

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES (CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2020

2020 No. 56

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is being made under the European Union (Withdrawal Agreement) Act 2020 (“the Act 2020”) to amend several EU Exit instruments previously made under the European Union (Withdrawal) Act 2018 (“EUWA 2018”). Specifically, the instrument delays the application of a number of financial services temporary permissions and transitional regimes established by these EU Exit instruments, such that they apply by reference to the end of the Implementation Period (“IP”) rather than exit day (31 January 2020).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force (“the 21 day rule”). The instrument enters into force immediately before exit day. This is because the instrument amends various financial services temporary permissions and transitional regimes (“the regimes”) which are in force and operate by reference to “exit day”, such that they refer instead to “IP completion day”. It is necessary for these amendments to come into force before exit day so that the UK financial services regulatory regime will continue to work clearly and effectively during the IP.

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.

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 Financial Services (Consequential Amendments) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument makes changes to secondary legislation concerning retained EU law that was made under the EUWA 2018, which are required as a consequence of the Act 2020. Specifically, Regulations 2 to 13 of the SI amend: the Electronic Money Regulations 2011; the Alternative Investment Fund Managers Regulations 2013; the Payment Services Regulations 2017; the Data Reporting Services Regulations 2017 (all as amended by secondary legislation made under the EUWA 2018); the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018; the Central Counterparties (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 Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018; the Central Securities Depositories (Amendment) (EU Regulations) 2018; the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2019; the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019; and the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019, such that the temporary permissions and transitional regimes established by these EU Exit instruments will apply by reference to the end of the Implementation Period rather than exit day.

7. Policy background

What is being done and why?

Amendments to the commencement of temporary regimes established by previous EU Exit SIs

- 7.1 HM Treasury has made more than 50 EU Exit statutory instruments under the EUWA 2018 to ensure there is a functioning legal and regulatory regime for financial services from exit day in all scenarios. These SIs were originally due to commence on exit day.
- 7.2 Paragraph 1 of Schedule 5 to the Act 2020 contains a general rule that delays those parts of these instruments that come into force immediately before, on, or after exit day so they instead come into force at the end of the IP, by amending references to “exit day” in the relevant commencement provisions to “IP completion day”.
- 7.3 However, this will not apply to a number of financial services temporary permissions and transitional regimes, which have already commenced in order for the UK regulators and affected firms to begin preparing for those regimes before exit day. For example, provisions allowing EEA passporting firms to notify the regulators in order that they can enter the Temporary Permissions Regime (TPR) on exit day are already in force.
- 7.4 These pre-exit provisions need to remain in effect during the IP, in order that the regulators and firms can continue to prepare for the end of the IP – for instance, to enable firms to continue to notify the regulators during the IP of their intent to enter the TPR. However, the application of the regimes themselves will need to be delayed until the end of the IP. If they were not delayed, these regimes would still start on exit day and would run in parallel to the IP. This would result in significant legal uncertainty for industry and would constitute a breach of the UK’s commitments under the withdrawal agreement to apply EU law during the IP.

- 7.5 To prevent this, this instrument amends the EU Exit SIs that implemented these regimes to repurpose the relevant temporary regimes such that they have effect by reference to IP completion day rather than “exit day”. All other characteristics of the regimes, such as their scope and duration, remain unchanged.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument is not being made under the EUWA 2018 but relates to the withdrawal of the United Kingdom from the European Union because it is being made using powers in the Act 2020 to amend, consequent on the Withdrawal Agreement, provisions made under the EUWA 2018 that address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU.
- 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 formal consultation on this instrument but has engaged with the Bank of England and the Financial Conduct Authority during the drafting process. HM Treasury has also engaged with relevant industry stakeholders on its approach to financial services legislation under the EUWA 2018, in order to familiarise stakeholders 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 significant impact on business, charities, the public sector or voluntary bodies as this instrument will only act to delay the start of the relevant temporary regimes from exit day until the end of the IP. All other characteristics of the regimes, such as their scope and duration, will remain unchanged. The impact of the EU Exit instruments that established the temporary permissions and transitional regimes have been produced and published (except where those instruments warranted a de-minimis impact assessment).
- 12.2 An Impact Assessment has not been prepared for this instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact 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 This instrument applies to activities that are taken by small business. No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 Though made under the Act 2020, this instrument amends provisions made under the EUWA 2018 for which no review clause is required. Consequently, no review clause is included for this instrument.

15. Contact

- 15.1 Thomas Haigh at HM Treasury (telephone: 0207 270 5225 or email: Thomas.haigh@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Rohan Lee, Deputy Director for Financial Services Strategy and Legislation at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 John Glen, the Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.