EXPLANATORY MEMORANDUM TO

THE MONEY LAUNDERING AND TRANSFER OF FUNDS (INFORMATION) (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 anti-money laundering (AML) 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 European legal framework was set most recently by Directive EU 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

2.3 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (the MLRs) set out the rules for ensuring that certain UK businesses properly assess money laundering and terrorist financing risks and carry out appropriate checks on their customers. They also make provision about beneficial ownership information and deal with enforcement in the UK of Regulation EU No 2015/847/EU of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds (the Funds Transfer Regulation).

2.4 The Funds Transfer Regulation specifies what information must accompany electronic transfers of funds carried out by firms known as payment service providers. The relevant provisions of the Regulation require UK payment service providers to provide differing levels of information in connection with transfers of funds between the UK and European Economic Area (EEA) member States, and between the UK and non-EEA member States.

2.5 The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (S.I. 2017/1301) (the Oversight Regulations) established the role of the Financial Conduct Authority (FCA) in overseeing the work of AML supervisory bodies who are professional, self-regulatory organisations. The relevant provisions of the Oversight Regulations require the FCA – in certain circumstances – to have regard to guidelines published by the European Supervisory Authorities (ESAs), and to consider whether AML supervisory bodies have had regard to guidelines published by the ESAs.

Why is it being changed?

2.6 Certain of these provisions derive solely from the UK's membership of the EU and will therefore cease to be appropriate once the UK is no longer a member of the EU.

2.7 In particular, some provisions of the MLRs cross-refer to other provisions of EU law; require that information be transmitted by UK authorities to EU institutions; set out how guidance published by EU institutions should be taken into account by UK bodies; and have the effect of requiring relevant UK businesses to differentiate between the treatment of counterparties established in EEA States and counterparties established outside the EEA.

2.8 The relevant provisions of the MLRs reflect the role currently played by EU institutions, including the ESAs, in monitoring the implementation of EU law and in providing guidance as to the interpretation of EU law. The MLRs also recognise the supranational EU legal system including through requiring that correspondent relationships between UK correspondent banks and non-EEA respondent banks are subject to enhanced due diligence (EDD) measures, but that EDD measures need not be applied to intra-EEA correspondent relationships.

2.9 The relevant provisions of the Funds Transfer Regulation require UK payment service providers to provide greater levels of information in connection with transfers of funds to non-EEA member States, relative to the levels of information which must be provided in connection with transfers of funds to EEA member States. Once the UK is no longer a member of the EU, it would not be appropriate to continue to treat transfers of funds to EEA member states differently to transfers of funds to other foreign countries.

2.10 The relevant provisions of the Oversight Regulations recognise the role that the ESAs play in assisting with the interpretation of EU law. Once the UK has left the EU, it will no longer be appropriate for the FCA to be legally obliged to have regard to guidelines published by the ESAs.

What will it now do?

2.11 The relevant provisions of the MLRs, the Funds Transfer Regulation and the Oversight Regulations will be amended so as to remove any requirements to transmit information to EU institutions, or to have regard to guidelines published by the ESAs. The amendments will also mean that after exit the regulatory treatment of EEA member States is consistent with the current treatment of non-EEA countries.

2.12 The FCA will also be empowered to make technical standards of the type referred to in Article 45(6) of Directive (EU) 2015/849, a function currently exercised by the EU Commission. The standards are to specify what additional measures are required to be taken by credit institutions and financial institutions with branches or subsidiaries abroad, when national law outside the UK does not permit group-wide policies and procedures to be implemented that are at least as strong as those that are required by the MLRs.

2.13 This instrument will ensure that electronic transfers of funds between the UK and Gibraltar will be treated for the purposes of the Funds Transfer Regulation as being equivalent to transfers within the UK. This is consistent with the UK government's commitment to guarantee Gibraltar financial services firms' access to UK markets as now until 2020. Ahead of this, the UK Government will work closely with the Government of Gibraltar to design a replacement framework to endure beyond 2020

similarly based on shared, high standards of regulation, and enforcement of this regulation, and underpinned by modern arrangements for information-sharing, transparency and regulatory co-operation.

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 this 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 MP) has made the following statement regarding Human Rights:

"In my view the provisions of the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends two retained UK instruments: the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (the MLRs), and the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (S.I. 2017/1301) (the Oversight Regulations). These both transposed in part Directive EU 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

6.2 This instrument also amends a retained EU instrument, Regulation EU No 2015/847/EU of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds (the Funds Transfer Regulation).

6.3 Finally this instrument revokes an EU Delegated Regulation, Commission Delegated Regulation (EU) 2018/1108 of 7 May 2018 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regulatory technical standards on the criteria for the appointment of central contact points for electronic money issuers and payment service providers and with rules on their functions.

6.4 The amendments are to remove deficiencies arising from the UK's exit from the EU.

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 AML 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 line with the approach taken in the other Financial Services EU Exit instruments, this SI will amend the MLRs so that it treats the EEA no differently to other third countries. Specifically, the SI will equalise the regulatory treatment of correspondent banking relationships, and therefore require UK credit and financial institutions to conduct EDD measures for intra-EEA correspondent relationships, as well as such relationships outside the EEA. This will align with the existing practice of many UK institutions and with the Financial Action Task Force (FATF) standards on this issue.

7.10 AML legislation requires certain UK persons to have regard to guidelines published by the ESAs and transmit information to EU institutions, which will no longer be appropriate when the UK leaves the EU. This SI will amend the MLRs, the Funds Transfer Regulation, and the Oversight Regulations to remove requirements to transmit information to EU institutions, and have regard to guidelines published by the ESAs. The existing supervisory regime made up of 25 AML supervisors, including the FCA, HMRC, the Gambling Commission as well as 22 professional body supervisors, will remain unchanged.

7.11 AML legislation assumes the UK is a member of the EU, and treats countries in the EEA differently to other third countries in certain respects, which will no longer be appropriate after exit day. In line with the approach taken in the other Financial Services EU Exit instruments, this SI will amend the Funds Transfer Regulation so that it operates effectively in a UK only context, and treats the EEA no differently to other third countries while ensuring continuity of the UK's existing regulatory treatment of Gibraltar. Equalising the regulatory treatment will require that UK payment services providers provide the same level of information identifying payers/payees accompanying electronic transfers of funds, regardless of whether funds are being transferred within or outside the EU. The effect of this will be to require UK payment service providers to provide greater volumes of information accompanying transfers of funds into EU Member States than is currently the case.

7.12 The MLRs reference the European Commission's high-risk third countries list. The list is in a delegated act and, therefore, will be transferred onto the UK statute book on exit day, and form part of retained EU law. Schedule 8 to the EUWA clarifies that references to the EU list in the Regulations will from exit day be static rather than dynamic, that is, subsequent updates the EU makes to the list will not flow through into UK law. The list will only evolve as amended by UK law. Powers within the Sanctions and Anti-Money Laundering Act 2018 will allow the UK government to maintain and update its own list of high-risk third countries using secondary legislation.

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 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 familiarise them with the legislation ahead of laying. We have engaged extensively with the Financial Conduct Authority in drafting the text.

10.2 The instrument was also published in draft, along with an explanatory policy note, on 23 November 2018 in order to maximise transparency ahead of laying. (https://www.gov.uk/government/publications/draft-money-laundering-and-transfer-of-funds-information-amendment-eu-exit-regulations-2018)

11. Guidance

11.1 HM Treasury will not be issuing guidance to accompany this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector. The instrument confers a power on the FCA to make certain technical standards, of a type similar to those already currently made by the FCA. The transfer of this power is necessary because the relevant standards are currently made by the EU Commission.

12.3 An Impact Assessment has not been prepared for this instrument because in line with Better Regulation guidance, HM Treasury considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de-minimis impact assessment has been carried out.

12.4 This instrument will mean that certain credit institutions, financial institutions and payment service providers need to expand existing IT systems to reflect the greater levels of scrutiny that will need to be applied to correspondent banking relationships between the UK and EEA states, and the information that needs to be provided in connection with increased volumes of transfers of funds between the UK and EEA states. However, these impacts will be limited (with a net impact of less than £5 million a year), as many institutions within the scope of such requirements already go beyond the relevant requirements of the MLRs and Funds Transfer Regulation that are currently in force.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses if they currently fall within scope of requirements within the MLRs and the Funds Transfer Regulation.

14. The intention of this instrument is to ensure that the UK's AML regime continues to operate as intended when the UK leaves the EU. This SI therefore is aimed to minimise the impact of these regulatory changes on all firms, including small businesses.

15. Monitoring & review

15.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

16. Contact

16.1 Jonny Medland at Her Majesty's Treasury (Telephone: 0207 270 1593 or email: Jonny.Medland@HMTreasury.gov.uk) can answer any queries regarding the instrument.

16.2 Giles Thomson, Deputy Director for Sanctions and Illicit Finance, at Her Majesty's Treasury can confirm that this Explanatory Memorandum meets the required standard.

16.3 The Economic Secretary to the Treasury (John Glen MP) 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 Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate."

1.2 This is the case because they do no more than correct deficiencies in UK law governing AML legislation resulting from the UK's exit from the EU. Further detail of the policy rationale for this instrument can be found in sections 7.1-7.12 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 that without the provisions in this instrument, domestic law governing AML rules would cease to function appropriately after the UK's exit from the EU. Further detail for the reasons for this SI can be found in sections 7.1-12 of this Explanatory Memorandum."

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:

"In my view it is appropriate to create a relevant sub-delegated power in the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018.".

5.2 Power is conferred on the FCA to make technical standards to specify what additional measures are required to be taken by credit institutions and financial institutions with branches or subsidiaries abroad, when national law outside the UK does not permit group-wide policies and procedures to be implemented that are at least as strong as those that are required by the MLRs. The FCA will have the technical knowledge to assess the kinds of practical measures needed in those circumstances to handle the money laundering and terrorist financing risks effectively without creating unnecessary burdens on businesses. It is the FCA who can take action, under regulation 25 of the MLRs, if measures being taken are *not* sufficient, and so specific technical standards will be useful to financial and credit institutions in seeking to comply with the MLRs. It is therefore considered appropriate to make the EU Commission's current power under the Directive exercisable instead by the FCA.