

EXPLANATORY MEMORANDUM TO
THE CIVIL, CRIMINAL AND FAMILY JUSTICE (AMENDMENT) (EU EXIT)
REGULATIONS 2020

2020 No. 1493

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice 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 amends the following statutory instruments (the Exit SIs) to ensure they clearly reflect the UK's obligations under the relevant paragraphs of Articles 67, 68 and 69 of the [Withdrawal Agreement](#)¹, which make provision for the treatment of matters which are ongoing at the end of the Transition Period:

- the Service of Documents and Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provisions) (EU Exit) Regulations 2018² (the Service and Evidence Exit SI);
- the European Enforcement Order, European Order for Payment and European Small Claims Procedure (Amendment etc.) (EU Exit) Regulations 2018³ (the European Procedures Exit SI);
- the Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019⁴ (the Mediation Exit SI);
- the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019⁵ (the Civil Exit SI);
- the Mutual Recognition of Protection Measures in Civil Matters (Amendment) (EU Exit) Regulations 2019⁶ (the CPM Exit SI);
- the Civil Legal Aid (Amendment) (EU Exit) Regulations 2019⁷ (the Legal Aid Exit SI);
- the Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019⁸ (the FPR and COPR Exit SI);
- the Civil Procedure Rules 1998 (Amendment) (EU Exit) Rules 2019⁹ (the CPR Exit SI); and

¹ 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

² [2018 No. 1257](#)

³ [2018 No. 1311](#)

⁴ [2019 No. 469](#)

⁵ [2019 No. 479](#)

⁶ [2019 No. 493](#)

⁷ [2019 No. 505](#)

⁸ [2019 No. 517](#)

⁹ [2019 No. 521](#)

- the Criminal Justice (Amendment etc.) (EU Exit) Regulation) 2019¹⁰ (the Criminal Justice Exit SI).
- 2.2 This instrument also amends the Civil Exit SI, the Legal Aid Exit SI, the FPR and COPR Exit SI and the CPR Exit SI to update references to ‘exit day’ to ‘IP completion day’. The Exit SIs were made before the Withdrawal Agreement was concluded and while their commencement was delayed by the European Union (Withdrawal Agreement) Act 2020 (the 2020 Act), references to ‘exit day’ in substantive provisions were not amended. This SI therefore amends the Exit SIs listed in order to update references to ‘exit day’.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The EU law relevant to this instrument is the following EU legislation¹¹ (the EU legislation):
- Regulation (EC) No 1393/2007 (the Service of Documents Regulation), which provides rules on the service of judicial and extrajudicial documents in civil or commercial matters;
 - Council Regulation (EC) No 1206/2001 (the Taking of Evidence Regulation), which provides rules on cooperation between the courts of Member States in the taking of evidence in civil or commercial matters;
 - Regulation (EC) No. 805/2004 (the EEO Regulation), which creates the European Enforcement Order for uncontested claim;
 - Regulation (EC) No. 1896/2006 (the EOP Regulation), which creates the European order for payment procedure;
 - Regulation (EC) No. 861/2007 (the ESCP Regulation), which establishes the European Small Claims Procedure;
 - Directive 2008/52/EC (the Mediation Directive), which seeks to harmonise certain aspects of mediation in relation to EU cross-border disputes, with the aim of promoting its use in those EU cross-border disputes;
 - Regulation (EU) No 1215/2012 (Brussels Ia), which provides rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
 - Regulation (EU) No 606/2013 (the CPM Regulation), which creates a regime for the mutual recognition of protection measures in civil matters;
 - Council Decision 2001/470/EC (the EJM Directive), which establishes a European Judicial Network in civil and commercial matters;
 - Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (the Legal Aid Directive); and

¹⁰ [2019 No. 780](#)

¹¹ Also relevant are various EU instruments which have been replaced or superseded by the instruments referred to in paragraph 2.1 but which continue to apply for the purpose of the Withdrawal Agreement, associated EU decisions and international agreements that are related to the Exit SIs which continue to apply to the UK by virtue of the Withdrawal Agreement.

- Council Directive 2004/80/EC (the Victims of Crime Directive), which required EU Member States to have national compensation schemes for victims of violent crime. It also set up a system of cooperation to facilitate access to compensation for victims of crime in cross-border situations.

Why is it being changed?

- 2.4 Since the Exit SIs referred to in paragraph 2.1 were made, the UK has ratified the Withdrawal Agreement and entered the Transition Period which ends at 11pm on 31 December 2020 (IP completion day) when the Exit SIs will now come into effect. Title VI of Part 3 of the Withdrawal Agreement contains ‘separation provisions’. These provide that in certain circumstances the EU legislation listed in paragraph 2.3 continues to apply in the UK after the end of the Transition Period¹² to matters that are ongoing the end of the Transition Period (transitional matters).

What will it now do?

- 2.5 This instrument makes amendments to domestic legislation to ensure that the UK’s obligations under the relevant paragraphs of Title VI of Part 3 of the Withdrawal Agreement are set out in the Exit SIs and, where appropriate, to update references to ‘exit day’ to ‘IP completion day’.
- 2.6 The explanatory memoranda accompanying the Exit SIs listed in paragraph 2.1 explain what the law will be after the amendments that they make come into force.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In its First Special Report of Session 2013-14 (excluding the inert from secondary legislation) the Committee drew attention to the inclusion of material in statutory instruments that has no legal effect and concluded that such material, if included at all, should not be presented as if it were part of the operative text. The Department acknowledges that this instrument contains such material insofar as it makes clear that the provisions of the Exit SIs do not affect the application of those paragraphs of the Withdrawal Agreement which already form part of domestic law. However, it is noted that section 8B of the European Union (Withdrawal) Act 2018 (the 2018 Act), under which this instrument is made, provides that regulations made under section 8B may (among other things) “restate, for the purposes of making the law clearer or more accessible, anything that forms part of domestic law” by virtue of section 7A of the 2018 Act and Part 3 of the withdrawal agreement.
- 3.2 The Department considers it appropriate to include such provisions in this instrument to assist understanding of how the legal framework will operation at the end of the transition period. The Department considers this makes the law clearer and more accessible, by clarifying that the relevant legislation must be read in conjunction with relevant parts of the Withdrawal Agreement

¹² The UK left the EU at 11pm GMT, 31 January 2020. The Transition Period (referred to as the ‘Implementation Period’ in the 2020 Act and this legislation) runs from that point until 11pm GMT, 31 December 2020.

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)

3.3 As the instrument is subject to the 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 varies between provisions. This instrument amends Exit SIs that themselves have varying extent, including provision extending to Northern Ireland and Scotland. In each case, any amendment made by this instrument has the same extent as the enactment that it amends.

4.2 The territorial application of this instrument varies between provisions.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Exit SIs were made in exercise of powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the 2018 Act to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

6.2 The UK withdrew from the EU on 31 January 2020. Prior to doing so, the UK ratified the Withdrawal Agreement. Under the terms of the Withdrawal Agreement, which have been generally implemented in the UK by the 2020 Act, the EU legislation listed in paragraph 2.1 continues to apply in the UK during the Transition Period.

6.3 The Withdrawal Agreement makes provision for the terms of the UK's exit from the EU including, at Title VI of Part 3, the treatment of transitional matters in civil and commercial matters as follows:

- paragraph (a) of Article 68, paragraph (3) of Article 69 and paragraph (b) of Article 68 make provision for transitional matters arising under the Service Regulation, the EU-Denmark Service Agreement and Evidence Regulation respectively;
- paragraphs 2(d), 3(d) and (e) of Article 67 make provision for transitional matters arising under the EEO, EOP and ESCP Regulations respectively;
- paragraph 1(b) of Article 69 makes provision for transitional matters arising under the Mediation Directive;
- paragraphs 1(a) and 2(a) of Article 67 make provision for transitional matters arising under the Brussels Ia Regulation;
- paragraph (2) of Article 69 makes provision for transitional matters arising under the EU-Denmark Agreement;
- paragraph (c) of Article 68 makes provision for transitional matters arising under the EJM Directive;

- paragraph 3(f) of Article 67 makes provision for transitional matters arising under the Protection Measures Regulation;
- paragraph 1(a) of Article 69 makes provision for transitional matters arising under the Legal Aid Directive; and
- paragraph 1(c) of Article 69 makes provision for transitional matters arising under the Victims of Crime Directive.

6.4 The provisions of Title VI of Part 3 of the Withdrawal Agreement are, by virtue of section 7A of the 2018 Act, directly applicable in the UK meaning the paragraphs of Articles 67, 68 and 69 of the Withdrawal Agreement specified in paragraph 6.3 above ensure that, in certain circumstances, the EU legislation listed in paragraph 2.3 of this explanatory memorandum continues to apply in the UK after the end of the Transition Period to transitional matters (the meaning of which is explained in paragraph 2.4).

7. Policy background

What is being done and why?

7.1 The Exit SIs were made in anticipation of the UK's exit from the EU in 2019 without an agreement on the terms of withdrawal. While they already contain some provision for transitional matters, they do not in all cases mirror the UK's obligations under Articles 67, 68 and 69 of the Withdrawal Agreement (which make provision for ongoing judicial cooperation in civil and commercial matters, so this instrument makes a number of amendments to ensure that those obligations are clearly reflected on the face of the Exit SIs. In addition, the Civil Exit SI, the Legal Aid Exit SI, the FPR and COPR Exit SI and the CPR Exit SI all contain references to 'exit day' in their substantive provisions which are no longer appropriate given the operative date for these instruments is now 'IP completion day' (11pm on 31 December 2020). This instrument updates those provisions to refer to 'IP completion day'.

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

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union and is being made under section 8B of and paragraph 21(b) of Schedule 7 to the 2018 Act to reflect separation issues contained within Part 3 of the Withdrawal Agreement.

8.2 Alongside the 2018 Act powers this instrument is also being made under section 41(1) of 2020 Act to amend references to 'exit day' to 'IP completion day'.

9. Consolidation

9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

10.1 There has been no public consultation because this instrument amends the Exit SIs to ensure their provisions align with the UK's obligations under the Withdrawal Agreement.

10.2 This instrument has been discussed and agreed with the Devolved Administrations of Northern Ireland and Scotland.

11. Guidance

11.1 There are no plans to publish guidance with this instrument.

12. Impact

12.1 There is no impact on business, charities, voluntary bodies or the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses because this instrument will not introduce any additional regulatory requirements.

14. Monitoring & review

14.1 As this instrument is made under the 2018 Act, no review clause is required.

15. Contact

15.1 Andrew Thompson at the Ministry of Justice: ‘Andrew.Thompson@justice.gov.uk’ can be contacted with any queries regarding the instrument.

15.2 Kristen Tiley, Deputy Director for International Justice at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alex Chalk MP, Parliamentary Under Secretary of State in the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.