EXPLANATORY MEMORANDUM TO

THE COLLECTIVE INVESTMENT SCHEMES (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 325

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument is being made using the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (EUWA), and powers under section 2(2) of the European Communities Act 1972 (ECA). It is made in order to address the deficiencies in retained EU law, which arise from the withdrawal of the United Kingdom (UK) from the European Union (EU), in relation to collective investment schemes, in particular Undertakings for Collective Investment in Transferable Securities (UCITS, which are regulated investment funds that can be sold to retail investors across the EU). These deficiencies are addressed in the instrument and outlined in section 7. The instrument aims to ensure that the legislation relating to UCITS and other collective investment schemes continues to operate effectively at the point at which the UK leaves the EU.

2.2 A collective investment scheme is a fund that several people contribute to. It is managed by a fund manager who will invest the pooled money into one or more types of assets. This instrument will continue the standards as set out by the UCITS Directive (2009/65/EC) to maintain common standards for investor protection for UCITS.

2.3 This instrument will also amend the commencement provisions in the Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2019.

Explanations

What did any relevant EU law do before exit day?

2.4 This instrument relates to the Directive 2009/65/EC (the UCITS Directive), which sets out the common standards for investor protection for regulated investment funds that can be sold to retail investors in the EU. The UCITS Directive established a "passporting" system that enables UCITS to be marketed and sold to the general public throughout the EU, and enables UCITS management companies to manage UCITS located in other member states. The UCITS Directive was transposed into UK law through domestic legislation and the Financial Conduct Authority's (FCA) rules, predominantly through:

- Part 17 of the Financial Services and Markets Act 2000 (FSMA);
- The Undertakings for Collective Investment in Transferable Securities Regulations 2011;
- The Open-Ended Investment Companies Regulations; and

- The Collective Investment Schemes sourcebook in the FCA's Handbook.

2.5 Regulations have also been made under the UCITS Directive by the European Commission:

- Commission regulation (EU) No 583/2010 sets out the requirements on the provision of key investor information;
- Commission delegated regulation (EU) 2016/438 sets out the obligations of depositaries;

Why is it being changed?

2.6 This instrument forms part of HM Treasury's contingency planning in the event that the UK leaves the EU without a deal. To prepare for a no deal scenario, it is necessary to address deficiencies in retained EU law to ensure that the legislation continues to operate effectively at the point at which the UK leaves the EU.

2.7 The passporting system in the UCITS regime relies upon a legal framework agreed between EEA member states and implemented in their domestic legislation. Once the UK leaves the EU, passporting will cease, and as a result, any references in UK legislation to the EEA passporting system will become deficient at the point of exit.

2.8 References to EU law in UK legislation will need to be amended so that those references continue to operate effectively after exit day. Some of the references will need to be amended to reflect changes in the versions of EU regulations which will become retained EU law when the UK leaves the EU.

2.9 The UCITS regime demands regulatory cooperation and information sharing between member states. When the UK is no longer part of the EU single market, it would not be appropriate for UK authorities to be obliged to share information or cooperate with the EU authorities on a unilateral basis, with no guarantee of reciprocity.

2.10 The instrument also needs to assign responsibility for the functions of the European supervisory bodies and the Commission to UK bodies.

2.11 If this instrument was not in place by exit day, certain regulations would cease to apply to UCITS authorised in the UK. The marketing of EEA UCITS, and therefore UK investors' access to these investments, would also be disrupted, as existing EEA UCITS will lose their right to passport into the UK.

What will it now do?

2.12 References to the EEA passporting will be removed, so that it will no longer be possible to market an EEA UCITS into the UK via passporting. The instrument will, however, provide for a "temporary permissions regime" (referred to in Part 6 of the instrument as "temporary recognition") for eligible EEA UCITS to market into the UK. Therefore, those EEA UCITS which are recognised schemes under section 264 of FSMA, and which, before exit day, make the appropriate notification to the FCA, will continue to be able to market into the UK for a limited period. The temporary permissions regime lasts for three years from exit day, with a power for HM Treasury to extend this period in certain circumstances. Existing EEA UCITS (standalone funds and sub-funds) that have not been notified to the FCA to enter the temporary permissions regime, will need to be recognised under section 272 of FSMA in order to market into the UK after exit day. The government intends to review this regime and bring forward legislation as necessary.

2.13 This instrument distinguishes UCITS authorised in the UK by the term "UK UCITS".

2.14 Amendments made by this instrument will ensure that the eligible assets that a UK UCITS may invest in remain the same, including ensuring that UK UCITS may continue to invest as they currently do in units of both UK and EEA UCITS.

2.15 This instrument also makes technical amendments that are required to ensure that the regulatory framework established by the UCITS Directive continues to operate effectively in a no deal scenario after exit day. This includes replacing references to the EU with references to the UK, and references to EU legislation which are no longer appropriate with references to UK legislation.

2.16 As the UK will no longer be part of the single market, it would not be appropriate for the UK supervisors to be obliged to share information or cooperate with EU authorities, without any guarantee of reciprocity. As such, provisions in legislation relating to cooperation and information sharing have been removed. However, this will not preclude UK supervisors from sharing information with EU authorities where necessary, as the existing domestic framework (as outlined in the Financial Services and Markets Act 2000) for cooperation and information sharing with countries outside the UK already allows for this.

2.17 The instrument also needs to assign responsibility for the functions of the European supervisory bodies and the Commission to UK bodies. Functions previously held by the Commission will be transferred to the Treasury, and functions previously held by the European Securities and Markets Authority (ESMA) will be transferred to the FCA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 (see EUWA and ECA) and the territorial application of this instrument is not limited either by the Acts or by the 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) has made the following statement regarding Human Rights:

"In my view the provisions of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 To address the deficiencies arising from the UK's exit from the EU, this instrument amends

- The Financial Services and Markets Act 2000,
- The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (2011 No. 1613),
- The Rehabilitation of Offenders Act (Exceptions) Order 1975 (1975 No. 1023),
- The Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 (1979 No. 195),
- The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (2001 No. 1060),
- The Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (2001 No. 1062),
- The Open-Ended Investment Companies Regulations 2001, Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (2001 No. 3649),
- The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001 (2001 No. 3592),
- The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (2013 No. 50),
- Commission Regulation (EU) No 583/2010, and Commission Delegated Regulation (EU) 2016/438.

6.2 This instrument revokes the Financial Services and Markets Act 2000 (Collective Investment Schemes Constituted in Other EEA States) Regulations 2001 (2001 No. 2382).

6.3 This instrument amends the Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2019.

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. This 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 the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. This will 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 they do now until 31 December 2020. UK firms will 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 has every confidence that there will be a deal and an implementation period in place, it has a duty to plan for all eventualities, including a 'no deal' scenario. The government is clear that this scenario is in neither the UK's nor the EU's interest, and the government does not anticipate it arising. To prepare for this unlikely eventuality, HM Treasury intends to use powers in the EUWA to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.

7.4 The EUWA will repeal the European Communities Act 1972 and convert into UK domestic law the existing body of directly applicable EU law (including EU Regulations) on exit day. 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 statutory instruments (SIs). These contingency preparations for financial services legislation are sometimes referred to as 'onshoring'. These SIs 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 In the unlikely scenario that the UK leaves 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 EUWA

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

7.9 There are around 2,500 UCITS authorised in the UK. It is estimated that there are around 7,000 EEA UCITS who can access the UK market through their passporting rights. There is a significant number of asset managers who service the UK solely from EEA UCITS. This instrument ensures that UK investors have continued access to EEA UCITS that are currently marketed in the UK.

Naming convention

7.10 The UCITS Directive applies only to funds established in the EEA which have applied for authorisation to be marketed to retail investors. If the UK leaves the EU without a deal, UK authorised schemes will no longer be established in the EEA, and will lose their legal status as UCITS according to EU law. This instrument establishes a separate UK regime for UK authorised UCITS, which will be distinguished by the term "UK UCITS".

Eligible investments of UCITS

7.11 The UCITS Directive sets out the investment rules for UCITS, which can only invest in eligible assets, and can only enter into borrowing and leverage arrangements, as prescribed by the EU legislation. In some cases, investment in EEA assets are given preferential treatment over third country assets. Amendments made by this instrument will ensure that the eligible investments of UK authorised UCITS will remain the same, to ensure continuity for investors. This includes maintaining the exposure that UK UCITS can have to EEA UCITS.

Cash of UCITS

7.12 The cash of a UCITS can currently be booked in accounts opened with any EEA credit institution. To ensure continuity, amendments made by this instrument will ensure that the cash of a UK UCITS can be retained in accounts opened with any UK or EEA credit institution. This will enable UK UCITS to continue to use settlement accounts in other member states to give effect to their investment mandates, in line with maintaining the eligible investments of UK UCITS, as set out above.

EEA UCITS marketed in the UK via a passport

7.13 Currently, an EEA UCITS or a sub-fund of an EEA UCITS can be marketed to retail investors in the UK by becoming a scheme recognised by the FCA under section 264 of FSMA. This passporting system functions by enabling EEA UCITS to benefit from the exemption to the restriction on the promotion of collective investment schemes contained in section 238 of FSMA. The passport system relies upon a legal framework agreed between EEA member states and implemented in their domestic legislation. If the UK leaves the EU without a deal, there will be no agreed legal framework upon which the passporting system can continue. The instrument will repeal section 264 of FSMA and related provisions.

7.14 After the UK leaves the EU on 29 March 2019, the use of the EEA financial services passport—which allows firms in EEA states the right to offer services in any other EEA state on the basis of their home state authorisation—would not operate effectively without a negotiated agreement with the EU. As a result, the many thousands of EEA funds currently marketed into the UK would suddenly lose access,

which would cause disruption for the funds and the UK businesses and consumers they serve.

7.15 As a consequence, EEA funds that currently market in the UK via an EEA financial services passport would have to apply to the FCA for permission as a third country fund, as set out in section 272 of FSMA. The number of potential applications would be unprecedented, and there is a significant risk that it would not be possible to process the applications ahead of the date the UK will leave the EU.

7.16 On 20 December 2017, the Government announced that it would put forward legislation to establish a 'temporary permissions regime'(TPR), enabling EEA firms and funds operating in the UK via a financial services passport to continue their activities in the UK for a limited period after exit day.

7.17 This instrument establishes the funds' 'temporary permissions regime' (referred to in Part 6 of the instrument as "temporary recognition") for EEA UCITS or sub-funds of EEA UCITS that are currently marketed in the UK via passporting (i.e. recognised under section 264 of FSMA) and gives powers to the FCA to deliver it in accordance with their statutory objectives.

7.18 EEA UCITS can operate different fund structures, known as an 'umbrella and sub-fund' structures or standalone schemes. An umbrella fund is a single fund that has different compartments referred to as sub-funds, but which remain part of the overall fund structure and legal entity. This allows sub-funds to share governance arrangements but follow different investment strategies. Standalone schemes are funds which have only one compartment with a single investment strategy, and which are unable to create any other sub-funds. Currently, an operator may market into the UK a standalone EEA UCITS, or a sub-fund of an EEA UCITS. A sub-fund of an EEA UCITS is marketed by the operator of the sub-fund's umbrella fund.

7.19 To enter the TPR, the operator of the standalone EEA UCITS or sub-fund of an EEA UCITS, which currently markets into the UK, will need to notify the FCA prior to exit day that it wishes the fund or sub-fund to have temporary permission to be marketed in the UK.

7.20 New sub-funds of an umbrella fund are those which are authorised in accordance with the UCITS Directive by their EEA home state regulator on or after exit day. Such sub-funds will be permitted to enter the TPR after exit day provided at least one other sub-fund of the new sub-fund's umbrella has notified to enter the TPR before exit day.

7.21 An existing standalone EEA UCITS or a sub-fund of an EEA UCITS that was not recognised under section 264 of FSMA prior to exit day (because it did not passport into the UK to market before exit day) will not be eligible to enter the TPR after exit day. The process for marketing a standalone EEA UCITS or a sub-fund of an EEA UCITS that is not part of the TPR to UK investors after exit day, will be the same as the existing process for third country funds under section 272 of FSMA.

Supervision of EEA UCITS

7.22 During the TPR, the FCA will continue to have the same powers as they currently do in relation to the EEA UCITS that are recognised schemes under section 264. This includes having the power to suspend the promotion of such a recognised scheme. In addition, the operator, trustee or depositary of a section 264 recognised scheme (which is currently an authorised person under schedule 5 of FSMA) will be deemed to have Part 4A of FSMA permission to carry on in the UK regulated activities

appropriate to their role in relation to that scheme. The FCA will therefore have the corresponding supervisory powers under FSMA.

7.23 The UCITS Directive mandates a split of supervisory responsibilities between the "home state" of the UCITS and the "host state" where the UCITS is marketed; some requirements in the UCITS Directive rely on implementation by the home state, and some rely on the sharing of information between competent authorities. This division of supervisory responsibilities and information sharing will no longer operate in a no deal scenario.

7.24 To ensure that the FCA continues to receive information regarding the EEA UCITS during the temporary permissions regime, this instrument will require the operator of the stand-alone scheme or sub-fund to provide the following:

- A notification if the authorisation of the stand-alone scheme or sub-fund in the home state is varied or cancelled;
- A notification if there is a change affecting the information contained in or accompanying the notification to enter into the temporary permissions regime;
- Information that the operator is currently required to provide to the FCA as the host state competent authority; and
- Information that they would have previously had to notify to the home state competent authority, which would then have been shared with the FCA.

7.25 The instrument will also ensure that, where the operator of an EEA UCITS or sub-fund of an EEA UCITS with temporary permissions is required by the law of its home state to provide information to its home state regulator, and where that information was, before exit day, of a kind which that home state regulator was obliged to provide to the host state regulator in accordance with the UCITS Directive, the operator informs the FCA of that information.

7.26 The temporary marketing permissions will end when the UCITS has been recognised under section 272 of FSMA, the FCA has refused the application made under section 272 of FSMA, the operator gives notice that they no longer wish to have temporary marketing permissions or has withdrawn its application under s.272, or three years from exit day, whichever is earlier. The instrument provides HM Treasury the power to extend the length of the regime by no more than 12 months at a time, in certain circumstances. The government has committed to review the regime set out in section 272 of FSMA and will bring forward legislation as necessary.

Depositaries, trustees, managers and operators of UK authorised funds

7.27 Currently, UK authorised funds must have a depositary that is incorporated in the UK or another EEA State, and that has a place of business in the UK. There is no passporting system for depositaries, but it is currently possible for eligible EEA firms to establish a branch in the UK, then receive a top-up permission to carry out depositary services in the UK. After exit day, the depositary, trustee, operator and/or manager of UK authorised funds will have to meet the following requirements, depending on the legal form the fund takes:

- Authorised unit trust: The manager and trustee must each be a body corporate incorporated in the UK, and have a place of business in the UK.

- Authorised contractual scheme: The operator and depositary must each be a body corporate incorporated in the UK, and have a place of business in the UK.
- Open-ended investment companies: The depositary and sole director must be a body corporate incorporated in the UK. The depositary must also have a place of business in the UK.

7.28 Under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, branches of EEA firms will be able to benefit from temporary permissions to continue to operate and carry out regulated activities in the UK. To align with the temporary permissions given to EEA firms, this instrument provides a transitional arrangement in Part 8 so that the above requirements (i.e. requiring the depositary, trustee, operator or manager of a UK scheme to be incorporated in the UK) do not affect a depositary, trustee, operator or manager with temporary permission.

Cross-border and domestic mergers

7.29 After exit day, cross-border mergers between UK UCITS and EEA UCITS will no longer be possible. However, mergers between two or more UK UCITS will continue to be possible where, prior to exit day, at least one of the UCITS has given a passporting notification to the FCA of the intention to market in another EEA member state. This instrument repeals provisions enabling or referring to cross-border mergers, but retains the provisions enabling or referring to mergers between UK UCITS, where one UK UCITS has given a passporting notification to provide services in an EEA member state before exit day.

Information sharing and cooperation

7.30 In the UCITS Directive, there are binding requirements on UK authorities to cooperate and share information with EU authorities. These obligate the FCA to cooperate and share data in relation to the investment funds and their managers. As the UK will no longer be part of the single market, it would not be appropriate for the UK supervisors to be obliged to share information or cooperate with EU authorities, without any guarantee of reciprocity. As such, provisions in legislation relating to cooperation and information sharing have been removed. However, this will not preclude UK supervisors from sharing information with EU authorities where necessary, as the existing domestic framework (as outlined in the Financial Services and Markets Act 2000) for cooperation and information sharing with countries outside the UK already allows for this.

Transfer of functions performed by EU institutions to appropriate UK bodies

7.31 EU regulation of financial services sets out a range of functions to be carried out by EU institutions. Many of these functions will need to be incorporated into the UK's regulatory framework so that the UK has a fully functioning regulatory regime outside of the EU. Broadly speaking, these functions fall into two categories: functions for making legislation and a wide range of other functions which relate to the supervision of financial services institutions.

7.32 Powers to supplement EU legislation are currently held by the European Commission. Binding Technical Standards which specify particular aspects of EU financial services legislation are developed by the European Supervisory Authorities.

This instrument transfers the power to make Binding Technical Standards from the European Supervisory and Markets Authority (ESMA) to the FCA. This is considered appropriate because it will give the FCA the necessary powers to ensure that EU-derived technical regulations for which they are responsible will operate effectively after exit, subject to mechanisms to ensure robust HM Treasury oversight. The FCA will have the following powers:

- To specify the information to be provided to the FCA in the application for authorisation of a UCITS.
- To specify the—
    1. information to be provided to the FCA in the application for the authorisation of the management company, including the programme of activity;
    2. requirements applicable to the management company and the information to be included in the notification by the FCA as to whether or not authorisation has been granted; and
    3. requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the FCA.
- To determine standard forms, templates and procedures for the notification or provision of information provided for in (1) and (2).
- To specify the information to be provided to the FCA in the application for the authorisation of the contractual scheme, unit trust scheme, or open-ended investment company as a UK UCITS, including the programme of operations, and to establish standard forms, templates and procedures for the provision of that information.
- To specify the provisions concerning the content of the prospectus, the annual report and the half-yearly report, and the format of those documents.
- To specify the conditions which need to be met by the UCITS after the adoption of the temporary suspension of the re-purchase or redemption of the units of the UCITS, once the suspension has been decided.

7.33 Directly applicable EU legislation, which the European Commission is responsible for, will become the responsibility of Treasury ministers and Parliament, including Commission Regulation (EU) 2010/583 and Commission Delegated Regulation (EU) 2016/438.

Alternative Investment Fund Managers Amendment

7.34 This instrument amends the commencement provisions in the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 that has been laid before Parliament. This is necessary to allow the FCA to open its notification window for alternative investment funds from the day after the SI comes into force, which provides sufficient time before exit day for those funds to notify their intent to enter the temporary permissions regime and for the FCA to process the notifications.

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 8(1) of, and paragraph 21 of Schedule 7 to, the EUWA, and powers under section 2(2) of the ECA, 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 (and in particular the deficiencies referred to in subsection (2)(a), (b), (c), (d), (f) and (g) of section 8). 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.

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 on its approach to Financial Services legislation under the European Union (Withdrawal) Act 2018, including on this instrument, in order familiarise them with the legislation ahead of laying. In particular, we have engaged extensively with the FCA in drafting the text.

10.2 The instrument was also published in draft, along with an explanatory policy note, on the 8th October 2018 in order to maximise transparency ahead of laying. (https://www.gov.uk/government/publications/draft-eu-exit-sis-for-investment-funds-and-their-managers/the-collective-investment-schemes-amendment-etc-eu-exit-regulations-2018-explanatory-information)

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

12.1 The impact on businesses will primarily be on fund managers and funds that currently operate under the UCITS Directive. There will also be indirect impacts on third parties including depositaries and trustees, professional services firms and law firms. However, as the UCITS regime is already in place in the UK, firms will already be complying with the regime; the familiarisation costs relating to this instrument should be limited, and will be a one-off cost for firms. The temporary permissions regime and the transitional arrangement for depositaries, trustees, managers, and operators should mitigate the impacts of any re-structuring necessary post-exit day, as they provide a limited period whereby current business structures can continue to exist.

12.2 There is no significant impact on charities or voluntary bodies. The instrument will have an impact on charity authorised investment funds that are UCITS, but the impacts will be minimal as these funds are already complying with the requirements of the UCITS Directive as implemented in the UK, and this instrument maintains the scope of provisions on eligible investments and cash flow monitoring for UK UCITS.

12.3 The impact on the public sector is that the FCA will be responsible for implementing and operating the temporary permissions regime for passporting EEA UCITS.

12.4 An Impact Assessment has been submitted with this Explanatory Memorandum and published alongside it on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses if they are currently in scope of the UCITS Directive. No specific action is proposed to minimise regulatory burdens on small businesses. The intention of this SI is to ensure the regulatory regime for investment funds in the UK continues to operate effectively in a UK context and to minimise the impact of the UK's withdrawal from the EU on all firms, including small business.

14. Monitoring & review

14.1 As this instrument is made under EUWA, no review clause is required.

15. Contact

15.1 Janice Chui at the HM Treasury (Telephone: 02072701081 or email: Janice.Chui@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 John Owen, Deputy Director for the Personal Finances and Funds Team at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Economic Secretary to the Treasury 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 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 Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because: the instrument does no more than amend the UK legislation which implemented the UCITS Directive (and the EU regulations made under the UCITS Directive), introduce a temporary permissions regime, and revoke certain regulations. These measures occur to correct deficiencies arising from the UK's exit from the EU, and treat the EU as a third country going forward. Further explanation of the policy purpose of the temporary permissions regime and the legislative amendments contained in this instrument can be found in paragraphs 7.1 – 7.27 of this Explanatory Memorandum.

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: without this instrument, the legislation regulating UK authorised UCITS would contain deficiencies and cease to function appropriately after the UK's exit from the EU. Further explanation of the policy purpose of this instrument can be found in paragraphs 7.1-7.27 of this Explanatory Memorandum.

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, the 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 Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019."

5.2 This is appropriate because: sub-delegation under the Regulations is either to the FCA or to HM Treasury. In respect of the FCA, the power to make directions is sub-delegated, which is considered appropriate to direct the operators of relevant UCITS to enter the temporary permissions regime. The power to make Binding Technical Standards is also sub-delegated. This is considered appropriate because it will give the FCA the responsibility of ensuring that EU-derived technical standards and regulator rules operate effectively after exit from the European Union. It is necessary for the regulators to perform this task, given that the required corrections for Binding Technical Standards and regulator rules will be of a highly technical nature.

5.3 In respect of HM Treasury, the power is being taken to extend the duration of the temporary permissions regime. This is considered appropriate should it transpire that, given the number and complexity of applications to exit the temporary permissions regime and to be a recognised scheme under s.272, they cannot all be dealt with in time. The power is exercisable if HM Treasury considers it necessary to do so and pursuant to the FCA submitting an assessment on the effect of extending/not extending the duration on the UCITS that the regime applies to, the financial markets, and the ability of the FCA to discharge its functions. The power to extend the period is also subject to annulment in pursuance of a resolution of either House of Parliament.