EXPLANATORY MEMORANDUM TO

THE ELECTRONIC COMMERCE AND SOLVENCY 2 (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 1361

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 ensure a coherent and functioning financial services regulatory regime once the United Kingdom (UK) leaves the European Union (EU). It addresses deficiencies in retained EU law arising from the UK's withdrawal from the EU, in line with the approach taken in other financial services EU exit instruments.

2.2 This instrument amends retained EU law relating to the Securitisation Regulation (Commission Delegated Regulation (EU) 2015/35 on the taking-up and pursuit of the business of Insurance and Reinsurance) to ensure that the legislation refers to the appropriate UK regulator and removes a deficient cross-reference.

2.3 This instrument also addresses deficiencies that arise as a result of the UK leaving the EU in relation to the financial services elements of the E-Commerce Directive (ECD). This instrument revokes provisions that currently exclude EEA firms from UK regulation if they provide online-only financial services. This instrument also implements a run-off regime to allow those firms to legally service any pre-existing contracts for a maximum period of five years from the day on which the Regulations come into force.

Explanations

What did any relevant EU law do before exit day?

The Securitisation Regulation and Commission Delegated Regulation 2015/35

2.4 Securitisation refers to the process of packaging and converting loans into tradable financial assets (securities), which can then be sold to investors. Through this process, banks can transfer some of the risk attached to these assets to other banks or long-term investors, freeing up their capital that was previously set aside to cover that risk so that it can be used to generate new lending. A typical securitisation involves three key entities: an originator, securitisation special purpose entity (SSPE) and a sponsor. The originator pools income-generating assets and sells them to the SSPE, which is the main investment vehicle in a securitisation. The sponsor is a financial institution that establishes a securitisation programme by purchasing exposures from another entity (for example an original lender of a loan that becomes securitised).

2.5 Prior to Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ("the Securitisation Regulation"), the EU's framework for all securitisations was relatively complex and covered by a variety of pieces of legislation. The Securitisation Regulation harmonises and reforms existing EU rules on due diligence, risk retention, disclosure and credit granting ("the general requirements") which apply in a uniform way to all securitisations, securitising entities and all types of EU regulated institutional investors.

2.6 The EU Securitisation Regulation defines a set of criteria for securitisations to qualify as simple, transparent and standardised (STS) securitisations. This is intended to differentiate those products from more complex and opaque securitisations. It creates a framework for the regulation of these STS securities, and asset-backed commercial paper (ABCP) products. ABCP is a type of security that is used by companies to raise short-term financing, and is backed by assets of the company. The Securitisation Regulation introduces preferential capital treatment for some securitisations that meet the STS standard.

2.7 Part 2 of this instrument amends Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). The aim of the Delegated Regulation is to provide further detail on the provisions on the Solvency II Directive. Article 257 of the Delegated Regulation sets out requirements for investments in securitisation that no longer comply with the risk-retention and qualitative requirements. The amendments to the Delegated Regulation address an omission from the Securitisation (Amendment) (EU Exit) Regulations 2019.

The Electronic Commerce Directive (ECD)

2.8 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000, known as the Electronic Commerce Directive (ECD), implements a framework to encourage greater cross-border electronic commerce activity within the EEA.

2.9 EEA States were required to implement the ECD in such a way as to allow information society service (ISS) providers to undertake online-only activity in an EEA state, other than its home state, without being subject to regulation in that EEA State, on the basis that an EEA ISS[1] provider will already be subject to appropriate regulation in its home state.

2.10 In the field of financial services, an EEA ISS provider (excluding Solvency II insurers) is therefore currently able to enter into online-only financial services contracts with UK consumers without needing authorisation from the Financial Conduct Authority (FCA).

[1] An ISS is defined in Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015, laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, as a service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

Why is it being changed?

The Securitisation Regulation and Commission Delegated Regulation 2015/35

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 retained EU legislation contains deficiencies relating to a reference to an instrument that will not be appropriate once the UK leaves the EU and also includes references to 'a supervisory authority', which needs to be changed to the appropriate UK body. These amendments ensure that the legislation continues to operate effectively at the point at which the UK leaves the EU.

The ECD

2.13 When the UK leaves the EU, the ECD will no longer apply to the UK. The reciprocal arrangement that permitted EEA ISS financial services providers to operate in the UK without being regulated in the UK on the basis that they are regulated in their home state will no longer be valid. As such, it will no longer be appropriate for EEA firms undertaking ISS of a financial services nature to be able to utilise the exclusion from authorisation provided by the UK law which implemented the ECD. The exclusion will therefore be revoked.

What will it now do?

The Securitisation Regulation and Commission Delegated Regulation 2015/35

2.14 Article 257 of Commission Delegated Regulation 2015/35 will be amended to insert a definition of the Prudential Regulation Authority (PRA) and to refer specifically to the PRA, rather than generally to a 'supervisory authority'. A deficient cross-reference will also be removed and replaced with an appropriate reference to ensure that the Delegated Regulation remains operative once the UK has left the EU.

The ECD

2.15 Article 72A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (the RAO) excludes from the scope of "regulated activities" (within the meaning of section 22 of the Financial Services and Markets Act 2000 (FSMA)) activities constituting the provision of an ISS from an establishment in a state in the EEA other than the United Kingdom. Article 72A of the RAO will be revoked. This revocation means that EEA firms offering ISS of a financial services nature will no longer be able to enter into new contracts with UK consumers unless they are authorised in the UK, or operating under the general temporary permissions regime established by the EEA Passport (Amendment etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I 2018/1149).

2.16 Furthermore, EEA firms will no longer be able to market ISS of a financial services nature to consumers in the UK, as the exclusion from the restriction on making financial promotions will be revoked for new business. This revocation will be implemented by regulation 169 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.

2.17 Additionally, this instrument will implement a run-off regime to allow EEA ISS firms to legally service financial services contracts that were taken out before commencement of the instrument and which utilised the exclusion in UK law for a limited period of time. Without implementing such a regime, those firms would be unable to continue to legally service contracts.

2.18 Pre-existing contracts comprising ISS of a financial services nature will continue to be excluded from the scope of regulated activities under section 22 of FSMA, to allow EEA ISS firms to legally service those contracts post-exit for a maximum period of 5 years. This run-off regime is similar to the contractual run-off established by Part 2 of the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019.

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 Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
- The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019.

3.2 Both the above instruments have been laid in draft. This instrument will be made once the above EU exit regulations have been made (assuming both Houses of Parliament give their approval).

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)

3.3 The territorial application of this instrument includes Scotland and Northern Ireland.

3.4 The powers in 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 the 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 Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and

of the Council on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II), the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188), the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (S.I. 2001/2256), the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775,the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529), and the Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015 (S.I. 2015/852).

6.2 The amendments to Commission Delegated Regulation (EU) 2015/35 will address an omission in the Securitisation (Amendment) (EU Exit) Regulations 2019 in order to correct deficiencies in retained EU law. In relation to financial services activity currently within the scope of the ECD, this instrument will ensure that EEA firms will no longer be able to rely on the current exclusion which allows them to enter into new contracts with UK consumers without needing to be authorised in the UK. This instrument also provides a run-off period for EEA firms to legally service contracts taken out pre-exit using this exclusion.

7. Policy background

What is being done and why?

7.1 The UK will leave the EU on 29 March 2019. The UK and EU negotiating teams 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, will 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'. The powers under the EUWA 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-serviceslegislation-under-the-eu-withdrawal-act).

7.9 This instrument is part of a wider package of statutory instruments laid by HM Treasury from July 2018 onwards in order to ensure the UK continues to have a functioning financial regulatory framework after the UK leaves the EU.

Amendment of Commission Delegated Regulation (EU) 2015/35

7.10 Part 2 of this instrument makes changes to Commission Delegated Regulation (EU) 2015/35 on the taking-up and pursuit of business of insurance and reinsurance to account for changes introduced by the EU Securitisation Regulation. In particular, it amends Article 257 of the Delegated Regulation to replace references to "supervisory authority" with references to the "PRA" and removes a deficient cross-reference. This is to ensure that these provisions continue to be operative after the UK leaves the EU.

The ECD

7.11 The ECD was broadly transposed into UK law through the Electronic Commerce (EC Directive) Regulations 2002 (the general ECD regulations). Elements related to financial services were transposed through the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (the 2002 regulations), Article 72A of the RAO, and Article 20B of the Financial Services and Markets Act (Financial Promotion) Order 2005 (S.I. 2005/1529) (FINPROM).

Revoking the exclusions

7.12 EEA firms providing ISS of a financial services nature (excluding Solvency II insurers) from an establishment outside the UK are currently able to operate in the UK without the need for UK authorisation, or being required to comply with UK regulation. This is on the basis that they will be subject to appropriate regulation in their home state. Practically, this is achieved through the exclusion in Article 72A of the RAO. This removes from the scope of "regulated activities", under section 22 of FSMA, activities constituting the provision of an ISS from an establishment in a state in the EEA other than the United Kingdom. Consequently, it is not necessary for such persons to be "authorised persons" within the meaning of FSMA before they can carry on such activities in the United Kingdom.

7.13 As this exclusion will no longer be appropriate once the UK has left the EU, Part 3 of this instrument revokes Article 72A of the RAO. This will ensure that EEA firms will no longer be able to undertake new ISS activity of a financial services nature in the UK post-exit without appropriate authorisation from the FCA. Part 3 of this instrument also makes other amendments in consequence of this revocation.

7.14 In addition, Article 20B of the FINPROM provides an exclusion from the restriction on making financial promotions for ISS of a financial services nature. This will be revoked by regulation 169 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, meaning that EEA firms will not be able to market ISS of a financial services nature from exit day.

ECD contractual run-off regime

7.15 Part 4 of this instrument implements a run-off regime (the ECD run-off) for EEA ISS providers to legally service financial services contracts taken out pre-exit under the ECD. The regime is designed to minimise the disruption faced by EEA firms and their UK businesses and consumers due to the amendments and revocations made by this instrument. The run-off regime will ensure that firms that do not gain the appropriate authorisation from the FCA, or enter any of the other temporary regimes created through other EU exit instruments, can continue to carry out business to the extent necessary to run off pre-existing contractual obligations in the UK, but not to undertake new business.

7.16 This instrument provides for automatic entry into the regime. Regulations 11 and 12 set out that despite the revocation of Article 72A of the RAO, activity which consists of the provision of ISS of a financial services nature will be excluded from the RAO where the supply of those services is necessary for the performance of a contract entered into before the commencement date of these Regulations.

7.17 Regulation 12 also ensures that where an EEA firm falls into the general temporary permissions regime (TPR), supervised run-off (SRO), or contractual run-off (CRO), those firms will be subject only to those regimes in order to prevent duplicate

supervision of firms. These regimes are established by the EEA Passport (Amendment etc., and Transitional Provisions) (EU Exit) Regulations 2018[2].

7.18 Part 4 also makes changes to ensure that the FCA can administer the regime. These include:

- regulation 13 imposes an obligation on EEA firms within the ECD run-off to notify the FCA that they are carrying on their activities;
- regulation 14 imposes an obligation on EEA firms within the ECD run-off, where those firms are authorised under the law of their home state, to notify the FCA when that authorisation is varied or cancelled, and notify the FCA if they become subject to criminal proceedings or if they are a person to whom an insolvency event occurs;
- regulations 15-17 provide for a power for the FCA to disapply or vary the exclusion for firms in the ECD run-off, and sets out the procedure for exercising that power; and rights of appeal for firms to whom the FCA apply a variation or exclusion;
- regulation 18 disapplies the restriction on firms in the ECD run-off engaged in the making of financial promotions, where those financial promotions are necessary for the performance of a pre-existing contract;
- regulation 19 extends the scope of the FCA's product intervention powers to cover EEA firms in the ECD run-off;
- regulation 20 extends the scope of the FCA's information gathering powers to cover EEA firms in the ECD run-off;
- regulation 21 gives the FCA a power to publish any information acquired through regulations 13 and 14;
- regulation 22 gives the FCA a power to make a public censure where a firm in the ECD run-off fails to provide the information required through regulations 13 and 14, or where a firm in the ECD run-off has acted in a manner contrary to that of the FCA's statutory objectives;
- regulation 23 gives the FCA a power to make rules to charge fees where in connection with the discharge of the functions in Part 4 of the instrument;
- regulation 24 disapplies the requirement for the FCA to supervise firms in the ECD run-off.

7.19 Regulation 25 of this instrument sets out the duration of the ECD run-off. The ECD run-off period will end five years after the day on which this instrument comes into force, unless a firm leaves the regime earlier for one of the reasons set out below, in which case, for the firm in question, it will end on:

- the day on which the FCA disapplies the exclusion, under regulation 15;
- if the FCA grants permission under Part 4A of FSMA to the firm, the date on which the FCA notifies the firm that the Part 4A permission takes effect;
- the day before the day on which a firm in the ECD run-off loses authorisation in their home state, if they were authorised in their home state immediately before commencement day;

[2] [2] S.I. 2018/1149 will be amended by the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019, which will establish the CRO and SRO.

- the day before a firm loses UK authorisation, where that firm was authorised in the UK immediately before commencement day.

7.20 Additionally, Part 3 removes references to ISS in sections 417 and 418 of FSMA, as these references will no longer be appropriate post-exit.

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. The instrument is also made under the powers in paragraph 1(1) of Schedule 4 and paragraph 21 of Schedule 7 to the Withdrawal Act 2018. 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 extensively with the FCA, as well as the Prudential Regulation Authority (PRA), 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. On the elements of this instrument relating to e-commerce, an explanatory statement was published on 21 November 2018. (https://www.gov.uk/government/publications/onshoring-of-elements-of-the-e-commerce-directive-relating-to-financial-services).

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 The impact on the public sector is that some of the instruments being amended impact on the UK financial services regulators (the Bank of England/Prudential Regulation Authority, the Financial Conduct Authority and the Payment Systems Regulator). Impact assessments for the individual instruments being amended by this instrument have been published on legislation.gov.uk.

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, however it does not introduce new regulatory requirements for small businesses, but merely ensures a consistent and coherent regulatory regime.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. The ECD did not provide flexibility to disapply the ECD's requirements to small businesses, or to apply them in a different way. The ECD intended to ensure the facilitation of cross-border ISS of a financial services nature across the breadth of firms in the financial services sector.

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 James Reah at HM Treasury Telephone: 020 7270 1352 or email: James.Reah@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 Deputy Director John Owen at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary to the 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 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 Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because: it follows the approach taken in previous instruments to fix deficiencies that arise as a result of the UK leaving the EU. This instrument makes amendments and corrections to ensure that UK financial markets continue to operate in a fair, stable and transparent manner post EU withdrawal. Additionally, this instrument makes the appropriate amendments to EU legislation that will become redundant once the UK is no longer a member of the EU.

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: the approach taken with this instrument is consistent with the approach previously taken in earlier instruments, and maintains the intended effect of those instruments. The corrections made to the instruments are necessary to ensure that legislation operates effectively once the UK leaves the EU, and the amendments go no further than what is required for this purpose.

3. Equalities

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

"The draft 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 draft instrument, I, John Glen MP, Economic Secretary to the Treasury, 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, 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 creation of a criminal offence and for the penalty in respect of it in the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019."

5.2 These are: the instrument expands the scope of the existing offence in section 23 of the Financial Services and Markets Act 2000 (FSMA), by revoking the exclusion for EEA established firms providing information society services to consumers in the United Kingdom. The exclusion currently means that those activities are not regarded as regulated activities for the purposes of FSMA and so the relevant EEA firms do not need to be authorised under FSMA to carry them out. Carrying on a regulated activity without the necessary authorisation is an offence. This exclusion was created because the relevant firms are currently regulated in their home state in respect of the provision of information society services to consumers in the UK. This home state regulation will cease to apply when the UK leaves the EU. Therefore, it is appropriate that following exit, EEA firms should no longer be able to carry out the relevant activities without authorisation in the UK.

6. Legislative sub-delegation

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 it is appropriate to create a relevant sub-delegated power in the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019."

6.2 It is appropriate to delegate the power to make rules concerning fees to the FCA because this will give the FCA the necessary powers to ensure it can recover any costs it incurs as a result of exercising its functions in administrating the run-off regime for financial services electronic commerce activity.