

EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENTARY ELECTIONS ETC. (REPEAL, REVOCATION, AMENDMENT AND SAVING PROVISIONS) (UNITED KINGDOM AND GIBRALTAR) (EU EXIT) REGULATIONS 2018

2018 No. 1310

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Cabinet Office and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 Schedule 9 to the European Union (Withdrawal) Act 2018 (“the EU(W) Act”) repeals the two main Acts governing the conduct of European Parliamentary elections: the European Parliamentary Elections Act 2002 (“the 2002 Act”) and the European Parliament (Representation) Act 2003 (“the 2003 Act”).
- 2.2 The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 are being made under powers in the EU(W) Act in order to make consequential and saving provision as a result of the repeal of the 2002 Act and the 2003 Act and to correct deficiencies in retained EU law arising as a result of the UK no longer having representation in the European Parliament or participating in elections to the European Parliament.

Explanations

What did any relevant EU law do before exit day?

- 2.3 Before exit day the relevant EU law requires EU Member States to hold elections to return Members to the European Parliament, and set out provisions relating to the election and tenure of Members of the European Parliament (“MEPs”), the cycle of European Parliamentary elections, and the rights for EU citizens resident in another Member State to vote and stand as candidates in European Parliamentary elections under the same conditions as nationals of their state of residence. EU law also includes provisions in relation to the statute and funding of European political parties and European political foundations. Further details are set out at sub-Sections 7.1 to 7.6 of this explanatory memorandum.

Why is it being changed?

- 2.4 Once the UK leaves the EU, the obligation that the UK return MEPs to the European Parliament will cease and the UK will not take part in future European Parliamentary elections. The provisions in UK law, including retained EU law, relating to European Parliamentary elections and European political parties and European political foundations will therefore be redundant.

What will it now do?

- 2.5 There will be no provision for the UK to hold European Parliamentary elections after exit day. These Regulations repeal, revoke or amend legislation, including retained EU law, relating to European Parliamentary elections, European political parties and European political foundations and, where no longer appropriate, reference to other EU Member States. They provide for the repeal or revocation of all provisions not included in the 2002 Act and the 2003 Act in relation to the franchise and the registration of electors in respect of European Parliamentary elections in the UK and Gibraltar and in relation to the conduct and administration of those elections, including provisions in respect of election expenditure in the UK and Gibraltar. Further details are set out at sub-Sections 7.7 to 7.26 of this explanatory memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations were presented to the Sifting Committees for consideration on 20 July 2018 in accordance with paragraphs 3(2) and 17(2) of Schedule 7 to the EU(W) Act. The Secondary Legislation Scrutiny Committee (SLSC) considered the instrument on 4 September 2018 and agreed that the instrument should follow the negative procedure (see the Committee's 39th Report of Session 2017-19, published on 6 September 2018, HL Paper 183). The European Statutory Instruments Committee considered the instrument on 5 September 2018 and noted that, although the amendments are individually modest, the volume of amendments and repeals to amend primary legislation are significant. However, having regard to the likely level of interest in the House in debating the matter raised, the Committee believes that the appropriate procedure for the instrument is for it to be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure) (see the Committee's First Report of Session 2017-19 (HC 1532) published on 7 September 2018).

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 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 and Gibraltar.
4.2 The territorial application of this instrument is the United Kingdom and Gibraltar.

5. European Convention on Human Rights

- 5.1 Chloe Smith MP, Minister for the Constitution, Cabinet Office has made the following statement regarding Human Rights:

“In my view the provisions of the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations are made under sections 8(1) and 23(1) and (6) of, and paragraph 21(b) of Schedule 7 to, the EU(W) Act. These Regulations are also made under section 24(3) of the EU(W) Act so far as they extend to Gibraltar.
- 6.2 As a result of the UK no longer being a EU Member State the UK will no longer elect MEPs. To the extent that retained EU law includes provision relating to the holding of European Parliamentary elections in the UK and any rights to vote or stand as candidates in relation to European Parliamentary elections in the UK, and provides for European political parties and European political foundations in the UK, these Regulations remedy deficiencies in retained EU law by removing such redundant provisions.
- 6.3 As a result, in exercise of the power in section 8(1) of the EU(W) Act, regulation 3 of these Regulations provides that any rights, powers, liabilities, obligations, restrictions, remedies and procedures which are derived from Article 14(3) of the Treaty on the European Union (“TEU”), Article 20(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”) (so far as that Article provides for voting or standing as a candidate in an election to the European Parliament) and Article 22(2) of the TFEU, which continue in retained EU law by virtue of section 4(1) of the EU(W) Act, shall cease to be recognised and available in domestic law and to be enforced, allowed and followed accordingly. In addition, Table 2 of Schedule 2 to these Regulations revokes retained direct EU legislation which relates to European Parliamentary elections and the statute and funding of European political parties and European political foundations. These Regulations also remove a reference to other EU Member States in relation to permissible donors to registered political parties which is no longer appropriate. None of the repeals, revocations or amendments to retained EU law made in exercise of the powers in section 8(1) of the EU(W) Act are considered to fall within paragraph 1(2) of Schedule 7 to the EU(W) Act.
- 6.4 These Regulations also make a large number of technical consequential amendments, including supplementary, incidental and consequential amendments, to primary and secondary legislation following the repeal of the 2002 Act and 2003 Act by Schedule 9 to the EU(W) Act. In addition, they make a technical saving provision in connection with the repeal of the European Parliamentary regions in Schedule 1 to the 2002 Act for the purposes of the definition of “electoral region” in the European Parliament (Pay and Pensions) Act 1979. This Act includes provision for pensions in relation to certain former UK MEPs, and will, therefore, remain in force following exit day. The 2002 Act and 2003 Act implement the UK’s obligations to hold European Parliamentary elections and provide for the administration of those elections. The 2003 Act also made provision for the inclusion of Gibraltar in the UK electoral regime for the purposes of Gibraltar participating in UK European Parliamentary elections. As a result of the repeal of those Acts the obligations in domestic law to conduct European Parliamentary elections and return MEPs are removed both in relation to the UK and Gibraltar. References to European Parliamentary elections, and to MEPs in other provisions of primary and secondary legislation are therefore redundant. These Regulations include provisions removing those redundant references from primary and secondary legislation and removing Gibraltar from the UK electoral regime, including the electoral expenditure regime. This is to ensure the effect of legislation for elections which will continue to be held in the UK is clear following the UK’s exit from the EU.

- 6.5 The consequential amendments which are made by these Regulations under section 23(1) of the EU(W) Act include amendments to powers to make secondary legislation. All provisions in these Regulations amending a power to legislate are considered appropriate amendments in consequence of the repeal of the 2002 Act and 2003 Act, and are, therefore, made in exercise of the power under section 23(1) of the EU(W) Act.
- 6.6 For example, section 15 of the Representation of the People Act 1985 includes a power to make regulations. This power can be exercised in connection with the combining of polls at certain elections, including the polls at a UK parliamentary general election and a European Parliamentary general election, and the polls at an ordinary local government election and a European Parliamentary general election. The repeal of the 2002 Act and the 2003 Act means that European Parliamentary general elections can no longer take place in the UK. As a consequence of those repeals the provisions in section 15 which refer to European Parliamentary elections will be repealed under section 23(1) of the EU(W) Act.
- 6.7 Where the EU(W) Act or these Regulations repeals a power to make secondary legislation any secondary legislation made under that power, which is not otherwise saved by the EU(W) Act, will lapse on commencement of the repeal of the power. A number of statutory instruments made solely under powers in the 2002 Act or the 2003 Act, or made under powers repealed or amended by these Regulations are, therefore, not revoked by these Regulations. To the extent that the enabling power is no longer in force following exit day those statutory instruments will cease to have effect. In cases where the repeal of an enabling power may give rise to uncertainty these Regulations do make specific provision to ensure clarity as to the law relating to elections in the UK.

7. Policy background

What is being done and why?

- 7.1 Article 14(3) of the TEU and the 1976 Act concerning the election of MEPs by direct universal suffrage (annexed to Council Decision 76/787/ECSC, EEC, Euratom and which was subsequently amended by Council Decision 2002/772/EC) provides for Member States to hold elections to return MEPs for a term of five years by direct universal suffrage in a free and secret ballot.
- 7.2 Under Article 14(3) of the TEU and the 1976 Act, European Parliamentary elections are required to be held across Member States every five years. The election period within which the poll is to be held is usually a four day period during May or June beginning on the Thursday morning and ending on the Sunday. Further, Articles 20(2)(b) and 22(2) of the TFEU entitle EU citizens resident in the UK or Gibraltar to vote and to stand as candidates in elections to the European Parliament under the same conditions as citizens of the UK.
- 7.3 Beneath these requirements in EU law, implementing legislation in the UK gives effect to the provisions in EU law and makes detailed provision for the holding of European Parliamentary elections in the UK. The main legislation governing such elections is the 2002 Act and the 2003 Act. Further provision is made in other primary and secondary legislation. For example, the European Parliamentary Elections Regulations 2004 (S.I. 2004/293) and the European Parliamentary Elections (Northern Ireland) Regulations 2004 (S.I. 2004/1267) set out the rules for the conduct

of European Parliamentary elections in Great Britain and Northern Ireland respectively. The 2003 Act includes Gibraltar in UK European Parliamentary elections.

- 7.4 For European Parliamentary elections, the UK is divided into 12 electoral regions: 9 in England (one of which includes Gibraltar) and the 3 regions of Wales, Scotland and Northern Ireland. The UK's MEP seats (there are currently 73 seats) are allocated across the regions in accordance with criteria set out in the 2003 Act which provides that each region has at least 3 MEP seats and, subject to this, MEP seats are allocated in proportion to the number of electors in each region. Since 1999, elections to the European Parliament in Great Britain have been held using the Closed List proportional representation system, and since 1979, in Northern Ireland the European Parliamentary elections have been held using the Single Transferable Vote (STV) system.
- 7.5 The most recent European Parliamentary elections were held in May 2014. The next European Parliamentary elections are due to be held from 23 to 26 May 2019. The next scheduled European Parliamentary elections are therefore due to take place after the UK has left the EU. Provision relating to the UK's participation in European Parliamentary elections, and MEPs elected for the UK, will therefore no longer be necessary. In addition, reference to companies incorporated in other EU Member States in relation to permissible donors to registered political parties will no longer be appropriate.
- 7.6 Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations, as amended by Regulation (EU, Euratom) 2018/673, makes provision under Article 224 of the TFEU governing political parties at European level, in particular regarding their funding. Regulation No 1141/2014 and Regulation 2018/673, and the European Political Parties and European Political Foundations Regulations 2017 (S.I. 2017/474), which implement Regulation No 1141/2014 in the UK, are, therefore, also no longer necessary once the UK has left the EU.
- 7.7 Schedule 9 to the EU(W) Act repeals the 2002 Act and the 2003 Act. These Regulations remedy deficiencies in retained EU law relating to European Parliamentary elections. They also repeal and amend the remaining provisions in primary legislation and, where appropriate, revoke and amend provisions in secondary legislation as a consequence of the repeal of the 2002 Act and the 2003 Act. This is to ensure the existing law works effectively once the UK has left the EU, and the 2002 Act and 2003 Act have been repealed.
- 7.8 These Regulations also make saving provision in connection with the coming into force of the repeal of the European Parliamentary electoral regions provided for in Schedule 1 to the 2002 Act. Saving provision is made in respect of Schedule 1 to the 2002 Act for the purposes of the definition of "electoral region" in section 8(1) of the European Parliament (Pay and Pensions) Act 1979. This Act will continue to provide for the pension arrangements in relation to certain former UK MEPs after the UK has left the EU.
- 7.9 These Regulations provide that any rights, powers, liabilities, obligations, restrictions, remedies and procedures which form part of retained EU law by virtue of section 4(1) of the EU(W) Act and which are derived from Article 14(3) of the TEU and Articles 20(2)(b) (so far as it relates to either voting or standing as a candidate in an election to

the European Parliament) and 22(2) of the TFEU, cease to be recognised and available in domestic law, and to be enforced allowed and followed accordingly.

- 7.10 Article 14(3) of the TEU provides that MEPs shall be elected for a term of five years by direct universal suffrage in a free and secret ballot, and Article 20(2)(b) of the TFEU includes provision for EU citizens resident in the UK or Gibraltar to vote and to stand as candidates in elections to the European Parliament under the same conditions as citizens of the UK. Article 20(2)(b) also includes provision in respect of the rights for EU citizens to vote and stand as candidates at municipal elections in their Member State of residence, which are not altered by these Regulations. Article 22(2) of the TFEU includes further provision in respect of the rights of EU citizens resident in the UK or Gibraltar to vote and to stand as candidates in elections to the European Parliament under the same conditions as citizens of the UK.
- 7.11 These Regulations also revoke from retained EU law the 1976 Act and the amending Council Decision 2002/772/EC; and Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations, and the amending Regulation 2018/673.
- 7.12 These Regulations include consequential repeals, revocations or amendments of a number of provisions in primary legislation and secondary legislation that relate to European Parliamentary elections and MEPs elected for the UK. These Regulations extend to Gibraltar. Gibraltar forms part of the South West region in England for the purposes of European Parliamentary elections, and Gibraltar will also no longer take part in those elections once the UK leaves the EU.
- 7.13 Examples of the changes made by the Regulations are set out below.
- 7.14 In UK electoral legislation, these Regulations repeal provisions at section 3 of the Representation of the People Act 1985 relating to the franchise for European Parliamentary elections for peers who are British citizens overseas, and at section 15 of that Act that provide for the poll at a European Parliamentary general election to be combined with the poll at a UK Parliamentary or ordinary local government election.
- 7.15 These Regulations repeal and amend provisions in the Political Parties, Elections and Referendums Act (“PPERA”) 2000 to remove European Parliamentary elections from the scope of that Act. For example, the repeal of section 5(2)(b) of that Act removes the requirement on the Electoral Commission to report on European Parliamentary elections. These Regulations make amendments to section 22 of PERA to remove requirements in relation to the registration of parties in order to field candidates at European Parliamentary elections. These Regulations also provide clarity in respect of Gibraltar by making provision removing Gibraltar from the scope of PERA.
- 7.16 With regard to provisions in secondary legislation, these Regulations revoke a number of statutory instruments, including Regulations made wholly or partly under section 2(2) of the European Communities Act 1972. Regulations relating solely to European Parliamentary elections which are revoked include the European Parliamentary Elections Regulations 2004 (S.I 2004/293) and the European Parliamentary Elections (Northern Ireland) Regulations 2004 (S.I. 2004/1267) that set out the rules for the conduct of European Parliamentary elections in Great Britain and Northern Ireland respectively. These Regulations also revoke certain Regulations that provide further for the franchise and conduct of European Parliamentary elections in the UK, including:

- The European Parliamentary Elections (Changes to the Franchise and Qualification of Representatives) Regulations 1994 (S.I. 1994/342);
 - The European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (S.I. 2001/1184);
 - The European Parliamentary Elections (Common Electoral Principles) Regulations 2004 (S.I. 2004/1374).
- 7.17 These Regulations also amend a number of statutory instruments (for example, the Local Elections (Principal Areas) (England and Wales) Rules 2006 (S.I. 2006/3304)) that set out the conduct rules for other UK elections. These amendments remove provisions for the combination of the poll at a European Parliamentary election with the poll at those other elections.
- 7.18 These Regulations also make changes to various other pieces of legislation that are appropriate as a consequence of the UK leaving the EU and the 2002 Act and 2003 Act being repealed. The changes relate only to the fact that the UK will no longer hold European Parliamentary elections, and have no wider policy impact. For example, sections 104 and 106 of the Equality Act 2010 make reference to the European Parliament. These Regulations will therefore repeal the following subsections in the Equality Act 2010:
- Section 104(8)(b) (selection of candidates);
 - Section 106(5)(b) (information about diversity in range of candidates).
- 7.19 Section 104 of the Equality Act 2010 allows registered political parties to make arrangements in the selection of candidates for election (such as women-only short lists) to address the under-representation of people with particular protected characteristics. Subsection 8 lists the elected bodies that this applies to: including, at paragraph (b), the European Parliament. The Regulations will therefore remove subsection (8)(b). The rest of the section will be unaffected by this deletion, and will therefore continue to operate as now.
- 7.20 Section 106 of the Equality Act 2010 concerns the provision of information by political parties about diversity in relation to candidates for election. Subsection 5 lists the types of elections that this applies to: including at paragraph (b), European Parliamentary elections. The Regulations remove subsection (5)(b). The rest of the section will be unaffected by this deletion.
- 7.21 Both of the repeals to the Equality Act 2010 relate only to the European Parliament; the provisions in the Equality Act will remain unaffected as regards elections within Great Britain so that, for example, the use of women-only short lists to select candidates for the House of Commons, the Scottish Parliament, the National Assembly for Wales and specified local government bodies will continue to be entirely legal.
- 7.22 These Regulations amend section 125 of the Reserve Forces Act 1996. This section relates to absence from duty when in the UK by a member of a reserve force for the purpose of voting (and provides that no penalty can be imposed for such an absence). These Regulations remove the reference to voting at an election for an MEP – as this provision will not be needed following exit day as the UK will no longer hold European Parliamentary elections. These Regulations also repeal paragraph 23(3)(e) of Schedule 1 to the Data Protection Act 2018. Paragraph 23 of Schedule 1 relates to data processing by elected representatives responding to requests in connection with

the discharge of the elected representative's functions. The repeal of paragraph 23(3)(e) of Schedule 1 will remove an MEP elected in the UK from the definition of elected representatives for the purpose of paragraph 23.

- 7.23 These Regulations make changes to the Parliamentary Constituencies Act ("PCA") 1986. The PCA 1986 allows the Boundary Commission for England when setting the boundaries of parliamentary constituencies to take into account the boundaries of the electoral regions in England used for the purposes of the European Parliamentary elections, as specified in Schedule 1 to the 2002 Act. The EU(W) Act repeals the 2002 Act, including the English electoral regions as set out in Schedule 1 to that Act.
- 7.24 These Regulations will maintain the current position that the Boundary Commission for England can take into account the boundaries of those regions if it wishes to do so. The Regulations therefore amend the PCA 1986 to remove the reference to the electoral regions as set out in Schedule 1 to the European Parliamentary Elections Act 2002, and instead insert a new definition of the English regions – under the changes, each region and the areas covered within it are set out, with the newly defined regions corresponding to the make-up of the existing regions as described in the 2002 Act.
- 7.25 European Parliamentary elections is a non-devolved subject matter in relation to the competence of each of the devolved legislatures and the devolved administrations. The vast majority of provisions in the Regulations relate to reserved matters for Scotland and Wales and excepted matters for Northern Ireland. The Regulations make a small number of consequential changes in domestic legislation covering devolved subject matters in Scotland, Wales and Northern Ireland that are appropriate as a result of the repeal of the European Parliamentary elections legislation. In Scotland, the Regulations make a consequential change in an instrument concerning local government in Scotland, which is a devolved matter. In Wales, the Regulations make consequential provision in relation to devolved provisions in the Representation of the People Act 1983 relating to the timing of local elections in Wales in a year in which a European Parliamentary election is to be held, and in four instruments concerning local government, elections to the National Assembly for Wales and planning. The provisions relating to devolved matters make technical changes as a consequence of the repeal of the 2002 and 2003 Acts, and relate only to the fact that the UK will no longer hold European Parliamentary elections.
- 7.26 For Northern Ireland, this instrument contains minor amendments to the Sex Discrimination (Northern Ireland) Order 1976 (S.I 1976/1042), as amended by the Sex Discrimination (Election Candidates) Act 2002, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The amendments remove references to selection of candidates at European Parliamentary elections. The use of women-only short lists to UK Parliamentary, Northern Ireland Assembly or Northern Ireland local council elections will be unaffected by these changes. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary

legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments.

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

8.1 This instrument is being made using the power in section 8 of the EU(W) Act in order 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. The instrument is also made under the powers in sections 23(1) and (6) and 24(3) of, and paragraph 21(b) of Schedule 7 to, the EU (W) Act 2018. 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 memorandum.

9. Consolidation

9.1 The Law Commission has conducted a review into the desirability and feasibility of reforming and consolidating electoral law. The Government is working with the Law Commission on taking forward this programme of work.

10. Consultation outcome

10.1 The Cabinet Office have shared the draft instrument with the Electoral Commission, representatives of the Association of Electoral Administrators, the Electoral Management Board for Scotland, the Society of Local Authority Chief Executives, the devolved administrations in Scotland, Wales and Northern Ireland, and the Government of Gibraltar.

10.2 The Electoral Commission and other bodies with whom we shared the draft instrument agree with the Government's approach in the instrument and consider that the proposed approach is sensible given that the UK will no longer be taking part in European Parliamentary elections once the UK has left the EU.

10.3 The devolved administrations in Scotland, Wales and Northern Ireland have raised no issues with the devolved provisions included in the Regulations in relation to their nation.

11. Guidance

11.1 The Cabinet Office have advised the Electoral Commission, Returning Officers and electoral administrators that as the UK will cease to be a member of the European Union on 29 March 2019, and will therefore not be taking part in the European Parliamentary elections in 2019. The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of elections. The Electoral Commission will update its guidance ahead of when the next European Parliamentary elections are scheduled to be held in May 2019 to reflect the changes made by the EU(W) Act and these Regulations in relation to the legislation governing the conduct of European Parliamentary elections, and that the UK will no longer take part in European Parliamentary elections.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The instrument will impact on the public sector in that once the UK leaves the EU it will no longer be necessary for Returning Officers to prepare for and administer European Parliamentary elections. It is estimated that not holding European Parliamentary elections in 2019 will save at least £109 million. The instrument will have no impact on the public sector beyond it no longer being necessary to hold European Parliamentary elections.

12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans to monitor or review these Regulations.

15. Contact

15.1 Peter Richardson at the Cabinet Office Telephone: 020 7271 6433 or email: peter.richardson@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Simon James, Deputy Director for the Elections Policy area at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith MP, Minister for the Constitution at the Cabinet Office 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 clauses 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/ESIC
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 clauses 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 clauses 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 clauses 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 clauses 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 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, Sch 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

- 1.1 Chloe Smith MP, Minister for the Constitution, Cabinet Office has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 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 these Regulations are made in exercise of the powers under sections 8(1) and 23(1) and (6) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“the EU(W) Act”). As explained in section 6 of the main body of this explanatory memorandum, none of the repeals, revocations or amendments to retained EU law made in exercise of the powers in section 8(1) of the EU(W) Act are considered to fall within paragraph 1(2) of Schedule 7 to the EU(W) Act. So far as these Regulations amend powers to legislate, those amendments are considered appropriate amendments in exercise of the powers in section 23(1) of the Act in consequence of the repeal of the European Parliamentary Elections Act 2002 and the repeal of the European Parliament (Representation) Act 2003 by Schedule 9 to the EU(W) Act. These Regulations should be subject to the negative procedure as to the extent that they are made in exercise of section 8 of the EU(W) Act they do not fall within paragraph 1(2) of Schedule 7 to that Act, and to the extent that they are made in exercise of section 23(1) and (6) of, and paragraph 21(b) of Schedule 7 to, the EU(W) Act they make a technical saving provision and technical consequential amendments, including supplementary, incidental and consequential amendments, which remove a large number of redundant references to European Parliamentary elections and MEPs in the UK following the repeal of the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003.

2. Appropriateness statement

- 2.1 Chloe Smith MP, Minister for the Constitution, Cabinet Office has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because following exit day the UK will no longer participate in elections to the European Parliament. These Regulations do no more than is appropriate in order to provide certainty and clarity as to the effect of the UK’s exit from the EU, and of the repeal of the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003 on electoral, and other relevant, legislation. This includes removing redundant provision relating to European

Parliamentary elections, members of the European Parliament, European political parties and European political foundations, and removing reference to other EU Member States which is no longer appropriate. Further details, including examples of amendments made are set out in section 7 of the main body of this explanatory memorandum.

3. Good reasons

3.1 Chloe Smith MP, Minister for the Constitution, Cabinet Office 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: following exit day the UK will no longer participate in elections to the European Parliament. The provisions in these Regulations are a reasonable course of action in order to provide certainty and clarity as to the effect of the UK’s exit from the EU, and of the repeal of the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003 on electoral, and other relevant, legislation. This includes removing redundant provision relating to European Parliamentary elections, members of the European Parliament, European political parties and European political foundations, and removing reference to other EU Member States which is no longer appropriate. Further details, including examples of amendments made and the reasons for making them are set out in section 7 of the main body of this explanatory memorandum.

4. Equalities

4.1 Chloe Smith MP, Minister for the Constitution, Cabinet Office has made the following statements:

“The instrument does 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.

The effect is to repeal redundant references to European Parliamentary elections in section 104 and in section 106 of the Equality Act 2010. These repeals have no wider policy impact.”

4.2 Sections 104 and 106 of the Equality Act 2010 make reference to the European Parliament, an institution that will no longer be relevant to the UK once the UK leaves the EU. The Regulations will therefore repeal the following subsections in the Equality Act 2010:

- Section 104(8)(b) (selection of candidates);
- Section 106(5)(b) (information about diversity in range of candidates).

4.3 Sub-Sections 7.18 to 7.21 of the main body of this explanatory memorandum provide further details as to the effect of these repeals.

4.4 Chloe Smith MP, Minister for the Constitution, Cabinet Office has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Chloe Smith MP, 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.”

4.5 These Regulations will have no, or limited, impact on equalities.

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.