

EXPLANATORY MEMORANDUM TO
THE MONEY MARKET FUNDS (AMENDMENT) (EU EXIT) REGULATIONS 2019
2019 No. 394

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 using powers in the European Union (Withdrawal) Act 2018 c.16 (EUWA) in order to address the deficiencies in retained EU law in relation to money market funds (MMFs), 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 This instrument relates to Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (the MMF Regulation). An MMF is a fund that invests in liquid assets such as treasury bills, commercial paper and certificates of deposit. MMFs are an important source of short-term financing, as they are a cash management tool generally used by financial institutions, corporates and governments to invest their excess cash over a short timeframe.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The MMF Regulation regulates the use of the designation “MMF” for funds to ensure that no fund may use that designation without authorisation, and requiring funds with the characteristics of MMFs to be authorised as an MMF. The MMF Regulation also lays down a common framework of rules for qualifying money market funds. In particular, it sets out rules on portfolio structure, such as requirements on diversification of portfolios and risk assessments. This was with the aim to make MMFs more resilient and better able to withstand market shocks. It does so by ensuring uniform rules on prudential requirements, governance and transparency for managers of MMFs.
- 2.4 MMFs are structured as either undertakings for collective investment in transferable securities (UCITS) or alternative investment funds (AIFs). The MMF Regulation builds upon the UCITS Directive (Directive 2009/65/EC) and the Alternative Investment Fund Managers Directive (Directive 2011/61/EU).

Why is it being changed?

- 2.5 This instrument forms part of HM Treasury's contingency planning in the event that the UK leaves the EU without a deal. To prepare for a no deal scenario, it is necessary to address deficiencies in domestic and retained EU law to ensure that the legislation continues to operate effectively at the point at which the UK leaves the EU.
- 2.6 References to EU law in UK legislation will need to be amended so that they continue to operate effectively after exit day. Some of these references will need to be amended

to reflect changes in the versions of EU regulations which will become retained EU law when the UK leaves the EU.

- 2.7 The passporting system, which enables European Economic Area (EEA) funds and firms to access other EEA Member State markets on the basis of their home Member State authorisation, relies upon a legal framework agreed between EEA Member States and implemented in their domestic legislation. If the UK leaves the EU without a deal, there will be no agreed legal framework upon which the passporting system can continue. As a result, any references in UK legislation to the EEA passporting system will become deficient at the point of exit.
- 2.8 When the UK is no longer a member of the EU single market for financial services, it would not be appropriate for UK authorities to be obliged to share information or cooperate with the EU on a unilateral basis, with no guarantee of reciprocity.
- 2.9 If this instrument was not in place by exit day, certain regulations will cease to apply to EU MMFs set up and registered in the UK. The strict rules on the use of the designation of “MMF” would mean that only those MMFs authorised under the UK regime would continue to be able to market to UK investors. The marketing of EEA MMFs, and therefore UK investors’ access to these investments, would be disrupted, as existing EEA MMFs would lose their right to passport into the UK.

What will it now do?

- 2.10 This instrument makes amendments to the MMF Regulation to ensure it continues to operate effectively in a no deal scenario after exit day.
- 2.11 Key amendments achieve the following:
 - replacing references to the Union with references to the UK, and references to EU legislation which are no longer appropriate with references to UK legislation and rules made by the Financial Conduct Authority (FCA);
 - removing certain references to EEA institutions and Member States as the UK will no longer be a member of the EU or have access to the European Single Market;
 - assigning responsibility for the functions of the European supervisory bodies and the European Commission to appropriate UK bodies;
 - reflecting changes arising from the Collective Investment Schemes (Amendment) (EU Exit) 2019 Regulation and the Alternative Investment Fund Managers (Amendment) (EU Exit) 2019 Regulation, replacing references to “UCITS” and “AIF” to “UK UCITS” and “UK AIF”, instead;
 - making provision for any EEA UCITS or AIF fund that is using the ‘temporary permissions regime’ (as set out in the Collective Investment Scheme (Amendment etc.) (EU Exit) Regulations 2019 and Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019) to be able to be marketed into the UK as an MMF. This will allow EEA funds which currently market into the UK via a passport to continue to do so for a limited period whilst they gain necessary permission to market into the UK as a third country.

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 UK (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 UK.
- 4.2 The territorial application of this instrument is to the whole UK.

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 Money Market Funds (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends retained EU law, the MMF Regulation, by addressing deficiencies arising from the withdrawal of the UK from the EU and making other amendments to ensure that it operates effectively after the UK’s exit from the EU. It also amends the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (SI 2018/1115) made under the EUWA which will ensure that Binding Technical Standards and rules made by the FCA under the Financial Services and Markets Act 2000 in respect of money market funds will operate effectively after the UK’s withdrawal from the EU.
- 6.2 Deficiencies arising from the MMF Regulation were amended by Commission Delegated Regulation (EU) 2018/990, which are further amended in this instrument.
- 6.3 All MMFs are structured as either one of two types of fund: UCITS or AIFs. As such, MMFs regulated by this instrument will also be regulated by relevant EU legislation, which are amended by the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 and the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019.

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. Therefore, should a deal be approved, the implementation period 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 an

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 believes that there will be a deal and an implementation period in place, it must plan for all eventualities, including a ‘no deal’ scenario. HM Treasury intends to use powers in the 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’. The powers conferred on Ministers pursuant to the EUWAs 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 If the UK were to leave 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,

- 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>)

Regulatory scope (Regulation 4)

- 7.9 The MMF Regulation applies only to schemes established in the EEA. If the UK leaves the EU without a deal, UK authorised schemes will no longer be established and authorised in the EEA, and will no longer be subject to the MMF Regulation. Amendments made by this instrument will change the scope of the retained MMF Regulation to apply to MMFs established in the UK only.

Distribution of non-UK MMFs

- 7.10 Article 6 of the MMF Regulation requires that any fund with the characteristics of an MMF must be authorised under the MMF Regulation. Article 4(1) of MMF Regulation states that MMFs cannot be established, authorised, or managed in the EU unless they are authorised under the MMF Regulation. Articles 4 and 5 also operate to require an MMF to either be located in the EU (if structured as a UCITS fund), or to have a manager in the EU (if structured as an alternative investment fund). Therefore, to operate as an MMF under the MMF Regulation, the fund must be either be authorised in the EEA or have an EEA manager.
- 7.11 Amendments made by this instrument will change the scope of the MMF Regulation so that it applies only within the UK, and requires that either the MMF is located in the UK (if structured as a UCITS fund), or that it has a manager in the UK (if structured as an alternative investment fund). There will be an exception for EEA MMFs currently marketed in the UK via a passport, as set out in the section below.

EEA MMFs marketed in the UK via a passport (Regulations 6-9)

- 7.12 MMFs are either UCITS or AIFs, and can be currently marketed across the EU under the marketing passports in the respective directives. If the UK leaves the EU without a deal, the passporting system will cease, and any references in UK legislation to the EEA passporting system will be redundant at the point of exit. The passport system relies upon a legal framework agreed between EEA member states and implemented in their domestic legislation. If the UK leaves the EU without a deal, there will be no agreed legal framework upon which the passporting system can continue. As a result, EEA funds (including MMFs) currently marketed into the UK would suddenly lose access, which would cause disruption for the funds and the UK businesses and consumers they serve.
- 7.13 To ensure that UK investors have continued access to EEA funds that are currently marketed in the UK, the government announced on 20 December 2017 that it would put forward legislation to establish a “temporary permissions regime” (TPR) for firms and funds.
- 7.14 The design and structure of the regime for funds, the ‘temporary marketing permissions regime’ (TMPR) (including the relevant conditions for entry to the TMPR) is set out in the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 for EEA UCITS (including MMFs which are UCITS), and the

Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 for AIFs marketed by EEA AIFMs (including MMFs which are AIFs) (see Regulation 5(31)).

- 7.15 The TMPR will enable EEA funds that satisfy the relevant conditions to continue to access the UK market on the same basis as they did before exit day. The regime will last for three years from exit day, with a power for HM Treasury to extend the regime by no more than 12 months at a time in certain circumstances.
- 7.16 EEA funds which are exiting the TMPR will be able to access the UK market through the relevant regime for third country funds – either by notifying under the national private placement regime under the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773) (as amended), or becoming recognised under section 272 of the Financial Services and Markets Act – without further authorisation under the UK MMFR.
- 7.17 Any fund that is able to market via the TMPR that wishes to market into the UK as an MMF will have to be authorised to do so in accordance with this regulation (as set out in Article 4 – 6). This will require any other MMFs to be either a UK UCITS or a UK AIF to market as an MMF.

Transfer of Functions

- 7.18 EU regulation of financial services sets out a range of functions to be carried out by EU institutions. Many of these functions will need to be incorporated into the UK's regulatory framework so that the UK has a fully functioning regulatory regime outside of the EU. Broadly speaking, these functions fall into two categories: functions for making legislation and a wide range of other functions which relate to the supervision of financial services institutions.
- 7.19 Functions previously held by the Commission will be transferred to HM Treasury. For example, the Treasury has the power to make delegated acts specifying quantitative and qualitative liquidity requirements on MMFs.
- 7.20 Functions previously held by the European Securities and Markets Authority (ESMA) will be transferred to the FCA. The power to make technical standards, such as on templates for the reporting of MMFs, is transferred from ESMA to the FCA. This is considered appropriate because it will give the FCA, a UK regulator, the responsibility of ensuring that EU-derived technical standards and regulator rules operate effectively after exit from the EU.

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

- 8.1 This instrument is being made using powers in section 8(1) of and paragraph 21(b) of Schedule 7 to 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 UK from the EU. 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 EUWA, including on this instrument, in order to familiarise them with the legislation ahead of laying. In particular, we have engaged extensively with the FCA in drafting the text.
- 10.2 An explanatory policy note was published online on the 21 November 2018 and the draft instrument was published online on the 12 December, in order to maximise transparency ahead of laying. (<https://www.gov.uk/government/publications/draft-eu-exit-sis-for-investment-funds-and-their-managers>)

11. Guidance

- 11.1 No further guidance is being published alongside this instrument. As mentioned above in section 10, an explanatory policy note was published alongside the draft instrument.

12. Impact

- 12.1 The impact on businesses will primarily be on fund managers and funds that currently operate under the MMF Regulation. Impacted firms will need to understand the changing regulatory environment. As the MMF regime is already in place in the UK, firms will already be complying with the regime; the familiarisation costs relating to this instrument should be limited and a one-off cost to firms.
- 12.2 There is no impact on charities or voluntary bodies.
- 12.3 There is no impact on the public sector.
- 12.4 A full 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 undertaken by small businesses if they manage MMFs. This SI does not affect previous measures that were taken to address the possible impact on small businesses. The intention of this SI is to ensure that the regulatory regime for investment funds in the UK continues to operate effectively in a UK context and to minimise the impact of the UK's withdrawal from the EU on all firms, including small business.

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 Janice Chui at the HM Treasury (Telephone:02072701081 or email: Janice.Chui@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 John Owen, Deputy Director for the Personal Finances and Funds Team, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury 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/Sifting Committees
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 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: <ul style="list-style-type: none"> 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— <ul style="list-style-type: none"> (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:
- “In my view the Money Market Funds (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.
- 1.2 This is the case because: the instrument does no more than amend the EU regulations related to MMFs, to correct deficiencies arising from the UK’s exit from the EU, and treat the EU as a third country going forward. The instrument also amends the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 made under the EUWA. Further explanation of the policy purpose of this instrument can be found in paragraphs [7.1-7.20] 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:
- “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: without this instrument, the legislation regulating MMFs in the UK would contain deficiencies and cease to function appropriately after the UK’s exit from the EU. Further explanation of the policy purpose of this instrument can be found in paragraphs [7.1-7.20] 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:
- “In relation to the instrument, I, 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.

5. Legislative sub-delegation

- 5.1 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:

“In my view it is appropriate to create a relevant sub-delegated power in the Money Market Funds (Amendment) (EU Exit) Regulations 2019.”

- 5.2 It is appropriate to delegate the power to make regulatory technical standards to the FCA because it will give them the necessary powers to ensure that EU-derived technical regulations for which they are responsible will operate effectively after exit, subject to mechanisms to ensure robust HM Treasury oversight. This is considered appropriate as the FCA will have the requisite technical knowledge to make assessment of certain matters. For example, the FCA have the power to make technical standards to specify further information to be provided to it in order to complete registration.
- 5.3 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.