

## EXPLANATORY MEMORANDUM TO

### THE FINANCIAL SERVICES AND ECONOMIC AND MONETARY POLICY (CONSEQUENTIAL AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 1301

#### 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.

#### 2. Purpose of the instrument

- 2.1 This instrument is being made under the European Union (Withdrawal Agreement) Act 2020 ("the 2020 Act") to make consequential amendments to financial services EU exit instruments previously made under the European Union (Withdrawal) Act 2018 ("EUWA 2018"). Specifically, this instrument will update references to "exit day" (31 January 2020) within substantive provisions of previous financial services EU exit instruments, where considered appropriate, so that they refer instead to the end of the Transition Period ("TP"). In the instrument itself, the term "IP completion day" is used, which is the defined term within the 2020 Act for the end of the TP.
- 2.2 This instrument also amends a reference to "exit day" in the European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019 to "IP completion day".
- 2.3 This instrument is being made in order to ensure that the EU exit instruments work as intended when they come into force and there is a coherent and functioning financial services regulatory regime in the United Kingdom ("UK") at the end of the TP.

#### 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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application.

- 4.1 The territorial extent of this instrument is to the whole UK.
- 4.2 The territorial application of this instrument is to the whole UK.

#### 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 Financial Services and Economic and Monetary Policy (Consequential Amendments) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

6.1 This instrument makes amendments to secondary legislation made under the EUWA 2018 that are required as a consequence of the 2020 Act and the Transition Period, to ensure that retained EU law operates as intended from the end of the Transition Period.

6.2 Regulation 2 substitutes reference to “exit” in the EEA Passport Rights (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018 with “IP completion day”. Regulation 3 and the Schedule amend a number of references to “exit day” in the provisions in 48 financial services EU exit instruments listed below, so that they refer instead to “IP completion day”. The financial services EU exit SIs amended are:

- The Friendly Societies (Amendment) (EU Exit) Regulations 2018;
- The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018;
- The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018;
- The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018;
- The Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018;
- The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018;
- The Bank of England (Amendment) (EU Exit) Regulations 2018;
- The Central Securities Depositories (Amendment) (EU Exit) Regulations 2018;
- The Short Selling (Amendment) (EU Exit) Regulations 2018;
- The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018;
- The Capital Requirements (Amendment) (EU Exit) Regulations 2018;
- The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018;
- The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019;
- The Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019;
- The Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019;
- The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019;
- The Market Abuse (Amendment) (EU Exit) Regulations 2019;
- The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019;

- The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019;
- The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019;
- The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019;
- The Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019;
- The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019;
- The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019;
- The Money Market Funds (Amendment) (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) (EU Exit) Regulations 2019;
- The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019;
- The Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019;
- The Financial Services (Gibraltar) (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 Payment Accounts (Amendment) (EU Exit) Regulations 2019;
- The Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019;
- The Insurance Distribution (Amendment) (EU Exit) Regulations 2019;
- The Uncertificated Securities (Amendment and 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 Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019;
- The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019;
- The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019;
- The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019;

- The Capital Requirements (Amendment) (EU Exit) Regulations 2019;
- The Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019;
- The Prospectus (Amendment etc.) (EU Exit) Regulations 2019;
- The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019.

6.3 Regulation 3 and paragraph 28 of the Schedule update a reference to “exit day” in another EU Exit SI – the European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019 to “IP completion day”.

## 7. Policy background

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

- 7.1 The UK left the EU on 31 January 2020 and is currently in a TP lasting until 31 December 2020. During this period, common rules continue to apply, access to each other’s markets continues 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 TP.
- 7.2 Prior to exit day, HM Treasury made over 50 EU Exit instruments under the EUWA 2018 to ensure the UK’s financial services regulatory regime stood ready for all scenarios at exit day. This included introducing a range of temporary permissions and transitional regimes to minimise any disruption to firms and consumers as the UK left the EU. The majority of these instruments were originally drafted to take effect on exit day.
- 7.3 Paragraph 1 of Schedule 5 to the 2020 Act contained a general rule that delayed those parts of these EU Exit instruments that would have come into force by reference to exit day (for instance, “on exit day” or “immediately before exit day”) so they will instead come into force by reference to “IP completion day”.
- 7.4 The 2020 Act did not make any general amendments to “exit day” that may be referenced within the substantive provisions of EU Exit instruments. Earlier this year, HM Treasury made the Financial Services (Consequential Amendments) Regulations 2020, which is now in force, and which dealt with a number of temporary permissions and transitional regimes that had come into force ahead of exit day, to allow the UK regulators and affected firms to prepare for exit. That instrument ensured that the temporary permissions and transitional regimes that were already in force will apply as intended by reference to the end of the Transition Period rather than “exit day”.
- 7.5 This instrument updates references to “exit day” in substantive provisions that have not already been amended, and where it is appropriate to do so, to ensure that the previous EU Exit instruments operate as intended from the end of the Transition Period. Specifically, this instrument amends a number of references to “exit day” in these substantive provisions of the earlier EU Exit instruments to instead read “IP completion day”. Other characteristics of the EU Exit instruments will remain unchanged (for example, references to time periods will remain the same in length; so, a reference to “one year from exit day” will become “one year from IP completion day”).

- 7.6 In March 2019, the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 became law. This instrument provided for a Temporary Transitional Power (“TTP”) for use by the UK’s financial services regulators (the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority). The TTP allows the regulators to delay or phase in new changes to UK regulatory requirements arising as a result of the UK’s withdrawal from the EU. Specifically, the TTP allows the UK’s financial services regulators to give transitional directions to delay the coming into force of, or otherwise modify, firms’ regulatory obligations where they have changed as a result of an SI made under section 8 of the EUWA 2018.
- 7.7 In March 2020, HM Treasury confirmed via a Written Ministerial Statement that the TTP would be retained at the end of the Transition Period, with its application updated such that it is available for use by the UK’s financial services regulators for a period of up to two years from the end of the Transition Period. This instrument delivers that outcome by amending the relevant references to “exit day” in the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 to instead read “IP completion day”.
- 7.8 This instrument also updates a reference to “exit day” in the European Union Budget, and Economic and Monetary Policy (EU Exit) Regulations 2019 to “IP completion day”. This amendment is to ensure that the restated principles of Article 123 of the Treaty on the Functioning of the European Union continue to apply as intended from the end of the TP. This article prevents the Bank of England from providing overdraft facilities or any other type of credit facility in favour of central government, regional, local or other public authorities, other bodies governed by public law, or public undertakings of the UK, or purchasing debt instruments directly from them.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument is not being made under the EUWA 2018 but relates to the UK’s withdrawal from the EU. This is because this instrument is being made using powers in the 2020 Act to make amendments consequential on the Withdrawal Agreement. This includes amending provisions made under the EUWA 2018 that address failures of retained EU law to operate effectively, or other deficiencies arising from the withdrawal of the UK from the EU.
- 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 Financial Conduct Authority 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 Financial Conduct Authority).
- 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 Although made under the 2020 Act, this instrument amends provisions made under the EUWA 2018 for which no review clause is required. Consequently, no review clause is included for this instrument.

## **15. Contact**

- 15.1 Thomas Haigh at HM Treasury (Email: [thomas.haigh@hmtreasury.gov.uk](mailto:thomas.haigh@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.