

EXPLANATORY MEMORANDUM TO
THE LAW ENFORCEMENT AND SECURITY (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

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1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 The purpose of the instrument ('the Regulations') is to ensure that that the United Kingdom's (UK's) statute book continues to function effectively in the area of security, law enforcement and criminal justice, and regulatory measures in scope of the Regulations should the UK leave the European Union (EU) without an agreement in March 2019. The Regulations will address failures of retained EU law to operate effectively or address other legislative deficiencies arising from the UK's withdrawal from the EU. This will provide legal and operational certainty. For extradition, the Regulations will provide the legislative underpinning for the UK to transition its cooperation with Member States to a non-EU mechanism. As the Regulations cover a number of policy areas, further detail is provided in the sections below for Parts 2 to 24 of the Regulations.

Part 2 – Child Pornography

What did any relevant EU law do before exit day?

- 2.2 The Council Decision 2000/375/JHA on combating child pornography on the internet outlines how Member States should combat online child abuse by implementing the necessary legislation and through appropriate law enforcement responses and international and industry cooperation.

Why is it being changed?

- 2.3 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be a member state and so will not be bound by Council Decision 2000/375/JHA.

What will it now do?

- 2.4 Part 2 of the Regulations will amend Council Decision 2000/375/JHA so that the obligations to take measures to prevent and combat the sexual abuse of children continue to apply to the UK.

Part 3 – Counter-Terrorism

What did any relevant EU law do before exit day?

- 2.5 The Terrorism Act 2000 ('the 2000 Act') contains various provisions prohibiting terrorism financing. Some of those provisions contain definitions and concepts which are defined by reference to definitions contained in EU law. For example, there are provisions which require disclosure of suspicions of terrorism financing, and an offence for tipping someone off that such a disclosure has been made where that would prejudice an investigation. However, sections 21E and 21F of the 2000 Act are exemptions to this offence, which apply where tipping off occurs within a 'group' of companies or where disclosures are made between financial institutions. The definition of 'group' and embedded definitions within it are rooted in EU law. Similarly, the definition of 'regulated sector', which is a concept required for the

criminal offence imposed on the regulated sector, of failing to make disclosures to the authorities of suspected terrorism financing, is rooted in EU law definitions. These definitions are cross-referenced in Schedule 3A to the 2000 Act, as is the definition of ‘financial institution’ in Schedule 6, which contains provisions relating to powers of the police to obtain information in the course of investigations into terrorism financing.

- 2.6 Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 (‘Directive on Electronic Commerce’) makes provision on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. This includes inter alia requiring Member States to establish in their domestic law limitations on the ‘liability’ of providers of an information society service, subject to certain conditions, where the provider: is acting as a ‘mere conduit’ for the transmission of information provided by a recipient of the service; where it automatically, temporarily and intermediately stores information provided by a recipient of the service for the sole purpose of making more efficient its onward transmission (‘caching’); or where it stores (‘hosts’) information provided by a recipient of the service.
- 2.7 The Directive on Electronic Commerce also requires Member States to establish certain restrictions on the circumstances in which proceedings can be brought against an information society service provider based in another Member State, in order to preserve the position that Member States are responsible for services originating within their jurisdiction (the ‘country of origin’ principle). In the context of counter-terrorism, the Directive on Electronic Commerce was implemented so its provisions applied in the context of the offence of eliciting, publishing or communicating information about members of the armed forces (section 58A of the Terrorism Act 2000) and the offences of encouraging terrorism and disseminating terrorist publications (sections 1 and 2 of the Terrorism Act 2006).

Why is it being changed?

- 2.8 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be a member of the European Economic Area (EEA) and will not be bound by the Directive on Electronic Commerce. The amendments made by this Part are required to address failures of retained EU law to operate effectively or other legislative deficiencies arising from withdrawal. Without action, in some cases the UK would be required to give effect to requirements which would no longer be reciprocal.

What will it now do?

- 2.9 Part 3 of the Regulations makes minor amendments to sections 21E and 21F of the 2000 Act to reflect the fact that the UK will not be an EEA State after exit day. Amendments are made to Schedule 3A to amend the definition of businesses in the ‘regulated sector’ to appropriate domestic law-defined categories. Paragraphs 11A to 11G, 25A to 25G and 41A to 41G of Schedule 4 to the 2000 Act are omitted; these paragraphs collectively provide a mechanism to allow freezing orders to be sent to, and received from, Member States under Framework Decision 2003/577/JHA of 22nd July 2003 (on the execution in the European Union of orders freezing property or evidence), and transitional provisions are made to preserve these paragraphs in respect of any requests sent or received prior to exit day. The definition of ‘financial

institution’ in paragraph 6 of Schedule 6 to the 2000 Act is amended to replace reference to certain EU definitions with domestic definitions.

- 2.10 The Regulations amend Schedule 8A to the Terrorism Act 2000 and the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007, to maintain the ‘mere conduit’, ‘host’ and ‘cache’ exemptions for information society service providers in respect of the section 58A and section 1 and 2 offences. The Regulations also preserve the additional conditions that have to be satisfied before action can be taken against EEA-established information service society providers. However, the Regulations omit provisions, which implemented requirements in Article 3 of the Electronic Commerce Directive, which required Member States to extend their courts’ jurisdiction to service providers engaged in conduct in other EEA States, because such requirement represents a reciprocal arrangement which no longer works in a ‘no deal’ scenario.

Part 4 – Cross Border Surveillance

What did any relevant EU law do before exit day?

- 2.11 The body of EU law known as the Schengen acquis deals primarily with the abolition of checks at the EU's internal borders, while tightening controls at the external borders, in accordance with a single set of rules.
- 2.12 Whilst the UK has not participated in these aspects of the Schengen acquis prior to EU exit, the UK has participated in those parts which deal with police and judicial co-operation. This includes the reciprocal arrangements for carrying out cross-border surveillance, set out in Articles 40, 42 and 43 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (‘the 1990 Schengen Convention’). The UK’s participation in these arrangements is secured through a number of Council Decisions. Additionally, section 76A of the Regulation of Investigatory Powers Act 2000 implements Article 40(2) of the 1990 Schengen Convention by setting out the limited circumstances under which Member State law enforcement officers can carry out surveillance in the UK without prior authority.

Why is it being changed?

- 2.13 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer participate in the reciprocal arrangements for carrying out cross-border surveillance under the 1990 Schengen Convention. The amendments made by this Part are required to address failures of retained EU law to operate effectively or to address other legislative deficiencies arising from the withdrawal.

What will it now do?

- 2.14 Part 4 of the Regulations will revoke retained EU law relating to Articles 40, 42 and 43 of the 1990 Schengen Convention:
- Article 40 provides that officers of one of the parties to the Convention who, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence, shall be authorised to continue their surveillance in the territory of another party to the Convention where the latter has authorised

cross-border surveillance in response to a request for assistance made in advance.

- Article 42 provides that during the operations referred to in Article 40, officers operating in the territory of another party to the Convention, shall be regarded as officers of that party with respect to offences committed against them or by them.
- Article 43 provides that where, in accordance with Article 40 of the Convention, officers of a party to the Convention are operating in the territory of another party, the first party shall be liable for any damage caused by them during their operations, in accordance with the law of the party in whose territory they are operating.

2.15 The instruments revoked under Part 4 of the Regulations are as follows:

- Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom to take part in some of the provisions of the Schengen acquis;
- Council Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention, implementing the Schengen Agreement of 14 June 1985, on the gradual abolition of checks at common borders;
- Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom; and
- Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2.16 The Regulations also amend section 76A of the Regulation of Investigatory Powers Act 2000, so as to remove the references to Article 40 of the 1990 Schengen Convention. This means that law enforcement officers of Member States will no longer be able to carry out cross-border surveillance in the UK for a limited period without prior authority by virtue of their participation in the 1990 Schengen Convention.

2.17 The Regulations also make transitional provisions in respect of any cross-border surveillance that is being carried out pursuant to these provisions of retained EU law (or the domestic law implementing them) in the UK at the point of exit. The transitional provisions ensure that such operations can continue to be carried out lawfully on UK territory.

Part 5 – Drug Precursors and Psychoactive Substances

Chapter 1 – Drug Precursors

What did any relevant EU law do before exit day?

2.18 The UK is a signatory to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 ('the UN Convention'), which establishes controls on chemicals frequently used in the illicit manufacture of narcotic

drugs (known as drug precursor chemicals), to prevent the illicit manufacturing of narcotic drugs while also allowing for legitimate trade. Regulation (EC) No 273/2004 of the European Parliament and Council and Council Regulation (EC) No 111/2005 ('the EU Drug Precursor Regulations') implements the UK's international obligations under Article 12 of the UN Convention.

- 2.19 The EU Drug Precursor Regulations established harmonised measures within the EU for controlling and monitoring certain drug precursor chemicals. For scheduled substances, the EU Drug Precursor Regulations contain provisions relating to licences, customer declarations and labelling. A monitoring procedure was also put in place to prevent obstacles to the free trade in these substances between EU countries.

Why is it being changed?

- 2.20 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be bound by the EU Drug Precursor Regulations. The Regulations amend the EU Drug Precursor Regulations to address failures of the latter to operate effectively after exit from the EU.

What will it now do?

- 2.21 Part 5 of the Regulations will amend the EU Drug Precursor Regulations in UK law and the domestic implementing regulations (Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008 (SI 2008 No. 295 and Controlled Drugs (Drug Precursors) (Community External Trade) Regulations 2008 (SI 2008 No. 296)) to ensure that they operate effectively after exit day.
- 2.22 The Regulations will ensure that there is a mechanism in place to control and monitor chemical substances that are frequently used in the illicit manufacture of narcotic drugs, thereby ensuring that the UK remains compliant with its international obligations under the UN Convention. It will also allow for trade in these substances to continue, albeit that trade between the UK and the EU will now be on a third country basis.

Chapter 2 – Psychoactive Substances

What did any relevant EU law do before exit day?

- 2.23 Schedule 1 to the Psychoactive Substances Act 2016 ('the 2016 Act') lists 'exempted substances'. Exempted substances are substances that are already controlled through existing legislation (such as alcohol, tobacco, medicines and controlled drugs), or because their psychoactive effects are negligible, (for example, caffeine and foodstuffs such as nutmeg and chocolate). Food (includes drink) and any substance which is ordinarily consumed as food and does not contain a prohibited ingredient. Paragraph 7 of Schedule 1 defines "prohibited ingredients" as substances the use of which in or on food is not authorised by 'an EU instrument'. This primarily corresponds to EC Regulations 1333/2008 ('Regulation on food additives') and 1334/2008 ('Regulation on flavourings and certain food ingredients with flavouring properties for use in and on foods').
- 2.24 Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 ('Directive on Electronic Commerce'), makes provision on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. This includes inter alia requiring Member States to establish in their domestic

law limitations on the liability of providers of an information society service, subject to certain conditions. The Directive also requires Member States to establish certain restrictions on the circumstances in which proceedings can be brought against an information society service provider based in another Member State, and to extend jurisdiction in respect of things done by UK based information society service providers in other Member States, in order to preserve the position that Member States are responsible for services originating within their jurisdiction (the ‘country of origin’ principle). In the context of psychoactive substances, the Directive was implemented by Schedule 4 to the 2016 Act, so its provisions applied in the context of terms that could be imposed in prohibition notices or orders (under the 2016 Act), insofar as those conditions might restrict the freedom of EEA-established service providers, and to give effect to the Directive as it applied to the offences of offering to supply a psychoactive substance and/or failing to comply with a prohibition or premises order (under sections 5(2) and 26 of the 2016 Act respectively).

- 2.25 Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 on the European Monitoring Centre for Drugs and Drug Addiction’ (‘EMCDDA’) established the EMCDDA, a decentralised agency of the EU providing information on drugs, drug addiction and their consequences in Europe. Regulation (EU) No 2017/2101 of the European Parliament and of the Council of 15 November 2017 amended Regulation (EC) No 1920/2006, to facilitate information exchange on, and establish an early warning system and risk assessment procedure for, new psychoactive substances between Member States.

Why is it being changed?

- 2.26 Should the UK withdraw from the EU without a deal in March 2019, to the extent that they do not form part of retained EU law, in relation to psychoactive substances the UK will cease to be bound by, among others, Regulation (EC)1333/2008 (‘Regulation on food additives’), Regulation (EC) 1334/2008 (‘Regulation on flavourings and certain food ingredients with flavouring properties for use in and on foods’), Directive 2000/31/EC of 8th June 2000 (‘Directive on Electronic Commerce’), Regulation (EC) No 1920/2006 (on the European Monitoring Centre for Drugs and Drug Addiction) and Regulation (EU) No 2017/2101 (amending Regulation (EC) No 1920/2006). The amendments made by this Part are required to address failures of retained EU law to operate effectively or to address other legislative deficiencies arising from the withdrawal.

What will it now do?

- 2.27 Regulation 17 removes the reference to ‘EU instruments’ in the definition of “food” in paragraph 7 of Schedule 1 to the 2016 Act. Food is an exempted substance under the 2016 Act. Whilst Regulations (EC) 1333/2008 and 1334/2008 will form part of retained EU law on exit, following withdrawal, all new authorisations will be determined by the appropriate UK-wide risk management procedure as jointly exercisable by Ministers of the Crown, Ministers of Wales, Ministers of Scotland, and the Northern Ireland devolved authority.
- 2.28 Regulation 17 also amends Schedule 4 to the 2016 Act to amend references which would otherwise suggest the UK is an EEA State and is bound by Directive 2000/31/EC of 8th June 2000 (‘Directive on Electronic Commerce’), which ceases to have effect on exit day. The regulation omits provisions, which implemented requirements in Article 3 of the Directive, which required Member States to extend

their courts' jurisdiction to service providers engaged in conduct in other EEA States. This is because such requirement represents a reciprocal arrangement which no longer works in a 'no deal' scenario. Restrictions on including terms in prohibition notices or orders which restrict the freedom of non-UK service providers to provide information society services in relation to an EEA State, are also removed. However, the public interest conditions, which limit the circumstances in which service providers established in other EEA States can be prosecuted for the trafficking offences are maintained, as is the position regarding liability of providers acting as conduits, caches or hosts.

- 2.29 Regulations 18 and 19 will revoke Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 (on the European Monitoring Centre for Drugs and Drug Addiction) and Regulation (EU) No 2017/2101 of the European Parliament and of the Council of 15 November 2017 (amending Regulation (EC) No 1920/2006), ending UK participation in, and obligations relating to, the EMCDDA and associated information exchange, early warning assessment and risk assessment procedures for new psychoactive substances.

Part 6 – Eurojust

What did any relevant EU law do before exit day?

- 2.30 Council Decision 2002/187/JHA, setting up Eurojust with a view to reinforcing the fight against serious crime, established Eurojust as a body of the EU with legal personality. Its purpose was to stimulate and improve coordination and cooperation between competent authorities of Member States in the field of judicial cooperation in criminal matters. The Council Decision has been amended several times, including by Council Decision 2003/659/JHA and by Council Decision 2009/426/JHA on the strengthening of Eurojust.

Why is it being changed?

- 2.31 Should the UK withdraw from the EU without agreement in March 2019, the Council Decision will cease to apply to the UK as a matter of EU law. The Council Decision is retained EU law; however, it will no longer be possible for competent authorities in the UK to cooperate with those in Member States on the basis of the Council Decision and the retained EU law would therefore not operate effectively.

What will it now do?

- 2.32 Part 6 of the Regulations will revoke the Council Decision subject to certain savings provisions on data security and confidentiality relating to information received prior to exit day.

Part 7 - European Agency for Law Enforcement Training (CEPOL)

What did any relevant EU law do before exit day?

- 2.33 Council Decision 2005/681/JHA establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA ('the CEPOL Council Decision') established a successor European Police College, also known as CEPOL. Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing

and repealing Council Decision 2005/681/JHA ('the CEPOL Regulation') subsequently repealed and replaced the CEPOL Council Decision. However, as the UK did not opt into the CEPOL Regulation, it remained bound by the CEPOL Council Decision. The European Police College (Immunities and Privileges) Order 2004 confers privileges and immunities upon CEPOL and its members of staff but has not been commenced.

Why is it being changed?

- 2.34 CEPOL provides training for law enforcement officials of Member States. Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be able to participate in CEPOL's arrangements. The Regulations therefore revoke the CEPOL Council Decision, as well as the European Police College (Immunities and Privileges) Order 2004.

What will it now do?

- 2.35 Part 7 of the Regulations revokes Council Decision 2005/681/JHA and the European Police College (Immunities and Privileges) Order 2004 in their entirety.

Part 8 - European Criminal Record Information System (ECRIS)

What did any relevant EU law do before exit day?

- 2.36 Council Framework Decision 2009/315/JHA of 26 February 2009, on the organisation and content of the exchange of information extracted from the criminal record between Member States ('Framework Decision 2009/315/JHA'), sets out principles for the exchange of criminal records between Member States and sets an obligation on Member States to respond to requests for conviction information within ten working days. Part 6 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 ('the CJDP Regulations') transposed Framework Decision 2009/315/JHA into UK law.
- 2.37 Council Decision 2009/316/JHA, on the establishment of the European Criminal Records Information System in application of Article 11 of Framework Decision 2009/315/JHA ('Council Decision 2009/316/JHA'), established the electronic mechanism to facilitate criminal records exchange under Framework Decision 2009/315/JHA. This is the European Criminal Records Information System (ECRIS). It also imposes certain obligations on Member States in relation to the format for exchanging information using ECRIS.
- 2.38 Article 10(3) of Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (Directive 2011/93/EU) requires Member States to take the necessary measures to ensure that, where employers are recruiting for a position involving direct and regular contact with children, and request information regarding certain criminal convictions or disqualification from such roles, this information is transmitted in accordance with the procedures set out in Framework Decision 2009/315/JHA.. The Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013 (the 2013 ECRIS Regulations) transposed Article 10(3) of Directive 2011/93/EU in England, Wales and Northern Ireland.

Why is it being changed?

- 2.39 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer have access to ECRIS. Therefore, the Council Decision 2009/316/JHA, which established that system, is being revoked.
- 2.40 Framework Decision 2009/315/JHA provides for the reciprocal sharing of criminal record information between Member States. Given that Member States will no longer have an obligation under EU law to respond to criminal record requests from the UK, Part 6 of the CJDP Regulations and the 2013 ECRIS Regulations, which impose the obligations on the UK to provide criminal record information in accordance with Framework Decision 2009/315/JHA, are being revoked.

What will it now do?

- 2.41 Part 8 of the Regulations revokes the Council Decision 2009/316/JHA in its entirety.
- 2.42 Part 8 of the Regulations revokes Part 6 of the CJDP Regulations and the 2013 ECRIS Regulations, subject to some saving and transitional provisions. It saves provisions which dictate how the UK should handle information transmitted by a Member State to the UK in relation to information received before exit day. This includes provisions which set out how the UK should respond to requests from third countries for information on UK nationals which was obtained from a Member State. The Regulations also make transitional provision in relation to requests received from Member States prior to exit day.

Part 9 – European Judicial Network

What did any relevant EU law do before exit day?

- 2.43 Council Decision 2008/976/JHA of 16 December 2008 introduced the European Judicial Network (EJN). It replaced Joint Action 98/428/JHA, which had the purpose of fulfilling recommendation 21 of the Action Plan to Combat Organised Crime, which recommended that ‘Member States should seek to pool their resources at European level by setting up a network for judicial cooperation’.
- 2.44 The EJN functions as a network of national contact points, designated by each Member State, among central authorities in charge of international judicial cooperation, judicial authorities and other competent authorities. Its purpose is to improve, facilitate and speed up international judicial cooperation and ensure the proper execution of mutual legal assistance and mutual recognition requests.
- 2.45 The EJN provides full access to a network which includes direct contact points for judicial authorities, lists of EU legislation that have been implemented in different Member States, draft template forms for issuing MLA requests, summaries of national judicial systems, and legal and practical information on judicial cooperation measures available in each Member State.

Why is it being changed?

- 2.46 The UK will no longer be a member of the EJN and therefore Council Decision 2008/976/JHA will no longer apply to the UK. The amendments made by Part 9 are required to address failures of retained EU law to operate effectively or other legislative deficiencies arising from the withdrawal.

What will it now do?

- 2.47 Part 9 of the Regulations will revoke Council Decision 2008/976/JHA as the UK will cease cooperation under this instrument.

Part 10 - EU-LISA

What did any relevant EU law do before exit day?

- 2.48 Eu-LISA is the agency responsible for the operational management of large-scale IT systems across the EU. It became operational in 2012, and previously managed three IT systems: the Second Generation Schengen Information System (SIS II), the Schengen Visa Information System (VIS), and the EURODAC system for storing the fingerprints of asylum seekers and certain illegal migrants.
- 2.49 Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 established the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. However, Regulation (EU) 2018/1726 entered into force on 11th December 2018, repealing (EU) 1077/2011 and gave the agency additional responsibilities including the management of new systems, two of which will build upon the parts of the Schengen acquis in which the UK is not currently authorised to participate (namely the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS)).
- 2.50 The UK sought to take part in some of the provisions of the Schengen acquis relating to eu-LISA. To this end, Council Decision 2010/779/EU of 14th December 2010 provided for the UK to participate in Regulation (EU) No 1077/2011 in accordance with the conditions set out in that Decision. Council Decision 2018/1600/EU was subsequently adopted by the Council to provide for the UK's participation in Regulation (EU) 2018/1726.

Why is it being changed?

- 2.51 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer operate systems which are governed by eu-LISA or be bound by the relevant Council Decision. The amendments made by Part 10 of the Regulations are required to address failures of retained EU law to operate effectively or to address other legislative deficiencies arising from the withdrawal.

What will it now do?

- 2.52 Part 10 of the Regulations revokes Regulation (EU) 2018/1726 and Council Decisions 2010/779/EU of 14 December 2010 and 2018/1600/EU.

Part 11 – Europol

What did any relevant EU law do before exit day?

- 2.53 Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol) ('the Europol Regulation') provides the legal base for Europol, which was established with a view to supporting cooperation among law enforcement authorities in the EU.

Why is it being changed?

- 2.54 Should the UK leave the EU without a deal in March 2019, the Europol Regulation will cease to apply to the UK as a matter of EU law. The Europol Regulation is

retained EU law; however, it will no longer be possible for the UK to cooperate with Europol on the basis of the Regulation and the retained EU law would therefore not operate effectively.

What will it now do?

- 2.55 Part 11 of the Regulations revokes the Europol Regulation subject to certain savings provisions relating to information provided prior to exit day. It will also revoke relevant Council Decisions, a Commission Decision and some further domestic legislation relating to Europol, which remains on the statute book. Further detail is contained in Sections 6 and 7 below.

Part 12 - Exchange of Information and Intelligence between Law Enforcement Authorities and Disclosure in Foreign Proceedings

Chapter 1 – Exchange of Information and Intelligence between Law Enforcement Authorities

What did any relevant EU law do before exit day?

- 2.56 Part 5 of the CJDP Regulations transposed Council Framework Decision 2006/960/JHA of 18 December 2006, on simplifying the exchange of information and intelligence between law enforcement authorities of the member States of the European Union ('The Swedish Initiative'), and Article 1(10) of Council Framework Decision of 13 June 2002 on joint investigation teams ('Framework Decision 2002/465/JHA'). The Swedish Initiative provides a common legal framework for the effective and expeditious exchange of existing information and criminal intelligence between Member States' law enforcement authorities. The instrument was adopted in 2006 and sets out rules for the cross-border exchanges of criminal information and intelligence, ensuring procedures for cross-border data exchanges are not stricter than those applying to exchanges at national level. It regulates the conditions for exchanging information and intelligence among Member States, including time limits and admissible justifications for refusing to share data. Article 1(10) of Framework Decision 2002/465/JHA regulates the purposes for which information obtained by a member or seconded member of a Joint Investigation Team while part of that team, and which is not otherwise available to the competent authorities of the Member States concerned, may be used.

Why is it being changed?

- 2.57 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be able to exchange information and intelligence under the Swedish Initiative framework. The amendments made by Part 12 of the Regulations are required to address failures of retained EU law to operate effectively or to address other legislative deficiencies arising from the withdrawal.

What will it now do?

- 2.58 Part 12 of the Regulations revokes Part 5 of the CJDP Regulations, subject to saving and transitional provisions. Regulation 44 deals with responding to pre-exit requests from a Member State, including an obligation to supply information and intelligence and to not apply stricter conditions than those which apply to domestic use. However, regulation 44 also retains the ability to refuse a request where there are reasonable

grounds to do so, as well as to apply conditions of use, although such conditions will not be enforceable as a matter of EU law.

- 2.59 Regulation 45 concerns information and intelligence that has been supplied to the UK before exit day. The provisions maintain obligations to consult the country which supplied information on how it is used, and inform that country accordingly, when and if asked.
- 2.60 Regulation 46 retains the ability of the UK to make representations about the use of information or intelligence where the receiving Member State is not bound by the conditions imposed by the UK on the use of that information or intelligence.
- 2.61 Savings provisions are also made in respect of information obtained by a UK member of a Joint Investigation Team before exit.

Chapter 2 – Disclosure in Foreign Proceedings

What did any relevant EU law do before exit day?

- 2.62 Section 17 of the Anti-terrorism, Crime and Security Act 2001 clarifies and extends a number of information disclosure provisions available to public authorities, permitting disclosure to assist any criminal investigation or criminal proceedings being carried out in the UK or abroad, or to facilitate determinations of whether such investigations or proceedings should begin or end. However, section 18 enables the Secretary of State, in certain circumstances, to prohibit the disclosure of information for the purposes of overseas criminal investigations or criminal proceedings that would otherwise be permitted by section 17. However, the Secretary of State cannot prohibit the making of any disclosure in pursuance of an ‘EU obligation’ (section 18(4)(b)).

Why is it being changed?

- 2.63 Chapter 2 of Part 12 of the Regulations makes an amendment to the Anti-Terrorism, Crime and Security Act 2001, to ensure that a reference to ‘EU obligation’ does not create a deficiency upon the UK’s withdrawal from the EU.

What will it now do?

- 2.64 Chapter 2 of Part 12 of the Regulations amends section 18(4)(b) of the Anti-terrorism, Crime and Security Act 2001 to ensure that the Secretary of State is only precluded from prohibiting the making of disclosures which are required under those EU laws that are retained as obligations following the UK’s withdrawal.

Part 13 – Explosive Precursors

What did any relevant EU law do before exit day?

- 2.65 Regulation (EU) No 98/2013 (the ‘EU Explosive Precursors Regulation’) controls the marketing and use of explosives precursors in the EU. It establishes a prohibition on members of the general public accessing certain chemicals. However, Member States can establish licensing and/or registration regimes to allow members of the general public controlled access to some chemicals should they have a demonstrable, legitimate need. In England, Wales and Scotland, the regulatory framework implementing the EU Explosive Precursors Regulation is contained in the Poisons Act 1972 and the secondary legislation made under it (the Control of Poisons and Explosive Precursors Regulations 2015). In Northern Ireland, it is the EU Explosive

Precursors Regulation that provides the licensing regime and rules around the use of explosives precursors, with the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 implementing it. After exit day, the EU Explosive Precursors Regulation will be retained EU law.

Why is it being changed?

- 2.66 If the UK withdraws from the EU without a deal in March 2019, the EU Explosive Precursors Regulation and domestic implementing legislation will be amended in order to maintain explosives precursors' regulation in the UK. This will allow for the continued pursuit of our objective of reducing the threat of terrorist attacks using explosives precursors. The law is being amended to remove deficiencies and failures preventing its effective operation that would arise as a consequence of the UK's withdrawal from the EU.

What will it now do?

- 2.67 Part 13 of the Regulations will make amendments to ensure the EU Explosive Precursors Regulation, and the related domestic legislation, no longer refer to the UK as a Member State, and that the licensing and notification regimes continue to operate effectively. The amendments will maintain the possibility of licences, issued by Member States, being recognised in Great Britain and Northern Ireland.

Part 14 – Extradition

What did any relevant EU law do before exit day?

- 2.68 The European Arrest Warrant Council Framework Decision (2002/584/JHA) is the reciprocal extradition arrangement which governs extradition between Member States. The European Arrest Warrant (EAW) is a simplified and faster extradition procedure for prosecuting or executing a custodial sentence or detention order. A warrant issued by one Member State is valid in the entire territory of the EU. The EAW became operational on 1 January 2004. The EAW is implemented in UK law through Part 1 of the Extradition Act 2003.

Why is it being changed?

- 2.69 If the UK withdraws from the EU without a deal in March 2019, the UK will no longer operate the EAW. The Regulations therefore contain statutory amendments required for alternative provisions to process extradition requests from Member States once cooperation under the EAW ceases.

What will it now do?

- 2.70 Part 14 of the Regulations will amend the previous orders under the Extradition Act 2003 to re-designate the current Part 1 territories to be Part 2 territories following the UK's withdrawal from the EU and the EAW Framework Decision. This will allow for extradition requests from Member States, previously designated under Part 1 of the Act, to be administered under Part 2 of the Act based on extradition arrangements under the 1957 European Convention on Extradition.
- 2.71 In addition, the legislation also includes transitional arrangements for existing EAWs. These arrangements ensure continuity in proceedings for cases where an arrest has been made prior to exit day.

Part 15 – Firearms

What did any relevant EU law do before exit day?

- 2.72 The EU weapons directive (91/477/EEC) ('the European Weapons Directive') sets minimum standards for the acquisition and possession of firearms and resulted in changes to the Firearms Act 1968 and the Firearms (Amendment) Act 1988. The European Weapons Directive was implemented in Northern Ireland by the Firearms (Northern Ireland) Order 2004. Commission Implementing Regulation 2015/2403 established common guidelines on deactivation standards and techniques. This Regulation has also resulted in changes to the Firearms (Amendment) Act 1988.

Why is it being changed?

- 2.73 Should the UK withdraw from the EU without a deal in March 2019, the Commission Implementing Regulation and domestic implementing legislation is being amended in order to maintain the necessary safeguards and controls on the possession etc, of firearms and shotguns. However, failures of retained EU law to operate effectively and other deficiencies will arise in the legislation as a consequence of the UK's withdrawal.

What will it now do?

- 2.74 Part 15 of the Regulations will remove references to EU legislation in domestic firearms legislation, and amend retained EU law to deal with deficiencies, while retaining all the necessary safeguards and controls on the possession etc, of firearms and shotguns. It will also provide for a saving provision in respect of the possession of certain prohibited weapons immediately before exit day (see Section 6 for more detail).

Part 16 – Football Disorder

What did any relevant EU law do before exit day?

- 2.75 Council Decision 2002/348/JHA of 25th April 2002 - concerning security in connection with football matches, with an international dimension as amended by Council Decision 2007/412/JHA of 12th June 2007 acts - provides that Member States must set up a National Football Information Point (NFIP) to support the policing of international football matches between teams from different countries. This measure facilitates the task of coordinating and enabling international police cooperation and information exchange, in order to reduce the risk of violence and disorder

Why is it being changed?

- 2.76 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be able to use the Council Framework Decision 2002/348/JHA as a legal base for sharing information with the National Football Information Points with Member States.

What will it now do?

- 2.77 Part 16 of the Regulations will revoke Council Framework Decision 2002/348/JHA and Council Decision 2007/412/JHA, as they will no longer be the procedure for the UK's national football information point's communication with Member States' National Football Information Points.

Part 17 – Joint Investigation Teams

What did any relevant EU law do before exit day?

- 2.78 The 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Council Framework Decision on joint investigation teams (2002/465/JHA), together provide the legal bases under EU law for the competent authorities of two or more Member States to set up a Joint Investigation Team.

Why is it being changed?

- 2.79 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be able to use the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, or the Council Framework Decision 2002/465/JHA, as a legal base for Joint Investigation Teams with Member States. The amendments made by Part 17 of the Regulations are required to address failures of retained EU law to operate effectively or to address other legislative deficiencies arising from the withdrawal.

What will it now do?

- 2.80 Part 17 of the Regulations will amend domestic legislation to remove references to EU legal bases in relation to Joint Investigation Teams. The Regulations will also provide for a saving provision, which will ensure that officers carrying out cross-border surveillance, under the transitional provisions provided for in Part 4 will continue to benefit from section 89(5) of the Police Act 1996 for operations that have begun before exit day, until their completion.

Part 18 – Mutual Legal Assistance in Criminal Matters

What did any relevant EU law do before exit day?

- 2.81 The Criminal Justice (European Investigation Order) Regulations 2017 ('EIO Regulations') implemented the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ('EIO Directive'). The purpose of the EIO Directive was to replace existing measures for requesting and sharing evidence in criminal investigations through mutual legal assistance ('MLA') between Member States. MLA is a method of cooperation, between Member States, for obtaining assistance in the investigation and prosecution of criminal offences. It is generally used for obtaining material that cannot be obtained on a police-to-police basis, particularly where enquiries require coercive measures. The key features of the EIO Directive are that it: standardises the format in which a request is made; applies the principle of mutual recognition to requests; and introduces timeframes for responding to requests. It also prescribes the grounds for refusal, making it easier to anticipate the outcome of requests for assistance.
- 2.82 The EIO Regulations prescribe the method for making or validating an EIO in the UK, as well as setting out the requirements for recognising and executing an EIO made in a participating Member State in the UK.

- 2.83 The EIO Directive largely replaced the 2000 Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union and its 2001 Protocol thereto ('MLAC'), which sought to improve mutual assistance between Member States. It supplemented the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 ('1959 Convention'), a Council of Europe convention which also set out arrangements for mutual assistance in criminal matters between signatories to that convention.
- 2.84 The MLAC, however, continues to operate where certain methods of cooperation are not provided for under the EIO Directive, such as service of process and joint investigation teams. In addition, the MLAC continues to govern the MLA relationship between Member States and Ireland and Denmark, which did not opt into the EIO Directive. The MLAC provisions were extended by agreement to Norway and Iceland, by the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto ('the EU – Iceland, Norway agreement') and this agreement continues to apply in respect of those countries.
- 2.85 The 1990 Schengen Convention implements the Schengen Agreement of 1985. The UK joined certain Schengen provisions on police and judicial cooperation under Council Decisions 2000/365/EC, 2004/926/EC and 2014/857/EC (the latter amending the previous 2000 and 2004 Decisions). These measures supplemented arrangements which existed under the 1959 Convention. The provisions contained in the 1990 Schengen Convention included key principles and procedures that provide for police cooperation between Schengen States, including: the sharing of information between police authorities (Article 46); the secondment of liaison officers to facilitate faster police and judicial cooperation and information exchange (Article 47); mutual assistance supplementing the 1959 Convention (Article 48); the types of proceedings that MLA can be provided for and service of judicial documents (Article 49); and the execution of requests for search and seizure being dependent on certain conditions being fulfilled (Article 51).
- 2.86 Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence ('2003/577/JHA Decision'), has largely been replaced by provisions in the EIO Directive. However, the provisions contained in 2003/577/JHA Decision continue to apply in respect of Ireland and Denmark. These provisions allow for the mutual recognition of freezing orders whereby a Member State recognises a freezing order issued by the judicial authority of another Member State for the purpose of freezing evidence. Sections 20 to 25 of the Crime (International Cooperation) Act 2003 ('CICA') allow a UK court to give effect to such orders.
- 2.87 In addition, the EU entered into separate arrangements on MLA in criminal matters with third countries such as Japan. The Agreement between the European Union and Japan on mutual legal assistance in criminal matters ('EU-Japan treaty MLA Treaty') sets out how and when assistance can be afforded between Member States and Japan. The European Community and its Member States also concluded an agreement with Switzerland on MLA, the Cooperation agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part,

to combat fraud and any other illegal activity to the detriment of their financial interests, setting out how and when assistance can be afforded between Member States and Switzerland.

Why is it being changed?

- 2.88 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be bound by: the EIO Directive; MLAC and its Protocol; those measures of the Schengen acquis which it has opted into; the 2003/577/JHA Decision; and third country agreements on mutual assistance on criminal matters. The amendments made by Part 18 of the Regulations are required to address failures of retained EU law to operate effectively or to address other legislative deficiencies arising from the withdrawal.

What will it now do?

- 2.89 Part 18 of the Regulations will revoke the EIO Regulations with regard to the making or validating of an EIO in the UK under Part 2 of the EIO Regulations after exit day. However, saving provisions are made to retain certain EIO regulations in respect of the EIO's made prior to exit day that are still ongoing. These will include where an EIO has been made for the purposes of a temporary transfer of a prisoner and that prisoner is yet to return to the UK.
- 2.90 The Regulations will also reverse consequential amendments that were made by the EIO Regulations. This includes changes to: Crime (International Cooperation) Act 2003 (CICA); orders designating participating countries under CICA; legislation governing the admissibility of evidence; and legislation governing the powers of the Serious Fraud Office. In addition to this, where EU measures have been revoked by the Regulations, certain provisions of CICA will cease to apply. For instance, sections 20 to 25 of CICA governing freezing orders will not apply following revocation of the 2003/557/JHA Decision. Chapter 4 of Part 1 of CICA will also cease to apply when we the UK is no longer bound by the MLAC and its Protocol, which introduced customer information orders, account information and account monitoring orders. Provisions of the Schengen Convention which were also introduced under CICA will be revoked.
- 2.91 The Regulations will reverse a number of Orders that designated countries as 'participating countries' under CICA. Some participating countries were designated to give effect to an EU measure or EU – third party agreement. Where such EU measures or agreements will cease to apply on exit, and if there are no equivalent 'non-EU' obligations, the Regulations will revoke the country-specific designations. However, where there is another non-EU legal obligation, for example, countries that have ratified the 1959 Convention and the Additional Protocols, those countries still need to be designated as participating countries for the purposes of CICA to give effect to those obligations. All Member States were designated as participating countries by CICA, but were removed from this definition by the EIO Regulations. In order to give effect to any non-EU obligations in respect of these countries, they need to be re-designated as participating countries under CICA.
- 2.92 In addition, Part 3 of the EIO Regulations will be saved insofar as it applies to EIOs made before exit day. This will enable those who are executing requests to continue to use the EIO Regulations to complete a request from a participating Member State that arrived before exit day. This means that EIOs that are part way through execution can still be dealt with. It also means that EIOs that are received before the exit day can

still be executed as an EIO request, rather than using MLA methods. This is preferable because of the speed and expediency in which an EIO request can be executed compared with an MLA request. Furthermore, certain provisions will need to be saved to give effect to requests made under other EU measures received before exit day. These include freezing orders made under the 2003/557/JHA Decision, requests for banking and financial information implemented by virtue of the 2000 MLAC and its Protocol, and the EU – Iceland, Norway agreement allowing for the temporary transfer of prisoners to or from Iceland. Norway has ratified the Second Additional Protocol to the 1959 Convention, which allows for continued cooperation of prisoner transfer even after the EU- Iceland/ Norway treaty ceases to apply.

Part 19 – Passenger Name Record Data

What did any relevant EU law do before exit day?

- 2.93 The objective of Directive 2016/681, on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (‘the PNR Directive’), was to establish a consistent EU approach to the processing and protection of PNR data and its use by Member States in the fight against terrorism and serious crime. The PNR Directive also provides for cooperation between Member States and for the exchange of relevant information between Member State Passenger Information Units (PIUs).
- 2.94 Commission Implementing Decision (EU) 2017/759 of 27 April 2017 (‘the PNR Implementing Decision’), made in accordance with Article 16 of the PNR Directive, sets out the technical protocols and data formats which air carriers can use to transfer PNR data to PIUs in the Member States. Reference to the PNR Implementing Decision was added to the Immigration and Police (Passenger, Crew and Service Information) Order 2008 (the ‘Passenger Data Order’) as a transposition measure related to the PNR Directive.
- 2.95 The Passenger Name Record Data and Miscellaneous Amendments Regulations 2018 (‘the PNR Directive Regulations’) were made to transpose into national law the requirements of the PNR Directive not already in UK legislation.
- 2.96 Council Decision 2012/381/EU of 13 December 2011, on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data, by air carriers, to the Australian Customs and Border Protection Service, and Council Decision 2012/472/EU of 26 April 2012, on the conclusion of the Agreement between the United States of America and the European Union, on the use and transfer of passenger name records to the United States Department of Homeland Security, approve the international agreements to which they refer.

Why is it being changed?

- 2.97 The amendments made by Part 19 of the Regulations are required to address failures of retained EU law to operate effectively or other legislative deficiencies arising from the withdrawal. If the UK withdraws from the EU without a deal in March 2019, the UK will no longer be bound by EU rules on the technical protocols and data formats to be used by air carriers when transferring PNR data to PIUs. The EU Agreements on the transfer of PNR data to Australia and the United States of America will no longer apply to the UK.

What will it now do?

- 2.98 Part 19 of the Regulations amends the PNR Directive Regulations so that the rules relating to the international sharing of PNR data are the same for Member States as they are for all other third countries. In particular, the amendments remove reciprocal obligations with the EU that are no longer appropriate post-exit. The UK PIU will no longer be obliged to share PNR information with Member States but instead will be able to do so if it chooses to do so. This will mirror the default position for how Member States will engage in PNR data-sharing with the UK post-Exit.
- 2.99 The Regulations will also revoke Council Decisions 2012/381/EU and 2012/472/EU on the transfer of PNR data to Australia and the United States of America and Commission Implementing Decision (EU) 2017/759 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units.
- 2.100 The amended PNR Directive Regulations will retain the data protection safeguards as provided for in the PNR Directive. They will provide that Member States are treated in the same way as third countries for the purposes of data exchange and cooperation, in the same way that the UK will be treated by Member States.

Part 20 – Proceeds of crime

What did any relevant EU law do before exit day?

- 2.101 Council Framework Decisions 2003/577/JHA and 2006/783/JHA provide for the mutual recognition of asset freezing and confiscation orders, between Member States, to allow for the quicker transmission and recognition of orders. These Framework Decisions were given effect in UK law by the CJDP Regulations.
- 2.102 Council Decision 2000/642/JHA contains provisions relating to the definition of a financial intelligence unit (FIU) and the sharing of financial information to tackle money laundering between FIUs. There is also a provision relating to the grounds under which sharing may not take place. Council Decision 2007/845/JHA also provides for the establishment of Asset Recovery Offices, which trace and identify property that is the proceeds of crime.
- 2.103 Certain provisions in the Proceeds of Crime Act 2002 ('POCA') also rely on definitions which are contained in EU law. The references to Directive 2002/87/EC relate to the definition of groups of companies, which are used in sections 333B and 333C of POCA, and which provide a defence to the offence of 'tipping off' under section 333A. Additionally, Schedule 9 to POCA sets out the definition of a business operating in the 'regulated sector' and refers to categories defined in EU law.

Why is it being changed?

- 2.104 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be bound by these Council Decisions which cover the UK financial intelligence unit and asset recovery office, or by the Framework Decisions that allow for mutual recognition on freezing and confiscation orders. The amendments made by Part 20 of the Regulations are required to address failures of retained EU law to operate effectively or to address other legislative deficiencies arising from the withdrawal

What will it now do?

- 2.105 Part 20 of the Regulations will remove references to EU law in the Proceeds of Crime Act 2002 in relation to the definition of a ‘bank’, EEA Politically Exposed Persons, the definition of categories of business that rely on EU law, and to ensure that competent bodies who can receive and send requests for assistance are no longer underpinned by an EU Treaty definition.
- 2.106 The Regulations also revoke Part 2 of, and Schedules 1 and 2 to the CJDP Regulations, and ensure relevant transitional provisions are retained for requests received or sent prior to exit day.
- 2.107 The Regulations also make savings provisions to ensure that the provisions relating to the use of information (including personal data) in Council Decisions 2000/642/JHA and 2007/845/JHA are preserved in respect of any information provided to Member States under those procedures prior to exit day.
- 2.108 The Regulations make amendments to references to the definition of ‘groups’ in relation to companies in sections 333B and 333C of POCA, which provide a defence to the offence of ‘tipping off’ under section 333A, to ensure that the defence will capture such groups in the UK after exit day. The amendments made to Schedule 9 to POCA are all made to ensure that the definition of a business operating in the ‘regulated sector’ (which is subject to the offence in section 330 of failing to support suspicions of money laundering) cross-refers, where possible, to categories of business defined in domestic law, rather than categories defined in EU law, which will remain frozen in their meaning as of exit day.

Part 21 - Prüm

What did any relevant EU law do before exit day?

- 2.109 The purpose of Prüm is to improve cross-border cooperation between EU countries’ police and judicial authorities in order to combat terrorism and cross-border crime. The Prüm Decisions provide for a system which allows participating countries to automatically exchange DNA, fingerprints and Vehicle Registration Data.
- 2.110 The relevant EU law is:
- Council Decision 2008/615/JHA of 23 June 2008, on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;
 - Council Decision 2008/616/JHA of 23 June 2008, on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime;
 - Council Decision 2014/836/EU of 27 November 2014 determining certain consequential and transitional arrangements, concerning the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union, in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;
 - Council Decision 2014/837/EU of 27 November 2014 determining certain direct financial consequences incurred as a result of the cessation of the participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial

cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon;

- 2.111 Commission Decision (EU) 2016/809 of 20 May 2016 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in certain acts of the Union in the field of police cooperation, adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis is revoked; and a number of Council Implementation Decisions.
- 2.112 The Council Implementation Decisions, the Commission Decision and Council Decisions as set out above are collectively referred to in this Explanatory Memorandum as the ‘Prüm Decisions’.
- 2.113 The Prüm Decisions provide for a system which allows participating countries to automatically exchange DNA, fingerprints and Vehicle Registration Data. Unlike alternative channels, automatic exchange under Prüm provides a hit/no-hit response for DNA within 15 minutes and fingerprints within 24 hours. Vehicle Registration Data is provided directly within 10 seconds. The UK has not yet connected to Prüm in respect of the automated exchange of DNA Fingerprints and Vehicle Registration Data but is operational in respect of the elements of the Prüm Decisions which provide for civil contingencies and for fighting terrorism.

Why is it being changed?

- 2.114 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer participate in the reciprocal arrangements established by the Prüm Decisions or have access to the electronic system which provides for the exchange of Prüm data. Therefore, the Prüm Decisions are being revoked.

What will it now do?

- 2.115 Part 21 of the Regulations revokes the Prüm Decisions.

Part 22 - Schengen Information System (SIS II)

What did any relevant EU law do before exit day?

- 2.116 SIS II is an information system, holding information on persons and goods of interest, including missing persons and individuals who are subject to European Arrest Warrants (EAWs). It is aimed at enhancing public security in Europe. The system allows participating countries to share and receive law enforcement alerts in real time, and allows participating states to establish SIRENE bureaux for the purpose of providing supplementary information relating to those alerts. The UK connected to SIS II on 13 April 2015.

Why is it being changed?

- 2.117 In the event of a ‘no deal’ scenario the UK will cease to have access to the Schengen Information System.

What will it now do?

- 2.118 Part 22 of the Regulations will revoke the following directly applicable EU instruments, to the extent they relate to the Schengen Information System, subject to certain saving provisions:

- Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis;
- Council Decision 2004/926/EC of 22 December 2004, on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland;
- Council Decision 2014/857/EU of 1 December 2014, concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters, and amending Decisions 2000/365/EC and 2004/926/EC.

2.119 The Regulation revokes the following decisions in their entirety, subject to certain saving provisions:

- Commission Decision 2007/171/EC of 16 March 2007, laying down the network requirements for the Schengen Information System II (3rd pillar);
- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System;
- Commission Implementing Decision 2013/115/EU of 26 February 2013 on the SIRENE Manual and other implementing measures for the second-generation Schengen Information System;
- Council Decision 2013/157/EU of 7 March 2013 fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second-generation Schengen Information System;
- Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen acquis on data protection, and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland;
- Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second-generation Schengen Information System or changing substantially their directly related national systems; and
- Commission Implementing Decision (EU) 2016/1345 of 4 August 2016 on minimum data quality standards for fingerprint records within the second-generation Schengen Information System (SIS II).

Part 23 - Serious Crime and Fraud

What did any relevant EU law do before exit day?

2.120 In relation to serious crime, Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 ('Directive on Electronic Commerce') makes provision on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. This includes, inter alia, requiring Member States to establish, in their domestic law, limitations on the liability of providers of an information society service, subject to certain conditions. The Directive also requires Member States to establish certain restrictions on the circumstances in which

proceedings can be brought against an information society service provider based in another Member State, in order to preserve the position that Member States are responsible for services originating within their jurisdiction (the ‘country of origin’ principle). In the context of serious crime, the Directive on Electronic Commerce was implemented so its provisions applied in the context of the conditions that could be imposed under ‘Serious Crime Prevention Orders’ (contained in the Serious Crime Act 2007), insofar as those conditions might restrict the freedom of EEA-established service providers. The Directive on Electronic Commerce also applied in the context of proceedings that could be brought under Part 2 of the 2007 Act which contains offences of encouraging or assisting crime (‘inchoate offences’).

- 2.121 In relation to fraud, Council Regulation (EU) No 331/2014 of the European Parliament and of the Council of 11 March 2014 provides for exchanges of information, co-operation and mutual assistance, including training programmes, and establishing a harmonised framework for the protection of the Euro against counterfeiting (the ‘Pericles 2020’ programme). The Programme provides funding for information exchanges and training for authorities, law enforcement and banks both within the Eurozone and in EU countries outside of the Eurozone. The EU Regulation itself contains no obligations on Member States; rather, it sets out, amongst other things, the Programme’s objectives; the bodies which are eligible for funding; the participants; the groups to which the Programme is targeted; the types of actions, such as information exchanges, that the Programme envisages; the financial envelope available and the means by which participants can obtain funding; and the obligations placed on the Commission under the Programme, such as monitoring and evaluation.

Why is it being changed?

- 2.122 In relation to its implementation in the context of serious crime provisions, the Directive on Electronic Commerce will cease to bind the UK on exit day but it is desirable to preserve the effect of certain of its provisions post exit, whilst removing the effect of provisions which no longer work as a consequence of the UK withdrawal from the EU.
- 2.123 In relation to fraud, the EU Regulation establishing the Pericles programme would, by operation of the European Union (Withdrawal) Act 2018, be retained EU legislation but there is no need for it to continue to bind the UK post-exit since it has no ongoing practical application. In a scenario where the UK is no longer participating in mutual assistance with the remaining Member States in the context of tackling the counterfeiting of the Euro, the EU Regulation – which imposes no obligations on the UK – is redundant and falls to be revoked.

What will it now do?

- 2.124 Section 34 of the Serious Crime Act 2007 provides that a Serious Crime Prevention Order (SCPO) may not include terms which restrict the freedom of a service provider, who is established in an EEA State other than the UK, to provide information society services in relation to an EEA State unless certain conditions are met, and the terms of the SCPO are necessary for the objective of protecting the public by preventing, restricting or disrupting involvement in serious crime in the UK. Part 23 of the Regulations preserves these conditions, notwithstanding that the Directive on Electronic Commerce ceases to bind the UK on exit day, amending references which would otherwise suggest the UK is an EEA State and is bound by the Directive. The Regulations also omit provisions which implemented requirements, in Article 3 of the

Directive on Electronic Commerce, which required Member States to extend their courts' jurisdiction to service providers engaged in conduct in other EEA States. That is because such requirement represents a reciprocal arrangement, which no longer works in a 'no deal' scenario.

- 2.125 Sections 54 of the 2007 Act restricts the circumstances in which proceedings can be brought against an information society service provider for inchoate offences in Part 2 of the Act. Again, the Regulations preserve the additional conditions that have to be satisfied before such proceedings can be brought, amending references which would otherwise suggest the UK is an EEA State.
- 2.126 Section 69 of the 2007 Act establishes an offence of disclosure of protected information and contains an exemption where such a disclosure takes place in compliance with an EU obligation. The Regulations amend section 69 to ensure the exemption applies only where the disclosure takes place in respect of retained EU obligations, and not EU obligations which are no longer binding following exit day.
- 2.127 In relation to fraud, the Regulations revoke the EU Regulation establishing the 'Pericles' programme for countering the counterfeiting of the Euro since it has no practical application post-exit. The UK will cease to co-operate in this mutual assistance programme should the UK withdraw from the EU without a deal, and the EU Regulation – which imposes no obligations on the UK – is redundant and can accordingly be revoked.

Part 24 – Miscellaneous

CHAPTER 1

Miscellaneous amendments to police legislation

SECTION 1

Amendment of primary legislation

124. Amendment of the Local Government (Miscellaneous Provisions) Act 1982

What did any relevant EU law do before exit day?

- 2.128 Whilst the Local Government (Miscellaneous Provisions) Act 1982 is domestic legislation, Schedule 3, paragraph. 12(1)(c) and (d) of the Act currently refers to the UK as being an 'EEA State', which will no longer be the case following the UK's exit from the EU. This is in reference to residency requirement eligibility for those applying for licences for sex establishments in England and Wales.

Why is it being changed?

- 2.129 In the event of the UK withdrawing from the EU without a deal in March 2019, domestic legislation is being amended to reflect the fact that the UK will not be an 'EEA State' after exit day.

What will it now do?

- 2.130 Regulation 124 will amend Schedule 3, paragraph 12(1)(c) and (d) of the Local Government (Miscellaneous Provisions) Act 1982 to reflect the fact that the UK will

not be an ‘EEA State’ after exit day. The criteria for Schedule 3, paragraph 12(1)(c) and (d) will therefore be amended to read ‘the United Kingdom or an EEA State’.

125. Amendment of the Licensing Act 2003

What did any relevant EU law do before exit day?

- 2.131 Whilst the Licencing Act 2003 is domestic legislation, section 120(8)(c) of the Act currently refers to the UK as being an ‘EEA State’, which will no longer be the case following the UK’s exit from the EU.

Why is it being changed?

- 2.132 In the event of the UK withdrawing from the EU without a deal in March 2019, domestic legislation is being amended to reflect the fact that the UK will not be an ‘EEA State’ after exit day.

What will it now do?

- 2.133 Regulation 125 will amend section 120(8)(c) of the Licensing Act 2003 to omit reference to the UK as an ‘EEA State’.

126. Amendment of the Anti-social Behaviour, Crime and Policing Act 2014

What did any relevant EU law do before exit day?

- 2.134 Schedule 6A is an amendment of the Anti-social Behaviour, Crime and Policing Act 2014, which prohibits the identification of victims in publications where an allegation has been made that an offence of forced marriage has been committed against a person. Paragraphs 4 to 8 of Schedule 6A, as currently drafted, are designed to ensure that the offence provided for in paragraph 2 of the Schedule (which makes it a summary offence to identify the victim of a forced marriage) is consistent with the UK’s obligations under Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘the Directive on Electronic Commerce’). The Directive on Electronic Commerce ceases to bind the UK on exit day.

- 2.135 Under paragraphs 4 to 8 of Schedule 3A, providers of information society services which are established in England and Wales are currently covered by the offence even when they are operating in other European Economic Area states. Paragraphs 6 to 8 of Schedule 6A provide exemptions for internet service providers from the offence in limited circumstances (such as where they are acting as mere conduits for the prohibited material or are storing it as caches or hosts).

Why is it being changed?

- 2.136 The Directive on Electronic Commerce ceases to bind the UK on exit day. Regulation 126 amends provisions which would otherwise suggest the UK is an EEA State and bound by the Directive. The regulation also omits provisions which required Member States to extend their courts’ jurisdiction to service providers engaged in conduct in other EEA States because such a requirement represents a reciprocal arrangement which will cease to apply should the UK withdraw from the EU without a deal in March 2019.

What will it now do?

- 2.137 Regulation 126 makes amendments to the relevant parts of Schedule 6A of the Anti-Social Behaviour, Crime and Policing Act 2014 to reflect the fact that the Directive

on Electronic Commerce does not apply to the UK after exit day, and to clarify that the UK is no longer an EEA State after exit day. The regulation also omits provisions which required Member States to extend their courts' jurisdiction to service providers engaged in conduct in other EEA States; such a requirement reflects a reciprocal arrangement, which will have ceased to apply should the UK withdraw from the EU without a deal in March 2019.

127. Amendment of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

What did any relevant EU law do before exit day?

- 2.138 The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 is domestic legislation enacted by the Northern Ireland Assembly. Schedule 3A of the Act makes amendments which mirror amendments to Schedule 6A of the Anti-social Behaviour, Crime and Policing Act 2014 (which covers England, Wales and Scotland). Paragraphs 4 to 8 of Schedule 3A provide that the offence created in paragraph 2 of the Schedule (which makes it a summary offence to identify the victim of a forced marriage) is consistent with the UK's obligations under the Directive on Electronic Commerce.
- 2.139 Under paragraphs 4 to 8 of Schedule 3A, providers of information society services which are established in Northern Ireland are covered by the new offence even when they are operating in other EEA states. Paragraphs 6 to 8 of Schedule 3A provide exemptions for internet service providers from the offence in limited circumstances (such as where they are acting as mere conduits for the prohibited material or are storing it as caches or hosts).

Why is it being changed?

- 2.140 The Directive on Electronic Commerce ceases to bind the UK on exit day. Regulation 127 amends references which would otherwise suggest the UK is an EEA State and bound by the Directive. The regulation also omits provisions which required Member States to extend their courts' jurisdiction to service providers engaged in conduct in other EEA States because such a requirement represents a reciprocal arrangement which will cease to apply in a 'no deal' scenario.

What will it now do?

- 2.141 Regulation 127 makes amendments to the relevant parts of Schedule 3A to reflect the fact that the Directive on Electronic Commerce does not apply to the UK after exit day and to clarify that the UK is no longer an EEA State after exit day. The regulation also omits provisions which required Member States to extend their courts' jurisdiction to service providers engaged in conduct in other EEA States because such a requirement reflects a reciprocal arrangement which will have ceased to apply in a 'no deal' scenario.

128. Amendment of the Policing and Crime Act 2017

What did any relevant EU law do before exit day?

- 2.142 The current effect of section 144 of the Policing and Crime Act 2017 is to enable regulations made under section 2(2) of the European Communities Act 1972 to set a maximum term of imprisonment of more than two years for breaches of financial sanctions.

Why is it being changed?

- 2.143 Since section 2(2) powers will no longer be available, should the UK withdraw from the EU without a deal in March 2019, section 144 will have no effect. Its repeal is consequential on the repeal of section 2(2) by the EU (Withdrawal) Act 2018.

What will it now do?

- 2.144 Regulation 128 will repeal section 144 of the Policing and Crime Act 2017. Alternative powers to impose penalties for breaches of financial sanctions will be available under Part 1 of the Sanctions and Anti-Money Laundering Act 2018 (see section 17).

SECTION 2

Amendment of secondary legislation

129. Amendment of the Police Pensions (Additional Voluntary Contributions) Regulations 1991

What did any relevant EU law do before exit day?

- 2.145 The Police Pensions (Additional Voluntary Contributions) Regulations 1991 ('the 1991 Regulations') are domestic regulations, which have a definition of 'insurance company' which referred to EEA firms.

Why is it being changed?

- 2.146 The reference to an EEA firm will no longer be necessary once the UK has exited the EU because regulation 6 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 ('the 2018 Regulations') treats a person with temporary permission under those Regulations as having a Part 4A permission. The effect of the 2018 Regulations therefore means that a relevant firm, falling within the part of the current definition that would be removed by this change, will be picked up by the 2018 Regulations as a firm with temporary permission under Part 4A of the Financial Services and Markets Act 2000, which is catered for by the remaining part of the definition.

What will it now do?

- 2.147 The amendments will mean that a firm falling to be dealt with under the 2018 Regulations will come within the amended definition within the 1991 Regulations, if temporary permission under those Regulations has been granted.

130. Amendment of the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013

What did any relevant EU law do before exit day?

- 2.148 Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 ('Directive on Electronic Commerce') makes provision on certain legal aspects of information society services. In the context of trafficking and modern slavery, the Directive was implemented by the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013, so that its provisions applied in the context of offences under section 59A of the Sexual Offences Act 2003 (trafficking people for sexual exploitation), section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for labour and other exploitation), and section 2 of the Modern Slavery Act 2015 (human trafficking) – the 'trafficking offences'.

Why is it being changed?

- 2.149 In relation to its implementation in the context of the trafficking offences, the Directive on Electronic Commerce will cease to bind the UK on exit day. However, it is desirable to preserve the effect of certain of its provisions post exit, whilst removing the effect of provisions which no longer work as a consequence of the UK's withdrawal from the EU.

What will it do now?

- 2.150 Regulation 130 amends the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013 so as to omit provisions which implement a requirement in Article 3 of the Directive on Electronic Commerce to extend domestic courts' jurisdiction to service providers established in England and Wales where they provide services in EEA States other than in the UK. The public interest conditions, which limit the circumstances in which service providers established in other EEA States can be prosecuted for the trafficking offences, are maintained, as is the position regarding liability of providers acting as conduits, caches or hosts. References which would otherwise suggest the UK is an EEA State and is bound by the Directive are amended, and a requirement for the Secretary of State to have regard to the implementation of the Directive in other Member States is removed.

131. Amendment of the Police Pensions Regulations 2015

What did any relevant EU law do before exit day?

- 2.151 The Police Pensions Regulations 2015 are domestic regulations. However, the definition being changed by this amendment, 'duly qualified medical practitioner', captures a registered medical practitioner who holds the minimum qualification of the Associate of the Faculty of Occupational Medicine or the equivalent EEA qualification, or any other equivalent qualification acceptable to the scheme manager. It recognises the effect of the Mutual Recognition of Professional Qualifications (MRPQ) Directive as a reciprocal arrangement which enables European Economic Area (EEA) nationals to have their professional qualifications recognised in an EEA State other than the one in which the qualification was obtained.

Why is it being changed?

- 2.152 If the UK withdraws from the EU without a deal in March 2019, the Directive on mutual recognition of professional qualifications will no longer apply to the UK and there will be no system of reciprocal recognition of professional qualifications between the remaining EEA States and the UK. In anticipation of this eventuality, regulation 131 removes specific reference to equivalent EEA qualifications.

What will it now do?

- 2.153 The removal of the specific reference does not mean a person with relevant EEA-derived qualifications cannot be a duly qualified medical practitioner; rather, it recognises that the MRPQ Directive will no longer apply to the UK. However, it would not preclude a scheme manager still deciding that relevant qualifications held by practitioners from remaining EEA States (or other countries) might be sufficiently equivalent to satisfy the last limb of the amended definition.

CHAPTER 2

Miscellaneous amendments to the investigatory powers legislation

132. Amendment of the Investigatory Powers Act 2016

What did any relevant EU law do before exit day?

- 2.154 Section 19 of the Investigatory Powers Act 2016 ('the 2016 Act') sets out the power of the Secretary of State to issue warrants authorising the targeted interception of communications. Section 102 makes similar provision in respect of warrants authorising interference with equipment.
- 2.155 Both sections set out the circumstances in which this power may not be exercised by the Secretary of State because it is instead exercisable by Scottish Ministers. Sections 19(5) and 102(9) provide that this restriction does not prevent the Secretary of State from doing anything under those sections for the purposes specified in section 2(2) of the European Communities Act 1972 ('the 1972 Act'). In practice, the Secretary of State has not needed to rely upon this reference to the 1972 Act.

Why is it being changed?

- 2.156 Should the UK withdraw from the EU without a deal in March 2019, the European Communities Act 1972 will have been revoked. The revocation of sections 19(5) and 102(9) of the 2016 Act is consequential on the revocation of that Act.

What will it now do?

- 2.157 As the provisions linking to the European Communities Act have not previously been relied upon, sections 19 and 102 of the 2016 Act will continue to operate as they do now, without the references to the 1972 Act.

133. Amendment of the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

What did any relevant EU law do before exit day?

- 2.158 The Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018 provide the legal basis under which a body, such as a company or public authority, may intercept communications for monitoring or record keeping purposes that are transmitted by a telecommunications system they control.
- 2.159 Regulation 3 of that instrument makes clear that authorised conduct for these purposes may include interception that is carried out in order to ascertain compliance with regulatory or self-regulatory practices or procedures. Regulation 2, without amendment, makes clear that such practices or procedures include those for which compliance is required by virtue of any provision of a Member State or other State within the European Economic Area, or any standard or Code of Practice established by or on behalf of a relevant body in such a State.
- 2.160 In addition, regulation 4(2) of that instrument limits certain conduct set out in the Regulations to the extent that it is permitted by Article 5 of Directive 2002/58 ('the Electronic Privacy Directive').

Why is it being changed?

- 2.161 Should the UK withdraw from the EU without a deal in March 2019, there would be no justification to treat differently the regulatory practices or procedures of Member States, as against other countries, in relation to the interception by businesses for the purposes of monitoring and record-keeping.

2.162 In addition, the provisions of the Electronic Privacy Directive would no longer apply in relation to the relevant activity.

What will it now do?

2.163 The amendments to the Investigatory Powers Regulations in relation to interception by businesses, at regulation 133, will remove provisions that currently enable interception to take place in accordance with regulatory practices required by Member States or other states within the European Economic Area (or relevant bodies within such states).

2.164 This will limit interception for regulatory practices to circumstances where compliance is required by an enactment in UK law or by standards or Codes of Practice established by or on behalf of a relevant body in the UK.

2.165 The amendments will also remove the existing limitation to certain activity needing to be permitted by the Electronic Privacy Directive. The removal of this limitation will not have a substantive impact, given that the Investigatory Powers Act Regulations themselves limit the purposes for which business may conduct interception, and those limitations were designed to be within scope of what the Electronic Privacy Directive would permit.

CHAPTER 3

International agreements

What did any relevant EU law do before exit day?

2.166 Through its membership of the EU, the UK is party to a number of international agreements which relate to police and judicial cooperation in criminal matters. Chapter 3 of Part 24 is concerned with any directly effective rights arising from the following agreements:

(a) the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway on the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Republic of Iceland and the Kingdom of Norway, on the other, in areas of the Schengen acquis which apply to these States ('the Ireland, United Kingdom, Iceland and Norway Schengen acquis Agreement');

(b) the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto ('the Iceland and Norway Agreement on the 2000 Convention');

(c) the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis ('the Swiss Schengen Association Agreement');

(d) the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and

cross-border crime, and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto ('the Iceland and Norway Prüm Agreement');

- (e) the Agreement between the European Union and Japan on mutual legal assistance in criminal matters ('the Japan MLA Agreement');
 - (f) the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis ('the Liechtenstein Protocol').
- 2.167 While the UK is not part of the Schengen area, the Schengen acquis includes measures related to police cooperation and judicial cooperation in criminal matters. The UK participated in a number of these before exit day. The Ireland, United Kingdom, Iceland and Norway Schengen Agreement establishes the reciprocal rights and obligations between Iceland and Norway and Ireland and the UK to the extent that Ireland or the UK participate in the Schengen acquis or measures building on it.
- 2.168 The Iceland and Norway Agreement on the 2000 Convention is a treaty aiming to improve judicial cooperation in criminal matters between the Member States of the European Union and Iceland and Norway. Once brought into force, it applies certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States and the 2001 Protocol on the relations between Iceland and Norway and the EU, supplementing and facilitating the application of the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.
- 2.169 The Swiss Schengen Association Agreement associated Switzerland on an equal footing with Norway and Iceland in the implementation, application and development of the Schengen Acquis and created rights and obligations between Switzerland and Member States in relation to the areas of the Schengen acquis which apply to those states.
- 2.170 The Prüm agreements govern the exchange of data relating to DNA, fingerprints and vehicle registration information. The Iceland and Norway Prüm Agreement establishes the legal framework which enables Norway and Iceland to participate.
- 2.171 The Japan MLA Agreement provides a framework for Member States and Japan to provide mutual legal assistance, covering such areas as the investigation and prosecution of crime, taking witness statements and obtaining evidence.
- 2.172 The Liechtenstein Protocol made possible the accession of Liechtenstein to the Schengen acquis and determines the rights and obligations of the Contracting Parties.
- Why is it being changed?***
- 2.173 If the UK withdraws from the European Union in March 2019 without a deal, the UK will no longer participate in the international agreements listed above. It will therefore no longer be appropriate to retain the associated rights and obligations in the UK's domestic law. Therefore, to the extent that these agreements give rise to directly effective rights, Chapter 3 of Part 24 of the Regulations provides that those rights should cease to have effect, subject to a saving provision.

What will it now do?

- 2.174 Chapter 3 of Part 24 of the Regulations ensures that any directly effective rights which are derived from the international agreements listed above are discontinued after exit day, except to the extent that such rights correspond to rights which are being retained elsewhere in the Regulations.

CHAPTER 4

Atlas – cooperation between special intervention units

What did any relevant EU law do before exit day?

- 2.175 Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in Crisis Situations ('the Atlas Council Decision') lays down general rules and conditions to allow for special intervention units of one Member State to provide assistance and/or operate on the territory of another Member State (hereinafter referred to as the requesting Member State) in cases where they have been invited by the requesting Member State and have agreed to do so in order to deal with a crisis situation.

Why is it being changed?

- 2.176 Council Decision 2008/617/JHA of 23 June 2008 facilitates cooperation between the special intervention units of Member States. The reciprocal arrangements set out in the Atlas Council Decision will no longer be binding on Member States in respect of the UK once the UK has left the EU. Accordingly, the Atlas Council Decision is being revoked, subject to certain transitional provisions.

What will it now do?

- 2.177 The Regulations revoke the Atlas Council Decision. However, they make transitional provision in relation to requests for assistance made by a Member State to the UK before exit day, with the effect that the UK may accept or refuse the request or propose a different type of assistance, and require the UK to complete any offer of assistance agreed to prior to exit day. They also make transitional provision in relation to requests for assistance made by the UK to a Member State before exit day. This will allow Member States to operate in the UK in relation to such requests on similar terms to before exit and retain the obligation on the UK to bear the costs of other special intervention units operating in UK territory at the UK's request.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 The territorial application of this instrument varies between provisions.
- 3.3 Please see paragraphs 4.3 and 4.4 below for further details of the application of the provisions in this instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.3 The precise extent of each provision of this instrument varies, as set out in regulation 2 (Extent), and the territorial application of this instrument is not limited. In most cases, any amendment, repeal or revocation made by this instrument has the same extent within the UK as the provision to which it relates, with the exception of certain provisions relating to the Proceeds of Crime Act 2002 ('POCA') and the Criminal Finances Act 2017 ('CFA'). Regulation 107(5) and (8) of this instrument relates to provisions in POCA which were inserted by the CFA, but which have not yet commenced in Northern Ireland; accordingly, regulation 107(5) and (8) extends and applies to England and Wales and Scotland only. Similarly, the provisions in the CFA 2017 which are amended by regulation 109(1) to (3) of this instrument make changes to POCA but are not yet commenced in Northern Ireland. Accordingly, Regulation 109(1) and (3) of this instrument extends and applies to Northern Ireland only. Regulation 109(4) makes amendments to section 27 of the CFA, which itself only extends to Northern Ireland, so no further provision is required.
- 4.4 Any saving or transitional provision in this instrument has the same extent within the UK as the provision to which it relates, with the exception that regulation 72 (saving provision – investigation teams operating in the UK after exit day) extends and applies to England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire, has made the following statement regarding Human Rights:
- 'In my view the provisions of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.'

6. Legislative Context

- 6.1 The purpose of the Regulations is to ensure that that the UK statute book continues to function should the UK leave the EU without a deal in March 2019. The Regulations will utilise section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU. It will also rely upon other relevant powers in the European Union (Withdrawal) Act 2018 and the Extradition Act 2003. As the Regulations cover a number of measures, further legislative context is provided in the sections below for Parts 2 to 24 of the Regulations.

Part 2 – Child Pornography

- 6.2 Part 2 of the Regulations retains provisions in the Council Decision 2000/375/JHA on combating child pornography, which is already implemented by UK legislation. In England and Wales there is legislation which prevents child sexual abuse material, including the Protection of Children Act 1978 (PCA 1978) and the Criminal

Justice Act 1988 (CJA 1988) which both set out the law on sexual images and pseudo-images of people under the age of 18. The equivalent legislation in Scotland is sections 52 and 52A of the Civic Government (Scotland) Act 1982.

Part 3 – Counter-Terrorism

- 6.3 Sections 21E(b) and 21F(2)(c) of the Terrorism Act 2000 ('the 2000 Act') provide exemptions to an offence under 21(D) which criminalises entities in the regulated sector which fail to disclose suspicion or belief that money or property is terrorist property. These provisions, without amendment, would continue to be drafted in a way which indicated that the UK remains an EEA State after exit day.
- 6.4 Schedule 3A to the 2000 Act provides interpretation as to whether a business is considered in the 'regulated sector', as well as defining a 'credit institution', a 'regulated market' and 'specified disclosure obligations'. These definitions are contained in EU law, and the Regulations amend certain of those references to refer to definitions in domestic law.
- 6.5 Schedule 4 to the 2000 Act gives effect to the UK obligation under Framework Decision 2003/577/JHA (on the execution in the European Union of orders freezing property or evidence) and provides for the cross-border recognition of forfeiture orders relating to terrorism financing. There are three groups of provisions, and each one does the same thing for a different jurisdiction (11A-11G covers England and Wales, 25A-25G covers Scotland, and 41A-41G covers Northern Ireland). The Regulations revoke these provisions, since the reciprocal arrangements will no longer persist following exit day. However, transitional provisions are included so that any requests sent or received prior to exit day which have not been processed may be completed.
- 6.6 Schedule 6 to the 2000 Act covers the provision of financial information orders – that is, the disclosure of customer information by a financial institution for the purposes of an investigation. The Regulations replace EU law-rooted definitions with definitions in domestic law.
- 6.7 Section 58A of the 2000 Act provides that it is an offence to elicit, publish or communicate information of a kind likely to be useful to a person committing or preparing an act of terrorism, about a member of the armed forces, a member of the intelligence services or a constable.
- 6.8 Section 1 of the Terrorism Act 2006 provides that it is an offence to publish a statement likely to be understood by members of the public as a direct or indirect encouragement of the commission, preparation or instigation of an act of terrorism, including the glorification of terrorism. Section 2 provides that it is an offence to disseminate a terrorist publication which contains such an encouragement, or which is likely to be useful in the commission or preparation of an act of terrorism.
- 6.9 Schedule 8A to the 2000 Act makes provision in relation to the section 58A offence and the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007 in relation to the section 1 and 2 offences, so that these offences apply (and proceedings may be brought in the UK courts) to domestic service providers in relation to anything done in an EEA State, and to non-UK service providers, subject to the 'country of origin' principle where a non-UK provider is based in an EEA State. They also

implement the ‘mere conduit’, ‘caching’ and ‘hosting’ principles in relation to these offences (see above for explanation of these principles).

- 6.10 The Regulations generally preserve the above position despite the Electronic Commerce Directive ceasing to bind the UK. However, they omit the provisions which implemented the Directive’s requirement to extend domestic courts’ jurisdiction to service providers engaged in conduct in other EEA States because such requirement represents a reciprocal arrangement which no longer works in a ‘no deal’ scenario.

Part 4 – Cross border surveillance

- 6.11 The 1990 Schengen Convention governs the UK’s participation in cross-border surveillance measures. Should the UK withdraw from the EU without a deal in March 2019, on exit day the reciprocal arrangements under the Schengen Agreement will no longer work. That being the case, it is unnecessary to keep this legislation in place and is therefore cause for it to be revoked, subject to transitional provisions which will ensure that operations commenced before exit day can be completed (see Section 2 for details).

Part 5 – Drug Precursors and Psychoactive Substances

Chapter 1 – Drug Precursors

- 6.12 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be bound by Regulation (EC) No 273/2004 of the European Parliament and Council and Council Regulation (EC) No 111/2005 (‘the EU Drug Precursor Regulations’). The EU Drug Precursor Regulations currently have direct effect in UK law, and the UK implementing legislation (SI 2008/295, SI 2008/296) supports the EU Regulations by providing for the powers and penalties required by the EU Regulations.
- 6.13 Provisions in the EU Drug Precursor Regulations and the UK implementing legislation need to be amended to remove deficiencies that arise as a consequence of the UK’s withdrawal from the EU without a deal.
- 6.14 Following the UK’s withdrawal from the EU, the UK will continue to be a signatory to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (‘the UN Convention’). Some of the requirements of the UN Convention are transposed into UK law through section 12 in Part II of the Criminal Justice (International Co-operation) Act 1990, which makes it an offence to manufacture and/or supply certain specified substances to another person, knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug. The amendments to the EU Drug Precursor Regulations are required to ensure that the UK complies with the remainder of the obligations under the UN Convention.

Chapter 2 – Psychoactive Substances

- 6.15 Schedule 1 to the Psychoactive Substances Act 2016 ('the 2016 Act') sets out 'exempted substances' for the purposes of the provisions of the Act. Paragraph 7 of Schedule 1 defines 'food' (including drink) by reference to 'prohibited ingredients'. Substances the use of which in or on food is authorised under EU legislation ('an EU instrument') are excluded from the definition of prohibited ingredients. This primarily corresponds to EC Regulations 1333/2008 ('Regulation on food additives') and 1334/2008 ('Regulation on flavourings and certain food ingredients with flavouring properties for use in and on foods'). The Regulations amend paragraph 7 to replace the deficient reference to 'EU instrument', following withdrawal, with a reference to UK law (enactments including subordinate and devolved legislation).
- 6.16 Schedule 4 to the 2016 Act contains provisions about the application of the Act in relation to persons providing information society services, to ensure compatibility with the UK's obligations under the Electronic Commerce Directive (Directive 2000/31/EC of 8th June 2000). The Regulations amend Schedule 4 in respect of its implementation of the Electronic Commerce Directive, in relation to: extension of liability for domestic service providers; restriction on institution of proceedings for non-UK service providers; restrictions on including terms in prohibition notices or orders; and protections for service providers of intermediary services (providers acting as conduits, caches or hosts).
- 6.17 Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 on the European Monitoring Centre for Drugs and Drug Addiction' ('EMCCDA') established the EMCDDA. Regulation (EU) No 2017/2101 of the European Parliament and of the Council of 15 November 2017 amended Regulation (EC) No 1920/2006, to facilitate information exchange on, and establish an early warning system and risk assessment procedure for, new psychoactive substances between Member States. These EU Regulations are revoked on exit day, as the UK will no longer participate in the EMCDDA and associated systems, such as information exchange and early warning systems, as a Member State.

Part 6 - Eurojust

- 6.18 Council Decision 2002/187/JHA falls within the definition of 'retained EU law' under section 6(7) of the European Union (Withdrawal) Act 2018 as it is 'direct EU legislation' under section 3. As it will no longer be possible for competent authorities in the UK to cooperate with those in Member States on the basis of the Council Decision, and the retained EU law would therefore not operate effectively, the Regulations will revoke the Council Decision subject to certain savings provisions relating to information received prior to exit day. Further detail is available in Section 7.

Part 7 - European Agency for Law Enforcement Training (CEPOL)

- 6.19 The CEPOL Council Decision established a successor European Police College, known as CEPOL. It was subsequently repealed and replaced by the CEPOL Regulation. However, the UK continued to be bound by the CEPOL Council Decision by virtue of the fact that it did not opt into the CEPOL Regulation. Should the UK withdraw from the EU without a deal, it will no longer participate in the CEPOL Council Decision. Accordingly, the Regulations revoke the CEPOL Council Decision as retained in UK law by the EU Withdrawal Act 2018. Additionally, the Regulations

revoke the European Police College (Immunities and Privileges) Order 2004, which confers privileges and immunities upon CEPOL staff. As this Order has never been commenced, there is no need to make saving or transitional provision.

Part 8 - European Criminal Record Information System (ECRIS)

- 6.20 The exchange of criminal record information between Member States is governed by Framework Decision 2009/315/JHA and Council Decision 2011/93/EU. Framework Decision 2009/315/JHA has been transposed into UK law under Part 6 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 (the CJDP Regulations). Article 10(3) of Directive 2011/93/EU requires Member States to take the necessary measures to ensure that, where employers are recruiting for a position involving direct and regular contact with children and request information regarding certain criminal convictions or disqualification from such roles, this information is transmitted in accordance with the procedures set out in Framework Decision 2009/315/JHA. Article 10(3) has been transposed into UK law under the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013 (the 2013 ECRIS Regulations). The Regulations revoke Council Decision 2009/316/JHA in its entirety, and revoke Part 6 of the CJDP Regulations and the 2013 ECRIS Regulations, subject to some saving and transitional provisions.

Part 9 – European Judicial Network

- 6.21 The relevant EU legislation which pertains to the UK's participation in the European Judicial Network (EJN) is the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network. Decision 2008/976/JHA repeals and replaces Joint Action 98/428/JHA and governs the operation of the 'European Judicial Network'. It sets out: the composition of the Network; the way in which the Network will operate; the functions of contact points within Member States; the purposes and venues of the plenary meetings of contact points; meetings of the Network's national correspondents; the content of the information disseminated within the EJN and the updating of that information; the telecommunication tools of the Network; the relationship between the EJN and Eurojust; and the budget, territorial application and assessment of the operation of the EJN.
- 6.22 Should the UK withdraw from the EU without a deal in March 2019, these reciprocal arrangements will no longer work. That being the case, it is unnecessary to keep this legislation in place and is therefore cause for it to be revoked.

Part 10 - eu-LISA

- 6.23 Pursuant to Council Decision 2018/1600/EU, the UK participates in Regulation (EU) 2018/1726, which established a further iteration of eu-LISA, the agency responsible for the operation of large-scale IT systems in the area of freedom, security and justice. Should the UK withdraw from the EU without a deal in March 2019, it will no longer be possible for the UK to cooperate with eu-LISA, and so the Regulations revoke Council Decision 2018/1600/EU and Regulation (EU) 2018/1726. They also revoke Council Decision 2010/779/EU, concerning the UK's participation in the previous iteration of eu-LISA.

Part 11 – Europol

- 6.24 Regulation 2016/794/EU falls within the definition of ‘retained EU law’ under section 6(7) of the European Union (Withdrawal) Act 2018 as it is ‘direct EU legislation’ under section 3. As it will no longer be possible for the UK to cooperate with Europol on the basis of the Europol Regulation, and the retained EU law would therefore not operate effectively, the Regulations will revoke the Europol Regulation subject to certain savings provisions relating to information provided prior to exit day. Further detail is available in Section 7.
- 6.25 For legal certainty, the Regulations also revoke some further legislation relating to Europol including:
- Five Council Decisions relating to Europol in so far as they are retained EU law:
 - a) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol);
 - b) Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information;
 - c) Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements;
 - d) Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files; and
 - e) Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information.
- 6.26 These are revoked in so far as they are retained EU law.
- Commission Decision (EU) 2017/388 of 6 March 2017 confirming the participation of the United Kingdom of Great Britain and Northern Ireland in Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol); and
 - Three Orders relating to Europol (none of which have been commenced):
 - a) The European Police Office (Legal Capacities) Order 1996;
 - b) The European Communities (Immunities and Privileges of the European Police Office) Order 1997;
 - c) The European Communities (Immunities and Privileges of the European Police Office) (Amendment) Order 2004.
- 6.27 These provisions are on the statute book but have not been commenced and relate to the Europol Convention which no longer applies to the UK. As their drafting is redundant, the Government intends to revoke them.

Part 12 - Exchange of Information and Intelligence between Law Enforcement Authorities and Disclosure in Foreign Proceedings

Chapter 1 – Exchange of Information and Intelligence between Law Enforcement Authorities

- 6.28 Should the UK withdraw from the EU without a deal in March 2019, the UK will cease to participate in the reciprocal arrangements set out under Council Framework Decision 2006/960/JHA ('the Swedish Initiative') and Article 1(10) of Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams ('Framework Decision 2002/465/JHA'), . Part 12 of the Regulations therefore revokes Part 5 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 which transposed the Swedish Initiative and Framework Decision 2002/465/JHA into UK law, subject to specified savings and transitional provisions.

Chapter 2 – Disclosure in Foreign Proceedings

- 6.29 Chapter 2 of Part 12 of the Regulations makes an amendment to the Anti-Terrorism, Crime and Security Act 2001, to ensure that a reference to 'EU obligation' does not create a deficiency upon the UK's withdrawal from the EU. Section 17 of the 2001 Act clarifies and extends a number of information disclosure provisions available to public authorities, permitting disclosure to assist any criminal investigation or criminal proceedings being carried out in the UK or abroad, or to facilitate determinations of whether such investigations or proceedings should begin or end. However, section 18 enables the Secretary of State, in certain circumstances, to prohibit the disclosure of information for the purposes of overseas criminal investigations or criminal proceedings that would otherwise be permitted by section 17. However, the Secretary of State cannot prohibit the making of any disclosure in pursuance of an 'EU obligation' (section 18(4)(b)). The Regulations amend this provision to ensure that the Secretary of State is only precluded from prohibiting the making of disclosures which are required under those EU laws that are retained as obligations following the UK's withdrawal from the EU.

Part 13 – Explosive Precursors

- 6.30 The EU Explosive Precursors Regulation requires Member States to establish a prohibition on members of the general public accessing certain chemicals, unless the Member States establish a licensing and/or registration regime to allow members of the general public controlled access to some chemicals if they have a demonstrable legitimate need. The Poisons Act 1972 was amended in order to implement the EU Explosive Precursors Regulation's requirements, including provision for the possibility, should the Secretary of State choose, to recognise 'non-GB licences'. The 2015 Regulations made under the Poisons Act 1972 make further detailed provision in relation, amongst other things, to the licensing regime in operation in England and Wales and Scotland. Similar implementing provisions for Northern Ireland are contained in the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014.
- 6.31 Provisions in the EU Explosive Precursors Regulation and the implementing domestic legislation need to be amended to remove deficiencies and failures that would arise as a consequence of the UK's withdrawal from the EU without a deal in March 2019.

Part 14 – Extradition

- 6.32 Part 14 of the Regulations amend the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 and the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003.
- 6.33 The Regulations amend previous orders under the Extradition Act 2003 to re-designate current Part 1 territories to Part 2 Territories following the UK's withdrawal from the EU and the Framework Decision on the European Arrest Warrant (EAW).
- 6.34 The Extradition Act 2003 provides for two distinct sets of procedures to apply to incoming extradition requests. Part 1 of the Act implements the EAW Framework Decision and is a more simplified and streamlined system, which does not involve the Secretary of State. Part 2 of the Act covers other territories that the UK has extradition relations with, but whom are not operating the simplified procedure. Part 2 of the Act requires decisions to be made by both the Secretary of State and the courts.
- 6.35 The Regulations amend previous orders which designated Member States as Part 1 territories and re-designates these as Part 2 Territories applicable from 29 March 2019, the day of exit from the EU. The UK retains extradition arrangements with the applicable territories under the 1957 European Convention on Extradition.
- 6.36 The transitional arrangements provide continuity of Part 1 of the Act to apply to EAWs after the day of exit for cases where an arrest has already been made.

Part 15 – Firearms

- 6.37 Regulation 58 amends the Commission Implementing Regulation (EU) No 2015/2403 by substituting certain references to the European Weapons Directive, and requirements for the verification and certification of deactivated firearms, with references to the equivalent part of domestic legislation to ensure the continuation of deactivation standards and techniques through relevant domestic legislation. References to Member States are amended to reflect the fact that the UK will no longer be a Member State after exit day and also to omit Articles of the EU Implementing Regulation which will no longer have practical application in relation to the UK.
- 6.38 Regulation 59 amends the Firearms Act 1968 to remove or amend references to EU law in respect of: collectors of firearms, the use of firearms by persons under the age of 18, the issue of European Firearms Passes, and the notification of certain transactions involving the holders of Visitor's Permits.
- 6.39 Regulation 60 is a saving provision in relation to the repeal of section 5A(3) of the Firearms Act 1968, which provides an exemption from the requirement to hold the Secretary of State's authority to possess, purchase or acquire certain prohibited weapons in respect of collectors or bodies concerned in the cultural or historical aspects of weapons, where they are recognised by a Member State. The regulation will ensure that anyone who is in possession of prohibited weapons immediately before exit day and who does not hold an authority by virtue of the exemption provided by section 5A(3), does not commit an offence on exit day.
- 6.40 Regulation 61 amends the Firearms (Amendment) Act 1988 to remove or amend references to EU law in respect of: the sale or transfer of defectively deactivated

firearms, the issue of visitor's permits, firearms acquired for export, and the notification by GB residents of firearms purchased or acquired in EU countries.

- 6.41 The measures listed in regulation 64 amend the Firearms (Northern Ireland) Order 2004 to remove provisions relating to the European firearms pass and reflect the fact that the UK will no longer be a Member State after exit day. Regulation 65 creates a saving provision in relation to the amendment to Article 46, similar to the saving provision made in respect of section 5A(3) of the Firearms Act 1968.

Part 16 – Football disorder

- 6.42 Council Decision 2002/348/JHA as amended requires Member States to set up or designate a National Football Information Point (NFIP) of a police nature. The UK's NFIP is located within the UK Football Policing Unit. The Council Decision requires the NFIP to act as the direct central contact point for exchanging relevant information and for facilitating international police cooperation in connection with football matches with an international dimension. The procedure for communication between National Football Information Points is also set out within the Council Decision.

Part 17 – Joint Investigation Teams

- 6.43 There are various references to the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Council Framework Decision on joint investigation teams (2002/465/JHA) on the UK statute book (the latter framework decision is not specifically referred to, however, legislation refers to 'any framework decision on joint investigation teams adopted under Article 34 of the Treaty on the European Union'). These references occur principally in sections defining 'Joint Investigation Team' or 'International Joint Investigation Team' by referencing an investigation team set up in accordance with the above instruments.
- 6.44 The International Joint Investigation Teams (International Agreement) Order 2004 is also revoked. This specified the Schengen Agreement of 14 June 1985 as an international agreement under which joint investigation teams could be formed.

Part 18 – Mutual Legal Assistance in Criminal Matters

- 6.45 The EIO Regulations implemented Directive 2014/41/EU. Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be bound by the EIO Directive and it will cease to operate in the UK from then.
- 6.46 In addition, the UK will not be part of other EU measures such as: the 2000 MLAC and additional protocol; the 2003/557/JHA Decision; the provisions of the 1990 Schengen Convention into which the UK opted; and EU – third country agreements, setting out mutual assistance relationships in criminal matters. Provisions have only been saved in so far as required to execute a request received by the UK before 29 March 2019.
- 6.47 Therefore, the Regulations will, under Chapter 2, revoke the EIO Regulations. Chapter 3 has the effect of reversing any consequential amendments made when implementing the EIO Directive or the MLAC and Additional Protocol. However,

Chapter 4 will save provisions relating to EIOs. This specific Chapter will save provisions for outgoing requests to enable an EIO transmitted before 29 March 2019 to be capable of being revoked. In addition, this Chapter saves regulation 12 of the EIO Regulations which concerns the use of evidence obtained from a participating State pursuant to an EIO. Interpretive provisions of the EIO Regulations and Schedules 1 and 2, which designate public prosecutors and participating States, continue to have effect for the purposes of the saved provisions.

- 6.48 Chapter 4 also saves provisions for incoming EIOs that were received by a central authority in the UK before exit day. This means that Part 3 of the EIO Regulations are largely retained. In addition, Chapter 4 also seeks to retain provisions that: designate the EIO Directive for the purposes of interception; contain the grounds for refusal in the EIO Directive; provide for the receiving evidence before a nominated court and hearing a person by video link or telephone conference; and provisions contained in the EIO Regulations concerning incoming and outgoing requests for the temporary transfers of prisoners.
- 6.49 Chapter 5 reverses amendments made to Crime (International Co-operation) Act (CICA) as a result of the implementation of the EIO Directive, MLAC and Additional Protocol, Framework Decision 2003/557/JHA on freezing orders and evidence, 1990 Schengen Convention, as well as any obligations contained under an EU – third country agreement on MLA.
- 6.50 Chapter 6 will reverse subordinate legislation made under CICA where, for example, implementing an EU measure, it was necessary to designate countries as ‘participating countries’ under CICA to give effect to those obligations.
- 6.51 Chapter 7 saves provisions under CICA and subordinate legislation for freezing orders made under the 2003/557/JHA Decision where such orders were forwarded or received by the Secretary of State or Lord Advocate before exit day. Likewise, it saves provisions relating to outgoing and incoming requests for information about financial accounts and transactions under the additional protocol to the MLAC – which are made before exit day. Chapter 7 will save provisions in CICA in respect of a temporary transfer of a prisoner to or from Iceland before exit day, which was implemented following the conclusion of the EU-Iceland Norway agreement on MLA.
- 6.52 Chapter 8 revokes the Council Decisions (2000/365/EC, 2004/926/EC and 2014/857/EC), which give effect to the 1990 Schengen Convention relating to police cooperation and MLA in criminal matters. It also deals with revocation of the MLAC and additional protocol.

Part 19 – Passenger Name Record Data

- 6.53 The Regulations will make legislative provision amending the domestic regulations implementing the Passenger Name Record (PNR) Directive; in particular, it amends the Regulations to change provisions around data sharing with Member States so that they become third countries for the purposes of data sharing. Further detail on the legislative changes is set out in Section 2.

Part 20 - Proceeds of Crime

- 6.54 Part 20 of the Regulations makes amendments to deal with deficiencies arising in relation to proceeds of crime legislation, primarily the Proceeds of Crime Act 2002 (c.22) (POCA) as amended by the Criminal Finances Act 2017.
- 6.55 Section 1 of the Criminal Finances Act 2017 introduces a new investigative power (the Unexplained Wealth Order) into the Proceeds of Crime Act 2002 to require an individual, including a Politically Exposed Person outside of the EEA, to set out the nature and extent of their interest in the property in question, and explain how they obtained that property in cases where that person's known income does not explain the ownership of that property. The Regulations make relevant amendments in both pieces of legislation to reflect the fact that the UK will not be an 'EEA State' after exit day.
- 6.56 In addition, references to 'EEA Firms' are removed from the definitions of 'bank' in sections 16 and 27 of the Criminal Finances Act, which make amendments to POCA that have not yet been fully commenced. These sections allow for the forfeiture of monies held in bank and building society accounts, where those accounts contain the proceeds of unlawful conduct. The definition of a bank in these sections partly relies on a definition of an EEA firm, within Schedule 5 of the Financial Services and Markets Act 2000 (section 303Z7 of POCA, which is also amended).
- 6.57 Section 67 of POCA allows for monies held in bank or building society accounts to be to be paid over to meet a confiscation order. The definition of a bank in section 67 also relies on a definition of an EEA firm, within Schedule 5 of the Financial Services and Markets Act 2000, which is also removed by the Regulations. Section 131ZA contains the corresponding provisions for Scotland.
- 6.58 Paragraph 6 of Schedule 6 to POCA contains provisions relating to the role of administrators who may be appointed to deal with realisable property in Scotland. References to a bank in this paragraph, which rely in the definition of an EEA firm within Schedule 5 of the Financial Services and Markets Act 2000, are also removed by the Regulations.
- 6.59 Sections 282D, 375A and 408A of POCA related to the procedure by which evidence can be requested from overseas countries, to assist in asset recovery investigations in the UK. These sections refer to competent bodies who are able to receive requests under any provisions adopted by EU Treaties. Those references are removed by the Regulations.
- 6.60 Regulation 107 amends references to groups of companies in sections 333B and 333C of POCA, which provide a defence to the offence of 'tipping off' under section 333A, to ensure that the defence will capture companies in the UK after exit day. The amendments made to Schedule 9 to POCA are all made to ensure that the definition of businesses operating in the 'regulated sector' (which are subject to the offence in section 330 of failing to support suspicions of money laundering) cross-refers, where possible, to categories of business defined in domestic law rather than categories defined in EU law which will remain frozen in their meaning as of exit day.
- 6.61 Regulation 108 omits section 96 of the Serious Organised Crime and Police Act 2005 (c.15). That section provides a power to allow the Secretary of State to make provision to give effect to rights and obligations arising under Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.200 p.45-55). The UK will not participate in that Framework Decision after exit day. For the same reason, regulation

110 revokes Part 2 of, and Schedules 1 and 2 to, the Criminal Justice and Data Protection (Protocol No 36) Regulations 2014, which contain provisions allowing for freezing orders and confiscation orders to be sent to Member States, and for such orders received from Member States to be given effect in the UK, under that Framework Decision and Framework Decision 2006/783/JHA of 6th October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59-78). After exit day, the UK will not send or process any new requests under this mechanism, but transitional provisions are included in regulation 111 to ensure that the procedure in domestic law continues to apply where a request was sent or received prior to exit day.

- 6.62 Regulation 112 revokes Council Decisions 2000/642/JHA concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information to tackle economic and other crime, and 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States to support tracing and identification of proceeds from, or other property related to, crime. Regulation 113 makes savings provisions to ensure that the provisions relating to the use of information (including personal data) in those Council Decisions is preserved in respect of any information provided under those procedures prior to exit day.

Part 21 - Prüm

- 6.63 The Prüm Decisions are concerned with the stepping up of cross-border cooperation, particularly in combatting terrorism and cross-border crime, and facilitate the exchange of DNA, fingerprints and vehicle registration data among Member States. Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be able to participate in these measures. Accordingly, the Regulations revoke the Prüm Decisions.

Part 22 - Schengen Information System (SIS II)

- 6.64 As set out above, Part 22 of the Regulations will revoke a number of Council Decisions concerning the participation by the United Kingdom in the Schengen acquis insofar as they relate to SIS II. In addition, Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) is revoked along with a number of other supplementary instruments. These revocations are all subject to the savings provisions in regulations 120 and 121. Most of the rules relating to the use of SIS II are currently found in Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II), which is directly applicable in the UK. However, the legal framework also includes a number of supplementary legal instruments, including instructions on use of the ‘SIRENE manual’ (this is a set of operational instructions issued to national, central bureaux designated for the purposes of processing SIS II data). These legal frameworks will also cease to be needed by the UK in the event of ‘no deal’.

Part 23 - Serious Crime and Fraud

- 6.65 The Regulations amend the Serious Crime Act 2007 in respect of its implementation of the Directive on Electronic Commerce in relation to: the conditions that may be imposed on information society service providers under ‘Serious Crime Prevention Orders’; and the conditions that need to be satisfied before proceedings can be brought for inchoate offences in Part 2 of the Act in respect of such service providers. The Regulations also amends section 69 to replace a deficient reference to ‘EU obligations’ with a reference to ‘retained EU obligations’.
- 6.66 In relation to fraud, the Regulations also revoke the EU Regulation establishing the ‘Pericles’ programme for countering the counterfeiting of the Euro since it has no practical application post exit. The UK will cease to co-operate in this mutual assistance programme should the UK withdraw from the EU without a deal in March 2019, and the EU Regulation – which imposes no obligations on the UK - is redundant and can accordingly be revoked.

Part 24 – Miscellaneous

CHAPTER 1

Miscellaneous amendments to police legislation

SECTION 1

Amendment of primary legislation

124. Amendment of the Local Government (Miscellaneous Provisions) Act 1982:

- 6.67 The Local Government (Miscellaneous Provisions) Act 1982 makes amendments for England and Wales of provisions of that part of the law relating to local authorities or highways which is commonly amended by local Acts. This includes making provision for the control of sex establishments including cinemas, shops and entertainment venues.
- 6.68 Schedule 3 paragraph 12 of the 1982 Act sets out provision for the control of sex establishments, including the grant, renewal and transfer of licences and the refusal of licences for sex establishments.
- 6.69 For the purposes of this Schedule, paragraph 12(1) states that a licence under this Schedule shall not be granted—
- (a) to a person under the age of 18; or
 - (b) to a person who is for the time being disqualified under paragraph 17(3) below; or
 - (c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
 - (d) to a body corporate which is not incorporated in an EEA State; or
 - (e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the

premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

- 6.70 Whilst the Local Government (Miscellaneous Provisions) Act 1982 is domestic legislation, Schedule 3, paragraph 12(1)(c) and (d) of the Act currently refers to the UK as an ‘EEA State’, which will no longer be the case following the UK’s exit from the EU. This is in reference to residency requirement eligibility for those applying for licences for sex establishments in England and Wales. The amendment being made will correct this.

125. Amendment of the Licensing Act 2003

- 6.71 The Licensing Act 2003 (‘the 2003 Act’) regulates the following licensable activities, namely the sale of alcohol by retail; the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club; the provision of regulated entertainment; the provision of late-night entertainment; and offences relating to alcohol and for connected purposes.
- 6.72 There are four types of authorisations under the 2003 Act which can be used to authorise the carrying on of licensable activities: premises licences, club premises certificates, temporary event notices and personal licences. Under a premises licence, there must be at least one personal licence holder to authorise every sale of alcohol. Part 6 of the 2003 Act defines a ‘personal licence’ as a licence granted by a licensing authority to an individual that authorises them to supply alcohol or to authorise the supply of alcohol under a relevant premises licence.
- 6.73 Section 120 of the 2003 Act sets out the circumstances that must be met for a licensing authority to grant a personal licence, which includes that the applicant must possess a licensing qualification or be a person of a prescribed description. For the purposes of this section, section 120(8) defines a ‘licensing qualification’ as an accredited qualification or a qualification awarded before the coming into force of this section certified by the Secretary of State as if it were an accredited qualification, or a qualification obtained in Scotland or Northern Ireland or in an EEA State (other than the UK). Reference to ‘other than the United Kingdom’ is being removed from domestic legislation to reflect the fact that the UK will not be an ‘EEA State’ after exit day.

126. Amendment of the Anti-social Behaviour, Crime and Policing Act 2014

- 6.74 Schedule 6A is an amendment of the Anti-social Behaviour, Crime and Policing Act 2014, which prohibits the identification of victims in publications where an allegation has been made that an offence of forced marriage has been committed against a person. Paragraphs 4 to 8 of Schedule 6A as currently drafted are designed to ensure that the offence provided for in paragraph 2 of the Schedule (which makes it a summary offence to identify the victim of a forced marriage) is consistent with the UK’s obligations under the Directive on Electronic Commerce. Under paragraphs 4 to 8 of Schedule 6A, providers of information society services who are established in England and Wales are currently covered by the new offence even when they are operating in other European Economic Area states. Paragraphs 6 to 8 of Schedule 6A provide exemptions for internet service providers from the offence in limited circumstances (such as where they are acting as mere conduits for the prohibited material or are storing it as caches or hosts). This domestic legislation is being amended to reflect the fact that the UK will not be an ‘EEA State’ after exit day and

remove the effect of provisions which no longer work as a consequence of the UK's withdrawal from the EU.

127. Amendment of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

- 6.75 Schedule 3A of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 is domestic legislation enacted by the Northern Ireland Assembly. It mirrors Schedule 6A of the Anti-social Behaviour, Crime and Policing Act 2014 (which covers England, Wales and Scotland). Paragraphs 4 to 8 of Schedule 3A provide that the offence created in paragraph 2 of the Schedule is consistent with the UK's obligations under the Directive on Electronic Commerce. Under paragraphs 4 to 8, providers of information society services who are established in England and Wales are currently covered by the offence even when they are operating in other European Economic Area states. Paragraphs 6 to 8 of Schedule 6A provide exemptions for internet service providers from the offence in limited circumstances (such as where they are acting as mere conduits for the prohibited material or are storing it as caches or hosts). This domestic legislation is being amended to reflect the fact that the UK will not be an 'EEA State' after exit day and remove the effect of provisions which no longer work as a consequence of the UK's withdrawal from the EU.

128. Amendment of the Policing and Crime Act 2017

- 6.76 Certain international financial sanctions are implemented in the UK by regulations made under section 2(2) of the European Communities Act 1972.
- 6.77 The European Communities Act 1972 limits the maximum penalty for offences created by regulations made under section 2(2) of that Act, including offences related to breaching of financial sanctions, to two years' imprisonment. This is inconsistent with penalties for similar offences in other sanctions regimes.
- 6.78 Part 8 of the Policing and Crime Act 2017 provided for an uplift of criminal penalties for EU financial sanctions by applying a gloss to section 2(2) of the 1972 Act. The changes enabled the maximum custodial sentence for a criminal breach of financial sanctions to be increased from two to seven years for conviction on indictment.
- 6.79 Section 144 of the Policing and Crime Act 2017 will no longer be relevant if the UK withdraws from the EU without a deal. Alternative powers to impose penalties for breaches of financial sanctions will be available under Part 1 of the Sanctions and Anti-Money Laundering Act 2018 (see section 17). The Sanctions and Anti-Money Laundering Act 2018 will allow the UK to set a maximum term of imprisonment of more than two years.

SECTION 2

Amendment of secondary legislation

129. Amendment of the Police Pensions (Additional Voluntary Contributions) Regulations 1991

- 6.80 The Police Pensions (Additional Voluntary Contributions) Regulations 1991 ('the 1991 Regulations') provide the rules governing an Additional Voluntary Contribution (AVC) pension scheme for police officers. The 1991 Regulations allow members to use insurance companies to purchase annuities on retirement. The definition of

insurance company in the 1991 Regulations has a reference to EEA firms as defined in the Financial Services and Markets Act 2000. The amendments to the 1991 Regulations made by this instrument update that reference, which will change as a result of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

130. Amendment of the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013

- 6.81 The Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013 seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services ('ISS') between EEA States. Article 3 provides for regulation on the country of origin basis. The Regulations amend the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013, in respect of its implementation of the Directive on Electronic Commerce in relation to the 'trafficking offences' under section 59A of the Sexual Offences Act 2003, section 4 of the Asylum and Immigration Act 2004 and section 3 of the Modern Slavery Act 2015 ('the trafficking offences'). This relates to: extension of liability for service providers established in England and Wales where they provide services in EEA States other than in the UK; the conditions that need to be satisfied before proceedings can be brought in respect of service providers established in other EEA States; the position regarding liability of providers acting as conduits, caches or hosts; and the Requirement for the Secretary of State to have regard to the implementation of the Directive in other Member States.

131. Amendment of the Police Pensions Regulations 2015

- 6.82 The Police Pensions Regulations 2015 ('the 2015 Regulations') provide the rules governing the most recent pension scheme for serving police officers. Part 6 and Chapter 4 of Part 4 of the 2015 Regulations deal with ill-health benefits and include questions that must be put to a suitably qualified doctor. The definition of 'duly qualified medical practitioner' includes a doctor who holds the equivalent EEA qualification of the Associate of the Faculty of Occupational Medicine. This amendment will remove the reference to an EEA qualification.

CHAPTER 2

Miscellaneous amendments to investigatory powers legislation

132. Amendment of the Investigatory Powers Act 2016

- 6.83 The Investigatory Powers Act 2016 makes it a criminal offence to undertake the interception of communications in the UK without lawful authority. The amendments at regulation 132 will revoke sections 19(5) and 102(9) of the Investigatory Powers Act 2016.
- 6.84 These sections currently provide that, where the issuing of an interception or equipment interference warrant must be exercised by a Scottish Minister as opposed to the Secretary of State, that does not prevent the Secretary of State doing anything for the purposes of section 2(2) of the European Communities Act.

133. Amendment of the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

- 6.85 The Investigatory Powers Act 2016 makes it a criminal offence to undertake the interception of communications in the UK without lawful authority. The Act also sets out what constitutes ‘lawful authority’ to conduct interception, including where it is undertaken by businesses and other bodies for the purposes of monitoring and record-keeping, in accordance with regulations made by the Secretary of State. The Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018 set out when such conduct is authorised.
- 6.86 The Regulations will make amendments to the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018, made under section 46(2) of the Investigatory Powers Act 2016.
- 6.87 The amendments will do two things. First, they will remove provisions that currently enable interception to be carried out by businesses for regulatory practices, where compliance is required in a Member State, as there is no justification to treat such countries in a particular way in a ‘no deal’ scenario. Second, they remove limitations to certain categories of permitted interception that are currently imposed by the Electronic Privacy Directive, given that Directive will no longer apply. The removal of these limitations will not have a substantive impact given that the Investigatory Powers Act Regulations themselves limit the purposes for which businesses may conduct interception, and those limitations were designed to be within scope of what the Electronic Privacy Directive would permit.

CHAPTER 3

International agreements

- 6.88 Chapter 3 of Part 24 of the Regulations is designed to correct any deficiencies in EU-retained law relating to the international agreements listed in section 2. The EU (Withdrawal) Act 2018 has the effect of preserving in domestic law directly effective rights in EU Treaties (as defined by that Act). To the extent that the international agreements listed in section 2 give rise to directly effective rights, the Regulations provide that those rights should cease to have effect, subject to a saving provision.

CHAPTER 4

Atlas – cooperation between special intervention units

- 6.89 Chapter 4 of Part 24 of the Regulations revokes Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in Crisis Situations (‘the Atlas Council Decision’), as retained in domestic law by the EU (Withdrawal) Act 2018, subject to certain transitional provisions.
- 6.90 The Atlas Council Decision formalised the network of special intervention units established in 2001 and sets out how Member States can cooperate across borders in crisis situations by allowing law enforcement units of one Member State to operate on the territory of another.

7. Policy background

What is being done and why?

- 7.1 The Government is preparing for all scenarios in the UK's withdrawal from the EU, including the outcome that the UK leaves the EU without a deal in March 2019. As part of these preparations, the Government is implementing a cross-Government programme of secondary legislation, which will ensure that, without prejudice to the outcome of negotiations, there is an effectively functioning statute book on exit day. The Regulations will ensure this by addressing failures of retained EU law to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU. As the Regulations cover a number of measures, further policy background is provided in the sections below for Part 2 to 24 of the Regulations.

Part 2 – Child Pornography

- 7.2 Part 2 of the Regulations will amend Council Decision 2000/375/JHA on combating child pornography so that the obligations to take measures to prevent and combat the sexual abuse of children continue to apply to the UK.

Part 3 – Counter-Terrorism

- 7.3 The Regulations make amendments to the Terrorism Act 2000 ('the 2000 Act'). Minor amendments are made to sections 21E and 21F to reflect the fact that the UK will not be an EEA State after exit day. Amendments are made to Schedule 3A to amend the definition of businesses in the 'regulated sector' to appropriate domestic law-defined categories. Paragraphs 11A to 11G, 25A to 25G and 41A to 41G of Schedule 4 to the 2000 Act are omitted; these paragraphs collectively provide a mechanism to allow freezing orders to be sent to, and received from, Member States under Framework Decision 2003/577/JHA of 22nd July 2003, and transitional provisions are made to preserve these paragraphs in respect of any requests sent or received prior to exit day. The definition of 'financial institution' in paragraph 6 of Schedule 6 to the 2000 Act is amended to replace reference to certain EU definitions with domestic definitions.
- 7.4 The Regulations amend the 2000 Act and the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007, to preserve the effect of various provisions of Directive 2000/31/EC of 8th June 2000 ('Directive on Electronic Commerce') in the context of counter-terrorism offences and to correct deficiencies in those provisions that are occasioned by the UK's departure from the European Union.
- 7.5 Paragraphs 1(7) and 3 amend, respectively, the 2000 Act and the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007, to remove references to the Directive on Electronic Commerce and to ensure parity and reciprocity between UK and Member States' laws in respect of the matters provided for in the Directive on Electronic Commerce, following the UK's departure from the EU.

Part 4 - Cross Border Surveillance

- 7.6 Part 4 of the Regulations will revoke retained EU law relating to Articles 40, 42 and 43 of the 1990 Schengen Convention, as this legislation would serve no operational or

legislative purpose should the UK withdraw from the EU without a deal in March 2019. The UK will therefore not be bound by the cross-border surveillance co-operation measures prescribed under the arrangement, except for those transitional measures.

Part 5 – Drug Precursors and Psychoactive Substances

Chapter 1 – Drug Precursors

- 7.7 Part 5 of the Regulations aims to correct deficiencies that arise, in the legislation which monitors the trade in licit substances ('precursors') that can be used in the manufacture of illegal drugs, as a consequence of the UK's withdrawal from the EU, in order to support the objective of preventing their diversion on to the illicit market.
- 7.8 The most significant changes to the system brought about by the Regulations are:
- The regulations transfer the power from the European Commission to the Secretary of State to add non-scheduled substances or adapt the Annex of the Regulations to reflect new trends in diversion of drug precursors and to follow any amendment to the tables in the Annex to the UN Convention.
 - The regulations also make provision for the Secretary of State to make regulations to amend the licensing conditions.

Chapter 2 – Psychoactive Substances

- 7.9 The UK will no longer be subject to EU legislation authorising the use of substances in or on food. To ensure domestic legislation remains effective, the definition of 'prohibited ingredients' in paragraph 7 of Schedule 1 to the Psychoactive Substances Act 2016 (food as an exempted substance) is therefore amended to refer to the authorisation of substances in or on food by UK legislation (including subordinate and devolved legislation).
- 7.10 Schedule 4 (providers of information society services) of the 2016 Act is amended to reflect that the Directive on Electronic Commerce (Directive 2001/31/EC of 8th June 2000) will cease to bind the UK in relation to psychoactive substances from exit day. References which characterise the UK as an EEA State, place limits on terms which can be imposed by prohibition notices or orders and extend extra-territorial jurisdiction to certain offences under the 2016 Act (such extension having been a requirement of Article 3 of the Directive which no longer works in a post-exit scenario given the lack of reciprocity) are removed. The conditions that need to be satisfied before proceedings can be brought in respect of service providers established in other EEA States are maintained, however it is anticipated that the public interest conditions will in practice almost always be met. The position regarding liability of providers acting as conduits, caches or host is maintained.
- 7.11 The UK will no longer be a member of the European Monitoring Centre for Drugs and Drug Addiction ('EMCDDA') and therefore the EC and EU Regulations relating to the EMCDDA and associated information exchange, early warning system and risk assessment procedures for new psychoactive substances (Regulations (EC) 1920/2006 and (EU) 2017/2101 respectively) will no longer apply to the UK. This instrument therefore revokes these Regulations.

Part 6 – Eurojust

- 7.12 Council Decision 2002/187/EU will no longer apply to the UK as a matter of EU law and it will no longer be possible for competent authorities in the UK to cooperate with those in Member States on the basis of the Council Decision.
- 7.13 The Regulations will revoke the Council Decision, except for limited savings as set out in regulation 22.
- 7.14 Regulation 22(1) relates to the data security of personal data that the UK has received under the Council Decision prior to exit day and retains the obligations in Article 22(1) of the Council Decision in relation to that data. Whilst any personal data held in the UK will be subject to the Data Protection Act 2018, this aims to provide legal certainty as to how personal data will continue to be treated in the UK after the UK ceases to be subject to the Council Decision.
- 7.15 Regulation 22(2) retains the obligation of confidentiality for former UK national members of Eurojust and those who worked with them in relation to information received by Eurojust before exit day.

Part 7 - European Agency for Law Enforcement Training (CEPOL)

- 7.16 CEPOL brings together a network of training institutes for law enforcement officials in Member States, and provides training on security priorities, law enforcement cooperation and information exchange. The UK will no longer be able to participate in CEPOL under the CEPOL Council Decision after exit day, should the UK withdraw from the EU without a deal in March 2019. Therefore, the Regulations revoke the CEPOL Council Decision.
- 7.17 In line with the revocation of the CEPOL Council Decision, the Regulations also revoke the European Police College (Immunities and Privileges) Order 2004. This Order confers privileges and immunities upon CEPOL and its members of staff but has never been commenced.

Part 8 - European Criminal Record Information System (ECRIS)

- 7.18 Should the UK withdraw from the EU without a deal in March 2019, the UK would no longer have access to ECRIS. As there would no longer be an electronic mechanism by which to exchange criminal records, the Regulations revoke Council Decision 2009/316/JHA in its entirety.
- 7.19 Framework Decision 2009/315/JHA provides for the reciprocal sharing of criminal record information between Member States. Should the UK withdraw from the EU without a deal in March 2019, Member States would not be obliged to respond to criminal record requests from the UK. Given that Member States would not be obliged to respond to requests for criminal record information, subject to some saving and transitional provisions, Part 6 of the CJDP Regulations and the 2013 ECRIS Regulations are being revoked. This means that the UK is no longer obliged to share criminal records in accordance with Framework Decision 2009/315/JHA. This includes no longer having to respond to requests within a ten-working day timeframe.

- 7.20 The Regulations save provisions which dictate how the UK should handle information which has been sent by Member States via ECRIS to the UK prior to exit day. This includes provisions which set out how the UK should respond to requests from third countries for information on UK nationals which was obtained from a Member State. The Regulations also make transitional provisions, the effect of which is to retain the obligation to respond to outstanding requests received from Member States and third countries prior to exit day. The obligation to respond using ECRIS and within a ten-working day timeframe has not been saved.

Part 9 – European Judicial Network

- 7.21 The Council Decision is revoked in its entirety as it would serve no operational or legislative purpose in a ‘no deal’ scenario.

Part 10 – eu- LISA

- 7.22 Regulation (EU) 2018/1726 established a further iteration of eu-LISA, the European Union Agency for the Operational Management of Large-Scale IT Systems in the area of freedom, security and justice. Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer participate in eu-LISA. That being the case, it is unnecessary to keep this legislation in place and is therefore cause for it to be revoked under Schedule 8 of the European Union (Withdrawal) Act 2018. Council Decisions 2010/779/EU of 14 December 2010 and 2018/1600/EU, concerning the UK’s participation in eu-LISA, will cease to serve any practical or legal purpose and as a consequence will also be revoked.

Part 11 – Europol

Revocation of Europol Regulation with savings

- 7.23 Regulation 2016/794/EU will no longer apply to the UK as a matter of EU law and it will no longer be possible for the UK to cooperate with Europol on the basis of the Europol Regulation.
- 7.24 The Regulations will revoke the Europol Regulation, except for limited savings as set out in regulation 40 relating to information provided before exit day.
- 7.25 Regulation 40(1) relates to information (including personal data) provided by Europol to the UK before exit day, and retains relevant obligations relating to access, onward transfers, sensitive personal data and security of processing.
- 7.26 Regulation 40(2) retains relevant obligations, from Article 42 of the Europol Regulation, concerning supervision by the national supervisory authority (the Information Commissioner’s Office) in relation to data transfers made by the UK to Europol prior to exit day.
- 7.27 Whilst any personal data held in the UK will be subject to the Data Protection Act 2018, the above approach aims to provide legal certainty as to how personal data will continue to be treated in the UK after we cease to be subject to the Europol Regulation.

Further revocations

- 7.28 Regulation 38 revokes five Council Decisions relating to Europol in so far as they are retained EU law.
- 7.29 Regulation 39 revokes the Commission Decision confirming the UK's participation in the Europol Regulation.
- 7.30 Regulation 41 revokes three Orders relating to Europol (none of which have been commenced).

Part 12 - Exchange of Information and Intelligence between Law Enforcement Authorities and Disclosure in Foreign Proceedings

Chapter 1 – Exchange of Information and Intelligence between Law Enforcement Authorities

- 7.31 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be able to exchange information and intelligence under the Swedish Initiative framework (under Council Framework Decision 2006/960/JHA). Accordingly, the Regulations revoke the provisions in Part 5 of the CJDP Regulations which implemented Council Framework Decision 2006/960/JHA, subject to certain transitional and saving provisions:
- Regulation 44 deals with responding to pre-exit requests from a Member State, including an obligation to supply information and intelligence and not apply stricter conditions than those which apply to domestic use. However, regulation 44 also retains the ability to refuse where there are reasonable grounds to do so, as well as to apply conditions of use, although such conditions will not be enforceable as a matter of EU law.
 - Regulation 45 concerns information and intelligence that has been supplied to the UK before exit day. The provisions maintain obligations to consult the country which supplied information on how it is used and inform that country accordingly, when and if asked.
 - Regulation 46 retains the ability of the UK to make representations about the use of information or intelligence where the receiving Member State is not bound by the conditions imposed by the UK on its use.
- 7.32 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer be able to participate in EU joint investigation teams. Accordingly, the Regulations also revoke the provisions in Part 5 of the CJDP Regulations which implemented Article 1(10) of Framework Decision 2002/465/JHA. Article 1(10) regulates the purposes for which information obtained by a member or seconded member of a Joint Investigation Team while part of that team, and which is not otherwise available to the competent authorities of the Member States concerned, may be used. Saving provision is made in respect of information obtained by a UK member of a Joint Investigation Team before exit.

Chapter 2 – Disclosure in Foreign Proceedings

- 7.33 Chapter 2 of Part 12 of the Regulations makes an amendment to the Anti-Terrorism, Crime and Security Act 2001, to ensure that a reference to ‘EU obligation’ does not create a deficiency upon the UK’s withdrawal from the EU. Section 17 of the 2001 Act clarifies and extends a number of information disclosure provisions available to public authorities, permitting disclosure to assist any criminal investigation or criminal proceedings being carried out in the UK or abroad, or to facilitate determinations of whether such investigations or proceedings should begin or end. However, section 18 enables the Secretary of State, in certain circumstances, to prohibit the disclosure of information for the purposes of overseas criminal investigations or criminal proceedings that would otherwise be permitted by section 17. However, the Secretary of State cannot prohibit the making of any disclosure in pursuance of an ‘EU obligation’ (section 18(4)(b)). These Regulations amend this provision to ensure that the Secretary of State is only precluded from prohibiting the making of disclosures which are required under those EU laws that are retained as obligations following the UK’s withdrawal from the EU.

Part 13 – Explosive Precursors

- 7.34 Part 13 of the Regulations aims to remove deficiencies and failures that would arise in the legislation regulating access to explosives precursors as a consequence of the UK’s withdrawal from the EU. This is in order to support the objective of reducing the threat of terrorist attacks and crime using explosives precursors in the UK, as well as enhancing health and safety for the UK public.

Part 14 - Extradition

- 7.35 Should the UK withdraw from the EU without a deal in March 2019, once the UK ceases to be a Member State it will no longer operate the European Arrest warrant (EAW). The re-designation of Member States from Part 1 to Part 2 of the Extradition Act 2003 (the Act) involves a significant change in extradition arrangements with Member States but puts in place essential alternative provisions.
- 7.36 The National Crime Agency (NCA) has responsibility for certifying EAWs, and extradition proceedings under Part 1 are exclusively matter for the courts. Once the UK ceases to operate the EAW, extradition arrangements with the Member States will revert to the European Convention on Extradition (ECE). The re-designation of territories from Part 1 to Part 2 of the Act ensures alternative provisions are in place for administering requests made by the relevant territories under the ECE. Requests under the ECE are made via diplomatic channels. Decisions on certification and ordering extradition under Part 2 of the Act fall to the Secretary of State.
- 7.37 Following exit day, the UK will not process any new EAW requests. However, transitional arrangements for requests commenced under Part 1 of the Act provide provision for continuity of existing requests where an arrest has been made, allowing the court to continue extradition proceedings in accordance with Part 1 of the Act.

Part 15 – Firearms

- 7.38 Firearms law is contained in domestic legislation, which has been amended over time to take account of the European Weapons Directive and the Implementing Regulation

on deactivation standards. Part 15 of the Regulations amends domestic firearms legislation to remove references to EU law following the UK's exit from the EU. It also makes amendments to the Implementing Regulation on deactivation standards to deal with deficiencies arising. In particular, by amending references to Member States to reflect the fact that the UK will not be a Member State after exit day, and to make changes which ensure the continuation of deactivation standards and techniques through relevant domestic legislation. This ensures the legislation remains effective and retains the necessary safeguards and controls against the misuse of firearms.

Part 16 – Football disorder

- 7.39 Should the UK withdraw from the EU without a deal in March 2019, it will no longer be able to rely upon Council Decision 2002/348/JHA as amended by Council Decision 2007/412/JHA concerning security in connection with football matches with an international dimension.

Part 17 – Joint Investigation Teams

- 7.40 Should the UK withdraw from the EU without a deal in March 2019, it will no longer be able to use the Council Framework Decision on joint investigation teams as a legal base for Joint Investigation Teams with Member States. The UK implemented the Council Decision via existing statutory and common law powers, which need to be amended to remove references to an EU legal base.

Part 18 – Mutual Legal Assistance in Criminal Matters

- 7.41 Should the UK withdraw from the EU in March 2019 without a deal, the UK can no longer rely on the EIO Directive, the MLAC and its Protocols or any other EU measures as a basis for MLA with Member States. Instead, it will rely on other non-EU mechanisms which include: Council of Europe Conventions and any additional protocols where applicable; bilateral arrangements concluded by the UK and another Member State (if any); and reciprocity (an undertaking that the country requesting assistance will provide assistance to the other government if the situation is reversed in the future). The EIO Regulations, along with any consequential amendments made to existing UK law on implementation of the EIO Directive and other EU measures, will need to be revoked to reflect that the UK is no longer a Member States.
- 7.42 However, it has been necessary to save certain provisions of legislation to ensure the UK can continue to use evidence received through an EU measure that was transmitted before exit day, as well as continuing to respect the rights and obligations that may be owed for certain requests made before exit day (for example transfer of prisoners between the UK and Member States). It is recognised that requests made under EU measures may have been received by the UK before exit day, but are yet to be executed, or are part way through execution. The Regulations retain relevant provisions for those requests received before exit day, but these will cease to apply for any new requests received after exit day – reflecting that the UK will no longer be a Member State.

Part 19 – Passenger Name Record Data

- 7.43 The PNR Directive was adopted by the EU on 27 April 2016. It established a consistent EU approach to the processing and protection of PNR data, obliging Member States to adopt the necessary measures to ensure that air carriers transfer PNR data to Member State Passenger Information Units (PIUs), and providing for the exchange of information between Passenger Information Units in the Member States.
- 7.44 The PNR Implementing Decision was adopted by the EU on 28 April 2017 in accordance with Article 16 of the PNR Directive. The requirements of the PNR Directive that were not already provided for in UK legislation were transposed in the PNR Directive Regulations.
- 7.45 The amendments made by Part 19 of the Regulations to the PNR Directive Regulations are necessary to remove certain obligations provided for by the PNR Directive, which the UK will no longer be bound by post-exit. In particular, the Regulations amend specific data sharing obligations with Member States such that they are treated in the same way as any other third country.

Part 20 - Proceeds of Crime

- 7.46 The Proceeds of Crime Act 2002 contains provisions for the investigation and recovery of proceeds of crime, and also provisions relating to money laundering offences and the associated Suspicious Activity Reporting Regime. POCA was amended by the Criminal Finances Act 2017, which introduced measures to substantially enhance the UK's ability to investigate the proceeds of crime, strengthen the Suspicious Activity Regime, and improve the UK's capability to recover the proceeds of crime.
- 7.47 Section 1 of the Criminal Finances Act 2017 introduces a new investigative power (the Unexplained Wealth Order) into POCA to require an individual, including a Politically Exposed Person outside of the EEA, to set out the nature and extent of their interest in the property in question, and explain how they obtained that property in cases where that person's known income does not explain the ownership of that property. The Regulations make relevant amendments in both pieces of legislation to reflect the fact that the UK will not be an 'EEA State' after exit day.
- 7.48 In addition, references to 'EEA Firms' are removed from the definitions of 'bank' in various provisions in POCA and in the Criminal Finances Act 2017. This includes provisions which allow for the forfeiture of monies held in bank and building society accounts, where those accounts contain the proceeds of unlawful conduct, provisions allowing a court to order that monies held in a bank or building society account may be paid over to meet a confiscation order, and provisions relating to the appointment of administrators dealing with realisable property in Scotland. The definition of a bank in these provisions partly relies on a definition of an EEA firm, within Schedule 5 of the Financial Services and Markets Act 2000. These amendments are made to reflect the fact that the UK will not be an 'EEA State' after exit day.
- 7.49 Sections 282D, 375A and 408A of POCA related to the procedure by which evidence can be requested from overseas countries, to assist in asset recovery investigations in the UK. These sections refer to competent bodies who are able to receive requests under any provisions adopted by EU Treaties. Those references are removed by the Regulations, to reflect the fact that the UK will cease to be bound by the EU Treaties after exit day.

- 7.50 Regulation 107 amends references to groups of companies in sections 333B and 333C of POCA, which provide a defence to the offence of ‘tipping off’ under section 333A. The amendments reflect the fact that the UK will not be an “EEA State” after exit day, and are made to ensure that the defence will capture companies in the UK after exit day. “Regulated sector” is defined in Schedule 9 of POCA, and the amendments made to Schedule 9 to POCA ensure that the definition of businesses operating in the ‘regulated sector’ (which are subject to the offence in section 330 of failing to support suspicions of money laundering) cross-refers, where possible, to categories of business defined in domestic law rather than categories defined in EU law which will remain frozen in their meaning as of exit day.
- 7.51 The Criminal Justice and Data Protection (Protocol No 36) Regulations 2014 contain provisions allowing for freezing and confiscation orders to be sent to Member States, and for orders received from Member States to be given effect in the UK, pursuant to two Framework Decisions on mutual recognition. The Regulations revoke those provisions, on the basis that the UK will not participate in the Framework Decisions after exit day. They also provide for transitional provisions to ensure that cooperation can continue where a request was sent or received prior to exit day. In addition, section 96 of the Serious Organised Crime and Police Act 2005 provides a power to allow the Secretary of State to make provision to give effect to rights and obligations arising under Framework Decision 2003/577/JHA of 22nd July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.200 p.45-55). The Regulations revoke section 96, as the UK will not participate in that framework decision after exit day.
- 7.52 Council Decision 2000/642/JHA contains provisions relating to the sharing of financial information between Member States financial intelligence units. The UK shares financial information to tackle financial crime and other offences via the UK financial intelligence unit, hosted in the National Crime Agency. Council Decision 2007/845/JHA contains provisions relating to the sharing of information between Member States pertaining to the tracing and identification of property that is the proceeds of crime. The UK shares information with Asset Recovery Offices of Member States to trace and identify property that is the proceeds of crime. The UK ARO is hosted in the NCA. The Regulations revoke both Council Decisions, on the basis that the UK will no longer participate in them after exit day. Savings provisions are made to ensure that the provisions relating to the use of information (including personal data) in those Council Decisions is preserved in respect of any information provided under those procedures prior to exit day.

Part 21 - Prüm

- 7.53 The Prüm Decisions provide for a system which allows participating countries to automatically exchange DNA, fingerprints and Vehicle Registration Data. Automatic exchange under Prüm provides a hit/no-hit response for DNA within 15 minutes and fingerprints within 24 hours. Vehicle Registration Data is provided directly within 10 seconds.
- 7.54 The legislation also allows for the proactive intelligence sharing about people who may commit terrorist offences and for the proactive or reactive sharing of intelligence about people who may break the law for major events.

- 7.55 Should the UK withdraw from the EU without a deal in March 2019, the UK will no longer participate in the reciprocal arrangements established by the Prüm Decisions or have access to the electronic system which provides for the exchange of Prüm data. Therefore, the Prüm Decisions are being revoked.

Part 22 - Schengen Information System (SIS II)

- 7.56 The Schengen acquis refers to provisions agreed between several Member States relating to the abolition of internal borders, and improved police and judicial cooperation. The Schengen acquis was incorporated into EU law in 1999. The UK applied to participate in some parts of the acquis relating to police and judicial cooperation in 2000 and was allowed to participate under Council Decision 2000/365/EC of 29 May 2000 ('the 2000 Decision'). This was supported by Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland. The Treaty of Lisbon modified the UK's Schengen arrangements to give the UK the right not to participate in measures which build upon the part of the acquis in which the UK participates. The UK decided to opt out of all pre-Lisbon Justice and Home Affairs measures (Council Decision 2014/857/EU of 1 December 2014 concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Decisions 2000/365/EC and 2004/926/EC). The UK subsequently opted back in to some of these measures.
- 7.57 The measures which the UK applied to participate in in the 2000 Decision included the Schengen Information System. The second-generation Schengen Information System ('SIS II') was established by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System. The UK participates in SIS II by virtue of Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen acquis on data protection, and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom. As listed above, there are several other Council Decisions and Council Implementing Decisions which underpin the operation and implementation of SIS II.
- 7.58 Should the UK withdraw from the EU without a deal in March 2019, on exit day these arrangements will cease to be used by the UK. The Regulations therefore revoke the measures through which the UK currently participates in SIS II. They also make a number of savings provisions relating to data held on SIS II national files, as well as the exchange of supplementary information, to cater for situations where action was taken either on the territory of the United Kingdom or in response to a UK-issued alert before exit day.

Part 23 - Serious Crime and Fraud

- 7.59 In the context of serious crime legislation, there are provisions which implement Directive 2000/31/EC of 8th June 2000 (the Directive on Electronic Commerce') which need to be amended, to make technical changes to ensure the UK is not referred to as an EEC state, and to preserve certain protections against liability that the

Directive on Electronic Commerce required. These protections were for ‘information society service providers’ that were acting as ‘mere conduits’, ‘caches’ and ‘hosts’, and were not thus responsible for the material placed by others on their platforms. Should the UK withdraw from the EU without a deal in March 2019, it is important to maintain these protections despite the Directive on Electronic Commerce ceasing to require them to be maintained. The Regulations therefore maintain those exemptions in two areas. The Serious Crime Act 2007 allows for ‘Serious Crime Prevention Orders’ to be imposed by the courts. The Regulations amend the 2007 Act to ensure that it remains the case that conditions under SCPOs cannot be imposed which would contravene those protections. The Regulations also amend the 2007 Act to remove the extension of extra-territorial jurisdiction to certain offences (such extension having been a requirement of Article 3 of the Directive on Electronic Commerce which no longer works in a post-exit scenario given the lack of reciprocity). The Regulations are also required to amend section 69 of the 2007 Act to ensure that an exemption to an offence of disclosing protected information is available only where the disclosure is in compliance with retained EU obligations, rather than EU obligations that no longer have binding effect upon exit date.

- 7.60 In relation to fraud, should the UK withdraw from the EU without a deal in March 2019, the UK will cease to participate in the mutual programme of assistance and information exchange concerning efforts to tackle counterfeiting of the Euro. Therefore, the Regulations will revoke the EU Regulation establishing the ‘Pericles’ programme for countering the counterfeiting of the Euro, since it has no practical application post exit.
- 7.61 The Regulations amend sections 34 and 54 of the Serious Crime Act 2007 which, respectively, concern the conditions that can be imposed on information society service providers (as defined in Directive 2000/31/EC of 8th June 2000 (‘Directive on Electronic Commerce’)) under ‘Serious Crime Prevention Orders’, and which concern the conditions that have to be met before service providers established in EEA States, can have proceedings brought against them under the inchoate offences under Part 2 of the Act. The Regulations amend these provisions to remove amendments which characterise the UK as an EEA State and remove the extension of extra-territorial jurisdiction to certain offences (such extension having been a requirement of Article 3 of the Directive, which no longer works in a post-exit scenario given the lack of reciprocity). The Regulations also amend section 69 of the Act to ensure that an exemption to an offence of disclosing protected information is available only where the disclosure is in compliance with retained EU obligations, rather than EU obligations that no longer have binding effect upon exit date.
- 7.62 In relation to fraud, the Regulations will revoke the EU Regulation establishing the ‘Pericles’ programme for countering the counterfeiting of the Euro since it has no practical application post-exit.

Part 24 – Miscellaneous

CHAPTER 1

Miscellaneous amendments to police legislation

SECTION 1

Amendment of primary legislation

124. Amendment of the Local Government (Miscellaneous Provisions) Act 1982

- 7.63 Schedule 3 governs the control of sex establishments and their licensing. This includes licensing for sex shops, sex cinemas and sex entertainment venues. Schedule 3, paragraph 12(1) of the Local Government (Miscellaneous Provisions) Act 1982 prescribes the criteria under which a licence shall not be granted. Paragraph 12 (1)(c) states that a licence shall not be granted to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or (d) to a body corporate which is not incorporated in an EEA State. Reference to ‘an EEA State’ is being amended in domestic legislation to reflect the fact that the UK will not be an ‘EEA State’ after exit day and should therefore read ‘the United Kingdom or an EEA State’.

125. Amendment of the Licensing Act 2003

- 7.64 Section 120 of the Licensing Act 2003 prescribes the criteria to be met by an applicant in order for a licensing authority to grant a personal licence, which includes possession of a licensing qualification. Section 120(8) of the 2003 Act defines a ‘licensing qualification’ for the purpose of section 120 as a qualification accredited by the Secretary of State or an equivalent qualification obtained in Scotland, Northern Ireland or in an EEA State (other than the UK). Reference to ‘other than the United Kingdom’ is being removed from domestic legislation to reflect the fact that the UK will not be an ‘EEA State’ after exit day.

126. Amendment of the Anti-social Behaviour, Crime and Policing Act 2014

- 7.65 Regulation 126 makes amendments to Schedule 6A of the Anti-social Behaviour Crime and Policing Act to remove references which characterise the UK as an EEA State, and remove the extension of extra-territorial jurisdiction to the offence created at paragraph 2, as the Directive on Electronic Commerce will no longer apply in a ‘no deal’ scenario and such a requirement reflects a reciprocal arrangement which will cease to apply.

127. Amendment of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

- 7.66 Regulation 127 amends provisions of Schedule 3A of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 to remove references which characterise the UK as an EEA State and remove the extension of extra-territorial jurisdiction to the offence created at paragraph 2; as the Directive on Electronic Commerce will no longer apply should the UK withdraw from the EU without a deal in March 2019, and such a requirement reflects a reciprocal arrangement which will cease to apply should the UK withdraw from the EU without a deal in March 2019.

128. Amendment of the Policing and Crime Act 2017

- 7.67 Certain international financial sanctions are implemented in the UK by regulations made under section 2(2) of the European Communities Act 1972.
- 7.68 The European Communities Act 1972 limits the maximum penalty for offences created by regulations made under section 2(2) of that Act, including offences related

to breaching of financial sanctions, to two years' imprisonment. This is inconsistent with penalties for similar offences in other sanctions regimes.

- 7.69 Part 8 of the Policing and Crime Act 2017 provided for an uplift of criminal penalties for EU financial sanctions by applying a gloss to section 2(2) of the 1972 Act. The changes enabled the maximum custodial sentence for a criminal breach of financial sanctions to be increased from two to seven years for conviction on indictment.
- 7.70 Section 144 of the Police and Crime Act 2017 will no longer be relevant if the UK withdraws from the EU without a deal. Alternative powers to impose penalties for breaches of financial sanctions will be available under Part 1 of the Sanctions and Anti-Money Laundering Act 2018 (see section 17). The Sanctions and Anti-Money Laundering Act 2018 will allow the UK to set a maximum term of imprisonment of more than two years.

SECTION 2

Amendment of secondary legislation

129. Amendment of the Police Pensions (Additional Voluntary Contributions) Regulations 1991

- 7.71 The Police Pensions (Additional Voluntary Contributions) Regulations 1991 provide the rules governing the standalone Additional Voluntary Contribution (AVC) pension scheme for police officers. AVCs work by investing money up until retirement, when the member typically buys an annuity, usually from an insurance company. The definition of insurance company in the Regulations needs to have the reference to EEA firms as defined in the Financial Services and Markets Act 2000 removed, because that will no longer be necessary once the UK has exited the EU and the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 come into force.

130. Amendment of the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013

- 7.72 Regulation 130 amends the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013 ('the 2013 Regulations'), in respect of its implementation of the Directive on Electronic Commerce in relation to the 'trafficking offences' under section 59A of the Sexual Offences Act 2003, section 4 of the Asylum and Immigration Act 2004 and section 3 of the Modern Slavery Act 2015 ('the trafficking offences'). Regulation 130 amends these provisions to remove references which characterise the UK as an EEA State and remove the extension of extra-territorial jurisdiction to certain offences (such extension having been a requirement of Article 3 of the Directive on Electronic Commerce which reflects a reciprocal arrangement that no longer applies in a post-exit scenario). The conditions that need to be satisfied before proceedings can be brought in respect of service providers established in other EEA States are maintained, however it is anticipated that the public interest conditions in regulation 4 of the 2013 Regulations will in practice almost always be met. The position regarding liability of providers acting as conduits, caches or host is maintained.

131. Amendment of the Police Pensions Regulations 2015

- 7.73 The Police Pensions Regulations 2015 govern the most recent pension scheme for serving police officers. This includes benefits payable on ill-health retirement, which therefore need a suitably qualified doctor to answer specified medical questions. The

definition of a ‘duly qualified medical practitioner’ needs to have the reference to an ‘equivalent EEA qualification’ removed as, if the UK exits the EU without a deal in March 2019, the Directive on mutual recognition of professional qualifications will no longer apply to the UK and there will be no system of reciprocal recognition of professional qualifications between the remaining EEA States and the UK. However, this should have no material impact on the choice of doctor for scheme managers, as the definition will still allow a scheme manager to choose a doctor with a qualification equivalent to Associate of the Faculty of Occupational Medicine, which will include those currently specifically defined as EEA equivalents.

CHAPTER 2

Miscellaneous amendments to the investigatory powers legislation

132. Amendment of the Investigatory Powers Act 2016

- 7.74 Sections 19 and 102 of the Investigatory Powers Act 2016 set out the power of the Secretary of State to issue interception and equipment interference warrants respectively. Both those sections also include a caveat, setting out the circumstances in which the Secretary of State may not issue such a warrant because it must instead be issued by a Scottish Minister. Those circumstances are, in essence, that the warrant is in the interests of preventing and detecting serious crime and relates to a person or set of premises in Scotland, or reasonably believed to be in Scotland.
- 7.75 Both sections 19 and 102 also make clear that this caveat, in relation to warrants that must be issued by Scottish Ministers, does not prevent the Secretary of State from doing anything in relation to their power to issue warrants for the purposes set out in section 2(2) of the European Communities Act 1972. Section 2(2) of that Act relates to the general implementation of treaties and enables UK Government Ministers to take action to, for example, give effect to rulings of the Court of Justice of the European Union or to transpose EU directives. In practice, it has not been necessary for the Secretary of State to rely on this provision in relation to their power to issue investigatory powers warrants.
- 7.76 These revocations are consequential on the repeal of the European Communities Act 1972. Regulation 132 will amend the Investigatory Powers Act to remove the references to it under sections 19 and 102. As those provisions have not in practice been relied upon, the relevant sections of the Investigatory Powers Act will continue to operate as they do now and there will not be a substantive impact.

133. Amendment of the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018

- 7.77 The Investigatory Powers Act 2016 makes it a criminal offence to undertake the interception of communications in the UK without lawful authority. The Act also sets out what constitutes ‘lawful authority’ to conduct interception, including where it is undertaken by businesses and other bodies for the purposes of monitoring and record-keeping, in accordance with Regulations made by the Secretary of State. The Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018 (‘the 2018 Regulations’) set out when such conduct is authorised.
- 7.78 Without amendment, the 2018 Regulations make clear that interception may be authorised where it is necessary to comply with self-regulatory or regulatory practices

and procedures in Member States or other States within the European Economic Area. This would, for example, make it lawful for a UK business to conduct interception for monitoring or record-keeping purposes in accordance with a regulatory code of practice in a Member State.

- 7.79 If the UK leaves the EU without a deal, there would be no reason to maintain the particular treatment afforded to EU regulatory practices. As such, the 2018 Regulations are being amended such that compliance with regulatory practices or procedures relates only to UK legislation or relevant standards or Codes of Practice.
- 7.80 In addition, without amendment, the 2018 Regulations would be limited in certain respects by Article 5 of the Electronic Privacy Directive. As that Directive would no longer apply in a scenario where the UK withdraws from the EU without a deal, the 2018 Regulations are being amended to remove this limitation. This will not have a substantive impact. The 2018 Regulations themselves limit the ways in which companies, and other bodies, are permitted to conduct interception. The limitations explicitly set out within the 2018 Regulations were designed to fit within scope of what was permitted by the Electronic Privacy Directive.

CHAPTER 3

International agreements

- 7.81 Through its membership of the EU, the UK is party to a number of international agreements which relate to police cooperation and judicial cooperation in criminal matters. The international agreements listed in Section 2 may contain directly effective rights. To the extent that they do, those rights will be preserved in domestic law by the EU (Withdrawal) Act 2018. If the UK withdraws from the European Union in March 2019 without a deal, the UK will no longer participate in these international agreements. It will therefore no longer be appropriate to retain the associated rights and obligations in the UK's domestic law. Therefore, to the extent that these agreements give rise to directly effective rights, Chapter 3 of Part 4 of the Regulations provides that those rights should cease to have effect, subject to a saving provision. However, to the extent that any directly effective right in one of these international agreements corresponds to another right which is being saved elsewhere in the Regulations, it is appropriate to save that directly effective right to the same extent.

CHAPTER 4

Atlas – cooperation between special intervention units

- 7.82 Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in Crisis Situations ('the Atlas Council Decision') lays down general rules and conditions to allow for special intervention units of one Member State to provide assistance and/or operate on the territory of another Member State (hereinafter referred to as the requesting Member State) in cases where they have been invited by the requesting Member State and have agreed to do so in order to deal with a crisis situation.
- 7.83 The key terms 'special intervention unit', 'crisis situation' and 'competent authority' are defined in the original Council decision as:

(a) ‘special intervention unit’ shall mean any law enforcement unit of a Member State which is specialised in the control of a crisis situation;

(b) ‘crisis situation’ shall mean any situation in which the competent authorities of a Member State have reasonable grounds to believe that there is a criminal offence presenting a serious direct physical threat to persons, property, infrastructure or institutions in that Member State, in particular those situations referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (1);

(c) ‘competent authority’ shall mean the national authority which may make requests and give authorisations regarding the deployment of the special intervention units.

7.84 Should the UK withdraw from the EU without a deal in March 2019, the reciprocal arrangements set out in that decision will cease to apply in respect of the UK. Chapter 4 of Part 24 of the Regulations therefore revokes the Atlas Council Decision. However, transitional provisions are made with respect to requests for cooperation from Member States to the UK, and from the UK to Member States, which remain ‘live’ on exit day. From a UK perspective, the transitional provisions in Chapter 4 will largely retain the commitments made under the Council Decision. This will allow Member States to provide or complete cooperation relating to a request for assistance made by the UK before exit day on similar terms to before exit. It will also oblige the UK to issue a response to any pending request for cooperation, as well as requiring the UK to complete any cooperation in a Member State in cases where the Member State is willing for the UK to do so. The UK will also retain the right to decline a request for assistance from a Member State. Historically it is rare for a special interventions unit from one Member State to operate in another; this is particularly true in the UK.

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 European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. The instrument also relies on the powers in section 23(1) of, and paragraph 21 of Schedule 7 to, the Withdrawal 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 Explanatory Memorandum.

8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under sections 1(1), 69(1), 71(4), 73(5), 84(7), 86(7) and 223(3) and (8) of the Extradition Act 2003. These powers are being used in relation to changes made in Part 14 of the Regulations, concerning extradition.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 For security, law enforcement and criminal justice, the Home Office has fully engaged with operational partners and the Devolved Administrations on preparations for a scenario in which the UK withdraws from the EU without a deal in March 2019.
- 10.2 For the most part, the Regulations make changes to address failures of retained EU law to operate effectively, or to address other legislative deficiencies arising from the UK's withdrawal from the EU. For extradition, the Regulations will provide the legislative underpinning for the UK to transition its cooperation with Member States to a non-EU mechanism, and partners have been consulted on this as part of wider preparations for a 'no deal' scenario.
- 10.3 For the Regulatory Systems (drug precursor chemicals, firearms and explosive precursors) the Regulations are also seeking to address failures of retained EU law to ensure it operates effectively. As there is not a significant impact on businesses, the Home Office has not undertaken a formal consultation exercise. In addition, the impact of 'no deal' was communicated to licence holders and other stakeholders via Technical Notices published in September. As relevant, the Devolved Administrations and other government departments were consulted during the drafting of the Regulations. The Home Office will continue to informally engage with stakeholders and licence holders after this instrument comes into force.

11. Guidance

- 11.1 Guidance is not being provided in relation to this instrument.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies may arise from some amendments made by this instrument, which may require (in some cases) changes to guidance, with associated costs for training and communication.
- 12.2 The impact on the public sector may arise from amendments made by this instrument, which may require changes to guidance, with associated costs for training and communication. This instrument will enable the implementation of the 'no deal' contingency arrangement for extradition, resulting in the cost per incoming extradition case rising for the organisations affected - including central authorities, executing judicial authorities, law enforcement agencies and the criminal justice system (across the UK). The overall cost to each organisation will depend on the number of extradition requests.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 See paragraph 12.1 concerning the impacts on businesses. The changes made by the instrument applies to small businesses in the same way that it applies to other businesses.

14. Monitoring & review

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

15. Contact

15.1 Rachel Vickerstaff at the Home Office Telephone: 0207 035 3267 or rachel.vickerstaff@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rob Jones at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service at the Home 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,	Ministers of the Crown exercising clauses 8(1), 9	Explain the instrument, identify the relevant law before exit day,

	Schedule 77	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'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 powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
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	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in

<p>regulations under 2(2) ECA 1972</p>		<p>(Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA</p>	<p>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.</p>
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Part 2
Statements required when using enabling powers
under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 Not applicable. The instrument is being made under the draft affirmative procedure.

2. Appropriateness statement

2.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

‘In my view The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate.’

2.2 This is the case because the instrument is being made to address deficiencies in retained EU law and makes appropriate transitional and saving provisions as detailed.

3. Good reasons

3.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, 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 that the instrument is being made to address deficiencies in retained EU law and makes appropriate transitional and saving provisions as detailed.

4. Equalities

4.1 The Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP has made the following statement(s)

‘The draft 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 Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

‘In relation to the draft instrument, I, the Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd 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.’.

5. Explanations

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

6. Criminal offences

6.1 Not applicable. The instrument does not create a new criminal offence or penalty.

7. Legislative sub-delegation

7.1 Not applicable. The instrument does not create a sub-delegated power.

8. Urgency

8.1 Not applicable. The instrument is not being made under the urgent procedure, provided for in paragraphs 4 or 14, Schedule 7 of the European Union (Withdrawal) Act 2018.