EXPLANATORY MEMORANDUM TO

THE CREDIT TRANSFERS AND DIRECT DEBITS IN EURO (AMENDMENT)(EU EXIT) REGULATIONS

2018 No. 1199

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 ensure that the regulation establishing technical and business requirements for credit transfers and direct debits in euro (No. 260/2012 – "the SEPA Regulation") can continue to operate effectively after the UK's withdrawal from the EU. The retention and amendment of this piece of EU law is designed to maximise the likelihood of the UK remaining a member of the Single Euro Payments Area (SEPA, which enables quick and efficient Euro payments) as a non-EEA country. This instrument will achieve this by using the EU (Withdrawal) Act Section 8 powers to fix deficiencies in the retained SEPA Regulation.

Explanations

What did any relevant EU law do before exit day?

2.2 The SEPA Regulation establishes business rules for businesses conducting cross-border payments in Euro within the EEA. These rules cover areas such as: ensuring Payment Service Providers (PSPs – mostly banks) are 'reachable', i.e. can be directly contacted, by other PSPs looking to make a euro payment to them; the message format of the payment.

Why is it being changed?

2.3 Once the UK has left the European Union, UK law will no longer operate effectively after exit day. This instrument seeks to fix the deficiencies in the SEPA Regulation to ensure an effectively operating regime governing euro transactions is in place from exit day. If these deficiencies are not addressed at Exit then significant aspects of the SEPA Regulation would become legally inoperable, rendering the UK regime ineffective, imposing costs on business and consumers, and reducing the likelihood of the UK being able to continue to access SEPA as a non-EEA -country.

What will it now do?

2.4 This SI makes amendments to ensure that the SEPA Regulation continues to operate effectively at the point at which the UK leaves the EU. These amendments include required changes to the scope of the Regulation; and enabling HM Treasury to revoke the Regulation (and other relevant legislation) through secondary legislation in the event the UK is no longer able to participate in the SEPA. More detail on the specific changes being made in these areas can be found at Section 7.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

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

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to the whole United Kingdom.

4.2 The territorial application of this instrument is to the whole United Kingdom.

5. European Convention on Human Rights

5.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding Human Rights:

"In my view the provisions of The Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 This SI amends the EU retained Regulation establishing technical and business requirements for credit transfers and direct debits in euro (No 260/2012) to correct deficiencies arising from the UK's exit from the European Union.

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 provisionally 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 non-EEA 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 non-EEA 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 SI makes amendments to the SEPA Regulation as retained to ensure that it can continue to operate effectively once the UK has left the EU, and to maximise the prospects of the UK remaining within the geographical scope of the SEPA payment schemes. Currently the UK is a member of SEPA by virtue of being a member of the EU. In order to maintain membership of SEPA after the UK leaves the EU, the UK payments industry is required to make an application to join SEPA as a non-EEA country. Applications from non-EEA countries are determined by the European Payments Council (EPC) by reference to its published criteria for non-EEA country participation. These criteria include that relevant provisions of EU law, which include inter alia the SEPA Regulation and others, are effectively represented in the domestic law of the applicant state. If the SEPA Regulation were not (a) retained by the EUWA and (b) amended by this SI, then it would be difficult for the UK to show effective representation, which in turn could impact the success of the UK's application. Changes effected by this SI include:

Introducing the concept of a 'qualifying area'

7.10 This qualifying area comprises the EEA and the UK, and serves as creating the geographical area within which these regulations will apply to UK PSPs Euro transactions. This qualifying area is broadly aligned to the geographical scope of the SEPA, although it does not include existing non-EEA country members (as the SEPA Regulation itself does not include these members within the regulation).

7.11 A number of minor amendments which fix deficiencies occurring from changing the scope of the SEPA Regulation from the EEA to the 'qualifying area'.

Transfer of functions

7.12 Under the SEPA Regulation, the Commission may adopt delegated acts which amend the Annex in order to take account of technical progress and market developments. In line with the Government's cross-cutting approach on the transfer of functions, this SI ensures that these functions are transferred to the appropriate UK bodies – in this case, HM Treasury.

Power to revoke

7.13 This SI provides HM Treasury with the power to revoke the retained SEPA Regulation, along with any other relevant associated legislation, in the event that the UK is no longer able to remain a member of the SEPA. Should UK PSPs no longer be able to access SEPA, then they will no longer be able to comply with some of the requirements in this legislation. This power therefore enables HM Treasury to revoke these requirements to prevent the detrimental effects on UK PSPs of having a regulatory requirement which they cannot meet.

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 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.

10.2 The instrument was also published in draft, along with an explanatory policy note, on the 5th September 2018, in order to maximise transparency ahead of laying. (https://www.gov.uk/government/publications/eu-exit-sis-for-payment-services-e-money-and-the-sepa-regulation)

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 primarily consist of one-off familiarisation costs for PSPs.

12.2 Should the UK lose access to SEPA, the ability for Her Majesty's Treasury to amend the regulations to prevent firms from facing regulatory obligations which they cannot comply with will ensure that PSPs do not face potential regulatory costs from breaching the obligations.

12.3 There is no significant impact on the public sector.

12.4 An Impact Assessment will be published in due course on the legislation.gov.uk website.

12.5 The Treasury's decision to publish 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 if they currently undertake cross-border Euro direct debits and credit transfers.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. The intention of this SI is to ensure that the payments and e-money regimes within the UK continues to operate as intended when the UK leaves the EU. This SI is therefore aimed at minimising the impact of these regulatory changes on all firms, including small businesses.

14. Monitoring & review

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

15. Contact

15.1 Andrew Clemo at HM Treasury Telephone: 0207 270 1187 or email: Andrew.clemo@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Raw, Deputy Director for Banking and Credit, 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	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) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate."

1.2 This is because the changes to the law made by these Regulations are limited to those that fix deficiencies arising out of EU Exit, or those that provide for the revocation of otiose legal provisions, or which provide for the stability of the financial system.

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 This is because the instrument is necessary to ensure that cross-border Euro transactions can operate effectively and efficiently on and immediately after Exit day.

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 Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018."

5.2 Sub-delegation under these regulations is granting HM Treasury the power to revoke these regulations, and associated relevant legislation, in the event that the UK is no longer able to participate as a member of the Single Euro Payments Area. The power is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

5.3 This is considered appropriate because, should it transpire that UK PSPs can no longer access SEPA, then they will no longer be able to comply with some of the requirements in this legislation. Her Majesty's Treasury would therefore need to revoke these requirements to prevent the detrimental effects on UK PSPs of having a regulatory requirement which they cannot meet, and may need to do so quickly depending on how much notice the UK has been provided with regarding the UK's SEPA membership being withdrawn.