

**Explanatory Memorandum to: The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment)(EU Exit) Regulations 2019**

This Explanatory Memorandum has been prepared by the Welsh Government's Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment)(EU Exit) Regulations 2019.

I have made the Statements required by the European Union (Withdrawal) Act 2018.

**Julie James AM**  
**Minister for Housing and Local Government**

**22 March 2019**

## **PART 1**

### **1. Description**

1.1 This instrument makes an amendment to:

- The Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003.

1.2 Regulation 3 of the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2018 amended regulation 1 of the 2003 Regulations and introduced a new definition of “money market fund”. The amendments made by this instrument amend the definition of “money market fund” to omit a reference to EU directive 2009/65/EC.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

2.1 This instrument is being made under section 11 of and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018. The amendments to the instrument would have ordinarily been made through the negative annulment procedure however, to ensure that the instrument is operable after exit day it is proposed that the affirmative resolution procedure is followed.

### **3. Legislative background**

3.1 This instrument is being made using the power in Part 1 of Schedule 2 to the 2018 Act 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.

3.2 This instrument is also made under paragraph 21 of Schedule 7 of the Act. These Regulations are being under the affirmative resolution procedure.

### **4. Purpose and intended effect of the legislation**

#### ***What did any relevant EU law do before exit day?***

4.1 The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2018 set out the definition of “money market fund” as a collective investment scheme in transferable securities subject to Directive 2009/65/EC as well as under the Financial Services and Market Act 2000. The European Directive sets out the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

### ***Why is it being changed?***

4.3 The minor and technical changes made to these instruments address the failure of retained EU law to operate effectively following the withdrawal of the United Kingdom from the European Union.

### ***What will it now do?***

4.4 This SI amends the definition of “money market fund” to omit a reference to European Directive 2009/65/EC. The previous definition of money market fund required an investment to be an undertaking for collective investment in transferable securities subject to that Directive AND to be authorised or recognised under part XVII of the Financial Services and Markets Act 2000.

4.5 By omitting the reference to the Directive and continuing with the remainder of the definition Councils may continue to invest in UK, EEA and the wider world, where such investments are authorised or recognised under the Financial Services and Markets Act 2000. Such investments include undertakings in collective investments and transferable securities.

## **5 Consultation**

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

## **6 Regulatory Impact Assessment (RIA)**

6.1 A Regulatory Impact Assessment has not been conducted. No policy change is introduced through the amending Regulations. The Regulations are technical in nature and intended solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6.2 These amending Regulations have no impact on the statutory duties as set out in sections 77 to 79 of the Government of Wales Act 2006 or the statutory partners as set out in Sections 72 to 75 of the Government of Wales Act 2006.

# 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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7  <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI  Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	<p>Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved</p>	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

## Part 2

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

#### 1. Sifting statement(s)

1.1 Not applicable.

#### 2. Appropriateness statement

2.1 The Minister for Housing and Local Government, Julie James AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

*“In my view the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment)(EU Exit) Regulations 2019 do no more than is appropriate. This is the case because the instrument makes amendments which are technical in nature and designed to address failures of retained EU Law to operative effectively after exit day”.*

#### 3. Good reasons

3.1 The Minister for Housing and Local Government, Julie James AM, 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. This is because the instrument makes technical amendments to definition of “money market fund” to omit a reference to EU directive 2009/65/EC”.*

#### 4. Equalities

4.1 The Minister for Housing and Local Government, Julie James AM, 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 Minister for Housing and Local Government, Julie James AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

*“I 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 4 (Purpose & intended effect of the legislation) of the main body of this Explanatory Memorandum.

## **6. Criminal offences**

6.1 Not applicable.

## **7. Legislative sub-delegation**

7.1 Not applicable.

## **8. Urgency**

8.1 Not applicable.