2.8 The calls for proposals opened on 9 April 2019 and applicants will have until 29 August 2019 to submit their proposals.

Why is it being changed?

- 2.9 The regulation and decisions being revoked put in place internal EU conditions, methods and procedures for EU funding to be provided under the Programmes. As the regulation and decisions relating to the Programmes generally deal with internal EU mechanisms, on exit, they will become redundant and serve no purpose as “retained EU law” under section 3 of the Act. The instrument therefore revokes the regulation and decisions.
- 2.10 Whilst the revocation of the regulation and decisions does not affect the validity, for the purposes of EU law, of grants awarded under the Programmes, UK organisations or persons who have had approved grants may no longer be able to receive funding due to the withdrawal of the UK from the EU without a deal in place and the projects may no longer be able to continue, without further action.
- 2.11 To mitigate this, the HMG Guarantee was announced by HM Treasury. The Ministry for Defence will be responsible for delivering any payments due under the Guarantee in respect of the Programmes and will need spending powers to make such payments.

What will it do now?

- 2.12 This instrument revokes the PADR Financing Decisions, the EDIDP Regulation and its Implementing Decision. It also makes transitional provisions creating a power for the Secretary of State to make payments to enable the delivery of the HMG Guarantee.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Sifting Committees*

- 3.1 The instrument was laid for sifting under paragraph 3 of Schedule 7 to the European Union (Withdrawal) Act 2018, on 13 June 2019, by the Minister for the Armed Forces. He considered that the appropriate Parliamentary procedure for the instrument was that it should be subject to annulment in pursuance of a resolution of either House

of Parliament (i.e. the “negative procedure”). The Secretary of State made a statement to that effect as detailed in Part 2 of the Annex to this Explanatory Memorandum.

- 3.2 The Secondary Legislation Scrutiny Committee of the House of Lords, at its meeting on 18 June 2019, scrutinised the instrument and agreed that the negative procedure should apply to the instrument.
- 3.3 The European Statutory Instruments Committee of the House of Commons, at its meeting on 18 June 2019, scrutinised the instrument and agreed that the negative procedure should apply to the instrument.
- 3.4 If the UK departs the EU with no deal in place, funding for the Programmes, which has previously been agreed by or on behalf of the European Commission, may not be paid out. This instrument grants the Secretary of State the powers needed from Exit day to deliver the HMG Guarantee in cases where UK organisations have bid under the Programmes directly to the European Commission until the end of 2020 and their bids are approved but they are unable to receive funding due to the withdrawal of the UK from the EU with no deal in place.

***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)***

- 3.5 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 territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

*Financing Decisions on PADR*

- 6.1 The European Commission Decisions of 11 April 2017, 9 March 2018 and 19 March 2019 on the financing of PADR establish the annual work programmes, budgets, the administration of the budgets and the method of implementation of the programme.  
European Defence Industrial Development Programme
- 6.2 The European Regulation No 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishes the EDIDP from 1 January 2019 to 31 December 2020, sets out its objectives, overall budget envelope and the framework for the operation and administration of the programme.  
The Implementing Decision of the European Commission 19 March 2019
- 6.3 The Implementing Decision adopts the work programme for the EDIDP and its budget and clarifies the provisions for the management and administration of the budget and programme.

- 6.4 These regulations will constitute “retained EU law” as defined in section 6(7) of the Act (namely “direct EU legislation” under section 3 of the Act).
- 6.5 This instrument is made using the powers in section 8 (1) of the Act to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the EU.

## **7. Policy background**

### *What is being done and why*

#### Revocation of legislation

- 7.1 The Act repeals the European Communities Act 1972 on the day that the UK leaves the EU. The Act ends the supremacy of EU law in UK law, converts EU law as it stands at the moment of exit into domestic law, and preserves laws made in the UK to implement EU obligations. It creates temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU, so that the domestic legal system continues to function correctly outside the EU.
- 7.2 This instrument revokes the PADR Financing Decisions, the EDIDP Regulation and the Implementing Decision.
- 7.3 The PADR Financing Decisions, the EDIDP Regulation and the Implementing Decision establish the frameworks for the operation of the Programmes, set the EU internal priorities and processes for managing the funding from the EU Budget. After leaving the EU, the UK will no longer be a Member State and no longer subject to EU internal procedures. As such the above Decisions and Regulation should be revoked.
- HMG Guarantee
- 7.4 In 2016 the Chancellor announced that the Government would guarantee funding to organisations delivering projects awarded through EU direct bid grant funds, including where such projects continue beyond the UK’s departure from the EU. This was extended, as notified to Parliament by Written Ministerial Statement in July 2018, to cover the payment of awards under successful competitive bids until the end of 2020. The HMG Guarantee will only be needed in the event that the UK leaves the EU with no deal.
- 7.5 The instrument creates transitional provisions to enable the delivery of the HMG Guarantee. It provides a legal basis for delivery of the HMG Guarantee for the Programmes where UK organisations have bid under the Programmes directly to the European Commission until the end of 2020 and their bids are approved but they are unable to receive funding should the UK leave the EU without a deal in place.
- 7.6 The PADR 2017 - 2019 has three annual programmes and British companies are participating in the 2017 and 2018 programmes, with interest in the 2019 programme. The EDIDP call for proposals is currently open.
- 7.7 In this context, the total financial assistance required by the HMG Guarantee in respect of the Programmes can only be estimated. The total cost is dependent on certain unknown factors including when the UK leaves the EU; the payments already

disbursed by the EU; progress of the programmes; whether British companies choose to compete in the PADR 2019 and the EDIDP and whether they succeed in winning grants. Furthermore, there is also the uncertainty of the EU's position and whether it allows the projects to continue.

- 7.8 However, the Ministry of Defence has engaged with British industry and estimate that the total financial assistance required will be less than £2.5 million. The Ministry of Defence would be willing to return to Parliament if this figure is exceeded.

## **8. European Union (Withdrawal) Act**

- 8.1 This instrument is being made using the power in section 8 of the Act 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 paragraph 21 of Schedule 7 to the Act. 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.

## **9. Consolidation**

- 9.1 The Ministry of Defence has no plans to consolidate the legislation covered by this instrument.

## **10. Consultation outcome**

- 10.1 The Ministry of Defence has engaged with organisations funded through the Programmes to understand their operations, potential UK liability under HMG Guarantee and the funding arrangements within the EU. These discussions have informed plans to deliver the HMG Guarantee.
- 10.2 The activity funded by the programmes do not fall within areas of devolved competence.

## **11. Guidance**

- 11.1 The Ministry of Defence is not producing any specific guidance on this instrument at this stage. However, detailed guidance on the HMG Guarantee is available. Further information regarding the HMG Guarantee can be found in the Chief Secretary to the Treasury's Written Ministerial Statement - HCWS926 - and in the "Guidance on how to prepare for Brexit if there's no deal", specifically the guidance on "The government's guarantee for EU-funded programmes if there's no Brexit deal" published on 3 December 2018.<sup>1</sup>
- 11.2 The Ministry of Defence has engaged directly with all the current recipients of the Programmes.

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<sup>1</sup> <https://www.gov.uk/government/publications/the-governments-guarantee-for-eu-funded-programmes-if-theres-no-brex-it-deal/the-governments-guarantee-for-eu-funded-programmes-if-theres-no-brex-it-deal>.

## **12. Impact**

- 12.1 The impact on businesses is that the Secretary of State may provide financial assistance in relation to projects awarded through the Programmes if the EU ceases to do so. The number of British companies affected is small. It does not represent a policy change
- 12.2 There is no impact on the public sector, charity or volunteer sector.
- 12.3 An impact assessment has not been prepared for this instrument because the expected impact on business is insignificant and the funding figures are relatively low.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses, if they are recipients of EU funding, but this does not represent a policy change with respect to small businesses, including micro-entities.

## **14. Monitoring & review**

- 14.1 As this instrument is made under the Act, no review clause is required.

## **15. Contact**

- 15.1 Tracy Sexton, CLS Sec1, Ministry of Defence, email: Tracy.Sexton743@mod.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Dr Chris Moore-Bick, Head, DST-S&T Policy, Strategic Research and International Engagement can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State, Penny Mordaunt at the Ministry of Defence 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. Sifting statement(s)**

- 1.1 The Secretary of State for Defence has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Preparatory Action on Defence Research and European Defence Industrial Development Programme (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument makes change of a technical nature and does not make policy changes. Although the instrument provides a power for the Secretary of State to provide financial assistance in certain circumstances, this is in pursuance of a central policy on the HMG guarantee which has previously been notified to Parliament by HM Treasury.

#### **2. Appropriateness statement**

- 2.1 The Secretary of State for Defence has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Preparatory Action on Defence Research and European Industrial Development Programme (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case because the instrument revokes certain retained EU law on the basis that it is redundant or concerns arrangements relating to the EU which are no longer appropriate after exit. The transitional provisions, which provide new spending powers for the Secretary of State, do no more than is necessary to allow the Secretary of State to deliver the HMG Guarantee in respect of the Programmes.

#### **3. Good reasons**

- 3.1 The Secretary of State for Defence 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 set out in sections 7.1 – 7.3 and 10.1 and 10.2 in the Explanatory Memorandum document.

#### **4. Equalities**

- 4.1 The Secretary of State has made the following statement:

“The 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 Secretary of State for Defence has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Penny Mordaunt, Secretary of State for Defence 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 section 2 of the main body of this Explanatory Memorandum.