

EXPLANATORY MEMORANDUM TO
THE FRIENDLY SOCIETIES (AMENDMENT) (EU EXIT) REGULATIONS
2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Committees on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 This instrument is being made in order to address deficiencies in the Friendly Societies Act 1992 (c.1992) and related subordinate legislation (the Friendly Societies (Accounts and Related Provisions) Regulations 1994) (S.I. 1994/1983) arising from the withdrawal of the United Kingdom (UK) from the European Union (EU), ensuring the legislation continues to operate effectively at the point at which the UK leaves the EU.
- 2.2 Explanations

What did any relevant EU law do before exit day?

There are provisions in the Friendly Societies Act 1992 that relate to the European Economic Area (EEA) "financial services passport" for insurance business. The EEA "financial services passport" currently facilitates access by EEA firms to the UK on the basis of authorisation in their home state to undertake activities as provided in relevant EU single market legislation.

The Friendly Societies Act 1992 contains provisions allowing friendly societies to transfer insurance business to certain EEA firms.

The Act also contains various other provisions relating to matters such as the constitution and purposes of incorporated friendly societies, their management and administration, accounts and auditing requirements and disputes.

Why is it being changed?

This instrument corrects deficiencies in legislation governing friendly societies arising from the UK's exit from the EU. Further detail of the rationale for this instrument can be found in sections 7.1-7.8 of this memorandum.

One example of a deficiency that is being corrected is referenced in the Friendly Societies Act 1992 to Schedule 3 of the Financial Services and Markets Act 2000. Schedule 3 makes provision in domestic law for the EEA financial services passport, but the plan is to revoke that Schedule on the basis that the EEA financial services passport will be unworkable without a negotiated agreement with the EU.

Consequently, this instrument revokes any references to the use and operation of the EEA financial services passport in the legislation it amends.

Other deficiencies being corrected in the Friendly Societies Act 1992 by this instrument are mostly minor and technical. They include, for example, an amendment to a reference to “the law of any EEA State other than the United Kingdom” (because the UK will no longer be an EEA State); and an amendment to the phrase “friendly society to which the Audit Directive applies” (because the Directive will no longer apply on exit).

What will it now do?

The legislation will now treat EEA States as third countries. Further detail of the effects of this instrument are described in sections 7.9-7.11 of this memorandum.

The legislation this instrument amends will not reference the EEA financial services passport.

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK’s exit from the European Union

- 3.1 This instrument is being laid for sifting by the European Statutory Instrument Committee and the Secondary Legislation Scrutiny Committee under Schedule 7 to the EU (Withdrawal) Act 2018.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is to the whole United Kingdom.
4.2 The territorial application of this instrument is to the whole United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding Human Rights:

“In my view the provisions of the Friendly Societies (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the Friendly Societies Act 1992 and related subordinate legislation (the Friendly Societies (Accounts and Related Provisions) Regulations 1994) to address deficiencies arising from the UK’s exit from the European Union.

7. Policy background

What is being done and why?

- 7.1 The UK will leave the EU on 29 March 2019. The UK and the EU have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. This will provide time to introduce the new arrangements that will underpin the UK-EU future relationship, and provide valuable certainty for businesses and individuals. During the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. This will mean that access to each other's markets will continue on current terms and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020. UK firms will need to comply with any new EU legislation that becomes applicable during the implementation period.
- 7.2 The government is seeking a deep and special future partnership with the EU, which should be greater in scope and ambition than any such agreement before and encompass financial services. Given the highly regulated nature of financial services, the volume of trade between UK and EU markets, and a shared desire to manage financial stability risks, the UK would need a stable process for maintaining equivalent regulatory outcomes as legislation evolves – including a system to resolve disagreements at regulatory and supervisory levels – alongside an open, collaborative relationship between supervisors that protects UK and EU financial systems and UK and EU taxpayers from financial stability risks.
- 7.3 While the government has every confidence that a deal will be reached and the implementation period will be in place, it has a duty to plan for all eventualities, including a 'no deal' scenario. The government is clear that this scenario is in neither the UK's nor the EU's interest, and the government does not anticipate it arising. To prepare for this unlikely eventuality, HM Treasury intends to use powers in the European Union (Withdrawal) Act (EUWA) to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.
- 7.4 The EUWA repeals the European Communities Act 1972 and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through SIs. These contingency preparations for financial services legislation are sometimes referred to as 'onshoring'. These SIs are not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to this situation. The scope of the power is drafted to reflect this purpose and is subject to further restrictions, such as the inability to use the power to impose or increase taxation, or establish a public authority. The power is also time-limited and falls away two years after exit day.
- 7.5 Wherever practicable, the proposed approach is that the same laws and rules that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, if the UK does not enter an implementation period, some changes would be required to reflect the UK's new position outside the EU from 29 March 2019.

- 7.6 In the unlikely scenario that the UK leaves the EU without a deal, the UK would be outside the EU's framework for financial services. The UK's position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.
- 7.7 In light of this, the approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed including to provide for a smooth transition to the new circumstances.
- 7.8 HM Treasury published a document on 27 June 2018, which sets out in more detail HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act. (<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>)
- 7.9 The UK's exit from the EU will cause certain parts of UK legislation governing friendly societies to cease to function appropriately.
- 7.10 Currently, the Friendly Societies Act makes provision for friendly societies to transfer insurance business to mutuals and companies in the rest of the EEA, but not elsewhere in the world. These Regulations amend the legislation so that special provision is no longer made for EEA firms so that they are to be treated in the same way as firms from a third country.
- 7.11 The Regulations replace some references to requirements in EU law with reference to equivalent requirements in rules made by the Financial Conduct Authority and the Prudential Regulation Authority.
- 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 are currently no plans to consolidate the relevant legislation.
- 10. Consultation outcome**
- 10.1 HM Treasury has not undertaken a consultation on this instrument. We have engaged extensively with the Bank of England and the Financial Conduct Authority in drafting the text
- 11. Guidance**
- 11.1 No guidance will be updated as a result of this instrument.

12. Impact

- 12.1 This instrument will impact the UK friendly societies sector, which consists of mutually owned insurers. This instrument only impacts on friendly societies registered under the Friendly Societies Act 1992, not those registered under the Friendly Societies Act 1974 (c.46). Other businesses indirectly impacted are law firms and accountants that provide services to friendly societies.
- 12.2 There is no significant impact on charities or voluntary bodies.
- 12.3 There is no significant impact on the public sector.
- 12.4 An Impact Assessment will be published alongside the Explanatory Memorandum on the legislation.gov.uk website, when an opinion from the Regulatory Policy Committee has been received.
- 12.5 The Treasury's decision to publish the regulations without a final Impact Assessment aims to ensure that industry and regulators have as much time as possible to familiarise themselves with the regulatory changes.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The legislation does not introduce new requirements on small businesses. Instead it corrects deficiencies arising from the UK's withdrawal from the EU in legislation which applies to them. Therefore, no impact on small businesses is expected.

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 Kat Lyness at HM Treasury Telephone: 020 7270 2467 or email: katharine.lyness@hmtreasury.gov.uk can answer any queries regarding the instrument.
- 15.2 David Raw at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury (John Glen) can confirm that this Explanatory Memorandum meets the required standard.

Annex A

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Sifting statement(s)

- 1.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Friendly Societies (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure). This is the case because the SI makes only minor technical changes, and does not create any new powers to legislate.”

2. Appropriateness statement

- 2.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view the Friendly Societies (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate. This is the case because it does no more than correct deficiencies in UK law governing friendly societies resulting from the UK’s exit from the EU. Further detail of the policy rationale for this instrument can be found in sections 7.1-7.11 of this explanatory memorandum.”

3. Good reasons

- 3.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are that without the provisions in this instrument, domestic law governing friendly societies would cease to function appropriately after the UK’s exit from the EU. Further detail for the reasons for this SI can be found in sections 7.1-7.11 of this Explanatory Memorandum.”

4. Equalities

- 4.1 The Economic Secretary to the Treasury (John Glen) has made the following statement(s) “The 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 Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 4.3 “In relation to the instrument, I, the Economic Secretary to the Treasury (John Glen) 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.