**EXPLANATORY MEMORANDUM TO**

**THE ALTERNATIVE INVESTMENT FUND MANAGERS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019**

**2019 No. 328**

## 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 in order to address deficiencies in retained EU law in relation to alternative investment fund managers arising from the withdrawal of the United Kingdom (UK) from the European Union (EU), ensuring the legislation continues to operate effectively at the point at which the UK leaves the EU.

2.2 This instrument relates to the Alternative Investment Fund Managers Directive 2011/61/EU ("AIFMD"), the regulatory framework in the EU for alternative investment funds managers ("AIFMs") concerning the management, administration and marketing of alternative investment funds ("AIFs").

2.3 AIFs are funds that are not regulated at EU level by the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive (2014/91/EU). These funds are usually aimed at professional and institutional investors, although it is possible for AIFs to be marketed to retail investors, subject to meeting certain requirements. Hedge funds, private equity funds, and most kinds of unregulated collective investment schemes are traditionally AIFs. It is also possible for listed investment companies whose securities are traded on the London Stock Exchange and other regulated markets, and authorised open-ended funds to be AIFs.

***Explanations***

*What did any relevant EU law do before exit day?*

2.4 The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773) ("the Regulations") implemented AIFMD in part. The Regulations set out the requirements for authorisation to manage AIFs by AIFMs who have their registered offices in the UK and who are subject to the full AIFMD requirements, and impose operating conditions on AIFMs, external valuers and depositaries. The Regulations also provide for the registration of "small AIFMs" (defined by reference to the value of assets under management), which are not required to comply with the full requirements of authorisation as a "full-scope" AIFM, and provide for the registration of three types of AIFs: European Venture Capital Funds ("EuVECA"), European Social Entrepreneurship Funds ("EuSEF") and European Long Term Investment Funds ("ELTIF").

2.5 The Regulations introduced a right for authorised UK AIFMs to manage and market funds in other Member States, and AIFMs from other Member States to be able to manage and market AIFs in the UK, and put in place rules for the marketing of funds in the UK by non-UK fund managers, by notifying the Financial Conduct Authority ("FCA"). The notification process is known as the "national private placement

regime" ("NPPR"). The Regulations also impose certain obligations on the FCA which arise out of AIFMD, relating mainly to the provision of information to the European Securities and Markets Authority ("ESMA") and to regulators in other EEA states.

2.6 The Alternative Investment Fund Managers (Amendment) Regulations 2013 No. 1773 implemented provisions of AIFMD relating to the "third country passport", a passporting procedure for non-EEA AIFMs. This Regulation has not come into effect, as this relied on a date to be specified by the European Commission in a delegated act, which has not yet been made.

2.7 The Commission delegated regulation (EU) No 231/2013 supplements Directive 2011/61/EU by setting out technical requirements on exemptions, general operating conditions, depositaries, leverage, transparency and supervision of AIFMs.

2.8 The Commission implementing regulation (EU) No 447/2013 supplements Directive 2011/61/EU by establishing the procedure by which small AIFMs that meet certain conditions may choose to opt in to AIFMD to benefit from the passporting rights granted to full-scope AIFMs.

2.9 The Commission implementing regulation (EU) No 448/2013 supplements Directive 2011/61/EU by establishing a procedure for determining the "Member State of reference" within the third country passport regime for non-EU AIFMs.

2.10 The Commission delegated regulation (EU) 2015/514 set out details of the information to be provided by competent authorities to ESMA.

*Why is it being changed?*

2.11 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 domestic and retained EU law to ensure that the legislation continues to operate effectively at the point at which the UK leaves the EU.

2.12 The passporting system relies upon a legal framework agreed between EEA Member States and implemented in their domestic legislation. Once UK leaves the EU, there will be no agreed legal framework upon which the passporting system can continue.

2.13 As a result, any references in UK legislation to the EEA passporting system will become deficient at the point of exit.

2.14 Upon leaving the EU, the UK will also no longer fall under the jurisdiction of the European Commission or regulator procedures of ESMA. To ensure that the procedure for the third country passport can continue to operate at the point of exit, the functions of the Commission and ESMA will need to be transferred to UK authorities.

2.15 The instrument also needs to assign responsibility for the other functions of the European supervisory bodies and the Commission relating to alternative investment fund management to UK bodies.

2.16 References to EU law in UK legislation will need to be amended so that they continue to operate effectively after exit day. Some of these 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.

2.17 This instrument will also introduce changes to information sharing and cooperation obligations between the UK and EU authorities. When the UK is no longer a member of the EU single market for financial services, it would not be appropriate for UK authorities to be obliged to share information or cooperate with the EU on a unilateral basis, with no guarantee of reciprocity.

2.18 If this instrument was not in place by exit day, certain regulations would cease to apply to AIFMs. The marketing of EEA AIFs, and therefore UK investors' access to these investments, would also be disrupted given the lack of clarity on what regulations apply to the cross-border, inward marketing of these funds.

*What will it now do?*

2.19 In line with the approach taken in other financial services EU Exit instruments, this instrument makes amendments to existing UK legislation which implemented AIFMD, and Commission delegated and implementing regulation related to AIFMD, to ensure they continue to operate effectively in a no deal scenario after exit day.

2.20 Amendments that this instrument makes are outlined in section 7, however key amendments include:

- Replacing references to the Union with references to the UK, and references to EU legislation which are no longer appropriate with references to UK legislation and rules made by the regulators;
- Amending the meaning of AIF under UK law, specifying that it is an investment fund that is not authorised as a UCITS in the UK (see regulation 5(4));
- Amending the provisions relating to EuSEF and EuVECA (types of funds) to replace references to the naming convention used in the EU with the new names to be used in the UK – "Social Entrepreneurship Fund" (SEF) and "Registered Venture Capital Fund" (RVECA);
- Amend the provisions relating to ELTIF (a type of funds) to replace references to the naming convention used in the EU with the new name to be used in the UK – "Long-term Investment Fund" (LTIF);
- Amending the scope of reporting on portfolio companies and the asset stripping provisions to relate to UK companies only (see regulation 10);
- Providing for a "temporary permissions regime", by introducing provisions for EEA AIFMs currently marketing EEA AIFs and UK AIFs to have temporary marketing permissions in the UK for a limited period, while they apply for and obtain the relevant UK permissions (see regulation 15);
- Transferring functions of the European Commission to HM Treasury (see regulation 16);
- Transferring functions of ESMA to the FCA (see regulation 16);
- Amending the Alternative Investment Fund Managers (Amendment) Regulations 2013 that implemented the third country passport, so that it can continue to operate in a UK and Gibraltar context, with HM Treasury taking on the Commission's function of appointing the day when the passport comes into force (see chapter 2); and

- Amending the transparency provisions in Commission delegated regulation (EU) No 231/2013 so that UK AIFMs continue to report information on both their UK and EU AIFs to the FCA.

2.21 To reflect the UK's new status when the UK leaves the EU, information sharing and cooperation obligations in respect of EU authorities will be removed. It is more appropriate for UK authorities to rely on the robust existing domestic framework for cooperation and information sharing with non-EU countries, which allows UK authorities to cooperate with relevant authorities outside the UK on a discretionary basis.

## 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 European Union (Withdrawal) Act 2018) (c.16) and the territorial application of this instrument is not limited either by the Act 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 Alternative Investment Fund Management (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

## 6. Legislative Context

6.1 To address deficiencies of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU, this instrument amends the Alternative Investment Fund Managers Regulations 2013, the Alternative Investment Fund Managers (Amendment) Regulations 2013, Commission delegated regulation (EU) No 231/2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision, and Commission implementing regulation (EU) No 447/2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU.

6.2 This instrument revokes Commission implementing regulation (EU) No 448/2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU and Commission delegated regulation (EU) 2015/514.

6.3 This instrument relates to AIFs, which includes 'ELTIF', 'EuVECA' and 'EuSEF' funds. These particular funds are also subject to their own statutory instruments; Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019; Registered Venture Capital Funds (Amendment) (EU Exit) Regulations 2019 and Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019 which will be laid separately.

## 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 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 a deal will be reached and the implementation period will be 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 European Union (Withdrawal) Act (EUWA) to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.

7.4 The EUWA repeals the European Communities Act 1972 (c.68) and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through SIs. These contingency preparations for financial services legislation are sometimes referred to as 'onshoring'. 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 European Union (Withdrawal) Act (https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act).

*Meaning of AIF*

7.9 An AIF is currently defined by the Alternative Investment Fund Managers Regulations 2013 by reference to the UCITS Directive (2009/65/EC). This results in funds established in the EEA being treated differently to funds established in third countries. This instrument will amend the definition of AIF under UK law; an AIF will instead be an investment fund that is not authorised as a UCITS in the UK, amending the definition to refer to the relevant UK legislation instead.

7.10 To ensure that the reporting requirements on fund managers marketing non-UK funds remain proportionate, the instrument will also make amendments which disapply the regulations that give effect to the NPPR information and reporting requirements for funds recognised under section 272 of the Financial Services and Markets Act 2000 (c.8) for marketing to retail investors (such as the requirement to publish information and periodic reports). FCA rules in relation to section 272 will continue to require adequate information about the fund to be provided to its investors.

*EEA AIFMs marketing AIFs in the UK via a passport*

7.11 After the UK leaves the EU, the use of the marketing passport, which allows EEA AIFMs to market the EEA AIFs they manage in any other Member State, would not operate effectively without a negotiated agreement with the EU.

7.12 To ensure that UK investors have continued access to AIFs that are currently marketed in the UK, this instrument provides for a temporary permissions regime for EEA AIFs and UK AIFs that have been marketed by EEA AIFMs in the UK via a passport before exit day.

7.13 EEA AIFMs currently marketing AIFs via a passport can obtain permission to market the relevant funds under the temporary permissions regime.

7.14 To enter the regime, the AIFM of eligible AIFs will need to notify the FCA prior to exit day that it wishes the relevant fund to have temporary permission to be marketed in the UK. The FCA will provide further details to firms on how and when to do this. During this temporary permissions regime, the AIFM will be able to market the relevant fund in the UK on the same terms and subject to the same conditions as it could before exit day.

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

7.16 To ensure that the FCA continues to receive the necessary information to supervise the AIFs marketed in the UK during the temporary permissions regime, this SI will require the AIFM to continue to comply with duties imposed on it in relation to a host Member State by specific provisions of the AIFMD, and which were previously implemented by the home Member State. This includes notifying the FCA of any changes to the documentation for a passporting AIF, and changes to the passporting AIFM's programme of operations.

7.17 The temporary marketing permissions will end when the AIFM of the relevant fund has given notice to the FCA under the NPPR, or after three years, 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.

7.18 The FCA will have the same power to revoke or suspend an AIFM's entitlement to market an AIF during the temporary permissions regime as it does to revoke or suspend the entitlement of an AIFM to market an AIF under the NPPR.

*New EEA AIFs marketed in the UK after exit day*

7.19 UK and EEA AIFMs will no longer be able to make use of the passport if the UK leaves the EU without a deal. Both UK and EEA AIFMs marketing EEA AIFs in the UK after exit day will need to notify the FCA under the NPPR, as is required for the marketing of third country AIFs.

*Reporting on portfolio companies and asset stripping provisions*

7.20 A UK AIFM (authorised by the FCA) must report and make certain disclosures when it acquires control of an EU company. There are also restrictions on the AIFM in the first two years of it acquiring control of the EU company. As a result of amendments made by this SI, a UK AIFM will only be required to report on portfolio companies and comply with the restrictions on asset stripping when it acquires control of a UK company, as opposed to an EU company.

*Third country passport*

7.21 This instrument makes the necessary amendments for the passport for third country AIFMs and AIFs to operate in a UK-only context. HM Treasury will have the power to specify by regulations the date the third country passport comes into force in the UK.

*Naming convention*

7.22 Currently, UK AIFMs must register EuVECAs or EuSEFs, or seek authorisation for ELTIFs, in order to market funds throughout the EU under the relevant labels. If the UK leaves the EU without a deal it would no longer be possible for UK fund managers to market these funds under the EU regime, and so under the EU labels. This instrument amends references to the naming convention used in the EU to the new names for the UK regime – RVECA, SEF and LTIF.

*Reporting to the FCA*

7.23 The amendments made by this instrument ensure that UK AIFMs will continue to report information on both their UK and EU AIFs to the FCA, to ensure the FCA continues to receive the information required to monitor the risk management and stress-testing of AIFs.

*Transfer of functions performed by EU institutions to appropriate UK bodies*

7.24 EU regulation of financial services includes 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.

7.25 The European Supervisory and Markets Authority (ESMA) has various powers and functions under AIFMD which will be transferred to the FCA as the appropriate UK authority on EU exit. In particular, the FCA will be responsible for making technical standards to ensure that EU-derived technical standards and regulator rules operate effectively after exit from the EU.

*Information sharing and cooperation*

7.26 In AIFMD, there are binding requirements on UK authorities to cooperate and share information with EU authorities. These require the FCA to cooperate and share data in relation to alternative investment fund management.

7.27 To reflect the UK's new status when the UK leaves the EU, these obligations will be removed. This is appropriate given that the UK will no longer be a member of the European Union, and will ensure the UK is not obliged to share information or cooperate with the EU on a unilateral basis and with no guarantee of reciprocity. Instead, UK authorities will rely on the existing domestic framework for cooperation and information sharing, which allows for this on a discretionary basis.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. 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 to familiarise them with the legislation ahead of laying.

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-alternative-investment-fund-managers-amendment-eu-exit-regulations-2018-explanatory-information#next-steps)

## 11. Guidance

11.1 No further guidance is being published alongside this instrument. As mentioned above in section 10, an explanatory policy note was published alongside the draft instrument.

## 12. Impact

12.1 The impact on businesses will primarily be on fund managers and funds that currently operate under the AIFMD. The statutory instrument will also impact on fund managers that market EEA UCITS into the UK.

12.2 Impacted firms will need to understand the changing regulatory environment. As the AIFMD 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 a one-off cost to firms. There will also be transitional costs related to the NPPR, particularly for firms that have not previously used this regime. There will be an increase in reporting for firms previously marketing via the passport, who will have to provide additional information through the NPPR post-exit. This instrument also duplicates certain reporting obligations under AIFMD. There will be a reduction in reporting requirements in relation to the control of companies.

12.3 There is no impact on charities or voluntary bodies.

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

12.5 A full Impact Assessment will be published alongside the Explanatory Memorandum on the legislation.gov.uk website, when an opinion from the Regulatory Policy Committee has been received.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, if they are currently in scope of the Alternative Investment Fund Managers Directive (AIFMD). This SI does not affect existing measures to address the possible impact on small businesses, such as the provision of simplified requirements in AIFMD for "small" AIFMs with assets under management below the specified threshold in Article 3 of AIFMD (although a small AIFM could opt-in to the full requirements). The intention of this SI is to ensure that the regulatory regime for fund managers within 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 the European Union (Withdrawal) Act 2018, 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.<br><br>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<br>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. |

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|---|---|---|---|
| | | 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:<br>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,<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>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 Alternative Investment Fund Managers (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 regulations which implemented AIFMD, and the EU delegated and implementing regulations made under AIFMD, 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 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 alternative investment fund management in the UK 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. **Explanations**

3.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

4. **Legislative sub-delegation**

4.1 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 Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019."

4.2 It is appropriate to delegate the power to make regulatory technical standards to the FCA because it will give them 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. This is considered

appropriate as the FCA will have the requisite technical knowledge to make assessment of certain matters. For example, the FCA have the power to make technical standards to specify further the information to be provided to it in order to complete registration.

4.3 This is in line with the approach that the government has set out in which legislative responsibility for Level 2 technical legislation in financial services will be transferred to the financial regulators, while the Treasury will have responsibility for changes to Level 1 legislation which Parliament will approve.