

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES (MISCELLANEOUS) (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury 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 This instrument is being made in order ensure a coherent and functioning financial services regulatory regime once the United Kingdom (UK) leaves the European Union (EU). It addresses deficiencies in UK domestic law and retained EU law arising from the UK's withdrawal from the EU, in line with the approach taken in other financial services EU exit instruments under the EU (Withdrawal) Act 2018 (EUWA), (for example, it amends the definition of 'credit institution' in UK legislation to align with the definition created in a previous EU exit instrument).
- 2.2 Additionally, this instrument revokes a number of pieces of retained EU law and UK domestic law, which would not be appropriate to keep on the statute book after exit, as they deal with cross-border activity within the EU and the functioning of EU institutions.
- 2.3 This instrument also makes amendments to a number of financial services EU exit statutory instruments, correcting errors identified in legislation after it was made, and making amendments to ensure consistency between EU exit instruments. These amendments will ensure that these instruments operate effectively after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.4 Part 2 of the instrument amends:
- The Insolvency Act 1986 sections 124B and 124C, which make provisions for the winding up of European companies and cooperative societies.
 - The Financial Services and Markets Act 2000 (FSMA), section 425 and Schedule 3, which make provision for the UK's participation in the EEA financial services passporting system.
 - The Income Tax Act 2007, section 886, which makes provision for exceptions from the duty to deduct income tax at source for relevant entities, including EEA central counterparties and EEA central securities depositories (CSDs).
 - The Corporation Tax Act 2009, section 697, which makes provision for exceptions to section 696 relating to derivative contracts for certain entities, including EEA central counterparties.

2.5 Part 3 of the instrument amends the following statutory instruments:

- The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), the Financial Services and Markets Act (Exemption) Order 2001 (S.I. 2001/1201) and the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013 (S.I. 2001/1201), all of which form part of the UK’s legislative framework for financial services regulation. They define the activities and firms that fall within the scope of UK financial services regulation, through defining what constitutes a ‘regulated activity’ and the persons exempt in respect of any ‘regulated activity’, and the kinds of institution which are prescribed financial institutions (parent undertakings of authorised persons whose main business is financial services, and so fall within the scope of the financial services regulators powers under FSMA).
- The Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004 (S.I. 2004/3200), which modifies the provisions of the Building Societies Act 1986 on the calculation of the lending limit and the funding limit to the assets of subsidiary undertakings of a building society.
- The Payment to Treasury of Penalties (Enforcement Costs) Order 2013 (S.I. 2013/418), which specifies certain enactments which are classified as falling within the FCA’s “enforcement powers” for the purposes of Schedule 1ZA of FSMA (under which the FCA are permitted to deduct their enforcement costs from any fines levied by the FCA under such powers).
- The Small and Medium Sized Business (Credit Information) Regulations 2015 (S.I. 2015/1945), which require designated banks to share information on their small and medium sized business customers with designated Credit Reference Agencies (“CRAs”), and require that those designated CRAs provide equal access to that data to finance providers.
- The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), which make the activity of administering a benchmark a regulated activity, giving effect to Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investments and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (“the EU Benchmarks Regulation 2016”).

2.6 Part 3 also makes minor technical amendments to correct the following financial services EU exit instruments. Further information on these instruments can be found in the EMs accompanying the instruments on legislation.gov.uk:

- The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019; these regulations address deficiencies in retained EU law and amend aspects of the UK legislation implementing the Alternative Investment Fund Managers Directive 2011/61/EU (“AIFMD”), to ensure the regulatory framework for alternative investment fund managers continues to operate effectively after the UK leaves the EU.
- The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297). These regulations make amendments to ensure that the constitution, responsibilities and functions of the Bank of England continue to be clearly defined after the UK leaves the EU.

- The Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1320), which make technical changes to the Central Securities Depositories (CSDs) Regulation EU No 909/2014, transfer functions from the relevant EU authorities to the relevant UK regulators, and provide for a transitional regime to allow third country CSDs to provide services to UK firms after exit.
- The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403) (the MiFI Regulations 2018). The MiFI Regulations 2018 address deficiencies in retained EU law in relation to markets in financial instruments arising from the withdrawal of the UK from the EU, to ensure that it continues to operate effectively after exit, by amending key pieces of EU and domestic legislation relating to markets in financial instruments.
- The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394). These regulations amend UK legislation implementing the Bank Recovery and Resolution Directive (BRRD), to address deficiencies in the UK's legislative framework for the recovery and resolution of banks and investment firms, that arise as a result of the UK leaving the EU.
- The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/38). These regulations address deficiencies in retained EU law in relation to the reorganisation and winding up of credit institutions and insurance undertakings, to ensure they operate effectively when the UK leaves the EU.
- The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019. These regulations address deficiencies in FSMA and related legislation (in particular the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), that arise as a result of the UK leaving the EU.
- The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019. These regulations address deficiencies in the UK legislative framework concerning financial market infrastructure insolvency that implement EU law. They also introduce a Temporary Designation Regime to ensure that designated systems in the EEA can continue to benefit from protections from UK insolvency law after exit.
- The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) Regulations 2019. These regulations amend aspects of the UK legislation implementing the European Market Infrastructure Regulation (Regulation (EU) No 648/2012) to ensure that the UK continues to have an effective regulatory framework for over-the-counter derivatives, central counterparties and trade repositories when the UK leaves the EU.
- The Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019. These regulations amend UK legislation implementing the EU's Solvency 2 Directive and relevant directly applicable EU legislation, which introduced a harmonised prudential framework for insurance and reinsurance firms, so that it continues to operate effectively when the UK leaves the EU.
- The Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/266). These regulations amend deficiencies in retained EU law in

relation to credit rating agencies arising from the UK's withdrawal from the EU, ensuring the legislation continues to operate effectively when the UK leaves the EU.

- The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019, (the Equivalence Regulations). The Equivalence Regulations make provisions for elements of the UK equivalence framework when the UK leaves the EU. The equivalence framework is a process for finding a third country's regulatory and supervisory regime "equivalent" to the domestic regime in certain areas. This can help reduce or eliminate overlap in regulatory and supervisory requirements, and facilitate cross-border access.

2.7 Part 3 of the instrument also revokes the following UK instruments:

- The European Cooperative Society Regulations 2006 (S.I. 2006/2078), which gives effect in the UK to Council Regulation 1435/2003 No 1435/2003 which created a new form of cooperative, known as the European Cooperative Society (the "SCE").
- The Recognised Auction Platforms Regulations 2011 (S.I. 2011/2699) and the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2012 (S.I. 2012/2661), which implement parts of the Commission Regulation (EU) 1031/2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (O.J. L302/1. 18.11.2010) ("the Commission Regulation") by providing for the authorisation and regulation of auction platforms auctioning such allowances, makes provision in relation to the auction process for allocating Community tradeable emissions allowances in the UK, and extending UK law on regulated markets in financial instruments and on market abuse apply to such auction platforms.

2.8 Chapter 1 of Part 4 of the instrument makes amendments to the following retained EU law:

- Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, known as 'EMIR'. EMIR mandates the use of CCPs for certain over the counter (OTC) derivative transactions, the reporting of derivative transactions to TRs and the application of risk mitigation techniques in bilateral derivative transactions.
- Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, known as the Capital Requirements Regulation or "CRR". CRR, along with the Capital Requirements Directive IV (CRD IV), and a range of technical standards and non-binding guidelines, form the EU's prudential policy regime for banks, building societies and investment firms.
- Commission Delegated Regulation (EU) 2015/35 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). The aim of the EU Commission Delegated Regulation is to provide further detail on the provisions on the Solvency II Directive.
- Regulation (EU) 2017/1131 on money market funds (MMFs) introduced rules on how MMFs operate, their portfolio and valuation, and reporting requirements.

- Commission Delegated Regulations (EU) 2017/2358 and 2017/2359, which supplement provision in UK law which implements Directive (EU) 2016/97 on insurance distribution (the 'Insurance Distribution Directive' or IDD). The IDD sets the regulatory framework for the distribution of insurance in the EU, covering the initial registration, passporting arrangements, and ongoing regulatory requirements for insurance and reinsurance distributors.
- Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (the Securitisation Regulation) which establishes a general framework for securitisation across the EU through introducing rules for issuing simple, transparent and standardised (STS) transactions.

2.9 Chapter 2 of Part 4 of the instrument revokes the following EU Regulations and Decisions:

- Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society. This Regulation created a new form of cooperative, known as the European Cooperative Society (the “SCE”).
- Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001. This Regulation, more commonly known as the “Cross-Border Payments Regulation” or “CBPR” requires that charges for making payments across member state borders must be the same as charges for making payments within a given member state. It also makes some supplementary provision regarding automation of payments.
- A number of EU Regulations and Decisions, listed in paragraphs 6.5 to 6.7 of this EM, which relate to the functions and administration of the European Central Bank, including the framework for the European Central Bank to supervise banks in the eurozone, and to the European Insurance and Occupational Pensions Authority. Much of this supervisory framework (e.g. Single Supervisory Mechanism, Single Resolution Fund, Single Resolution Mechanism and associated Mediation Panel, and supervisory reporting and fees) does not currently apply to the UK as a result of the UK's opt out of treaty provisions relating to the coordinated banking supervision in the eurozone.

2.10 Part 5 of the instrument implements transitional and saving provisions by:

- Modifying FSMA and legislation under FSMA to give effect to transitional insurance business transfer schemes, transitional arrangements for the recognition of overseas investment exchanges, and to ensure that the substitution of the term "qualifying provision" for “qualifying EU provision” does not affect anything done under the provision in question as it was in force before exit day. FSMA is a core part of the UK's legislative framework for financial services regulation. FSMA and related secondary legislation define the ‘regulatory perimeter’, setting out the activities and firms that fall within the scope of UK financial services.
- Modifying section 886 of the Income Tax Act 2007 (described above in paragraph 2.4) and the Investment Bank Special Administration Regulations 2011, which provide for a special administration regime for investment banks, to give effect to transitional arrangements in relation to specified CSDs.

- Amending the Consumer Credit (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1038). These regulations address deficiencies in UK legislation that implements Directive 2008/48/EC, known as the Consumer Credit Directive (“CCD”), to ensure this legislation operates effectively when the UK leaves the EU.
- Amending the Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019 (described above in paragraph 2.6 of this EM).

Why is it being changed?

- 2.11 Amendments to primary and secondary legislation outlined in paragraphs 2.4 to 2.6, and retained EU law as outlined in paragraph 2.8 of this EM, are required in order to ensure that the legislation operates effectively following the UK’s withdrawal from the EU.
- 2.12 Revocations to UK legislation as outlined in paragraph 2.7 are made where the UK legislation derives from EU law which is being revoked at exit day. The UK legislation will therefore be redundant and should also be revoked.
- 2.13 Revocations to retained EU law as outlined in paragraph 2.9 are made where the legislation will become redundant once the UK leaves the EU, for example because it deals with the functioning of EU institutions (such as the European Central Bank) or it deals with arrangements for cross border activity between EU member states, which will have no relevance in the UK once the UK leaves the EU.
- 2.14 Transitional and saving provisions as outlined in paragraph 2.10 are provided in order to limit disruption to the financial services industry once the UK leaves the EU.

What will it now do?

- 2.15 The amendments to UK legislation described in paragraphs 2.4 to 2.5 and retained EU law in paragraph 2.8, ensure that the legislation operates effectively when the UK leaves the EU, in line with amendments made by other EU exit SIs.
- 2.16 The amendments to other EU exit instruments described in paragraph 2.6 ensure that these instruments deal effectively with deficiencies in retained EU law after the UK leaves the EU. These changes do not make any broader changes to the policy intent or effect of the amended instruments.
- 2.17 The revocations remove UK legislation and retained EU law, as outlined in paragraphs 2.7 and 2.9, from the statute book, where that legislation would become redundant when the UK leaves the EU.
- 2.18 Transitional and saving provisions as outlined in paragraph 2.10 will help minimise disruption to the financial services industry once the UK leaves the EU.
- 2.19 Further details on the specific amendments made by this instrument can be found in Section 7.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument relies on provisions made by other EU exit instruments which have not yet been made. It is therefore conditional on the making of those instruments, which are as follows:

- Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019;
- Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019;
- Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
- Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc. and Transitional Provision) (EU Exit) Regulations 2019;
- Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019;
- International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019;
- Financial Services Contracts (Transitional and Saving Provisions) (EU Exit) Regulations 2019;
- Insurance Distribution (Amendment) (EU Exit) Regulations 2019;
- Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019;
- Securitisation (Amendment) (EU Exit) Regulations 2019;
- Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019.

- 3.2 All the above instruments have been laid in draft. This instrument will be made once the above EU exit regulations have been made (assuming both Houses of Parliament give their approval).
- 3.3 The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 were proposed for sifting on 11 February 2019. Both the Commons sifting committee (the European Statutory Instruments Committee (ESIC)) and the Secondary Legislation Scrutiny Committee (SLSC) in the Lords disagreed with the government and recommended that this statutory instrument should be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. follow the affirmative procedure).
- 3.4 The ESIC stated that they considered it would usually be appropriate to use the affirmative procedure when amending EU exit instruments which were themselves originally subject to the affirmative procedure. HM Treasury respectfully takes a different view on this point.
- 3.5 The ESIC additionally noted that this instrument amends four Acts of Parliament and the transitional provisions apply the Financial Services and Markets Act 2000 with modification in certain circumstances. The ESIC acknowledged that the amendments are technically modest, but stated that the changes in the context of a coherent and functioning financial services regime once the UK leaves the EU are such that the additional safeguard of affirmative resolution is appropriate.
- 3.6 The SLSC noted that the legislation proposed to be amended by the instrument includes: four Acts of Parliament; seven "pre-EU Exit" statutory instruments; 12 "EU Exit" statutory instruments that have been considered by the House during the last six months; and several items of retained EU legislation. The SLSC stated that given the number and significance of the Acts and instruments being amended, and of the policy area (financial services regulation) concerned, the House may wish to have the

opportunity to debate the instrument, and therefore the affirmative resolution procedure is appropriate.

- 3.7 As this instrument is now subject to the affirmative resolution procedure, we have taken the opportunity to add three minor amendments to paragraph 8(1) of the Schedule 3 to the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, to clarify that the Treasury's powers to determine the equivalence of the legal and supervisory requirements applying to regulated markets in a third country apply equally in relation to other trading venues, and to correct the number of the directive referred to in that paragraph. These new amendments are set out in regulation 16(17) of this instrument.

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)

- 3.8 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.9 The powers under which this instrument is made cover the entire United Kingdom (see section 2(2) of Schedule 2 to the European Communities Act 1972, and section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited by either 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 MP) has made the following statement regarding Human Rights:
- “In my view the provisions of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends several pieces of primary legislation, amends and revokes several pieces of secondary legislation, amends and revokes several pieces of retained EU law, and implements a number of transitional provisions, to address deficiencies from the withdrawal of the UK from the EU.
- 6.2 The instrument amends the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Income Tax Act 2007, the Corporation Tax Act 2009, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the Financial Services and Markets Act 2000 (Exemption) Order 2001, the Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004, the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013, the Payment to Treasury of Penalties (Enforcement Costs) Order 2013, the Small and Medium Sized Business (Credit Information) Regulations 2015, the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019, the Bank of England (Amendment) (EU Exit) Regulations 2018, the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018, the Markets in

Financial Instruments (Amendment) (EU Exit) Regulations 2018, the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018, The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019, the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019, the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) Regulations 2019, the Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019, the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 and the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.

6.3 Part 3 of this instrument revokes the European Cooperative Society Regulations 2006, the Recognised Auction Platforms Regulations 2011, and the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2012.

6.4 Part 4 of this instrument amends the following retained EU law:

- Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;
- Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;
- Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance;
- Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds;
- Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors;
- Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products;
- Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012.

6.5 Part 4 of this instrument revokes the following Regulations in retained EU law:

- Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society;

- Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001;
- Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism;
- Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board;
- Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;
- Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities;
- Regulation (EU) No 673/2014 of the European Central Bank of 2 June 2014 concerning the establishment of a Mediation Panel and its Rules of Procedure;
- Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010;
- Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees;
- Regulation (EU) 2015/534 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information; Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law;
- Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law;
- Regulation (EU) 2017/1538 of the European Central Bank of 25 August 2017 amending Regulation (EU) 2015/534 on reporting of supervisory financial information;
- Regulation (EU) 2017/1539 of the European Central Bank of 25 August 2017 laying down the date of application of Regulation (EU) 2017/1538 amending Regulation (EU) 2015/534 on reporting of supervisory financial information to less significant supervised entities which are subject to national accounting frameworks;
- Regulation (EU) 2018/1845 of the European Central Bank of 21 November 2018 on the exercise of the discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to the threshold for assessing the materiality of credit obligations past due.

6.6 Part 4 of the instrument revokes the following EU Level 2 regulations:

- Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014

of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund;

- Commission Delegated Regulation (EU) 2016/451 of 16 December 2015 laying down general principles and criteria for the investment strategy and rules for the administration of the Single Resolution Fund;
- Commission Delegated Regulation (EU) 2017/747 of 17 December 2015 supplementing Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to the criteria relating to the calculation of ex-ante contributions, and on the circumstances and conditions under which the payment of extraordinary ex-post contributions may be partially or entirely deferred;
- Commission Delegated Regulation (EU) 2017/2361 of 14 September 2017 on the final system of contributions to the administrative expenditures of the Single Resolution Board; Commission Implementing Regulation (EU) 2018/1889 of 4 December 2018 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulations (EU) No 575/2013 and (EU) No 648/2012 of the European Parliament and of the Council;
- Commission Implementing Regulation (EU) 2018/1627 of 9 October 2018 amending Implementing Regulation (EU) No 680/2014 as regards prudent valuation for supervisory reporting;
- Commission Implementing Regulation (EU) 2018/1889 of 4 December 2018 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulations (EU) No 575/2013 and (EU) No 648/2012 of the European Parliament and of the Council.

6.7 Part 4 of the instrument revokes the following EU Decisions:

- Council Implementing Decision of 16 December 2013 implementing Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;
- Council Implementing Decision of 11 February 2014 implementing Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;
- Council Implementing Decision of 19 December 2014 on the appointment of the Chair, the Vice-Chair and the further full-time members of the Single Resolution Board;
- Decision (EU) 2016/1507 of the European Parliament of 28 April 2016 on discharge in respect of the implementation of the budget of the European Banking Authority for the financial year 2014;
- Decision (EU) 2016/1509 of the European Parliament of 28 April 2016 on the closure of the accounts of the European Banking Authority for the financial year 2014;
- Council Decision (EU) 2016/228 of 14 July 2005 on the resolution procedure;

- Decision (EU) 2017/1654 of the European Parliament of 27 April 2017 on discharge in respect of the implementation of the budget of the European Banking Authority for the financial year 2015;
- Decision (EU) 2017/1656 of the European Parliament of 27 April 2017 on the closure of the accounts of the European Banking Authority for the financial year 2015;
- Council Implementing Decision (EU) 2017/2437 of 18 December 2017 on the renewal of the Chair of the Single Resolution Board;
- Council Implementing Decision (EU) 2018/463 of 19 March 2018 on the appointment of a member of the Single Resolution Board;
- Decision (EU) 2018/1361 of the European Parliament of 18 April 2018 on discharge in respect of the implementation of the budget of the European Banking Authority for the financial year 2016;
- Decision (EU) 2018/1363 of the European Parliament of 18 April 2018 on the closure of the accounts of the European Banking Authority for the financial year 2016;
- Decision (EU) 2018/1382 of the European Parliament of 18 April 2018 on discharge in respect of the implementation of the budget of the European Insurance and Occupational Pensions Authority for the financial year 2016;
- Decision (EU) 2018/1384 of the European Parliament of 18 April 2018 on the closure of the accounts of the European Insurance and Occupational Pensions Authority for the financial year 2016;
- Council Implementing Decision (EU) 2018/1958 of 6 December 2018 on the appointment of the ECB Supervisory Board.

6.8 Part 5 introduces transitional and saving provisions, modifying Part 7 of the Financial Services and Markets Act 2000, amending the Consumer Credit (Amendment) (EU Exit) Regulations 2018 and the Solvency 2 and Insurance (Amendments etc.) (EU Exit) Regulations 2019, and making additional transitional provision in relation to "qualifying EU provisions", the recognition of overseas investment exchanges, central securities depositories, and group supervision.

7. Policy background

What is being done and why?

7.1 The UK will leave the EU on 29 March 2019. The UK and EU negotiating teams have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. Therefore, should a deal be approved, the implementation period 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 an implementation period, common rules will continue to apply. The UK would continue to implement new EU law that comes into effect and the UK would continue to be treated as part of the EU's single market in financial services. This would 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 would 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 believes that there will be a deal and an implementation period in place, it must plan for all eventualities, including a ‘no deal’ scenario. 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 If the UK were to leave 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 third 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 third 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 instrument is part of a wider package of statutory instruments laid by HM Treasury from July 2018 onwards in order to ensure the UK continues to have a functioning financial regulatory framework after the UK leaves the EU. This particular instrument addresses errors and omissions in earlier instruments, and makes amendments that do not fall within the remit of changes made by other instruments, such as revocations of retained EU law that have no relevance in a UK-only context.

Primary legislation

- 7.10 Part 2 of the instrument makes the following minor and technical amendments to primary legislation:
- 7.11 Regulation 2 of this instrument omits sections 124B and 124C from the Insolvency Act 1986, to remove provision which relates to the winding up of a European Company or ‘Societas Europaea’ (SE), and a European Cooperative Society or ‘Societas Cooperativa Europaea’ (SCE). This is consequential on the revocation of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society by regulation 29(a) of this instrument (described in paragraph 2.34), and the amendment of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company Regulation which is to be contained within the proposed International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019.
- 7.12 Regulation 3 amends the Financial Services and Markets Act 2000 to omit references to “EEA AIFM” and “EEA authorisation”, as these references will be redundant after exit day.
- 7.13 Regulations 4 and 5 amend the Income Tax Act 2007 and the Corporation Tax Act 2009, to remove references to EEA central counterparties and EEA CSDs. These amendments are consequential on amendments made by the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1184) and the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 (laid in draft), which remove the definitions of “EEA central counterparty” and “EEA CSDs” from section 285 of the Financial Services and Markets Act 2000.

Secondary legislation

- 7.14 Part 3 of this instrument makes the following minor technical amendments to secondary legislation:
- 7.15 Regulation 6 makes minor technical amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/516). Sums held by lawyers in the course of their profession are not deposits under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 by virtue of Article 7 of the Order. At present, this exemption extends to European lawyers registered under the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) and the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (S.I. 2000/121). Those Regulations are being amended to provide for a temporary permissions regime allowing registered European lawyers to continue to practice until 11p.m. on 31st December 2020. The amendment being made aligns the exclusion

from regulation under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 with the temporary permission to 11 p.m. on 31st December 2020. This follows from the approach taken in the Services of Lawyers and Lawyers Practice (Revocation etc.) (EU Exit) Regulations 2019, and in the Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019.

- 7.16 Regulation 7 amends the Financial Services and Markets Act 2000 (Exemption) Order to insert an updated definition of "credit institution". The new definition is inserted to refer to the new definition of "qualifying credit institution" being inserted into the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, by the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.
- 7.17 Regulation 8 amends the definition of "credit institution" in the Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004 to remove a reference to EU law and insert a domestic definition, reflecting the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.
- 7.18 Regulation 9 omits the definition of "credit institution" from the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013. A new definition is being inserted into the Financial Services and Markets Act 2000 by the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, so a specific definition in this instrument is no longer required.
- 7.19 Regulation 10 amends the Payment to Treasury of Penalties (Enforcement Costs) Order 2013 to reflect the fact that the Auction Platform Regulations 2011 are being revoked and will therefore no longer be a Regulation to which Schedule 1ZA of FSMA applies (further explanation in paragraph 7.35 of this EM). A clarification has been included so that the FCA will be permitted to deduct their enforcement costs from any fines which the FCA have collected under the Auction Platform Regulations 2011 prior to exit-day.
- 7.20 Regulation 11 makes minor technical amendments to the Small and Medium Sized Business (Credit Information) Regulations 2015. The amendments remove the deficient provision that allows the Bank of England to provide information received from a designated credit reference agency to any person where such disclosure is in pursuance of an EU obligation.
- 7.21 Regulation 12 amends the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018. These amendments will correct deficiencies that arise as a result of the UK leaving the EU. For example, the definition of "third country" is amended to include EU Member States and references to EU law are amended to retained EU law. Regulation 4 of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, which designates the FCA as the competent authority, is omitted because the retained direct EU legislation itself is amended to provide that the FCA is the competent authority. This approach follows from the approach taken in the Benchmarks (Amendment) (EU Exit) Regulations 2019.

Amendments to financial services EU exit statutory instruments

- 7.22 In addition to the above amendments, Part 3 also makes the following amendments to other financial services EU exit statutory instruments, correcting errors identified in legislation after it was made, and making amendments to ensure consistency between EU exit instruments.

- 7.23 Regulation 13 makes minor technical amendments to the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 to:
- correct a drafting error, so that the "national private placement regime" for the marketing of third country funds applies to Gibraltar alternative investment funds (as well as UK alternative investment funds) that invest in another alternative investment fund which is either managed by a third country fund manager or is a third country fund;
 - clarify in what instance a third country fund manager may make use of the "third country passport" (not currently in force) to manage and market funds in the UK; and
 - ensure the FCA continues to receive information from UK fund managers on both the UK and EU alternative investment funds that they manage, which is necessary for their effective supervision.
- 7.24 Regulation 14 omits paragraph 4 of regulation 8 of the Bank of England (Amendment) (EU Exit) Regulations 2018. This is a duplicate provision which was made in error, as the relevant amendment is also made to section 82 of the Financial Services Act 2012 by the Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1285).
- 7.25 Regulation 15 corrects a minor drafting error in regulation 8(b)(ii) of the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018.
- 7.26 Regulation 16 amends the MiFI Regulations 2018. The amendments to the MiFI Regulations 2018 are required to ensure that the regulations deal with deficiencies in retained EU law and UK law after exit. New provisions have been included to establish that the transaction reporting obligation contained in the Markets in Financial Instruments Regulation (EU) No 600/2014 (MiFIR) (as amended by the MiFI Regulations 2018) will continue to apply to instruments which are traded on trading venues in Gibraltar (as was the case pre-exit day). This instrument also makes an amendment to clarify the position around an exemption from MiFIR which is available to certain types of energy products that must be physically settled, as well as recognising that an equivalence decision under Article 47 of MiFIR may also be provided pursuant to the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019, and clarifying that the Treasury's powers to make an equivalence decision in relation to a regulated market applies equally to other trading venues. Otherwise, the minor corrections and clarifications made to this instrument do not make broader changes to the policy intent of the MiFI Regulations 2018.
- 7.27 Regulation 17 revokes a provision of the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018, to ensure that an amendment is not made to s.48D of the Banking Act 2009 which is inconsistent with an amendment to be made by the laid Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019.
- 7.28 Regulation 18 amends the Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019 to correct a drafting error in those regulations by supplying a commencement date in regulation 1(2) of those regulations.
- 7.29 Regulation 19 amends the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 to reflect that MiFIR equivalence determinations may be

made under the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (as well as under Article 47 of MiFIR).

- 7.30 Regulation 20 amends the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 to:
- make a further change in line with the change contained in regulation 5(3)(b) of those regulations, to provide a consistent result;
 - clarify the meaning of terms in the transitional provision inserted as regulation 27 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;
 - clarify the differences for UK and third country systems in terms of the requirements contained in Schedule 1 to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;
 - insert further provisions in Part 4 of those regulations. These provide certainty that a system in the Temporary Designation Regime is to be treated the same as a system designated under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, for the purposes of certain sections of the Banking Act 2009.
- 7.31 Regulation 21 amends the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) Regulations 2019 to make minor technical amendments (inserting missing words) and to update the definition of “occupational pension scheme” so that it is clear it only includes pension schemes established in the UK.
- 7.32 Regulation 22 omits paragraphs (25) and (39) from regulation 11 of the Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019, because they made amendments to the Commission Delegated Regulation (EU) No 2015/35 of 10 October 2014 supplementing the Solvency 2 Directive, which will no longer be effective on exit day by reason of amendments made by Regulation (EU) 2017/2402 (the Securitisation Regulation), which came into force on 1 January 2019.
- 7.33 Regulation 23 omits Regulation 64 from the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019, because they made amendments to the Commission Delegated Regulation (EU) No 2015/35 supplementing Solvency 2 which will no longer be effective on exit day by reason of amendments made by the Securitisation Regulation, which came into force on 1 January 2019.
- 7.34 Regulation 24 makes minor amendments to the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019 to clarify that a direction making an equivalence determination under those Regulations ceases to have effect when it is replaced by regulations making the same equivalence determination, simplifying the legislative process.

Revocations of UK instruments

- 7.35 Regulation 25 in Part 3 of this instrument revokes the following UK instruments, as they will become redundant once the UK is no longer a member of the EU as these instruments implement EU law which is being revoked at exit day:
- The European Cooperative Society Regulations 2006, where the relevant EU law is revoked by this instrument (further detail in paragraph 7.44).

- The Recognised Auction Platforms Regulations 2011 and the Community Emissions Trading Scheme (Allocation of Allowances for Payment) Regulations 2012, where the relevant EU law is revoked by the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/107).

Amendments to retained EU law

- 7.36 Chapter 1 of Part 4 of this instrument makes amendments to several pieces of retained EU law to ensure consistency with other financial services EU exit instruments, described below.
- 7.37 Regulation 26 makes a minor amendment to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (known as 'EMIR') to substitute a cross-reference to the fines and periodic penalty payments that could be imposed by ESMA on trade repositories, for a reference to the FCA's new regime for imposing fines on trade repositories which replaces the ESMA regime (as provided for in Part 4 of the laid Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) Regulations 2019).
- 7.38 Regulation 27: Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 contains several references to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards. These references will no longer be appropriate or relevant after exit day because the international accounting standards referenced in that regulation will have been incorporated directly into UK law. Therefore, such cross-references to those standards need technical amendment such that they read as cross-references to the UK-adopted international accounting standards. Regulation 27 of this instrument makes that change.
- 7.39 Regulation 28 amends Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance to save and modify provisions deleted by Commission Delegated Regulation (EU) 2018/1221 of 1 June 2018 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings, which is necessary to ensure that the provisions in the Commission Delegated Regulation continue to have effect and are workable post-exit.
- 7.40 Regulation 29 amends Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds to ensure consistency with amendments made by the Securitisation (Amendment) (EU Exit) Regulations 2019 to Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012, which lays down a general framework for securitisation and creates a specific framework for simple, transparent and standardised securitisation.

- 7.41 Regulations 30 and 31: Commission Delegated Regulations (EU) 2017/2358 and 2017/2359 are retained EU law which supplement provision in UK law which implements the Insurance Distribution Directive (IDD). The proposed Insurance Distribution (Amendment) (EU Exit) Regulations 2019 fix a number of deficiencies in these two Commission Delegated Regulations. Regulations 30 and 31 of this instrument make further amendments to deal with deficiencies in the definitions of entities that are subject to the two Commission Delegated Regulations so that they work in the context of a UK IDD regime, including the 'temporary permissions regime' as set out in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I.2018/1149).
- 7.42 Regulation 32 amends the Securitisation Regulation, to save and modify provisions deleted by Commission Delegated Regulation (EU) 2018/1221 of 1 June 2018 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings, which is necessary to ensure that the provisions in the Commission Delegated Regulation continue to have effect and are workable post-exit.

Revocations of retained EU law

- 7.43 Chapter 2 of Part 4 of this instrument revokes several pieces of retained EU law as they will become redundant once the UK leaves the EU.
- 7.44 Regulation 33(a) revokes Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society because it is no longer appropriate to provide for the EU-wide regime for establishing such entities once the UK is no longer a member of the EU. As there are no UK-based European Cooperative Societies no transitional provisions are required.
- 7.45 Regulation 33(b) revokes the Cross-Border Payments Regulation (Regulation (EC) 924/2009) as it cannot logically be reduced to UK-only in scope. This is because it is concerned with making payments across national borders. The UK does not have any internal borders for payments, so it would not make sense to require harmonisation of charges for cross-border and intra-country payments.
- 7.46 Regulation 33(c) revokes Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism. This mechanism will no longer apply to the UK and is being revoked to avoid redundant legislation being retained in UK law.
- 7.47 Regulation 33 (d-n) revokes EU Regulations providing for the functions and administration of the European Central Bank in relation to combined supervision of banks in the eurozone. Much of this legislation does not apply to the United Kingdom as a result of the UK's opt out of the treaty provisions relating to the coordinated banking supervision in the eurozone. The revocation avoids redundant legislation being retained in UK law.
- 7.48 Regulation 34(a), (b), (c) and (d) revokes EU regulations providing for functions and administration of, and contributions to, the Single Resolution Fund. This Fund relates to the Single Resolution Mechanism. These EU Regulations are of no practical relevance to the UK because the UK chose not to participate in the Single Resolution Mechanism and so its institutions were not required to contribute to the Fund.

- 7.49 Regulation 34(e) and 34(f) revoke EU regulations conferring functions on the European Central Bank in relation to prudential supervision of credit institutions. These will not be relevant to the UK after exit day and therefore are being revoked.
- 7.50 Regulation 35 revokes EU Decisions providing for functions and administration of the European Central Bank, the Single Resolution Board and the European Insurance and Occupational Pensions Authority. These will no longer apply to the UK and are being revoked to avoid redundant legislation being retained in UK law.

Transitional and saving provisions

- 7.51 Part 5 of this instrument implements a number of transitional and saving provisions to address deficiencies that arise from the UK's withdrawal from the EU.
- 7.52 Regulation 36 makes a transitional provision in relation to insurance business transfer schemes under Part 7 of the Financial Services and Markets Act 2000. This transitional provision allows up to two years for the parties to obtain a court order sanctioning the transfer of insurance business, where that insurance business transfer scheme is already underway at exit day (under the pre-exit regime) and has met two conditions required to be considered sufficiently advanced. These conditions are that, prior to exit day the regulatory transaction fee has been paid to the PRA, and an independent expert has either been nominated or approved by the PRA to produce a scheme report into the transfer as part of the court process.
- 7.53 Regulation 37 makes transitional provision to ensure continuity of supervisory and enforcement powers when “qualifying EU provisions” become “qualifying provisions” after exit. “Qualifying EU provisions” are directly applicable provisions of EU law which are specified for the purposes of various provisions in FSMA. The effect of specifying EU provisions is to connect them to the operation of the relevant provisions in FSMA. For example, specifying directly applicable EU provisions for the purposes of Part 14 of FSMA enables the UK regulators to take disciplinary action, as provided for under Part 14, in relation to UK regulated entities that are in breach of the specified EU provisions. As legislation under the EUWA is being used to incorporate directly applicable EU provisions into UK law, transitional provision needs to be made so that the link between qualifying EU provisions and the relevant parts of FSMA continues to operate as intended once the directly applicable EU provisions become part of UK law.
- 7.54 Regulation 38 makes transitional provision waiving the requirement in FSMA that, when recognising an EEA overseas investment exchange, there must be co-operation arrangements in place with the exchange's home regulator, for a period of two years. This is required to give time for new co-operation agreements to be entered into after exit.
- 7.55 Regulation 39 makes transitional provision in relation to CSDs which are, before exit day, EEA or third country CSDs (as defined before exit day in section 285 of FSMA) while they transition to the new arrangements for third country CSDs post-exit. Transitional provision is made, firstly, for the purposes of section 886 of the Income Tax Act 2007, to maintain the same treatment for relevant CSDs after exit day as a consequence of the amendments made by regulation 4 of these Regulations and regulation 5(2) of the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019. Secondly, provision is made to ensure the continued involvement of relevant CSDs in engagement with regulators under the Investment Bank Special Administration Regulations 2011, as a

consequence of amendments made by regulations 5(2) and 24 of the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019. The transitional provisions apply until the procedure for seeking recognition as a third country CSD pursuant to the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1320) terminates.

- 7.56 Regulation 40 makes a transitional provision with reference to the Consumer Credit (Amendment) (EU Exit) Regulations 2018. These provisions relate to the amendments of the Consumer Credit (Disclosure of Information) Regulations 2010 made by regulation 3 of the Consumer Credit (Amendment) (EU Exit) Regulations 2018. Those amendments concern the manner in which certain information relating to credit agreements must be disclosed. The transitional provision temporarily allows disclosure obligations to be met using previous versions of the wording included on consumer credit information forms in order to smooth the transition as the UK leaves the EU.
- 7.57 Regulation 41 implements transitional provision in relation to group supervision within the Solvency 2 and Insurance (Amendments etc.) (EU Exit) Regulations 2019. These provisions introduce transitional arrangements that ensure that, where a group is supervised by an EEA supervisor, the relevant provisions that impose requirements on the PRA as a group supervisor do not apply for a period of two years after exit day.

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.

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. The financial services EU exit instruments that are amended under this instrument have been published and laid in draft beginning in July 2018. This instrument only makes minor amendments, to ensure a coherent and consistent regulatory regime on exit.

11. Guidance

- 11.1 No further guidance is being published alongside this instrument

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is that some of the instruments being amended impact on the UK financial services regulators (the Bank of England/Prudential Regulation Authority, the Financial Conduct Authority and the Payment Systems Regulator). Impact assessments for the individual instruments being amended by this instrument have been published on legislation.gov.uk.

12.3 An Impact Assessment has not been prepared for this instrument because in line with Better Regulation guidance, HM Treasury considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de-minimis impact assessment has been carried out.

13. Regulating small business

13.1 The legislation applies to small businesses, however it does not introduce new regulatory requirements for small businesses, but merely ensures a consistent and coherent regulatory regime.

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 Rachel Mumford at HM Treasury Telephone: 020 7270 5636 or email: Rachel.Mumford@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 Katie Fisher, Deputy Director for Financial Services EU Exit Domestic Preparation at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary to the Treasury 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 MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because: it follows the approach taken in previous instruments to fix deficiencies that arise as a result of the UK leaving the EU. This instrument makes amendments and corrections to ensure that UK financial markets continue to operate in a fair, stable and transparent manner post EU withdrawal. Additionally, this instrument makes the appropriate amendments and revocations to EU legislation that will become redundant once the UK is no longer a member of the EU.

2. Good reasons

- 2.1 The Economic Secretary to the Treasury, John Glen MP, 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 are: the approach taken with this instrument is consistent with the approach previously taken in earlier instruments, and maintains the intended effect of those instruments. The corrections made to the instruments are necessary to ensure that legislation operates effectively once the UK leaves the EU, and the amendments go no further than what is required for this purpose.

3. Equalities

- 3.1 The Economic Secretary to the Treasury, John Glen MP has made the following statement(s):

“The draft 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 MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, John Glen MP, Economic Secretary to the Treasury, 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.