EU EXIT STATUTORY INSTRUMENTS LAID WITH LOCAL GOVERNMENT IMPACTS

This guidance note has been prepared by Lawyers in Local Government (LLG) for the benefit of its members in order to introduce the EU Exit Amendment Legislation brought in by the government in response to Brexit. It does not constitute legal advice and should not be relied upon in that capacity. Independent legal advice should be sought.

Introduction

The governments preparations for Brexit has resulted in a number of legal provisions and guidance documents which will impact directly on local government. In consequence, there is a need for all local authorities to work through the governance documentation of their own council to ensure that it remains up to date and relevant after our withdrawal from the EU.

It is important to note that the picture with the EU is constantly changing and this document therefore reflects the position on publication but may be subject to change. Information on the latest version can be found on our website together with other Brexit related news at https://www.lawyersinlocalgovernment.org.uk/saas/eu-referendum. There is also a forum thread of FAQs running at https://www.lawyersinlocalgovernment.org.uk/forum which is open to our members.

1. Local Government Governance Documentation

1.1 Constitutions

The following provides an oversight of the core local authority governance documentation which should be reviewed.

1.1.1 A local authority is under a duty to prepare and keep up to date its constitution under s.9P Local Government Act 2000 as amended. The Constitution must contain:

- the standing orders/procedure rules;
- the members’ code of conduct
- such information as the Secretary of State may direct
- such other information (if any) as the authority considers appropriate

1.1.2 Constitutions must be available for inspection at all reasonable hours by members of the public and supplied to anyone who asks for a copy on payment of a reasonable fee.

1.1.3 Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint
arrangements with other local authorities and a description of the rights of inhabitants of the area, amongst other things.

1.1.4 Whilst precedent from elsewhere may be helpful, a Constitution should primarily be a locally driven document which reflects the character and culture of the organisation and facilitates Council business, rather than something that creates bureaucratic procedures and potential traps for decision makers that may come back to haunt the Council.

1.2 Delegations

1.2.1 A scheme of delegation authorises, relevant officers to exercise the functions of the council as set out in the scheme and the Constitution. ‘Officers’ are likely to include the Chief Executive, directors, statutory officers and other officers whose titles and/or areas of responsibility are set out within it.

1.2.2 Schemes of delegation are generally without prejudice to the exercise of the council’s functions by the council, the cabinet, the council’s committees and sub-committees and their own powers of delegation and by the officers set out within it. Power to determine anything not included in the scheme will normally vest in the chief executive.

1.2.3 Chief executive and directors of the council are usually afforded the power within the scheme to take all necessary decisions in cases of emergency. Emergency will usually be defined in this context as ‘any situation in which the relevant officer believes that failure to act would seriously prejudice the Council’s or the public’s interests. Such interests are to be interpreted widely and include (but are not limited to) the risk of damage to property or threat to the health or well-being of an individual’.

1.3 Authorisations

1.3.1 Each local authority is required to make authorisations under statute for the purpose of specific functions which runs concurrently with the scheme of delegation. Such examples include:

- Designated Senior Officer for the purpose of RIPA
- Consumer Credit Products
- Acquisition and Disclosure of Communications Data

1.4 Statutory forms & Warrant Cards

1.4.1 Statutory forms are those required to be completed by statute when making certain applications or declarations and in proceedings. Everything from applying for a licence, certifying sickness, filing for bankruptcy, parental leave, issuing proceedings, defending proceedings, company information and many more regulated circumstances require the completion of statutory forms.

1.4.2 Warrant Cards for enforcement in areas such as a planning, environment and housing prescribe specific legal authorisations which must be kept up-to-date.
1.5 **Policy & procedure**

1.5.1 Local Authorities will have wide and varied adopted policies. Some are required by law and some will have developed from locally specific circumstances. The main core policies held by a local authority which might be affected by EU Exit SI’s include:

- Planning & Building Policy
- Planning Enforcement Policy
- HSAB Escalation Policy
- Local Plan
- Licensing Policy
- Environmental Enforcement Policy
- Recycling & Waste Policy
- Transport Policy
- Allocations Policy
- Housing Enforcement Policy
- Children Missing Education
- Safeguarding Adults Policy
- Foster Carers Delegated Authority Policy
- Local Housing Allowance Policy
- Equal Opportunities and Human Rights Policy
- Procurement, Tenders & Contracts Policy
- HR Policies - Pensions, Redundancies, Redeployment, Capability, Recruitment, Disciplinary, Whistleblowing etc

2. **Caveats**

2.1 You may wish to place a caveat into your documents/website to safeguard against amendments required due to changes in legislation. Such a caveat could include:

2.2 "References to legislation including statutory instruments contained within this document/policy/procedure/guidance (delete as appropriate) may have been superseded by changes derived from the European (Withdrawal) Act 2018 (“the Act”) and subordinate legislation introduced as a result of Brexit. Users should check references contained within to ensure they are up to date. No liability is accepted for reliance or loss arising from the specified legislation or procedure which has subsequently been amended by the Act or European Union Exit Statutory Legislation from the date of publication”.

3. **European Union (Withdrawal) Act 2018**

3.1 The European Union (Withdrawal) Act 2018 (the EUWA) will end the supremacy of EU law in UK law and will convert directly applicable EU legislation into domestic law. The legislation will generally have the same effect that it had before the UK left the EU, unless or until it is changed by Parliament. Some however have been amended by Statutory Instruments (SIs) made under the EUWA to correct “retained EU law” to ensure that the legislation will work properly once the UK has left the EU.
3.2 The Statutory Instruments listed on the government website have been made using the powers in section 8 of the EUWA. This provides for a Minister to make such provision as the Minister considers appropriate to prevent, remedy or mitigate: (a) any failure of retained EU law to operate effectively or (b) any other deficiency in retained EU law, in both cases arising from the withdrawal of the United Kingdom from the EU. The majority of provisions contained within the SI's utilise the power in section 8 of the EUWA to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. Many of the Instruments replace references to EU Member States, institutions, procedures and decisions that will no longer be directly relevant after Exit Day with references to UK equivalents.

3.3 Paragraph 37 of Schedule 8 to the European Withdrawal Act is a “transitional and saving” provision which provides that anything done or in force before exit day (or in in the process of being done), and which relates to any element of retained EU law is preserved. For example, licences lawfully issued before exit day would continue to have effect after exit day. It provides that “Anything……….if in force or effective immediately before exit day, continues to be in force or effective on and after exist day….”

3.4 Paragraph 37 will apply to local authority schemes of delegation which are in place immediately before exit day, to the extent to which those schemes relate to retained EU law. Any new schemes of delegations (or changes to schemes) after exit day will need to be formulated with regard to retained EU law, as applicable in each case.

4. List of Statutory Instruments Detailed

- Environment (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/458) Page 6
- Conservation of Habitats etc. (EU Exit) Regulations 2019 (SI 2019/579) Page 7
- The Jurisdiction and Judgements (Family) (Amendment etc) (EU Exit) (No.2) Regulations 2019 (SI 2019/836) Page 8
- The State Aid (EU Exit) Regulations 2019 Page 9
- The European Structural and Investment Funds Common Provisions (Amendment) (EU exit) Regulations 2019 (SI 2019/785) Page 10
- The Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018 Page 10
- The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 Page 10
- Public Procurement (Amendment etc.) (EU Exit) Regulations (SI 2019/560) Page 12
5. Statutory Instruments

5.1 The following is a collection of prevalent statutory instruments with EU Exit local government implications together with an explanation of the changes. This list is not exhaustive.


a. Disregards for the purposes of the allocation of housing under Part 6 and Part 7 of the Housing Act 1996 those granted limited leave to enter or remain in the UK by virtue of Appendix EU to the immigration rules made under the Immigration Act 1971.

b. This is restricted to the purpose of determining whether the only right to reside comes from a status as a jobseeker or family member of a jobseeker; an initial 3 month right to reside under regulation 13 of the EEA Regulations; or the only right to reside in the Channel Islands, Isle of Man or Republic or Ireland is a right equivalent to those derived under the Treaty establishing the European Community.

c. When does it take effect? Applications received prior to 7th May 2019 will not be affected by these changes.

Changes required? Check Housing, Homelessness & Allocations Policy

5.3 The Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 (SI 2018/1232)

a. This instrument principally concerns the Environmental Impact Assessment and Strategic Environmental Assessment regimes. The SEA and EIA regimes amended by this instrument will continue to function as they did before Exit.

b. The main part of this instrument amends the following:

- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, S.I. 2017/572
- The Town and Country Planning Act 1990
- The Planning and Compulsory Purchase Act 2004
• The Planning Act 2008 The instrument (in regulations 2(3) and 5(3)(a))

  c. The main changes are:
      • references to complying with EU obligations have been replaced with references to complying with retained EU law (regulations 5(3), 5(4), 5(7), 5(8), 6(2), 6(3), 6(4), 6(6), 6(8), 6(9), 6(13), 6(14), 7(2), 7(3), 7(4), 7(5), 7(6), 7(10) and 7(11))
      • references to requests made and documents provided, pursuant to EU law, to the UK from other Member States are amended (regulations 5(6), 6(8), 6(9) and 7(6))
      • references to Directives are amended to make clear to readers they are referring to the version in force immediately before exit day (regulations 5(2), 6(2), 6(11) and 6(12) and 7(2), 7(8) and 7(9))
      • references to the UK as a Member State are amended (regulations 5(5), 5(6), 5(8), 6(5), 6(7), 6(8), 6(9), 6(10), 6(14), 7(6), 7(7) and 7(11)). In relation to the other amendments in this instrument they relate to references to obligations in EU law which are redundant or no longer appropriate. Namely these are references to complying with EU obligations etc have been replaced with references to complying with retained EU obligations etc (regulations 2(2), 2(4), 2(5), 3, and 4).

  d. When does it take effect?
      On Exit Day (except for Regulations 2(3) and 5(3)(a) which came into force on 31st December 2018.
      Changes required?
      Planning & Building Policy

5.4 Environment (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/458)

  a. This statutory instrument makes provision in respect of:

      • The Environmental Protection Act 1990 (“EPA 1990”)
      • The Environment Act 1995 (“EA 1995”)
      • Pollution Prevention and Control Act 1999 (“PPCA 1999”)
      • Contaminated Land (England) Regulations 2006 (SI 2006/1380)
      • Environmental Noise (England) Regulations 2006 (SI 2006/2238)
      • The Environmental Damage (Prevention and Remediation) (England) Regulations 2015. (SI 2015/810)

  b. In the EPA1990, references to obligations under EU law are omitted and where appropriate replaced with references to retained EU law and retained EU obligations.
      In the EA1995, powers to make directions and regulations for the purposes of implementing EU law are adjusted to refer to retained EU obligations, with appropriate savings in Part 4. There are also amendments to the power for appropriate agencies to impose charges in relation to retained EU law.

  c. In the PPCA1999, the power to make regulations under section 2 is adjusted so as to substitute references to retained EU obligations for existing references to the UK’s obligations under the EU Treaties, and to replace the provisions, whereby relevant Directives may be designated from time to time, with provisions on the face of the Act
which specify a closed list of Directives in connection with which regulations may be made.

d. The amendments to sections 41 and 41A of the EA 1995 relate to a fee in respect of a function exercisable by a public authority in the United Kingdom. The amendments to the PPCA 1999 and section 156 of the EPA 1990 amend powers to legislate.

e. **When does it take effect?**
   On Exit day.
   **Changes required?**

5.5 **Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (SI 2019/579)**

a. This instrument makes changes to the three existing instruments which transpose the Habitats and Wild Birds Directives so that they continue to work on Exit day. These are:
   - The Conservation of Habitats and Species Regulations 2017
   - The Conservation of Offshore Marine Habitats and Species Regulations 2017
   - Section 27 of the Wildlife and Countryside Act 1981 to ensure existing protections continue.

b. **Section 27 Wildlife and Countryside Act 1981**

   “wild bird” is defined in the WCA in terms of species found in or visiting the European territory of a Member State. On exiting the EU this would mean that species of wild birds found in the UK but not elsewhere in the EU would no longer be protected. To ensure such species of wild birds continue to be protected the definition is amended to add the UK. Species of wild birds found in or regularly visiting either the UK or the European territory of a Member State will continue to be protected.

c. International commitments including the Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) and The Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention) remain.

d. **When does it take effect?**
   On Exit day.
   **Changes required?**
   Planning/Conservation Policy

5.6 **The Childcare (Miscellaneous Amendments) (EU Exit) (England) Regulations 2018 (SI 2018/1116) (as amended by the childcare (Correction to Miscellaneous Amendments) (England) (EU Exit) Regulations 2019/727).**

a. The SI makes minor amendments to the following:
b. This instrument will amend three sets of regulations which concern the sharing of information about childcare providers, between Ofsted, childminder agencies and national childcare regulators in member states of the EEA, for the purpose of protecting children from harm or neglect. This instrument makes minor drafting changes to retain information sharing provisions between England and national childcare regulators in the EEA, after the UK’s withdrawal from the EU. Changes are made to the following:

- The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 – regulation 5 prescribes information that Ofsted can request from a third party (including a childcare regulator in an EEA member state) relating to an application for registration as a childcare provider in England. If the applicant withholds or withdraws consent for Ofsted to seek any of this information, this gives Ofsted grounds for refusing the registration.
- The Childcare (Supply and Disclosure of Information) (England) Regulations 2007 – regulation 9 requires Ofsted to provide information about childcare providers and childminder agencies on its registers to certain authorities when requested. One of the authorities listed is the national authority regulating childcare in another EEA member state.
- The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 – regulation 19. This is similar to the provision described in the previous paragraph but places the onus on a childminder agency (rather than Ofsted) to supply information on any childminder registered with them to an EEA member state national childcare regulator, when requested.

c. When does it take effect?
On Exit day (SI 2019/727 amended to move the commencement date from 29th March 2019)
Changes required?

Procedures & Policy

5.7 The Jurisdiction and Judgements (Family) (Amendment etc) (EU Exit) (No.2) Regulations 2019 (SI 2019/836) (amends SI 2019/519 Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019)

a. It amends the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 to ensure that, in England and Wales and Northern Ireland, the court’s jurisdiction to determine a financial remedy application and the type of financial remedy the court can order under the Children Act 1989 and the Children (Northern Ireland) Order 1995 are not narrowed as a result of European Union (EU) exit.
b. The instrument revokes the EU Maintenance Regulation (with transitional and savings provisions). Among numerous other amendments, the Regulations amend the Children Act and the Northern Ireland Order to remove references to the EU Maintenance Regulation and return the jurisdiction and powers of the court in England and Wales and Northern Ireland under these provisions in financial remedy cases involving children to the position prior to the application of the EU Maintenance Regulation.

c. The jurisdiction of the court and the range of financial remedies the court may order under the Children Act and the Northern Ireland Order were narrowed from the position under the EU Maintenance Regulation by SI 2019/519. This instrument ensures that jurisdiction grounds and remedies are not lost. Post EU Exit, the courts will have jurisdiction to make orders whenever a child or a parent or guardian is habitually resident or domiciled in England and Wales or Northern Ireland. It will also retain the power to make lump sum and property orders in addition to periodical payments.

d. When does it take effect?
The SI states ‘immediately before Exit day’

Changes required?
None

5.8 The Social Security (Amendment) (EU Exit) Regulations 2019 (2019/128)

a. This instrument amends section 179 of the Social Security Administration Act 1992 by providing a power to implement and give statutory effect to reciprocal agreements related to social security with countries outside the UK. It amends the existing power to implement international agreements related to social security, so that agreements with international organisations (i.e. the EU) can be implemented, and so that retained direct principal EU legislation (within the meaning of section 7 of the Act) can be amended in order to give effect to such an agreement. It also amends various provisions to remove references to the UK as a Member State of the EU.

b. When does it take effect?
On Exit day

Changes required?
Update policy and procedure

5.9 The State Aid (EU Exit) Regulations 2019 (no SI reference provided by government)

a. This instrument preserves most EU State aid law as retained EU law and provides that State aid rights continue to be recognised in domestic law on and after exit day, ensuring that EU legislation forms part of domestic law on and after exit day.

b. The amendments made by this instrument do not materially alter the substance of the EU State aid framework. There is no material change to the definition of aid or to the general prohibition on giving aid. However, changes are included to give the CMA the function of regulating the regime, to set out how aid givers must fulfil their
obligations to notify aid in the new system and to clarify how appeals against certain State aid decisions made by the CMA will be made.

c. Once the UK has left the EU, the Commission will cease to have authority to approve and monitor new aid granted by public authorities in the UK. This instrument provides for the CMA to become the independent regulator with functions to regulate State aid.

d. When does it take effect?
   On Exit day
   Changes required?

5.10 The European Structural and Investment Funds Common Provisions (Amendment) (EU exit) Regulations 2019 (SI 2019/785)

a. This instrument amends Regulation (EU) No 1303/2013 of the European Parliament and the Council laying down common provisions on:

- The European Regional Development Fund
- The European Social Fund
- The Cohesion Fund
- The European Agricultural Fund for Rural Development
- The European Maritime and Fisheries Fund

b. It repeals Council Regulation (EC) No 1083/2006 (“Regulation 1303/2013”), to the extent that it applies to support for rural development and support under Regulation (EU) No 508/2014 in order to correct deficiencies created by UK leaving the EU.

c. When does it take effect?
   On Exit day
   Changes required?

5.11 The Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018

a. These Regulations amended four statutory instruments in the field of local government finance legislation in consequence of the UK’s exit from the European Union. IT HAS NOW BEEN WITHDRAWN

5.12 The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

a. This instrument maintains the data protection standards that currently exist under the GDPR and the DPA 2018 and introduces a newly merged regime for general processing activities (covering matters that were in and out of scope of the GDPR prior to Exit Day). It also maintains the extra-territorial scope of the GDPR, so that controllers or processors based outside the EEA which are processing UK residents’ data for the purposes of providing goods and services or monitoring behaviour will
continue to be covered by the UK GDPR, and extends this to cover such processing by controllers and processors in the EEA. A number of functions conferred on the European Commission by the GDPR will transfer to the Secretary of State and/or the Information Commissioner.

**b.** Part 3 of the DPA 2018, which transposed the Law Enforcement Directive into UK law, has been preserved. However, amendments have been made to correct deficiencies within it.

**c.** Parts 5 to 7 of the DPA 2018 make general provisions relevant for the UK data protection framework on matters such as the constitution and functions of the Information Commissioner, enforcement and territorial application of the Act. This instrument removes obligations for the Information Commissioner to cooperate with other member state’s supervisory authorities for the Law Enforcement Directive.

**d.** The Privacy and Electronic Communications (EC Directive) Regulations 2003 - regulation 8, inserts a definition of “consent” into Regulation 2(2) of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PECR”). This amendment makes clear that, for the purposes of PECR, the definition of consent corresponds to that in the GDPR instead of that in the 1995 Data Protection Directive (Directive 95/46/EC).

**e.** The DPA 2018 extended GDPR standards to general processing activities that were outside the scope of EU law via the ‘applied GDPR’. As the GDPR will no longer apply directly in the UK, this instrument introduces a single regime for general processing activities known as the UK GDPR.

**f.** Article 3 of the GDPR extends the regulation to data controllers and processors who are based outside of the EEA but are processing personal data of people within the EEA in connection with the offering of goods and services to them or for monitoring purposes. Paragraph 5 of Schedule 1 of the instrument retains this principle in the context of the UK. In practice this means that the UK GDPR will apply to a controller or processor who is based outside of the UK but is processing personal data of people within the UK in connection with the offering of goods and services to them or for monitoring purposes. This entails extending the scope of the current regime (which currently apply extraterritorially to controllers and processors outside of the EEA) to certain processing by controllers and processors established within the EEA after the UK’s Exit.

**g.** It also revokes EU decisions on adequacy and standard contractual clauses, and the EEA adoption of those decisions, the GDPR, and the Regulation on processing by EU institutions.

**h.** When does it take effect?
Regulations 7 and 8 and Schedule 4 came into force on 29th March 2019.
All other provisions come into force on Exit day

**Changes required?**
Data Protection Policy, Procedure & Guidance
5.13 **Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/560)**

a. In most respects, the framework and principles underlying the procurement regime remain unchanged.

b. This instrument replaces the requirement to send notices to the EU Publications Office (for publication in OJEU via Tenders Electronic Daily (TED)), with a requirement to submit notices to a new UK e-notification service. This is intended to reflect the publication requirements in the GPA. Contract opportunities that would have been published on OJEU/TED will be published on the new UK e-notification service. Publication will take place electronically and the service will be free. Transitional provisions have been made in respect of procurement procedures which straddle exit day and in relation to which earlier notices have been published on OJEU/TED.

c. This instrument transfers the Commission’s function to revalue the main financial thresholds to the Minister for the Cabinet Office (MCO).

d. Regulation 5(57) of the instrument includes amendments to Regulation 89 of the Public Contracts Regulations 2015 (and parallel provisions in the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016). Remedies for breaches of “enforceable EU obligations”, is amended to refer instead to any retained EU obligation that is saved under section 4 of the European Union (Withdrawal) Act 2018. This would include directly effective rights and obligations that previously flowed through section 2(1) of the European Communities Act 1972 and which continue to be recognised in domestic law post exit.

e. Obligations under Part 2 and 3 of the Public Contracts Regulations 2015 in respect of economic operators from EEA States in circumstances where the UK is likely to be treated as a third country by contracting authorities in member States are amended. After exit and save in respect of procurements which are on-going as of exit day, this duty is owed only to economic operators from the UK.

f. The instrument amends the definition in the Equality Act 2010 of “public procurement functions”, reflecting the fact that after exit, public procurement functions exercised by UK contracting authorities will not be regulated by the EU Directive to which the Act currently refers.

g. In respect of abnormally low tenders submitted by bidders who may have been in receipt of state subsidies, non-UK economic operators will be treated on a level playing field. Further, under the new UK State Aid scheme where enforcement is conferred on the Competition and Markets Authority, in public procurement it would be inappropriate for economic operators established in the UK to be required to demonstrate that aid provided by the UK Government was compatible with the UK’s State aid regime in contrast to economic operators not established in the UK. Accordingly, the provisions in the Regulations relating to State aid have been removed (regulation 69(2)(f), (6) and (7) of the Public Contracts Regulations 2015).

h. **When does it take effect?**
Regulations 6, 8, and 10 come into force eight months after the day on which exit day falls.

All other provisions come into force on exit day.

Changes required?

Procurement Policy, procedure, references in scheme of delegation and constitution.

For more information on public procurement including transitional arrangements in the event of a no deal see https://www.gov.uk/guidance/public-sector-procurement-after-a-no-deal-brexit

5.14 The Employment Rights (Amendment) (EU Exit) Regulations 2019 (SI 2019/535)

a. This Instrument will come into force only in the event that there is no Withdrawal Agreement

b. Amendments are being made to existing legislation to reflect the UK’s withdrawal from the EU and the European Economic Area. In particular;

• Schedule 2, paragraph 10, Employment Rights Act 1996
• Working Time Regulations 1998
• The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002
• Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013
• The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations 2014
• Posted Workers (Enforcement of Employment Rights) Regulations 2016
• Transnational Information and Consultation of Employees Regulations 1999 (which extend to the UK)

c. The following powers to make secondary legislation will be repealed.

• Section 79(3), Employment Rights Act 1996
• Section 19(4), Employment Relations Act 1999
• Section 45(4), Employment Act 2002
• Section 42(5), Employment Relations Act 2004

d. When does it take effect?
Schedule 1 - paragraphs 9, 11(c) and 16(c) and regulation 2(1) came into force the day after the SI came into force.

All other provisions come into force on exit day.

Changes required?

At the point of a no deal Brexit.
2.15 The Employment Rights (Amendment) (EU Exit) (No.2) Regulations 2018 (no SI number provided by government)

a. his Instrument removes provisions which are no longer appropriate or relevant if the UK leaves the EU without a Withdrawal Agreement. The SI does not change the operation of these aspects of employment law in other ways.

b. When does it take effect?
On exit day.

Changes required?
Possible references within HR policies.

5.16 The Recognition of Professional Qualifications (Amendment Etc.) (EU Exit) Regulations 2019 (SI 2019/312)

a. This Instrument amends the European Union (Recognition of Professional Qualification) Regulations 2015 (“the 2015 Regulations”) and revokes the effect of the European Communities (Recognition of Professional Qualifications) Regulations 2007 in relation to Switzerland. It also makes transitional and savings provisions to legislation concerning schoolteachers.

b. The 2015 Regulations, as amended by this instrument will retain a general system for recognition where UK regulators will be required to recognise EEA and Swiss qualifications which are of an equivalent standard to UK qualifications in scope, content and level. An applicant’s qualification will not be considered comparable to UK qualifications if the level of qualification is lower than UK standards, the qualification is substantially different in knowledge, skills and competencies, or the regulated profession in the UK comprises one or more regulated professional activities which do not exist in the country in which they are qualified in practice. This instrument will make similar transitional and savings provisions for schoolteachers.

c. The amended 2015 Regulations will no longer include obligations on regulators that are primarily based on facilitating Treaty rights such as compensation measures, partial access and temporary and occasional provision of services.

d. When does it take effect?
Regulation 2 (so far as it relates to Part 1 of Schedule 1) and Part 1 of Schedule 1 come into force on the day after the day on which the Regulations were made.

All other provisions come into force on Exit Day

Changes required?
Recruitment Policy

5.17 The Health and Safety (Amendment) (EU Exit) Regulations 2018 (SI 2018/1370)

a. These Regulations ensure that European Union (‘EU’) derived health and safety protections will continue to be available in domestic law after the United Kingdom
(‘UK’) has left the EU. These Regulations do not make any changes beyond the intent of ensuring continued operability of the relevant legislation.

b. When does it take effect?
On Exit Day.

Changes required?
Health & Safety Policy

6. FSA Brexit Statutory Instruments

3.1 The FSA has published a statement for local authorities in England (PDF, 190 KB), Wales (PDF, 429 KB) and Northern Ireland (PDF, 140 KB) about updating enforcement documentation produced while the UK was in the EU. It includes information about retained EU law and enforcement regulations and offers legislation examples. Please use this information to support the delivery of your plans.

7. LGA Brexit Hub

4.1 The LGA have a Brexit Hub where you can find information and links to deal and no deal scenario impacts and changes https://www.local.gov.uk/topics/european-and-international/brexit-and-local-government

8. Further Information

8.1 Further information can be found on the LLG website at www.lawyersinlocalgovernment.org.uk Enquiries on this guidance note should be directed to Membership@llg.org.uk

Lawyers in Local Government

@LLGLegal

Credits
Helen McGrath, Head of Public Affairs LLG

Deborah Evans – CEO, LLG; Julia Cunningham – LLG; Judith Barnes - Bevan Brittan; Simon Goacher- Weightmans; Jeanette Thompson - North Hertfordshire DC; Matt Marsh - Anthony Collins; Candice Manifold - Trafford Council; Fiona Anthony -nplaw Norfolk Council; Simon Banks – Hertfordshire DC.