EXPLANATORY MEMORANDUM TO

THE CAPITAL REQUIREMENTS (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

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 to address deficiencies in retained EU law in relation to capital requirements arising from the withdrawal of the United Kingdom (UK) from the European Union (EU). This instrument will therefore act to ensure that the UK's capital requirements regime continues to operate as intended in the UK once the UK has left the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 This SI is predominantly focused on two pieces of EU legislation – the Capital Requirements Regulation (CRR) (EU Regulation No. 575/2013) and the Capital Requirements Directive IV (CRD IV) (Directive 2013/36/EU). These two pieces of legislation, alongside a range of technical standards and non-binding guidelines, form the EU's prudential policy regime for banks, building societies and investment firms. CRR and CRD IV amount to the EU's commitment to implement the Basel accords, a set of international prudential standards predominantly developed in the aftermath of the financial crisis. Prudential policy is focused on measuring risk and mitigating that risk through the maintenance of adequate capital reserves. It is designed to help protect depositors, consumers and other senior creditors of banks, building societies and investment firms. It also helps to maintain confidence in financial systems and promote financial stability.

2.3 Together, CRR and CRD IV set out various standards for the management of capital, liquidity and credit risk. This includes regulations that require banks to set aside enough capital to cover their risks, with these capital requirements adjusted dependent on the level of risk a bank takes. CRR and CRD IV set out some standard measures of risk in order to determine the level of capital a firm is required to hold. Banks are also required to hold a sufficient level of liquid assets – i.e. assets that can be readily accessed at times of financial stress.

2.4 The main pieces of sector-specific UK legislation that implement CRD IV are the Regulated Covered Bonds Regulations 2008[1], the Capital Requirements (Country-by-Country Reporting) Regulations 2013[2], and the Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014[3]. This SI therefore addresses these

[1] SI 2008/346
[2] SI 2013/3118
[3] SI 2014/894

pieces of domestic legislation to ensure they can continue to function as intended post-exit.

Why is it being changed?

2.5 EU Directives, including the CRD IV, will not form part of retained EU law after exit day, but the CRR will. This SI addresses deficiencies within the CRR and the UK's legislation which implemented the CRD, which arise as a result of the UK's withdrawal from the EU. If these deficiencies are not addressed, then significant aspects of the UK prudential regime would become less effective or legally inoperable. Without an operable prudential regime in place, the UK's ability to regulate the financial sector effectively would be compromised, affecting market confidence and creating instability. As well as being exposed to significant financial risk, the UK would also risk not meeting international commitments on prudential regulation agreed as part of the UK's membership of the G20.

What will it now do?

2.6 This SI makes amendments to ensure that the UK's capital requirements regime continues to operate effectively at the point at which the UK leaves the EU. These include changes to group consolidation, EU27 exposures, macroprudential measures, the transfer of functions currently carried out by the European Supervisory Authorities, and links to other EU dossiers. More detail on the specific changes being made in these areas can be found at Section 7.

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 2(2) of Schedule 2 to the European Communities Act 1972, and section 8(1) of, and paragraph 21 of Schedule 7 to 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 to the whole of the United Kingdom.

4.2 The territorial application of this instrument is to the whole of the 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 Capital Requirements (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 This SI amends the Capital Requirements Regulation (Regulation No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms), as that Regulation will be retained EU law by virtue of s.3 of the European Union (Withdrawal) Act 2018. It also amends two pieces of delegated legislation made under that Regulation – Commission Delegated Regulation (EU) 2015/61 with regard to liquidity coverage requirements for Credit Institutions, and Commission Delegated Regulation 1222/2014 with regard to the methodology for the identification of global systemically important institutions.

6.2 It also makes amendments to the following pieces of domestic legislation – the Regulated Covered Bonds Regulations 2008, Capital Requirements (Country-by-Country Reporting) Regulations 2013, and Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014.

6.3 To all these pieces of legislation, amendments are made to address failures of the retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

7. Policy background

What is being done and why?

7.1 The UK will leave the EU on 29 March 2019. The UK and the EU have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. This will provide time to introduce the new arrangements that will underpin the future UK-EU 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 has every confidence that a deal will be reached and the implementation period will be in place, it has a duty to plan for all eventualities, including a 'no deal' scenario. The government is clear that this scenario is in neither the UK's nor the EU's interest, and the government does not anticipate it arising. To prepare for this unlikely 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 In the unlikely scenario that the UK leaves 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 This SI makes amendments to aspects of CRR and related legislation to ensure that the UK's prudential policy regime continues to operate effectively in the UK once the UK has left the EU. The substantive change are:

Group consolidation

7.10 CRR introduced a simplified capital and liquidity reporting process for EU banking groups by introducing 'supervisory consolidation' - i.e. allowing groups to report single figures for their activities across the EU, with these overseen by a sole national supervisor acting on the EU's behalf. This SI makes amendments to Article 4 of the CRR to amend the geographical scope of all group consolidation provisions, restricting consolidation of capital and liquidity requirements to within the UK. In practice this will not change the application of consolidated capital requirements, as these are currently calculated on both a national and EU basis under the CRR.

7.11 However, CRR introduced consolidated liquidity requirements for EU banking groups which only apply on a cross-EU basis. Therefore, some groups with an EU parent entity and an EU consolidating supervisor that is not UK-based do not have a UK level of liquidity consolidation. When the UK leaves the EU it will fall outside of the joint supervisory framework for liquidity consolidation, meaning the UK will no longer be able to act as the EU consolidated group supervisor for a UK group with EU business. Instead, an EU bank operating in the UK will now be subject to a new layer of liquidity consolidation within the UK, overseen by the Prudential Regulation Authority (PRA).

EU27 exposures:

7.12 The CRR specifies how much capital and liquidity firms must hold against different types of exposures, for example exposures to central counterparties (CCPs) or central banks, expressed as a percentage of the total exposure. EU assets, and those of third countries whose prudential regime has been deemed equivalent by the European Commission, are given preferential treatment under CRR – for example, exposures to EU sovereign debt is subject to a 0% risk weight, meaning no capital needs to be held against these exposures.

7.13 In a no deal scenario and with no Commission assessment of equivalence between the EU27 and UK, UK exposures would no longer be treated preferentially by the EU. Once the UK has left the EU, in the absence of an agreement and where no equivalence determination has been made by the UK, the EU27 would automatically fall into the category of a third country where EU27 exposures would no longer receive preferential capital treatment. Therefore, this SI amends Articles 114-119 of the CRR to remove preferential treatment for various EU27 exposures to ensure consistent treatment.

7.14 The amendments to Articles 114-119 also make the necessary amendments to ensure that UK exposures of firms subject to the UK's capital requirements framework continue to be treated preferentially.

Macroprudential measures:

7.15 The CRR outlines a set of measures that national regulators can use in times of macroprudential or systemic risk – e.g., by providing the ability to adjust risk weights to certain exposures in the event of an asset bubble (Article 458). CRR requires that regulators notify or seek approval from EU institutions when deploying some of these tools. In the event of a no deal, these EU institutions will no longer have a role in the implementation of macroprudential measures in the UK. Amendments to Article 458 made by this SI therefore ensure that these tools remain available to UK regulators by removing the requirements to notify or seek approval from EU institutions, but with current requirements and restrictions on the use of macroprudential measures remaining in place. Therefore, the process for using macroprudential measures in a UK context will not change as a result of this SI, but the requirement for UK bodies to notify the EU when it uses these measures will come to an end. The Financial Policy Committee will play a role in this framework, in line with the its role as a macroprudential authority.

Transfer of functions:

7.16 Under the CRR, various functions are carried out by the European Supervisory Authorities – in particular, the European Banking Authority and European Securities

and Markets Authority. In line with HM Treasury's general approach on the transfer of functions, this SI ensures that these functions are transferred to the appropriate UK bodies – in this case, HM Treasury, the PRA and the Financial Conduct Authority (FCA). In some cases these functions are transferred to both of these regulators, while in other cases they are transferred to a specific regulator.

7.17 For example, this transfer of functions includes changes to Article 124 of CRR, which requires the European Banking Authority to publish the risk weights and criteria that competent authorities set for certain exposures. The responsibility to publish this information will be transferred to the PRA and FCA. A further example is the Article 135 requirement for the EBA to publish a list of External Credit Assessment Institutions – this function will be transferred to the FCA.

7.18 Under the EU system of financial regulation, drafts of Binding Technical Standards (BTS) are developed by European Supervisory Authorities. This SI transfers responsibility for making BTS under CRR to the relevant UK regulators (the FCA or the PRA), including responsibility for correcting deficiencies in CRR BTS. This will ensure that they operate effectively immediately on exit day and that they remain fit for purpose thereafter. This is in line with the approach taken across financial services regulation, where the Treasury is transferring responsibility for making BTS to UK regulators, as set out in the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018, laid in draft on 16 July 2018 (https://www.legislation.gov.uk/ukdsi/2018/9780111171394).

7.19 In order to provide continuity for firms in the event of a no deal, supervisory decisions made on certain issues before exit will be saved. Changes here are made through a new Article 522 added by this SI, which includes permissions (such as permission to use the standardised approach and internal models), application of intragroup treatments, application of single liquidity sub-group treatment, and adequacy of own funds. Where certain decisions under CRR are made on or before exit day by a body other than the PRA or FCA the SI contains a provision whereby such decisions are 'saved'. This means that, post-exit, the PRA and FCA will have the same powers in respect of such decisions after exit day as if they were the decisions taken by the PRA or FCA, including the power to vary or revoke decisions when necessary. This includes decisions taken via joint decision of the PRA or FCA and the national competent authority of an EU member state prior to exit, for example in relation to internal models or applications for various permissions.

Links to other dossiers:

7.20 CRR contains definitions and provisions that refer to other EU dossiers. The SI has addressed deficiencies in those provisions as far as possible. However, as some of the statutory instruments that correspond to those dossiers will be laid at a later stage, some of the cross references to them cannot be corrected in this instrument. This includes cross references to the Financial Conglomerates Directive (Directive 2002/87/EC), the International Accounting Standards Regulation (Regulation No.1606/2002) and the European Market Infrastructure Regulation on derivatives, central counterparties and trade repositories (Regulation No 648/2012). In addition, where aspects of CRR will be substantially amended by the Securitisation regulations (Regulations (EU) 2017/2402 and 2017/2401), these aspects will be amended at a later stage as part of the Securitisation onshoring.

References to Regulators' rules:

7.21 These Regulations refer to the Rulebook made by the PRA under the Financial Services and Markets Act 2000 and sourcebooks made by the FCA under that same Act. As these Regulations make clear, such references generally do not ambulate, and are fixed instead to how the Rulebook and sourcebooks have effect on exit day. This approach matches that taken in other HM Treasury EU Exit Regulations, and ensures that industry can look at one single version of the Rulebook and sourcebooks to understand all such references in HM Treasury Exit Regulations.

7.22 The FCA and PRA will be updating their respective Rulebook and sourcebooks in time for exit day to reflect the changes introduced through this SI, and to address any deficiencies due to the UK leaving the EU. HM Treasury is working closely with the FCA and PRA to review and approve these changes. The regulators will be consulting on all of the deficiency fixes they propose to make.

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.

8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972 (c.68) in order to make minor amendments to the secondary legislation associated with this instrument. These amendments ensure that references to EU instruments in those instruments are up to date at exit day, in accordance with the United Kingdom's EU's obligations prior to exit day.

9. Consolidation

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

10. Consultation outcome

10.1 HM Treasury has not undertaken a consultation on the instrument, but has engaged with relevant stakeholders on its approach to Financial Services legislation under the European Union (Withdrawal) Act 2018, including on this instrument, in order familiarise them with the legislation ahead of laying.

10.2 The instrument was also published in draft, along with an explanatory policy note, on 21st August 2018, in order to maximise transparency ahead of laying. (https://www.gov.uk/government/publications/draft-capital-requirements-amendment-eu-exit-regulations-2018)

10.3 The financial services regulators have launched a public consultation on changes they propose to make to Binding Technical Standards and rules made under the powers conferred upon them by the Financial Services and Markets Act 2000. The FCA's consultation can be found at https://www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation and the PRA's consultation can be found at https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2618-complete .

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

12.1 The impact on business, will include one-off familiarisation costs for banks, building societies and investment firms. The extent of the familiarisation will vary according to the particular business activities of affected firms, though for most affected businesses the costs are expected to be minimal. There may be an increase in the administrative burden for some groups that operate cross-border between the UK and the EU due to changes to group consolidation arrangements, as some firms operating in the UK will be subject to new reporting requirements.

12.2 There may also be a further impact on firms that currently have certain types of exposures to the remaining EU27. This SI ends the CRR preferential treatment for exposures to relevant EU firms and institutions so that automatic preferential treatment will only apply to UK exposures. An example is exposures to EU sovereign debt, which are subject to a 0% risk weight in the CRR. Under this SI, these exposures will instead require capital to be weighted according to countries' credit rating. Our expectation is that the impact of this change on firms will be low given that EU exposures make up a small proportion of overall exposures in in-scope firms.

12.3 The impact on the public sector is that, after the UK leaves the EU, the FCA and the PRA will be responsible for carrying out functions under CRR that are currently carried out by the European Supervisory Authorities, As regulation and supervision of credit institutions and investment firms is predominantly carried out at national level, and as UK regulators already play a major role in the operation of the ESAs, the PRA and FCA are well prepared for taking on these additional functions. There is no material impact on charities or voluntary bodies.

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 if they currently fall within the scope of the CRR.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. The intention of this SI is to ensure that the prudential regime within the UK continues to operate as intended when the UK leaves the EU. This SI therefore is aimed to minimise the impact of these regulatory changes on all firms, including small businesses.

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 Luke Miller at HM Treasury Telephone: 02072704399 or email: Luke.Miller@hmtreasury.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Clare Bolingford, Deputy Director for Securities, Markets and Banking, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

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

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

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

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

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

Part 2

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

1. Appropriateness statement

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

"In my view the Capital Requirements (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate".

1.2 This is the case because: it is in line with the European Union (Withdrawal) Act 2018 in serving to make those changes necessary to provide a functioning statute book in relation to prudential requirements on the day we leave the EU. It goes no further than doing what is appropriate to mitigate any disruption in financial markets for UK consumers, firms and the UK financial services sector as a whole, as a result of the UK exiting the EU. Without this instrument, then after Exit, the UK's prudential regulation framework would be deficient.

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: if this Government were not to proceed with this legislation, then significant aspects of the UK's prudential regime would become legally inoperable. The UK would risk not meeting international commitments made as part of its membership of the G20. This could expose the UK to serious financial stability risks and would create a period of uncertainty for the UK.

3. Equalities

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

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

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

"In relation to the instrument, I, 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 create the relevant sub-delegated powers in The Capital Requirements (Amendment) (EU Exit) Regulations 2018."

The functions detailed at paragraphs 7.13 and 7.14 require a transfer of Binding Technical Standards to the FCA and PRA. This is appropriate because the relevant Regulator (either the FCA or the PRA, or in some cases both) will have the necessary technical knowledge and resource to ensure that the EU technical standards which are relevant to CRR continue to operate effectively after the UK's exit from the EU. The required corrections and amendments to these binding technical standards will be of a highly technical nature and the Regulators will be best placed to assess what amendments to the standards are required post-exit to ensure that these operate effectually in a UK-only context. The transfer of functions for binding technical standards to the regulators is also consistent with the general onshoring approach to such standards (as per the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018).