

**EXPLANATORY MEMORANDUM TO**  
**THE MARKET ABUSE (AMENDMENT) (EU EXIT) REGULATIONS**

**2018 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Act.

**2. Purpose of the instrument**

- 2.1 This instrument is being made in order to address deficiencies in retained EU law in relation to market abuse arising from the withdrawal of the United Kingdom (UK) from the European Union (EU). This instrument amends retained EU law relating to market abuse, including the EU Market Abuse Regulation No 596/2014 (MAR), the tertiary legislation made under MAR, and the UK legislation which complemented MAR, to ensure that the relevant legislation continues 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 In 2014, as part of its work to make financial markets more transparent and more stable, the EU enacted more stringent legislation against market abuse to replace the earlier Market Abuse Directive which came into force in 2003. Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (“MAR”) aims to increase market integrity and investor protection, enhancing the attractiveness of securities markets for capital raising. It contains prohibitions on insider dealing, unlawful disclosure of inside information and market manipulation, and provisions to empower the regulators of Member States to prevent and detect these. MAR broadened the scope of instruments covered by the market abuse framework, strengthening in particular the regime for commodity and related derivative markets. It explicitly bans the manipulation of benchmarks (such as the London Interbank Offered Rate (LIBOR)) and reinforces the investigative and sanctioning powers of EU regulators. It provides for a single EU rulebook while reducing administrative burdens on smaller and medium-sized issuers where possible. MAR’s measures to prevent market abuse are important for supporting market confidence in the integrity and reputation of the UK market.

Why is it being changed?

- 2.3 This instrument addresses deficiencies in retained EU law related to market abuse, which would otherwise no longer operate effectively once the UK has left the EU. This is part of the wider work the government is undertaking to prepare for the UK’s withdrawal from the EU.
- 2.4 The current MAR framework applies to financial instruments admitted to trading or traded on an EU trading venue. It also applies to financial instruments admitted to trading or traded elsewhere, where the price or value of such instruments depends on

or has an effect on the price or value of a financial instrument admitted to trading or traded on an EU trading venue.

- 2.5 When the UK leaves the EU, UK trading venues will cease to be EU trading venues. Consequently, MAR would not apply to financial instruments admitted to trading or traded on UK venues. If not addressed, this would leave UK markets and market participants without the current protections in MAR. For this reason, this instrument amends retained EU law related to market abuse so that it applies to financial instruments admitted to trading or traded on UK as well as EU trading venues. This will ensure that UK markets and financial instruments continue to be subject to the same requirements and protections as under MAR. This is necessary to maintain confidence in the integrity and reputation of UK markets as the UK withdraws from the EU.
- 2.6 MAR also delegates powers to the European Commission and to the European Securities and Markets Authority (ESMA) to make supplementary regulations and technical standards under MAR. This instrument transfers those functions to the relevant UK authorities.

*What will it now do?*

- 2.7 This instrument does not alter the policy approach of the current market abuse regime. It makes certain amendments to reflect the UK's new position outside the EU, and to smooth the transition to this new situation. The principal amendment is to provide that financial instruments admitted to trading or traded on UK venues continue to be within scope of regulation in the UK after the UK leaves the EU, in addition to continuing to include those admitted to trading or traded on EU venues.
- 2.8 The decision to keep instruments admitted to trading or traded on EU venues, rather than amending to a UK only scope, was taken because of the close relationship between UK and EU markets. As far as is possible in a no deal scenario, this will ensure the Financial Conduct Authority (FCA) maintains the ability to prohibit, investigate and pursue cases of market abuse related to financial instruments which affect UK markets and its reputation, thereby maintaining the integrity of UK markets. For example, this could include taking action against abuse of a UK firm's debt instruments which are admitted to trading on EU trading venues.
- 2.9 Details of the changes being made by this statutory instrument are set out in paragraphs 7.9 to 7.17 of this Memorandum.
- 2.10 Other key amendments resulting from this include:
- transferring certain powers from ESMA to the FCA, to enable the FCA to continue to effectively enforce the market abuse regime in the UK;
  - transferring the power to make supplementary regulations under MAR from the Commission to HM Treasury;
  - retaining notification requirements for issuers who have admitted financial instruments to trading on UK trading venues, emission allowance market participants registered in the UK, and UK trading venues to report certain information to the relevant national regulators, which will now be the FCA;
  - removing the obligation for UK regulators to share information or cooperate unilaterally with EU authorities without any guarantee of reciprocity;

- references to emission allowances markets have been retained in places as it is envisioned that UK firms will still participate in secondary market trading of emission allowances under the EU Emissions Trading Scheme (ETS) and some UK firms may continue to participate in the EU ETS schemes through a branch in the EU, despite the UK leaving the EU ETS in a no deal scenario;
- making technical amendments to Commission Delegated Regulation (EU) 2016/522 in order to make it operable within the UK as piece of retained EU legislation.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

#### *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 (see European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole United Kingdom.
- 4.2 The territorial application of this instrument is 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 Market Abuse (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

### **6. Legislative Context**

- 6.1 This instrument amends the retained MAR to remove deficiencies arising from the UK’s exit from the European Union or repeal provisions which are no longer required. This instrument also amends retained Commission Delegated Regulation (EU) 2016/522 supplementing Regulation No (EU) 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries’ public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the relevant regulator for notification of delays, the permission for trading during closed periods and types of notifiable managers’ transactions.
- 6.2 In addition, to address the deficiencies in UK law that arise from the UK’s exit from the EU, this instrument amends the Financial Services and Markets Act 2000 and makes consequential amendments to Part 8 of that Act, together with amendments to the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016, and the Criminal Justice Act 1993.

## 7. Policy background

### *What is being done and why?*

- 7.1 The UK will leave the EU on 29 March 2019. The UK and the EU have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. This 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 the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. This will 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 will 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 has every confidence that there will be a deal and an implementation period in place, it has a duty to plan for all eventualities, including a 'no deal' scenario. The government is clear that this scenario is in neither the UK's nor the EU's interest, and the government does not anticipate it arising. To prepare for this unlikely eventuality, 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 In the unlikely scenario that the UK leaves 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 Regulation 9 of the instrument amends the scope of the regulation to cover financial instruments admitted to trading or traded on both UK and EU trading venues and related over-the-counter (OTC) financial instruments, which are contracts that are traded directly between two parties without going through an intermediary, and includes acts or omissions relating to those financial instruments which take place in a third country. Amendments to the Regulation are needed to continue to give effect to the UK market abuse regime and to enable the FCA to continue to be able to take action in respect of acts or omissions that affect UK markets. These amendments are needed to protect confidence in the integrity and reputation of the UK market.
- 7.10 EU regulation of financial services sets out a range of functions to be carried out by EU institutions. Many of these functions will need to be incorporated into the UK's regulatory framework so that the UK has a fully functioning regulatory regime outside of the EU. Broadly speaking, these functions fall into two categories: functions for making legislation and a wide range of other functions which relate to the supervision of financial services institutions.
- 7.11 This instrument transfers such functions in MAR to the appropriate UK bodies. The powers of the Commission to make delegated acts under some Articles of MAR are transferred to HM Treasury, which is given power to make regulations under these Articles. The functions relating to preparation and making of regulatory or implementing technical standards are transferred to the FCA. The functions to be transferred include developing technical standards, obligations to publish lists of notifications, or to set out what may be acceptable market practices for the UK market (in Article 13).
- 7.12 The FCA will be designated as the UK regulator for the purposes of MAR. The FCA is the suitable regulator because it is already enforcing MAR, therefore it possesses the necessary expertise to continue to enforce against market abuse under the new UK regime. Notifications which are required to be made to a regulator must be made to the FCA, as (for example) Regulation 10 of the instrument, outlines. Therefore, Articles relating to notification obligations will only now apply in relation to UK markets – the notification requirements under MAR will be retained in this instrument

and no changes will be made to these processes. Notification obligations are limited to issuers who have financial instruments admitted to trading or traded on UK trading venues and to Emission Allowance Market Participants registered in the UK. This is to limit notifications to issuers with instruments admitted to trading or traded on UK markets and to avoid double reporting for operators of EU trading venues, issuers who have admitted financial instruments to trading on EU trading venues, and EAMPs registered in the UK. These provisions apply to UK trading venues in Article 4 (notifications and lists of financial instruments) and Article 16 (prevention and detection of market abuse). Article 16 also applies to persons professionally arranging and executing transactions on UK trading venues who are registered in, have a head office, or a branch situated in the UK. Articles 17 (public disclosure of inside information), 18 (insider lists), and 19 (managers' transactions) apply to issuers with instruments admitted to trading on UK venues and to emission allowance market participants registered in the UK.

- 7.13 In MAR, there are exemptions for some trading activities to reflect that such actions should not constitute market abuse. This instrument retains exemptions in Article 5 (buy-backs and stabilisation), Article 6 (monetary and public debt management activities), and Article 7 (accepted market practices) to provide certainty for certain trading activities. Regulation 10 of the instrument gives HM Treasury power to make regulations to extend some of these public policy exemptions in Article 6 (which now apply to UK public bodies and the Bank of England) to activities undertaken by EU or third country entities. This instrument transfers this power to HM Treasury from the Commission.
- 7.14 In MAR, there are binding requirements on UK authorities to cooperate and share information with EU authorities. To reflect the UK's new status when the UK leaves the EU, these obligations will be removed, as shown in Regulation 13 of the instrument. This is appropriate given that the UK will no longer be a member of the EU, and will ensure the UK is not obliged to share information or cooperate with the EU on a unilateral basis and with no guarantee of reciprocity. Instead, UK authorities will rely on the existing domestic framework for cooperation and information sharing, which allows for this on a discretionary basis.
- 7.15 In a no deal scenario the UK will leave the EU Emissions Trading System (ETS) and will not hold auctions of emission allowances on its national recognised auction platform. Regardless, UK firms will still be permitted to participate in secondary market trading of ETS emission allowances and some UK firms may continue to participate in ETS schemes through a branch in the EU. References to emission allowances in MAR are retained throughout the instrument in order for the FCA to properly monitor and enforce the behaviour of UK-authorized firms which are emission allowance market participants and which may trade ETS auction products or derivatives on the secondary market.
- 7.16 Regulation 18 of this instrument also makes technical amendments to Commission Delegated Regulation (EU) 2016/522 in order to make it operable within the UK as piece of retained EU legislation. Other delegated acts made under MAR will be brought into the body of retained EU legislation in the EU Exit statutory instruments relating to technical standards. Most of these are contained in the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), (which will be amended to take account of any

further delegated acts which may be made between the date of laying this instrument and exit day).

- 7.17 In addition, Parts 2 to 3 of these Regulations amend the Criminal Justice Act 1993, to make consequential amendments to the defence provided for in paragraph 5 of Schedule 1 to that Act and Part 8 of the Financial Services and Markets Act 2000, to ensure that the UK can continue to respond to requests for information from overseas regulators. The UK intends as far as possible to maintain a mutually beneficial working relationship with the EU, in the same way we currently co-operate with non-EU regulators under the existing provisions of the Act. Moreover, Part 5 of these Regulations amends the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016. This ensures that any deficiencies in existing UK law are addressed, and each amendment will ensure the new market abuse framework that will exist in the UK will be operable in relation to existing UK law.

## **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. 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.

## **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, but has engaged with relevant stakeholders on its approach to Financial Services legislation under the European Union (Withdrawal) Act 2018, including on this instrument, in order familiarise them with the legislation ahead of laying.
- 10.2 An explanatory policy note, setting out the government's policy approach in this instrument, was published on 21 November 2018, in order to maximise transparency ahead of laying. The link for this publication can be found here:  
<https://www.gov.uk/government/publications/draft-market-abuse-amendment-eu-exit-regulations-2018>
- 10.3 The financial services regulators are consulting on changes they propose to make to technical standards and rules made under the powers conferred upon them by the Financial Services and Markets Act 2000.

## **11. Guidance**

- 11.1 No further guidance is being published alongside this instrument.

## **12. Impact**

- 12.1 MAR applies to all natural and legal persons which issue or trade in financial instruments admitted to trading or traded (or that have a relationship with such an instrument) on an EU venue, this includes businesses, charities and voluntary bodies

that issue or trade in financial instruments. The changes are largely technical in nature and will for the most part maintain the status quo in terms of the effect on UK and EU market participants and issuers.

- 12.2 The current mechanics for firms submitting relevant notifications for UK instruments to the FCA will be retained.
- 12.3 The impact on the public sector relates to changes to the functions of the FCA. The FCA will no longer be required to submit information to ESMA, and the FCA will also be transferred powers from ESMA to draft technical standards.
- 12.4 Exemptions to the MAR requirements will continue to apply to relevant UK public bodies and the Bank of England, and any relevant joint venture with one or more EU Member States, but only where the UK is undertaking the project together with that Member State.
- 12.5 An Impact Assessment has been prepared and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website, when an opinion from the Regulatory Policy Committee has been received.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 One of the aims of MAR was to reduce administrative burdens on small and medium sized businesses caused by the legislation it replaced. The intention of this instrument is to ensure that the market abuse framework within the UK continues to operate as intended when the UK leaves the EU. This instrument therefore is aimed to minimise the impact of these regulatory changes on all firms, including small businesses

### **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 Samuel Hill at HM Treasury, Telephone: 0207 270 5494 or email: [Samuel.hill@hmtreasury.gov.uk](mailto:Samuel.hill@hmtreasury.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Clare Bolingford, Deputy Director for Securities, Markets and Banking, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury, John Glen MP, at 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	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:

1.2 “In my view the Market Abuse (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

1.3 This is the case because this instrument will amend the current legislation relating to market abuse so that it operates effectively in the UK and maintains the ability of the UK regulator to intervene in cases of market abuse which involve UK persons, UK trading venues or the UK markets.

#### **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 that without this instrument, the market abuse legislation would contain deficiencies and cease to function appropriately after the UK’s exit from the European Union. Further explanations of the reasons for the provisions in this instrument can be found in sub-paragraphs 7.1 to 7.17 of this Explanatory Memorandum.

#### **3. Equalities**

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

“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:

3.3 “In relation to the instrument, I, John Glen MP 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 MP, 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 the relevant sub-delegated powers in the Market Abuse (Amendment) EU Exit) Regulations 2018.

This instrument transfers powers to make certain binding technical standards from ESMA to the FCA. This is considered appropriate as the FCA will have the necessary technical knowledge to ensure that the EU technical standards which are relevant to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) continue to operate effectively after the UK’s exit from the European Union. The required corrections and amendments to these binding technical standards will be of a highly technical nature and the FCA will be best placed to assess what amendments to the standards are required post-exit to ensure that these operate effectually in a UK-only context. The transfer of the function of making binding technical standards to the FCA is also consistent with the general onshoring approach to such standards (as per the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018).

The purposes for which the FCA will be able to make technical standards under the powers transferred to them are listed in Part 6 of the Market Abuse (Amendment) (EU Exit) Regulations 2018.”