EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES ACT 2021 (PRUDENTIAL REGULATION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS) (CONSEQUENTIAL AMENDMENTS AND MISCELLANEOUS PROVISIONS) REGULATIONS 2022

2022 No. 838

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 The primary purpose of this instrument is to make consequential changes as a result of the Financial Services Act 2021 (c. 22) (the "FS Act").

2.2 The FS Act introduced the framework for the Investment Firms Prudential Regime (IFPR), a bespoke prudential regime for investment firms that do not pose a systemic risk to the financial system (otherwise known as non-systemic investment firms).

2.3 The FS Act also provided for the transfer of certain prudential regulation set out in UK legislation to rules made by the Prudential Regulation Authority (PRA). This enabled the PRA to implement the remaining aspects of the Third Basel Accord (Basel 3 standards) through regulator rules. It will also enable the future implementation of the Basel 3.1 standards.

2.4 This instrument includes further consequential amendments following the introduction of the IFPR and Basel 3 standards on 1st January 2022. In particular, this instrument repeals the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 as it is redundant following the removal of Financial Conduct Authority (FCA)-regulated investment firms from the UK resolution regime.

2.5 This instrument makes transitional provision in respect of risk retention requirements for certain securitisations following the implementation of the IFPR. These requirements relate to the retention of a material net economic interest in a securitisation by the originator, sponsor, or original lender to better align their interests with those of investors.

2.6 This instrument makes amendments to ensure that short-term liabilities owed to both PRA-regulated and FCA-regulated investment firms with permission to underwrite or deal on own account will continue to be exempt from bail-in. Bail-in involves shareholders of a failing institution being divested of their shares, and creditors of the institution having their claims cancelled or reduced to the extent necessary to restore the institution to financial viability.

2.7 Finally, this instrument addresses further deficiencies arising from the withdrawal of the United Kingdom from the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument repeals the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 as it is redundant following the removal of FCA-regulated investment firms from the UK resolution regime.

3.2 Article 2 of that Order was amended by an instrument using powers conferred by section 2(2) of the European Communities Act 1972 (c. 68). This instrument is revoking the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 using a power conferred before the 2017 to 2019 parliamentary session began. For these reasons, this instrument has been subject to the enhanced scrutiny procedure in Schedule 8 of the European Union (Withdrawal) Act 2018 (c. 16) and published in draft.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is United Kingdom.

4.2 The territorial application of this instrument is 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 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The FS Act enables the implementation of the full set of Basel 3 and Basel 3.1 standards by giving powers to HM Treasury to revoke provisions of the UK Capital Requirements Regulation (CRR). Following repeal, many of the standards have been implemented through CRR rules made by the PRA.

6.2 When making 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[1] ("FSMA") – which seeks to ensure the PRA has regard to a number of relevant policy areas when making these rules.

6.3 The FS Act also introduced a bespoke prudential regime for non-systemic investment firms – the IFPR - by placing an obligation on, and providing powers for, the FCA in sections 143C to 143E (contained in Part 9C) of FSMA[2] to introduce prudential rules for investment firms (Part 9C rules).

6.4 To enable the introduction of the IFPR, the FS Act took non-systemic investment firms out of the scope of the Capital Requirements Regulation (CRR[3]) and Capital

[1] Financial Services and Markets Act 2000 c. 8. Sections 144C to 144E were inserted by Schedule 3 to the FS Act.
[2] As inserted by Schedule 2 to the FS Act.
[3] Regulation (EU) No 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

Requirements Directive, (CRD[4]) (hereafter jointly referred to as the "CRR framework"), thus limiting the application of the CRR framework and rules to credit institutions and PRA-designated investment firms.

6.5 When making Part 9C rules, the FCA is subject to an accountability framework – set out in sections 143G to 143I of FSMA[5] – which is similar to that which applies to the PRA when it makes rules.

6.6 This instrument is part of a package of instruments which supports the introduction of the IFPR and Basel 3 standards. This instrument and those which preceded it, give effect to sections 1 to 5 of, and Schedules 1 to 4 to, the FS Act. These provisions of the FS Act ensure that the UK's regulatory framework continues to function effectively following the UK's withdrawal from the EU and make important updates to the UK's regulatory framework.

6.7 This instrument was preceded by:

- the Capital Requirements Regulation (Amendment) Regulations 2021 (2021 No. 1078) which revoked certain pieces of legislation.
- the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (2021 No. 1376) which primarily focused on consequential changes following the revocations
- the Financial Services and Markets Act 2000 (Consequential Amendments of References to Rules) Regulations 2021 (2021 No. 1388) which made also made minor consequential changes.

6.8 This instrument is also exercising powers in the Banking Act 2009 (c. 1) in order to make consequential amendments as a result of removing FCA-regulated investment firms from the UK resolution regime.

6.9 This instrument also exercises powers in section 8(1), and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 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 to 2008 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 and Basel 3.1 standards. The UK played an active role in negotiating and agreeing these standards and has always been committed to their implementation.

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

[4] 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).

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

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 implementation period completion day, 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 3 standards was CRR2[6] and the 5th Capital Requirements Directive (CRDV)[7]. Some aspects of CRR2, however, came into application following Implementation Period Completion Day and therefore do not form part of retained EU law.

7.6 The UK has now implemented the Basel 3 standards through rules made by the PRA. This includes some of those standards contained in the EU's 2nd Capital Requirements Regulation (CRR2).[8]

The Investment Firms Prudential Regime

7.7 Prior to 1 January 2022, many investment firms were subject to the CRR framework, while others were exempt from the CRR and related requirements.

7.8 Investment firms differ from credit institutions (banks) in that they do not accept deposits or typically 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.

7.9 As such, the CRR framework in its previous form did not appropriately cater for the differences between credit institutions and investment firms and was disproportionate, burdensome, and inappropriate to the risks these firms faced.

7.10 To seek to address these issues, the FCA has created 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.

7.11 The FCA has published all its final Part 9C rules.[9]

Basel 3 and IFPR consequential amendments

7.12 This instrument will amend the definition of the "capital requirements regulation[10]" within certain pieces of legislation to ensure that the changes to the CRR made by the

[6] REGULATION (EU) 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

[7] 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

[8] 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.

[9] The final IFPR rules are contained in the legal instruments FCA 2021/38, FCA 2021/39, FCA 2021/49, FCA 2021/50 and FCA 2021/51. See also the FCA's IFPR website for IFPR discussion paper, consultations and policy statements.

[10] Regulation (EU) 575/2013

FS Act 2021 and rules made by the regulators using powers conferred by the FS Act 2021 are reflected. These amendments include changes to:

(a) Insolvency (Northern Ireland) Order 1989 (1989 No. 2405 (N.I.19)); and

(b) Bankruptcy (Scotland) Act 2016 (2016 asp 21);

7.13 This instrument also makes changes to ensure the coherence of these regimes by adding/updating cross-references to regulator rules (CRR Rules or Part 9C rules and PRA/FCA handbook references) where required to effectively link the legislation and the new rules. These amendments include changes to:

(a) Financial Services and Markets Act 2000 (c. 8);

(b) Bank Levy (Loss Absorbing Instruments) Regulations 2020 (2020 No.1188);

(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 (EUR 648/2012);

(d) Regulation (EU) No 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 (EUR 575/2013);

(e) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (EUR 2015/35).

7.14 This instrument also amends section 48D of the Banking Act 2009. This amendment is necessary following the decision to remove FCA-regulated investment firms from the scope of the UK resolution regime. An amendment has been made to ensure that short-term liabilities owed to both PRA and FCA-regulated investment firms will continue to be exempt from bail-in. The Government considers that this best preserves the existing effect of the safeguards for short-term liabilities, thereby reducing the risk of systemic contagion.

7.15 The proposed amendment is being made using the power to amend the definition of excluded liabilities under section 48F(1) of the Banking Act 2009.

7.16 This instrument also repeals the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 as it is redundant following the removal of FCA-regulated investment firms from the UK resolution regime.

Securitisation

7.17 This instrument will make transitional provisions in relation to risk retention requirements for certain securitisations. These transitional provisions are made because of IFPR-related changes that narrow the applicable group risk retention provisions (under Article 6(4) of the Securitisation Regulation[11] and under Article 405(2) of the Capital Requirements Regulation in the version applicable on 31 December 2018 as modified by Article 43(6) of the Securitisation Regulation).

7.18 For securitisations that, prior to the IFPR-related changes, met the risk retention requirements via the group risk retention requirements, but where these stopped applying after the IFPR-related changes, this instrument requires the risk retention to

[11] 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, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012

be assumed by the originator, sponsor or original lender to satisfy the risk retention requirements.

7.19 This means for example, by means of a transfer of the risk retention from the relevant group entity to the originator, sponsor or original lender. This needs to be done before 1 January 2023 when transitional provisions in the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 cease to have effect. It is important to ensure that the risk retention requirements in relation to securitisations work as intended (see paragraph 2.5 above).

EU exit deficiencies

7.20 This instrument seeks to fix some deficiencies which have arisen as a result of the UK's withdrawal from the EU.

7.21 The includes changes to Northern Ireland and Scotland Insolvency legislation.

7.22 These changes are not intended to make policy changes, other than to reflect the UK's new position outside the EU.

7.23 These amendments include:

- Replacing references to European jurisdictions with references to the United Kingdom.
- Updating references to EU directives, which have now been transposed to EU retained law or replaced with domestic legislation.
- Fixing two deficiencies in the Banking Act 2009 which:
  - update a previously onshored[12] reference to an EU regulation, to reflect a late amendment of the EU regulation between the EU Exit Regulations (SI 2018/1394) being made and Exit Day (regulation 7(2)(c)); and
  - correct and achieve the intention behind a previous provision to deal with a deficiency, which made an incorrect reference to the deficient provision (regulations 7(3) and 10).

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 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made under sections 48F(2), 48F(3) and 258A(2)(b) of the Banking Act 2009 and sections 45(1), 45(3) and 49(7) of the FS Act.

[12] refers to the legislative approach taken by the government to address deficiencies that arose from the withdrawal of the UK from the EU and ensure that legislation continue to operate effectively after EU Exit.

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?

8.3 Following Implementation Period Completion Day, 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?

8.4 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?

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

Miscellaneous

8.6 This instrument corrects a typographical error in the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021.

9. Consolidation

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

10. Consultation outcome

10.1 HM Treasury ran a public consultation on the implementation of certain aspects of Basel 3 and the IFPR which closed on 01/04/2021. This included reference to using powers in the FS Act (including to make consequential amendments) that are being used to make some provisions in this instrument. A more detailed analysis of the consultation outcome and the Treasury's policy response to the opinions expressed has been published.[13]

10.2 HM Treasury ran a public consultation[14] on the amendment to section 48D of the Banking Act 2009. This is a necessary consequential amendment following the decision to remove FCA-regulated investment firms from the scope of the UK resolution regime.

10.3 This consultation proposed amending the definition of 'investment firm' in section 48D of the Banking Act 2009 to capture PRA-regulated investment firms and FCA-regulated investment firms with permission to underwrite or deal on own account.

10.4 A more detailed analysis of the consultation outcome and HM Treasury's policy response to opinions expressed has been published.[15]

[13] OFFICAL_-_MARKET_SENSITIVE_Prudential_Consultation_Updated_220621.pdf (publishing.service.gov.uk)
[14] OMS_-_consultation_S48D_BA09_.pdf (publishing.service.gov.uk)
[15] Consultation_response_-_S48D_BA09_.pdf (publishing.service.gov.uk)

10.5 HM Treasury also published a public call for evidence on 24 June 2021[16] related to its legal obligation to review the Securitisation Regulation and lay a report before Parliament by 1 January 2022. The call for evidence supported work on the review of the Securitisation Regulation, which was laid before Parliament on 13 December 2021[17].

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 The measures in this instrument are already accounted for in the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (2021 No. 1376) de minimis assessment.

12.4 A copy of the assessment is published on legislation.gov.uk with 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 estimated annual net direct cost to business is less than £5 million and the number of small businesses in scope is very low".

15. Contact

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

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.

[16] Securitisation Regulation: call for evidence
[17] Review of the Securitisation Regulation: report and call for evidence response

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 23(1) or jointly exercising powers in Schedule 2 to create	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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 2022 do 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. Scrutiny statement 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 this instrument:

"I have taken the following steps to make the draft instrument published in accordance with paragraph 14(2) of the Schedule 7 of the European Union (Withdrawal) Act 2018 available to each of House of Parliament:

- The draft SI and Explanatory Memorandum have been published on gov.uk.

- An unnumbered Command Paper has been laid in both Houses giving notice of the publication of the draft SI and EM. No comments on the published draft instrument were received.
- A Written Ministerial Statement has been issued to notify the House of Commons of the draft publication on gov.uk.
- The Clerk of the Secondary Legislation Scrutiny Committee has also been provided with a link to the publication on gov.uk.

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

6.1 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 2022 to revoke the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 and amend regulation 6 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, made under section 2(2) of the European Communities Act 1972.

6.2 This is because the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 is redundant following the removal of FCA-regulated investment firms from the UK resolution regime. The amendments to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 are needed to ensure that the prudential regime reflects the changes made as a result of the FS Act.