

**EXPLANATORY MEMORANDUM TO**  
**THE BUILDING SOCIETIES LEGISLATION (AMENDMENT) (EU EXIT)**  
**REGULATIONS 2018**

**2018 No. [XXXX]**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument is being made in order to address deficiencies in retained EU law in relation to building societies 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?*

The Building Societies Act 1986 ("the 1986 Act") and related legislation contain various technical provisions, governing how building societies must act. For example, section 6A of the 1986 Act ensures that loans taken in respect of land in the EEA qualify as "loans secured on land" in the same way as loans taken in respect of land in the UK. This ensures that borrowers whose loans are secured on EEA land qualify as borrowing members of a building society, receiving equal treatment to borrowers whose loans are secured on land in the UK. A security over land outside of the EEA is not capable of being a loan secured on land for the purposes of section 6A.

Section 97 makes provision for transfers of the business of a building society to a commercial company, treating bodies incorporated in an EEA state in the same way as companies incorporated in the UK. Section 107 imposes restrictions on the use of certain names, subject to an exception for certain companies whose principal place of business is outside the UK. That exception is extended to unincorporated associations formed under the law of a member State other than the UK in the same way as partnerships formed in the UK. Paragraph 23 of Schedule 2 to the 1986 Act sets out members' entitlement to vote on resolutions. It excludes certain members from voting on resolutions on remuneration, which are defined by reference to provision made in the capital requirements directive. Schedule 11 makes provision in relation to the auditors of building societies. It includes requirements for audit committees of building societies. Paragraph 8C defines "audit committee" by reference to Article 39 of Directive 2006/43/EC, which prescribes the functions of the audit committees.

The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007, and the Mutual Societies (Transfers) Order 2009 contained provisions allowing building societies to transfer business to and from mutuals in the rest of the EEA. The Building Societies (Transfer of Business) Regulations 1998 require transfer statements provided when the business of a building society is transferred to a company to contain certain information, including confirmation that the successor company will have the permissions required to carry out the business of a building

society. The permissions referred to include permission given by paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000 to EEA firms passporting into the United Kingdom.

The Building Societies (Accounts and Related Provisions) Regulations 1998 specify the information which must appear in a building society's accounts. The definition provisions for that Schedule define "credit institution" by reference to authorisation by the competent authorities of an EEA state, which post exit will no longer include the United Kingdom. The Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007 modifies the funding limit set by section 7 of the Building Societies Act 1986 in its application to the liabilities of EEA subsidiary undertakings of a building society, defined to include subsidiaries incorporated in an EEA state, Gibraltar, the Isle of Man or the Channel Islands.

#### ***Why is it being changed?***

This SI is being laid to address deficiencies arising from the UK's exit from the EU. In particular, the provisions identified above extend reciprocal treatment to borrowers whose loans are secured on land in an EEA state, and to bodies incorporated in an EEA state which is no longer appropriate when the UK is no longer an EU member State nor a party to the EEA Agreement. They also contain EU references (including references to EU directives, and to member States) which are no longer appropriate after the UK's exit from the EU. Further detail can be found in sections 7.1-7.9 of this Explanatory Memorandum.

#### ***What will it now do?***

The legislation will now treat the EU and EEA states as a third country. References to EU directives are being replaced by references to the provisions in UK law which implemented them. Further detail of the effects of this instrument are described in sections 7.9-7.15 of this Explanatory Memorandum.

### **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 includes Scotland and Northern Ireland.

3.3 It is an amending instrument which has the same territorial application as the legislation being amended, which extends to England and Wales, Scotland and Northern Ireland.

### **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 Building Societies Act 1986 etc. (Amendment) (EU Exit) Regulations are compatible with the Convention rights.”

## **6. Legislative Context**

6.1 This SI amends the Building Societies Act 1986 (sections 6, 97, 107 and Schedules 2 and 11), the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (section 3) and related subordinate legislation (the Building Societies (Transfer of Business) Regulations 1998 (S.I. 1998/212), the Building Societies (Accounts and Related Provisions) Regulations 1998 (S.I. 1998/504), the Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007 (S.I. 2007/860) and the Mutual Societies (Transfers) Order 2009 (S.I. 2009/509)) to address deficiencies arising from the UK’s exit from the European Union, by removing references to the EEA and EU law which will no longer be appropriate after exit day.

## **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 our markets, and our 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 powers 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 This SI amends domestic legislation governing building societies, to address deficiencies arising from the UK’s exit from the EU.
- 7.10 The UK’s exit from the EU and the EEA will cause certain parts of UK legislation governing building societies to cease to function appropriately.
- 7.11 The legislation treats States in the European Economic Area (EEA) differently to other third countries in certain respects, which will no longer be appropriate after exit day. In line with the approach set out above, this SI will amend the Building Societies Act 1986 and related legislation to treat States in the EEA no differently to other third countries after exit day.
- 7.12 Firstly, when calculating a building society’s lending limit, and defining a building society member, the legislation treats mortgages the building society holds on properties in other EEA States the same as it treats mortgages on properties in the UK, but differently to mortgages on properties elsewhere in the world. The SI amends the legislation to ensure that new mortgages on properties in non-EEA States and EEA

States are treated the same after exit day. The instrument maintains contractual continuity for building society members who have an existing mortgage on a property in an EEA State, by maintaining the pre-Exit legal treatment of mortgages on properties in EEA States.

- 7.13 Secondly, the legislation allows building societies to transfer business to and from companies and mutuals in EEA States, but not countries outside the EEA. This SI will amend the legislation to no longer allow these transfers.
- 7.14 The SI replaces several references to EU directives with equivalent references to the Prudential Regulation Authority's rulebook.
- 7.15 Although this SI changes the UK building society sector's relationship with the EU to reflect our exit, the SI ensures that the current relationship between the UK and the Channel Islands, Isle of Man and Gibraltar, is maintained.

## **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, but we have engaged extensively with the Bank of England and the Financial Conduct Authority in drafting it.

## **11. Guidance**

- 11.1 No guidance will be updated as a result of this instrument.

## **12. Impact**

- 12.1 This statutory instrument will impact the UK building societies sector, which are primarily active in the mortgage, savings account and current account markets. Other businesses indirectly impacted are law firms and accountants that provide services to building societies
- 12.2 There will be some costs for businesses linked to the restriction on the ability of building societies to lend on properties in the EEA. This is because loans secured on properties in the EEA post - exit will no longer count towards the calculation of the building societies lending limit (which requires that 75% of a building societies' assets are secured on residential property).
- 12.3 Furthermore, borrowers taking out a mortgage with a building society on property in the EEA will no longer automatically become members of that society.
- 12.4 No impact on the public sector is expected as a result of this instrument

- 12.5 No significant impact on charities or voluntary bodies is expected as a result of this instrument.
- 12.6 An Impact Assessment will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website, when an opinion from the Regulatory Policy Committee has been received.
- 12.7 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. This means that building societies, including those that qualify as small businesses, will be prevented from entering into EEA lending and cross-border business transfers. However, no small building society has previously undertaken these activities, or expressed an interest in undertaking them in future. Therefore, minimal 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](mailto:katharine.lyness@hmtreasury.gov.uk) can be contacted with 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

## 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/ESIC
Appropriateness	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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
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, 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. Appropriateness statement**

- 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 Building Societies Act 1986 etc. (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate. This is because they do no more than amend building societies legislation to correct deficiencies arising from the UK’s exit from the European Union, and treat the European Union as a third country going forward, while maintaining contractual continuity for existing building society members. Further explanation of the policy purpose of this instrument can be found in paragraphs 7.1-7.9 of this Explanatory Memorandum”

#### **2. Good reasons**

- 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 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 this instrument, building societies legislation would contain deficiencies and cease to function appropriately after the UK’s exit from the European Union. Further explanation of the reasons for the provisions in this instrument can be found in sub-paragraphs 7.1 to 7.15 of this Explanatory Memorandum.”

#### **3. Equalities**

- 3.1 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.
- 3.2 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:
- 3.3 “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.”

#### **4. Explanations**

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