EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES (ELECTRONIC MONEY, PAYMENT SERVICES AND MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

2019 No. 1212

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument is being made in order to ensure a coherent and functioning financial services regulatory regime is in place once the United Kingdom (UK) leaves the European Union (EU). It addresses deficiencies in retained EU law and UK domestic law arising from the UK's withdrawal from the EU, in line with the approach taken in other financial services EU exit instruments made under the EU (Withdrawal) Act 2018 (EUWA).

2.2 The government is committed to ensuring all necessary measures have been taken to prepare the UK's regulatory regime for exit on 31 October, and has therefore used the additional time provided by the Article 50 process extension to review EU exit legislation. This instrument updates legislation to account for the Article 50 extension. The review has also identified a limited number of existing exit provisions which will need amending. In particular, key provisions relating to the contractual continuity schemes for payment services and electronic-money (e-money) firms, and the transitional provisions for third country benchmarks, need to be clarified and supplemented to ensure they appropriately address the risk of post-exit disruption to firms and consumers. While this instrument does not change the policy approach of earlier EU exit instruments, it does strengthen a number of important provisions. The instrument also corrects minor issues identified in earlier EU exit legislation.

2.3 The amendments below are ordered sequentially as they appear in the instrument, except where common subject matter makes it more helpful to combine the descriptions of related amendments.

Explanations - What did any relevant EU or UK law do before exit day and how is it being changed?

<u>*Amendment of the Financial Services and Markets Act 2000*</u>

2.4 Part of the government's approach to ensuring an effective regulatory regime for financial services after exit is to provide a clear, appropriate and pragmatic allocation of responsibility for retained EU regulations. Under that approach, the UK financial regulators will take on responsibility for EU Binding Technical Standards (BTS), the technical rules which provide further detail on how firms should comply with requirements set out in higher EU legislation. UK regulators are to be given this responsibility in line with the function Parliament has delegated to the regulators for making regulator rules under the Financial Services and Markets Act 2000 ("FSMA").

FSMA sets the requirements the regulators must comply with when making rules, including requirements to consult and provide cost-benefit analysis. FSMA also sets out limited exceptions to the consultation obligation where the regulators need to make rule changes quickly to address an urgent regulatory risk. The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations (S.I. 2019/1115) amends FSMA to apply the same requirements to the regulators when making or amending BTS after exit.

2.5 Since making the Financial Regulators' Powers Regulations, subsequent EU exit instruments have been used to legislate for post-exit regimes covering regulated entities that are not authorised under FSMA, such as payment services firms. To ensure BTS that apply to these types of firm are caught by all of the FSMA rule-making provisions, it is necessary to make an amendment to a definition of "consumer" in FSMA so that the Financial Conduct Authority (FCA) can, if necessary, be exempt from consultation requirements where an urgent change to BTS is needed to protect UK consumers. The ability of the FCA to make urgent rule changes, where necessary to protect consumers, is an important crisis management tool in the UK regulatory framework. Regulation 2(2) of this instrument amends section 138S(2) of FSMA accordingly.

Amendment of primary and secondary legislation: updating cross-references to the Capital Requirements Regulation (EU) No 575/2013 ("the CRR")

2.6 In order to ensure that retained EU law and related domestic law operate as intended from exit day, it is necessary to ensure that legislative cross-references (where domestic legislation relies on provisions in an EU regulation) are up to date. Regulations 2(3), 3 and 9 to 12 of this instrument update cross-references to the CRR, as it will form part of UK law at exit. Updates are necessary to take account of EU amendments made to the CRR which became applicable in June 2019. The CRR cross-references to be updated are in domestic legislation concerning the recovery and resolution of banks, and the reorganisation and winding up of credit institutions.

Amendment of secondary legislation: electronic money and payment services

2.7 Once the UK has left the EU, and the UK is outside of the EU's single market for financial services, EEA firms will no longer be able to rely on the EU's system of "passporting" for permission to do business in the UK. A key objective of financial services exit legislation is to provide temporary regimes which will enable EEA firms to continue doing business while they become UK authorised, or to continue discharging their pre-existing obligations to UK consumers for a limited period. Part 3 of this instrument amends legislation relating to the temporary regimes established by the Electronic Money, Payment Services and Payments Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1201), and the regimes established by the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149). A review of this legislation has identified a limited number of provisions which should be amended in order to ensure these temporary regimes operate as intended from exit day. The amendments fall into two categories explained below.

2.8 Firstly, EEA e-money and payment services firms that enter a Contractual Run-Off (CRO) regime will be permitted to carry on Financial Services activities that are necessary to meet pre-existing UK contractual obligations, until those obligations have been "run-off". This is achieved by exempting CRO firms from specific UK

regulations. This instrument amends relevant legislation to supplement the regulations that a CRO firm is exempted from under each specific regime. The amendments will ensure that CRO firms can carry out the full range of activities required to discharge any pre-existing contractual obligations, as intended. While these firms will be exempt from general UK regulation, they will still be regulated by their home EEA state regulator. The necessary amendments are made to the Payment Services Regulations 2017, Electronic Money Regulations 2011, EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, and the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.

2.9 Secondly, this instrument makes amendments to the Temporary Permissions Regime (TPR), Supervised Run-Off (SRO) regime and Contractual Run-Off (CRO) regime for EEA payments and e-money firms.[1] Following review of the legislation, these amendments clarify and make more explicit the legal rights and obligations of firms that enter these regimes, and the powers of the FCA in relation to those firms:

i. Regulations 7(3) and 7(11)(a) ensure that relevant funds of payment service users and e-money holders continue to be prioritised above the claims of other creditors as they are currently, in the event that these firms enter a UK insolvency procedure.

ii. Regulations 7(5), 7(6), and 7(7) clarify that an EEA firm in a run-off regime is legally able to redeem outstanding electronic money (that is, return any balance on the account to the e-money holder), enabling UK consumers to continue to redeem any unspent e-money held by such firms.

2.10 In a limited number of areas, the amendments make the intended FCA powers explicit, in a way that is more consistent with the run-off regimes for types of firm authorised that would usually be authorised under FSMA:

i. Regulations 7(4) and 7(12) ensure that any “requirements” imposed by the EEA home state regulator prior to exit (which may include restrictions on the services a firm provides), are maintained in UK law, as if they were imposed by the FCA. This is to ensure that there is no gap in the application of requirements which may have been made to protect consumers, and enables the FCA to amend or revoke these requirements as appropriate to protect UK payment service users or e-money holders.

ii. Regulations 7(8) and 7(15) (inserted paragraphs 12H and 32) strengthen the supervisory regime for SRO firms by, for example, ensuring that the FCA has the power to obtain injunctions against these firms and require restitution, consistent with the regime for TPR firms, as originally intended.

iii. Regulations 7(8) and 7(15) (inserted paragraphs 12HA and 32A) clarify the powers of the FCA to supervise and sanction CRO firms (for example, to gather information and censure firms), and makes explicit that the FCA has powers to publish a register of firms in the CRO regime. This provides the FCA with proportionate powers to supervise and sanction these firms, and provides further public transparency on the status of these firms.

[1] As established by the Electronic Money, Payment Services and Payments Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1201) as amended by Part 4 of the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405).

Amendment of the Financial Regulators' Powers (Technical Standards etc.) (Amendment) (EU Exit) Regulations 2018

2.11 Regulation 13 of this instrument will ensure that recently adopted BTS, which will form part of retained EU law at exit, continue to operate effectively after the UK has left the EU. Regulation 13 achieves this by amending the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115). The Regulations give the UK financial services regulators powers to fix deficiencies in BTS so that they operate effectively in UK law from exit day. Regulation 13 adds to the Schedule to the Regulations new BTS adopted under the Prospectus Regulation (EU) 2017/1129. It also amends an existing reference to one BTS under the Payment Services Directive (EU) 2015/2366 to reflect the fact that this has now become fully applicable in EU law.

Amendments to the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

2.12 The EU's Markets in Financial Instruments Directive (2014/65/EU) and the Markets in Financial Instruments Regulation (No 600/2014) ("MiFIR"), often collectively referred to as "MiFID 2", regulate the buying, selling and organised trading of financial instruments.

2.13 MiFID 2 introduced the concept of an Organised Trading Facility ("OTF"), which is a category of trading venue in which buyers and sellers of certain financial instruments can enter into contracts with one another. The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403) ("the MiFI Exit SI") introduced a UK-specific version of the OTF known as the "UK OTF". As currently drafted, however, the definition of UK OTF is ambiguous and could include OTFs that are not necessarily operated by a UK entity. Regulation 14(2) of this instrument therefore amends the definition of UK OTF to clarify that it is an OTF operated by a UK investment firm or a UK market operator.

2.14 MiFID 2 also introduced an obligation for trading venues to provide certain trading information to central counterparties (CCPs) upon request in specific circumstances. Trading venues can be exempt from this requirement for a limited period for some instruments if the total volume of their trading falls below a certain threshold. This threshold is currently defined by reference to trading venues that are based in the EU. In order for the trading venue information requirement exemption to operate effectively in the UK after exit, this threshold needs to be expressed by reference to UK markets rather than EU markets. Regulation 14(5) of this instrument addresses the omission by amending regulation 31(2)(d) of the MiFI Exit SI.

2.15 Regulation 14(8) of this instrument also fixes incorrect cross-references in regulation 49 of the MiFI Exit SI. These cross-references refer to certain conditions that specify when a client is deemed to be a professional client for the purposes of MiFID 2. However, these conditions are not relevant to the provision in question, which concerns the treatment of eligible counterparties that request to be treated as retail clients. These conditions are therefore deleted.

Amendment of the Market Abuse (Amendment) (EU Exit) Regulations 2019

2.16 The EU's Market Abuse Regulation (EU) No. 596/2014 ("MAR") was introduced to enhance market integrity and investor protection by prohibiting insider dealing, unlawful disclosure of inside information and market manipulation. The territorial

scope of MAR, set out in Article 2.4, covers the EU and any "third country". The Market Abuse (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/310) ("the MAR Exit SI") fixes deficiencies in MAR as it will apply in the UK after exit. This includes amendments to Article 2.4 so that MAR will continue to apply to the UK and any third country. However, as amended, there is potential ambiguity around whether the scope of UK MAR will include all of the UK's overseas territories. Regulation 15 of this instrument makes amendments to the MAR Exit SI to remove the ambiguity and ensure that the UK's overseas territories will be in scope of UK MAR, as well as making minor drafting corrections. As a result of this, an amendment made by the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680) to the MAR Exit SI, to capture Gibraltar within the scope of UK MAR, is no longer needed. Regulation 22(2) deletes the redundant amendment.

Amendment of the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019

2.17 Regulation 16 of this instrument amends the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328) to correct a drafting error in regulation (9)(4)(b), where a reference to an EU Directive was not fully omitted. This amendment now removes the whole reference to the Second EU Company Law Directive.

Amendment to equivalence provisions in EU exit legislation

2.18 EU financial services legislation contains provisions that give powers to the European Commission to determine that a third country's regulatory and supervisory framework is equivalent to the EU's regime. At exit, the Commission's powers to make equivalence determinations will transfer to HM Treasury.

2.19 When making an equivalence determination, HM Treasury will be required to compare the relevant third country law with UK law. To provide clarity on HM Treasury's equivalence powers after exit, this instrument amends the equivalence provisions in relevant EU Exit instruments. When making an equivalence determination, HM Treasury must consider the UK law that was used to implement the relevant EU law before exit, as that law stands on the day HM Treasury makes a determination by laying regulations before Parliament. These amendments are necessary to ensure that HM Treasury's equivalence determination-making powers are clearly defined. The amendments are made in regulations 14, 17 and 18 of this instrument.

2.20 Schedule 1 to the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/541) ("the Equivalence Exit SI") lists the equivalence regimes under which HM Treasury can make equivalence directions for EEA states. This direction power can be exercised for 12 months after exit day. Paragraph 4(1)(a) of that schedule contains an incorrect cross-reference to the European Market Infrastructure Regulation (EMIR). Regulation 19(2) of this instrument corrects that cross-reference so that it instead refers to the EU Markets in Financial Instruments Directive (Directive 2014/65/EU) as it will be implemented in UK law.

2.21 Schedule 2 to the Equivalence Exit SI fixes deficiencies in some existing EU equivalence decisions that will be retained in UK law under the EUWA. The provisions in Schedule 2 ensure that third countries found equivalent to the EU will

continue to be equivalent to the UK on exit day. Regulation 19(3) of this instrument makes some further drafting amendments to Schedule 2 to ensure legal consistency in the way that existing Commission decisions are retained at exit.

Amendment of the Benchmarks (Amendment and Transitional Provisions) (EU Exit) Regulations 2019

2.22 Financial benchmarks are standards used in a wide range of markets to help set prices, measure performance, or work out amounts payable under financial contracts. The primary objective of the EU Benchmarks Regulation (the "EU BMR") is to ensure the accuracy, robustness and integrity of benchmarks.

2.23 The EU BMR includes an access regime for benchmarks administered outside of the EU. Benchmark administrators that are located outside of the EU may apply for "endorsement" of a specific benchmark or for "recognition" as an administrator, or their benchmarks may be permitted for use in the EU following an "equivalence" determination made by the European Commission. Through any one of these routes, the benchmark and its administrator can then be entered onto a register of non-EU administered benchmarks held by ESMA. From 1 January 2020, non-EU administered benchmarks may only be used for new contracts or products in the EU if they appear on the ESMA register. This transitional period, up to the end of 2019, is intended to give non-EU benchmark administrators enough time to familiarise themselves with the EU BMR and make an application for endorsement or recognition, or for the Commission to make equivalence determinations, where appropriate.

2.24 Under the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657) (the "Benchmarks Exit SI"), post-exit the FCA will maintain a UK register of benchmarks administered outside the UK which have been approved for use through endorsement or recognition applications, or an equivalence determination, in the UK. The Benchmarks Exit SI also maintains the transitional period that is contained in the EU BMR and applies this in the UK. This means that benchmarks that are administered outside the UK ("third country benchmarks") and which do not appear on the FCA register by 31 December 2019 may not be used in new contracts or products in the UK after this time. The Benchmarks Exit SI contains a further transitional provision which permits the use in the UK of any benchmark administered outside the UK which appears on the ESMA register at exit day, by adding them to the FCA register for a period of two years from exit day (the "additional transitional period"). The additional transitional period was included so that administrators of benchmarks that appear on the ESMA register at exit day are given an appropriate period of time after exit to apply to the FCA for continued inclusion on the FCA's register of third country benchmarks.

2.25 However, since the Benchmarks Exit SI was made, it has become clear there will be a damaging cliff-edge risk to the UK when the UK's third country transitional period ends at the end of 2019. If the UK leaves the EU without a deal on 31 October, third country benchmark administrators will not have sufficient time to make an application under the UK's new benchmark regime by 31 December 2019. Additionally, it is now clear that very few third country administrators have made applications under the EU BMR, and only two equivalence determinations have been made, covering seven benchmarks. There is therefore a high risk that a significant number of third country benchmarks will not be on the FCA register by the end of 2019, either as a result of an application in the UK after exit, or by making use of the additional transitional period for EU registered benchmarks. This would mean firms would no longer be able to use

these benchmarks in the UK for new contracts and products, causing considerable market disruption. For example, loss of access to third country foreign exchange rates could prevent firms from carrying out important risk management functions, such as hedging their currency risk.

2.26 Regulation 20 of this instrument therefore amends the transitional regime for third country benchmarks to extend it by three years. This will enable UK firms to use third country benchmarks until the end of 2022, without the need for those benchmarks to be on the FCA register. This will remove the current cliff edge and provide business with certainty regarding the benchmarks they can use in the UK in the period after exit. It will also give administrators of third country benchmarks sufficient time to gain endorsement of specific benchmarks or recognition as an administrator. Regulation 20 also removes the additional transitional period, which is not needed based on this extension.

Amendment to the Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660) ("the Securitisation Exit SI")

2.27 The Securitisation Exit SI addresses deficiencies in the EU's Securitisation Regulation (EU) 2017/2402 ("the Securitisation Regulation") as it will apply in UK law at exit. Regulation 21 of this instrument makes a minor correction to the Securitisation EU Exit SI. Regulation 30 of the Securitisation Exit SI amended Article 43(8) of the Securitisation Regulation so that the FCA and Prudential Regulation Authority (PRA) will be responsible for making technical standards on disclosure requirements. However, this amendment referred to Article 6(7) (which deals with risk retention requirements) rather than the relevant disclosure requirements in Article 7(3). Regulation 21 of this instrument corrects this.

Amendment of the Gibraltar (Miscellaneous Amendment) (EU Exit) Regulations 2019

2.28 The Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680) introduced a general savings provision to preserve pre-exit regulatory arrangements between the UK and Gibraltar after exit. The savings provision achieves this by disapplying, with respect to Gibraltar, deficiency fixes made in relevant EU Exit SIs. A drafting error, whereby the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 referred to incorrect paragraph numbers in the FSMA Exit SI, meant that the savings provision was applied incorrectly to certain onshoring fixes. Regulation 22(3) of this instrument corrects the drafting error.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is made using the urgent 'made-affirmative' procedure. The Ministerial statement in Part 2 of the Annex to this Explanatory Memorandum explains why use of the made-affirmative procedure is necessary.

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)

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

3.3 The powers under which this instrument is made cover the entire United Kingdom (section 2(2) of the European Communities Act 1972, and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018) and the

territorial application of this instrument is not limited by those Acts or by this instrument.

4. Extent and Territorial Application.

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

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

5. European Convention on Human Rights

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

"In my view the provisions of the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends primary and secondary legislation to address deficiencies arising from the withdrawal of the UK from the EU.

6.2 Part 2 of the instrument amends the Financial Services and Markets Act 2000 and the Banking Act 2009. Part 3 of the instrument amends: the Electronic Money Regulations 2011; the Payment Services Regulations 2017; the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018; the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018; the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.

6.3 Part 4 of the instrument amends: the Credit Institutions (Reorganisation and Winding up) Regulations 2004; the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009; the Banking Act 2009 (Banking Group Companies) Order 2014; the Bank Recovery and Resolution (No. 2) Order 2014; the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018; the Market Abuse (Amendment) (EU Exit) Regulations 2019; the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019; the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019; the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019; the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019; the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019; the Securitisation (Amendment) (EU Exit) Regulations 2019; and the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019.

7. Policy background

What is being done and why?

7.1 It is the duty of a responsible government to plan for all eventualities, including the possibility that the UK leaves the EU on 31 October 2019 without an agreement. Since July 2018, HM Treasury has been using the powers in the EUWA to ensure that

the UK continues to have a functioning financial services regulatory regime in all scenarios. Parliament had approved all of the legislative amendments necessary to achieve this in time for exit on 29 March 2019. Since the extension to the Article 50 process, new EU financial services legislation will become operative between 29 March and 31 October 2019 and will therefore form part of retained EU law under the EUWA on exit day. Further statutory instruments under the EUWA are therefore necessary to ensure the UK's financial services regulatory regime remains prepared for exit.

7.2 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, such as legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA gives Ministers a power to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, through statutory instruments. These contingency preparations for financial services legislation are sometimes referred to as "onshoring". The financial services onshoring SIs are not intended to make policy changes, other than to reflect the UK's new position outside of the EU, and to smooth the transition to this position. The scope of the EUWA powers 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 to establish a public authority. The power is also time-limited and falls away two years after exit day.

7.3 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 the UK leaves the EU. But some change to regulatory requirements will be necessary to ensure the UK's regulatory regime continues to operate effectively after exit.

7.4 If the UK were to leave the EU without an agreement, 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 Member State and EU rules that apply to "third countries". The European Commission has confirmed that this would be the case.

7.5 The approach in this scenario cannot and does not rely on any special arrangements being in place between the UK and the EU. As a general principle, the UK would 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 UK's new position outside of the EU.

7.6 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 EUWA. (https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act).

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

8.1 This instrument is being made using the powers conferred by section 2(2) of the European Communities Act 1972, and by sections 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

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 specific consultation on this instrument, but has engaged with the Bank of England/PRA and the FCA during the drafting process. HM Treasury has engaged with relevant industry stakeholders on its approach to financial services legislation under the EUWA, including on this instrument, in order to familiarise them with the proposed legislation ahead of laying.

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

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

12.2 The impact on the public sector is that some of the instruments being amended impact on the UK financial services regulators (the Bank of England/PRA and the FCA).

12.3 An Impact Assessment has not been prepared for this instrument because in line with Better Regulation guidance, HM Treasury considers that the net impact of this instrument on businesses will be less than £5 million a year. Due to this limited impact, a de minimis impact assessment has been carried out.

13. Regulating small business

13.1 The legislation applies to small businesses. However, it does not introduce new regulatory requirements for small businesses, but merely ensures a consistent and coherent regulatory regime.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Richard Lowe-Lauri at HM Treasury (Telephone: 020 7270 5423 or email: richard.lowe-lauri@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

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

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

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	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 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 instrument, and (ii) any other representations made to the relevant authority about the published instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

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

"In my view the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 do no more than is appropriate."

1.2 This is the case because: the Regulations follow the approach taken in previous instruments to fix deficiencies that arise as a result of the UK leaving the EU. This instrument makes amendments and corrections to ensure that UK financial markets continue to operate in a fair, stable and transparent manner post EU withdrawal. Additionally, this instrument makes the appropriate amendments to EU legislation that will become redundant once the UK is no longer a member of the EU.

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: if the Government were not to proceed with this legislation, then important elements of the UK's regulatory regime for financial services would be subject to legal uncertainty, with some requirements becoming legally inoperable. This would lead to disruption for firms and consumers, and would compromise the ability of UK regulators to meet their objectives, with potentially adverse consequences for financial stability.

3. Equalities

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

"In relation to the instrument, I, John Glen MP, Economic Secretary to the Treasury, 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 MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view it is appropriate to extend the relevant sub-delegated power in the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018, to cover the newly adopted Binding Technical Standards set out in regulation 13 of this instrument. This will give UK regulators the responsibility of ensuring that the full set of EU-derived technical standards operate effectively after exit from the European Union. It is necessary for the regulators to perform this task, given that the required corrections for BTS and regulator rules will be of a highly technical nature. This sub-delegation is also appropriate as the amendments needed to correct deficiencies in BTS will be aligned with the changes that Parliament has approved to EU Level 1 legislation."

6. Urgency

6.1 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, by reason of urgency, it is necessary to make the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament."

6.2 This is appropriate because: the instrument is essential to ensure critical deficiency fixes to retained EU law are made in time for exit from the EU on 31 October 2019. Without these critical provisions being in place, important areas of UK financial services regulation would be subject to significant legal uncertainty. For example, this instrument includes provisions to clarify and strengthen requirements for the contractual continuity schemes that enable EEA payment services and e-money firms to continue meeting their contractual obligations to UK consumers. Without these provisions, there is risk that these contractual continuity schemes do not operate as intended. Furthermore, this instrument provides a critical transitional arrangement for benchmarks administered outside of the UK. Without this transitional arrangement in place, there is significant risk that firms would no longer be able to use these benchmarks in the UK after 31 December 2019, resulting in material disruption to UK financial markets. Making this instrument now will give industry and UK regulators the legal certainty they need to prepare for exit in an orderly way.

6.3 For the reasons set out above, the Government has concluded it is essential to make this instrument using the made-affirmative procedure. While this instrument has now been made, it will cease to have effect at the end of the period of 28 days beginning with the day on which this instrument is made, unless during that period, it is approved by a resolution of each House of Parliament (subject to extension for periods of dissolution, prorogation or adjournment for more than four days).