

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (CORRECTION TO MISCELLANEOUS AMENDMENTS)
(ENGLAND) (EU EXIT) REGULATIONS 2019

2019 No. 727

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 Section 3 of this memorandum contains information of special interest for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations make one minor amendment to the Childcare (Miscellaneous Amendments) (EU Exit) (England) Regulations 2018 (“the 2018 regulations”), which were laid before the House on 1 November 2018 and come into force at 11.00 pm on 29th March 2019.
- 2.2 The minor drafting change amends reference to the coming into force date of the 2018 regulations to “exit day” so that it is consistent with section 20 of the European Union (Withdrawal) Act 2018.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In its letter to the Department for Education of 21st November 2018, the Joint Committee on Statutory Instruments (JCSI) requested a memorandum on whether it was intended that the 2018 regulations come in to force at 11.00 pm on 29 March 2019 even if the definition of exit day is amended in accordance with section 20(4) of the European Union (Withdrawal) Act 2018. The Department for Education responded to confirm that was not the intention; this was a drafting error, and the intention is for the Regulations to come into force on “exit day”, as defined in the European Union (Withdrawal Act) 2018. The department committed to amend the 2018 regulations at the earliest opportunity.
- 3.2 On 22 March 2019, the European Council adopted decision 2019/4/6 (OJ No. L 80 I, 22.03.2019, p.1) to extend the period provided for in Article 50(3) TEU. This extension will be until 22 May 2019, in the event that the withdrawal agreement is approved by the House of Commons (by 29 March 2019 at the latest), or until 12 April 2019, in the event that the withdrawal agreement is not approved by the House of Commons by 29 March 2019.
- 3.3 The United Kingdom agreed to this decision by a letter dated 22 March 2019 from the Permanent Representative of the United Kingdom to the EU, in accordance with Article 50(3) TEU. This European Council decision and the United Kingdom’s agreement to it constitute a binding agreement to extend in EU and international law. This means the UK remains a Member State until 11pm on 29 March 2019.
- 3.4 On 25 March 2019, the government laid the draft European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) Regulations 2019 (“the Exit Day Amendment

Regulations”) to amend the definition of “exit day” to bring domestic law in line with the agreement at the international level.

- 3.5 These Regulations correct the drafting error identified by the JCSI and in anticipation of the amendment to the definition of “exit day” by way of the draft Exit Day Amendment Regulations.
- 3.6 This amendment therefore ensures the commencement date for the 2018 regulations aligns with the definition of “exit day” as explained in the explanatory memorandum to the draft Exit Day Amendment Regulations¹.
- 3.7 These Regulations will come into force at 10.00 p.m. on 29th March 2019. This is before when the 2018 regulations are due to take effect (11.00 p.m. on 29th March 2019). This instrument therefore comes into force less than 21 days after it is laid. This is because urgent action is required to align the 2018 regulations with the new date of the UK’s departure from the EU and ensure the correct functioning of the domestic statute book. Further detail about the impact of breaching the 21 day rule is set out in section 7 of this explanatory memorandum.

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)

- 3.8 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 England and Wales.
- 4.2 The territorial application of this instrument is England only.

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

- 6.1 These Regulations will amend the 2018 regulations which relate to information sharing provisions between England and national childcare regulators in the EEA, after the UK’s withdrawal from the EU, for the purpose of protecting children from harm or neglect.
- 6.2 These Regulations amend reference to the coming into force date of the 2018 regulations to “exit day” so that it is consistent with section 20 of the European Union (Withdrawal) Act 2018.

7. Policy background

What is being done and why?

- 7.1 The 2018 regulations were laid before Parliament on 1 November 2018. Those regulations made minor amendments related to information sharing provisions

¹ <http://www.legislation.gov.uk/ukdsi/2019/9780111184622/memorandum/contents>

between England and national childcare regulators in the EEA as a consequence of the UK's withdrawal from the EU.

- 7.2 This instrument simply corrects defective drafting in the 2018 regulations, substituting "exit day" for "11.00 pm on 29th March 2019". This is a technical change to ensure that those regulations take effect on "exit day" as defined in the European Union (Withdrawal) Act 2018 and will align with changes made via the Exit Day Amendment Regulations.
- 7.3 As set out in section 3, these Regulations will come into force less than 21 days after they are laid. Delaying the legislation to meet the 21 day rule would render the 2018 regulations in breach of international law, as the 2018 regulations would imply that the United Kingdom is not an EU Member State. For the sector, the Department considers there would be a negligible impact, as both Ofsted and Childminder agencies have confirmed that the information-sharing provisions which the 2018 regulations updated are not routinely used.
- 7.4 The Department considers bringing these Regulations into force before the 2018 regulations take effect is necessary to bring clarity in domestic law in the simplest manner, and avoid any period of uncertainty. Delaying the legislation would instead require the 2018 regulations to be revoked, only to be re-made again in anticipation of the UK's departure from the European Union.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but made under sections 84(1) and (3), 84A(1) and (3), 90(2) and 104(2) of the Childcare Act 2006 as these powers allow for these changes to be made. This instrument makes minor drafting changes to reflect the status of the UK after leaving the EU on "exit day".

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 No formal public consultation has been undertaken because no substantial changes are being made to existing regulations.

11. Guidance

- 11.1 No guidance is required.

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 this instrument because it falls below the threshold for requiring one.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. However this instrument is merely amending the coming into force date. Details of the impact on small businesses are set out in the original Explanatory Memorandum to the 2018 regulations.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 There are no plans to monitor or review this legislation.

15. Contact

- 15.1 John Trakos at the Department for Education Telephone: 020 7340 7050 or email: John.Trakos@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Susie Owen, Deputy Director for Early Years Quality, Outcomes and Providers at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nadhim Zahawi, Parliamentary Under Secretary of State for Children and Families, can confirm that this Explanatory Memorandum meets the required standard.