EXPLANATORY MEMORANDUM TO

THE OVER THE COUNTER DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES (AMENDMENT, ETC., AND TRANSITIONAL PROVISION) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instrument.

2. Purpose of the instrument

2.1 This instrument is being made to address deficiencies in retained EU law in the European Market Infrastructure Regulation (EU) No. 648/2012 (EMIR), as amended by Regulation (EU) No. 2019/834 (REFIT). EMIR regulates over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories (TRs). REFIT introduces targeted amendments to ensure EMIR requirements are applied more proportionately to non-financial counterparties, small financial counterparties and pension funds. REFIT came into force on 17 June 2019. This instrument ensures that EMIR and related legislation will continue to operate effectively at the point at which the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 Central Counterparties (CCPs) are financial institutions which firms use to reduce the risk arising from some trades, including derivatives. The CCP guarantees that transactions will be honoured if a party defaults. They do this by standing between the parties of a trade, becoming the buyer to every seller and the seller to every buyer. CCPs can only be used by clearing members (whose creditworthiness the CCP monitors), who are typically large international institutions. Clearing members can then offer clearing services to individual clients.

2.3 In 2009 the G20 made a commitment to ensure that more derivative trades would take place through CCP clearing. EMIR implemented this commitment for the EU and mandates the use of CCPs for certain OTC derivative transactions (derivatives traded directly between two parties).

2.4 In 2015-16, EMIR was reviewed by the European Commission. It proposed a number of targeted changes to EMIR to reduce burdens on business. This resulted in REFIT, which was approved by the European Parliament and the Council and published in the Official Journal of the European Union on 28th of May 2019. It came into force on 17 June 2019.

2.5 The key changes introduced by REFIT are: making some of the EMIR requirements for firms trading in derivatives simpler and more proportionate by introducing new exemptions from the clearing and reporting obligations; extending the clearing

exemption for pension funds to avoid disproportionate costs falling on those funds; and establishing an ability for the relevant authority to temporarily suspend the clearing obligation in order to support the smooth functioning of markets.

Why is it being changed?

2.6 To prepare for the UK's withdrawal from the EU on 29 March 2019, Parliament had approved EU Exit instruments to ensure that EMIR would continue to operate effectively in the UK after exit, including in the scenario under which the UK left the EU without a deal. The principal EU Exit instruments used to fix deficiencies for EMIR are: the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184); the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318) and the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2019 (S.I. 2019/335) (henceforth this final instrument will be referred to as "the EMIR 2019 SI").

2.7 Section 3 of the EU (Withdrawal) Act 2018 (EUWA) operates to ensure that all directly applicable EU law, as that law stands on exit day, will form part of UK law at exit ("retained EU law" under the EUWA). Since REFIT has now amended EMIR, this updated version of EMIR will form part of UK law at exit. Further deficiency fixes are therefore necessary to ensure that EMIR will continue to operate effectively in the UK after exit.

2.8 Some provisions of the REFIT amendment to EMIR do not become applicable until after 31 October 2019, and these provisions will therefore not form part of retained EU law, and therefore not form part of UK law on exit day, if the UK leaves the EU on 31 October 2019. Therefore, this instrument does not make amendments to those provisions.

What will it now do?

2.9 This instrument ensures that EMIR, as it will be applicable in EU law on 31 October, continues to function effectively in the UK after exit.

2.10 Part 2 of this instrument makes a minor amendment to the definition of EMIR in Part 18 of the Financial Services and Markets Act 2000 so that it refers to EMIR as it has been amended by REFIT.

2.11 Part 3 of this instrument makes changes to a number of EU Exit instruments made under section 8 of the EUWA as they amended EMIR and related legislation. These instruments addressed deficiencies in EMIR arising as a result of exit, and some updates are necessary to ensure the deficiency fixes now operate effectively with the changes introduced to EMIR by REFIT.

2.12 Part 4 of this instrument addresses deficiencies in EMIR, as amended by REFIT, and related UK legislation to ensure that the UK continues to have an effective regulatory framework for OTC derivatives and CCPs after the UK has left the EU. The principal deficiency fixes included in Part 4 are explained in sub-paragraphs 2.13 to 2.21 below.

Transfer of functions

2.13 REFIT allocates certain new functions to EU authorities, principally the European Securities and Markets Authority (ESMA). These functions would no longer apply in the UK after exit. This instrument therefore transfers the functions of ESMA,

including functions for new Binding Technical Standards (BTS) in relation to the reporting obligation in Article 9 EMIR, to the appropriate UK financial regulator. The functions of the European Commission are transferred to HM Treasury, with one exception, the clearing obligation suspension power, which is explained in paragraphs 2.14 to 2.16 below.

Clearing obligation suspension

2.14 Under certain circumstances, REFIT allows ESMA to request that the European Commission suspends the clearing obligation for specific classes of OTC derivatives or for a specific type of counterparty. For example, if a clearing member defaults, it could prevent a significant number of firms (i.e. the clearing member's clients) from clearing their trades through the CCP, resulting in market disruption. Suspending the obligation to use a clearing service provider in this scenario would enable the affected firms to continue trading without being in breach of the law for a period while they found a replacement clearing services provider and agreed the necessary legal documentation with that new provider.

2.15 Regulation 28 of this instrument substitutes a new Article 6a in EMIR relating to the suspension of the clearing obligation. This defines the conditions under which the clearing obligation can be suspended. It also ensures the clearing suspension can be deployed effectively in the UK by transferring the function from the Commission to the Bank of England (the Bank). This is consistent with the Bank's existing responsibilities for safeguarding financial stability in general, and in particular for supervising CCPs. HM Treasury would be required to give its consent to a Bank decision to suspend the clearing obligation.

2.16 EMIR, as amended by REFIT, allows the Commission to suspend the clearing obligation for up to twelve months in three-month increments. Paragraph 4 of the new Article 6a allows the Bank to suspend the obligation for up to 12 months. This is appropriate in the UK context, reflecting the size and number of globally significant clearing members and clients, that are subject to the clearing obligation, operating through UK CCPs. It will enable the Bank to provide additional flexibility and greater certainty for affected firms, CCPs and exchanges.

2.17 Article 28 of the Markets in Financial Instruments Regulation No. 600/2014 (MiFIR), requires that designated derivative products are traded on a trading venue, a requirement known as the 'trading obligation'. The trading obligation may only apply to products where a clearing obligation also exists. Most trading venues in the UK include the requirement for derivatives to be cleared on a CCP in their own rulebook. Any suspension of the clearing obligation that impacts classes of derivatives with a trading obligation must result in the trading obligation also being suspended to avoid a conflict. Paragraph 3 of the new Article 6a of EMIR ensures this will happen automatically. Given the Financial Conduct Authority (FCA) will be responsible for the MiFIR trading obligation in the UK, the Bank must notify the FCA of its intention to make a clearing obligation suspension.

Pension fund clearing exemption

2.18 Before its amendment by REFIT, EMIR provided an exemption from the clearing obligation for European Economic Area (EEA) pension funds. This exemption was necessary as there is currently no appropriate technical solution for pension funds to clear all transactions covered by the clearing obligation through CCPs (and in

particular to comply with the requirements for posting collateral) without imposing disproportionate costs on funds and, consequently, on pension fund members. This would be particularly problematic for defined benefit pension funds, of which the UK has a significant number relative to other EU member states.

2.19 Although the exemption in EMIR expired on 16th August 2018, ESMA had issued a statement that the clearing obligation should not be enforced until the changes in REFIT came into force. REFIT retroactively extended the exemption for EEA pension scheme arrangements (PSAs) to 18th June 2021, with an option for the Commission to further extend the exemption twice by one-year increments. This means the exemption will last somewhere between two and four years.

2.20 Regulation 33 of this instrument maintains the pension fund exemption, for both UK and EEA funds, after exit. Given the importance to UK pension provision of funds that would be adversely affected by the clearing obligation, this instrument provides the pension fund sector with greater certainty by setting the exemption to expire in the UK on 18th June 2023. This instrument also empowers HM Treasury to further extend the exemption by up to two years at a time if no appropriate technical solution for pension fund clearing has been found.[1]

Intragroup transactions

2.21 Regulation 13 of this instrument corrects an error in the EMIR 2019 SI. EMIR permits an intragroup transaction (a transaction between counterparties that are part of the same corporate group) to be exempt from clearing and margin obligations. For a group including a counterparty located in a third country, the Commission must have made an implementing act under Article 13 to certify that the legal supervisory and enforcement arrangements of that third country are equivalent to the provisions in EMIR which relate to clearing (Articles 4 and 10), risk-mitigation (Article 11) and reporting (Article 9). After exit, HM Treasury will be responsible for this function by making regulations. Article 3, as amended by the EMIR 2019 SI, provided that the exemption could only apply in the UK after exit if both the Commission has made an implementing act and the Treasury has made regulations in respect of the relevant third country. However, it is not possible to meet both of these conditions. Regulation 13 of this instrument therefore amends the EMIR 2019 SI to provide that either the Commission has made an implementing act under Article 13 of EMIR before exit day or the Treasury has made regulations under Article 13 in respect of that third country after exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 As outlined above, regulation 13 of this instrument corrects an error in the EMIR 2019 SI. In accordance with the requirement stated in paragraph 4.7.6 of the Statutory Instrument Practice, HM Treasury has consulted with the SI Registrar. As this

[1] For information, HM Treasury confirmed on 21st February 2019, that the UK PSA exemption would continue to apply to both UK and EEA PSAs. If this were not the case, UK counterparties which have entered OTC derivative contracts with EEA PSAs would be required to clear trades in a CCP even if those EEA PSAs were exempt from clearing under EU law. Regulation 34 of this instrument pertains to this aspect of the of this instrument: https://www.gov.uk/government/publications/emir-pension-scheme-arrangements-clearing-exemption/emir-pension-scheme-arrangements-clearing-exemption

correction represents only a small part of this instrument the procedure for free issue has not been applied.

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 whole of the UK.

4.2 The territorial application of this instrument is the whole of the UK.

5. European Convention on Human Rights

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

"In my view the provisions of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends EMIR as that Regulation will be retained EU law by virtue of section 3 of the EUWA. This is necessary as EMIR has been updated by REFIT, introducing a new set of provisions which must be amended to operate effectively in the UK when the UK is no longer part of the EU.

6.2 There have been a number of instruments made under section 8 of the EUWA which have made amendments to EMIR to ensure it works in a UK context after EU withdrawal. This instrument amends those instruments to ensure they continue to operate effectively after exit. This includes: the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115); the Central Counterparties (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1184); the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2019/1318); the Over the Counter Derivatives; Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335); the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/541); the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657); the Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660); the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulation 2019 (S.I. 2019/681); the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685); and the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710).

6.3 Amendments are also made to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (No. 2001/554) and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419) using powers conferred by section 2(2) of the European Communities Act 1972 to update

references to EU law in UK legislation. Section 313 of the Financial Services and Markets Act 2000 is also amended by this instrument under section 8 of the EUWA, to update the definition of the EMIR regulation so it is up to date on exit day for the purposes of regulation 2 of S.I 2013/504 as amended by regulation 2 of S.I. 2019/335.

7. Policy background

What is being done and why?

7.1 The UK and EU negotiating teams have agreed the terms of an implementation period that will start on exit day and last until 31 December 2020. 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 UK and EU negotiating teams have agreed a deal and an implementation period, the government must continue to plan for all eventualities, including a 'no deal' scenario. Since July 2018, HM Treasury has been using the powers in 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 EUWA powers 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. HM Treasury has laid a package of EU Exit statutory instruments, making these changes. The majority of these instruments have now been made, and would come in to force on exit day, if the UK did not enter an implementation period.

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 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 being laid by HM Treasury from July 2018 onwards. Parliament had approved all of the legislative amendments necessary to ensure a functioning financial services regulatory regime in time for exit on 29 March 2019. Since the extension to the Article 50 process, new EU financial services legislation will become operative between 29 March and 31 October 2019 and will form part of retained EU law under the EUWA on exit day. Further statutory instruments under the EUWA are therefore necessary to ensure the UK's financial services regulatory regime remains prepared for exit.

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

8.1 This instrument is being made using the power in section 8 of the EUWA in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Regulations 3 and 4 are made using powers conferred by section 2(2) of the European Communities Act 1972 to make amendments to UK law.

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 this instrument, but has engaged extensively with the Bank and the FCA during the drafting process. HM Treasury has

engaged with relevant stakeholders on its approach to Financial Services legislation under the EUWA, including on this instrument, in order to familiarise them with the legislation ahead of laying.

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

12.1 This instrument does not make changes to the regulatory framework which was updated in REFIT, such as clearing thresholds, or risk mitigation techniques. For this reason, affected business in the UK will only be faced with needing to familiarise themselves with this instrument.

12.2 There is no material impact on charities or voluntary bodies.

12.3 This instrument has an impact on the public sector as, after the UK leaves the EU, the Bank will take on responsibility for taking clearing obligation suspension decisions. The Bank and the FCA will also take on responsibility for some Binding Technical Standards made under EMIR. The impact on these regulators will be marginal as these new functions are consistent with the regulatory responsibilities these regulators currently have in the UK.

12.4 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 activities that are undertaken by small businesses. The population of firms that are required to comply with the EMIR requirements on OTC derivatives – for example investment companies, insurance companies, credit institutions and banks – will include some small businesses.

13.2 The primary aim of REFIT regulation is to introduce or maintain exemptions for smaller business from EMIR requirements. This instrument does not impact on this objective. This instrument makes it less likely that UK PSAs will face additional and hard to bare costs in the future.

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 Tim Garbutt at HM Treasury (Telephone: 020 7270 5601 or email: Tim.Garbutt@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Tom Duggan, Deputy Director for Securities, Markets and Banking at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen, Economic Secretary to the HM 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
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 HM Treasury, John Glen, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 do no more than is appropriate."

1.2 This is the case because: the instrument does only what is necessary to ensure that the relevant legislation relating to over-the-counter derivatives and central counterparties continues to operate effectively at the point at which the UK leaves the EU. This can only be achieved through making the changes to EMIR, as amended by REFIT, and the associated legislation contained in this instrument.

2. Good reasons

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

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action."

2.2 These are: if the government were not to proceed with this legislation, then aspects of the UK's regulatory regime for over-the-counter derivatives and central counterparties would become legally inoperable. This could affect UK market confidence and create financial instability. The UK would also risk not meeting international commitments made as part of its membership of the G20.

3. Equalities

3.1 The Economic Secretary to the HM Treasury, John Glen, 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.

5. Legislative sub-delegation

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

> "In my view it is appropriate to create relevant sub-delegated powers in the draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019."

5.2 The instrument transfers powers to the Bank of England and FCA to make binding technical standards. This is appropriate because the relevant regulator will have the necessary technical knowledge to make assessments of certain matters contained within EMIR, as amended by REFIT, and will ensure that EU-derived technical standards for which they are responsible will operate effectively after exit, subject to mechanisms to ensure robust HM Treasury oversight.

5.3 The instrument also transfers a power to the Bank of England from the European Commission to suspend the clearing obligation and, if required, the associated trading obligation, as detailed in sub-paragraphs 2.14 to 2.17 of the explanatory memorandum. This is consistent with the Bank's responsibility for financial stability within the UK regulatory framework and the stable operation of CCPs in particular.