

SL(5)368 – The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are proposed to be made by the Welsh Ministers pursuant to section 11 of, and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018, to correct a deficiency arising from the UK's withdrawal from the European Union.

Regulation 1(4) of the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003, as amended by the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2018 (“the **2003 Regulations**”) defines a “money market fund” as including a collective investment scheme in transferable securities subject to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009. The amendment made by these Regulations limits that definition to a collective investment scheme authorised or recognised under domestic legislation only (specifically, Part XVII of the Financial Services and Markets Act 2000).

Procedure

Affirmative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 2 amends Regulation 1(4) of the 2003 Regulations. The Explanatory Memorandum to these Regulations contains inconsistencies (to which, see below) and indicate variously that the amendment amounts to removing reference to “EU regulations” (para 1.2) or the “European Directive and Council meeting” (para 4.4).

However, Regulation 2 omits paragraph (a) of the definition of “money market fund” in its entirety, which has the effect of omitting provision defining such a fund as being an undertaking for collective investment in transferable securities. It is therefore not clear, in light of the content of the Explanatory Memorandum, whether this change is intended.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.



The Explanatory Memorandum to these Regulations, at paragraph 2.1, notes that these Regulations *"would ordinarily have been made through the negative annulment procedure however, to ensure that the instrument is operable after exit day it is proposed that the affirmative procedure is followed"*.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Explanatory Memorandum to these Regulations appears to contain a number of errors:

1. The title of these Regulations is "The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) (EU Exit) Regulations 2019 (referred to in the Explanatory Memorandum as "The Local Authorities Capital Finance and Accounting (Wales) (Amendment)(EU Exit) Regulations 2019";
2. Paragraph 1.2,, and a statement made by the Minister at paragraph 3.1 in Part 2 of the Annex, indicate that these Regulations amend the definition of "money market fund" in the 2003 Regulations to "remove reference to EU regulations" (the amendment made in facts omits a reference to Directive 2009/65/EC); and
3. Paragraph 4.4 states that these Regulations "remove reference to the European Directive and Council meeting." (as above, these Regulations omit a reference to Directive 2009/65/EC).

Implications arising from exiting the European Union

No further points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

14 March 2019

