

EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (WITHDRAWAL) ACT 2018 (REPEAL OF EU RESTRICTIONS IN DEVOLUTION LEGISLATION, ETC.) REGULATIONS 2022

2022 No. 357

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument repeals the limitations on devolved legislative and executive competence introduced into the devolution settlements by the European Union (Withdrawal) Act 2018 (“EUWA”), and makes further provision in consequence of the repeals. Powers introduced by EUWA provided the Government a temporary mechanism to prevent divergence by the devolved administrations from existing structures established in the UK by EU law while UK Common Frameworks were developed where needed. However, the powers have not been exercised and are no longer necessary. The repeal of the powers will also remove an ongoing statutory obligation to report to Parliament every quarter on the use of these powers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 The Minister for Levelling Up, The Union and Constitution has made the following statement regarding Human Rights:

“In my view the provisions of the European Union (Withdrawal) Act (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 12 of EUWA removed the requirements in each of the devolution statutes that the devolved legislatures can only legislate in ways that are compatible with EU law. It replaced those requirements with powers for the Government to apply, by regulations, a temporary ‘freeze’ on devolved legislative competence in specified areas, subject to the approval of the UK Parliament. If any such regulations were made, then the devolved legislatures and executives could not legislate in those areas. The powers introduced by section 12 have never been used and no new regulations

can be made after 10.59pm on 31 January 2022. Section 12 includes an ongoing duty on Ministers to consider repeal.

7. Policy background

What is being done and why?

- 7.1 The proposed instrument will repeal the powers introduced into the devolution settlements by section 12 of EUWA. Section 12 of EUWA includes a duty on the Government to consider repeal of the powers. Considering that the powers provided a temporary mechanism to prevent divergence from existing structures established in the UK by EU law while UK Common Frameworks were developed where needed, and the progress made towards developing these Frameworks, the powers are no longer necessary. The repeal of the powers will also remove an ongoing statutory obligation to report to Parliament every quarter on the use of the powers and implementation of UK Common Frameworks. The instrument will also remove provisions that inserted, amended, or made reference to those repealed powers.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 Section 12 of EUWA replaced the prior limits on legislative and executive competence of the Scottish, Welsh and Northern Ireland administrations in relation to EU law with a limit in relation to retained EU law. The limits introduced by section 12 of EUWA were in the form of a regulations-making power that enabled UK Ministers to make regulations that limited executive and legislative competence in relation to specified areas of retained EU law, which would otherwise be within devolved competence. The powers to make such regulations cannot be exercised after 10.59pm on 31 January 2022.

Why is it being changed?

- 7.3 The Government has worked collaboratively with the devolved administrations to develop UK Common Frameworks, where needed, for policy areas within devolved competence which were previously covered by EU law. As a result it has never needed to use the powers introduced by section 12 of EUWA and in any event the powers cannot be used after 10.59pm on 31 January 2022. The instrument is needed to remove redundant provisions from the statute book and the statutory obligation to report to Parliament on the use of these powers.

What will it now do?

- 7.4 The power to make regulations freezing devolved competence in relation to retained EU law will be removed from the devolution settlements. Redundant references in other legislation will also be removed.

8. European Union Withdrawal and Future Relationship

- 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 because it is being made under section 12(9) of the European Union (Withdrawal) Act 2018. The Minister has made any relevant statements in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

- 9.1 This instrument repeals provisions of legislation and makes consequential amendments. Consolidation is not being considered at this time.

10. Consultation outcome

- 10.1 Statutory consultation is not required for this instrument, however the UK Government has engaged with the devolved administrations and they are content with the repeal.

11. Guidance

- 11.1 These regulations do not require guidance being issued.

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 A full Impact Assessment has not been prepared for this instrument because there is no impact on businesses.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The purpose is to repeal redundant powers and references. There is no continuing impact of the powers to monitor. Monitoring is therefore not applicable.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

- 15.1 Gurminder Bhogal at the Cabinet Office (telephone: 07749 722570 or email: gurminder.bhogal@cabinetoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Sharon Carter, Deputy Director at the Cabinet Office can confirm that this explanatory memorandum meets the required standard.
- 15.3 Neil O'Brien MP, Parliamentary Under Secretary of State (Minister for Levelling Up, The Union and Constitution) at the Department for Levelling Up, Housing and Communities can confirm that this explanatory memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Explanations

- 1.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.