

EXPLANATORY MEMORANDUM TO
THE PROSPECTUS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019
2019 No. 1234

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) Act 2018 ('EUWA') to ensure the UK has a coherent and functioning prospectus regime once the United Kingdom ('UK') leaves the European Union ('EU'). Primarily, it makes amendments to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities - such as shares and bonds - are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC ('the EU Prospectus Regulation') that sets the prospectus regime in the UK. This instrument also makes amendments to related EU and domestic legislation to ensure the UK prospectus regime continues to function effectively after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Companies wishing to raise capital through issuing securities may be required to provide investors with a prospectus. This is a document which describes a company's business, shareholding structure, and details of the securities. It must be approved by the regulator of an EEA State before it can be used. The UK's regulator for approving prospectuses is the Financial Conduct Authority (FCA). Once a company decides to raise capital by issuing securities, we usually refer to them as an issuer.
- 2.3 The EU Prospectus Regulation contains the standardised prospectus rules that apply across all European Economic Area ('EEA') Member States. These rules apply when securities are offered to the public in the EEA or admitted to trading on a regulated market – such as the London Stock Exchange's main market. The EU Prospectus Regulation, and Delegated Regulations made under the EU Prospectus Regulation, include rules on the regulator's scrutiny and approval process, the format and content of a prospectus and the length of time that a prospectus is valid for. Additionally, the EU's single market in financial services enables a prospectus approved in one EEA State to be valid for use in another EEA State. This is known as 'passporting'. The EU Prospectus Regulation also sets out the conditions and process for firms wishing to 'passport' their prospectus.
- 2.4 The EU Prospectus Regulation has applied in its entirety across EEA States since 21 July 2019. Prior to this, and since 2003, the EEA prospectus regime was set by Directive 2003/71/EC of the European Parliament and of the Council of 4 November

2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC ('the EU Prospectus Directive'). On 21 July 2019, the EU Prospectus Regulation also repealed and replaced the EU Prospectus Directive.

- 2.5 Previously, and ahead of 29 March 2019 (the original date for the UK to leave the EU), an EU Exit instrument ensuring the UK prospectus regime would continue to function effectively after the UK left the EU was made. This instrument is the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 ('the Official Listing instrument'). As the EU Prospectus Regulation replaced the EU Prospectus Directive, the fixes made to the UK prospectus regime in the Official Listing instrument require amendment.

What is being changed?

- 2.6 This instrument forms part of HM Treasury's contingency planning for a 'no deal' scenario, making the necessary amendments to the relevant legislation to ensure the UK continues to have a functioning financial services regime from exit day. Specifically, this instrument ensures the UK prospectus regime continues to function effectively once the UK leaves the EU. Without these provisions, the UK's primary capital markets (where securities are offered to the public or admitted to trading on a regulated market such as the London Stock Exchange's main market) would not operate effectively once the UK leaves the EU. This would cause significant disruption to UK investors, issuers and the UK financial services sector as a whole, with further impacts on the integrity and attractiveness of the UK's capital markets.

What will it do now?

- 2.7 This instrument amends the EU Prospectus Regulation, the Official Listing instrument and other relevant legislation that collectively set the UK prospectus regime to ensure it functions effectively once the UK leaves the EU. It largely preserves the existing regime as it currently applies to issuers in the UK. It does not make policy changes, other than those necessary to reflect the UK's new position outside the EU. Where appropriate, this instrument amends the EU Prospectus Regulation and other relevant legislation in the same way as the Official Listing instrument amended the EU Prospectus Directive as implemented in UK law, and Delegated Regulations under the EU Prospectus Directive. In most cases, the legislation is amended to bring the treatment of the EU into line with the current treatment of other non-EU countries. However, there are some exceptions to this approach, as set out in subsections 2.16, 2.19 and 2.22. The following subsections (2.8 – 2.29) set out the key policy changes made in this instrument.

Transfer of Functions

- 2.8 After the UK ceases to be a member of the EU, it would no longer be appropriate for functions under the EU Prospectus Regulation to be exercised by EU institutions. Instead, these functions should be exercised by the appropriate UK institutions. Under the EU Prospectus Regulation, functions are exercised by the European Commission and the European Securities and Markets Authority ('ESMA'). In line with HM Treasury's approach to EU Exit instruments, this instrument generally transfers the functions currently exercised by ESMA to the FCA and the functions of the European Commission to HM Treasury. Certain functions under the EU Prospectus Regulation are no longer considered necessary after the UK leaves the EU. For example, ESMA's

function to promote supervisory convergence between the national regulators of EEA States. This instrument removes the functions from the EU Prospectus Regulation that are no longer considered necessary.

- 2.9 The Commission's function to make delegated acts under the EU Prospectus Regulation is transferred to HM Treasury through this instrument. Delegated acts supplement the overarching EU law by setting out further detail on the more technical aspects of this law. For example, the EU Prospectus Regulation sets out which risk factors should be included within a prospectus. The Commission is then empowered to adopt a delegated act setting out the format of how these risk factors should be presented. This instrument transfers the Commission functions for making delegated acts to HM Treasury by making Regulations.

Prospectus Requirements Equivalence

- 2.10 One of these functions relates to the treatment of non-EEA countries' prospectus requirements. Under the EU Prospectus Regulation, an EEA regulator can approve a prospectus drawn up in accordance with the rules of a non-EEA country, if they are content it provides the same level of information as set out in the Regulation, and they have a cooperation agreement in place with the regulator of that country. The Commission is also empowered to adopt a delegated act setting out criteria to assess if a non-EEA country's prospectus rules provide the same level of information as the EU Prospectus Regulation. Following this, the Commission is empowered to make a decision that states a country's prospectus rules comply with these criteria. This is known as making an equivalence decision, specifically in relation to prospectus requirements. Regulation 54 of this instrument transfers this function to HM Treasury.

Accounting Equivalence for the purpose of preparing a Prospectus

- 2.11 Under the EU Prospectus Regulation, issuers are required to present their historical financial information within a prospectus. Currently, issuers must make use of International Financial Reporting Standards ('IFRS') as adopted by the EU. Alternatively, another country's accounting standards can be used if the Commission has made an equivalence decision in relation to those standards. This decision is made if the Commission is certain that an investor has sufficient information to make a similar assessment of the financial position of the issuer based on the historical financial information in a prospectus. After the UK leaves the EU, it would no longer be appropriate for issuers in the UK to make use of IFRS as adopted by the EU. As such, regulation 71 of this instrument sets out that issuers in the UK must use UK-adopted international accounting standards when presenting their historical financial information in a prospectus. Issuers established outside the UK must use UK-adopted international accounting standards or the accounting standards of other countries if an equivalence decision has been made.
- 2.12 Under the EU Prospectus Directive, the Commission was empowered to make these equivalence decisions under Commission Regulation (EC) No 1569/2007, a delegated act made under the EU Prospectus Directive (and Directive (EC) No 109/2004, known as the Transparency Directive). When the UK leaves the EU, it would no longer be appropriate for the Commission to carry out this function for the UK. As such, this delegated act was amended in the Official Listing instrument to transfer the function of making equivalence decisions to the Treasury. Regulation 72 of this instrument amends this delegated act further to change references to the EU Prospectus Directive to the EU Prospectus Regulation. In doing so, it ensures HM

Treasury is empowered to continue to make equivalence decisions for the accounting standards of other countries under the EU Prospectus Regulation.

- 2.13 Under the EU Prospectus Directive, the Commission previously made equivalence decisions in respect of the accounting standards of several countries for the purpose of preparing a prospectus by non-EU issuers. This includes the United States, Japan, Canada and others, including other non-EU countries that use IFRS. These decisions were explicitly stated in a delegated act under the EU Prospectus Directive, that set out which accounting standards could be used to prepare a prospectus in the EU. However, they are not explicitly stated in the EU Prospectus Regulation. To provide certainty for market participants, regulation 71 of this instrument amends the delegated act under the EU Prospectus Regulation to set out explicitly the accounting standards that can be used by issuers both before, and after the point at which the UK leaves the EU.
- 2.14 The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 includes a time-limited power for ministers to make equivalence decisions for the EU and EEA Member States. On 11 April 2019, the Government laid a Direction in Parliament stating that IFRS as adopted by the EU would be considered equivalent to UK-adopted international accounting standards for the purpose of preparing a prospectus and for the purposes of the transparency regime. This decision was made to provide continuity for market participants after the UK leaves the EU and comes into effect on exit day. To maintain this continuity, this Direction will be amended to refer to the EU Prospectus Regulation. This amendment is not contained within this instrument.

Binding Technical Standards

- 2.15 Under the EU system of financial regulation, Binding Technical Standards (BTS) are developed by the European Supervisory Authorities. Under the EU Prospectus Regulation, this is done by ESMA. BTS are legal acts which set out particular aspects of the overarching EU law in more technical detail. For example, under the EU Prospectus Regulation, ESMA have developed BTS setting out how the key financial information in a prospectus summary should be formatted. As it would not be appropriate for ESMA to continue this function for issuers in the UK after the UK leaves the EU, this instrument transfers this function to the FCA.

Approval and validity of Prospectuses

- 2.16 Under the EU Prospectus Regulation, an issuer is obliged to produce a prospectus before it offers securities to the public in the EEA or requests the admission of securities to trading on a regulated market. A prospectus must be approved by the national regulator of an EEA State before it can be used. Once approved, it is valid for use for a period of 12 months. During this period, the prospectus can be passported for use in any other EEA state, without the need for further approval from that State's national regulator. After the UK leaves the EU, the UK will fall outside the EU's single market and EEA issuers will no longer be able to issue securities in the UK via a passport. Instead, EEA issuers wishing to issue securities in the UK will be required to secure approval of their prospectus from the FCA. This will be the case irrespective of whether their prospectus has already been approved by the national regulator of an EEA State. This approach is in line with the current treatment of issuers from countries outside the EU.

- 2.17 As approved prospectuses are valid for a period of 12 months, it is possible that prospectuses may be passported into the UK with a period of validity that extends past the day that the UK leaves the EU. To provide a smooth transition for issuers in the UK, regulation 74 of this instrument sets out that valid prospectuses passported into the UK will continue to be valid for use in the UK up to the end of their normal period of validity. That is, 12 months from the date it was originally approved. These prospectuses will be treated as if they had originally been approved by the FCA. Sometimes, a prospectus must be supplemented. This occurs when there has been a material change to the information supplied in the original prospectus following its approval. For these valid prospectuses passported into the UK pre-exit that will remain valid, any supplements to this prospectus must be approved by the FCA.

Approval and validity of Registration Documents/ Universal Registration Documents

- 2.18 Prospectuses consist of 3 constituent parts: a registration document (that contains the information on the company), a securities note (that contains information on the securities) and a prospectus summary. An issuer can choose whether to produce a prospectus as a single document or as multiple documents. Similar to the treatment of a full prospectus, a registration document can be approved by the national regulator of an EEA State as a standalone document. Once approved, it is valid as a constituent part of a prospectus for a period of 12 months. An approved registration document can also be passported into any other EEA State for use as a constituent part of a prospectus, without the need for further approval from that State's national regulator.
- 2.19 As with full prospectuses, after the UK leaves the EU, the UK will fall outside the EU's single market. This means EEA issuers will no longer be able to passport a registration document approved by an EEA regulator for use as a constituent part of a prospectus in the UK. Instead, EEA issuers will be required to secure approval of their registration document for use in the UK from the FCA. This is in line with how issuers from all countries outside the EU are currently treated.
- 2.20 In line with the approach taken with full prospectuses, regulation 75 of this instrument sets out that valid registration documents passported into the UK for use as a constituent part of a prospectus, can still be used in the UK until the end of their normal period of validity. That is, 12 months from the date it was originally approved. However, a prospectus that contains one of these registration documents will still require FCA approval for the securities note and the prospectus summary.
- 2.21 The EU Prospectus Regulation introduced the universal registration document. This is a registration document that is filed annually with the national regulator of an EEA State. For the first 2 years, the EEA regulator must approve the universal registration document. After this, the issuer gets a 'frequent issuer' status. To maintain this status, the issuer must ensure they file a new universal registration document each year. With this status, an issuer can file their universal registration document with their EEA regulator without the need for approval. It also entitles the issuer to have a prospectus that includes their most recent universal registration document approved by their EEA regulator within a shorter timeframe. Other than these requirements and benefits for issuers, universal registration documents are treated in the same way as other registration documents. After the UK leaves the EU, this means issuers in the UK must file a universal registration document with the FCA. The transitional provision in regulation 75 of this instrument also applies to universal registration documents.

Incorporation of Information by Reference

- 2.22 Under the EU Prospectus Regulation, information in certain documents that are available electronically elsewhere, can be incorporated by reference in a prospectus. This includes information contained in prospectuses (and certain other documents) that have previously been approved by the national regulator of an EEA State. After the UK leaves the EU, it would no longer be appropriate for issuers in the UK to be permitted to incorporate information into a prospectus by reference that is contained in a document approved by an EEA regulator. Given this, regulation 47 of this instrument removes this permission.
- 2.23 However, to provide a smooth transition for market participants, regulation 47 of this instrument provides that information contained in the relevant documents approved by the regulator of an EEA State before exit day, can continue to be incorporated by reference in a prospectus for use in the UK going forward. By providing continuity for issuers in the UK, this approach will help maintain the attractiveness of the UK's primary capital market. However, this decision does not prejudice the FCA's role in approving a prospectus for use in the UK. A prospectus incorporating information by reference that had been approved by an EEA regulator will still need FCA approval before it is valid for use in the UK.

Supervisory Cooperation

- 2.24 The EU Prospectus Regulation contains obligations for the relevant authorities of EEA States to cooperate and share information with EU authorities. When the UK withdraws from the EU, it will no longer be appropriate for the UK to be obliged to share information or to cooperate with EU authorities unilaterally, without any guarantee of reciprocity. As such, regulation 59 of this instrument removes these obligations. Instead, UK authorities will be able to continue to cooperate and share information with EEA authorities, in the same way as they currently do with authorities outside the EEA, based on the existing framework provisions for cooperation and information sharing in the Financial Services and Markets Act 2000, which allows for this on a discretionary basis.

Exemptions from the obligation to produce a prospectus: public bodies

- 2.25 Under the EU Prospectus Regulation, certain public bodies are exempt from the obligation to produce a prospectus when issuing securities. This includes certain securities offered by EEA States, EEA local authorities, EEA central banks, and public international bodies of which one or more EEA states are a member. After the UK leaves the EU, it would no longer be appropriate for these exemptions to apply to only EEA States. To address this, regulation 32 of this instrument extends this exemption to the same set of public bodies in both the UK and all countries outside the UK. This is in line with the approach taken to the same exemptions in the Official Listing instrument.
- 2.26 This exemption could have been restricted to UK public bodies only. However, this would explicitly remove EEA public bodies from the exemption. This would mean EEA public body issuers would be obliged to produce a prospectus if they wanted to access the UK market. In contrast, these issuers could choose to access EEA markets without this obligation. This could negatively impact the attractiveness of the UK market. The extension of this exemption to the same set of public bodies from the UK

and all countries outside the UK should prevent a negative impact on the attractiveness of the UK market.

Matters relating to Gibraltar

- 2.27 EU law allows authorised financial services firms to access markets across EU Member States. However, for the purposes of EU law, the UK and Gibraltar are, in effect, considered as the same Member State. After the UK leaves the EU, amendments to UK legislation are needed to ensure that authorised financial services firms in Gibraltar will continue to be able to provide services and establish branches in the UK on current terms.
- 2.28 To help achieve this outcome, the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680) contained a general savings provision that was applied to many other EU Exit Financial Services instruments. The effect of this provision is to ensure that relevant matters in relation to Gibraltar can be treated as they were before the UK leaves the EU, with any necessary modifications to take into account the UK and Gibraltar's withdrawal from the EU.
- 2.29 To ensure matters in relation to the UK prospectus regime will continue to apply to Gibraltar as they did prior to the UK, Regulation 29 of this instrument applies the general savings provision in S.I. 2019/680 to this instrument and the Official Listing instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

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

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see Section 24 of the EUWA) 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 HM Treasury, John Glen MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Prospectus (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the following EU legislation, which will be retained EU law by virtue of Section 3 of the EUWA, to address deficiencies arising from the UK's withdrawal from the EU: the EU Prospectus Regulation; Commission Delegated Regulation (EU) 2019/980; Commission Regulation (EC) 1596/2007; and the EEA Agreement. It also makes amendments to the Financial Services and Markets Act 2000 ('FSMA'), the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019, the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019, the Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 and the Official Listing instrument.
- 6.2 Part 1 of this instrument (General) sets out a series of definitions used within the instrument and specifies when the instrument will come in force in UK legislation.
- 6.3 Part 2 of this instrument (Amendments of FSMA) amends section 84, section 85, section 86, section 87LA, section 97A, section 391 and section 391F of FSMA, to reflect the changes made to the EU Prospectus Regulation in Part 5 of this instrument. Principally, these amendments remove references to EU entities. To note, there are further amendments to FSMA contained in Part 3 of this instrument through amendments to the Official Listing instrument.
- 6.4 Part 3 of this instrument (Amendment of the 2019 Regulations) amends the Official Listing instrument. This instrument contained deficiency fixes to ensure the UK prospectus regime under the EU Prospectus Directive would function effectively when the UK left the EU on the original exit day of 29 March 2019. The extension for leaving the EU meant the UK is still subject to EU law and its developments. The EU Prospectus Regulation replaced the EU Prospectus Directive in July 2019, the amendments in Part 3 therefore, largely omit these deficiency fixes which related to the UK legislation implementing the EU Prospectus Directive. New deficiency fixes are introduced for the EU Prospectus Regulation in Part 5 of this instrument.
- 6.5 Part 4 of this instrument (Amendments of other secondary legislation) makes consequential amendments to relevant secondary legislation to ensure the UK prospectus regime is operational once the UK leaves the EU. For example, regulations that are no longer appropriate are omitted.
- 6.6 Part 5 of this instrument (Amendments of retained European Union law) amends the EU Prospectus Regulation and related EU legislation. These amendments contain the deficiency fixes to ensure the UK prospectus regime operates effectively once the UK leaves the EU, as set out in Section 2 of this Explanatory Memorandum.
- 6.7 Part 6 of this instrument (Transitional provision) introduces transitional provisions for valid prospectuses, registration documents and universal registration documents transported into the UK prior to the UK's withdrawal from the EU.
- 6.8 Schedule 1 to this instrument makes amendments to the Annexes of Commission Delegated Regulation (EU) 2019/980, the Delegated Regulation under the EU Prospectus Regulation. These annexes set out further technical detail on the format and content of different prospectuses.

7. Policy background

What is being done and why?

- 7.1 It is the duty of a responsible government to plan for all eventualities, including the possibility that the UK leaves the EU on 31 October 2019 without an agreement. Since July 2018, HM Treasury has been using the powers in the EUWA to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios. Parliament had approved all of the legislative amendments necessary to achieve this in time for exit on 29 March 2019. Since the extension to the Article 50 process, new EU financial services legislation will become operative between 29 March and 31 October 2019 and will therefore form part of retained EU law under the EUWA on exit day. Further statutory instruments under the EUWA are therefore necessary to ensure the UK's financial services regulatory regime remains prepared for exit.
- 7.2 The EUWA repeals the European Communities Act 1972 and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership, such as legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA gives ministers a power to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, through statutory instruments. These contingency preparations for financial services legislation are sometimes referred to as 'onshoring.' The financial services onshoring SIs are not intended to make policy changes, other than to reflect the UK's new position outside of the EU, and to smooth the transition to this position. The scope of the EUWA powers is drafted to reflect this purpose and is subject to further restrictions, such as the inability to use the power to impose or increase taxation, or to establish a public authority. The power is also time-limited and falls away two years after exit day.
- 7.3 Wherever practicable, the proposed approach is that the same laws and rules that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty as we leave the EU. But some change to regulatory requirements will be necessary to ensure the UK's regulatory regime continues to operate effectively after exit.
- 7.4 If the UK were to leave the EU without an agreement, the UK would be outside the EU's framework for financial services. The UK's position in relation to the EU would be determined by the Member State and EU rules that apply to 'third countries'. The European Commission has confirmed that this would be the case.
- 7.5 The approach in this scenario cannot and does not rely on any special arrangements being in place between the UK and the EU. As a general principle, the UK would need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed, including to provide for a smooth transition to the UK's new position outside of the EU.
- 7.6 HM Treasury published a document on 27 June 2018, which sets out in more detail HM Treasury's approach to financial services legislation under the EUWA. (<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>).

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

- 8.1 This instrument is being made using powers in 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. 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 this instrument, but has engaged with relevant stakeholders on its approach to financial services legislation under the EUWA, including on this instrument, to familiarise them with the legislation ahead of laying.

11. Guidance

- 11.1 No further guidance is being published alongside this instrument.

12. Impact

- 12.1 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.
- 12.2 This was considered appropriate as there is no significant impact on business, charities or voluntary bodies as a result of this instrument. This is because this instrument seeks to replicate the current effects of the UK prospectus regime as set out in the EU Prospectus Regulation. It does not make new policy decisions other than those necessary to reflect the UK leaving the EU.
- 12.3 As such, other than a one-off familiarisation cost, there will be no annual costs for UK firms as a result of this instrument, excluding those issuers wishing to access both UK and EEA markets. As EEA passporting rights will fall away after the UK leaves the EU, these issuers may face duplication costs (and related costs, such as changes to IT systems to facilitate this) to secure approval for their prospectus from the FCA and the national regulator of an EEA State. However, these costs are not an impact of this instrument, but rather a consequence of the UK leaving the EU, and the subsequent loss of EEA passporting rights.
- 12.4 There is an impact on the public sector due to the transfer of functions from EU institutions to the relevant UK institutions. In particular, the FCA will be transferred powers to draft technical standards previously held by ESMA, and HM Treasury will be transferred powers previously held by the Commission. This impact will be marginal within the context of these institutions' existing responsibilities for financial services policy and legislation.

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 the effects of this instrument in relation to small businesses. However, it does not introduce new regulatory requirements for small businesses, but merely ensures the UK prospectus regime remains effective after the UK leaves the EU.
- 13.3 In addition, the EU Prospectus Regulation already contains a number of exemptions from the obligation to produce a prospectus (principally, exempting offers of securities to fewer than 150 people or offers raising less than a certain threshold (set at the maximum of €8 million in the UK). Given this instrument largely does not make significant policy changes (including in relation to these exemption), except for changes necessary to reflect the UK's withdrawal from the EU, we expect most small businesses to be exempt from the requirements under the retained EU law. As such, small businesses would not be disproportionately affected by this instrument.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 George Duffin at HM Treasury, Telephone: 0207 270 1276 or email: George.Duffin@HMTreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tom Duggan, Deputy Director for the Securities, Markets and Banking team, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 John Glen MP, Economic Secretary 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	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 HM 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 Prospectus (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because the instrument goes no further than doing what is appropriate to mitigate a disruption in the UK’s primary capital markets for consumers, issuers and the UK financial services sector as a whole, from the UK’s withdrawal from the EU. The instrument does not make any policy changes, other than those necessary to reflect the UK’s position outside the EU, and ensures that the UK prospectus regime that applies when securities are offered to the public or admitted to trading on a regulated market, will continue to operate effectively in a wholly domestic context.

2. Good reasons

- 2.1 The Economic Secretary to HM 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 Without these provisions, the UK’s primary capital markets would not continue to operate effectively once the UK leaves the EU. This would likely cause disruption to consumers, issuers and the UK financial services sector as a whole, impacting the integrity and attractiveness of UK financial markets.

3. Equalities

- 3.1 The Economic Secretary to HM Treasury, John Glen MP, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

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

“In my view it is appropriate to create a relevant sub-delegated power in The Prospectus (Amendment etc.) (EU Exit) Regulations 2019”.

- 5.2 This is appropriate because powers to make and amend certain BTS are to be transferred from ESMA to the FCA, as it would no longer be appropriate for ESMA to exercise this function in the UK after the UK leaves the EU. It is considered appropriate for this function to be transferred to the FCA as they have the necessary technical knowledge to ensure that the relevant BTS will continue to operate effectively after the UK leaves the EU. Particularly as the necessary corrections and amendments to these BTS will be of a highly technical nature. This is in line with the approach that the government has set out in the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), in which legislative responsibility for technical legislation in financial services will be transferred to the financial regulators.

6. Urgency

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

“In my view, by reason of urgency, it is necessary to make The Prospectus (Amendment etc.) (EU Exit) Regulations 2019, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

- 6.2 This is appropriate because this instrument is essential to ensure critical deficiency fixes to retained EU law are made in time for exit from the EU on 31 October 2019. Without these provisions, users of the UK prospectus regime, and the FCA which is responsible for regulating that regime, will be faced with significant legal uncertainty. In particular, issuers wishing to access the UK market would not have legal certainty on the nature of the UK prospectus regime, while prospectuses already issued by EEA issuers for use in the UK would become invalid overnight. The UK would also have no equivalence framework in place for third country prospectus requirements or accounting standards that can be used to prepare a prospectus for use in the UK. Without the certainty that provisions in this instrument will provide, the UK’s primary capital markets would be disrupted once the UK leaves the EU. This would cause significant disruption to consumers, issuers and the UK financial services sector as a whole, undermining the integrity and attractiveness of UK financial markets, with potential adverse consequences for financial stability. Making this instrument now will give industry and the FCA the legal certainty needed to prepare for exit in an orderly way.

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