EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES (MISCELLANEOUS) (AMENDMENT) (EU EXIT) (NO. 3) REGULATIONS 2019

2019 No. 1390

1. Introduction

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

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 to 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). It also makes amendments to a number of financial services EU exit statutory instruments, correcting minor errors identified in legislation after it was laid before Parliament, and updating certain references to account for the Article 50 process extension. The amendments below are ordered sequentially as they appear in the instrument, except where common subject matter means it makes more sense to combine the descriptions of the amendments to be made out of sequence.

Explanations - What did any relevant EU or UK law do before exit day and how is it being changed?

Amendment of the Criminal Justice Act 1993

2.2 Part 5 of the Criminal Justice Act 1993 (CJA) establishes the offence of insider dealing. It is an offence for an individual or professional intermediary in the UK, who has information as an insider, to deal on a "regulated market" in securities whose price would be significantly affected if the inside information were made public. It is also an offence to encourage insider dealing, and to disclose inside information. The Insider Dealing (Securities and Regulated Markets) Order 1994 (S.I. 1994/187) specifies which markets are a "regulated market" for the purposes of the CJA offences. The list of markets designated as a "regulated market" will continue to include Gibraltar and European Economic Area (EEA) markets after exit.

2.3 Schedule 1 to the CJA sets out special defences for insider dealing. Paragraph 5 of the Schedule provides that an act is not an offence if it is in accordance with UK legislation on buy-back arrangements (when a company buys back some of its outstanding shares) and stabilisation arrangements (when a credit institution or investment firm purchases securities exclusively for supporting the market price of those securities for a predetermined period of time) for transactions taking place on a trading venue in the UK.

2.4 The requirements on buy-back and stabilisation arrangements are derived from the Market Abuse Regulation ((EU) No 596/2014) (MAR) which applies across the EEA.

Once the UK has left the EU, the UK's retained and amended version of MAR will apply to the UK only. In order to ensure that the CJA defences for insider dealing continue to work as intended after exit in relation to regulated markets outside of the UK, regulation 2 of this instrument extends the defences to include buy-back and stabilisation arrangements which take place on a trading venue in Gibraltar or in the EEA. This means a UK individual or professional intermediary will not be guilty of insider dealing if their actions conform with Article 5 of MAR or its equivalent, or any other applicable law, in those territories. This amendment follows on from the approach to amending the UK's retained version of MAR approved by Parliament in the Market Abuse (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/310).

Amendment of the Insider Dealing (Securities and Regulated Markets) Order 1994

2.5 The Insider Dealing (Securities and Regulated Markets) Order 1994 sets out conditions for the securities to which the insider dealing provisions of the CJA apply. Regulation 3 of this SI amends the territorial scope of the Order to ensure that, once the UK has left the EU and the EEA, the UK and Gibraltar remain in scope of the CJA provisions on insider dealing. This amendment follows on from the approach to amending the UK's retained version of MAR approved by Parliament in the Market Abuse (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/310).

Amendment of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 and the Data Reporting Services Regulations 2017

2.6 The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701) and the Data Reporting Services Regulations 2017 (S.I. 2017/699) (here both are referred to as "the 2017 Regulations") rely on references to relevant provisions in EU legislation. The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403) ("the UK MiFI Regulations") inserted provisions into the 2017 Regulations so that those references would be treated as references to the EU legislation as it had effect on the date on which the UK MiFI Regulations were made. Following the change of exit day to 31 October, it is necessary to update these references further to ensure that any amendments to EU legislation before the revised exit day are taken into account. Regulations 4 and 5 of this instrument do this by providing that references to EU legislation are to EU legislation as it will form part of domestic UK law at exit under section 3 of the EUWA.

Amendment of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019

2.7 To ensure that the draft Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019, when made, are commenced at the appropriate time following the extension of the Article 50 process, regulation 6 of this instrument updates the commencement date of these Regulations to exit day.

Amendment to the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 and Commission Implementing Decision (EU) 2019/541

2.8 The EU's Markets in Financial Instruments Regulation (Regulation (EU) No. 600/2014) (MiFIR) exempts members of the European System of Central Banks (ESCB) from certain requirements of MiFIR. At exit, the UK's retained and amended

version of MiFIR will maintain this exemption for members of the ESCB. However, this exemption will not cover the central banks of the EEA states of Norway and Iceland (the central banks of Switzerland and Lichtenstein being covered by a separate exemption that will form part of retained EU law on exit day). To ensure that the UK is able to extend this exemption to the central banks of the relevant EEA states immediately on exit day (meeting the Government's policy of maintaining the existing relationship with the EEA wherever possible), regulation 7 of this instrument amends the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541), enabling HM Treasury to grant the specified MiFIR exemptions to the relevant EEA central banks by way of ministerial direction.

2.9 Regulation 16 of this instrument amends the Commission Implementing Decision (EU) 2019/541, which determines that the regulatory and supervisory framework for trading venues in Singapore is equivalent to the EU's framework for the derivatives trading obligation within MiFIR. This decision was published on 2 April 2019, after the Equivalence Regulations had been made. The decision is amended to replace a reference to the Markets in Financial Instruments Directive (Directive 2014/65/EU) with a reference to the UK law that implements the Directive, and to remove a requirement to review the decision as this requirement relates to the Commission's functions in maintaining and reviewing equivalence decisions and will be redundant in UK law.

Amendment of the Financial Regulators' Powers (Technical Standards etc.) (Amendment) (EU Exit) Regulations 2018

2.10 Regulation 8 of this instrument will ensure that recently adopted EU Binding Technical Standards (BTS), which will form part of retained EU law at exit, continue to operate effectively after the UK has left the EU. Regulation 8 achieves this by amending the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115). The Regulations give the UK financial services regulators powers to fix deficiencies in BTS so that they operate effectively in UK law from exit day. Regulation 8 adds to the Schedule to the Regulations new BTS adopted under: the Fourth Money Laundering Directive (Directive (EU) 2015/849); the Payment Services Directive (Directive (EU) 2015/2366); the Securities Financing Transactions Regulation (Regulation (EU) 2015/2365); the Securitisation Regulation (Regulation (EU) 2017/2402); and the Bank Recovery and Resolution Directive (Directive 2014/59/EU).

Amendments to the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

2.11 The EU's revised Markets in Financial Instruments Directive (Directive 2014/65/EU) and the Markets in Financial Instruments Regulation (Regulation (EU) No. 600/2014) (often collectively referred to as "MiFID 2") regulate the buying, selling and organised trading of financial instruments. The UK MiFI Regulations amend MiFID 2 as it will form part of UK law at exit.

2.12 MiFID 2 introduced the concept of a systematic internaliser, which is an investment firm that meets client orders to buy or sell financial instruments from its own capital, rather than directing orders through a regulated trading venue that is subject to transparency requirements. When such business reaches significant scale, the firm is designated a systemic internaliser and its systemic internaliser trades are subject to

transparency requirements. For the purposes of compliance with MiFID 2's share trading obligation (which requires certain types of trade to take place on specified regulated venues), the trading of certain shares may take place through EU systemic internalisers. After exit, the share trading obligation, as it will operate in a standalone UK regime outside of the EU, should only permit relevant trades through UK systemic internalisers. As drafted, regulation 28(10) of the UK MiFI Regulations is ambiguous and could be read as permitting trades on both UK and EU systemic internalisers. Regulation 9 of this instrument makes a clarificatory amendment to regulation 28(10) to ensure that the UK share trading obligation requirements can be met through trades on UK, but not EU, systemic internalisers.

2.13 Since the UK MiFI Regulations were made, the European Commission has introduced measures to further promote the use of Small-Medium Sized Enterprise (SME) growth markets. As part of this, the definition of a non-equity SME issuer in the MiFID 2 Delegated Regulation (Regulation (EU) 2017/565) has been revised to make it easier for Multilateral Trading Facilities (MTFs) providing non-equity finance for SMEs to register as SME growth markets. This should enable a greater number of MTFs to take advantage of the more proportionate regulation applying to SME growth markets, which in turn will benefit the SMEs that rely on these MTFs to raise finance. Regulation 9 of this instrument also updates the UK MiFI Regulations so that the new definition of a non-equity SME issuer will work effectively in UK law after exit. References to trading venues in the EU are replaced with references to UK trading venues, a reference to "the competent authority" is changed to the "FCA", and a reference to MiFID 2 is replaced with a reference to the UK law that implements MiFID 2.

Amendment of the Money Market Funds (Amendment) (EU Exit) Regulations 2019

2.14 An important element of the Government's EU exit preparations for financial services is the "Temporary Marketing Permissions Regime" (TMPR) for EU and EEA investment funds, including EU Money Market Funds (MMFs). This will allow EU MMFs that currently market to UK investors to continue to do so in a similar manner for a temporary period after exit day. After the period ends, those EU MMFs will be able to gain recognition under existing domestic frameworks to continue to market in the UK.

2.15 In the Money Market Funds (Amendment) (EU Exit) Regulations 2019 (S.I 2019/394) a drafting error meant that EU MMFs that gain recognition under existing domestic frameworks after the TMPR would not be able to use the designation "MMF". Regulation 10 of this instrument corrects this so that EU MMFs that exit the TMPR and subsequently obtain UK recognition will be able to continue to market to UK investors and label themselves as "MMFs".

Amendment of the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019

2.16 Regulation 8(3) of the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/407) transfers the European Insurance and Occupational Pensions Authority function to produce technical information on the 'risk free rate' to the Prudential Regulation Authority (PRA). The technical information is used by insurance and reinsurance firms to value their liabilities. Regulation 8(3) obliged the PRA to begin publishing technical information on 10 April 2019. Following the extension of the Article 50 process, commencement of the PRA's new function will

need to be changed so that the function commences on an appropriate date after the UK has left the EU. Regulation 11(2) of this instrument amends the commencement date so that the PRA will be obliged to publish technical information by the 8th working day of the month that follows the end of each quarter, beginning with the quarter which ends after the UK has left the EU.

2.17 The EUWA incorporates all directly applicable EU regulation into UK law and preserves UK legislation which has been used to implement EU law, to form retained EU law at exit. EU directives do not automatically become part of retained EU law under the Act, but it is sometimes necessary to bring certain provisions from directives into UK law to address deficiencies. Regulation 11(3) of this instrument incorporates several definitions from the Solvency 2 Directive (Directive 2009/138/EC) to ensure that the Solvency 2 Delegated Regulation (Regulation (EU) 2015/35) will operate effectively in UK law after exit. In incorporating these definitions into the Solvency 2 Delegated Regulation, they have been amended to reflect the scope of UK Solvency 2 legislation after exit, which will operate as a stand-alone regulatory regime outside of the EU. The incorporated definitions apply to the expressions "insurance undertaking", "reinsurance undertaking" and "supervisory authority". Regulation 11(3) also replaces references in the Solvency 2 Delegated Regulation to EU international accounting standards with references to UK adopted international accounting standards.

Amendment of the Securitisation (Amendment) (EU Exit) Regulations 2019

2.18 Regulation 14 of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335) ("the EMIR Exit Regulations") fixes deficiencies in the EU regulation of trade repositories as it will form part of UK law at exit. A trade repository is an entity designed to improve transparency for derivative transactions by compiling and storing transaction data in a continually updated database. The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660) ("the Securitisation Exit Regulations") applies some of the provisions of the EMIR Exit Regulations, with modifications, to the regulation of trade repositories used for securitisations. The Securitisation Exit Regulations apply these provisions by inserting a new Article 15 in the Securitisation Regulation (Regulation (EU) 2017/2402), as it will form part of UK law at exit. Article 15 makes reference to paragraph numbers in the EMIR Exit SI which were subsequently changed so the references do not work as intended, and the disapplication of two interpretation provisions in the EMIR Exit Regulations was omitted. Regulation 12 of this instrument corrects these errors.

Amendment of the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019

2.19 Regulation 13 of this instrument makes a minor correction to the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/681) ("the 2019 Regulations"). The 2019 Regulations fix deficiencies in UK primary and secondary legislation that deal with the protection and disclosure of confidential information held by UK regulatory bodies. Regulation 6(2)(b) amended paragraph 11, Schedule 3 to the Electronic Money Regulations 2011 (S.I. 2011/99), which currently includes an out of date reference to the "Department of Enterprise Trade and Investment in Northern

Ireland". The title of the Department was changed in 2016, so this instrument now updates the reference so it refers to the Department's correct title, which is the "Department for the Economy in Northern Ireland".

Amendment of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

2.20 The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1010) introduced a transitional provision in the Consumer Credit (Disclosure of Information) Regulations 2010 (S.I. 2010/1013) concerning the way certain information relating to credit agreements must be disclosed. This would mean disclosure obligations could be met using previous versions of the wording included on consumer credit information forms for a temporary period after exit day. However, following the Article 50 extension, the duration of this transitional provision needs to be updated. Regulation 14 of this SI therefore updates the length of the transitional to ensure that it remains in place for five months from exit day.

Revocation of Commission Delegated Regulation (EU) 2019/360

2.21 The European Supervisory Authorities (ESAs) are regulatory agencies established in 2010 to help facilitate the development and convergence of financial services regulation and supervision across the EU. The ESAs operate as part of the EU's joint regulatory framework for financial services. Once the UK has left the EU, the UK will be outside of this framework and the ESAs will no longer carry out their functions in relation to the UK. EU legislation relating to the operation of the ESAs will be redundant in the UK's post-exit regulatory regime. HM Treasury is therefore using statutory instruments under the EUWA to revoke any such legislation that would become part of retained EU law at exit. Commission Delegated Regulation 2019/360 deals with registration fees that the European Securities and Markets Authority (ESMA) may charge trade repositories for registration applications. This Delegated Regulation is revoked by regulation 15 of this instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 6 of this instrument amends the commencement date of the draft Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019, which has been approved by both Houses but not yet been made. If approved, this instrument will be made after the aforementioned Regulations have been made.

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.

3.3 The powers under which this instrument is made cover the entire United Kingdom (section 2(2) of the European Communities Act 1972, section 349(1)(b) of the Financial Services and Markets Act 2000, and sections 8(1) and 23(1) of, and paragraph 1(1) of Schedule 4 to and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited by those Acts or by this 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) (No. 3) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends primary and secondary legislation, and amends and revokes parts of retained EU law to address deficiencies arising from the withdrawal of the UK from the EU.

6.2 Part 2 of the instrument amends the Criminal Justice Act 1993. Part 3 of the instrument amends: the Insider Dealing (Securities and Regulated Markets) Order 1994; the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017; the Data Reporting Services Regulations 2017; the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019; the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019; the Financial Regulators' Powers (Technical Standards etc.) (Amendment) (EU Exit) Regulations 2018; the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018; the Money Market Funds (Amendment) (EU Exit) Regulations 2019; the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019; the Securitisation (Amendment) (EU Exit) Regulations 2019; the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019; and the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019.

6.3 Part 4 of the instrument revokes Commission Delegated Regulation (EU) 2019/360 and amends Commission Implementing Decision (EU) 2019/541.

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 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 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 the European Union

8.1 This instrument is being made using the powers conferred by section 2(2) of the European Communities Act 1972, section 349(1)(b) of the Financial Services and Markets Act 2000, and by sections 8(1) and 23(1) of, and paragraph 1(1) of Schedule 4 to and paragraph 21 of Schedule 7 to, 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 and 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, apart from those that have been deemed to be de minimis.

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 Richard Lowe-Lauri at HM Treasury (Telephone: 020 7270 5423 or email: richard.lowe-lauri@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Richard Knox, Director for Financial Services 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) (No. 3) 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 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.

5. Legislative sub-delegation

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

5.2 "In my view it is appropriate to extend the relevant sub-delegated power in the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018, to cover the newly adopted Binding Technical Standards set out in regulation 8 of this instrument. This will give UK regulators the responsibility of ensuring that the full set of EU-derived technical standards operate effectively after exit from the European Union. It is necessary for the regulators to perform this task, given that the required corrections for BTS and regulator rules will be of a highly technical nature. This sub-delegation is also appropriate as the amendments needed to correct deficiencies in BTS will be aligned with the changes that Parliament has approved to EU Level 1 legislation."

5.3 "In my view, it is also appropriate to extend the ministerial power of direction in the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019, to include the power to extend the relevant central bank exemptions provided for in the EU's Markets in Financial Instruments Regulation (Regulation (EU) No. 600/2014), as it will for part of UK law at exit. This will enable HM Treasury to put in place the relevant exemptions for EEA central banks to take effect from exit day, if needed."