EXPLANATORY MEMORANDUM TO

THE DATA PROTECTION, PRIVACY AND ELECTRONIC COMMUNICATIONS (AMENDMENTS ETC) (EU EXIT) REGULATIONS 2020

2020 No. 1586

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Digital Culture Media and Sport (DCMS) and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument uses powers under the EU (Withdrawal) Act 2018 (EUWA) to amend the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ("the DPPEC 2019") and revoke the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) (No. 2) Regulations 2019 ("the Previous Amending Regulations") in order to correct deficiencies in EU-derived data protection legislation as a result of the withdrawal of the UK from the EU. This will ensure that the legal framework for data protection within the UK continues to function correctly after the transition period.

Explanations

What did any relevant EU law do before exit day?

2.2 The General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) applies directly across all EU Member States, including the UK, until the end of the transition period. It regulates the processing of personal data by data controllers and processors with an establishment in the EU; and by those outside the EU which are processing data about individuals who are in the EU for the purposes of providing them with goods and services or monitoring their behaviour.

2.3 The GDPR is direct EU legislation and will form part of UK domestic law under the EUWA from "IP Completion Day".

2.4 The Data Protection Act 2018 (DPA 2018) supplements the GDPR within the UK by exercising areas for derogation within the GDPR. Chapters 2 and 3 of Part 2, Part 3, and Parts 5 to 7 of the DPA 2018 so far as they relate to Parts 2 and 3, are EU-derived law for the purposes of the EUWA.

2.5 The Law Enforcement Directive (Directive (EU) 2016/680) (LED) concerns the processing of personal data by bodies with law enforcement functions for law enforcement purposes. The UK implemented this Directive through Part 3 of the DPA 2018.

2.6 Other direct legislation that will be incorporated into UK domestic law under the EUWA in the field of data protection includes EU decisions on the adequacy of third countries, which are relevant for the international transfers provisions in Chapter V of

the GDPR. These decisions and the GDPR have been adopted by the EEA. The paragraphs of Annex XI to the EEA Agreement setting out that adoption will also be incorporated into UK domestic law.

2.7 The UK's participation in EU legislation on Justice and Home Affairs (JHA) is principally governed by Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

2.8 Article 4 to Protocol (No 19) to the TEU and TFEU, on the Schengen acquis integrated into the Framework of the European Union, provides that the UK may request to take part in some or all provisions of the Schengen acquis.

2.9 JHA opt-in Protocol 21 allows the UK to choose, within three months of a proposal being presented to the Council pursuant to Title V of Part Three of the TFEU (the part of the Treaty governing JHA matters), whether it wishes to participate in the adoption and application of any such proposed measure.

Why is it being changed?

2.10 The DPPEC 2019 were made on 28th February 2019 and were originally due to come into force on "exit day" (as defined in the EUWA). It includes necessary and appropriate changes to the GDPR and the DPA 2018 so that the law continues to function effectively after exit day. This includes transitional provisions inserted into DPA 2018 to ensure that, after exit day, personal data can continue to be transferred to third countries as it could immediately before exit day, including, where applicable, under EU adequacy decisions and binding corporate rules.

2.11 Since the DPPEC 2019 were made, the European Union (Withdrawal) Agreement Act 2020 (EUWAA) has given effect to the Withdrawal Agreement, which provides for a transition period from "exit day" (31 January 2020) until "IP completion day" (11pm on 31 December 2020). The EUWAA has the effect of postponing commencement of the DPPEC 2019 until IP completion day. It therefore no longer makes sense for provisions in the DPPEC 2019, including in particular the transitional provisions, to be based on the position immediately before "exit day": they should instead be based on the position before IP completion day.

2.12 EU adequacy decisions operative immediately before the end of the transition period will form part of retained EU Law. The DPPEC 2019 will revoke these decisions but will make transitional provision to enable personal data to continue to flow from the UK to jurisdictions subject to an EU adequacy decision immediately before "exit day", listing the relevant decisions in paragraph 5(2) of new Schedule 21 to the DPA 2018 for clarity. Since the DPPEC 2019 were laid in Parliament there has been a new adequacy decision for Japan and the adequacy decision for the US (commonly known as Privacy Shield) has been invalidated in July by a CJEU judgment (Case C-311/18, "Schrems II").

2.13 The Previous Amending Regulations were laid to amend the DPPEC 2019 to make changes relevant to the transitional provisions for the Privacy Shield decision in paragraph 5 of new Schedule 21 to the DPA 2018 (as inserted by paragraph 102 of Schedule 2 to the DPPEC 2019). As that decision has since been invalidated this instrument revokes the Previous Amending Regulations before it comes into force.

2.14 The DPPEC 2019 also provided a legal basis for continued free flow of data from the UK to the EU falling within scope of the LED, deeming EU member states, Gibraltar and any third country, territory or sector within a third country or an international

organisation which is the subject of an adequacy decision made by the European Commission before exit day on the basis of Article 36(3) of the LED, as adequate. Since the DPPEC 2019 were made the Home Office has established that the EEA states (Norway, Iceland and Liechtenstein) and Switzerland have also transposed the LED into their law. As a result, this instrument looks to add these countries to the list of countries that the UK deems adequate for law enforcement processing, so that data sharing for law enforcement purposes can continue with them as it did before the end of the transition period.

2.15 To ensure that established data flows from UK companies to other members of the company group outside of the UK can continue after the UK leaves the EU, the DPPEC 2019 also insert transitional provisions in the DPA 2018 in relation to binding corporate rules (BCRs) (see paragraph 9 of the new Schedule 21 to the DPA 2018 as inserted by paragraph 102 of Schedule 2). Since the DPPEC 2019 were made we have identified a possibility that some BCRs currently relied on by UK company group members might not be captured by these transitional provisions.

2.16 The EUWA will bring EU-derived domestic legislation onto the UK statute book at the end of the transition period. This will include EU legislation that would have no practical effect in the UK, including the new EU adequacy decision for Japan. This instrument will revoke these defunct decisions, regulations and provisions in the interests of clarity.

What will it now do?

2.17 Provisions in the UK GDPR and DPA 2018 as amended by the DPPEC 2019 that would have had effect by reference to the position immediately before "exit day" will instead now have effect by reference to the position immediately before IP completion day.

2.18 The transitional provisions for GDPR adequacy decisions which the DPPEC 2019 insert as paragraphs 4 to 6 of new Schedule 21 DPA 2018 will be updated to reflect the changes to the current EU adequacy decisions that are in force by adding the Japan adequacy decision and removing the Privacy Shield decision from the list in paragraph 5(2). This does not change the effect of the DPPEC 2019 but provides clarity of law.

2.19 The transitional provisions for adequacy decisions under Part 3 of DPA 2018 which the DPPEC 2019 insert as paragraphs 10 to 12 of new Schedule 21 DPA 2018 will be updated to include the wider EEA states (Norway, Iceland and Liechtenstein) and Switzerland in the list in paragraph 11(1), so that data transfers to them can continue after the end of the transition period.

2.20 The transitional provisions for BCRs which the DPPEC 2019 insert as paragraph 9 of new Schedule 21 DPA 2018 will be updated to enable pre-GDPR BCRs relied on by UK company group members and authorised by EU supervisory authorities that were valid immediately before the end of the transition period to be treated as authorised by the Information Commissioner after the transition period provided that they are approved by the Commissioner following notification by the UK company group member within six months of the end of the transition period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The DPPEC 2019 inserted transitional provisions into DPA 2018 relating to the UK's withdrawal from the EU. These include provisions that treat EU adequacy decisions for third countries as if they were made under powers that the DPPEC 2019 transfers from the EU to the Secretary of State. However this transitional mechanism does not apply for any EU adequacy decisions that are repealed or suspended immediately before IP completion day (as amended by this instrument). On 16 July 2020, in case C-311/18 (commonly referred to as Schrems II) the CJEU declared one such decision, the Privacy Shield, to be invalid. The transitional mechanism will not therefore apply for that decision.

3.2 The Previous Amending Regulations makes amendments to the DPPEC 2019 that solely relate to the Privacy Shield decision. As this no longer has any application, this instrument revokes the Previous Amending Regulations. Where the DPPEC 2019 comes into force on IP completion day, the Previous Amending Regulations come into force immediately before IP completion day, as does this instrument. The Previous Amending Regulations make numbering changes that are relevant for this instrument. In the interests of certainty, the intention is to bring the provision revoking the Previous Amending Regulations into force on the day after this instrument is made. The other amendments this instrument makes are therefore to the DPPEC 2019 as originally numbered, rather than as amended by the Previous Amending Regulations.

3.3 The JCSI has previously criticised an affirmative instrument which came into force on the day after making (see JCSI's 1st Report of Session 2013-14). However, we believe the criticism does not apply here because the JCSI noted that the offending instrument "significantly diminishes the legal rights of persons affected, or imposes new duties on such persons which are significantly more onerous than before, and requires them to adopt different patterns of behaviour accordingly". As the Previous Amending Regulations will have no effect following the Schrems II judgment the revocation of it on the day after this instrument is made will cause no prejudice.

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)

3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

3.5 The powers under which this instrument is made cover the entire United Kingdom and the territorial application of this instrument is not limited either by the EUWA or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is all of the UK.

4.2 The territorial application of this instrument is all of the UK, and it also has extra-territorial effect in certain circumstances (as explained in paragraph 4.3).

4.3 The GDPR as it applies to the UK, and the DPA 2018 insofar as it supplements the GDPR for the UK, apply to processing by controllers and processors who are established outside of the EEA in certain circumstances where they are processing data about individuals who are in the UK. After the transition period, the UK GDPR and the DPA 2018 (as both amended by the DPPEC 2019, which this instrument

amends) will apply in the same way to processing by controllers and processors who are established outside of the UK. This will extend the extraterritorial application of the domestic framework to the remaining EEA member states.

5. European Convention on Human Rights

5.1 The Minister of State for the Department for Digital, Culture, Media and Sport, John Whittingdale MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The EUWA (as amended by EUWAA) makes provision for repealing the European Communities Act 1972 and will incorporate direct EU legislation, as it stands immediately before the end of the transition period, into UK law, as well as saving EU-derived domestic legislation relating to the EU – collectively referred to as "retained EU law". The Act also provides a temporary power for ministers to make regulations to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the EU. This instrument forms the third of a series of instruments, after the DPPEC 2019 and Previous Amending Regulations, that exercise that power in relation to the GDPR and the DPA 2018.

7. Policy background

What is being done and why?

7.1 The Government is seeking to use powers under section 8 of the European Union (Withdrawal) Act 2018 in order to address deficiencies arising from the withdrawal of the UK from the EU.

Correcting deficiencies arising from the UK's entering a transition period with the EU

7.2 The DPPEC 2019 uses "exit day" as the reference point for some of its provisions, particularly for some of its transitional provisions. As the UK has now entered into a transition period with the EU the term "exit day" would point to a time in the past (31st January 2020). This instrument updates these references to amend this date to the end of the transition period or 'IP completion day'(31st December 2020). This will ensure that the transitional provisions in the DPPEC 2019 will work at the end of the transition period as they originally intended to.

Additional transitional provisions for international transfers under Part 3 DPA 2018

7.3 Upon leaving the EU, controllers in the UK will need a legal basis to continue the free flow of personal data for law enforcement purposes from the UK to third countries, territories and institutions, including EU Member States, other EEA countries and Gibraltar. For law enforcement purposes, The DPPEC 2019 provides the legal basis for some law enforcement transfers by transitionally deeming the EU and Gibraltar to be adequate, along with any other country or territory already deemed adequate by the EU under the LED, although there are no such countries currently. Subsequently it has become clear that the EEA countries have also implemented the LED along with

Switzerland under Schengen building measures. As a result, we know that they are required to implement equivalent data protections standards, so it is appropriate for the UK to also transitionally deem Norway, Liechtenstein, Iceland and Switzerland as adequate. This change will ensure that it is possible to continue easily sharing data with these countries for law enforcement purposes after the transition period, which is important for wider law enforcement cooperation.

Valid pre-GDPR BCR's that were authorised by supervisory authorities in other member states

7.4 BCRs are sets of rules approved by a supervisory authority (SA) that companies may use in order to lawfully transfer personal data to other companies outside the EA that are within the same group structure. The DPPEC 2019 provides that all BCRs that had either been approved or authorised by the Information Commissioner will continue to operate immediately after the end of the transition period (as amended by this instrument) as they had immediately before the end of the transition period. Since the DPPEC 2019 were made we have identified the possibility that some UK company group members may currently rely on BCRs authorised by a SA in other member states in order to transfer personal data to other group members outside the EEA that have not been approved by the UK SA (the Information Commissioner). As there is no record of who may be currently relying on BCRs of this nature it would not be practicable for regulatory purposes for them to be rolled over en masse as the Information Commissioner would not be aware of what she was responsible for, making it difficult to ensure effective enforcement.

7.5 The instrument therefore requires affected UK group members to notify the Information Commissioner of the existence of any such pre-GDPR BCRs so that she can consider whether or not to approve them, without the need for a full new approval in accordance with Article 47 UK GDPR. The notification must include contact details for the relevant UK group member and such other information that the UK SA reasonably requires, which might include textual changes of a kind referred to in paragraph 9(3) of new Schedule 21 to the DPA 2018 as inserted by the DPPEC 2019. Given the transitional nature of this process there will be a six month window for notification, starting from the end of the transition period. This will as far as possible allow companies using this kind of BCR to continue to rely on them with as minimal period of disruption as possible.

Removal of the Privacy Shield transitional provision and addition of the Japanese adequacy transitional provision in new Schedule 21 DPA 2018

7.6 The DPPEC 2019 lists out all the transitional adequacy provisions that the UK will rollover at the end of "exit day" unless repealed or suspended. It also includes a sweeper provision which would enable any new decisions made before "exit day" to also rollover. Since the DPPEC 2019 were laid, Japan was granted adequacy and the CJEU invalidated Privacy Shield. Even though the way the transitional provisions are drafted mean that the Privacy Shield would not be rolled over but the Japan adequacy decision would, in the interests of clarity of the law the now invalid Privacy Shield decision is removed from the list and the Japan adequacy decision is added to it.

Revoking The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) (No. 2) Regulations 2019

7.7 The Previous Amending Regulations were made on 6th March 2019 in order amend the DPPEC 2019 to reflect the arrangements made for personal data transferred from the UK to Privacy Shield companies in the US to continue to be protected under Privacy Shield after "exit day". Since the Previous Amending Regulations were made the CJEU has struck down Privacy Shield which now means that its provisions will have no legal effect. This instrument revokes the Previous Amending Regulations in order to keep the UK statute book tidy and remove legislation which no longer has any practical effect.

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 United Kingdom from the European Union. 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.

9. Consolidation

9.1 There is no current plan to consolidate the legislation amended by these Regulations.

10. Consultation outcome

10.1 The Government has not publicly consulted on this instrument as it makes no significant policy changes.

11. Guidance

11.1 The Information Commissioner's Office (ICO) has published regulatory guidance to help organisations understand and comply with the "EU" GDPR and DPA 2018.

11.2 The ICO has published additional guidance to support organisations and data subjects understand the implications of the exiting the EU on the UK's domestic data protection framework.

11.3 The ICO will be publishing specific guidance about BCRs before the end of the transition period.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies.

12.4 A De Minimis Assessment was undertaken and found that this instrument would have no significant wider, novel or contentious effects.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the ICO has published guidance for small businesses as well as a straightforward, interactive tool particularly aimed at small and medium sized organisations, to help them decide if Standard Contractual Clauses are relevant. It includes help with completing the clauses and templates they can simply copy in order to use them.

13.3 The basis for the final decision on what action to take to assist small businesses is due to the main purpose of the instrument is to correct deficiencies in retained EU law and update DPPEC 2019 to reflect the UK entering a transition period, rather than making any policy changes with an impact on small businesses. The nature of the amendments are limited by the EUWA and given the time since implementation of the GDPR and DPA any administrative and familiarisation costs are expected to be negligible.

13.4 A De Minimis Assessment found that there is not expected to be any impacts to small or micro businesses.

14. Monitoring & review

14.1 The changes made by this instrument are limited to ensuring the UK's data protection legislation will be operable after the transition period. The government will review the need for further changes to the UK data protection framework and bring further legislative proposals forward as necessary to ensure it remains effective, protects data subjects' rights, ensures that data processing can be processed where it is in the public interest and that data can be shared appropriately with the UK's international partners.

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

15. Contact

15.1 Greg Dunne or Sarah Goulsbra at the Digital, Culture, Media and Sport Telephone: 07341883123 or 07715808684 or email: data.protection-leg@culture.gov.uk can be contacted with any queries regarding the instrument.

15.2 Harry Lee (Deputy Director) at the Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Whittingdale MP Minister of State for the Digital, Culture, Media and Sport 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 sections 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/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 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 sections 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 sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 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, Schedule 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 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State for the Digital, Culture, Media and Sport has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because: this instrument only does what is appropriate to ensure the UK retains an operative data protection framework at the end of the transition period. As set out in Section 2, these amendments include: updating references to "exit day" to "IP completion day", an update to the transitional provisions for pre-GDPR BCRs so UK controllers and processors will be able to continue to rely on them for cross border transfers where they currently do so, and an update transitional adequacy provisions to reflect changes in EU adequate third countries and the transposition of the Law Enforcement Directive by the wider EEA states and Switzerland.

2. Good reasons

2.1 The Minister of State for the Digital, Culture, Media and Sport, John Whittingdale 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".

2.2 These are: explained in sub-sections 7.1 – 7.7 under Policy background of this Memorandum.

3. Equalities

3.1 The Minister of State for the Digital, Culture, Media and Sport, John Whittingdale 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.

3.2 The Minister of State for the Digital, Culture, Media and Sport, John Whittingdale has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, John Whittingdale have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

4. Explanations

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