EXPLANATORY MEMORANDUM TO

THE FINANCIAL MARKETS AND INSOLVENCY (TRANSITIONAL PROVISION) (EU EXIT) (AMENDMENT) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

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

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 ensure there is a coherent and functioning financial services regulatory regime in the United Kingdom ("UK") following the end of the Transition Period ("TP"). This instrument makes amendments to an earlier financial services EU Exit instrument.

2.2 This instrument addresses deficiencies in retained EU law arising as a result of the UK's withdrawal from the EU, in line with the approach taken in other financial services EU exit instruments under the European Union (Withdrawal) Act 2018 ("EUWA 2018").

Amendment of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 ("FM&I Transitional SI")

2.3 To ensure the legal framework for settlement finality protections continued to operate effectively after the end of the TP, the FM&I Transitional SI introduced a Temporary Designation Regime ("TDR"). The regime ensures that non-UK systems benefitting from Settlement Finality Regulations ("SFR") protection (existing EEA systems designated in other EEA states) at the end of the TP will continue to do so for three years from that point. The purpose of the TDR is to allow time for applications from such EEA systems under the UK SFR to be considered by the Bank of England. In order for systems to begin to benefit from the TDR, they were required to notify the Bank of England before the end of the TP that they wished to enter the regime. In order to remain in the TDR, EEA systems are required to submit an application to the Bank of England for SFR designation within 6 months following the end of the TP.

2.4 This instrument amends the consequences for systems failing to submit an application within 6 months. Instead of immediately losing settlement finality protections under the TDR, systems will retain protections for a period of 30 months following the end of the TP. This ensures that UK firms which are using EEA systems that fail to submit an application for designation under the UK SFR, will have sufficient time to find alternative providers should those systems choose to stop providing services to UK firms.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations come into force on the day after the day on which these Regulations are made. The Regulations amend the consequences of failing to submit an application for SFR designation by the deadline of 30-June 2021. It is considered that a reasonable time is being provided to allow those affected to adapt to the legislative change. Early commencement of this instrument achieves the benefit of the protection provided by designation continuing for a further two years.

3.2 The impact on systems operators themselves of the two year extension of the temporary designation beyond the deadline is limited, because during this period the systems operator is not subject to the requirements concerning payment of fees and provision of information. That follows from regulation 16(3) of the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

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)

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

3.4 The powers under which this instrument is made cover the entire United Kingdom (Schedule 7 to, the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited by those Acts or by this 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 the whole 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 Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends secondary legislation, The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

7. Policy background

What is being done and why?

7.1 This instrument ensures that there is continuity for UK firms and their customers who rely on EEA systems retaining settlement finality protection as a requirement for continued membership to those systems. UK Firms could need up 2 years to find alternative service providers if membership to any of those EEA systems was denied as a result of the EEA systems failure to apply for UK SFR designation by the 30-June 2021 deadline stipulated in the TDR.

7.2 To ensure that UK firms are given sufficient notice that EU systems will be losing settlement finality protection under the TDR, this instrument creates a run-off regime whereby EEA systems that fail to apply for UK SFR designation by the deadline will retain their protections under the TDR until 30-June 2023. This allows UK firms to put proper contingency plans in place if this impacts the access requirements to the EEA systems.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers conferred by Schedule 7 to, the EUWA 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

9. Consolidation

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

10. Consultation outcome

10.1 HM Treasury has not undertaken a consultation on this instrument but has engaged extensively with the Bank of England and the FCA during the drafting process.

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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

12.3 An Impact Assessment has not been prepared for this instrument because in line with Better Regulation guidance, HM Treasury considers that there will be no direct costs or benefits to UK based business. There will be an indirect benefit to UK-based business because it allow impacted EEA based firms to delay decisions about continuing to provide services to UK firms, giving the UK firms sufficient time to put contingency plans in place.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by 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 Greg Stump at HM Treasury (Email: greg.stump@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Tom Duggan, Deputy Director for Financial Services at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.

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

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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
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 14, 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 15, 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 Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 do no more than is appropriate".

1.2 This is the case because it follows the approach taken in previous instruments to fix deficiencies in retained EU law to ensure that the UK financial services regulatory regime continues to operate in a coherent, effective and transparent manner at the end of the Transition Period.

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: the approach taken with this instrument is consistent with the approach previously taken in earlier instruments, and maintains the intended effect of those instruments. The amendments and clarifications made to previous instruments are necessary to ensure that legislation operates effectively at the end of the Transition Period, and the amendments go no further than what is required for this purpose.

3. Equalities

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

"The Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 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 Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021, I, Economic Secretary to the Treasury, 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.