**EXPLANATORY MEMORANDUM TO**

**THE EEA PASSPORT RIGHTS (AMENDMENT, ETC., AND TRANSITIONAL PROVISIONS) (EU EXIT) REGULATIONS 2018**

**2018 No. [XXXX]**

## 1. Introduction

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

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

## 2. Purpose of the instrument

2.1 This instrument is being made in order to address deficiencies in retained EU law in relation to the European Economic Area's (EEA) 'financial service passport'—which allows firms in EEA states to offer services in any other EEA state on the basis of their home state authorisation—that arise from the withdrawal of the United Kingdom (UK) from the EU. To ensure an orderly transition from the use of the EEA financial services passport to the requirement that EEA financial services firms that carry on regulated activities in the United Kingdom must be authorised by the UK's competent authorities (the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA)), this instrument creates a 'temporary permissions regime' whereby EEA firms currently operating in the UK via an EEA financial services passport are granted UK authorisation for a limited time until the PRA and the FCA determine their applications for UK authorisation. This instrument also removes references in UK law to the provisions that implement the EEA financial services passport.

***Explanations***

*What did any relevant EU law do before exit day?*

2.2 The EEA financial services 'passporting' system enables financial services firms authorised by the regulatory authorities in their home EEA member state to provide their services to customers in any other EEA member state without having to obtain authorisation from the other member states' regulatory authorities.

The UK's participation in the passporting system and EU Treaty-derived inward access is implemented via Section 31(1)(b) and (c), Schedule 3, and Schedule 4 of UK's Financial Services and Markets Act 2000 (FSMA). These provisions of FSMA are referenced in other pieces of legislation that concern EEA firms performing regulated activities in the UK using a passport and UK firms that perform regulated activities in the EEA using an EEA financial services passport.

*Why is it being changed?*

2.3 Section 31(1)(b) and (c), and Schedules 3 and 4 of FSMA are being repealed because the EEA financial services passport will be unworkable without a negotiated agreement with the EU. This is because the EEA financial services passport depends upon a legal framework including allocating regulatory responsibilities and duties of

cooperation between the authorities of the EEA home state and the authorities of the UK.

*What will it now do?*

2.4 Without Sections 31(1)(b) and (c) and Schedules 3 and 4 of FSMA, EEA firms will not be able to conduct regulated activities in the UK via an EEA financial services passport. Instead they will be required to seek UK authorisation by UK regulators. To ensure this transition happens smoothly, and to mitigate risks of disruption to UK businesses and consumers, the instrument implements a temporary permissions regime, enabling EEA firms operating in the UK via a passport to continue their activities in the UK for a limited period after exit day in order to allow them to obtain UK authorisation or transfer business to a UK entity as necessary.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 The Committee may be interested to note the following.

3.2 Regulation 5(2)(a)(ii) applies certain modifications made for the purposes of the transitional provision, in particular the extension of the statutory time limit for dealing with applications by virtue of regulation 6(7)(a) and (b), to applications made before the day on which the regulations come into force. As such, it is informally retrospective.

3.3 Regulation 27 provides a power for the Treasury to amend various time limits in the modifications made by the regulations (in particular that at regulation 6(7)(a) and (b)), exercisable by regulations made by statutory instrument and subject to annulment by a resolution of either House of Parliament.

***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)***

3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

3.5 The powers under which this instrument is made cover the entire United Kingdom (see 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 United Kingdom.

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

## 5. European Convention on Human Rights

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

"In my view the provisions of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 are compatible with the Convention rights."

## 6. Legislative Context

6.1 To address the deficiencies in retained EU law that arise from the UK's exit from the EU, this instrument amends the Financial Services and Markets Act 2000 and makes consequential amendments to that Act and: the Agricultural Credits Act 1928; the Solicitors Act 1974; the Judicial Pensions Act 1981; the Administration of Justice Act 1985; the Housing Act 1985; the Building Societies Act 1986; the Access to Medical Reports Act 1988; the Road Traffic Act 1988; the Social Security Administration Act 1992; the Judicial Pensions and Retirement Act 1993; the Social Security (Recovery of Benefits) Act 1997; the Bank of England Act 1998; the Trustee Act 2000; the Anti-terrorism, Crime and Security Act 2001; the Health and Social Care (Community Health and Standards) Act 2003; the Legal Services Act 2007; the Dormant Bank and Building Society Accounts Act 2008; the Terrorist-Asset Freezing etc. Act 2010; the Charities Act 2011; the Health and Social Care Act 2012; the Welfare Reform and Work Act 2016; the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988; the Social Landlords (Additional Purposes or Objects) Order 1999; the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000; the Pig Industry Restructuring (Capital Grant) Scheme 2001; the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; the Financial Services and Markets Act 2000 (Stakeholder Products) Regulations 2004; the North Korea (United Nations Measures) Order 2006; the Iran (Financial Sanctions) Order 2007; the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007; the Companies (Authorised Minimum) Regulations 2008; the Zimbabwe (Financial Sanctions) Regulations 2009; the Companies (Authorised Minimum) Regulations 2009; the Somalia (Asset-Freezing) Regulations 2010; the Libya (Financial Sanctions) Order 2011; the Egypt (Asset-Freezing) Regulations 2011; the Tunisia (Asset-Freezing) Regulations 2011; the Iran (Asset-Freezing) Regulations 2011; the Afghanistan (Asset-Freezing) Regulations 2011; the Legal Services Act 2007 (Designation as a Licensing Authority) Order 2011; the ISIL (Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011; the Legal Services Act 2007 (Designation as a Licensing Authority) (No. 2) Order 2011; the Syria (European Union Financial Sanctions) Regulations 2012; the Guinea-Bissau (Asset-Freezing) Regulations 2012; the Iraq (Asset-Freezing) Regulations 2012; the Republic of Guinea (Asset-Freezing) Regulations 2012; the Democratic Republic of the Congo (Asset-Freezing) Regulations 2012; the Eritrea (Asset-Freezing) Regulations 2012; the Lebanon and Syria (Asset-Freezing) Regulations 2012; the Belarus (Asset-Freezing) Regulations 2013; the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013; the Civil Legal Aid (Statutory Charge) Regulations 2013; the Local Government Pension Scheme Regulations 2013; the Ukraine (European Union Financial Sanctions) Regulations 2014; the Central African Republic (European Union Financial Sanctions) Regulations 2014; the Ukraine (European Union Financial Sanctions) (No. 2) Regulations 2014; the Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014; the Sudan (European Union Financial Sanctions) Regulations 2014; the Ukraine (European Union Financial Sanctions) (No. 3) Regulations 2014; the Yemen (European Union Financial Sanctions) Regulations 2014; the South Sudan (European Union Financial Sanctions) (No. 2) Regulations 2015; the Burundi (European Union Financial Sanctions) Regulations 2015; the Iran (European Union Financial Sanctions) Regulations 2016; the Libya (European Union Financial Sanctions) Regulations 2016; the Local Government Pension Scheme (Management and Investment of Funds) Regulations

2016; the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2017; the Judicial Pensions (Fee-Paid Judges) Regulations 2017; the Republic of Mali (European Union Financial Sanctions) Regulations 2017; the Venezuela (European Union Financial Sanctions) Regulations 2017; the Andrey Lugovoy and Dmitri Kovtun Freezing Order 2018; and the Burma (European Union Financial Sanctions) Regulations 2018.

## 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 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 our shared desire to manage financial stability risks, the UK would need a stable process for maintaining equivalent regulatory outcomes as legislation evolves—including a system to resolve disagreements at regulatory and supervisory levels—alongside an open, collaborative relationship between supervisors that protects UK and EU financial systems and UK and EU taxpayers from financial stability risks.

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, our 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 After the UK leaves the EU on 29 March 2019, the use of the EEA financial services passport—which allows firms in EEA states the right to offer services in any other EEA state on the basis of their home state authorisation—would not operate effectively without a negotiated agreement with the EU. As a result, the many thousands of EEA firms undertaking business in the UK via an EEA financial services passport would suddenly lose their authorisation to carry out regulated activities in the UK, which would cause disruption for the firms, the UK businesses and consumers they serve and to the UK financial services sector more broadly.

7.10 The instrument repeals the parts of domestic UK legislation (Section 31(1)(b) and (c), and Schedules 3 and 4 of FMSA) that enable EEA firms to access the UK via an EEA financial services passport and EU-treaty derived access respectively. This means that any EEA firm currently carrying out regulated activities in the UK via an EEA financial services passport will have to apply for UK authorisation with either the PRA or the FCA, depending on the type of regulated activity they undertake.

7.11 As a consequence of the UK's withdrawal from the EU, the volume of applications for UK authorisation received by the PRA and the FCA is expected to increase significantly since the EEA firms that currently carry out business in the UK via an EEA financial services passport will have to submit applications for domestic authorisation if they wish to continue operating in the UK. This volume of applications, some of which are expected from firms that already have a substantial and complex UK presence, will be unprecedented, and there is a significant risk that applications cannot be processed ahead of the date the UK will leave the EU. Additionally, many EEA firms that wish to continue operating in the UK will require more time beyond exit day in which to prepare for and submit applications for UK

authorisation, and to complete any required restructuring as part of that authorisation process.

7.12 On 20 December 2017, the Government announced that it would put forward legislation to establish a 'temporary permissions regime', enabling EEA firms and funds operating in the UK via a financial services passport to continue their activities in the UK for a limited period after exit day. This instrument implements that regime for EEA firms and gives powers to the regulators to deliver it in accordance with their statutory objectives.

7.13 To enter the regime, prior to exit day eligible firms will either need to submit an application for UK authorisation or a notification of their intent to enter the regime. The regulators will provide further details to firms on how and when to do this. Once in the regime, firms will be directed by the relevant regulator to make an application within two years from exit day if they have not already done so.

7.14 Firms in the regime will be treated as though they have UK authorisation. This will enable the PRA and the FCA to have the same supervisory powers over the firms as they would with any other UK-authorised firm. The scope of the activity a firm will be permitted to undertake will be limited to the scope of regulated activities they were permitted to carry on immediately before exit day under their passport. To enable EEA firms entering the regime to transition to UK rules, HM Treasury plans to give the regulators powers to phase in UK regulatory requirements.

7.15 All firms in the regime with an establishment in the UK will have membership of the Financial Services Compensation Scheme (FSCS). Like any other member of the FSCS, these firms will be required to pay the FSCS levy that funds the scheme. Firms in the regime without an establishment in the UK will be outside of the scope of the FSCS until they set up such an establishment in the UK. There is an exception to this: EEA insurers that currently operate in the UK via a passport but without an establishment here already have FSCS membership, as do certain EEA-based fund managers who are managing UK-authorised funds. In the temporary permissions regime, these firms will retain their existing FSCS membership and will continue to be required to pay the levy. More details on FSCS membership for firms in the regime will be set out by the regulators and in their rulebooks.

7.16 The instrument also provides the regulators with the discretion to choose to treat individuals to whom the Senior Managers and Certification Regime (SMCR) applies as having been granted approval from a time stated in a notice until their firm comes out of the temporary permissions regime, pending a decision on approval. It also makes provision to treat insurance firms' existing supervisory approvals under Solvency II, originally granted by their home EEA state regulator, as granted by the relevant UK regulator whilst the firms are in the regime.

7.17 In line with the duration of the regime, the instrument extends the deadlines by which the PRA and the FCA have to make a determination on an application for authorisation (including for a variation of permission) from EEA firms operating in the UK via a passport to up to three years after exit day. The instrument mirrors this extension for any applications for approved persons made under the SMCR and supervisory approvals under Solvency II. Additionally, the instrument provides HMT the power to extend both the length of the regime and these deadlines—by no more than 12 months at a time—in certain circumstances.

7.18 A firm's temporary permissions will end as soon as it becomes fully UK authorised or it receives a negative determination on its application. However, firms that do not submit an application by the allotted deadline or firms that withdraw their applications without submitting another will be eligible to have their temporary permissions cancelled by the PRA or the FCA. Provision will be made for them to wind down their UK regulated activities, including any outstanding contractual obligations, in an orderly manner in a separate statutory instrument, to be laid before parliament at a later date.

7.19 Further to the temporary permissions regime outlined above, this instrument also makes consequential amendments to remove references in UK legislation to the EEA financial services passport.

## 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, and paragraph 1 of Schedule 4 to, 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 the instrument was published in draft, along with an explanatory policy note, 24 July 2018. The financial services regulators plan to undertake a public consultation this Autumn on changes to ensure that rules and certain Binding Technical Standards that apply to firms in the temporary permissions regime are operable when the UK leaves the EU.

## 11. Guidance

11.1 The FCA and PRA will provide further information on how they intend to use the powers conferred to them by virtue of this instrument.

## 12. Impact

12.1 The impact on business, charities or voluntary bodies is that firms that currently operate in the UK on the basis of an EEA financial services passport will require a legal expert to examine the new legislation and understand its implications.

12.2 The impact on the public sector is that the PRA and FCA will be responsible for implementing and operating the temporary permissions regime for EEA passporting firms.

12.3 An Impact Assessment will be published alongside the Explanatory Memorandum on the legislation.gov.uk website, when an opinion from the Regulatory Policy Committee has been received.

12.4 The Treasury's decision to publish the regulations without a final Impact Assessment aims to ensure that industry and regulators have as much time as possible to familiarise themselves with the regulatory changes.

## 13. Regulating small business

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

13.2 No specific action is proposed to minimise the effects of this instrument in relation to small businesses. The instrument implements a temporary permissions regime, enabling EEA firms operating in the UK via a passport to continue their activities in the UK for a limited period after exit day in order to allow them to obtain UK authorisation or transfer business to a UK entity as necessary. This application process takes into consideration a firm's size and complexity, and is structured proportionately.

## 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 Richard Lowe-Lauri at Her Majesty's Treasury (Telephone: 020 7270 5423 or email: Richard.Lowe-Lauri@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Katie Fisher, Deputy Director for the EU Exit Financial Services Domestic Preparation Team at Her Majesty's Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Economic Secretary to the Treasury at HM 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.<br><br>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<br>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. |

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|---|---|---|---|
| | | 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:<br>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,<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>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 EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 do no more than is appropriate".

1.2 The instrument goes no further than to mitigate the disruption to UK consumers, firms and the UK financial services sector as a whole if EEA firms operating in the UK via an EEA financial service passport were to suddenly lose these authorisations on exit day (see section 7). This is achieved by providing the FCA and PRA with sufficient time to assess the large volumes of applications for UK authorisation expected from EEA firms operating in the UK via an EEA financial services passport; as well as providing those same firms with the temporary authorisation required to carry out business as before while they are awaiting determinations on their applications or to transfer business to a UK entity as necessary. This time period is to be three years from exit day, which Her Majesty's Treasury, FCA, and PRA officials have judged to be an appropriate amount of time. To mitigate the possibility that this is not the case, this instrument provides Her Majesty's Treasury with a power to extend both the duration of the regime and the statutory deadlines by which the FCA and PRA must determine an application in certain circumstances.

### 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 Without a temporary permissions regime, firms currently operating in the UK via an EEA financial services passport would suddenly lose their permission to operate in the UK on exit day, because the EEA financial services passport relies on the existing EU legal structure and it could not survive in place without a negotiated agreement between the UK and the EU. This would cause notable disruption for the firms, the UK businesses and customers they serve and to the UK financial services sector more broadly. The temporary permissions regime provides an appropriate amount of time for the FCA and the PRA to assess each application for UK authorisation and for EEA firms to complete any required restructuring or to transfer business to a UK entity as necessary, ensuring the FCA and the PRA can continue to protect UK consumers and the stability of the UK's financial system.

## 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, Economic Secretary to the Treasury (John Glen) 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 EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018."

5.2 Sub-delegation under the Regulations is either to the regulators (the FCA and the PRA) or to Her Majesty's Treasury. In respect of the former, the power to make directions is sub-delegated, which is considered appropriate to direct firms to enter the temporary permissions regime. In respect of the latter, the power is being taken to extend the time during which the regulators have to determine applications for permission to carry out regulated activities in the UK in certain specific circumstances, and as a consequence, the duration of the temporary permissions regime. The power is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. This is considered appropriate should it transpire that, given the number and complexity of applications, they cannot all be dealt with in time, and that this would be result in detrimental effects on UK consumers, firms and financial markets.