EXPLANATORY MEMORANDUM TO

THE ACCOUNTS AND REPORTS (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy 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 The purpose of this instrument is to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union, in the field of accounts and reports of UK corporate bodies.

Explanations

What did any relevant EU law do before exit day?

2.2 The Accounting Directive (Directive 2013/34/EU) sets out reporting requirements (which include the requirements in relation to the preparation of accounts) and exemptions from those requirements for entities, their parents or subsidiaries registered in the European Economic Area (EEA), or for entities listed on markets in the EEA.

2.3 These requirements were transposed into UK law in relation to companies by Part 15 of the Companies Act 2006 ("CA06") and regulations made under that Part (the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410)), and this legislation is applied as a framework in relation to some other corporate entities. For limited liability partnerships ("LLPs"), the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 (SI 2008/1911) apply certain provisions of Part 15 CA06 to LLPs, but whenever Part 15 is amended that instrument needs to be updated to take account of the changes because provisions may need modification to take account of the structural differences between LLPs and companies. Qualifying partnerships are types of partnerships to which the Accounting Directive applied, and the requirements were transposed by the Partnerships (Accounts) Regulations 2008 (SI 2008/569) (see regulation 3 for a definition of "qualifying partnership"), which applies Part 15 CA06 with modifications. The Accounting Directive requirements were transposed in relation to friendly societies by Part 6 of the Friendly Societies Act 1992 and in relation to building societies by Part 8 of the Building Societies Act 1986.

2.4 The Accounting Directive requirements include mandatory preferential treatment within the accounting and reporting framework in EEA States for the entities of other EEA States, for domestic entities which have EEA parents or subsidiaries, and for listings on the regulated markets of other EEA States.

2.5 The Accounting Directive sets out the concept of a “public interest entity”, namely entities with transferable securities listed on an EEA regulated market, credit institutions (such as banks and building societies) and insurers, and more onerous requirements apply in relation to them, and these categories included EEA entities.

2.6 Chapter 10 of the Accounting Directive deals with requirements for reports on payments to governments by undertakings engaged in logging and the extractive industries. That was transposed in the UK by the Reports on Payments to Governments Regulations 2014 (SI 2014/3209). The Regulations require extractive companies to report on their payments to governments. Previously, a UK subsidiary was exempted from having to prepare a consolidated report if its parent undertaking was subject to the provisions of Chapter 10 of the Accounting Directive in any EEA State and the parent was preparing a consolidated report which included the UK undertaking. No such exemptions are available to subsidiaries of parent undertakings complying with other third country accounting requirements (unless the country has been found to have equivalent reporting requirements). The European Commission has power under the Directive to grant equivalence to a third country in relation to its system of reporting on these matters, which in turn allows for reporting on a group basis.

2.7 The Overseas Companies Regulations 2009 (SI 2009/1801) partially implements the Eleventh Company Law Directive (Directive 89/666/EEC now consolidated into Directive 2017/1132/EU), and Directive 89/117/EEC on the obligations of branches established in a Member State of credit and financial institutions with head offices outside that Member State regarding the publication of annual accounting documents. The regulations set out the requirements for the delivery of accounting documents to the registrar by companies incorporated outside of the UK ("overseas companies") that open an establishment, whether a place of business or a branch, in the United Kingdom (a "UK establishment"). The requirements in these regulations for delivering accounting documents for overseas companies from EEA States were different compared to those applied to overseas companies from other third countries.

2.8 The Conduct Committee of the Financial Reporting Council has been appointed by the Secretary of State under section 14(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 as the body which is to: (a) keep under review periodic accounts and reports that are produced by issuers of transferable securities and are required to comply with any accounting requirements imposed by listing rules; and (b) if it thinks fit, inform the Financial Conduct Authority of any conclusions it has reached in relation to any such accounts or report (see the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors' Reports) (Authorised Person) Order 2012 (SI 2012/1439)). Article 2 limits the appointment to accounts and reports produced by relevant corporate bodies issuing transferable securities which are admitted to trading on a regulated market (being a regulated market in the EEA). The relevant corporate bodies are those whose home Member State is the UK for the purposes of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (known as the Transparency Directive).

2.9 The Companies (Receipt of Accounts and Reports) Regulations 2013 (SI 2013/1973) concern the arrangements for copies of certain reports to be sent out by a company, alongside a form for consulting those receiving the information. The company must

pay the postage for the return of the consultation form if the recipients' addresses are within the EEA.

Why is it being changed?

2.10 Without amendment domestic legislation would contain deficiencies in the following ways: (a) it makes provision for, or in connection with, arrangements relating to accounts and reports which involve the EU, the Commission and Member States; (b) it does not contain a power to grant equivalence to third countries for their system of reports by entities about payments to governments regarding their logging and mining activities that it would be appropriate to retain for the UK post-exit; and (c) it contains EU references which are no longer appropriate.

2.11 The UK corporate reporting framework derives heavily from EU law. In places it relies on reciprocal arrangements for company group structures. After the UK's exit from the EU, EEA States will be third countries in relation to the UK and the UK will be a third country in relation to EEA States. In the absence of a negotiated agreement about the economic relationship between the UK and the EU, it is inappropriate to continue with preferential treatment for EEA entities, or UK entities with parents or subsidiaries from EEA States, or entities listing on EEA regulated markets, because that would amount to unreciprocated preferential treatment. Entities from, and listed on markets in, EEA States will be treated in the same way as entities from, and listed on markets in, other third countries. Preferential treatment however will be continued for UK entities, for UK entities with UK parents or subsidiaries, and for those entities listed on UK markets.

2.12 All overseas companies, including those from EEA States, all third country companies will be subject to the same requirements.

What will it now do?

2.13 This instrument makes a number of amendments to Part 15 of the Companies Act related to preparation and filing of accounts by companies in the UK. These address a number of minor inoperabilities arising from the UK's exit from the EU, such as substituting references to the EU's Accounting Directive with references to domestic legislation, as well as making changes which have more significant impacts, such as limiting the scope of certain exemptions so that they apply only to UK registered companies with UK parents only.

2.14 Transitional provision has been made to give entities sufficient time to adjust to the changes.

2.15 See section 7 for further details.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Alongside the European Union (Withdrawal) Act 2018 powers, the instrument is also being made under section 2(2) of the European Communities Act 1972, to correct a small numbers of errors in transposition (out of date cross-references for defined terms).

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.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

5.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst, has made the following statement regarding Human Rights:

"In my view the provisions of the Accounts and Reports (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 See the text under the heading of 'Explanations' in section 2 for details of what legislation is being amended and why.

6.2 Not all deficiencies as a result of the UK's withdrawal from the EU which relate to accounts are being addressed by this instrument. There will be another instrument which deals with the adoption of international accounting standards for the UK, and related consequential amendments.

7. Policy background

What is being done and why?

7.1 The explanations in section 2 provide an overview of the amendments being made to domestic legislation.

7.2 As examples of the kind of amendments that have been made, sections 394A to 394C of CA06 concerned an exemption from producing accounts for dormant subsidiaries. The exemption applied to dormant UK subsidiaries of certain EEA parent undertakings. The exemption is now only available to UK subsidiaries of certain UK parents. UK dormant subsidiaries with EEA parents will be required to prepare and file annual accounts with Companies House.

7.3 Section 395 CA06 sets out the regulatory requirements for the preparation of individual accounts and the accounting framework which are permitted for use in the preparation of those accounts, namely International Accounting Standards (IAS) or UK Generally Accepted Accounting Practise (UK GAAP). It also sets out the conditions under which entities can switch to alternative accounting frameworks after the first financial year of reporting. One of those conditions related to when an entity trading on an EEA regulated market de-lists. The amendment reduces the scope of this condition to when entities that trade on UK regulated markets de-list. Entities de-listing from an EEA regulated market will no longer meet that condition for switching to an alternative accounting framework. Similar amendments have been made in section 403 which concerns the preparation of group accounts and the accounting framework permitted for use in their preparation.

7.4 Section 399 CA06 set out conditions under which UK subsidiaries with EEA parents were exempt from the requirement to file group accounts. That exemption has been reduced in scope so that it applies only to UK subsidiaries with UK parents.

7.5 Section 400 CA06 contained an exemption available to intermediate UK parent companies with an immediate EEA parent, exempting them from the requirement to produce group accounts and the conditions under which that exemption applied. The exemption has been amended so that it only applies to intermediate UK parent companies with an immediate UK parent. However, section 401 included a similar exemption available to intermediate parent companies with an immediate non-EEA parent, which has been amended so that it applies in respect of any immediate third country parent (which will now include EEA parents).

7.6 There are other deficiencies which are minor and technical. Where appropriate, similar amendments have been made to legislation which effectively mirrors Part 15, such as the legislation relating to qualifying partnerships, LLPs, friendly societies and building societies.

7.7 In relation to the Partnerships (Accounts) Regulations 2008, where none of the members of [illegible] is a limited company they are required to make the latest accounts of the qualifying partnership open for inspection. However, an exemption from this requirement was extended to certain qualifying partnerships where: any member of the qualifying partnership was a legal entity incorporated in an EEA State; that member of the qualifying partnership was comparable to a limited company; and the latest accounts of the partnership had been or were to be appended to the accounts of that member, published under the law of that Member State in accordance with Accounting Directive requirements. This exemption is no longer available to such qualifying partnerships. The requirements for qualifying partnerships with only UK members remain unchanged.

7.8 In relation to the Reports on Payments to Governments Regulations 2014, the exemption previously available from preparing a report where an EEA parent was preparing a consolidated report, has been removed. The ability to grant equivalence to the system of reporting of a third country has been given to the Secretary of State, to be exercised by way of a determination, and those countries which have been recognised by the EU as having an equivalent system of reporting are also granted recognition by the UK. EEA countries will have to apply for a determination of equivalence.

7.9 In relation to the Overseas Companies Regulations 2009, the Regulations permitted an EEA company which was required under its parent law to prepare and disclose accounts, but not to have its accounts audited or deliver its accounts, to omit delivery of those documents to the UK registrar in respect of their UK establishment or to deliver them without having been audited. This exemption has been removed. There were different requirements relating to the accounts for EEA credit or financial institutions compared to institutions from other third countries. All overseas companies will now be required to file the same accounting documents as specified by the Regulations.

7.10 In relation to the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors' Reports) (Authorised Person) Order 2012, the appointment of the Financial Reporting Council to scrutinise accounts, is

limited to accounts and reports produced by relevant corporate bodies issuing transferable securities which are admitted to trading on a UK regulated market.

7.11 In relation to the Companies (Receipt of Accounts and Reports) Regulations 2013, companies will only be required to pay the postage for the return of the consultation form if the recipients' addresses are within the UK.

7.12 The changes made by this instrument which relate to financial years, apply to financial years beginning on or after the day the UK leaves the EU. For financial years that begin before, but end on or after, this day the relevant UK law applies as if the UK continued to be a member State. These are transitional arrangements to minimise disruption for those affected.

7.13 This instrument applies to company law which is a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

7.14 There are some amendments made by this instrument which have dependencies with EU Exit instruments made by HM Treasury. These are as follows.

- The definition of "CRR firm" (relevant to the definition of "credit institution") cross-refers to provisions inserted into Regulation (EU) No. 575/2013 by HM Treasury's instrument the Capital Requirements (Amendment) (EU Exit) Regulations 2018.
- The definitions of "MiFID investment firm", "regulated market", "EU regulated market" and "UK regulated market" cross-refer to provisions inserted into Regulation (EU) No. 600/2014 by HM Treasury's instrument the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using powers in 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 A to this Explanatory Memorandum.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers, the instrument is also being made under section 2(2) of the European Communities Act 1972, to correct a small numbers of errors in transposition (out of date cross-references for defined terms).

9. Consolidation

9.1 This is not a consolidation.

10. Consultation outcome

10.1 We have not been able to publicly consult in order to minimise sensitivities in advance of negotiations with the EU.

10.2 Informal consultation has taken place with stakeholders, including representatives of registered companies in the UK, accounting firms, investors and lawyers to discuss and gather information on how companies are planning to minimise disruption on business. We understand from these discussions that many UK registered companies will have made their own preparations in advance of the exit date to a smooth transition.

11. Guidance

11.1 Companies House will update their existing guidance to reflect the provisions in this statutory instrument to be available when this instrument comes into force.

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.

12.3 A full impact assessment has not been prepared for this instrument due to the low level of impact on business (less than £5 million). A De Minimis impact assessment has been carried out, confirming that the impact on business would be minimal, and any resulting costs would be largely commensurate with company size. Overall absolute costs to business were therefore estimated to be small.

12.4 All entities in scope of the changes introduced by this instrument will incur direct costs in the form of familiarisation costs, and for those in scope of sections 394 and 399, the cost of preparing and filing financial reports.

12.5 The De Minimis impact assessment also considered second-order impacts as affected entities may respond by transferring additional costs to their consumers via higher prices, or by reducing spending on growth and innovation, which can itself lead to competitive disadvantage. Further, with amendments to sections 395 and 403, the ability to switch between accounting frameworks could incentivise negative company behaviour, since companies may decide to withdraw listings from UK markets in order to choose the accounting framework that is most advantageous or presents the least onerous reporting requirements.

12.6 Given the unprecedented nature of these changes and the difficulty in predicting companies' response to increased costs, the magnitude of second-order impacts was not assessed. However, the impact passed on to consumers is expected to be small, since the direct costs to companies are estimated to be small.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The changes introduced by this instrument encompass multiple amendments that affect entities of all sizes, albeit in different ways. However, impacts are expected to

be commensurate with company size. Absolute costs to small businesses from these changes are therefore expected to be small.

13.3 As the estimated impact was low and no disproportionate impact was identified in the De Minimis impact assessment, we have not considered any further action or measures to minimise the small-business impact of these changes.

14. Monitoring & review

14.1 As this instrument is made under the European Union Withdrawal Act 2018 (and the changes under other powers are not regulatory changes), no review clause is required.

15. Contact

15.1 Seema Jamil O'Neill at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 0352 or email: Seema.jamil-oneill@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Death, Deputy Director for Business Frameworks, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Small Business, Consumers and Corporate Responsibility Kelly Tolhurst at the Department for Business, Energy and Industrial Strategy 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 Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Accounts and Reports (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate within the meaning of the European Union (Withdrawal) Act 2018, as detailed in section 2 of the explanatory memorandum."

1.2 This is the case because of the reasons given in sections 2 and 7 of this explanatory memorandum.

2. Good reasons

2.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst 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 reasons are detailed in sections 2 and 7 of this explanatory memorandum.

3. Equalities

3.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst 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 Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, the Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst 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."

This legislation complies with the requirements of the Public-Sector Equality Duty (PSED).

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.