

EXPLANATORY MEMORANDUM TO
THE EQUIVALENCE DETERMINATIONS FOR FINANCIAL SERVICES AND
MISCELLANEOUS PROVISIONS (AMENDMENT ETC) (EU EXIT)
REGULATIONS 2019

2019 No. 541

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument is being made using powers in the European Union (Withdrawal) Act 2018 (EUWA) to address deficiencies in relation to the European Union's (EU) equivalence framework for financial services and retained EU law arising from the withdrawal of the United Kingdom (UK) from the EU. This instrument makes provisions for elements of the UK equivalence framework in a no deal scenario. It provides ministers with a temporary power, for up to twelve months after exit day, to make equivalence directions and exemption directions for the EU and EEA member states. This power is intended to be used only in cases where it is necessary to make equivalence decisions for the EU and EEA member states quickly and efficiently to support UK market activity and the continuity of cross-border business. After this power expires, and for any countries other than the EU and EEA member states, equivalence decisions made by the Treasury must be made by regulations subject to the negative procedure. However, these powers only come into force on exit day.
- 2.2 The temporary power of direction is therefore needed to ensure that HM Treasury can make equivalence decisions before exit day that come into force on exit day. The instrument also gives new functions to the financial regulators to provide technical advice to HM Treasury in relation to equivalence assessments, revokes related EU regulations, and corrects deficiencies in existing EU equivalence decisions that will be retained EU law

Explanations

What did any relevant EU law do before exit day?

- 2.3 Some EU financial services legislation contains provisions which allow the European Commission to determine that a third country's regulatory and supervisory regime is equivalent to the EU's corresponding regulatory framework. Equivalence decisions can help to reduce or eliminate overlaps in regulatory and supervisory requirements between the EU and the third country, and can allow for third countries to receive improved prudential treatment. They can also facilitate the cross-border exchange of services and products, and may allow EU authorities to rely on compliance with a third country regime.
- 2.4 In the EU, the Commission is usually responsible for making jurisdiction-level equivalence decisions in relation to third country regimes, while the European Supervisory Authorities (ESAs) are responsible for making the 'recognition' decisions or authorisations that apply to specific firms within those third countries

where there is provision for this in EU legislation. These functions of the Commission and the ESAs are set out in various EU regulations.

- 2.5 Before making an equivalence decision, the Commission will assess the relevant aspects of a third country's regulatory and supervisory regime to determine whether they meet equivalent standards. When preparing to make equivalence determinations, the Commission may ask the ESAs to conduct technical assessments of a third country's framework to support the Commission's assessment.
- 2.6 When the Commission makes an equivalence decision in relation to a third country, the decision is given effect through EU tertiary legislation (as defined in s. 20 Interpretation of the EUWA 2018), meaning an implementing or a delegated act. These decisions may apply to an entire area of a third country's regulatory and supervisory framework, or may only apply to a specific regime in that third country where multiple regimes exist. The Commission makes equivalence decisions on a unilateral basis, and may attach additional conditions to its decisions.

Why is it being changed?

- 2.7 This instrument forms part of HM Treasury's contingency planning in the event that the UK leaves the EU without an agreement or implementation period. In a no deal scenario, the UK will no longer be included in scope of the Commission's equivalence regime for financial services. In order to maintain a functioning statute book on exit day, the functions of the Commission and the ESAs will need to be transferred to the appropriate UK authorities.
- 2.8 On exit day, the Commission's function for making equivalence decisions in financial services legislation will be transferred to HM Treasury. An example of this transfer of function can be found in The Central Securities Depositories (Amendment) (EU Exit) Regulations 2018. (<http://www.legislation.gov.uk/ukxi/2018/1320/contents/made>)
- 2.9 The functions of the ESAs to provide technical advice to the Commission will be transferred to the UK financial regulators, the Bank of England, Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). The ESAs' functions for making firm-level 'recognition' decisions will be transferred to the relevant UK financial services regulators through other HM Treasury EU Exit instruments which correct deficiencies in the relevant EU legislation.
- 2.10 Existing EU equivalence decisions will become retained EU law but will contain deficiencies that need to be addressed. These deficiencies include references to EU institutions, the Union and EU law. These deficiencies need to be addressed in order to ensure that these retained decisions continue to operate effectively in the UK after exit.
- 2.11 Equivalence decisions which relate to third country Central Counterparties (CCPs), made under Article 25 of Regulation (EU) No 648/2012 (EMIR) will be revoked by The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1184). To ensure the continuity of services provided by third country CCPs, those regulations create a temporary recognition regime which will provide a fall-back for non-UK CCPs to provide services to the UK.
- 2.12 This instrument also grants temporary powers to HM Treasury to address a situation where equivalence decisions need to be made for the EU and EEA member states at short notice, including before exit day so that they can come into force on exit day.

Further detail on these temporary powers are provided in section 7 of this explanatory memorandum.

What will it now do?

- 2.13 This instrument addresses deficiencies in relation to the EU's equivalence framework and retained EU law that result from the UK's withdrawal from the EU. It provides ministers with a temporary power, for up to twelve months after exit day, to make equivalence directions and exemption directions specified in the instrument for the EU and EEA member states. This power is intended to be used in cases where it is necessary to make equivalence decisions for the EU and EEA member states quickly and efficiently to support UK market activity and the continuity of cross-border business. Use of this temporary power is not expected where alternative, specific transitional arrangements are in place. After this power expires, equivalence decisions made by the Treasury must be made by regulations subject to the negative procedure.
- 2.14 The instrument gives functions to the financial services regulators to provide technical advice to HM Treasury to support third country equivalence assessments to which their fee raising powers apply, and ensures that the Treasury can require the regulators to provide advice. It also revokes EU Regulations that are no longer appropriate once the UK has left the EU and corrects deficiencies in some retained EU equivalence decisions.
- 2.15 As equivalence provisions appear in several EU regimes, this instrument interacts with changes made in other HM Treasury EU Exit instruments which have been prepared as part of the government's no deal contingency planning to ensure that the UK financial services framework can operate effectively once the UK has left the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 8(1) of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury, John Glen, has made the following statement regarding Human Rights

“In my view the provisions of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument addresses deficiencies arising from the withdrawal of the UK from the EU in relation to the existing equivalence framework for financial services.
- 6.2 Equivalence regimes appear across the acquis of EU financial services legislation that will become retained EU law on exit day. Schedule 1 to this instrument sets out the regimes under which HM Treasury may make equivalence decisions for EEA states by direction. Decisions made under the power of direction may be made in advance of exit day and have immediate effect from exit day.
- 6.3 Schedule 2 to this instrument makes amendments to some existing equivalence decisions contained in EU tertiary legislation that will become retained EU law at exit in order to address deficiencies in those decisions. This ensures that third country regimes found equivalent to the EU will continue to be considered as equivalent to the UK at exit.
- 6.4 This instrument also revokes the regulations establishing the ESAs and the European Systemic Risk Board (ESRB) which would not be appropriate to retain after exit day. The instrument revokes the following regulations:
- Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.
 - Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;
 - Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;
 - Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;

7. Policy background

What is being done and why?

- 7.1 The UK will leave the EU on 29 March 2019. The UK and EU negotiating teams have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. This will provide time to introduce the new arrangements that will underpin the UK-EU future relationship, and provide valuable certainty for businesses and individuals. During the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. This will mean that access to each other's markets will continue on current terms and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020. UK firms will need to comply with any new EU legislation that becomes applicable during the implementation period.

- 7.2 The government is seeking a deep and special future partnership with the EU, which should be greater in scope and ambition than any such agreement before and encompass financial services. Given the highly regulated nature of financial services, the volume of trade between UK and EU markets, and a shared desire to manage financial stability risks, the UK proposes a new economic and regulatory arrangement that will preserve mutually beneficial cross-border business models and economic integration for the benefit of businesses and consumers. Decisions on market access would be autonomous in our proposed model, but would be underpinned by stable institutional processes in a bilateral agreement and continued close regulatory and supervisory cooperation.
- 7.3 While the government believes that there will be a deal and an implementation period in place, it has a duty to plan for all eventualities, including a ‘no deal’ scenario. To prepare for this eventuality, HM Treasury intends to use powers in the European Union (Withdrawal) Act 2018 (EUWA) to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.
- 7.4 The EUWA repeals the European Communities Act 1972 and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as “retained EU law”. The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through SIs. These contingency preparations for financial services legislation are sometimes referred to as ‘onshoring’. These SIs are not intended to make policy changes, other than to reflect the UK’s new position outside the EU, and to smooth the transition to this situation. The scope of the power is drafted to reflect this purpose and is subject to further restrictions, such as the inability to use the power to impose or increase taxation, or establish a public authority. The power is also time-limited and falls away two years after exit day.
- 7.5 Wherever practicable, the proposed approach is that the same laws and rules that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, if the UK does not enter an implementation period, some changes would be required to reflect the UK’s new position outside the EU from 29 March 2019.
- 7.6 If the UK were to leave the EU without a deal, the UK would be outside the EU’s framework for financial services. The UK’s position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.
- 7.7 In light of this, the approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed including to provide for a smooth transition to the new circumstances.
- 7.8 HM Treasury published a document on 27 June 2018, which sets out in more detail HM Treasury’s approach to financial services legislation under the European Union

(Withdrawal) Act. (<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>)

- 7.9 As set out in section 2.1 of this explanatory memorandum, this instrument addresses deficiencies in relation to the EU's equivalence framework, and provides for a temporary decision-making process under that equivalence framework to take decisions before exit day that would come into force on exit day, in the event that the UK withdraws from the EU without an agreement or implementation period. This instrument is designed to ensure that the UK's equivalence framework for financial services is clearly defined after exit day, and intends to provide legal certainty about how the processes for preparing and making equivalence assessments will operate in a no deal scenario.

Power to make equivalence directions and exemption directions for the EU and EEA member states

- 7.10 To address a scenario where equivalence or exemption decisions may be required at short notice and to come into force on exit day, this instrument creates a temporary power for ministers to make equivalence and exemption decisions towards EU and EEA members states by direction, for equivalence regimes specified in Schedule 1 to the instrument and certain exemptions specified in regulation 3.
- 7.11 As the power is intended to mitigate risks associated with exit, ministers' ability to exercise this power will be limited to a period of twelve months from exit day. The Treasury will also be under an obligation to lay any direction before Parliament and to publish it.

Regulators' ability to provide information and advice

- 7.12 Under the EU equivalence framework for financial services, the ESA Regulations stipulate that the ESAs must provide a technical assessment of a third country's regulatory and supervisory regime when mandated to do so by the Commission. The regulations establishing the ESAs and ESRB will be revoked through this instrument, as these will not have application in the UK after exit. A list of these regulations is set out in section 6.4 of this explanatory memorandum.
- 7.13 After exit, HM Treasury may require technical advice when assessing the equivalence of a third country's regulatory and supervisory regime. It is therefore appropriate that the ESAs' function of providing technical advice to the Commission should be transferred to the UK's financial services regulators (the Bank of England, PRA and FCA).
- 7.14 Regulation 5 of this instrument ensures that protections on the disclosure of confidential information set out in the Financial Services and Markets Act 2000 apply in relation to information received by the Bank of England when providing information or advice to HM Treasury.

Obligation to enter into and maintain a Memorandum of Understanding (MoU)

- 7.15 After exit, HM Treasury and the UK financial services regulators will have new powers and functions under the UK's equivalence framework. The obligation created by this instrument for HM Treasury and the regulators to enter into and maintain an MoU is intended to provide clarity on aspects of the operational processes and coordination of activities between HM Treasury and the regulators which are not set out in legislation.

- 7.16 In addition, the obligation to publish the MoU and lay it before Parliament will provide transparency about the processes that will underpin the UK's equivalence decisions.

Fixing deficiencies in existing EU equivalence decisions

- 7.17 Equivalence decisions made by the Commission before exit day will become retained EU law. In order to ensure a functioning statute book at exit, this instrument fixes deficiencies in some of these decisions which contain deficiencies under the powers in section 8(1) of the EUWA. These fixes will ensure that third countries found equivalent to the EU are equivalent to the UK on exit day. This will help to avoid disruption to the UK's relationships with other non-EU countries by ensuring that they continue to have the same access to the UK that their existing EU equivalence decisions currently provide. It will also minimise disruption for UK firms consuming the services of foreign firms and for UK regulators.

Interaction with other EU Exit instruments being prepared by HM Treasury

- 7.18 After exit, the function of the Commission to determine the equivalence of third country regimes in financial services regulation will be transferred to HM Treasury, and the relevant functions of the ESAs' will be transferred to the Bank of England, the PRA and the FCA as appropriate. HM Treasury will be able to make decisions about equivalence by way of regulations, but these powers will not come into force until exit day.
- 7.19 The transfer of these functions will be achieved through other HM Treasury EU Exit instruments which correct deficiencies in the relevant EU regulations and related domestic legislation. After exit, the UK will no longer be in scope of the EU's equivalence framework, and therefore transferring these functions is necessary to ensure that there is a functioning UK equivalence framework in a no deal scenario. This split in responsibilities between HM Treasury and the regulators reflects the existing division between the Commission and the ESAs in making equivalence assessments and the existing split of responsibilities in the UK financial services framework. Transferring the function to make jurisdiction-level equivalence decisions to HM Treasury allows for an appropriate level of parliamentary oversight.

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

EUWA, including on this instrument, in order to familiarise them with the legislation ahead of laying.

11. Guidance

11.1 No further guidance is published alongside this instrument

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies as a result of this instrument, as this instrument does not create any new requirements for firms. UK financial services regulators, financial services firms, and their advisers such as law firms, could be impacted by this instrument if HM Treasury makes an equivalence or exemption direction, or does not make a direction. Non-UK firms and regulatory authorities may be impacted by this instrument should the UK undertake new equivalence assessments which require them to provide information in the context of any application they might make for an equivalence decision.
- 12.2 For firms that are currently operating on the basis of an EU equivalence decision listed in Schedule 2 of this instrument, this instrument will enable the Treasury to maintain their ability to operate in the UK after exit, by addressing any deficiencies in these equivalence decisions as they form part of retained EU law.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 An Impact Assessment has been prepared and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website, when an opinion from the Regulatory Policy Committee has been received.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 HM Treasury does not consider that small businesses will be disproportionately affected and has therefore taken the decision not to assist small business specifically. A large number of businesses, including small businesses, will benefit from the fact that deficiencies in retained EU financial services law arising at the point of exit are addressed, in order to ensure that there continues to be a fully functioning financial services legislative framework.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Michael Sole at HM Treasury (telephone: 020 7270 5508 or email: Michael.Sole@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Katie Fisher, Deputy Director for EU Exit Financial Services Domestic Preparation at HM Treasury, can confirm that this explanatory memorandum meets the required standard.
- 15.3 John Glen, the 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, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because without this instrument, elements of the UK’s equivalence framework would be left unspecified; the financial services regulators would not be given appropriate functions and duties to provide technical advice to HM Treasury to support future equivalence assessments; and existing equivalence decisions would contain deficiencies which would lead to uncertainty for firms which rely on their application. It is appropriate for HM Treasury to be able to make equivalence and exemption directions to prepare for a scenario where the EU and EEA member states may need to be declared equivalent in specific areas of financial services at short notice and with immediate effect on or after exit day. This power expires twelve months after exit day and following its expiry HM Treasury may only make equivalence and exemption determinations by regulations.

2. Good reasons

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

“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 The policy rationale for the provisions contained within this instrument is set out in sections 2 and 7 of the explanatory memorandum. The instrument forms part of HM Treasury’s contingency planning for a no deal scenario, to ensure that the UK continues to have a functioning financial services regime from exit day, regardless of the outcome of negotiations. These provisions ensure a smooth transition after exit day and will help to avoid legal uncertainty, costs and inefficiency by minimising disruption to financial markets.

3. Equalities

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

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

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

“In relation to the instrument, I, John Glen, Economic Secretary to the Treasury, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

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

“In my view it is appropriate to create a relevant sub-delegated power in the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.”

- 5.2 It is appropriate that this instrument delegates power to the Treasury to make directions which are not statutory instruments and therefore constitutes sub-delegation within the meaning of paragraph 30 of Schedule 7 EUWA. This is because the Treasury may need to make decisions quickly to come into force immediately in order to maintain continuity in relation to financial services around exit day.