

**EXPLANATORY MEMORANDUM TO**  
**THE GIBRALTAR (MISCELLANEOUS AMENDMENTS) (EU EXIT)**  
**REGULATIONS 2019**

**2019 No. XXXX**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument is being made in order to address deficiencies in domestic legislation and retained EU law in relation to financial services, arising from the withdrawal of the United Kingdom (UK) from the European Union (EU). Through amendments to existing and EU exit legislation, this instrument ensures that relevant matters in relation to Gibraltar can be treated as they were before exit day to support continued passporting for authorised financial services firms between UK and Gibraltar after exit day.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The majority of the UK's financial services legislation derives from the EU. Together, the body of EU law relating to financial services creates a harmonised framework for financial services, with cross-border market access, a common set of standards and approach to supervision, and significant cooperation between national supervisors within the EU.
- 2.3 EU law allows authorised financial services firms to access markets across EU member states. However, for the purposes of EU law, the UK and Gibraltar are in effect considered as the same EU member state.

Why is it being changed?

- 2.4 The UK government is exercising the powers in section 8 (1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the EU.
- 2.5 Along with the UK, Gibraltar will be undertaking its own parallel withdrawal from the EU. Since references to EU directives and EEA rights will no longer be appropriate after exit day, references in domestic financial services legislation that currently apply to the UK and Gibraltar will become deficient after exit day.

What will it now do?

- 2.6 The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 makes technical amendments to section 409 of the Financial Services and Markets Act 2000

(c.8), the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084), and EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149) to ensure that authorised financial services firms in Gibraltar will continue to be able to provide services and establish branches in the UK after exit day on current terms.

- 2.7 The amendments being made by the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 will ensure that financial services firms incorporated and headquartered in Gibraltar will be able to continue to conduct certain financial services activities in the UK as they do now. For example, this includes maintaining: existing provisions for home state responsibility in cross-border insolvency proceedings, existing treatments for policyholder and depositor protections, a payments regime governing euro transactions between the UK and Gibraltar, amongst other UK-Gibraltar financial services arrangements. The effect of such provisions – through bespoke amendments and horizontal savings provisions to existing and EU exit legislation – is to ensure that relevant matters in relation to Gibraltar can be treated as they were before exit day with any necessary modifications to take into account the UK and Gibraltar’s withdrawal from the EU.
- 2.8 Specifically, this instrument supports market access provisions through making technical amendments to existing domestic legislation: including the Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I.2004/353), the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/1045) and the Insurers (Reorganisation and Winding Up) (Lloyd’s) Regulations 2005 (S.I 2005/1998) as they apply to Gibraltarian insurers and credit institutions, and to the determination of Gibraltarian rights in relation to the winding-up or reorganisation of UK insurers and credit institutions.
- 2.9 This instrument also amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/3392) to make appropriate provision for Gibraltar following exit day, and also amends the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1199), the Market Abuse (Amendment) (EU Exit) Regulations 2019, the Friendly Societies (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1039), , the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 and the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 to ensure that the amendments made by these EU Exit instruments make appropriate provision in relation to Gibraltar.
- 2.10 Finally, this instrument saves the effect of certain legislation in relation to Gibraltar-based firms and activities.

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

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

- 3.1 This instrument relies on provisions made by other EU exit instruments which have been laid in draft, but have not been made yet. It is therefore conditional on the making of these instruments, which are as follows:
- The Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019 (laid in draft on 8<sup>th</sup> January 2019);
  - The Financial Conglomerates and Other Financial Groups (Amendments etc.) (EU Exit) Regulations 2019 (laid in draft on 17<sup>th</sup> January 2019);

- The Financial Markets and Insolvency (Amendment and Transitional) (EU Exit) Regulations 2019 (laid in draft on 13<sup>th</sup> December 2018);
- The Payment Accounts (Amendment) (EU Exit) Regulations 2019 (laid in draft on 6<sup>th</sup> November 2018);
- The Interchange Fee (Amendment) (EU Exit) Regulations 2019 (laid in draft on 22 November 2018);
- The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019 (laid in draft on 13<sup>th</sup> November 2018);
- The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019 (laid in draft on 13<sup>th</sup> November 2018);
- The Long Term Investment Funds (Amendment) (EU Exit Regulations) 2019 (laid in draft on 17<sup>th</sup> December 2018);
- The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (laid in draft on 17<sup>th</sup> December 2018);
- The Money Market Funds (Amendment) (EU Exit) Regulations 2019 (laid in draft on 24<sup>th</sup> January 2019);
- The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (laid in draft on 5<sup>th</sup> December 2018);
- The Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 (laid in draft on 17<sup>th</sup> January 2019);
- The Securitisation (Amendment) (EU Exit) Regulations 2019 (laid in draft on 23<sup>rd</sup> January 2019);
- The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 (laid in draft on 28<sup>th</sup> January 2019);
- The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (laid in draft on 24<sup>th</sup> January 2019);
- The Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019 (laid in draft on 29<sup>th</sup> November 2018);
- The Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 (laid in draft on 9<sup>th</sup> January 2019);
- The Credit Rating Agencies (Amendments etc) (EU Exit Regulations) 2019 (laid in draft on 13<sup>th</sup> December 2018).

3.2 This instrument will be made once the above 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)***

3.3 The territorial application of this instrument includes Scotland and Northern Ireland.

3.4 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 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 Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 This instrument amends financial services legislation made under the Financial Services and Markets Act 2000 and the European Union (Withdrawal) Act 2018 to address deficiencies arising in the financial services arrangements between the UK and Gibraltar as a result of the UK’s exit from the EU.
- 6.2 This instrument makes file-specific provisions, to ensure that the bespoke amendments made by these EU Exit instruments make appropriate provision in relation to Gibraltar, for: Insurers (Reorganisation and Winding Up) Regulations 2004, the Credit Institutions (Reorganisation and Winding Up) Regulations 2004; the Insurers (Reorganisation and Winding Up) (Lloyd’s) Regulations 2005; the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005; the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations; the Friendly Societies (Amendment) (EU Exit) Regulations 2018; the Market Abuse (Amendment) (EU Exit) Regulations 2018, the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019; and the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019.
- 6.3 This instrument makes a horizontal savings provision, to save the effect of certain legislation in relation to Gibraltar-based financial services firms and activities, for: the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318); the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184); the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1320); the Short Selling (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1321); the Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401); the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), except for Part 2, Chapter 3 of Part 3, and regulations 28(10), 29(3) and 30(1); the Capital Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2019 (except for regulations 6(2)); the Financial Markets and Insolvency (Amendment and Transitional) EU Exit) Regulations 2019 (except for regulations 5(7), 8(3)(a), 8(4)(b), 8(6) and 9); the Payment Accounts (Amendment) (EU Exit) Regulations 2019; the Interchange Fee (Amendment) (EU Exit) Regulations 2019; the Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019; the Venture Capital Funds (Amendment) (EU Exit) Regulations 2019; the Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019; the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019; the Money Market Funds (Amendment) (EU Exit) Regulations 2019; the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and

Transitional Provision) (EU Exit) Regulations 2019; the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019; the Financial Conglomerates and Other Financial Groups (Amendments etc.) (EU Exit) Regulations 2019; the Securitisation (Amendment) (EU Exit) Regulations 2019; the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019; the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019; the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019; the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019; the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2019; Part 6 of the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019; and regulation 12, and Parts 3 to 6 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (except for regulations 127, 128, 155, 180(2), 188 and 191).

## **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. Therefore, should a deal be approved, the implementation period will provide time to introduce the new arrangements that will underpin the UK-EU future relationship, and provide valuable certainty for businesses and individuals. During an implementation period, common rules will continue to apply. The UK would continue to implement new EU law that comes into effect and the UK would continue to be treated as part of the EU's single market in financial services. This would mean that access to each other's markets will continue on current terms and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020. UK firms would need to comply with any new EU legislation that becomes applicable during the implementation period.
- 7.2 The government is seeking a deep and special future partnership with the EU, which should be greater in scope and ambition than any such agreement before and encompass financial services. Given the highly regulated nature of financial services, the volume of trade between UK and EU markets, and a shared desire to manage financial stability risks, the UK proposes a new economic and regulatory arrangement that will preserve mutually beneficial cross-border business models and economic integration for the benefit of businesses and consumers. Decisions on market access would be autonomous in our proposed model, but would be underpinned by stable institutional processes in a bilateral agreement and continued close regulatory and supervisory cooperation.
- 7.3 While the government believes that a deal will be reached and the implementation period will be in place, it must plan for all eventualities, including a 'no deal' scenario. HM Treasury intends to use powers in the European Union (Withdrawal) Act 2018 (EUWA) to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.
- 7.4 The EUWA repeals the European Communities Act 1972 (c.68) and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law".

The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through SIs. These contingency preparations for financial services legislation are sometimes referred to as ‘onshoring’. These SIs are not intended to make policy changes, other than to reflect the UK’s new position outside the EU, and to smooth the transition to this situation. The scope of the power is drafted to reflect this purpose and is subject to further restrictions, such as the inability to use the power to impose or increase taxation, or establish a public authority. The power is also time-limited and falls away two years after exit day.

- 7.5 Wherever practicable, the proposed approach is that the same laws and rules that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, if the UK does not enter an implementation period, some changes would be required to reflect the UK’s new position outside the EU from 29 March 2019.
- 7.6 If the UK were to leave the EU without a deal, the UK would be outside the EU’s framework for financial services. The UK’s position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.
- 7.7 In light of this, the approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed including to provide for a smooth transition to the new circumstances.
- 7.8 HM Treasury published a document on 27 June 2018, which sets out in more detail HM Treasury’s approach to financial services legislation under the European Union (Withdrawal) Act. (<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>).

*UK-Gibraltar relationship in financial services following EU exit*

- 7.9 Gibraltar is a British Overseas Territory and is in the EU as part of the UK’s membership. Gibraltar applies EU law under provisions in its own European Communities Act 1972. Following the result of the EU referendum, Gibraltar will be leaving the EU in parallel with the UK. The government of Gibraltar will undertake its own contingency preparations for Gibraltar’s withdrawal from the EU in order to ensure a functioning financial services regime.
- 7.10 EU law provides for a single market in financial services for its member states. Once the UK leaves the EU, it will no longer be in the single market, and therefore, in general, retained EU law is amended to ensure that EU member states are treated largely as other third countries after exit.
- 7.11 For the purposes of EU law, the UK and Gibraltar are in effect considered as the same EU member state. However, in practice, the UK has treated Gibraltar in many cases as if it was an EEA state, and both passporting and non-passporting arrangements between the UK and Gibraltar in financial services are determined by EU financial services law. This means that the existing regulatory framework between the UK and

Gibraltar in financial services will become deficient once the UK and Gibraltar leave the EU.

- 7.12 In March 2018, at the Joint Ministerial Council with the government of Gibraltar, the UK government announced that Gibraltar's authorised financial services firms will continue to be able to access the UK as now until 2020 in a no deal scenario. UK firms will also continue to be able to exercise their passport rights as now in Gibraltar.
- 7.13 HM Treasury therefore laid the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations on 22 January 2019 to ensure that authorised financial services firms in Gibraltar will continue to provide services and establish branches in UK markets after exit day on current terms. The instrument achieves this by fixing EU exit deficiencies in section 409 of the Financial Services and Markets Act 2000 (FSMA), the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 and related provisions on authorisation, which together allow Gibraltar-based financial services firms to access the UK market under Schedule 3 to FSMA, the modified financial services passport.
- 7.14 This instrument makes amendments to financial services legislation, that support market access between the UK and Gibraltar, to ensure that relevant matters in relation to Gibraltar can be treated as they were before exit day. These changes are provided through amendments to financial services legislation under FSMA and the EUWA.
- 7.15 Specifically, Part 2 of this instrument makes bespoke amendments to:
- The Insurers (Reorganisation and Winding Up) Regulations 2004, the Credit Institutions (Reorganisation and Winding Up) Regulations 2004, and Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 to preserve the existing home state responsibility for the cross-border insolvencies of authorised UK and Gibraltar insurers and credit institutions after exit. The framework will continue to grant exclusive jurisdiction over the winding-up of financial services firms to the respective home state regulator, thereby not allowing competing proceedings to be opened elsewhere. This framework will not apply to the automatic recognition procedure of resolution actions between the UK and Gibraltar.
  - The Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 to ensure that there is an effective operating regime governing euro transactions between the UK and Gibraltar.
  - The Market Abuse (Amendment) (EU Exit) Regulations 2018 to capture conduct related to instruments admitted to trading or traded on both UK and Gibraltarian trading venues. As far as is possible in a no deal scenario, these amendments will help to ensure that 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.
  - The Control over Business Transfers provisions in the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, which provide clarification for the transfers of insurance business from the UK to Gibraltar subject to Court and Regulatory approval after exit.
  - The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 to ensure that the Solvency 2 regime, a harmonised framework of prudential framework for insurance and re-insurance firms in the EU, is captured for

relevant definitions and to clarify the framework for group supervision for groups that contain both UK and Gibraltar insurers. In parallel, the regulations also modify the Prudential Regulation Authority's (PRA) existing powers of intervention over incoming Gibraltar insurers to ensure that they will remain exercisable in relation to such firms in the UK after exit day.

- 7.16 Regulation 11, in Part 3, also includes a horizontal savings provision that disapplies amendments made under the EUWA to legislation that before exit day applied to activities connected to Gibraltar, Gibraltar trading venues or firms, transactions between the UK and Gibraltar and functions of the Gibraltar Financial Services Commission (except for amendments which make express provision for Gibraltar). The effect of the horizontal savings provision is to ensure that relevant matters in relation to Gibraltar can be treated as they were before exit day with any necessary modifications to take into account the UK and Gibraltar's withdrawal from the EU.
- 7.17 Paragraph 8 in Regulation 11 reflects that UK regulators will no longer be subject to obligations to EU bodies after exit day. For example, it ensures that applying an enactment to the relevant matters as it applied to them before exit day would not result in UK regulators continuing to be required, in respect of such matters, to take into account any guidelines, guidance, opinions, recommendations or decisions issued by European Supervisory Authorities. Nor will the UK regulators need to act in accordance with, or take account of, technical standards adopted by the Commission after exit day (technical standards adopted before exit day will have become retained EU law, so UK regulators will need to act in accordance with, or take account of, these only to the extent that they form part of domestic law).
- 7.18 Paragraph 9 in Regulation 11 deals, in respect of the relevant matters, with rights or obligations provided for in an enactment as applied before exit day which depend on a decision of an EU body. After exit day, the functions of EU bodies may no longer operate in respect of the relevant rights and obligations in the same way, and, to give effect to the UK's withdrawal from the EU, it has been considered appropriate for the functions of EU bodies to be transferred to either a UK regulator or HM Treasury. Accordingly, paragraph 9 provides that a reference to an EU body, in relation to such a decision, should instead be treated as a reference to the relevant UK body to which the EU body's function in relation to the decision concerned has been transferred.
- 7.19 EU exit deficiencies in relation to Gibraltar have also been addressed through specific amendments in the following statutory instruments: the Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018; the Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (2018 No. 1187); the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (2018 No. 1201); Financial Markets and Insolvency (Amendment) (EU Exit) Regulations 2019; and the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018. The Gibraltar-related amendments in these instruments do not come within the horizontal savings provisions to ensure that the provisions do not inadvertently alter amendments that have already been made in EU exit legislation.
- 7.20 The government of Gibraltar will be adopting a similar and reciprocal approach to the UK in its own EU Exit legislation to ensure Gibraltar has a functioning regulatory framework in a no deal scenario with mirroring rights and obligations.



*Long-term permanent framework for the UK-Gibraltar relationship*

- 7.21 The UK government will work closely with the government of Gibraltar to design a long-term permanent framework for market access, beyond 2020, similarly based on shared, high standards of regulation, enforcement of this regulation, and underpinned by modern arrangements for information-sharing, transparency and regulatory co-operation. The permanent framework, once legislated for, will supersede both this instrument and the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019.

**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 to familiarise them with the legislation ahead of laying. The instrument was published in draft with the explanatory policy note on 7<sup>th</sup> February 2019.

<https://www.gov.uk/government/publications/draft-eu-exit-legislation-relating-to-the-financial-services-framework-between-the-uk-and-gibraltar/the-financial-services-gibraltar-amendment-eu-exit-regulations-2019-explanatory-information>

- 10.2 The Bank of England is undertaking a public consultation on changes to maintain the current treatment of Gibraltar-based financial services firms. This can be found at:

<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp3218-complete.pdf?la=en&hash=AE219BEE6FE9984D6D5898B0B45876F1A16C2CC7>

- 10.3 The FCA has published a statement on the treatment of Gibraltar and have invited comments on this statement as well as the savings provision in the General Provisions sourcebook. This can be found at:

<https://www.fca.org.uk/news/statements/statement-treatment-gibraltar-our-handbook-after-brexit>

**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. Since this instrument seeks to maintain the current arrangements between the UK and Gibraltar, it will not have any significant impact on businesses. There is no impact on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 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 This instrument applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the effects of this instrument in relation to small business. This instrument is designed to maintain existing regulatory arrangements between the UK and Gibraltar, and therefore there should be no, or significant, impact on small businesses in the UK or Gibraltar that fall in scope of the regulations.

## **14. Monitoring & review**

- 14.1 No review clause is required for this instrument.

## **15. Contact**

- 15.1 Manmeet Narula at HM Treasury. Telephone: 0207 270 2450 or email: [Manmeet.Narula@HMTreasury.gov.uk](mailto:Manmeet.Narula@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Dashiell Caldwell, Deputy Director for Financial Services EU Strategy 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 Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 does no more than is appropriate.

- 1.2 This instrument goes no further than to mitigate the disruption to UK consumers, UK-based financial services firms, and Gibraltar-based financial services firms who have activity in the UK. The provisions ensure that relevant matters in relation to Gibraltar can be treated as they were before exit day with any necessary modifications to take into account the UK and Gibraltar’s withdrawal from the EU. For example, this includes maintaining the home state responsibility in cross-border insolvencies for authorised UK and Gibraltar insurers and credit institutions, as well as existing treatments for policyholder and depositor protections.”

#### 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 this instrument, UK and Gibraltar-based financial services firms would not be able to benefit from cross-border financial services arrangements that exist before exit day. This would cause notable disruption to these firms as well as UK consumers.”

#### 3. Equalities

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

“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.