

## EXPLANATORY MEMORANDUM TO

### THE INVESTMENT EXCHANGES, CLEARING HOUSES AND CENTRAL SECURITIES DEPOSITORIES (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument is being made in order to address deficiencies in UK domestic law arising from the UK's withdrawal from the EU. Amendments made through this instrument ensure that the regulatory regime for recognised investment exchanges ("RIEs"), market operators (i.e. persons who manage or operate the business of a regulated market, and who may be the regulated market itself), clearing houses (including central counterparties, or "CCPs") and central securities depositories ("CSDs") continues to be clearly defined and operable in UK domestic law after exit day in a no-deal scenario.

#### *Explanations*

##### What did any relevant EU law do before exit day?

- 2.2 This instrument amends the relevant parts (Part 18, 18A and Schedule 17A) of the Financial Services and Markets Act 2000 ("FSMA") that outline the regulatory regime for RIEs, EEA market operators, clearing houses (including CCPs) and CSDs, providing services in the UK. It also amends the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001/995 ("RRRs"), which are made under Part 18 of FSMA.
- 2.3 Amongst other provisions, Part 18 of FSMA sets out:
  - The exemptions to the general prohibition (which otherwise state that no person may carry on a regulated activity in the UK unless they are authorised or exempt), under which RIEs, clearing houses, CCPs and CSDs are able to carry on a regulated activity in the UK without being authorised under FSMA;
  - The recognition and supervisory powers of the relevant regulators – the Financial Conduct Authority ("FCA") in respect of RIEs and the Bank of England in respect of recognised clearing houses, CCPs and CSDs;
  - The regulatory framework for acquisitions of control over RIEs; and
  - The "passporting" rights of EEA market operators in the UK and RIEs operating in EEA States.
- 2.4 The RRRs set out the recognition requirements for investment exchanges, clearing houses, CCPs and CSDs in detail, while Part 18A of FSMA sets out the FCA's

powers and duties relating to suspensions and removals of financial instruments from trading in the UK and in EEA States.

- 2.5 Schedule 17A of FSMA makes a provision for a memorandum of understanding between the FCA and the Prudential Regulatory Authority (“PRA”) with respect to the exercise of their functions in relation to recognised bodies; applies certain provisions in relation to the rules made by the Bank of England under FSMA; makes provisions relating to the winding up, administration or insolvency of recognised clearing houses and recognised CSDs; and makes provisions about fees payable by clearing houses, CCPs and CSDs to the Bank of England.
- 2.6 Much of this domestic law is derived from, or refers to, EU law and regulations including the following, which are described in paragraphs 2.7-2.10:
- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (“MiFID II”) and the accompanying Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (“MiFIR”);
  - Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”);
  - Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (“European CSDR”); and
  - Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (“SFTR”).
- 2.7 MiFID II / MiFIR govern the buying, selling and organised trading of financial instruments, such as shares, bonds, derivatives and other more complex instruments. As such, they govern the practices of investment firms, data reporting service providers and market operators (amongst others). They also contain a “passport” that permits firms to provide investment services cross-border and to establish branches in another EEA State on the basis of their authorisation in their “home” Member State. MiFID II / MiFIR took effect in early 2018, aiming to create more robust and efficient market structures, for instance by requiring more trades to be conducted through trading venues to promote transparency and financial stability (amongst various other provisions).
- 2.8 EMIR lays down rules on over-the-counter derivatives, CCPs and central databases known as trade repositories. It regulates derivative trades by mandating risk mitigation techniques which vary depending on the financial instrument. It is the EU’s response to the G20 Pittsburgh commitment in 2009 that more derivatives trades should be cleared through CCPs and reported to trade repositories and is widely recognised as an important regulatory measure to improve the resilience of CCPs and address deficiencies in global derivatives markets.
- 2.9 The European CSDR created a common authorisation, supervision and regulatory framework for CSDs across the EU. It harmonises the timing and conduct of

securities settlement in the EU and the rules governing the authorisation and operation of CSDs.

- 2.10 SFTR increases the transparency of securities financing transactions (“SFTs”) by requiring all SFTs, except those concluded with central banks, to be reported to trade repositories. SFTR also requires information on the use of SFTs by investment funds to be disclosed to investors in the regular reports and pre-investment documents issued by the funds. Furthermore, SFTR also sets minimum transparency conditions to be met when collateral is reused, such as disclosure of the risks and the obligation to acquire prior consent. SFTs are any transactions where securities are used to borrow cash, or vice versa, which includes repurchase agreements (repos), securities lending activities, and sell/buy-back transactions.
- 2.11 The above EU law is being onshored via a number of other instruments, which will also be of particular relevance to RIEs, EEA market operators, CCPs and CSDs, as follows:
- The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (SI 2018/1403);
  - The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1184) (“CCR”);
  - The Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 (SI 2018/1302) (“CSDR”);
  - The laid Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018;
  - The Trade Repositories (Amendment and Transitional Provision) (EU exit) Regulations 2018 (SI 2018/1318); and
  - The proposed Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 (to be laid in due course – published on 19 December 2018).
- 2.12 As such, this instrument makes a number of consequential amendments to Part 18, 18A and Schedule 17A of FSMA and the RRRs to reflect amendments being made to retained EU law via the instruments listed above.

*Why is it being changed?*

- 2.13 This instrument forms part of HM Treasury’s contingency planning in the event that the UK leaves the EU without a deal. To prepare for a no-deal scenario, it is necessary to address deficiencies in domestic law to ensure that the legislation continues to operate effectively at the point at which the UK leaves the EU.
- 2.14 When the UK leaves the EU, references to EU law in UK legislation will need to be amended so that they continue to operate effectively after exit day. Some of these references will need to be amended to reflect changes in the versions of EU regulations which will become retained EU law when the UK leaves the EU. Without this instrument, aspects of existing UK legislation that relate to RIEs, EEA market operators, clearing houses and CSDs would not be operable after exit day.
- 2.15 When the UK is no longer a member of the EU single market for financial services, it would not be appropriate for UK authorities to be obliged to share information or cooperate with the EU on a unilateral basis, with no guarantee of reciprocity. The

EEA financial services “passporting” system will also become deficient at the point of exit, if the UK leaves the EU without a deal, as outlined in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1149).

*What will it now do?*

- 2.16 Amendments introduced through this instrument 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. This instrument amends Parts 18 and 18A of, and Schedule 17A to FSMA that outline the regulatory regime for RIEs, EEA market operators, clearing houses and CSDs. It also amends the RRRs, which are made under Part 18 of FSMA. Amendments introduced through this instrument are intended to make only technical changes to existing legislation to ensure that it continues to operate effectively once the UK leaves the EU.
- 2.17 This instrument removes Chapter 3A under Part 18 of FSMA, which provides the passport rights of EEA market operators in the UK and RIEs operating in EEA States, as these will be deficient at the point of exit, if the UK leaves the EU without a deal.
- 2.18 As a consequence of the UK exiting the EU, the European Securities and Markets Authority (“ESMA”) will no longer carry out functions determining whether third-country CCPs and CSDs can provide services in the UK post exit, with the CSDR transferring responsibility for recognising third country CSDs, and the CCR transferring responsibility for recognising third country CCPs, to the Bank of England. To ensure that the Bank of England can carry out this new function effectively, this instrument contains appropriate consequential amendments in domestic law to reflect these transfers of responsibility to the Bank of England.
- 2.19 This instrument reflects the amendment to the definition of “third country CSD” in FSMA Part 18 that will be made in the proposed Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (to be laid in due course). “Third country CSD” currently refers to any CSD located outside the EU, whereas following exit, “third country CSD” will refer to any CSD located outside the UK. This instrument therefore also deletes any references to the term “EEA CSD”. As a consequence, this instrument provides the Bank of England with the appropriate supervisory powers over third country CSDs.
- 2.20 To reflect the UK’s new status when the UK leaves the EU, information sharing and cooperation obligations in respect of EU authorities will be removed, as it is more appropriate for UK authorities to rely on the existing domestic framework for cooperation and information sharing with non-EU countries, which allows UK authorities to cooperate with relevant authorities outside the UK on a discretionary basis. To make sure the Bank of England has the necessary provisions in FSMA to meet its obligations, this instrument introduces a new provision in the form of a general duty, but not any specific obligation, on the Bank of England to cooperate with other persons (whether in the UK or elsewhere) who have functions similar to those of the PRA or those relevant to financial stability.
- 2.21 This instrument amends definitions in the RRRs that are cross-referenced to definitions in EU legislation, generally by referring to onshored legislation, EU law as retained on exit day, or by creating new definitions, in order to achieve a functioning standalone UK legislative framework.

- 2.22 This instrument also deletes other references to EEA bodies and EEA member states that will become redundant when the UK leaves the EU. As a result, CCPs, CSDs and market operators that are EEA entities will be treated in the same way that third-country entities are currently treated in domestic legislation.
- 2.23 Part 2 of this instrument updates a cross-reference and corrects omissions in FSMA and the RRRs using powers under section 2(2) of the European Communities Act 1972 and section 286(1) of FSMA. These amendments come into force before exit day.

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

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

- 3.1 The Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 were proposed for sifting on 30 November 2018. The Lords sifting committee (the Secondary Legislation Scrutiny Committee) agreed with the government that this instrument should follow the negative procedure. However, the Commons sifting committee (the European Statutory Instruments Committee (ESIC)) disagreed with the government and recommended that this statutory instrument should be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. follow the affirmative procedure).
- 3.2 The ESIC stated that they considered the changes to primary legislation, and the cumulative impact of the large volume of amendments in the instrument in the context of financial services, was such that the additional safeguard of affirmative resolution is appropriate.
- 3.3 In addition, it came to HM Treasury's attention, shortly before the ESIC recommendation, that the consequential amendment in regulation 22 amends a power to make regulations, and is therefore a mandatory affirmative trigger.

#### *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)*

- 3.4 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.5 The powers under which this instrument is made cover the entire United Kingdom (see European Union (Withdrawal) Act 2018 ("the EUWA")) and the territorial application of this instrument is not limited either by the EUWA or by the instrument.

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

- 4.1 The territorial extent of this instrument is to the whole of the United Kingdom.
- 4.2 The powers under which this instrument is made cover the entire United Kingdom (see the EUWA) and the territorial application of this instrument is not limited either by the EUWA or by the instrument.

### **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 Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 To address the deficiencies in retained EU law that arise from the UK's exit from the EU, this instrument amends Part 18, 18A and Schedule 17A of the Financial Services and Markets Act 2000 ("FSMA") and the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001/995 (the "RRRs").
- 6.2 Part 2 of this instrument updates a cross-reference and corrects omissions in FSMA and the RRRs using powers under section 2(2) of the European Communities Act 1972 and section 286(1) of FSMA. These amendments come into force before exit day.
- 6.3 This instrument also makes consequential amendments to the Finance Act 1986, the Finance Act 1991, the Income Tax (Manufactured Overseas Dividends) Regulations 1993/2004, the Investment Bank Special Administration Regulations 2011, the Stamp Duty and Stamp Duty Reserve Tax (Eurex Clearing AG) Regulations 2011/666, the Stamp Duty and Stamp Duty Reserve Tax (LCH.Clearnet Limited) Regulations 2011/669, the Stamp Duty and Stamp Duty Reserve Tax (SIX X-CLEAR AG) Regulations 2011/670, the Stamp Duty and Stamp Duty Reserve Tax (Cassa Di Compensazione E Garanzia S.p.A) Regulations 2011/2205, and the Stamp Duty and Stamp Duty Reserve Tax (European Central Counterparty N.V.) Regulations 2014/9.

## **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 believes 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. To prepare for this eventuality, HM Treasury intends to use powers in the 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 statutory instruments. These contingency preparations for financial services legislation are sometimes referred to as ‘onshoring’. These instruments 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 EUWA. (<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>)
- 7.9 To ensure that the UK domestic regulatory regime for RIEs, EEA market operators, clearing houses (including CCPs) and CSDs continues to be clearly defined after exit day in a no-deal scenario, this instrument addresses deficiencies in FSMA and the RRRs arising from the withdrawal of the UK from the EU, ensuring the legislation continues to operate effectively in the unlikely event that the UK leaves the EU without a deal.
- 7.10 Amendments introduced through this instrument are generally technical in nature and 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. As such, amendments introduced through this instrument intend to make only technical changes to existing legislation to ensure that it continues to operate effectively once the UK leaves the EU.

- 7.11 As outlined in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1149), any references in UK legislation to the EEA financial services “passporting” system will become deficient at the point of exit, if the UK leaves the EU without a deal. As a consequence, regulation 7 of this instrument removes Chapter 3A under Part 18 of FSMA, which provides the passport rights of EEA market operators in the UK and RIEs operating in EEA States.
- 7.12 As a result, EEA market operators who currently make use of passport rights may wish to apply to be recognised as a recognised overseas investment exchange (“ROIE”), to enable participation of the exchange in UK markets. The FCA have published a direction clarifying how an EEA market operator may make an application to become a ROIE (<https://www.fca.org.uk/publication/handbook/roie-direction.pdf>). Alternatively, EEA market operators which do not maintain a permanent place of business in the UK may be able to rely on the overseas persons exclusion, located in article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544, following the UK’s withdrawal from the EU, to the extent that they would otherwise be deemed to be carrying on a regulated activity in the UK.
- 7.13 As a consequence of the UK exiting the EU, the European Securities and Markets Authority (“ESMA”) will no longer carry out functions determining whether third-country CCPs and CSDs can provide services in the UK post exit, with the CSDR transferring responsibility for recognising third country CSDs, and the CCR transferring responsibility for recognising third country CCPs, to the Bank of England. To ensure that the Bank of England can carry out this new function effectively, this instrument contains appropriate consequential amendments in domestic law to reflect these transfers of responsibility to the Bank of England as outlined in the CSDR and the CCR.
- 7.14 This instrument, via regulation 5, reflects the amendment to the definition of “third country CSD” in FSMA Part 18 that will be made in the proposed Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (to be laid in due course). “Third country CSD” currently refers to any CSD located outside the EEA, whereas following exit, “third country CSD” will refer to any CSD located outside the UK. This instrument therefore also deletes any references to the term “EEA CSD”. As a consequence, this instrument provides the Bank of England with the appropriate supervisory powers over third country CSDs. This amendment is made in conjunction with changes in the proposed Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, which will be laid in due course, whereby the regulators will have the power to require information from, and inspect any UK branch of, a third country CSD. The Bank of England’s functions relating to public records and disclosure will also be extended to cover third country CSDs, in light of the Bank’s new responsibility for recognising such CSDs and the deletion of existing powers over EEA CSDs.
- 7.15 To reflect the UK’s new status when the UK leaves the EU, information sharing and cooperation obligations in respect of EU authorities will be removed, as it is more appropriate for UK authorities to rely on the existing domestic framework for cooperation and information sharing with non-EU countries, which allows UK authorities to cooperate with relevant authorities outside the UK on a discretionary basis. For example, regulation 10 of this instrument removes the obligation for the



FCA to inform ESMA and the competent authorities of EEA Member States when it suspends or removes a financial instrument from trading on a venue that falls under its jurisdiction, although the FCA will still be required to publish such decisions in a manner it considers appropriate. Similarly, the FCA will no longer be obliged to require venues under its jurisdiction to suspend or remove a financial instrument from trading if the same instrument has been suspended or removed from trading in another EEA Member State.

- 7.16 Regulation 14 of this instrument also introduces a new provision in the form of a general duty, but not any specific obligation, on the Bank of England to cooperate with other persons (whether in the UK or elsewhere) who have functions similar to those of the PRA or those relevant to financial stability. Under this duty, the Bank of England must take any steps it considers appropriate in cooperating with such relevant bodies and to decide the measures it deems appropriate in any particular case. This is introduced so that the Bank of England has the necessary obligation under FSMA for cooperation with other bodies in connection with its functions under EMIR, CSDR and SFTR.
- 7.17 Part 4 of this instrument amends definitions in the RRRs that are cross-referenced to definitions in EU legislation, generally by referring to onshored legislation, EU law as retained on exit day, or by creating new definitions, in order to achieve a functioning standalone UK legislative framework. As some of these amended definitions will cross-refer to other onshored legislation, it should be noted that these amendments will be conditional on other EU exit instruments being made, including the laid Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018, the laid Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018, the laid Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, and the proposed Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (to be laid in due course). This instrument will be made once the above regulations have been made. Part 5 makes consequential amendments to other primary and secondary UK legislation.
- 7.18 This instrument also deletes other references to EEA bodies and EEA Member States that will become redundant when the UK leaves the EU. As a result, CCPs, CSDs and market operators that are EEA entities will be treated in the same way that third-country entities are currently treated in domestic legislation.
- 7.19 Part 2 of this instrument updates a cross-reference and corrects omissions in FSMA and the RRRs using powers under section 2(2) of the European Communities Act 1972 and section 286(1) of FSMA. These amendments come into force before exit day.

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

- 8.1 This instrument is being made using the power in section 8 of the 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.

## **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 of England 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 will affect EEA market operators providing services in the UK. In a no deal scenario, EEA market operators who currently make use of passport rights may wish to apply to be recognised as a ROIE, to enable participation of the exchange in UK markets. The FCA have published a direction clarifying how an EEA market operator may make an application to become a ROIE (<https://www.fca.org.uk/publication/handbook/roie-direction.pdf>). EEA market operators which do not maintain a permanent place of business in the UK may be able to rely on the overseas persons exclusion (“OPE”), located in regulation 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544, following the UK’s withdrawal from the EU, to the extent that they would otherwise be deemed to be carrying on a regulated activity in the UK. However, EEA market operators who cannot rely on the OPE and who undertake regulated activities in the UK should seek appropriate FCA permissions such as recognition as a ROIE. Market operators should seek their own advice on the application of the UK regulatory framework to their circumstances. RIEs, EEA market operators, CSDs and CCPs may also want to acquire the services of legal experts to help examine this instrument and understand its implications.
- 12.2 There is no, or no significant, impact on charities or voluntary bodies.
- 12.3 The impact on the public sector is that, after the UK leaves the EU, the Bank of England will take on responsibility for recognising and supervising third country CSDs, as a result of the transfer of responsibilities from ESMA, which is outlined in the CSDR.
- 12.4 A full Impact Assessment 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 It is possible that some securities settlement and clearing participants, investment firms that participate in trading activity on trading venues, or the issuers of securities themselves, may be small businesses. However, the Regulations primarily affect large firms that operate trading venues, CCPs and CSDs.
- 13.2 HM Treasury does not consider that small businesses will be disproportionately affected and therefore no specific action is proposed to minimise the effects of this instrument in relation to small businesses. The instrument implements amendments to domestic UK law that would otherwise no longer operate effectively once the UK has left the EU, and in order to help smooth the transition for all businesses participating

in the UK's financial markets, irrespective of their size. This instrument is therefore aimed at minimising the impact of these regulatory changes on all firms, including small businesses.

**14. Monitoring & review**

- 14.1 To the extent this instrument is made under the EUWA, no review clause is required.

**15. Contact**

- 15.1 John Fowler at HM Treasury (Telephone: 020 270 1804 or email: John.Fowler@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Clare Bolingford, Deputy Director for Securities, Markets & 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) 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 Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because the instrument does no more than to correct deficiencies in UK law resulting from the UK’s withdrawal from the EU in relation to the regulatory regime for recognised investment exchanges (“RIEs”), market operators, clearing houses (including central counterparties, or “CCPs”) and central securities depositories (“CSDs”). Sections 2 and 7 of this Explanatory Memorandum further explain the legislative reasons for this instrument.

#### 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 Without the provisions in this instrument, domestic law in relation to the regulatory regime for RIEs, market operators, clearing houses (including CCPs) and CSDs would no longer operate appropriately once the UK withdraws from the EU. Sections 2 and 7 of this Explanatory Memorandum further explain the policy intentions of this instrument.

#### 3. Equalities

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

“The 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 instrument, I, Economic Secretary to the Treasury (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.