EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM 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 to address deficiencies in the Financial Services and Markets Act 2000 (c.8) (FSMA) and related subordinate legislation, including the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (RAO), arising from the withdrawal of the United Kingdom (UK) from the European Union (EU). Amendments introduced in this instrument will ensure that the UK's financial services legislative framework continues to operate effectively in a scenario where the UK leaves the EU without an agreement.

Explanations

What did any relevant EU law do before exit day?

2.2 FSMA is an important part of the UK's legislative framework for financial services regulation. FSMA and related secondary legislation define the 'regulatory perimeter', setting out the activities and firms that fall within the scope of UK financial services regulation. These activities are regulated and supervised by the three main financial services regulators in the UK: the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Bank of England ('the regulators').

2.3 FSMA and related secondary legislation set out the requirements and procedures for financial services firms to be authorised to carry on regulated activities as 'authorised persons'. The legislation also provides the financial services regulators with the necessary functions and powers to supervise the activities of firms, and to take enforcement action.

2.4 The legislation, as it operates before exit day, functions on the basis that the UK is a Member State of the EU and that it forms part of the EU's single market for financial services. Many provisions, particularly in the RAO, set out the scope of regulated activities by reference to those activities as defined in EU law. Authorisation to carry out regulated activities as authorised persons operates on the basis of firms carrying out activities across the EU's single market. UK regulators are also subject to specific requirements for participating in the EU's supervisory framework for financial services in order to support the functioning of the single market. This approach will no longer be appropriate once the UK has left the EU and is no longer part of the single market in financial services. Paragraphs 2.6 to 2.58 below identify the specific deficiencies in this legislation that will arise as a result of the UK leaving the EU,

along with the fixes that will be necessary to ensure the legislation operates effectively in a standalone UK regulatory regime.

Why is it being changed?

2.5 FSMA and related subordinate legislation functions on the basis that the UK is a Member State of the EU and that it forms part of the EU's single market for financial services. This instrument is required to address deficiencies in this legislation arising from the UK's withdrawal from the EU.

What will it now do?

Regulated and prohibited activities

2.6 FSMA, along with the RAO and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) (FPO) (which are made under FSMA), among other pieces of legislation, define the scope of financial services regulation in the UK. The "general prohibition" in section 19 of FSMA provides that a person may not carry on a "regulated activity" in the UK unless he is authorised or exempt; "regulated activity" is defined in section 22 as, broadly, a specified activity carried on by way of business relating to a "specified investment". The RAO sets out and defines the specified activities and investments that fall within the scope of financial services regulation in the UK. "Specified activities" are set out in Part 2 of the RAO and include accepting deposits, dealing in investments as a principal or agent and arranging deals in investments. "Specified investments" are set out in Part 3 of the RAO and include deposits, shares and debentures.

2.7 Many of the definitions for regulated activities and entities used in FSMA, the RAO and the FPO are dependent on provisions in EU legislation, or use definitions based on an activity being carried out within the EU's single market for financial services.

2.8 This instrument will amend many of the definitions used in FSMA, the RAO and the FPO so that they reflect the UK's position as a standalone regulatory regime outside of the single market for financial services.

2.9 Where appropriate, the territorial scope of definitions will be changed from the European Economic Area (EEA) to the UK, and definitions of third-country activities or entities will cover the EEA as well as non-EEA countries. For example, the regulated activity of acting as a trustee or depositary of an Undertaking for Collective Investment in Transferable Securities (UCITS) will be amended to refer to a UK UCITS.

2.10 Consistent with the government's overall approach to minimise disruption to firms and consumers, some of the amendments introduced in this instrument will be subject to transitional provisions. The instrument will also work in conjunction with the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149) (EEA Passport Rights Regulations) made under the European Union (Withdrawal) Act 2018 (c.16) (EUWA), which provides for a 'temporary permissions regime' (TPR) to allow EEA firms and funds operating in the UK via a passport to continue their activities for a limited period after exit day. Further detail on the specific transitional arrangements introduced by this instrument is set out in paragraphs 2.42 – 2.58 below.

Permission to carry on regulated activities

2.11 As explained in paragraph 2.6 above, a person is prohibited from carrying on a regulated activity in the UK, or purporting to do so, unless they are authorised or exempt. Permission to carry on such regulated activities in the UK is, for the most part, granted under Part 4A of, and Schedule 6 to, FSMA.

2.12 The provisions of Part 4A of, and Schedule 6 to, FSMA set out the procedures and requirements for obtaining permission to carry on regulated activities (often referred to as 'Part 4A permission'). Membership of the EU enables firms authorised in another EEA state to carry on regulated activities in the UK via a 'passport', without the need to apply for a separate permission from the UK regulators.

2.13 Firms located outside the EEA (i.e. in 'third countries') need to apply to the UK regulators for permission to be authorised and carry on regulated activities in the UK. In some cases relating to firms located in third countries, certain rules for obtaining permission apply differently where a firm is connected to another person, such as a parent company, located in the EEA.

2.14 The UK legislation giving effect to the EEA passporting system is repealed by the EEA Passport Rights Regulations. The passport will be unworkable without a negotiated agreement with the EU. This is because the EEA financial services passport depends upon a legal framework which, among other things, allocates regulatory responsibilities and imposes duties of cooperation between the authorities of the EEA home state and the authorities of the UK. In the absence of such a legal framework, references in UK legislation to the EEA passporting regime will become deficient at the point of exit. This instrument removes provision related to passporting not already removed by the EEA Passport Rights Regulations or other regulations made under the EUWA.

Performance of regulated activities

2.15 Part 5 of FSMA sets out a framework for the regulation of key individuals working within the financial services sector. As part of this framework, individuals who will be carrying out certain functions at authorised firms must obtain approval from the FCA or PRA, or they must be certified by the firm, under either the Approved Persons Regime (APR) or the Senior Managers & Certification Regime (SMCR).

2.16 Sections 59(8) and 63E(7) exempt EEA firms from elements of the APR and SMCR where the responsibility for those elements falls to the firms' EEA home state regulator. To bring requirements for EEA firms into line with existing requirements for non-EEA firms operating in the UK, this instrument removes the exemption for EEA firms. Once the UK is outside the single market for financial services and the EU's joint supervisory framework, maintaining this exemption after exit day would no longer be appropriate, as it would continue to treat EEA Member States in a preferential way.

Control of business transfers

2.17 Part 7 of and Schedule 12 to FSMA, as well as the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (S.I. 2001/3625) provide for a court-sanctioned legal transfer of some, or all, of a business from one insurance or banking institution to another. In addition, the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at

Lloyd's) Order 2001 (S.I. 2001/3626) includes provisions for an insurance transfer in relation to Lloyd's of London.

2.18 These business transfers, often referred to as 'Part 7 transfers', may include combining similar businesses from two or more institutions into a single institution, or transferring business between unrelated institutions. Under current legislation, business transfers covered by Part 7 require the regulators to obtain a certificate of consent from relevant EEA regulators where the transfer is to a body in an EEA state in order for the court to sanction a transfer.

2.19 The more complex provisions in Part 7 of FSMA relate to insurance business transfers. Part 7 insurance business transfers are currently restricted to firms operating in the EEA in accordance with the Solvency II Directive (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). This EU framework attaches several conditions to a Part 7 insurance business transfer, including cooperation between EU supervisors, so that a transfer can be approved.

2.20 Once the UK leaves the EU, the current framework for insurance business transfers referred to in paragraph 2.19 of this explanatory memorandum, based on the mutual recognition of home state procedures, will no longer operate effectively. The provisions in FSMA facilitating transfers of insurance business from the EEA to the UK, or from the UK to another EEA state, will therefore be revoked. After exit, EEA branches authorised in the UK will be treated in the same way that third-country branches are treated now.

2.21 Part 7 transfers will be possible from third-country branches authorised in the UK to other institutions within the UK, and from UK-authorised persons to UK-authorised branches of third-country firms. Accordingly, consequential amendments to the legislative provisions for a business transfer scheme will need to be made. In particular, section 105 of FSMA is being amended, while sections 114 and 114A of, and paragraph 6 of Schedule 12 to, FSMA will be deleted. Regulation 3 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 will also be amended.

2.22 In order to avoid disruption to firms that are already in the process of making a Part 7 insurance business transfer between UK and EEA entities, a separate instrument will introduce a savings provision for affected insurance business transfers.

2.23 Schedule 12 to FSMA also contains provisions which relate to business transfers involving Switzerland. These provisions currently work in conjunction with the EU-Swiss agreement on financial services.[1] On exit from the EU, the UK will no longer be party to the EU-Swiss agreement on insurance. Provisions in Schedule 12 to FSMA which relate to insurance business transfers involving Switzerland are therefore being amended and will be retained. This is intended to facilitate arrangements for Swiss firms and the Swiss supervisory authority while the government is working with Switzerland on a new bilateral agreement with the UK to mirror the terms of the EU-Swiss agreement.

[1] Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life insurance, OJ L205, 27/07/1991, p. 3

Control over authorised persons

2.24 Part 12 and sections 420-422A of FSMA set out requirements in respect of acquisitions or changes of control over certain types of firm, such as credit institutions, investment firms and insurance undertakings. Part 12 requires a person who decides to acquire a controlling interest in a firm to notify the appropriate regulator before making the acquisition.

2.25 There are also requirements to notify the appropriate regulator if a person reduces or disposes of a controlling interest. The duties of the regulators in these circumstances are also set out in this Part of FSMA.

2.26 The requirements will not change as a result of this instrument. However, amendments will be made so that the procedures to be followed reflect the UK's position outside the EU's supervisory framework for financial services. In particular, binding obligations upon UK regulators to consult EU authorities will be removed as these will no longer be appropriate after exit day.

2.27 The definition of "relevant UK authorised person" in Article 2 of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (S.I. 2009/774) will be amended to refer to authorisation under the relevant domestic legislation. This is because in the current paragraphs (a) to (c) of the definition, there are deficiencies arising from cross-references to EU directives, therefore it is necessary to substitute these references with references to provisions in domestic legislation to ensure that the definition of "relevant UK authorised person" is operable post-exit.

Provision of financial services by members of the professions

2.28 Part 20 of FSMA enables HM Treasury to designate professional bodies so that their members may be exempted from the general prohibition against carrying on a regulated activity without authorisation. Such bodies are referred to as 'designated professional bodies'.

2.29 To designate a professional body, HM Treasury must be satisfied that the body has appropriate rules applicable to its members to effectively regulate the carrying on of a relevant regulated activity. The Financial Services and Markets Act 2000 (Designated Professional Bodies) Order 2001 (S.I. 2001/1226) sets out which professional bodies are exempt under Part 20, and the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (S.I. 2001/1227) specifies certain regulated activities which are not included in the exemption that operates under Part 20.

2.30 Consistent with the operation of the EU's single market in financial services, Part 20 enables HM Treasury to designate a professional body that is established in an EEA state other than the UK. Once the UK has left the EU's single market for financial services, it will no longer be appropriate to exempt EEA professional bodies in this way. This instrument amends Part 20 of FSMA so that HM Treasury's power to designate a professional body is confined to UK bodies.

2.31 Amendments will also be made to the definitions of activities that are excluded from the Part 20 exemption so that they will refer to relevant UK law rather than referring to EU legislation.

Supervision and enforcement by the FCA and PRA

2.32 FSMA includes provisions which set out the powers of the FCA and PRA to supervise financial services firms, and to enforce domestic and relevant EU financial services regulatory requirements.

2.33 The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419) (QEPO) made under Part 29 of FSMA is used to designate directly applicable EU regulations to ensure that the financial regulators' enforcement powers can be used to enforce those EU regulations and to secure that references in FSMA to regulators' functions include functions under those EU regulations. EU measures designated under the QEPO are known as 'qualifying EU provisions'.

2.34 Amendments made by this instrument will ensure that the UK's financial services regulators can enforce the requirements of the retained direct EU legislation versions of EU regulations (and in future, any domestic legislation replacing them) that are designated under Part 29 of FSMA. This is achieved by replacing references to these directly applicable EU regulations with references to the retained direct EU legislation version of this instrument. Additionally, this instrument changes references in primary legislation from 'qualifying EU provisions' to 'qualifying provisions' to reflect the status of these provisions as retained EU law.

2.35 Amendments made by Part 8 of this instrument provide the financial services regulators with powers to charge fees in connection with the discharge of their functions under, or as a result of, (a) regulations under section 8 of the EUWA, and (b) qualifying provisions specified by the Treasury. The "qualifying provisions" which can be specified are domestic versions of EU regulations, and the domestic legislation replacing them. This instrument amends the QEPO to specify the same qualifying provisions in respect of regulators' fees under Part 8 as are specified in respect of fees under Schedules 1ZA, 1ZB and 17A to FSMA. The FCA and PRA are given power to make rules in respect of fees in the same terms as rules in respect of fees under Schedules 1ZA, 1ZB and 17A to FSMA.

Ring-fenced bodies

2.36 From 1 January 2019, UK legislation required banks and banking groups which carry on one or more core activities and which hold more than £25 billion in core deposits to separate core retail banking from investment banking. The ring-fencing regime is intended to provide greater protection to consumers so that a bank's investment banking activities do not adversely affect consumers' access to retail banking products. As part of this protection, the ring-fencing regime imposes restrictions on the products a Ring-Fenced Body (RFB) can offer to consumers. Additionally, the ring-fencing regime limits where an RFB may conduct business. Subject to certain exceptions, under current legislation RFBs must not own a banking subsidiary or branch which is located outside the EEA.

2.37 The framework for ring-fencing is set out in the Financial Services (Banking Reform) Act 2013 (c.33); specifically, this inserted Part 9B into FSMA. Part 9B provides for the separation of core activities, which include deposit taking, from excluded activities in an RFB's operations. In particular, the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (S.I. 2014/2080) (EAPO) defines what activities RFBs may not do by reference to other provisions in UK and EU legislation.

2.38 The ring-fencing regime is a UK initiative implemented through domestic legislation and is not itself an implementation of EU requirements. As such, the policy approach and scope of the ring-fencing framework will remain workable after the UK has left the EU. However, some of the definitions of permitted and prohibited activities in relation to ring-fencing were drafted to reflect the UK's place as part of the EU single market for financial services.

2.39 Once the UK has left the EU, some of these definitions will be deficient. To ensure that ring-fencing requirements continue to operate as they do now, amendments to some definitions in ring-fencing legislation will be needed. Specifically, this instrument will make amendments to the EAPO and other relevant domestic legislation to ensure that the UK's ring-fencing regime continues to operate as it currently does after the UK has left the EU.

2.40 The EAPO defines certain financial services terms and activities, such as "derivative instruments" and "insurance undertakings", by cross-referring to EU directives and regulations. Additionally, the EAPO defines certain financial bodies, such as credit institutions and investment firms, by cross-referring to EU law. Unlike other amendments introduced by this instrument, amendments made in relation to the ring-fencing regime will ensure that these definitions continue to maintain EEA-wide scope so that the ring-fencing regime remains unchanged on exit day. In some instances, this involves making consequential amendments as a result of other EU Exit instruments which the government is preparing. This means that, unlike other amendments in this instrument, many of the definitions in relation to the ring-fencing regime will continue to include the UK and the EEA within their scope.

References to EEA Central Securities Depositories

2.41 Schedule 17A to FSMA governs the exercise of functions by the Bank of England in relation to central securities depositories (CSDs). This instrument makes amendments to Schedule 17A in relation to information gathering and investigations, disclosure of information, offences and fees. These mainly reflect the fact that after exit, the term "EEA CSD" will be removed from FSMA. This change is delivered by the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019, which were laid on 17 January 2019. As such, references to "EEA CSD" are removed by this instrument.

Transitional provision for the use of EEA tied agents

2.42 A tied agent is a person who, under the full responsibility of an investment firm, acts on behalf of the investment firm by providing investment and/or ancillary services to clients. Tied agents may also receive or transmit instructions or orders from the client, placing financial instruments, or provide investment advice to clients in respect of those financial instruments and investment services.

2.43 Currently, where a UK-authorised person appoints a tied agent established in an EEA state in which the appointment of tied agents by authorised investment firms is not permitted, and the tied agent is carrying on investment services business outside of the UK, the UK-authorised person is held responsible for the tied agent's activities in carrying on investment services business. This is in accordance with the requirements set out in section 39A of FSMA, which relates to the EU's passporting system for the provision of investment services and ensures that EEA tied agents carrying out

investment services business are regulated, even if they are not authorised in their home Member State.

2.44 Once the UK is outside the EU and its passporting system, UK regulation applying to EEA tied agents in this way will no longer be appropriate. As a result, this instrument amends section 39A so that UK-authorised persons will only be held responsible for appointed tied agents established, but not authorised, in the UK carrying on investment services business outside the UK.

2.45 In order to provide continuity for contractual arrangements already in place at exit day, this instrument makes provision for a three-year transitional period. The pre-exit section 39A requirements will continue to apply to a UK-authorised person that has a relevant contract with an EEA tied agent for a maximum of three years after exit. This will ensure that existing contractual arrangements pre-exit will continue to operate effectively and provide certainty for stakeholders.

Transitional provision for regulated mortgage contracts

2.46 The scope of the UK's regulatory regime for consumer mortgage contracts is being amended by this instrument so that, rather than covering contracts secured on residential property in the EEA, it covers contracts entered into after exit only if they are secured on residential property in the UK (with the regulatory status of contracts relating to property outside the UK determined under the UK's wider regulatory regime for consumer credit).

2.47 In order to provide continuity for contractual arrangements already in place at exit, the UK regime will continue to apply to regulated pre-exit contracts secured on property in the EEA, so that consumers' existing regulated contracts continue to be regulated by UK regulators. This amendment also has a similar effect on the UK's regulatory regime for consumer buy-to-let mortgage contracts, because provisions in the Mortgage Credit Directive Order 2015 (S.I. 2015/910) set the scope of that regime in part by reference to regulated mortgage contracts under the FSMA regime.

Transitional provision for EEA payment institutions and EEA electronic money institutions

2.48 As part of EU passporting arrangements, EEA payment institutions and electronic money institutions passporting into the UK are currently exempt under articles 60JA and 60JB, respectively, of the RAO from UK requirements relating to the specified activity of entering into or exercising rights under a regulated credit agreement under article 60B of the RAO. Given that the UK will not be part of the EU's passporting arrangements after exit, this instrument revokes the exemption for EEA payment institutions.

2.49 EEA payment institutions and electronic money institutions will be able to continue to provide services in the UK after exit by entering into the TPR for EEA firms, as referred to in paragraph 2.10. Firms entering into the TPR will be deemed to have UK authorisation (permission under Part 4A of FSMA) and will be subject to UK regulatory requirements. To provide a smooth transition to UK requirements for EEA payment institutions and electronic money institutions, this instrument will preserve the exemptions in articles 60JA and 60JB for firms in the TPR. The exemption will end once these firms leave the TPR and their temporary permissions cease.

Transitional provision for alternative finance investment bonds

2.50 Alternative finance investment bonds (AFIBs) are a specified kind of investment under article 77A of the RAO and are therefore regulated investments under section 22 of FSMA. They are regulated as conventional debt securities, but are not subject to the more onerous requirements that apply to collective investment schemes if they are admitted to an official list in the EEA, or if they are traded on a regulated market in the EEA, as set out in article 3 of and paragraph 5(1)(a) of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062). Given that the UK will no longer be part of the EU's passporting arrangements after exit, and in line with the general onshoring approach of treating EEA states as third-country states, AFIBs will need to be admitted to a UK, or UK-recognised, official list or regulated market to be exempt from collective investment scheme regulation.

2.51 In order to avoid unnecessary disruption to firms and investors at exit, AFIBs issued before exit day, and admitted to an official list in the EEA or traded on an EEA regulated market, will continue to be exempt from collective investment scheme regulation, as provided for in regulation 152 of this instrument.

Transitional provisions relating to the FPO

2.52 Section 21 of FSMA sets out restrictions that apply to any invitation or inducement for someone to enter into an agreement which constitutes a controlled activity, or to exercise rights conferred by a controlled investment. The controlled activities and investments covered by the restriction are specified by the FPO. Section 21(1) of FSMA precludes anyone from communicating such an invitation or inducement, except if he is an authorised person, or if the content of the communication is approved by an authorised person.

2.53 Once the UK is no longer part of the EU's passporting arrangements, it is possible that some EEA entities which are currently regarded as authorised will lose their permission to carry on business in the UK. For such entities, communications related to pre-existing contracts could then be in breach of the section 21(1) prohibition. Regulation 162 of this instrument provides a general transitional provision for communications relating to contracts in place before exit. Such communications will not be in breach of section 21(1) if the pre-exit contract required the communication to be made, and that communication would not have constituted a breach of section 21(1) had it been made before exit.

2.54 Annual accounts and reports issued in EEA states are currently exempt from the financial promotion restriction in section 21(1) FSMA. Given that the UK will no longer be part of the EU's passporting arrangements after exit, this exemption will be removed from the FPO. Regulation 174(4) of this instrument provides a transitional provision by preserving the exemption for the duration of the financial year beginning before exit.

2.55 Prospectuses are also exempt from the section 21(1) prohibition if approved in an EEA state. This prospectus exemption will be removed by this instrument, but if a prospectus has been approved in an EEA state before exit day, it will be deemed to have been approved by the FCA after exit day under regulation 175 of this instrument.

2.56 Further detail about the policy rationale for introducing these transitional provisions is set out in paragraphs 7.14 – 7.15 of this explanatory memorandum.

Transitional powers for UK regulators

2.57 Part 7 of this instrument provides for a new power which enables the FCA, the PRA and the Bank of England to give transitional directions to facilitate an orderly transition for financial services firms in the event that the UK leaves the EU without a withdrawal agreement. The transitional directions may delay the coming into force of, or otherwise modify, firms' regulatory obligations where they have changed as a result of an instrument made under section 8 of the EUWA.

2.58 A regulator may only exercise the power where it is satisfied that the direction will help to mitigate disruption for firms, and where it is consistent with the regulator meeting its existing statutory objectives, including those objectives for financial stability and consumer protection. This power gives the regulators the ability to afford firms time to adjust their business models and systems to adapt to the legislative changes in the absence of an implementation period being agreed with the EU. All transitional directions made under this temporary power must cease to have effect two years after exit day.

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 The provisions brought into force by regulation 1(2)(a) to (i) of this instrument (which update or correct references to EU regulations) are to ensure that references to EU regulations are to those regulations as they form part of domestic law after exit day.

3.3 References in legislation to other instruments can be ambulatory or non-ambulatory. If the references are ambulatory, they automatically update when the instrument referred to is updated. The EUWA (Part 1 of Schedule 8) provides that existing ambulatory references in legislation to EU instruments will be interpreted after exit day as references to the retained EU version of the law as that is amended from time to time, unless the contrary intention applies. The EUWA does not make provision for non-ambulatory references (references which are not automatically updated) in legislation.

3.4 The Department for Exiting the European Union has prepared draft regulations that have been laid before Parliament, the draft European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-european-union-withdrawal-act-2018-consequential-modifications-and-repeals-and-revocations-eu-exit-regulations-2018)[2] which make provision for how non-ambulatory cross-references to EU instruments are to be read. They provide that up-to-date non-ambulatory cross-references to EU instruments made up to the point immediately before exit day are to be interpreted on and after exit day as references to the retained direct EU legislation version of the EU instrument. That "fix" only applies, however, if references to the EU regulations are up-to-date: where references are out-of-date, the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 provide that

[2] The draft European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 were proposed as a Negative instrument on 29 November 2018, to which this explanatory memorandum refers. The instrument has since been upgraded to the Affirmative procedure and was laid in Parliament as an Affirmative instrument on 29 January 2019. The draft Affirmative version of the instrument will be found at gov.uk or legislation.gov.uk when this is made available.

references will be to the EU instrument as it had effect at the time the reference was made. Most provisions brought into force by regulation 1(2)(a) to (i) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 update cross-references to EU regulations which are not up-to-date, and consequently those references will be read after exit day as references to the retained direct EU legislation version of those instruments.

3.5 The opening words at the beginning of section 417(1) of FSMA (definitions for the purposes of FSMA) are amended to provide for the definitions to apply for the purposes of orders and regulations under FSMA as well as for FSMA purposes. This is because, following amendments made by this instrument, some terms defined in section 417(1) are no longer used in FSMA itself but continue to be used undefined in subordinate legislation made under FSMA. Hitherto referring to orders and regulations under FSMA was unnecessary because of the effect of section 11 of the Interpretation Act 1978 (c.30), which sets out that terms defined in an Act (the enabling Act) bear the same meaning in subordinate legislation made under that Act, unless the contrary intention appears. However, the wording of section 11 probably does not produce any effect in these situations, because it refers to the meaning which terms "bear" in the enabling Act, and if the terms are no longer used in the enabling Act, they cannot bear a meaning in the enabling Act. In view of the volume of orders and regulations made under FSMA, the more conventional approach of putting definitions of terms no longer used in FSMA into the secondary legislation was not considered secure. Therefore, this instrument retains definitions set out in section 417(1) of FSMA which are not used elsewhere in FSMA, and amends section 417(1) to provide that those definitions apply where they are used in orders and regulations made under FSMA.

3.6 The transitional powers given to the regulators in Part 7 of this instrument include power to waive or modify “relevant obligations”. That term is defined in regulation 199 by reference to obligations “imposed by or under an enactment”. For these purposes, “enactment” is defined broadly in regulation 199(2) as including primary and subordinate legislation (including statutory instruments and rules made by the regulators). The sorts of obligations that can be waived or modified are restricted to those where the regulator is responsible for the affected firms complying with the obligation, and where the obligation (or its application) has been altered by an instrument made under section 8 of the EUWA, and where the obligation is not an excluded obligation (as defined in regulation 199(2)).

3.7 This instrument needs to be read with other instruments made under the EUWA which amend domestic legislation or EU regulations referred to in FSMA or in FSMA subordinate legislation, notably:

- the Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401) (http://www.legislation.gov.uk/uksi/2018/1401/contents/made?page=10)
- the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403) (http://www.legislation.gov.uk/uksi/2018/1403/contents/made)
- the draft Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018 (http://www.legislation.gov.uk/ukdsi/2018/9780111175323/contents)

- the draft Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (http://www.legislation.gov.uk/ukdsi/2019/9780111177938/contents)
- the draft Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (https://www.legislation.gov.uk/ukdsi/2019/9780111177259)
- the draft Financial Conglomerates and Other Financial Groups (Amendment) (EU Exit) Regulations 2019 (http://www.legislation.gov.uk/ukdsi/2019/9780111178775/contents).

3.8 This instrument also makes reference to Chapter 2A of Part 9A of FSMA (technical standards) inserted by the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115).

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)

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

3.10 The powers under which this instrument is made cover the entire United Kingdom (see section 2(2) of the European Communities Act 1972 (c.68), and section 8(1) of, and paragraph 1 of Schedule 4 to, and paragraph 21 of Schedule 7 to, the EUWA) and the territorial application of this instrument is not limited either by those Acts or by this instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the 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, has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 In order to address deficiencies in retained EU law that arise from the UK's withdrawal from the EU, this instrument amends FSMA and makes consequential amendments to the primary and secondary legislation listed in paragraph 6.4.

6.2 This instrument makes further amendments to the following secondary legislation:

- the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)
- the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529)
- the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I 2001/1201)
- the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217)

- the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (S.I. 2001/1227)
- the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (S.I. 2001/1420)
- the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (S.I. 2001/2507)
- the Financial Services and Markets Act 2000 (Own-initiative Power) (Overseas Regulators) Regulations 2001 (S.I. 2001/2639)
- the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (S.I. 2001/3625)
- the Financial Services and Markets Act 2000 (Control of Business Done at Lloyd's) Order 2001 (S.I. 2001/3626)
- the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013 (S.I. 2013/165)
- the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (S.I. 2009/774)
- the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419)
- the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556)
- the Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013 (S.I. 2013/3116)
- the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (S.I. 2014/1960)
- the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (S.I. 2014/2080)
- the Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015 (S.I. 2015/1865).

6.3 This instrument revokes the Financial Services and Markets Act 2000 (Exercise of Powers under Part 4A) (Consultation with Home State Regulators) Regulations 2013 (S.I. 2013/431).

6.4 This instrument also makes consequential amendments to the Consumer Credit Act 1974 (c.39), the Electronic Money Regulations 2011 (S.I. 2011/99), and the Payment Services Regulations 2017 (S.I. 2017/752).

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. Therefore, should a deal be approved, the implementation period 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 an implementation period, common rules will continue to apply. The UK would continue to implement new EU law that comes into effect and the UK would continue to be

treated as part of the EU's single market in financial services. This would 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 would 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 believes that there will be a deal and an implementation period in place, it must plan for all eventualities, including a 'no deal' scenario. 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'. The powers conferred by the EUWA 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 If the UK were to leave 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 As set out in paragraphs 2.2 to 2.4 of this explanatory memorandum, FSMA and related secondary legislation provide the main legislative framework for setting out the activities and entities that fall within the scope of financial services regulation in the UK.

7.10 As explained in paragraph 7.4, this instrument is not intended to make substantive policy changes, but will ensure that the UK's financial services framework can function effectively as a standalone regulatory regime. Some of these amendments are consequential to, or make transitional provision for, the approach taken in other financial services statutory instruments that have been laid before Parliament as part of the government's contingency preparations for a no deal scenario.

7.11 Many of the provisions in FSMA and related secondary legislation treat EEA states in a different way to non-EEA countries (i.e. 'third countries'). This is because the legislation, as it operates before exit day, functions on the basis that the UK is a Member State of the EU and that it forms part of the EU's single market for financial services. Once outside the EU and the single market, it would be inappropriate for the UK to continue to treat the EEA in this way. As such, the deficiency fixes explained in this explanatory memorandum are consistent with the government's general approach to treating EEA Member States as any other third country, unless otherwise stated.

7.12 In addition, a number of provisions in FSMA and related secondary legislation cross-refer to EU regulations or directives. So that the legislation continues to operate effectively after exit day, amendments in this instrument will replace many of these cross-references to EU legislation with references to domestic legislation.

7.13 The regulators are responsible for regulating and supervising the entities and activities that fall within the scope of the 'regulatory perimeter' in the UK under the necessary powers and functions that are provided to them in FSMA and related secondary legislation. While this instrument does not fundamentally alter the principle powers and functions of the regulators set out in this legislation, the instrument introduces amendments to ensure that the regulators' roles and responsibilities remain clearly defined after exit day, and that they can continue to carry out their statutory objectives and duties. The instrument further secures that the regulators can charge fees in connection with new or altered functions.

7.14 As set out in paragraphs 2.42 to 2.58 above, this instrument introduces transitional provisions both in relation to obligations on UK-supervised firms and in respect of certain EEA regulated entities and activities. These transitional arrangements are intended to mitigate disruption to the financial system at exit, and to ensure that certain contracts entered into pre-exit will continue to operate effectively after exit day for a temporary period. Without these transitional arrangements, firms which have been acting in reasonable reliance on the likelihood of an implementation period may experience significant disruption at exit which may negatively impact their operations. These transitional provisions will provide UK and EEA firms time to

adjust to new regulatory and supervisory requirements once the UK has left the EU, and will also allow the UK regulators to prepare in line with these changes.

7.15 As explained in paragraph 2.10 above, this instrument will also work in conjunction with the TPR which will allow EEA firms and funds operating in the UK via a passport to continue their activities for a limited period after exit day. These transitional arrangements are intended to mitigate disruption to the financial system once the UK is no longer a part of the EEA financial services 'passporting' system. The transitional powers for UK regulators introduced by Part 7 of this instrument will enable regulators to ensure that EEA firms in the TPR begin to comply with UK requirements in an orderly way. The Part 7 transitional powers are therefore essential to the effective operation of the TPR. Once this transitional period ends, EEA firms and funds, as with other third-country firms and funds, would need to apply for authorisation under Part 4A of, and Schedule 6 to, FSMA, in order to continue to carry on regulated activities in the UK.

7.16 As set out in paragraphs 2.36 – 2.40 above, amendments introduced by instrument in relation to the UK's ring-fencing regime diverge from the general approach to treating EEA states as third countries. Unlike other elements of the legislation referred to in this explanatory memorandum, the ring-fencing regime is a UK initiative implemented through domestic legislation and is therefore not itself an implementation of EU requirements. As such, the policy approach and scope of the ring-fencing framework will remain workable after exit.

7.17 Amendments made by this instrument will ensure that RFBs can continue to operate through a branch or subsidiary in the EEA in a no deal scenario. As many banks have undertaken significant work to restructure their operations to comply with the ring-fencing regime that came into effect on 1 January 2019, it is appropriate to maintain the current position after exit day in order to minimise disruption to UK banks. Prohibiting RFBs from having EEA branches and subsidiaries would have negative financial and operational impacts on UK banks and could result in the closure of some EEA branches. The independent statutory review of the ring-fencing regime is due to commence in 2020-21, which may serve as an appropriate opportunity to reassess the UK's ring-fencing policy.

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. The instrument is also made under paragraph 1 of Schedule 4 to, and paragraph 21 of Schedule 7 to, that Act. 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. The power in section 2(2) is being used in order to update cross-references to EU regulations which are not up-to-date. This is so that references to EU regulations in domestic law are to those regulations as they form part of domestic law after exit day, as explained in paragraphs 3.2 to 3.4 of 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 has engaged with relevant stakeholders, including the FCA and PRA, on its approach to financial services legislation under the EUWA, including on this instrument, in order to familiarise them with the legislation ahead of laying. An explanatory policy note setting out the necessary deficiency fixes was published on 22 November 2018, with Parts 1 to 6 of the instrument published in draft on 12 December 2018. (https://www.gov.uk/government/publications/draft-financial-services-and-markets-act-2000-amendment-eu-exit-regulations-2019)

10.2 The PRA and FCA are undertaking public consultations on any changes they propose to make to Binding Technical Standards and rules made under the powers conferred upon them by FSMA. The FCA's consultation can be found here, and the PRA's consultation can be found here.

11. Guidance

11.1 No further guidance is being published alongside this instrument. The financial services regulators are currently consulting on how to use the transitional powers set out in Part 7 of this instrument and will publish statements on their intended approach once those consultations have concluded.

12. Impact

12.1 The impact on business, charities or voluntary bodies is expected to be minimal as a result of this instrument. Consistent with the government's overall approach to minimise disruption to firms and consumers, this instrument includes transitional provisions for certain EEA firms that currently carry out regulated activities in the UK. These transitional provisions ensure that certain EEA regulated activities and entities can continue to comply with pre-exit requirements for a temporary period after exit, benefiting EEA firms and funds currently passporting into the UK, and their consumers. Further detail about these transitional arrangements is set out in paragraphs 2.42 – 2.58 of this explanatory memorandum.

12.2 The impact on the public sector is that the PRA and FCA will be responsible for making transitional directions under the temporary transitional power described in paragraphs 2.57 – 2.58 of this explanatory memorandum and may charge fees in connection with new or altered functions.

12.3 A full 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.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on businesses, including small businesses (employing up to 50 people), the approach taken is to publish most of the instrument in draft, as well as an explanatory policy note, in advance of laying this instrument in Parliament to allow businesses to familiarise themselves with any relevant changes

and the policy intentions behind these changes. Some of the transitional provisions introduced in this instrument may help to mitigate any impact that this instrument may have on 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 Lee O'Rourke or Michael Sole at HM Treasury (Telephone: 020 7270 6436 or 020 7270 5508 or email: Lee.ORourke@HMTreasury.gov.uk or Michael.Sole@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Katie Fisher, Deputy Director for EU Exit Financial Services Domestic Preparation, at HM Treasury, can confirm that this explanatory memorandum meets the required standard.

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

"In my view the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate."

1.2 This is the case because, firstly, the instrument does no more than to correct deficiencies in the framework for financial services regulation in the UK resulting from the UK's withdrawal from the EU. Secondly, the instrument ensures that there are adequate transitional arrangements for the orderly implementation of the changes made in this instrument and in other deficiency correcting instruments made by HM Treasury under the EUWA. Sections 2 and 7 of this explanatory memorandum further explain the legislative reasons for this instrument.

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 These are that, without the provisions in this instrument, domestic law in relation to the UK's legislative framework for financial services regulation would no longer operate appropriately once the UK withdraws from the EU. In particular, failure to proceed with this instrument would result in considerable uncertainty for financial services firms operating in the UK. The functions and powers of the UK's financial services regulators would also be unclear without this instrument if the UK withdraws from the EU without an agreement. Sections 2 and 7 of this explanatory memorandum further explain the policy intentions of this instrument.

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 Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019."

5.2 It is appropriate to delegate a legislative power to the Financial Conduct Authority and the Prudential Regulation Authority so that they can make rules in respect of fees in connection with the discharge of their functions under, or as a result of:

- regulations made under section 8 of the European Union (Withdrawal) Act 2018 ("section 8 regulations"),
- subordinate legislation made by virtue of section 8 regulations,
- retained direct EU legislation, and
- technical standards made in accordance with Chapter 2A of Part 9A of the Financial Services and Markets Act 2000,

in the same terms as rules in respect of fees under Schedules 1ZA, 1ZB and 17A to the Financial Services and Markets Act 2000.