EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. 1223

1. Introduction

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

2. Purpose of the instrument

2.1 The instrument contains a range of measures to address deficiencies in retained European Union ("EU") law.

2.2 It will ensure that HM Treasury and the Financial Conduct Authority ("FCA") can apply their powers under certain Regulations to Gibraltarian firms in the UK financial services market.

2.3 It will extend the requirement for institutional investors to conduct specific due diligence prior to investing in EU Simple, Transparent, and Standardised ("STS") securitisations, and extend the exemption from the clearing obligation in relation to EU STS securitisations to those notified prior to 11pm on 31 December 2024 (both currently apply in relation to EU STS securitisations notified prior to 11pm on 31 December 2022).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 Financial Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services (Miscellaneous Amendments) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

Gibraltar provisions

6.1 Gibraltar is a British Overseas Territory with its own institutions of self-government. Until Implementation Period ("IP") completion day at 11pm on 31 December 2020, EU law applied to the UK and Gibraltar. For the purposes of EU law, the UK and Gibraltar were in effect considered the same EU Member State. In practice, the UK treated Gibraltar in many cases as if it were a European Economic Area ("EEA")

state, and arrangements between the UK and Gibraltar in financial services were determined by EU financial services law, for example, to enable UK market access for Gibraltarian firms analogous to EU single market passporting. Gibraltar left the EU together with the UK. HM Treasury made regulations to ensure that the UK/Gibraltar financial services regulatory framework continued to operate effectively after the withdrawal from the EU.

6.2 HM Treasury made the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/680)[1] to make amendments to financial services legislation that support market access between the UK and Gibraltar. Regulation 11 of these Regulations included a horizontal savings provision that disapplied amendments made under the European Union (Withdrawal) Act 2018 ("EUWA") to legislation that before IP completion day applied to activities connected to Gibraltar, Gibraltar trading venues or firms, transactions between the UK and Gibraltar and functions of the Gibraltar Financial Services Commission ("GFSC"). Regulation 11 of SI 2019/680 was designed to ensure that relevant matters in relation to Gibraltar could be treated as they were before IP completion day with some necessary modifications to take into account the UK and Gibraltar's withdrawal from the EU.

6.3 By preserving the pre-existing arrangements, regulation 11 of SI 2019/680 also disapplied amendments concerning the transfer of certain powers from EU bodies to HM Treasury and the FCA. As a result, in relation to those powers, there continue to be deficiencies which arise from the withdrawal from the EU. This instrument addresses such deficiencies and enables HM Treasury and the FCA to exercise the relevant powers in relation to Gibraltar-based firms operating in the UK. It achieves this by excluding certain matters from the horizontal savings provision in regulation 11. In particular:

6.4 Regulation 2(a) of this instrument ensures that HM Treasury can use its power under article 5(4) of the Short Selling Regulation[2] in relation to Gibraltar firms with net short positions in shares admitted to trading on a UK trading venue. Under article 5(4) of that Regulation, HM Treasury may by regulations modify the thresholds in article 5(2) relating to net short positions.

6.5 Regulation 2(b) ensures that, under articles 20(3) and 21(5) of the Markets in Financial Instruments Regulation,[3] the FCA can apply technical standards in relation to post-trade disclosure obligations by Gibraltar investment firms operating in the UK.

6.6 Regulation 2(c) ensures that HM Treasury and the FCA can use the following powers in relation to Gibraltar firms acting as sellers, advisers or manufacturers of packaged retail and insurance-based investment products ("PRIIPs") to retail investors in the UK. Under article 8(4) of the PRIIPs Regulation,[4] HM Treasury may by regulations specify the procedural details to establish whether a PRIIP targets specific environmental or social objectives. Under articles 8(5), 10(2) and 13(5) of that

[1] https://www.legislation.gov.uk/uksi/2019/680/contents/made
[2] Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.
[3] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.
[4] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

Regulation, the FCA may make technical standards relating to Key Information Documents for PRIIPs.

Securitisation provisions

6.7 The EUWA converted EU law as it stood at IP completion day into domestic law. It also conferred temporary powers on the Government to make secondary legislation, to enable corrections to be made to the laws that do not operate appropriately in a UK-only context, now that the UK has left the EU. This instrument relies upon those correcting powers to make changes to the Securitisation Regulation (EU) 2017/2402 and the European Market Infrastructure Regulation (EU) 648/2012 ("EMIR").

6.8 The Securitisation Regulation[5] came into effect in the UK and EU on 1 January 2019. It aimed to strengthen the legislative framework for securitisations and to revive securitisation markets. The Securitisation Regulation consolidated and amended the securitisation requirements previously included in various pieces of legislation.

6.9 The Securitisation (Amendment) (EU Exit) Regulations 2019 (SI 2019/660) ("Securitisation Exit SI") addressed deficiencies in the Securitisation Regulation arising from the withdrawal of the UK from the EU. This included a provision temporarily recognising EU STS securitisations.

6.10 The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022 ("EU Exit Regulations 2022") contained a range of measures to address deficiencies in retained EU law. Regulation 6 amends Article 18(3) of the Securitisation Regulation to extend the temporary recognition of EU STS securitisations notified prior to 11pm on 31 December 2024 (from the previous end date of 11pm on 31 December 2022).

6.11 The amendments made in this instrument further address failures of the retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. To do this, this instrument amends Article 5(3)(d)(i) of the Securitisation Regulation, and Article 4(5A)(a) of Regulation 648/2012 (EMIR)[6], to achieve consistency with the extension of scope of EU STS securitisations provided for in Article 18(3).

7. Policy background

What is being done and why?

Gibraltar provisions

7.1 EU law construed the UK and Gibraltar as being in the same Member State and so did not provide for firms to passport from the UK to Gibraltar or vice versa. Under UK law, however, Gibraltar is a separate jurisdiction for financial services. UK law therefore specified that Gibraltar, in many cases, should be treated as if it were an

[5] 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, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/201.

[6] The European Market Infrastructure Regulation ("EMIR") is retained EU legislation aimed at reducing systemic counterparty and operational risk and thereby prevent future financial system collapses. Its focus is regulation of over-the-counter derivatives, central counterparties and trade repositories.

EEA state, allowing Gibraltar firms to passport into the UK market. As UK legislation was amended on withdrawal from the EU to adjust the treatment of EEA firms, UK financial services Withdrawal legislation required separate provisions to preserve Gibraltar's continued access to the UK market. As an interim measure, pending the introduction of a permanent regime, regulation 11 of SI 2019/680 has saved for Gibraltar certain non-passporting arrangements in the UK financial services market that existed before IP completion day.

7.2 HM Treasury also made the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (SI 2019/589)[7]. These preserve access akin to passporting and ensure Gibraltarian firms, authorised by the GFSC, can continue to provide certain services and establish branches for these purposes in UK markets after withdrawal from the EU.

7.3 These transitional arrangements (SI 2019/589) will be replaced by a permanent regime called the Gibraltar Authorisation Regime ("GAR"). The GAR is established in the Financial Services Act 2021 and HM Treasury are developing the secondary legislation required to bring the scheme into effect. It is important to clarify that the GAR will not affect matters within the scope of regulation 11 of SI 2019/680. The GAR will replace the interim passporting arrangements whereby firms authorised by the GFSC operate in the UK through the Financial Services and Markets Act 2000 (Gibraltar) Order 2001[8] as amended by SI 2019/589 and covers certain financial services activities.

Securitisation provisions

7.4 Securitisation is the process of pooling various financial exposures (such as mortgages, car loans, or consumer loans) to create a financial instrument that can be marketed to investors. These financial instruments are 'tranched', which means that they carry different levels of risk and return to suit the appetite of different investors. This process allows lenders (such as banks) to transfer the risks of loans or other assets to other banks or investors (such as insurance companies or asset managers). This process can help free up lenders' balance sheets to allow for further lending to the economy.

7.5 STS securitisations are designed to make it easier for investors to understand and assess the risks of a securitisation investment by excluding more complex features. The UK STS framework is in line with international standards for Simple, Transparent, and Comparable securitisation, set by the Basel Committee on Banking Supervision and International Organization of Securities Commissions.

7.6 Some firms (in particular banks, building societies, investment firms and insurance firms) are subject to prudential regulation and can benefit from preferential capital treatment from investing in STS securitisations, compared to non-STS securitisations.[9]

[7] https://www.legislation.gov.uk/uksi/2019/589/made
[8] https://www.legislation.gov.uk/uksi/2001/3084/made
[9] For a more detailed explanation of prudential regulation and capital treatment in relation to securitisation, see paragraphs 7.11 and 7.12 of the Explanatory Memorandum for The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022 <https://assets.publishing.service.gov.uk/media/62c46ccee90e077486c19ae1/_proposed_neg__EM_Fin_Serv__misc_amend___EU_Exit__regs.pdf >

7.7 To be considered STS under the EU Securitisation Regulation, all parties involved in a securitisation – the originator[10], sponsor[11], and Securitisation Special Purpose Entity (SSPE)[12] – must be located within the EU.

7.8 Following EU Exit, for a securitisation to be notified as STS, the Securitisation Regulation specifies that the originator and sponsor (or for Asset-Backed Commercial Paper (ABCP) securitisations[13], just the sponsor) of a securitisation must be established in the UK. In addition, the Securitisation Exit SI made provision for certain STS securitisations notified under the EU Securitisation Regulation (with the originator and sponsor in the EU) before 11pm on 31 December 2022 to be recognised as STS in the UK for the lifetime of the securitisation.

7.9 The EU Exit Regulations 2022 extended the transitional period by allowing certain EU STS securitisations notified prior to 11pm on 31 December 2024 to be recognised as STS in the UK for the lifetime of the securitisation. This will help bridge the gap until a permanent framework for designating equivalent jurisdictions is in effect and an assessment of the EU can be undertaken under it.

7.10 This instrument will amend references to the original end date of the temporary recognition of EU STS in the Securitisation Regulation and EMIR, so that they refer to the new end date of 11pm on 31 December 2024. This will ensure consistent treatment for EU STS securitisations notified before this date.

7.11 Ensuring this status quo remains consistent until 11pm on 31 December 2024 should continue to support robust STS securitisation markets, and choice for UK investors, until an equivalence assessment of the EU in respect of STS securitisations can be conducted under the future framework.

7.12 It will also re-affirm the UK's commitment to a stable and resilient securitisation framework which conforms to international standards, thereby furthering the encouragement of STS securitisations as an important element of well-functioning markets globally.

Explanations

What did any law do before the changes to be made by this instrument?

Gibraltar provisions

7.13 Through UK financial services onshoring legislation, functions vested in the European Supervisory Authorities ("ESAs") and the European Commission transferred to HM Treasury and the FCA, except for in relation to Gibraltar persons in the UK in certain circumstances. By preserving pre-existing arrangements, regulation 11 of SI 2019/680 unintentionally disapplied amendments concerning the transfer of certain powers from EU bodies to HM Treasury and the FCA, thus perpetuating deficiencies arising from EU withdrawal.

[10] The entity which originates the loans being securitised or purchases a third party's loans to be securitised.
[11] A credit institution or investment firm, which is not an originator, and establishes and manages certain types of securitisations.
[12] An entity, other than an originator or sponsor, established for, and whose activities are limited to, carrying out securitisations. An SSPE is structured to isolate its obligations from those of the originator.
[13] A type of short-term securitisation, where the securities issued have an original maturity of one year or less.

Securitisation provisions

7.14 The Securitisation Regulation provided for a transitional period where securitisations notified prior to 11pm on 31 December 2022 which meet the relevant STS criteria and are notified as STS under the EU Securitisation Regulation are recognised as STS under the Securitisation Regulation. This allows for those EU STS securitisations to be subject to the same capital treatment as UK STS securitisations.

7.15 The 'EU Exit Regulations 2022' allowed for EU STS securitisations notified prior to 11pm on 31 December 2024 to continue receiving the same capital treatment as UK STS securitisations for the life of the transaction (extended from the previous end date of 11pm on 31 December 2022).

7.16 Article 5 of the Securitisation Regulation places requirements on institutional investors to conduct due diligence checks before investing in a securitisation.

7.17 Article 5(3)(d)(i) of the Securitisation Regulation applies STS-specific due diligence requirements for institutional investors prior to investing in EU STS notified before 11pm on 31 December 2022.

7.18 As set out in EMIR, certain Over-The-Counter ("OTC") derivative contracts need to be cleared by a recognised central counterparty, or CCP. This obligation was introduced after the financial crisis and requires larger firms to clear specific standardised derivative contracts through a CCP, which mutualises the risk of default by either firm. Consequently, firms must put additional resource into complying with the clearing obligation.

7.19 Article 4(5A)(a) of EMIR exempts EU STS securitisations notified before 11pm on 31 December 2022 from being subject to the clearing obligation.

Why is it being changed?

Gibraltar provisions

7.20 For the instances identified, this instrument will enable the completion of the proper transfer of powers to HM Treasury and the FCA in respect of Gibraltar persons. The ESAs and the European Commission did cease, in all respects, to be the authorities with oversight of Gibraltar following withdrawal from the EU but certain functions and powers were not transferred to HM Treasury and the FCA as they should have been.

Securitisation provisions

7.21 Article 5(3)(d)(i) of the Securitisation Regulation and Article 4(5A)(a) of EMIR were not amended to correspond with the new EU STS temporary recognition extending to EU STS securitisations notified between 11pm on 31 December 2022 and 11pm on 31 December 2024.

7.22 Consequently, the requirement that institutional investors must carry out a due diligence assessment which verifies whether EU originators, sponsors or original lenders have correctly categorised EU securitisations as STS, will not be in place for securitisations notified between 11pm on 31 December 2022 and 11pm on 31 December 2024.

7.23 Likewise, the provision that EU STS securitisations are exempt from the clearing obligation will no longer be in effect for EU STS securitisations notified between 11pm on 31 December 2022 and 11pm on 31 December 2024.

What will it now do?

Gibraltar provisions

7.24 This instrument will exclude provisions from regulation 11 of SI 2019/680 to enable the transfer of powers to the applicable UK authority. This will enable the UK authorities to treat UK and Gibraltar firms in the same way, removing unintended inconsistency in the way that firms carrying out the same activities are treated. For instance, under the Short Selling Regulation, HM Treasury's power to modify reporting thresholds relating to net short positions will extend to Gibraltar persons. Should HM Treasury exercise this new power to modify the threshold in the future, Gibraltar persons will be compelled to notify the FCA if and when their net short position in shares traded on a UK trading venue exceeds or falls below the modified threshold determined by HM Treasury.

7.25 In relation to the Markets in Financial Instruments Regulation, the FCA will be able to apply Regulatory Technical Standards ("RTS") relating to post-trade disclosure obligations to Gibraltarian investment firms in the UK. Also, the FCA will be empowered to authorise Gibraltarian investment firms in the UK to defer publication of post-trade disclosure.

7.26 Similarly, HM Treasury and the FCA will be able to apply their powers to Gibraltar firms acting as sellers, advisers or manufacturers of PRIIPs to retail investors in the UK. The FCA will be able to apply RTS in relation to reporting obligations in Key Information Documents. By regulations, HM Treasury will be able to specify procedural details to establish whether a PRIIP targets specific environmental or social objectives.

Securitisation provisions

7.27 This legislation amends the reference to 'two years' after IP completion day in Article 5(3)(d)(i) of the Securitisation Regulation to 'four years', to maintain the requirement for institutional investors to conduct STS notification-related due diligence checks when investing in EU STS securitisations notified until 11pm on 31 December 2024. This will prevent looser due diligence requirements for EU STS securitisations notified between 11pm on 31 December 2022 and 11pm on 31 December 2024, ensuring that the same due diligence requirements apply for investing in UK and EU STS securitisations.

7.28 This legislation amends the reference to 'two years' after IP completion day in Article 4(5A)(a) of EMIR to 'four years', to preserve the provision to exempt EU STS securitisations from the clearing obligation for EU STS securitisations notified prior to 11pm on 31 December 2024.

7.29 These amendments will align both articles with the end date for the temporary recognition of EU STS securitisations. This preserves a consistent approach to the treatment of the STS securitisation market and re-affirms the UK's commitment to a stable and resilient securitisation framework which conforms to international standards.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the EUWA in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. 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 no plans to consolidate the relevant legislation.

10. Consultation outcome

Gibraltar provisions

10.1 HM Treasury have not undertaken an open, public consultation on this instrument. HM Treasury have consulted the FCA and the Prudential Regulation Authority in deciding which matters this instrument should cover.

Securitisation provisions

10.2 A formal consultation for amendments related to securitisations for this instrument has not been undertaken. However, industry respondents gave their views on the approach taken to recognising EU STS in the Securitisation Exit SI in response to a call for evidence which formed part of HM Treasury's review of the Securitisation Regulation.[14]

10.3 Respondents found the temporary recognition of EU STS securitisations a helpful part of the government's approach to exiting the EU.

11. Guidance

11.1 No guidance is being provided in relation to this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies is low.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because, in line with the Better Regulation Framework, HM Treasury consider that the net impact on businesses will be less than £5 million a year. A de-minimis Impact Assessment is submitted with this memorandum and published alongside it on legislation.gov.uk.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of regulatory changes on all firms, including small businesses, this instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

13.3 With regard to securitisation, the approach taken is one of extending pre-existing temporary legislation, which mitigates the need for transitional or familiarisation costs.

[14] HM Treasury, Review of the Securitisation Regulation: Report and call for evidence response <Securitisation_Regulation_Review.pdf (publishing.service.gov.uk)>

14. Monitoring & review

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

15. Contact

Gibraltar

15.1 Christina Pavlis at HM Treasury, email: Christina.Pavlis@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

15.2 John O'Regan, Deputy Director for International Policy and Partnerships, Financial Services Group, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

Securitisation

15.3 Zia Shakeel at HM Treasury, email: Zia.Shakeel@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

15.4 Fayyaz Muneer, Deputy Director for Green and Prudential, Financial Services Group, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.5 The Financial Secretary to the Treasury, Andrew Griffith MP, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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) or	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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) Act 2018 or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

1.1 The Financial Secretary to the Treasury, Andrew Griffith MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Financial Services (Miscellaneous Amendments) Regulations 2022 does no more than is appropriate".

Provisions relating to Gibraltar

1.2 This is the case because: it enables the completion of the transfer of powers from the European Commission, and the European Supervisory Authorities, to HM Treasury and the Financial Conduct Authority ("FCA"). HM Treasury and the FCA will be able to apply existing powers, under certain Regulations, to Gibraltarian firms where operating in the UK financial services market. For more detail, please see Legislative Context, paragraphs 6.1 to 6.6, and Policy Background, paragraphs 7.1, 7.13, 7.20, and 7.24 to 7.26.

Provisions relating to securitisation

1.3 This is the case because this instrument ensures that the regulatory regime for STS securitisations operates effectively in a UK-only context.

2. Good reasons

2.1 The Financial Secretary to the Treasury, Andrew Griffith 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".

Provisions relating to Gibraltar

2.2 These are: the unintended disapplication, under certain Regulations, of onshored UK legislation in respect of Gibraltarian financial services firms operating in the UK will be corrected. HM Treasury and the FCA, as applicable, will be able to treat Gibraltar firms in the same way as UK firms. For more detail about how UK authority powers will extend to Gibraltar under the Short Selling Regulation, Markets in Financial Instruments Regulation, and Packaged Retail and Insurance-based Investment Products Regulation, please see Legislative Context, paragraphs 6.4 to 6.6, and Policy Background, paragraphs 7.24 to 7.26.

Provisions relating to securitisation

2.3 The amendments to the Securitisation Regulation and EMIR ensure that, in line with granting UK investors the same level of choice of STS securitisations as they do now for another two years, the status quo for EU STS due diligence requirements and clearing exemptions will remain unchanged, while the government intends to make

permanent changes to enable the recognition of STS-equivalent non-UK securitisations as part of the Financial Services and Markets Bill, subject to parliamentary approval.

3. Equalities

3.1 The Financial Secretary to the Treasury, Andrew Griffith MP, has made the following statement(s):

"The draft 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 Financial Secretary to the Treasury, Andrew Griffith MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Andrew Griffith 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 7 of the main body of this explanatory memorandum.