

EXPLANATORY MEMORANDUM TO

THE PAYMENT ACCOUNTS (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 Act.

2. Purpose of the instrument

- 2.1 This instrument is being made in order to address deficiencies in retained EU law in relation to payment accounts regulation 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.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Payment Accounts Directive had three main objectives: (1) to improve the transparency and comparability of fees related to payment accounts that are used for day-to-day payment transactions; (2) to facilitate the switching of those accounts; and (3) to ensure access to payment accounts with basic features for EU residents. The Payment Accounts Regulations 2015 (PAR) transposed this Directive into UK law.
- 2.3 PAR apply to every Payment Service Provider (PSP), except for credit unions, National Savings and Investments (NS&I), and the Bank of England. A PSP is an institution or organisation which provides payment services, examples of which include making cash deposits and withdrawals, credit transfers and card payments (a full list of payment services can be found under Schedule 1 of the Payment Services Regulations 2017).
- 2.4 PAR require the Financial Conduct Authority (FCA) to publish, maintain and review a list of the most common services provided to customers of payment accounts in the UK, which should make use of EU standardised terminology. This is called the linked services list. PAR required Payment Service Providers (PSPs) to make use of this list in their contractual, commercial and marketing information. PAR also require that PSPs prepare a Fee Information Document for customers, which set out the fees and charges associated with any payment account they offered, and this document must make use of, at a minimum but not restricted to, the terms in the linked services list. PAR also require PSPs to provide an annual statement of fees free of charge to any customer of a payment account.
- 2.5 PAR require that the Money Advice Service provide a price comparison website for consumers that is independent, free of charge and compared the fees and charges of payment accounts for at least the services set out in the linked services list.
- 2.6 PAR require PSPs to offer a payment account switching service, where they do not already participate in an alternative switching service arrangement. PAR also require PSPs to facilitate the cross-border opening of payment accounts by providing the customer with information on their balance, direct debits and standing orders;

transferring any positive balance to the new account; and closing the UK account at the customer's request.

- 2.7 PAR set out the eligibility criteria for payment accounts with basic features (more commonly known as basic bank accounts in the UK) and designate the nine largest current account providers in the UK who must offer these accounts. PAR establish the right of access to a payment account with basic features for customers legally resident in the EU, who do not currently hold a payment account with a UK credit institution or who are not eligible for any other payment account at the UK credit institution at which they are applying for a payment account. PAR require that these accounts are fee-free for services offered in sterling and that EU currency services can be charged for at a reasonable fee. PAR also make provisions for the circumstances in which the nine designated credit institutions can refuse an application for a payment account with basic features or close an existing one. PAR require the Money Advice Service to raise awareness of payment accounts with basic features.
- 2.8 PAR give the FCA the power to ensure that PSPs and the nine designated providers are complying with the relevant provisions in the Regulations, and to enforce compliance where necessary.
- 2.9 PAR require that, at least every two years, the FCA gathers information on payment account switching and payment accounts with basic features to provide to HM Treasury so that it can be provided to the EU Commission as part of their evaluations of the Payment Accounts Directive. PAR also require that, at least every two years, HM Treasury provide evidence of the Money Advice Service's provision of the price comparison website to the EU Commission.
- 2.10 There are also three Binding Technical Standards which are relevant to this instrument. These specified the format and content of the Fee Information Document; the format and content of the annual statement of fees; and specified the EU standardised terminology which the FCA must refer to in producing their linked services list.

Why is it being changed?

- 2.11 The UK is leaving the EU. This instrument will make amendments to the Payment Accounts Regulations 2015 to ensure that they continue to operate effectively in the UK once the UK has left the EU, in the event of a no-deal exit. It removes references to the EU which will no longer be appropriate and treats the EU as a third country.

What will it now do?

- 2.12 The Payment Accounts Regulations 2015 will still achieve the three objectives set out in section 2.2. The changes for payment service providers and consumers will be minimal.
- 2.13 This instrument changes the residency eligibility criteria for customers of payment accounts with basic features because it treats the EU as a third country. Under this instrument it will be at the discretion of the nine designated providers of these accounts whether or not to offer payment accounts with basic features to customers legally resident in the EU, but they must continue to offer them to customers legally resident in the UK who meet the other eligibility criteria set out in section 2.6. It will also be at the discretion of the nine designated providers whether to keep existing payment accounts with basic features open for customers legally resident in the EU,

but there is no change to the provisions governing the closure of payment accounts with basic features for customers who are legally resident in the UK.

- 2.14 This instrument removes the requirement for the FCA to revise the linked services list in line and in time with any changes to the EU standardised terminology. It also removes the requirements for PSPs to facilitate the cross-border opening of accounts (as set out in section 2.5) because this was a provision to support the single market of which we will no longer be a part in a no-deal exit scenario.
- 2.15 This instrument changes the timings of the FCA's review of the linked services list as it will no longer be governed by the European Banking Authority's timetable. Instead, the FCA is required to update the list on 30 April 2022 (the first review date after the UK will have left the EU) and at least every four years after that.
- 2.16 This instrument maintains existing requirements to ensure that credit institutions do not discriminate against consumers with protected characteristics when applying for a payment account. The instrument includes a list of these protected characteristics.
- 2.17 This instrument alters the services that must be provided on a payment account with basic features. Under this instrument, it will be at the discretion of the nine designated credit institutions whether to offer non-sterling services to customers of a payment account with basic features, and they can continue to charge a reasonable fee for those services. However, the nine designated providers must continue to offer sterling services for free on a payment account with basic features.
- 2.18 This instrument transfers responsibility for implementing technical standards on the fee information document and the annual statement of fees from the European Banking Association to the Financial Conduct Authority. It also revokes the technical standard which implemented the EU standardised terminology for fees and charges which the FCA was required to use in their linked services list.
- 2.19 This instrument removes the requirements for HM Treasury to report to the EU Commission.

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 The powers under which this instrument is made cover the entire United Kingdom (see European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 Payment Accounts (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument makes amendments to the Payment Accounts Regulations 2015 to remove deficiencies arising from the UK’s exit from the European Union.

6.2 This instrument transfers power to the FCA to make new technical standards about the presentation and content of the fee information document and annual statement of fees.

6.3 This instrument amends the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018, (SI 2018/1115), which was made on the 25th October 2018, to add existing technical standards to the Schedule to that instrument. The effect of this amendment is that the FCA will have delegated power to amend the existing technical standards to correct deficiencies.

6.4 This instrument revokes an EU regulation which contained technical standards relating to the use of EU standardised terminology.

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 proposes a new economic and regulatory arrangement that will preserve mutually beneficial cross-border business models and economic integration for the benefit of businesses and consumers. Decisions on market access would be autonomous in our proposed model, but would be underpinned by stable institutional processes in a bilateral agreement and continued close regulatory and supervisory cooperation.

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 2018 (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 Payment Accounts legislation treats countries in the European Economic Area (EEA) differently to other third countries in certain respects, which will no longer be appropriate after exit day in a no-deal scenario. In line with the approach taken in the other Financial Services EU Exit instruments, this SI will amend the Payment Accounts Regulations so that it treats the EEA no differently to other third countries.

These Regulations

- 7.10 This instrument amends the Payment Accounts Regulations 2015 (PAR), to address deficiencies arising from the UK's exit from the EU.

- 7.11 The changes made by this instrument to PAR are minimal and the overall policy objective of PAR, set out in section 2.2, remains the same. This instrument removes provisions which were designed with the single market in mind and it amends provisions which give the EU special treatment.
- 7.12 This instrument retains the requirement for the nine largest current account providers in the UK to provide basic bank accounts (payment accounts with basic features) free of charge, in sterling, to customers legally resident in the UK, if the customer does not hold a current account at a UK bank or is not eligible for a standard current account. However, as the UK will no longer be a member of the EU after exit day, this instrument removes the requirement on the nine designated providers of basic bank accounts to offer these products to customers resident in the EU or to offer EU currency services on any basic bank account as standard. It will therefore be at the discretion of the nine providers whether to continue to offer basic bank accounts to customers resident in the EU after exit day, or keep existing basic bank accounts of EU residents open, as would currently be the case for customers who are resident in non-EU countries.
- 7.13 It will also be at their discretion whether to offer EU currency services on all basic banks accounts, including those for customers resident in the UK. This could affect customers resident in the EU who wish to open a basic bank account in the UK after exit, as UK providers may decide to stop offering this product for such customers. It could also affect existing holders of UK basic bank accounts who are resident in the EU, as UK providers will no longer be obliged to keep these accounts open, but may choose to do so. Based on conversations with industry, government expects this will affect very few accounts, in the region of the low hundreds. To put this into context, there were c.8 million UK basic bank accounts open as of December 2017. The nine UK designated basic bank account providers must, however, continue to offer basic bank accounts to customers resident in the UK, who meet the other eligibility criteria set out in PAR.
- 7.14 The FCA is currently the main UK regulator for PAR, as set out in sections 2.4 and 2.8-2.10. This instrument maintains the FCA's responsibility for regulating PAR.
- 7.15 This instrument changes the rules governing the fee information document and the statement of fees, and the linked services list which must be used in both documents. The linked services list is a glossary of the most representative services associated with a payment account and is intended to improve transparency for the consumer. The FCA remains responsible for publishing, reviewing and maintaining this list. Under this instrument the FCA will no longer have to take into account the EU standardised terminology, or any European Banking Authority reviews of the terminology, when updating the list. The FCA is still required to review the list at least every four years, starting on 30 April 2022, which is the first review date after which the UK will have left the EU.
- 7.16 Payment service providers will still be required to provide customers with a fee information document – which sets out the fees and charges associated with a payment account – and an annual statement of fees – which sets out the fees and charges a customer has accumulated over a year of using a payment account, but the rules governing the presentation and content of these documents will be the responsibility of the FCA and not the European Banking Authority, as it is at present. These documents will still have to make reference to at least the linked services list.

7.17 As the UK will no longer be an EU Member State after exit day, in a no deal scenario, this instrument removes the requirement on payment account providers to facilitate the cross-border opening of accounts, which is a provision designed to implement the single market in services. This means that payment service providers will no longer be required to provide certain information relating to a customer's payment account (e.g. direct debits, closing balance) or transfer a balance to an EU payment service provider when the customer wants to switch from a UK payment account to an EU payment account. Repealing this provision does not have an effect on the ability of UK customers to open payment accounts abroad, rather it leaves it to the discretion of payment service providers whether to facilitate an account switch outside of the UK, as is currently the case for UK customers who wish to switch their accounts to a non-EU country outside of the UK.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8(1) 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. The instrument is also made under paragraph 21(b) of Schedule 7 of the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

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 the instrument, but has engaged with relevant stakeholders on its approach to Financial Services legislation under the European Union (Withdrawal) Act 2018, including on this instrument, in order to familiarise them with the legislation ahead of laying.

10.2 The instrument was also published in draft, along with an explanatory policy note, on 31 October 2018, in order to maximise transparency ahead of laying (<https://www.gov.uk/government/publications/draft-payment-accounts-amendment-eu-exit-regulations-2018>)

11. Guidance

11.1 Where necessary, the FCA will update its Rulebook to reflect the changes introduced through this SI, and to address any deficiencies as a result of the UK leaving the EU. The FCA has confirmed its intention to consult on any changes in the Autumn. As mentioned above in section 10.2, an explanatory policy note was published alongside the draft instrument. The Payment Systems Regulator will also update its guidance, where necessary, to reflect the changes introduced through this SI, but these changes will be minimal.

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal. There will be no, or no significant, impact on charities or voluntary bodies. There is likely to be a slight

decrease in regulatory burdens for business. This SI will affect all payments service providers which offer payment accounts, and in particular the nine designated credit institutions which must offer payment accounts with basic features.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 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.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses who are providers of payment accounts.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to publish the instrument in draft in advance of laying so that small businesses have time to familiarise themselves with the changes. The changes are very minimal.
- 13.3 The basis for the final decision on what action to take to assist small businesses was taken because this SI will likely reduce the burden on small businesses and will affect very few small businesses.

14. Monitoring & review

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

15. Contact

- 15.1 Megan McPherson at HM Treasury, telephone: 020 7270 1949 or email: megan.mcpherson@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 David Raw, Deputy Director for the Banking and Credit team, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury, John Glen MP, at HM Treasury 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 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 MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Payment Account (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

1.2 This is the case because: the Regulations only correct deficiencies in retained EU law as set out in section 2.2 and sections 2.4-2.6 of this explanatory memorandum.

2. Good reasons

2.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.”

2.2 These are: to ensure the Payment Accounts Regulations 2015 continue to operate in the event of the UK leaving the EU without an agreed deal.

3. Equalities

3.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement:

“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 MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Economic Secretary to the Treasury (John Glen MP), have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

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

5. Legislative sub-delegation

5.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view, it is appropriate to create a relevant sub-delegated power in the Payment Accounts (Amendment) (EU Exit) Regulations 2018”.

5.2 It is appropriate to delegate the power to make technical standards under regulation 40A to the Financial Conduct Authority (FCA) because it will give the FCA the necessary powers to ensure that EU-derived technical regulations on the Fee Information Document and Statement of Fees, for which they are responsible, will operate effectively after exit. This is in line with the approach that the government has set out in which legislative responsibility for Level 2 technical legislation in financial services will be transferred to the financial regulators, while the Treasury will have responsibility for changes to Level 1 legislation which Parliament will approve.