EXPLANATORY MEMORANDUM TO

THE SECURITIES FINANCING TRANSACTIONS, SECURITISATION AND MISCELLANEOUS AMENDMENTS (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument is being made in order to ensure there is a coherent and functioning financial services regulatory regime in the United Kingdom ("UK") at the end of the Transition Period ("TP"). The instrument makes amendments to recently applicable and related European Union ("EU") legislation (which will form part of retained EU law at the end of the TP) and other financial services legislation where appropriate. This instrument amends and revokes aspects of retained EU law and related UK domestic law; makes a small number of necessary clarifications and a minor correction to earlier financial services EU Exit instruments; and provides sufficient supervisory powers for the financial services regulators to effectively supervise firms during and after the end of the TP.

2.2 This instrument addresses deficiencies across a number of pieces of retained EU law arising as a result of the UK's withdrawal from the EU, in line with the approach taken in other financial services EU exit instruments under the European Union (Withdrawal) Act 2018 ("EUWA 2018").

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

Transitional and saving provisions concerning the SFT Regulation (regulations 2-29)

2.3 This instrument sets out provisions allowing trade repositories ("TRs" - these are entities that collect and maintain records of derivatives transactions and securities financing transactions to enhance the transparency of those markets and promote financial stability) to submit applications for registration by the Financial Conduct Authority ("FCA") in advance of the end of the TP. This is to ensure that there is continuity of Securities Financing Transaction ("SFT") reporting services after the end of the TP, and to ensure that counterparties of SFTs will be able to meet their reporting obligations.

2.4 This instrument will also ensure that a temporary registration regime is in place, enabling TRs to apply for registration with the FCA before the end of the TP, provided they are a UK legal entity and part of the same group as a TR with an existing registration with the European Securities and Markets Authority ("ESMA") under the EU SFT Regulation ("SFTR").

2.5 This instrument will also ensure that a conversion regime is in place, which will allow TRs established in the UK before the end of the TP to convert their existing ESMA SFTR registration into a registration with the FCA. These powers are similar to those set out in the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018, which provided for registration arrangements, and a temporary registration regime and conversion regime for TRs under 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 ("the European Market Infrastructure Regulation" or "EMIR").

2.6 There are also some minor and technical amendments to the current version of UK SFTR. These are consistent with the UK's wider approach in previous EU Exit instruments under the EUWA 2018.

Transitional and saving provisions concerning the Securitisation Regulation (regulations 30-36)

2.7 After the end of the TP, firms will be required to make information on securitisations, which are not private, available through a securitisation repository ("SR" – these are entities that collect and maintain the records of securitisation instruments and underlying assets) authorised by the FCA. Regulations 30 - 36 will ensure that the FCA can receive and consider applications from SRs before the end of the TP, facilitating a smooth transition for SRs as they continue to provide SR services in the UK after the end of the TP.

Amendment of cross-references in primary legislation (regulations 37-39) and secondary legislation (regulation 71 and the Schedule).

2.8 Regulations 37 to 39, and 71 taken together with the Schedule of this instrument, make amendments to provisions in previous EU Exit financial services instruments that contained cross-references to EU regulations as they were in force when a particular EU exit instrument was made. However, in certain cases the underlying EU regulation has been amended since the date of making the EU exit instrument. It is therefore necessary to update these references to refer instead to the version of the EU regulation as it will be in force at the end of the TP (which is the version of the EU regulation that will form part of retained EU law under the EUWA 2018). The specific provisions of primary and secondary legislation amended are:

- Paragraph 15C (4) of Schedule 6 to the Insolvency Act 1986.
- Sections 313 and 417 of the Financial Services and Markets Act 2000.
- Sections 3, 4(4)(a) and 11A (8) of the Banking Act 2009.
- Article 35A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- Regulation 1(4) of the Regulated Covered Bonds Regulations 2008.
- Article 1(6) of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009.
- Regulation 2(3) of the Capital Requirements Regulations 2013.
- Regulation 1(3) of the Capital Requirements (Country-by-Country Reporting) Regulations 2013.
- Regulation 2(2A) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.

- Article 2(2) of the Banking Act 2009 (Banking Group Companies) Order 2014.
- Article 5(1) of the Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014.
- Article 2(4) of the Bank Recovery and Resolution (No. 2) Order 2014.
- Regulation 2 of the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016.
- The following paragraphs of the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018—
    - Schedule 1, paragraph 54;
    - Schedule 2, paragraph 3(b)(ii);
    - Schedule 3, paragraph 1(29);
    - Schedule 4, in each of paragraphs 2(2)(c), 4(4)(2)(b) and 7(3);
- Regulation 2 of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.
- Regulation 3(2)(b) of the Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019.

Amendment of secondary Legislation (regulations 40-70)

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (regulation 40)

2.9 This instrument amends a reference to EMIR in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, so that it refers to the appropriate (amended) version at the end of the TP. This is similar to the amendment detailed in paragraph 2.8.

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (regulation 41)

2.10 Regulation 41 of this instrument inserts a new provision in regulation 2 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 ("the 2001 Regulations"). It provides that a reference to an EU regulation in the 2001 Regulations is to be read as a reference to that EU regulation as amended from "time to time". The effect of the amendment is that a reference to an EU regulation in the 2001 Regulations will include subsequent amendments made to the version of that EU regulation that will form part of retained EU law. This supports the amendments made by regulation 61 of these Regulations, referred to below.

The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (regulation 42)

2.11 This instrument makes an amendment to a reference to the EU Benchmarks Regulation in The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, so that it refers to the appropriate (amended) version at the end of the TP.

The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (regulation 43)

2.12 Regulation 43 of this instrument amends the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 ("the 2018

Regulations"). The 2018 Regulations give the UK financial services regulators powers to fix deficiencies in EU Binding Technical Standards ("BTS") so that they operate effectively in UK law from the end of the TP. This instrument will ensure that recently adopted BTS, which will form part of retained EU law, will continue to operate effectively at the end of the TP.

2.13 Regulation 43 adds to the Schedule to the 2018 Regulations new BTS adopted under:

- EMIR;
- Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("the Fourth Money Laundering Directive");
- Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation ("the Securitisation regulation").

The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (regulation 44)

2.14 Under Articles 25.2a, 25a.3 or 25d.3 of EMIR, as amended by Regulation (EU) 2019/2099 ("EMIR 2.2"), the European Commission can introduce delegated acts specifying how the EU's updated third country Central Counterparty ("CCP") supervision framework will apply in practice. The Bank of England has been transferred the power to make their own such provision via binding technical standards. In line with the position taken for Article 25(6) of EMIR in an earlier EU Exit instrument (regulation 9 of SI 2018/1184), regulation 44(3) of this instrument puts in place a new provision to revoke any such EMIR 2.2 delegated acts that apply immediately before the end of the TP. Their revocation will allow the Bank of England to finalise the UK's own version of the EMIR 2.2 framework.

2.15 As the Bank of England will ultimately process all applications for recognition under the UK's own version of EMIR 2.2, regulation 44(4) of this instrument extends the deadline for foreign CCPs that are in the temporary recognition regime to submit their applications for permanent recognition from June 2021 to June 2022. This gives foreign CCPs more time to review the UK's final legal framework for recognition before applying.

The Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 (regulation 45) and the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (regulation 64)

2.16 The unamended Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community ("CBPR1") equalised charges for payments in euros between Member States with domestic payments in euros. CBPR1 was previously revoked by the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019, because the UK does not have any internal borders for payments.

2.17 Subsequently, CBPR1 was amended at the European level by Regulation (EU) 2019/518 ("CBPR2"). Certain provisions of the amended CBPR1 (Articles 3a and 3b) introduced new currency conversion transparency requirements. This instrument maintains the existing policy of revoking the provisions of the amended regulation

which equalise charges for cross-border payments but maintains and fixes deficiencies in Articles 3a and 3b.

2.18 In order to effectively maintain certain parts of the CBPR1 (as amended) in UK law (on which see regulation 72 of this instrument, outlined in paragraph 2.67 below), amendments are required to the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018, and the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019.

2.19 Regulation 45 of this instrument amends the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018, ensuring that the FCA continues to have powers (set out in the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012) to supervise and enforce the retained parts of the Cross Border Payments Regulation after the end of the TP.

2.20 Regulation 64 of this instrument amends the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 so that the CBPR is not revoked in its entirety.

The Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (regulation 46)

2.21 The Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 retained a provision from the Deposit Guarantee Scheme Directive into UK law, which requires the UK's deposit protection limit to be reviewed at least once every five years. This previous instrument also stipulated that the Prudential Regulation Authority ("PRA") should not review the UK limit until 2021 at the earliest. Given the timings of the end of the TP, it would now be inappropriate to require the PRA to review the limit before 2021. This instrument therefore removes this requirement and replaces it with a new requirement, that the PRA must review the limit no later than 2025, five years after the end of the TP. This amendment ensures deficiencies in the previous instrument are corrected whilst maintaining the policy intent of the limit being reviewed periodically every five years.

The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (regulation 47)

2.22 The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018, which transferred registration and supervision of TRs from ESMA to the FCA, includes both a Conversion Regime and a Temporary Registration Regime for firms wishing to operate under UK EMIR as a TR in the UK after the end of the TP. This measure grants the FCA the power to request more information from TRs who have made advance applications during the TP (including those who applied before the original deadline of exit day, as defined in legislation at the time as 29 March 2019) and requires TRs to notify the FCA of any changes to the information in their application, or anything else material to their recognition. The length of the TP means that information contained within advance applications could now be out of date, and these provisions ensure the FCA will have up to date information on TRs that are 'converting' from ESMA-registered TRs and those that are seeking registration for the first time, when the FCA takes over supervisory responsibility for them at the end of the TP. These amendments also extend the scope of the offence of misleading the FCA under section 398 of the Financial Services and Markets Act 2000 ("FSMA") (which

already covers information contained in applications or notifications) to include information provided in accordance with these new provisions.

The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (regulation 48)

2.23 This instrument deletes a number of articles from The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (the "2018 SI"). These deletions are necessary because the articles they refer to have been replaced or will be replaced by new EU law – parts of the second Capital Requirements Regulation ("CRR2") which apply from 28 December 2020, and the "CRR2.1" Covid-19 response legislation, which applied from the end of June 2020. The fixes to the original articles contained in the 2018 SI no longer work, and so are deleted in regulation 48 of this instrument. Deficiency fixes for the new articles, where relevant, are contained in regulation 74 of this instrument as explained below.

The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (regulation 49)

2.24 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms ("the Investment Firms Supervision Regulation") introduced small amendments to the tick size regime in Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ("the Markets in Financial Instruments Regulation" or "MiFIR"). The tick size regime regulates price increments ('ticks') on trading venues. These changes became operational in March 2020.

2.25 This instrument will make one minor deficiency fix to MiFIR to ensure that the new reference to the Markets in Financial Instruments Directive is replaced with a reference to the correct piece of UK legislation that implemented the relevant element of that Directive.

The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (regulation 50)

2.26 Regulation 50 of this instrument amends the definition of an unauthorised Credit Rating Agency ("CRA") in the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019. It provides that, at the end of the TP, the FCA will have the same powers to investigate and enforce against firms who are carrying out credit rating activities without being registered, as ESMA has under the Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies as it has effect in EU law.

2.27 The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 introduced both a Conversion Regime and a Temporary Registration Regime for CRAs, to allow registration and supervision of UK CRAs to transfer from ESMA to the FCA with minimal disruption. The legislation required CRAs to notify the FCA of their intention to enter these regimes before exit day (at the time defined in legislation as 29 March 2019). The FCA will then automatically take on supervisory responsibility at the end of the TP for any CRA that has submitted a valid notification.

2.28 It has now been more than a year since the notifications were submitted, so the information contained in the notifications may no longer be up to date. Regulation 50 of this instrument amends the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (2019/266) to grant the FCA the power to request more information from CRAs during the TP. This will allow the FCA to request up to date information in

advance of taking on supervisory responsibility for these CRAs. These amendments also extend the scope of the offence of misleading the FCA under s.398 FSMA (which already covers information contained in applications or notifications) to include information provided in accordance with these new provisions.

The Market Abuse (Amendment) (EU Exit) Regulations 2019, the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 and the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (regulations 51, 57 and 64)

2.29 The regulations in this instrument are part of the legislation necessary to implement a UK carbon emissions reduction policy; they lay the foundation for further legislation that will complete the legislative package for future UK carbon pricing.

2.30 This instrument revokes earlier deficiency fixes (which were due to come into force at the end of the TP) that relate to the EU Emissions Trading Scheme ("ETS"); specifically, they:

- Reinstate powers in FSMA in relation to the ETS and the Market Abuse (Amendment) (EU Exit) Regulations 2019 (regulation 51);
- Restore the regulated activity of bidding in emission auctions in relation to the operation of FSMA (regulation 57).
- Undo the revocation of the Recognised Auction Platform Regulations 2011 by regulation 25(b) of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (regulation 64).

2.31 The earlier deficiency fixes were intended to update legislation that had referred to the EU ETS. However, since the UK's membership of the EU ETS will end following the TP, the UK will establish a new regime for carbon pricing. The earlier deficiency fixes are therefore being removed whilst legislation is brought forward to introduce that replacement regime.

2.32 The Government intends to bring forward further legislation with provisions for the new carbon pricing regime, so that a new regime can be in place in 2021. The removal of existing provisions here is therefore part of wider legislative programme that will introduce a new UK carbon pricing regime. As such, the changes to MAR introduced by these provisions do not reflect the intended final scope of UK MAR on ETS matters – forthcoming legislation will further amend MAR to finalise its scope and applicability so far as ETS is concerned.

The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 and the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (regulation 52)

2.33 Article 4(4) of EMIR as it will form part of retained EU law provides the FCA with the power to make Technical Standards specifying which type of derivative contracts are required to clear in a CCP. Regulation 52(3) of this instrument clarifies the scope of the FCA's power to ensure it matches the scope of retained EU Regulatory Technical Standards and ensures that the FCA can update these retained Regulatory Technical Standards in a way that is appropriate for the UK market.

2.34 Regulation 52(5) of this instrument extends the deadline in the transitional provisions by a year to take account of the TP.

2.35 Regulation 52(6) ensures that the FCA will be able to impose requirements on TRs regulated under EMIR in the event of non-compliance with a supervisory request – for instance, where a TR does not provide the FCA with access to data on financial transactions. This regulation brings the powers of the FCA into line with the existing powers of EU regulators and will enable the FCA to regulate TRs more effectively in future.

2.36 Regulation 52(7) of this instrument makes an amendment to ensure that the correct regulator is referenced with relation to verifying rules made under UK EMIR.

2.37 Under EMIR, intragroup exemptions may be granted to allow different parts of corporate groups to enter into over-the-counter derivative contracts with each other without having to go through clearing at a CCP or posting margin. In Part 5 of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, HM Treasury established a temporary regime to ensure that any such existing intragroup exemptions between UK and EU firms, as well as other intragroup exemptions that applied to transactions with foreign entities under the EU's own temporary regime before exit, could continue in the event of a no-deal exit. In line with HM Treasury's general approach to transitional regimes, the UK's temporary intragroup regime has been amended to come into force at the end of the TP.

2.38 However, the EU's temporary regime for the clearing exemption will expire on 21 December 2020 and, if not extended, intragroup transactions between UK entities and non-EU entities that were covered by the EU regime immediately before that date will not be captured by the UK regime. Regulation 52(9) to (11) of this instrument therefore ensures that all those with an EU temporary exemption on 21 December 2020 will also benefit from an exemption in the UK's temporary regime, as was the original policy intention.

2.39 The EU's temporary regime for the intragroup exemption from margin requirements was intended to be extended to 21 December 2020; however, the Regulatory Technical Standards for this extension have never formally entered into force and the FCA have been acting in a risk-based and proportionate manner since 4 January 2020, pursuant to a supervisory statement from the European Supervisory Authorities. It is therefore not possible to extend the existing margin exemptions in the same way as will be done for the aforementioned clearing exemptions. Instead, regulations 52(9) and 52(11) remove the automatic transitional element of the regime for firms with existing exemptions, but maintain the ability for firms to apply for an exemption under the regime. We expect that in practice, UK firms who have received an intragroup exemption from margin requirements for transactions with non-EU entities, as a result of the EU's regime, will be able to maintain this exemption in the UK's temporary regime following a streamlined notification process. The notification process will be detailed by the FCA.

The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (regulation 67)

2.40 Regulation 67 of this instrument makes minor changes to ensure that new EMIR REFIT provisions which apply from 18 June 2020 work in a UK context at the end of the TP.

The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (regulation 69)

2.41 Regulation 69(2) of this instrument ensures that when the Bank of England recognises a foreign CCP under Article 25 of retained EMIR, it will also specify the services and activities which that recognition allows the CCP to provide or perform in the UK at the end of the TP. This addresses an inconsistency introduced by a previous instrument in the Bank of England's powers before and after the end of the TP.

2.42 As a result of a provision in regulation 44(4) which extends the deadline for non-UK CCPs within the temporary recognition regime to apply for permanent recognition, regulation 69(2) makes a consequential amendment to the deadlines by which the Bank of England have to process recognition applications under Article 25 EMIR. This maintains the status quo of the Bank of England having one year to process applications made before the deadline and 180 working days for applications made after.

2.43 Regulation 69(3) of this instrument makes an amendment to ensure that both the Panel on Takeovers and Mergers and the PRA has express permission to receive data from Trade Repositories under UK EMIR.

The Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 (regulation 53)

2.44 Currently, EEA retail funds known as "UCITS" are required to provide information to investors in the form of a "Key Investor Information Document" ("KIID") in the EU. Consequently, UCITS are exempt from the requirement to create or provide the "Key Investor Document" (KID) under the Packaged Retail Investment and Insurance-based Products (PRIIPs) Regulations. This exemption will be in force until December 2021. Through previous EU exit instruments, HM Treasury have replicated the exemption so that EEA and UK UCITS are also not subject to PRIIPs in the UK. Instead, UK UCITS and existing EEA UCITS under the Temporary Marketing Permissions Regime ("TMPR") are required to provide the UCITS KIID disclosure document.

2.45 Any new EEA UCITS, which are not in the TMPR and wish to market into the UK, are able to apply via a regime in section 272 of FSMA, which allows non-UK funds to market into the UK if they go through a rigorous fund-by-fund assessment by the FCA. These EEA funds are also exempt from producing the PRIIPs KID but there is not a similar requirement for these new EEA UCITS to provide a UCITS KIID to UK investors because the requirement in the UCITS Directive will no longer apply. This would result in an unjustifiable gap in disclosure requirements, and the amendment in this instrument will therefore require EEA UCITS recognised under section 272 to provide a UCITS KIID disclosure document to UK investors.

The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (regulation 54)

2.46 Equivalence is a unilateral process to determine whether another country's regulatory and supervisory regime is equivalent to the UK's corresponding regulatory framework. Under Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance ("the Solvency 2 Directive", the prudential regulatory regime for insurers), equivalence determinations can be permanent, provisional or temporary. The measure for "temporary equivalence" in the Solvency 2 Directive is due to end on 31 December 2020. This regulation allows the UK, before the end of the TP, to extend the application of any expiring temporary equivalence determinations made by the European

Commission to the end of 2021, by making regulations subject to negative resolution. This will allow the UK to conduct a full assessment of equivalence during 2021, without existing temporary arrangements lapsing. Regulation 54 also makes an amendment to a technical threshold in the volatility adjustment to Solvency 2 risk-free rates, in line with a change to the Solvency 2 Directive.

The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 and the Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020 (regulations 55 & 70)

2.47 Regulation 55 of this instrument updates the definition of EMIR in the Equivalence Determinations Regulations 2019, as this reference is now outdated following a recent amendment to EMIR.

2.48 Regulation 70 of this instrument introduces a provision in relation to the offence of misleading the FCA in providing information (in section 398 of FSMA) to clarify the position for submissions of information to the FCA under the Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020. Regulation 70 also provides powers for the FCA to enter into cooperation arrangements with third country regulators in relation to the EU Credit Rating Agencies Regulation ("CRAR") before the end of the TP. This avoids the application of existing EU equivalence determinations for CRAR, that will form part of retained EU law at the end of the TP, ceasing to function as intended.

The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 (regulation 56)

2.49 Regulation 56(2) of this instrument updates a reference to EMIR in the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 to refer to its application as retained EU law after 31 December 2020.

2.50 Regulation 56(5) and (6) of this instrument ensures that the FCA will be able to impose requirements on TRs regulated under SFTR in the event of non-compliance with a supervisory request – for instance, where a TR does not provide the FCA with access to data on financial transactions. This regulation brings the powers of the FCA in line with the existing powers of EU regulators and will enable the FCA to regulate TRs more effectively in future. A similar provision is provided in relation to TRs regulated under EMIR (see regulation 52(4) of this SI).

2.51 Regulation 56(7) of this SI makes an amendment to ensure that the correct regulator is referenced with relation to verifying rules made under UK SFTR.

The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 and The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 (regulations 58 and 68)

2.52 Article 15(5) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds ("the Benchmarks Regulation") as it will form part of retained EU law after the end of the TP ("the UK Benchmarks Regulation") relates to the codes of conduct for administrators of critical benchmarks. The legislation currently references a list of critical benchmarks in Article 20(1) of the Benchmarks Regulation as it forms part of EU law. However, there will be no reference to this list in the UK Benchmarks Regulation which will come into force at the end of the TP. This instrument amends Article 15(5), replacing the

reference to the list of critical benchmarks in Article 20(1) with a reference to those benchmarks which have been specified as critical by HM Treasury under Articles A20(5) or (6), or 20(5) of the UK Benchmarks Regulation.

2.53 Article A20 of the UK Benchmarks Regulation sets out the procedure for the review of critical benchmarks. This review informs the designation of benchmarks by HM Treasury. Benchmarks designated as critical are subject to more stringent regulatory requirements. This instrument inserts the word "proportionate" into Paragraph 1 of Article A20, to ensure the practicability of the FCA's obligation to conduct a review of critical benchmarks. This instrument also places an obligation on benchmark administrators to notify the FCA if they believe that a benchmark they administer meets the relevant criteria to be designated as a critical benchmark.

2.54 Regulation 68 of this instrument makes a minor correction to the amendment of the UK Benchmarks Regulation by the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020.

The Securitisation (Amendment) (EU Exit) Regulations 2019 (regulation 59)

2.55 The Securitisation Regulation requires institutional investors to carry out appropriate due diligence when investing in securitisation instruments. The Securitisation Regulation defines an institutional investor as, amongst other things, an institution for occupational retirement provision ("IORP" – for instance, a pension fund) or an investment manager or an authorised entity appointed by an IORP. The latter part of this definition – that an institutional investor may be an investment manager, or an authorised entity appointed by an IORP – was omitted from a previous financial services EU Exit instrument. This instrument makes an amendment to include authorised entities appointed by an IORP in the definition of institutional investor in the version of the Securitisation Regulation that will form part of retained EU law. This will ensure that, after the TP, an authorised entity appointed by an IORP can still act on behalf of IORPs when carrying out due diligence requirements under the Securitisation Regulation, consistent with existing market practices.

2.56 The FCA currently does not have the appropriate powers to enable it to impose requirements on SRs in the event of non-compliance by the SR with a supervisory request. Regulation 59(4) applies the new supervisory powers for trade repositories to the securitisation context, providing the FCA with powers to impose requirements on SRs, and therefore bringing powers of the FCA in line with the existing powers of EU regulators in this area. This provision therefore ensures the effective supervision of SRs after the end of the TP.

The Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (regulation 60)

2.57 This instrument provides for amendments to the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 ("CIRWUR") and the Insurers (Reorganisation and Winding Up) Regulations 2004 ("IRWUR").

2.58 The temporary market access arrangements for Gibraltarian firms are supported by savings for Gibraltar in other areas of legislation. Two examples of this are the CIRWUR and IRWUR which, from the end of the TP, will govern the orderly winding up or reorganisation of Gibraltarian credit institutions and insurers, and the respective role of the Gibraltarian and UK regulators in the process.

2.59 This instrument amends the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 to ensure the proper functioning of the onshored arrangements for Gibraltar in that SI. This includes amending paragraph 3 of Schedule 2 to the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 so that the Bank of England is under a duty to make a "third country instrument" recognising or refusing to recognise resolution action taken by the Gibraltarian regulator in respect of Gibraltarian credit institutions, investment firms and certain group companies when notified of such action; amending regulation 3 the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 to clarify that CIRWUR is saved for Gibraltarian investment firms and group companies, as well as credit institutions; and clarifying that the duty on the UK regulators to notify the Gibraltarian regulator of certain insolvency-related court proceedings only applies in relation to UK credit institutions with branches in Gibraltar.

The Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 (regulation 61)

2.60 The Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 ("the 2019 Regulations") make a number of amendments to The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 ("the 2001 Regulations"). Those amendments included amendments to the definitions of EU Regulations so that they referred to EU Regulations as amended by the various previous EU Exit financial services statutory instruments. Regulation 61 of this instrument amends regulation 4(2) of the 2019 Regulations by removing the references to the relevant EU Exit financial services statutory instruments. Instead the 2001 Regulations will now rely on the general provision inserted by regulation 41 of this instrument, referred to above, such that a cross reference will refer to an EU Regulation as it is amended from time to time.

The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (regulation 62)

2.61 This makes an amendment similar to that detailed in paragraph 2.8 to a reference in the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 to EMIR, so that it refers to the appropriate (amended) version at the end of the TP.

The Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 (regulation 63) and The Prospectus (Amendment etc.) (EU Exit) Regulations 2019 (regulation 66))

2.62 Companies wishing to raise capital through issuing securities – such as shares and bonds – may be required to provide investors with a prospectus. This is a document which describes – amongst other things – a company's business, shareholding structure, and details of the securities being offered. Since 21 July 2019, the UK's prospectus regime has been set by Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC ("the EU Prospectus Regulation") and Delegated Regulations made under the EU Prospectus Regulation, which contain the standardised prospectus rules, including on the format and content of prospectuses, that apply across all EEA Member States.

2.63 This instrument amends previous EU Exit financial services instruments in respect of the UK's prospectus regime, to omit provisions within these instruments that are now defunct. Firstly, this instrument omits the now unnecessary transitional provision (contained in regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019) which preserved the validity of prospectuses 'passported' into the UK under Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC ("the EU Prospectus Directive"). This transitional provision became defunct on 21 July 2020, one year after the EU Prospectus Directive was repealed in EU law, as prospectuses are only valid for a period of 12 months.

2.64 Secondly, an article of, and an annex to, a Delegated Regulation under the Prospectus Regulation are also removed. This annex previously contained the prospectus requirements for securities issued by certain public sector bodies of third countries. This annex (and the associated article) are no longer required as regulation 32 of the Prospectus (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1234)) extended an exemption for certain public sector bodies within the EU Prospectus Regulation from EEA states to all states. This means the specified public sector bodies of all states will not be obliged to produce a prospectus when issuing securities in the UK. As such, there is no requirement to set out what their prospectus requirements should be in legislation.

2.65 Additionally, regulation 66 of this instrument makes minor technical amendments to earlier EU Exit SIs, made necessary by the application of a new Delegated Regulation under the EU Prospectus Regulation. This new Delegated Regulation makes several amendments and corrections to an existing Delegated Regulation under the EU Prospectus Regulation, which sets out detailed prospectus information requirements for different issues of securities. That Delegated Regulation was previously amended in the Prospectus (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1234)).

Amendment or revocation of retained direct EU legislation (regulations 72-78)

Regulation (EC) No 924/2009 (as amended by Regulation (EU) 2019/518) (regulation 72)

2.66 The unamended Regulation (EC) No 924/2009 ("CBPR1", as defined above) equalised charges for payments in euros between Member States with domestic payments in euros. CBPR1 was to be revoked by the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019, because the UK does not have any internal borders for payments – however, that provision will be revoked itself by regulation 64 of this instrument.

2.67 Subsequently, CBPR1 was amended by Regulation (EU) 2019/518 (CBPR2). Certain provisions of the amended Cross Border Payments Regulation (Articles 3a and 3b) introduced new currency conversion transparency requirements. These require that, before making a card payment or a credit transfer involving a currency conversion, the party offering the currency conversion presents the payment service user with specified information regarding the amounts to be paid and received, and any currency conversion charges.

2.68 This instrument maintains the existing policy of revoking the provisions of the amended regulation which equalise charges for cross-border payments, but maintains and fixes deficiencies in Articles 3a and 3b. The amendments in regulation 72 of this instrument ensure that Articles 3a and 3b continue to apply to payments where the

currency conversion offered is between Sterling and EU currencies. They also ensure that the provisions continue to apply where the payment is domestic (between two UK payment service providers) or between a UK payment service provider and a payment service provider located in the EEA. For further clarity, points (5) and (6) of Article 3a will not come into UK law. This is because they apply in April 2021, after the end of the TP, and therefore cannot be onshored into UK law under the terms of the EUWA 2018, as amended.

2.69 These amendments should be read in conjunction with regulations 45 and 64 of this instrument (see explanatory notes above for further detail).

Regulation (EU) No 231/2013 (regulation 73)

2.70 Alternative Investment Fund Managers ("AIFMs") are regulated by the Alternative Investment Fund Managers Directive 2011/61/EU ("AIFMD"), which we have onshored as The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018 ("AIFM Regulations"). Alternative Investment Funds ("AIFs") are any funds that are not regulated at EU level under the Undertakings for Collective Investment in Transferable Securities ("UCITS") Directive and they are usually aimed at professional and institutional investors. Hedge funds, private equity funds, and most kinds of unregulated collective investment schemes are traditionally AIFs. As currently drafted, the onshored AIFM Regulations mean that certain FCA rules do not directly apply to small AIFMs. This instrument will fix this with a targeted amendment to ensure the relevant rules apply. This is a small technical fix that aims to faithfully deliver the regime as it was intended to apply from the end of the TP. This will be achieved by rewording the references made in the AIFM Regulations to the FCA rules, so that they are construed as if they apply to small AIFMs.

Regulation (EU) No 575/2013 (regulation 74)

2.71 Regulation 74 of this instrument amends provisions relating to the Capital Requirements Regulation ("CRR", Regulation EU 575/2013), which has been amended by the EU since previous deficiencies were fixed by Regulation (EU) 2019/876 ("CRR2") and amending Regulation (EU) 2020/873 ("CRR2.2"). The provisions in this instrument serve to fix technical deficiencies, including: amending references to the EU and Member States; amending references to EU law to their retained EU law equivalents; omitting paragraphs where these relate to EU-centric processes which will not exist in the UK after the end of the TP; designating the PRA as the relevant authority; and assigning Regulatory Technical Standard mandates to the relevant regulators – the PRA and the FCA.

Regulation (EU) 2015/2365 (regulation 75)

2.72 Regulation 75 of this instrument ensures that the definition of "financial counterparty" in UK SFTR captures CSDs. This will ensure SFTR reporting requirements function properly at the end of the TP.

Regulation (EU) 2019/877 (regulation 76)

2.73 The Single Resolution Mechanism is a central institution for bank resolution within the EU Banking Union. Given the Single Resolution Mechanism only applies to countries in the Banking Union, this instrument revokes Regulation (EU) 2019/877, which relates to the Single Resolution Mechanism and the loss-absorbing and recapitalisation capacity of credit institutions and investment firms.

Regulation (EU) 2019/2088; and Regulation (EU) 2020/852 (regulations 77-78)

2.74 This instrument makes minor amendments to the recently applicable elements of the EU Taxonomy framework. The elements of the Taxonomy framework that are directly applicable to the UK, and will therefore form part of retained EU law, are those that set out the criteria for the future development of green performance thresholds for specific economic activities, known as Technical Screening Criteria (TSCs).

2.75 The disclosure requirements for large corporate and financial firms will not form part of retained EU law because they enter into force after the TP. As such, there is no power to legislate for these elements under the EUWA 2018, however the Government is considering its wider approach to sustainable finance disclosures and will set out its approach to this in due course.

2.76 This instrument will make the following amendments to those elements that are directly applicable, to ensure they work in a UK context at the end of the TP:

- TSC publishing dates - the backstop deadline to develop TSCs in the EU taxonomy framework will be amended by this SI from January 2021 to January 2023 for the first 2 environmental objectives, and from January 2022 to January 2024 for the other 4 environmental objectives. This is to allow sufficient time to consider TSCs that are appropriate for the UK.
- Platform on sustainable finance - Article 20 of the EU taxonomy framework sets out the role and constituents of the Platform which the EU will use to advise on the development of the TSCs, which includes EU bodies no longer appropriate for the UK. This has been removed, to ensure UK maintains scope to determine who it will consult in the consideration of TSCs after the end of the TP.
- Review of the framework - inoperable criteria of Article 26 of the EU taxonomy framework has been removed and the deadline has been amended to within 3 years of the TP, giving the UK appropriate time to consider its approach to the Taxonomy overall.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 68 of this instrument amends regulation 12(4) of the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020, which (in turn) amends the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 that makes an amendment to Article 19a(2) of the Benchmarks Regulation as it forms part of retained EU law. The eventual provision in the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 would have replaced "EU" with "UK" "in both places" it occurred when it should have stated "in each place" it occurred. This instrument corrects the provision.

3.2 In accordance with the requirement stated in paragraph 4.7.6 of the Statutory Instrument Practice, HM Treasury has consulted with the SI Registrar. As this correction only represents a small part of both the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 and the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019, the procedure for free issue has not been applied.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 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 (section 2(2) of the European Communities Act 1972, section 8(1), and paragraphs 21 and 38 of Schedule 7 to, the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited by those Acts or by this instrument.

4. Extent and Territorial Application.

4.1 The territorial extent of this instrument is to the whole United Kingdom.

4.2 The territorial application of this instrument is to the whole United Kingdom.

5. European Convention on Human Rights

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

> "In my view the provisions of The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

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

6.2 Part 2 of the instrument amends transitional and saving provisions concerning the SFTR including advance applications, temporary registration, temporary registration for run-off period, registration conversion and general provisions.

6.3 Part 3 amends transitional and saving provisions concerning the Securitisation Regulation including, advance applications and general provisions.

6.4 Part 4 amends primary legislation including the Insolvency Act 1986, the Financial Services and Markets Act 2000 and the Banking Act 2009.

6.5 Part 5 amends secondary legislation including: The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001; The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018; The Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018; The Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018; The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018; The Capital Requirements (Amendment) (EU Exit) Regulations 2018; The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018; The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019; The Market Abuse (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 Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019; The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019; The Equivalence Determinations for

Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019; The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019; The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019; The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019; The Securitisation (Amendment) (EU Exit) Regulations 2019; The Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019; The Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019; The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019; The Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019; The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019; The Capital Requirements (Amendment) (EU Exit) Regulations 2019; The Prospectus (Amendment etc.) (EU Exit) Regulations 2019; The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019; The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020; The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020; The Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020; and Amendments to cross references to retained EU Regulations.

6.6 Part 6 of this instrument amends and revokes elements of retained EU law: Regulation (EC) No 924/2009; Regulation (EU) No 231/2013; Regulation (EU) No 575/2013; Regulation (EU) 2015/2365; Regulation (EU) 2019/877; Regulation (EU) 2019/2088; and Regulation (EU) 2020/852.

6.7 Part 4, regulations 41 and 71, and the Schedule are also made under section 2(2) of the European Communities Act 1972, so far as they have effect before the end of the TP to ensure the UK fulfils its obligations under the Withdrawal Agreement. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 with effect from exit day, but saved with modifications until the end of the TP by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020).

7. Policy background

What is being done and why?

7.1 The UK has left the EU and is currently in a Transition Period lasting until 31 December 2020. During this period, common rules continue to apply, access to each other's markets continue as previously, and businesses, including financial services firms, are able to trade on the same terms as previously. UK firms need to continue to comply with EU legislation, including any new EU legislation that becomes applicable during the Transition Period.

7.2 Since July 2018, HM Treasury has put in place legislation, using powers under the EUWA 2018, to ensure that the UK has an independent and coherent financial services regulatory regime at the end of the Transition Period. This instrument forms part of this programme of work.

7.3 As far as possible, HM Treasury's approach ensures that the same laws and rules that are currently in place in the UK would continue to apply at the end of the Transition Period, to provide continuity and certainty to firms and their customers.

7.4 During the Transition Period, HM Treasury has continued to use powers under the EUWA 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, to prepare for 1 January 2021. In particular, as new EU legislation has become applicable during the Transition Period, HM Treasury has brought forward further statutory instruments, including this instrument, to ensure that it continues to operate effectively in the UK at the end of the Transition Period.

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

8.1 This instrument is being made using the powers conferred by section 2(2) of the European Communities Act 1972 and by section 8(1) of, and paragraphs 21 and 38 of Schedule 7 to, the EUWA 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 HM Treasury has not undertaken a consultation on this instrument but has engaged extensively with the Bank of England and the FCA during the drafting process. HM Treasury has engaged with relevant industry stakeholders on its approach to Financial Services legislation under the EUWA 2018, including on this instrument, in order to familiarise them with the proposed legislation ahead of laying.

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is that some of the instruments being amended impact on the UK financial services regulators (the Bank of England and the FCA). Where required, impact assessments for the individual instruments being amended by this instrument have been published on legislation.gov.uk.

12.3 An Impact Assessment has not been prepared for this instrument because in line with Better Regulation guidance, HM Treasury considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de minimis impact assessment has been carried out.

13. Regulating small business

13.1 The legislation applies to small businesses. However, it does not introduce new regulatory requirements for small businesses, but merely ensures a consistent and coherent regulatory regime.

14. Monitoring & review

14.1 As this instrument is made under the EUWA 2018, no review clause is required.

15. Contact

15.1 Sarah Malik at HM Treasury (Email: sarah.malik@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Rohan Lee, Deputy Director for Financial Services at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

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

> "In my view the Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 do no more than is appropriate".

1.2 This is the case because it follows the approach taken in previous instruments to fix deficiencies in retained EU law to ensure that the UK financial services regulatory regime continues to operate in a coherent, effective and transparent manner at the end of the Transition Period. Additionally, this instrument makes the appropriate amendments and revocations to EU legislation that will become redundant in a UK-only context at the end of the Transition Period.

2. Good reasons

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

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

2.2 These are: the approach taken with this instrument is consistent with the approach previously taken in earlier instruments, and maintains the intended effect of those instruments. The amendments and clarifications made to previous instruments are necessary to ensure that legislation operates effectively at the end of the Transition Period, and the amendments go no further than what is required for this purpose.

3. Equalities

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

> "The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 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 Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020, 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.

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