EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES ACT 2021 (PRUDENTIAL REGULATION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS) (CONSEQUENTIAL AMENDMENTS AND MISCELLANEOUS PROVISIONS) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM 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 makes consequential changes as a result of the Financial Services Act 2021 (FS Act).[1]

2.2 The primary purpose of this instrument is to support the effective implementation of the Investment Firms Prudential Regime (IFPR) and remaining aspects of the Third Basel Accord (Basel 3 standards) by 1 January 2022.

2.3 This instrument largely amends legislation to effect implementation of the IFPR and Basel 3 Standards. The amendments largely fall into three categories:

- further revocations of provisions in the Capital Requirements Regulation (CRR) which will be either be replaced with rules made by the PRA or which do not need to be replaced[2];
- definitional changes and consequential amendments to legislation resulting from the introduction of the IFPR;
- consequential amendments made to the CRR and elsewhere as a result of the revocation of provisions in the CRR contained in the Capital Requirements Regulation (Amendment) Regulations 2021/1078 and their replacement with PRA rules.

2.4 This instrument also removes investment firms which are only regulated by the Financial Conduct Authority (FCA) from the provisions related to the resolution regime in the Banking Act 2009 and makes subsequent amendments to other legislation.

2.5 It further addresses a small number of deficiencies arising from the withdrawal of the UK from the European Union (EU) which have been identified during the process of making the above amendments.

[1] Financial Services Act 2021 c. 22.
[2] Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 In accordance with the requirement in section 3(4) of the FS Act, HM Treasury have considered the PRA's rules which will implement certain Basel 3 standards and are satisfied that the revoked provisions of the CRR will be adequately replaced by rules (referred to as CRR rules) or it is appropriate for the provisions not to be replaced.[3]

3.2 Certain provisions, such as Articles 499 and 500b of the CRR do not need to be replaced as the provisions are time limited and are no longer needed at the point of the introduction of CRR rules.

3.3 Under regulation 1(2) of this instrument, Parts 1 and 6 come into force on the day after the day on which they are made. HM Treasury are of the opinion that this does not impose duties on people that are significantly more onerous than before or require them to adopt different patterns of behaviour. In this instrument we are amending the Capital Requirements Regulation (Amendment) Regulations 2021/1078 which are not yet in force so there will be no immediate impact on those affected. HM Treasury believe that early commencement is justified because it ensures that the amendments are changed before they come into force and this gives those affected more time to understand their effect and prepare for when the original instrument comes into force on 1 January 2022.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is whole of the United Kingdom.

4.2 The territorial application of this instrument is 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 Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument flows from sections 1, 2, 3 and 7 of, and schedules 1, 2, 3 and 4 to, the FS Act which ensure the UK's regulatory framework continues to function effectively following the UK's withdrawal from the EU and which made important updates to the UK's regulatory framework.

6.2 The UK, as a member of the G20, is committed to the implementation of the international Basel standards on banking. As explained below, after the financial crisis of 2007 to 2008, those standards were updated in stages, referred to as the Basel 3 standards and Basel 3.1 standards. As the UK has left the EU, the UK will have to domestically implement those standards which do not currently form part of domestic

[3] The PRA rules on the Basel standards are contained in the legal instruments PRA 2021/13 (Basel 3) and PRA 2021/14 (Leverage rules).

law. This includes some of those standards contained in the EU's 2nd Capital Requirements Regulation (CRR2).[4]

6.3 The FS Act enables the implementation of the full set of Basel 3 and 3.1 standards by giving powers to HM Treasury to revoke provisions of the CRR. Following repeal, many of the standards will be implemented through CRR rules made by the PRA.

6.4 When making CRR rules, the PRA is subject to an accountability framework – set out in section 144C to 144E (contained in Part 9D) of the Financial Services and Markets Act 2000[5] ("FSMA") – which seeks to ensure the PRA has regard to a number of relevant policy areas when making these rules.

6.5 The FS Act also introduced a bespoke prudential regime for non-systemic investment firms – the Investment Firms Prudential Regime (IFPR) - by placing an obligation on, and providing powers for, the FCA in sections 143C to 143E (contained in Part 9C) of FSMA[6] to introduce prudential rules for investment firms (Part 9C rules).

6.6 To enable the introduction of the IFPR, the FS Act takes non-systemic investment firms out of the scope of the CRR and Capital Requirements Directive, or CRD[7] (hereafter jointly referred to as the "CRR framework"), thus limiting the application of the CRR framework and CRR rules to credit institutions and PRA designated investment firms. When making Part 9C rules, the FCA will be subject to an accountability framework – set out in sections 143G to 143I of FSMA[8] – which is similar to that which applies to the PRA when it makes CRR rules.

6.7 This instrument also exercises powers in section 8(1), and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018[9] to fix deficiencies which have arisen out the UK's exit from the EU.

7. Policy background

What is being done and why?

7.1 The global financial crisis of 2007-09 demonstrated the importance of the stability of the banking sector. This sector provides essential services to the economy, such as deposit taking, the facilitation of payments and the provision of credit.

7.2 In response to the financial crisis, the Basel Committee on Banking Supervision (BCBS) agreed the Basel 3 standards. The UK played an active role in negotiating and agreeing these standards and has always been committed to their full, timely and consistent implementation.

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[4] Regulation 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012.

[55] Financial Services and Markets Act 2000 c. 8. Sections 144C to 144E were inserted by Schedule 3 to the FS Act.

[6] As inserted by Schedule 2 to the FS Act.

[7] The Capital Requirements Directive IV, which was transposed through UK regulators' rules and legislation including the Capital Requirements Regulations 2013 (S.I. 2013/3115), the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (S.I. 2013/3118) and the Capital Requirements (Capital Buffers and Macro-Prudential Measures) Regulations 2014 (S.I. 2014/894).

[8] As inserted by Schedule 2 to the FS Act.

[9] European Union (Withdrawal) Act 2018 c.16.

7.3 These standards sought to strengthen the existing prudential framework, notably by improving the quality and quantity of financial resources banks are required to maintain and expanding requirements to ensure a wider set of risks that banks are exposed to are covered.

7.4 Prior to the end of the implementation period, the UK had implemented the majority of the earlier Basel Standards through EU law.

7.5 The most recent EU legislation which implemented some of the Basel standards was CRR2 and the 5th Capital Requirements Directive (CRDV).[10] Some aspects of CRR2, however, came into application following Implementation Period Completion Day (IPCD) and therefore do not form part of retained EU law. Following consultation with industry, the remaining Basel 3 and 3.1 standards will be implemented through the PRA's CRR rules.

The Investment Firms Prudential Regime

7.6 Many investment firms are currently subject to the CRR framework, while others are exempt from the CRR and related requirements.

7.7 Investment firms differ from credit institutions (banks) in that they do not typically accept deposits or grant traditional loans; instead, investment firms provide investment services and perform investment activities. This means that, whilst there is some overlap, the risks posed and faced by investment firms, and the impact of those risks, are different from those of credit institutions.

7.8 As such, the CRR framework in its current form does not appropriately cater for the differences between credit institutions and investment firms and can be disproportionate, burdensome, and inappropriate to the risks these firms face.

7.9 To seek to address these issues, the FCA is creating a tailored regime specifically for non-systemic investment firms (the IFPR), to fulfil its duty introduced in the FS Act. PRA designated investment firms (systemic investment firms) will continue to remain subject to the CRR framework.

7.10 The FCA has published most of its final Part 9C rules and will publish the remaining rules before the target implementation date of 1 January 2022.[11]

EU retained law

7.11 This instrument also seeks to fix some deficiencies which have arisen as a result of the UK's withdrawal from the EU. These changes are not intended to make policy changes, other than to reflect the UK's new position outside the EU.

CRR revocation and consequential amendments

7.12 This instrument will amend the definition of CRR within certain pieces of legislation to ensure that references to the CRR are up to date and refer to the retained EU law version of the CRR.

7.13 This will amend references to specific articles in (or Parts of) the CRR that have been deleted so that the reference refers to rules made by the FCA or PRA, or generic

[10] The UK implemented CRDV, per its obligation to implement EU directives during the implementation period, through the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 and PRA rules.
[11] The final IFPR rules published so far are contained in the legal instruments FCA 2021/38 and FCA 2021/39. See also the FCA's IFPR website for IFPR discussion paper, consultations and policy statements.

references to include Part 9C, FSMA or CRR rules where appropriate. These amendments include changes to the:

(a) Insolvency Act 1986 c.45.

(b) Insolvency (Northern Ireland) Order 1989/2405.

(c) Financial Services and Markets Act 2000.

(d) Terrorism Act 2000 c.11.

(e) Proceeds of Crime Act 2002 c.29.

(f) Banking (Special Provisions) Act 2008 c.2.

(g) Bank Recovery and Resolution (No.2) Order 2014

(h) Banking Act 2009 c.1.

(i) Bankruptcy (Scotland) Act 2016 asp 21.

(j) Financial Conglomerates and other Financial Groups Regulations 2004/1862.

(k) Capital Requirements Regulations 2013/3115.

(l) Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014/894.

(m) Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014/2080.

(n) Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017/701.

(o) Payment Services Regulations 2017/752.

(p) Regulation (EU) No.648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[12].

(q) Capital Requirements Regulation[13].

(r) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

(s) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

(t) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds.

(u) 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

7.14 This instrument amends Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade

[12] As amended by S.I. 2018/1184, S.I. 2018/1318, S.I. 2019/335, S.I. 2019/1416 and S.I. 2020/646.

[13] Regulation (EU) 575/2013, amended, or prospectively amended, by sections 1 and 7 of, and Schedules 1 and 4 to, the Financial Services Act 2021 (c. 22) and S.I. 2018/1401, S.I. 2019/264, S.I. 2019/660, S.I. 2019/710, S.I. 2019/1232, S.I. 2020/1301, S.I. 2020/1385, S.I. 2020/1470 and S.I. 2021/558.

repositories (known as the European Market Infrastructure Regulation or 'EMIR') as follows:

- As Article 308 of the CRR is being revoked and replaced with CRR rules, consequential amendments are needed to the relevant provisions of the EMIR that relate to it.
- The CRR specifies how institutions must calculate their capital requirements for exposures to Central counterparties (CCPs), which play a vital role in financial markets. In particular, the CRR states that capital requirements may be reduced for exposures to certain highly regulated CCPs, known as 'qualifying CCPs' (QCCPs).
- The regulatory framework for CCPs is contained in EMIR, so the CRR amended provisions in EMIR. The provisions in EMIR amended by the CRR set out the calculation of the 'hypothetical capital' of CCPs. The amount of a CCP's hypothetical capital is used by an institution to calculate its own funds requirement for exposures to that CPP. CRR2 updates the way that CCPs calculate hypothetical capital in EMIR.

7.15 This instrument amends the Capital Requirements Regulation (Amendment) Regulations 2021 as follows:

- This instrument amends the Capital Requirements Regulation (Amendment) Regulations 2021 to revoke provisions in Part Seven and Part Eight of the CRR which relate to the leverage ratio. These provisions will be replaced with CRR rules. These revocations are being made to a later timetable than the other CRR revocations because consultation on the rules took place after a comprehensive review of the leverage ratio framework by the Bank of England.
- This instrument provides for saving provisions for permissions which were granted under the CRR. These provisions will save the effect of permissions granted to firms under the CRR where those articles are being revoked and replaced with CRR rules. This ensures that firms will not have to reapply for their permissions simply because the article in the CRR has been replaced by CRR rules.
- This instrument provides a savings provision to allow the FCA to continue to modify, revoke or amend any technical standard which is in force before 1 January 2022 and which were adopted by the European Commission before IP completion day or made by the FCA after IP completion day. The articles of the CRR which allowed such technical standards to be granted are being revoked but technical standards which were in force before 1 January 2022 will continue to exist. The savings provision will allow the FCA to continue to have the power to modify, revoke or amend these technical standards.

7.16 This instrument amends the Capital Requirements Regulation Equivalence Directions 2020:

- This amendment omits the equivalence determination for the European Economic Area from 1 January 2022 for Article 132 of the CRR. Article 132 was revoked in the Capital Requirements Regulation (Amendment) Regulations 2021, leaving the PRA to address any risks which arise as a result of a firm's exposure to funds located and managed in overseas jurisdictions (including the EEA).

Macro prudential measures consequential amendment

7.17 The Bank of England Act 1998 (Macro – Prudential Measures) Order 2013/644, provides that the Financial Policy Committee may direct the PRA to require UK banks or UK investment firms to maintain additional capital requirements by reference to their exposure to residential property, commercial property or other entities in the financial sector (more generally known as sectoral capital requirements).

7.18 This instrument amends the definition of a "financial institution" in the Order (which is used to determine a firm's exposure to other entities in the financial sector) so that it is defined by reference to the CRR. This is to ensure the definition is coherent with wider changes to prudential regulatory framework since the Order was first introduced.

Investment Firms Prudential Regime (IFPR) consequential amendments

7.19 As a result of the introduction of the IFPR by the FS Act, the following consequential amendments are required:

(a) Minor consequential revocations to fully remove the references to the FCA and FCA investment firms from the scope of the CRR framework.

(b) Updating the Securitisation Regulation[14] to ensure the scope of the regulation continues to include FCA investment firms and groups, given the regulation previously relied on definitions in the CRR framework which have been amended for the introduction of IFPR.

(c) Amending the Financial Services and Markets Act 2000 (PRA-regulated Activities) (Amendment) Order 2013 (the PRA RAO) so that the PRA can continue to designate systemic investment firms after the IFPR is introduced. Currently, the PRA RAO allows the PRA to choose to designate any investment firm that fulfils two criteria: (1) dealing in investments as principal, and (2) being subject to the initial capital requirement of EUR 730,000. The IFPR will make the initial capital requirement of EUR 730,000 obsolete, as it will allow the FCA to set new initial capital requirements for investment firms. Therefore, the reference to the initial capital requirement of EUR 730,000 is removed by this instrument, and all firms that deal in investments as principal will become eligible for designation by the PRA (although this does not mean that the PRA will necessarily designate further investment firms – it will only designate firms where it considers it desirable to do so). When designating investment firms, the PRA will continue to have regard to its statutory objectives, the assets of the person or group, and its Statement of Policy on designation.[15]

(d) There are also some other minor technical changes made to the PRA RAO:

- To clarify the meaning of 'FCA controlled function' and 'PRA controlled function';
- To remove the requirement for the PRA to consult the Bank of England (BoE) before issuing a new designation statement of policy;
- To provide for transitional provisions for authorised persons in a firm that is designated by the PRA. These amendments clarify that, where the FCA has given its approval in relation to a particular function, such

[14] Regulation 2017/2402

[15] See Designation of investment firms for prudential supervision by the PRA.

an approval should be deemed to be given by the PRA. This means authorised persons do not need to re-apply for approval when a firm they work for becomes designated by the PRA.

7.20 The instrument makes other, minor consequential amendments to reflect definitional changes and the introduction of Part 9C rules. These amendments include changes to:

(a) The Financial Services and Markets Act 2000 (Gibraltar) Order 2001/3084.

(b) The Financial Services and Markets Act 2000.

(c) Regulation (EU) No.648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

(d) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisation requirements and operating conditions for investment firms and defined terms for the purposes of that Directive etc.

(e) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

(f) The Solvency 2 Regulations 2015.

Changes to reflect the introduction of the term "Investment Holding Companies"

7.21 This instrument inserts the term "investment holding companies" into legislation, where appropriate, to reflect the fact that these holding companies will no longer be treated as financial holding companies under the CRR, and the IFPR has created this separate category of holding companies. These amendments, therefore, maintains the coverage of the UK's insolvency regimes and the Money Laundering Regulations to include investment holding companies.

Changes to supervisory review of "mixed financial holding companies"

7.22 Where the PRA is the group supervisor of a group which includes a mixed financial holding company and the mixed financial holding company is subject to equivalent provisions under UK law which implemented the Solvency 2 Directive[16] and the CRR framework, the PRA has a discretion to apply only the UK law relating to the most significant sector.

7.23 Currently, where the PRA wishes to exercise that discretion, it must obtain the agreement of the FCA, where the FCA is the consolidating supervisory powers under the CRR. It will no longer be possible for the FCA to be consolidating supervisor under the CRR, and so the amendments mean that the PRA will no longer need to obtain the agreement of the FCA.

Non-performing loans consequential amendments

7.24 Regulation 26(32) inserts a new Article 269a into the CRR which reflects the PRA's implementation of updated international standards agreed by the BCBS for the securitisation of non-performing loans. The amendments in this instrument are consequential on these PRA rules to ensure the legislation accurately cross-references these PRA rules.

[16] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

Banking resolution regime: IFPR consequential amendments

7.25 The Government has decided to remove firms which are only regulated by the FCA under the IFPR from the scope of the UK resolution regime.[17] The Government views the existing supervisory powers that the FCA has in place (or will put in place through the IFPR), which are designed to ensure an orderly wind-down of these firms, as well as the Investment Bank Special Administration Regime, as the more appropriate tools for these firms.

7.26 This instrument therefore narrows the application of the resolution regime in the Banking Act to credit institutions and PRA-designated investment firms, through specifying that investment firms regulated only by the FCA are excluded from the relevant definition of "investment firm" in the Banking Act (see Part Seven). Further consequential amendments are made to other legislation in this instrument such as FSMA to ensure consistency.

Explanations of exercising powers under section 8 or 23 of the European Union (Withdrawal) Act 2018

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

7.27 Following IPCD there are aspects of legislation which fail to operate effectively and contain deficiencies as a result of the withdrawal of the United Kingdom from the EU. Therefore, in addition to the provisions discussed above, this instrument makes certain small deficiency fixes under section 8 of the European Union (Withdrawal) Act 2018.

Why is it being changed?

7.28 To correct references to EU institutions and other deficiencies arising from EU Exit. These should not be considered policy changes.

What will it now do?

7.29 Where appropriate, the amendments remove references to EU Directives which are not retained EU law and amend references to refer to UK institutions.

8. European Union Withdrawal and Future Relationship

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 The instrument is also being made under sections 3(1) (5) and (6) and 45(1) and (3) FS Act, sections 22A, 144F(1) and 428(3) FSMA, section 9I(2) and 9L(1) and (4)(a) Bank of England Act 1998, section 8(1) and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 and section 258A(2)(b) of the Banking Act 2009.

9. Consolidation

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

[17] Implementation of the Investment Firms Prudential Regime and Basel 3 standards: Consultation response.

10. Consultation outcome

10.1 HM Treasury ran a public consultation on the implementation of certain aspects of Basel 3 and the Investment Firms Prudential Regime (IFPR) which closed on 01/04/2021. This consultation included HM Treasury's proposed approach to the exercise of the revocations power in section 3 of the FS Act, as well as the amendments to the PRA RAO and scope of the Resolution regime.

8.1 A more detailed analysis of the consultation outcome and the Treasury's policy response to the opinions expressed has been published.[18]

11. Guidance

11.1 HM Treasury does not propose to issue guidance on the content of these Regulations.

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 the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de-minimis impact assessment has been carried out and is published alongside this instrument.

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 or will fall in the scope of the IFPR.

13.2 However, the number of small businesses (banks and investment firms) that fall within scope are minimal and HM Treasury does not consider there is a further need to minimise the impact of the requirements on small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Economics Secretary to the Treasury (John Glen MP) has made the following statement:

"It is not proportionate to include a review clause in this instrument because the number of small businesses in scope is very low; the provisions revoked are to be replaced by regulator rules and therefore amendments to the scope of the revocations contained in this instrument may lead to a situation where legislation and regulator rules contradict each other on the same prudential matters. Furthermore, these Regulations are allowing for the implementation of the Basel 3 standards, so a review that required changes to this legislation could leave the UK in breach of its international commitments."

15. Contact

15.1 Moshin Hamim at HM Treasury email: moshin.hamim@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

[18] Implementation of the Investment Firms Prudential Regime and Basel 3 standards consultation.

15.2 Fayyaz Muneer, Deputy Director for Green and Prudential, 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 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) 2018 Act or the European Union (Future Relationship) Act 2020

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 Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 does no more than is appropriate".

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 reasons set out in section 7.

3. Equalities

3.1 The Economic Secretary to the Treasury, John Glen 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 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 draft 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 7 of the main body of this explanatory memorandum.

5. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

5.1 The Economic Secretary to the Treasury, John Glen MP has made the following statement regarding regulations made under the European Communities Act 1972:

"In my opinion there are good reasons for the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 to amend the Insolvency Act 1986,

Insolvency (Northern Ireland) Order 1989, Financial Services and Markets Act 2000, Terrorism Act 2000, Proceeds of Crime Act 2002, Banking (Special Provisions) Act 2008, Counter-Terrorism Act 2008, Banking Act 2009, Bankruptcy (Scotland) Act 2016, Financial Conglomerates and Other Financial Groups Regulations 2004, Electronic Money Regulations 2011, Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013, Capital Requirements Regulations 2013, Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, 2014, Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014, Bank Recovery and Resolution (No.2) Order 2014, Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, Payment Services Regulations 2017 made under section 2(2) of the European Communities Act 1972 which are being amended.

5.2 This is because the regulations need to reflect changes to the wider prudential regime introduced by the Financial Services Act 2021.

5.3 These changes include:

- Minor consequential revocations to fully remove the references to the FCA and FCA investment firms from the scope of the CRR as a result of the introduction of IFPR.
- Consequential amendments to replace references to the CRR with references to rules made by the PRA or FCA.
- Minor amendments to remove references to EU Directives which are not retained EU law.
- The revocation of definitions which are defunct as a result of the IFPR and PRA rules.
- Inserting references to “CRR rules” and the “PRA Rulebook” where appropriate.
- A minor consequential amendment to reflect the revocation, by the FS Act, of section 192V of FSMA which does not alter the effect of retained EU law; and
- Updating the definition of “the capital requirements regulation”.