

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES (DISTANCE MARKETING) (AMENDMENT AND SAVINGS PROVISIONS) (EU EXIT) REGULATIONS 2019

2019 No. 574

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Act.
- 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 pursuant to powers in the European Union Withdrawal Act 2018 (c.16) (“EUWA”) in order to address deficiencies in retained European Union (EU) law in relation to the distance marketing (for example by telephone, email or fax) of consumer financial services arising from the withdrawal of the United Kingdom (UK) from the EU, ensuring the legislation continues to operate effectively at the point at which the UK leaves the EU.
- 2.2 This instrument also uses the powers in section 2(2) of the European Communities Act 1972 to update the definition of “the Directive” used in the Financial Services (Distance Marketing) Regulations 2004 (S.I. 2004/2095) (“Distance Marketing Regulations”).

Explanations

What did any relevant EU law do before exit day?

- 2.3 Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services, and known as the Distance Marketing Directive (DMD):
- imposes requirements on firms to provide information to consumers prior to the conclusion of a financial services contract at a distance¹;
 - sets out the right of cancellation by the consumer, including the time period in which that cancellation right can be exercised; and
 - provides that a consumer who receives unsolicited financial services is not subject to any obligation, including providing payment, that those unsolicited financial services purport to impose.
- 2.4 In the UK, the DMD is implemented by the Distance Marketing Regulations, as well as Financial Conduct Authority (FCA) rules. Whether the Distance Marketing Regulations or FCA rules currently apply depends on the type of, and location where, a particular activity is being undertaken. Further details on the applicability of the Distance Marketing Regulations are set out in section 7 of this explanatory memorandum.

¹ “At a distance” means without the simultaneous physical presence of the supplier and the consumer.

- 2.5 The DMD operates on a country of origin basis. This means that, presently, European Economic Area (EEA) financial services firms undertaking distance marketing from an establishment in an EEA state to consumers in the UK are not subject to the Distance Marketing Regulations, nor to FCA rules. This is on the basis that these activities will already be regulated in their home EEA state.
- 2.6 Consequently, the Distance Marketing Regulations, as well as the relevant FCA rules, currently only apply to UK firms, overseas firms who are undertaking activity from a UK establishment, or EEA firms operating from an establishment in an EEA state in cases where the Member State in which they are established has failed to adequately implement the DMD.

Why is it being changed?

- 2.7 This instrument remedies deficiencies arising from the UK's withdrawal from the EU.
- 2.8 Once the UK has left the EU/EEA, it may no longer be appropriate for UK legislation to refer to either EU/EEA bodies, territories and instruments, or to include other EU references.
- 2.9 To ensure the Distance Marketing Regulations continue to operate effectively, references to EU and EEA bodies, territories and instruments have been omitted where necessary. These include references in the Regulations to "the European Consumer Credit Information Form" which are replaced with references to the Pre-Contract Credit Information (Overdrafts) Form². In addition, the definition of the DMD used for the purposes of the Regulations is updated to ensure that the Regulations can continue to operate effectively. The definition will now capture the Directive as in force when these Regulations were made, rather than when the original Distance Marketing Regulations were made.
- 2.10 Furthermore, as the Distance Marketing Regulations and FCA rules which transpose the DMD currently only apply to UK firms and overseas firms operating from an establishment in the UK, it is necessary to ensure that the scope of the Distance Marketing Regulations is broadened to cover activities undertaken by EEA firms from an establishment outside the UK whilst using a temporary permission to operate in the UK post-exit, whilst seeking full UK authorisation.

What will it now do?

- 2.11 The Distance Marketing Regulations will:
- no longer make inappropriate references to EU and EEA bodies, territories and instruments;
 - ensure that references are made to the Pre-Contract Credit Information (Overdrafts) Form rather than the European Consumer Credit Information Form; and
 - will be expanded in scope to cover certain EEA firms who will continue operating in the UK from an EEA establishment, within the scope of their current passporting permissions, for a limited period after exit day, whilst

² The Consumer Credit (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1038) amended references in the Consumer Credit (Disclosure of Information) Regulations 2010, as those references will be deficient once the UK leaves the EU.

seeking full UK authorisation under one of the temporary regimes set out in section 7.

- 2.12 This approach ensures continuity of distance marketing requirements for UK financial services firms, whilst also ensuring that UK consumers dealing with an EEA established firm operating in the UK (via one of the approaches set out in section 7 of this Explanatory Memorandum) receive the appropriate amount of consumer protection.
- 2.13 If the scope of the Distance Marketing Regulations is not extended to cover the above activities, those firms would no longer be subject to appropriate distance marketing requirements, as such firms would no longer be captured by relevant distance marketing requirements in their home Member State which could have an adverse impact on consumer protections.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument relies on provisions made by other EU exit instruments which have not yet been made. It is therefore conditional on the making of those instruments, which are as follows:
- the laid Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019
 - the laid Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018.

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 in the European Communities Act 1972 and the EUWA under which this instrument is made cover the entire United Kingdom and the territorial application of this instrument is not limited by either enabling Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury John Glen has made the following statement regarding Human Rights:
- “In my view the provisions of the Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the Distance Marketing Regulations to correct deficiencies arising from the UK's exit from the European Union, and ensures that the Distance Marketing Regulations apply to certain categories of EEA firms operating in the UK

post-exit. It also uses powers under the ECA 1972 to amend the definition of the DMD, to ensure that it is up to date.

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. Therefore, should a deal be approved, the implementation period 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 an implementation period, common rules will continue to apply. The UK would continue to implement new EU law that comes into effect and the UK would continue to be treated as part of the EU's single market in financial services. This would mean that access to each other's markets will continue on current terms and businesses, including financial services firms, would be able to trade on the same terms as now until 31 December 2020. UK firms would 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 believes that there will be a deal and an implementation period in place, it must plan for all eventualities, including a 'no deal' scenario. HM Treasury intends to use powers in the European Union (Withdrawal) Act 2018 (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 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 If the UK were to leave 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>)
- 7.9 A "distance contract" is defined in Article 2 of the DMD. Such contracts are contracts for financial services between consumers and suppliers concluded under an organised distance sale or service provision scheme run by the supplier or an intermediary, where the supplier or intermediary makes exclusive use of one or more means of distance communication up to, and including, the time at which the contract is concluded. "Distance communications" refers to communication media where the supplier and consumer are not physically present at the same time, for example telephone, email, fax communications etc.
- 7.10 The DMD sets the minimum standards for information to be given to consumers of financial services prior to a "distance contract" becoming binding on the consumer. The DMD also makes provisions for withdrawal (cancellation) rights and protections against the unsolicited supply of financial services. The financial services covered by the DMD include any service of a banking, credit, insurance, personal pension, investment or payment nature; and includes both regulated and non-regulated activities.
- 7.11 The DMD is predominantly transposed in the UK through FCA rules and the Distance Marketing Regulations. Whether the Distance Marketing Regulations or FCA rules apply depends on the type of activity being undertaken, and the location from which the distance marketing originates.

Effects and current application of the Distance Marketing Regulations

- 7.12 The following provisions of the Distance Marketing Regulations apply only to unregulated "distance contracts", or supply of financial services, undertaken by a firm established in the UK:
- regulations 7 to 11, which impose requirements on firms to provide information to consumers prior to the conclusion of a distance contract, as well as setting out consumers' rights to cancel such contracts (including the period in which that cancellation right can be exercised (generally 14 days)).

- regulation 15, which provides that a consumer who receives unsolicited financial services is not subject to any obligation, including providing payment, that those unsolicited financial services purport to impose.
- 7.13 In this context “unregulated” means that the supplier is not making or entering into the contract, or providing the relevant service, as part of a regulated activity (within the meaning of the Financial Services and Markets Act 2000) carried on by that supplier. It also includes contracts entered into or services provided by the operator, trustee or depositary of a collective investment scheme recognised under that Act.
- 7.14 The following provisions of the Distance Marketing Regulations apply to all “distance contracts”, whether regulated or unregulated, made by a firm established in the UK:
- regulations 12 and 13, which relate to the cancellation of an attached secondary contract and repayment to a consumer of sums paid in the period prior to cancellation.

Application of the Distance Marketing Regulations post-exit

- 7.15 As the DMD operates on a country of origin basis, EEA financial services firms providing distance marketing into the UK from another EEA State are not subject to the Distance Marketing Regulations, nor equivalent FCA rules. This is on the basis that these firms will already be subject to regulation in their home state.
- 7.16 Post-exit, the Distance Marketing Regulations will continue to apply to the extent that they presently do to firms established in the UK.
- 7.17 However, post-exit, EEA firms and funds currently operating from their home state into the UK via a financial services passport³ will be able to continue their activities in the UK for a limited period after exit day through the general temporary permissions regime ("general TPR") as implemented through the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149).
- 7.18 In addition to firms operating through a financial services passport, EEA e-money and payments firms, and registered account information services providers will be able to operate under a separate temporary permissions regime ("payments TPR") for a limited period. This regime is established in the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1201).
- 7.19 EEA Alternative Investment Fund Manager qualifiers (AIFMs) will also continue to be able to market relevant funds for a limited period. This is set out in the proposed Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018, which have been laid before parliament.
- 7.20 EEA Undertakings for Collective Investment in Transferable Securities (UCITS) firms will continue to be able to be marketed in the UK under the temporary marketing permission regime for those firms. This is set out in the proposed

³ The EEA financial services ‘passporting’ system enables financial services firms authorised by the regulatory authorities in their home EEA member state to provide their services to customers in any other EEA member state without having to obtain authorisation from the other member states’ regulatory authorities, as set out in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149)

Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, which has been laid before parliament.

- 7.21 Post-exit, the firms set out in paragraphs 7.16-7.20 will no longer be required to apply their home state DMD-derived regulations on distance marketing activity into the UK, as the UK will no longer be a member of the EEA.
- 7.22 The Distance Marketing Regulations, as well as parallel FCA rules, will therefore be amended so that they apply to relevant activities carried on by the above EEA firms. This will ensure that UK consumers dealing with an EEA firm operating in the UK receive the information that they need about the financial services products that they may choose to use, and that the appropriate amount of consumer protection will apply.
- 7.23 EEA firms operating under the general TPR will be deemed to be authorised persons. Therefore, FCA distance marketing rules will generally apply to them. However, new regulation 4(1A)(a) of the Distance Marketing Regulations (as inserted by regulation 6 of this instrument) will apply regulations 12 and 13 of those Regulations in relation to contracts made by authorised persons contracting from an establishment in an EEA State with consumers in the UK.
- 7.24 New regulation 4(1)(a), (1A)(b) and (1B)(a) of the Distance Marketing Regulations will apply regulations 7-13 and 15 of those Regulations to EEA e-money and payments firms, and registered account information services providers, operating under the payments TPR from establishments in the EEA. Under the payments TPR, such firms will not be deemed to be authorised persons and FCA rules will not apply to them, therefore the totality of the Distance Marketing Regulations need to apply to ensure the appropriate degree of consumer protection.
- 7.25 New Regulation 4(1)(b) and (1B)(b) of the Distance Marketing Regulations will apply regulations 7-13 and 15 of those Regulations to EEA Alternative Investment Fund Managers (AIFMs) which continue to market funds post-exit to UK consumers. Regulations 12 and 13 of the Distance Marketing Regulations will also apply, as such firms will be deemed to be authorised. As many AIFMS are also UCITS firms (to which see below), the most coherent regulatory approach to ensuring the appropriate degree of consumer protection is to also regulate AIFMs under the Distance Marketing Regulations, rather than FCA rules.
- 7.26 New regulation 4(1)(c) and (1B)(c) of the Distance Marketing Regulations will apply regulations 7-11 and 15 of those Regulations to EEA UCITS firms which continue to market funds post-exit to consumers in the UK under the temporary permissions regime for those firms. This is reflected in Regulation 56 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 which amends Regulation 4(5) and (6) of the Distance Marketing Regulations. Regulations 12 and 13 of the Distance Marketing Regulations will also apply, as such firms will be deemed to be authorised persons.

Other changes made by this SI

- 7.27 Regulation 3 of this SI, made pursuant to powers conferred by section 2(2) of the ECA 1972, updates the definition of “the Directive” which is used for the purposes of the Distance Marketing Regulations.

- 7.28 Regulations 5 to 10 of this SI make amendments to the Distance Marketing Regulations to remove references to the EU, or the EEA, which are no longer appropriate post-exit.
- 7.29 Regulation 11 of this SI makes savings provisions in connection with the amendments made to regulation 4 of the Distance Marketing Regulations. These provisions make clear that the changes made by these Regulations do not affect:
- any contracts made before exit day between EEA firms mentioned in paragraphs 7.16 to 7.20 contracting from an establishment in an EEA state and a consumer in the UK;
 - any financial services provided before exit day by any such firm from an establishment in an EEA state to a consumer in the UK.

Criminal offences

- 7.30 The existing criminal offence in regulation 22 of the Distance Marketing Regulations will now also apply to the firms operating in the regimes set out in paragraphs 7.21-7.26. This ensures that where:
- a supplier fails to make clear his commercial purpose when providing the information required under the Distance Marketing Regulations;
 - a supplier fails to make clear his identity and the commercial purpose of any call initiated by him at the beginning of any conversation with the consumer;
 - a supplier fails to communicate the contractual terms and conditions to the consumer on paper, if the consumer so requests at any time during their contractual relationship; or
 - a supplier fails to change the means of distance communication with the consumer if the consumer so requests at any time during his contractual relationship with the supplier, unless that is incompatible with the distance contract or the nature of the financial service provided to the consumer;

they are guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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 EUWA 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 under paragraphs (c) and (g) of section 8(2)). The instrument is also made under the power in paragraph 21 of Schedule 7 to the EUWA. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 8.2 Alongside the EUWA powers the instrument is also being made under section 2(2) of the ECA1972.

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 this instrument, but has engaged extensively with the FCA during the drafting process. HM Treasury has engaged with relevant stakeholders on its approach to Financial Services legislation under the EUWA, including on this instrument, in order familiarise them with the legislation ahead of laying. The instrument was also published in draft, along with an explanatory policy note, on 12 December 2018, in order to maximise transparency ahead of laying. (<https://www.gov.uk/government/publications/draft-financial-services-distance-marketing-amendment-eu-exit-regulations-2019>)
- 10.2 On 23 November 2018, the Financial Conduct Authority published its second consultation paper (<https://www.fca.org.uk/publication/consultation/cp18-36.pdf>) on its proposed changes to its Handbook and Binding Technical Standards to reflect changes made through this instrument.

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 There is no, or no significant, impact on the public sector.
- 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 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 activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. The Distance Marketing Directive (DMD), from which the Distance Marketing Regulations derive, did not provide flexibility to disapply the DMD's requirements to small businesses, or to apply them in a different way. The DMD intended to ensure that an equivalent level of consumer protection applies across the financial services sector.

14. Monitoring & review

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

15. Contact

- 15.1 James Reah at the Treasury Telephone: 02072701352 or email: James.Reah@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Deputy Director John Owen at the Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury John Glen 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 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 MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019 does no more than is appropriate”.

1.2 This is the case because the instrument goes no further than to ensure that there is an appropriate degree of protection for UK consumers entering into a distance contract with an EEA firm, or to whom financial services are provided at a distance by an EEA firm, post-exit. The instrument applies the same distance marketing requirements that apply to firms operating from a UK establishment to EEA firms operating from their home state into the UK under a temporary permission regime post-exit.

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:

- Without legislating to apply the Financial Services (Distance Marketing) Regulations 2004 to EEA firms operating in the UK post-exit, there would be a gap in consumer protection.
- EEA firms making distance contracts from EEA states with consumers in the UK would not be required to provide the pre-contractual information which enables consumers to make an informed choice about the financial services product they are seeking to use.
- Furthermore, without legislating, UK consumers would also lose cancellation rights when making a distance contract with an EEA firms established in an EEA State.

3. Equalities

3.1 The Economic Secretary to the Treasury, John Glen MP has made the following statement:

“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 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. Criminal offences

- 5.1 The Economic Secretary to the Treasury 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 creation of a criminal offence and for the penalty in respect of it in the Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019.”

- 5.2 These are: the instrument amends the scope of the existing offence in regulation 22 of the Financial Services (Distance Marketing) Regulations 2004 by expanding the number of persons who may commit an offence under that provision. It is right that firms established in the EEA and making distance contracts in the UK, or provide financial services to persons in the UK, post-exit should be subject to the same sanctions for breaches of the requirements in Financial Services (Distance Marketing) Regulations 2004 as others to whom the Regulations apply, to ensure that those firms comply.