

EXPLANATORY MEMORANDUM TO
THE CONSUMER CREDIT (AMENDMENT) (EU EXIT) REGULATIONS 2018
2018 No. 1038

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Sifting Committees.

2. Purpose of the instrument

- 2.1 This instrument is being made in order to address deficiencies in retained EU law in relation to consumer credit 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 Consumer Credit (Disclosure of Information) Regulations 2010 (“Disclosure of Information Regulations”, S.I 2010/1013) implement, in part, Directive 2008/48/EC on credit agreements for consumers of 23 April 2008, and known as the Consumer Credit Directive (“CCD”), and have the effect that a consumer considering entering into a credit agreement must be given pre-contractual information in writing by the relevant firm. This information must be provided according to a specific format as set out in the CCD, and includes key information about the agreement. The format of this information is the “Standard European Consumer Credit Information” for non-overdrafts and “European Consumer Credit Information” for overdrafts.
- 2.3 The Disclosure of Information Regulations contain provisions which require disclosure of the creditor’s representative in the consumer’s “Member State” of residence, in the case of distance marketing of consumer credit.
- 2.4 Section 98A(5)(a) and section 157(2A)(b) of the Consumer Credit Act 1974 oblige creditors to not give a notice or disclose certain information to borrowers where prohibited by an “EU obligation”. Regulation 2 of the Consumer Credit (Green Deal) Regulations 2012 contains a reference to the CCD in defining replacement interest. Article 3 of the Financial Services Act 2012 (Consumer Credit) Order 2013 contains a reference to powers of intervention against incoming passporting EEA firms.

Why is it being changed?

- 2.5 This instrument addresses deficiencies arising from the UK’s withdrawal from the EU.
- The instrument amends references to an “EU obligation” within the Consumer Credit Act 1974. These references will be deficient once the UK leaves the EU.
 - The instrument amends references to “Standard European Consumer Credit Information”, “European Consumer Credit Information” and “Member State”

within the Disclosure of Information Regulations. These references will be deficient once the UK leaves the EU, as the UK will no longer be a member of the EU.

- The instrument omits the reference to the CCD in defining replacement interest within the Consumer Credit (Green Deal) Regulations 2012. This reference will be deficient once the UK leaves the EU, as the CCD will no longer apply in the UK.
- The instrument omits the reference to powers of intervention against incoming passporting EEA firms within the Financial Services Act 2012 (Consumer Credit) Order 2013. This reference will be deficient once the UK leaves the EU, as the EEA financial services passport will be unworkable without a negotiated agreement with the EU.

What will it now do?

- 2.6 The instrument makes only minor and technical amendments to ensure that consumer credit legislation continues to operate effectively at the point at which the UK leaves the EU. The instrument will have no substantive impact on the operation of the consumer credit regime.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was being laid for sifting by the Committees on the UK's exit from the European Union, in accordance with the European Union (Withdrawal) Act 2018. It was considered by the European Statutory Instruments Committee on 5 September 2018, who recommended it for the negative procedure. It was considered by the Secondary Legislation Scrutiny Committee on 4 September, and no recommendation to upgrade to the affirmative procedure was made

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 Consumer Credit (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the Consumer Credit Act 1974, the Consumer Credit (Disclosure of Information) Regulations 2010, the Consumer Credit (Green Deal) Regulations 2012, and the Financial Services Act 2012 (Consumer Credit) Order 2013, to address deficiencies arising from the UK's exit from the European Union. The instrument makes minor and technical amendments to address these deficiencies.

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 (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 This instrument makes the following minor and technical amendments to correct deficiencies in primary and secondary legislation.
- 7.10 The Consumer Credit Act 1974 contains provisions which oblige creditors to not give a notice or disclose certain information to borrowers where prohibited by an "EU obligation" The instrument amends these references, which will be deficient once the UK leaves the EU. The obligation not to give notice or disclose certain information is amended so that it applies where prohibited by a "retained EU obligation"
- 7.11 The Consumer Credit (Disclosure of Information) Regulations 2010 ("the Disclosure of Information Regulations") contain references to "Standard European Consumer Credit Information" and "European Consumer Credit Information", and contain provisions which require disclosure of the creditor's representative in the consumer's "Member State" of residence, in the case of distance marketing of consumer credit. The instrument amends these references, which will be deficient once the UK leaves the EU. There will be no substantive change to the information that firms have to disclose to prospective borrowers.
- 7.12 The Consumer Credit (Green Deal) Regulations 2012 ("the Green Deal Regulations") contain a reference to the Directive 2008/48/EC on credit agreements for consumers of 23 April 2008 and known as the Consumer Credit Directive ("CCD"). The instrument omits this reference because it will no longer be relevant, and therefore deficient, once the UK leaves the EU. The omission will have no substantive impact on the operation of the Green Deal Regulations.
- 7.13 The Financial Services Act 2012 (Consumer Credit) Order 2013 contains a provision referring to powers of intervention against incoming passporting EEA firms. The

instrument omits this reference, which will be deficient once the UK leaves the EU, as the EEA financial services passport will be unworkable without a negotiated agreement with the EU.

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 further guidance is being published alongside this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies will consist of minimal familiarisation costs and limited administrative costs for the approximately 30,000 consumer credit firms authorised by the Financial Conduct Authority (FCA). Firms will need to amend the titles of the pre-contractual information forms that they provide to borrowers, and firms will need to amend references within the forms from “Member State” to “United Kingdom”. By amending references that will no longer be appropriate once the UK exits the EU, firms will have clarity about the information that they should provide to borrowers.

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.

12.4 HM Treasury’s decision to make 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 No specific action is proposed to minimise regulatory burdens on small businesses. The Consumer Credit Directive (CCD), from which the pre-contractual information requirements derive, did not provide flexibility to disapply the CCD’s requirements to

small businesses, or to apply them in a different way. The CCD intended to ensure that an equivalent level of consumer protection applies across the consumer credit sector.

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 Edwin Ferguson at HM Treasury Telephone: 02072701263 or email: Edwin.Ferguson@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 John Owen, Deputy Director – Personal Finances and Funds 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/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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a 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, 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. Sifting 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 Consumer Credit (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)”.
- 1.2 This is the case because it complies with the requirement for the negative procedure under Schedule 7 to the EU (Withdrawal) Act 2018. The instrument contains only minor and technical amendments to UK primary and secondary legislation.

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:
“In my view the Consumer Credit (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.
- 2.2 This is the case because it makes only minor and technical amendments to UK primary and secondary legislation to ensure that consumer credit legislation continues to operate effectively at the point at which the UK leaves the EU.

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:
“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.2 These are that the instrument makes only minor and technical amendments to UK primary and secondary legislation to ensure that consumer credit legislation continues to operate effectively at the point at which the UK leaves the EU.

4. Equalities

- 4.1 The Economic Secretary to the Treasury, John Glen, 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.”
- 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:

“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 section 2 of the main body of this explanatory memorandum.