

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT (MISCELLANEOUS AMENDMENTS) (IEU EXIT)
REGULATIONS 2018

2018 No. 1386

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend four statutory instruments in the field of local government finance legislation in consequence of the UK's exit from the European Union. They amend the definition of a "prescribed educational establishment" in the Council Tax (Discount Disregards) Order 1992 (S.I. 1992/548) so that those institutions in the UK continue to be included in this definition after the UK leaves the EU; remove the definition of "prescribed investment" from the Local Authorities (Funds) (England) Regulations 1992 (S.I. 1992/2428), amend the Local Authorities (Contracting Out of Investment Functions) Order 1996 (S.I. 1996/1883) to remove references to qualifications from other member states and amend the definition of "money market fund" in the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146).

Explanations

What did any relevant EU law do before exit day?

The Council Tax (Discount Disregards) (Amendment) Order 2011 (S.I. 2011/948) amended the definition of "prescribed educational establishment" in Part 1 of Schedule 2 to the Council Tax (Discount Disregards) Order 1992 so that establishments (for the purpose of defining who is entitled to a student council tax exemption) are defined by their purpose (solely or mainly to provide courses of further or higher education) and are situated in a Member State of the European Union ("Member State"). Article 9(b) of the Local Authorities (Contracting Out of Investment Functions) Order 1996 provides that a contractor and its employees must be either a person authorised to provide regulated activities under the Financial Services and Markets Act 2000 or a person authorised under the law of an EEA state to carry on such regulated activities. The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 defines "money market fund" by reference to EU Directive 2009/65/EC.

Why is it being changed?

Unless the definition of prescribed educational establishment in the Council Tax (Discount Disregards) Order 1992 is changed, it would leave UK institutions excluded from the definition since it refers to educational establishments in a Member State. Article 9(b) of the Local Authorities (Contracting Out of Investment Functions) Order

1996 refers to EEA financial services passporting rights which are being removed by other legislation (see paragraphs 7.20 and 7.21 for details). The definition of money market fund in the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 needs to change as if it does not there is a risk that investments in funds used by most local authorities will be classified as revenue rather than capital expenditure. Classified these investments as revenue expenditure, could mean that it would not be cost effective for local authorities to invest in these funds.

What will it now do?

The Council Tax (Discount Disregards) Order 1992 is amended to add a reference to educational establishments in England, Wales, Scotland or Northern Ireland. A contractor and its employees will after exit day be required to be approved under the Financial Services and Markets Act 2000. The definition of money market fund will be amended to refer to a collective investment undertaking which is authorised under domestic legislation (see paragraph 7.22 for details).

3. Matters of special interest to Parliament

Matters of special interest to Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting as required by the European Union (Withdrawal) Act 2018 on 9th November 2018. It was considered by the Secondary Legislation Scrutiny Committee on 13th November 2018 and by the European Statutory Instruments Committee on 20th November 2018. Both Committees agreed with the recommendation of the minister that the instrument should be subject to the negative procedure.

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 England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.
- 4.3 Regulations 2 and 4 apply in relation to England and Wales. Regulations 3 and 5 apply in relation to England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Under Part 1 of the Local Government Finance Act 1992, the amount of council tax payable is reduced where a person resident in a dwelling falls to be disregarded for the purposes of discount. The Council Tax (Discount Disregards) Order 1992 specifies the classes of persons who qualify for the purposes of discount including students (see article 4 and Schedule 1). Article 5 and Schedule 2 provide for the

information to be contained in a student certificate and list the bodies prescribed as the educational establishments who are to provide such certificates. Paragraph 1 of Schedule 2 provides that an institution is a prescribed educational establishment if it is (a) situated in a member State, and (b) established solely or mainly for the purpose of providing further or higher education.

- 6.2 Under Part 6 of the Local Government Finance Act 1988 billing authorities are required to maintain collection funds. Into those funds must be paid receipts from council tax and non-domestic rates. From those funds billing authorities must meet precepts from other authorities and their own demands in respect of their estimated expenses. The Local Authorities (Funds) (England) Regulations 1992 (made under sections 89(5), 98(3), 99(1), 140(4), 143(1) and 146(6) of the Local Government Finance Act 1988) make provision for the discharge by a billing authority of its liabilities to pay amounts in respect of precepts from its collection and general funds and to make transfers between those funds to meet its estimated expenses.
- 6.3 Regulation 13, together with Schedule 3, make provision as to the holding, investment and use of sums paid into a billing authority's collection fund. Any sum paid into a billing authority's collection fund which is not immediately required for the purpose of making payments or transfers from that fund must be (a) held in cash (b) invested in a prescribed investment or (c) transferred to the billing authority's general fund. Any sum transferred under from an authority's collection fund to its general fund must be (a) held in cash; (b) invested in a prescribed investment; or (c) used for the discharge of the authority's functions. A "prescribed investment" is an investment prescribed in Schedule 3 to the Regulations.
- 6.4 The investments prescribed in Schedule 3 include a deposit with the Bank of England or an authorised deposit taker - defined as a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, or is an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule), to accept deposits.
- 6.5 The Local Authorities (Contracting Out of Investment Functions) Order 1996 makes provision to enable specified local authorities to authorise another person, or that person's employees ("a contractor") to exercise any functions consisting of, or relating to, the investment of sums of money. The sums in question include in the case of a billing authority in England, sums paid into the authority's collection fund which are not immediately required for making payments or transfers from that fund. The exercise by a contractor of the functions is subject to the conditions specified in Part 3 of the Order including in particular in article 9.
- 6.6 Article 9 requires the contractor to ensure that it and its employees are suitably qualified to make investment decisions on the authority's behalf and have practical experience of financial matters, including making investments. The contractor must also ensure that such a person is either (a) an authorised person within the meaning of the Financial Services and Markets Act 2000 or (b) is a person whose regulated activities are not conducted from a permanent place within the UK, whose head office is situated in an EEA State outside the UK, who is a national of an EEA State and who is authorised under the law of an EEA state to carry on one or more regulated activities.

- 6.7 The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 make provision for capital finance and accounts under Part 1 of the Local Government Act 2003. Regulation 25 prescribes expenditure which is to be treated by a local authority as capital expenditure. This includes the acquisition of share capital in any body corporate, unless the expenditure is investment in a money market fund (in which case the expenditure will be treated as revenue). “Money market fund” is defined in regulation 1(5) as a collective investment scheme which (a) in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, is an undertaking for collective investment in transferable securities subject to that Directive; and (b) is either a unit trust scheme authorised under section 243 of the Financial Services and Markets Act 2000 or a collective investment scheme recognised under section 264 of that Act.

7. Policy background

What is being done and why?

Council Tax (Discount Disregards) Order 1992

- 7.1 The Council Tax (Discount Disregards) (Amendment) Order 2011 amended the definition of “prescribed educational establishment” in Part 1 of Schedule 2 to the Council Tax (Discount Disregards) Order 1992 so that establishments are defined by their purpose (solely or mainly to provide courses of further or higher education) and are situated in a Member State of the European Union (“Member State”).
- 7.2 Accordingly, persons with a sole or main residence in England or Wales who are undertaking a full time course with an educational establishment situated in any Member state are capable of being treated as students and disregarded for council tax purposes. The reference to Member State includes England, Wales, Scotland and Northern Ireland.
- 7.3 If the Order was to remain unchanged following the UK’s exit from the EU, it would leave UK institutions excluded from the definition since it refers to educational institutions in a Member State, and the UK will not be a Member State from March 2019.
- 7.4 The amendments being made to the 1992 Order are intended to ensure that those students living in the UK and studying with educational establishments situated both in the UK and in a Member State continue to be disregarded for the purposes of council tax, after the UK has exited the EU.
- 7.5 These amendments ensure that the Order remains effective following the UK’s exit from the EU and maintains the original policy position to support the mobility of students.

Local Authorities (Funds) (England) Regulations 1992

- 7.6 The Chartered Institute of Public Finance and Accountancy (CIPFA) estimate that, as at 31 March 2016 UK local authorities had outstanding borrowing of £88bn and held investments of £32bn. The Local Government Act 2003 gives local authorities the power to invest sums for any purpose relevant to their functions, or for the prudent management of their financial affairs. The Local Authorities (Capital Finance and Accounting) Regulations 2003, made under the 2003 Act require that, when

considering its powers to invest, a local authority shall have regard to CIPFA's "Treasury Management in the Public Services: Code of Practice" (the CIPFA Code).

- 7.7 The CIPFA Code (the Code) provides a framework for effective treasury management in public sector organisations. It covers the management of the organisation's borrowing, investments and cash flows, its banking, money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks.
- 7.8 Local billing authorities hold "collection funds" into, and from which, they pay any monies collected, or due from business rates and the business rates retention scheme, and council tax.
- 7.9 The 2003 Act and Code, apply to investments made from local authorities' own cash balances. But it is not clear that the Act and Code extend to the authorities' collection fund balances.
- 7.10 Billing authorities instead invest collection fund balances according to regulation 13 of the Local Authorities (Funds) (England) Regulations 1992 (SI 1992/2428) (as amended). The 1992 Regulations, which pre-date the introduction of Code, provide that collection fund balances should be invested in "prescribed investments".
- 7.11 Prescribed investments include "a deposit with an authorised deposit taker", defined in section 29(3A) of the Trustee Act 2000 (c. 29) as
- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 ("*FSMA*") to accept deposits, or
 - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act (*i.e. the "FSMA"*) which has permission ... to accept deposits.
- 7.12 This kind of EEA firm has permission to accept deposits by virtue of the passporting rights enjoyed by EEA financial services firms under Schedule 3 to the FSMA.
- 7.13 If the Government were to revoke EEA firms' passporting rights as contained in Schedule 3 to FSMA this would mean that EEA firms would effectively cease to be "authorised deposit takers" for the purposes of investing collection fund balances unless they had applied for, or already received, separate authorisation from the FCA under Part 4A of FSMA.
- 7.14 There is a risk that if an EEA firm was an authorised deposit taker and decides not to apply for separate authorisation under Part 4A of FSMA, it could end up holding local authority funds immediately after Exit Day without authorisation to do so, or could return those funds without notice. This would lead to disruption for local authorities.
- 7.15 This Order therefore amends regulation 13 of the 1992 Regulations and revokes Schedule 3, removing the risk and using the opportunity to bring the regulation of investments in collection fund balances within the Code.
- 7.16 The effect of the proposed changes on local authorities as they currently operate would be likely to be small. Section 10 "Consultation outcome" below, sets out that authorities already have regard to the Code, as a matter of course, when managing their investments.
- 7.17 Bringing the legal framework for collection fund investments in line with the Code would eliminate the unquantifiable possibility that some local authorities might, in future, decide to invest collection fund balances in a manner that would be contrary to

the Code. Our discussion per Sections 10 and 12 below suggest that this risk is unlikely. However, if it were to happen, it could have serious consequences. For example, it could lead to a situation where local authorities made collection fund investments which were of a higher risk than would be permitted under the Code. The higher the risk an investment is, the greater the chance that it might fall in value. We consider that these potential consequences can not be quantified.

- 7.18 Changing the legal framework around collection fund investments so that they will be compliant with Code would solve the issue of any EEA firm held investments held after a no deal EU Exit. Under the existing regulations an EEA firm could end up holding local authority funds immediately after Exit Day without authorisation to do so. However, our discussions with CIPFA per Section 10 below show that once the Code is explicitly adopted for collection fund balances, it would automatically cover these EEA firm held investments
- 7.19 There is no free public access to the Code. CIPFA is a commercial organisation and charges for access to the Code. However, this won't be an extra cost for local authorities who will already have copies of the Code as they are required to comply with it in relation to other investments. More generally, the public can access the CIPFA website and gain a broad overview of what the Code is and what it seeks to do

Local Authorities (Contracting Out of Investment Functions) Order 1996

- 7.20 The Local Authorities (Contracting Out of Investments Functions) Order 1996 is being updated to require local authorities to contract out investment functions to persons qualified to carry out a regulated function as defined in the Financial Services and Markets Act 2000. This will mean that in the case of regulatory divergence between the UK and EU, local authorities will not be able to contract out investment functions to those who would not be qualified persons under UK law.

- 7.21 The 1996 Order is amended to remove references to the provisions that implement the EEA financial services passport in consequence of the changes being made by the EEA Passport Rights (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018:

http://www.legislation.gov.uk/ukdsi/2018/9780111172421/pdfs/ukdsiem_9780111172421_en.pdf. Article 9(b) of the 1996 Order will be redundant or substantially redundant once EEA firms passporting rights are removed by that Order and such firms will not be able to manage investments without deemed or actual UK authorisation under Part 4A of the Financial Services and Markets Act 2000. Article 9(b) obliges a contractor to ensure its firm and its employees have UK or EEA authorisation, but irrespective of article 9(b), those with EEA authorisation would already be blocked from carrying out financial services ("regulated activities" such as local authority investment functions) – so there would be no need for a contractor to check that their staff have EEA authorisation to carry out regulated activities.

Local Authorities (Capital Finance and Accounting) (England) Regulations 2003

- 7.22 Currently for investments in money market funds to be classified as capital expenditure the fund must comply with EU Directive 2009/65/EC and must be a unit trust scheme authorised under section 243 of the Financial Services and Markets Act 2000 or a collective investment scheme recognised under section 264 of that Act. Once the UK leaves the EU it is unclear if any money market funds would meet this definition and this would mean that local authorities would need to divest themselves of their current investments, which could cause market disruption. This is because

these investments could be classified as revenue expenditure for the purposes of making the annual balanced budget calculation. The definition of money market funds in the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 has been updated to manage this risk. The updated definition covers authorised unit trusts and contractual schemes as defined under sections 243A and 261EA of the Financial Services and Markets Act 2000 respectively, open-ended investment companies authorised under regulation 14(1A) of the Open-ended Investment Company Regulations 2001 and authorised alternative investment funds which are an MMF within the meaning of regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013.

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.
- 8.2 Regulation 3 (amendment of the Local Authorities (Funds) (England) Regulations 1992 is made under sections 89(5), 98(3), 99(1), 140(4), 143(1) and 146(6) of the Local Government Finance Act 1988 as the amendments go further than simply correcting a deficiency in EU retained law.

9. Consolidation

- 9.1 The amendments made by these Regulations are small and do not require any of the instruments being amended to be consolidated.

10. Consultation outcome

- 10.1 In relation to amendments to the Local Authorities (Funds) (England) Regulations 1992 officials at the Ministry of Housing, Communities and Local Government (MHCLG) met CIPFA in early 2018. At these meetings CIPFA were keen that local authorities should continue to have the power to effectively invest the sums held in their collection funds. In email exchanges with MHCLG officials in September 2018, CIPFA agreed that local authorities should follow their Code for any investments they hold in relation to collection fund monies. They said that any proposed amendments to regulation 13 of the 1992 Regulations would probably need to refer to their Code. CIPFA also confirmed that currently held EEA firm held investments would be covered by the Code after Exit day.
- 10.2 MHCLG officials met with representatives of various local authorities and the Local Government Association (LGA) on 27 June 2018 as part of one of our business-as-usual working groups. This group included representatives from 14 local authorities, one representative of SIGOMA (a special interest group of 46 urban authorities in the northern, midland and south-coast regions of England) and one representative each from the LGA and CIPFA. At that meeting, collection fund balances investment issues arising from the 1992 Regulations in a no deal EU Exit scenario were discussed. The group agreed that the legislation should be amended so that collection fund balances

were subject to the Code. The Local Authorities present at that meeting told MHCLG officials that they typically do not use the 1992 Regulations and instead default to the Code when managing their investments.

- 10.3 In relation to amendments to the Council Tax (Discount Disregards) Order 1992 we have consulted with the Department for Education, where we agreed the proposed approach.
- 10.4 In relation to amendments to Local Authorities (Contracting Out of Investment Functions) Order 1996 and Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 we have sought advice from the Chartered Institute of Public Sector Finance and Accountancy (CIPFA) who agreed that our proposed approach would have no detrimental impact on the sector.

11. Guidance

- 11.1 No guidance is necessary.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant impact on the public sector. This instrument makes only minor changes to resolve anomalies in local government legislation which would be caused by the UK's exit from the European Union and European Economic Area. It amends legislation to update definitions, remove redundant references and resolve other deficiencies which would exist in domestic legislation if this remained unchanged on Exit Day.
- 12.3 There is no significant impact on the public sector, business, charities or voluntary bodies. The instrument ensures that legislation remains effective following the UK's exit from the EU. It provides consequential updates to definitions used to define local authority expenditure and relevant qualification to exercise investment functions avoiding potential disruption and risks to local authorities, ensures that the rules concerning investments in English local authorities' collection funds are brought into line with the rules for investments that local authorities make on their other cash balances and maintains the existing policy position on Council Tax (Discount Disregards) to support the mobility of students.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 To the extent that this instrument is made under the EU Withdrawal Act 2018, no review clause is required. No review clause is required in relation to regulation 3 which applies in relation to local authorities.

15. Contact

- 15.1 Danielle Angelopoulou at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 3174 or email: Danielle.angelopoulou@communities.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Katy Baldwin at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rishi Sunak MP at the Ministry of Housing, Communities and Local Government 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 clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 clauses 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 clauses 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 clauses 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 clauses 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 clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government, Mr Rishi Sunak MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the draft Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure).” This is the case because

(a) the instrument does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure;

(b) in the case of regulation 2 the instrument makes the minimum change necessary to maintain the status quo after exit day;

(c) regulation 3 is made under the Local Government Finance Act 1988 rather than under the European Union (Withdrawal) Act 2018

(c) in the case of regulation 4, the instrument removes provision that implements the EEA financial services passport regime but which will be redundant following changes to that regime; and

(d) in the case of regulation 5, the instrument updates the definition of “money market funds” in domestic regulations so that it remains effective after exit day.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State, at the Ministry of Housing, Communities and Local Government, Mr Rishi Sunak MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 “In my view the draft Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018 does no more than is appropriate”. This is the case because the amendments the instrument makes are minor and do no more than is necessary to ensure the legislation amended functions correctly once the UK has left the European Union, including amendments that update references in UK legislation to EU law, Member States and related terms to reflect the UK leaving the European Union.

3. Good reasons

3.1 The Parliamentary Under Secretary of State, at the Ministry of Housing, Communities and Local Government, Mr Rishi Sunak MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

legislation amended by this instrument continues to function correctly once the UK has left the European Union and ensuring clarity for the public and stakeholders, in particular the amendments update references in UK legislation to EU law, Member States and related terms to reflect the UK leaving the European Union. More specific information for each amendment is set out under the section seven.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State, at the Ministry of Housing, Communities and Local Government, Mr Rishi Sunak MP has made the following statement: “the draft Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018 do 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 Parliamentary Under Secretary of State, at the Ministry of Housing, Communities and Local Government, Mr Rishi Sunak MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018: “In relation to the draft Local Government (Miscellaneous Amendments) (EU Exit) Regulations 2018, I, Rishi Sunak 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.”.

5. Explanations

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