Title: European Union (Withdrawal) Act – Financial Services Statutory Instruments (I) **IA No:** N/A **RPC Reference No:** RPC-4282-HMT **Lead department or agency:** HM Treasury **Other departments or agencies:** Department for Exiting the European Union	**Impact Assessment (IA)** **Date: 30/10/2018** **Stage: Final** **Source of intervention:** **Type of measure: Secondary Legislation** **Contact for enquiries:** Sebastian Astin-Chamberlain Sebastian.Astin-Chamberlain@hmtreasury.gov.uk

Summary: Intervention and Options [1]

RPC Opinion: Fit for purpose

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANDCB in 2014 prices)	**One-In, Three-Out**	**Business Impact Target Status**
-£1.02m	-£1.02m	£0.1m	Not in scope	Non-qualifying provision

What is the problem under consideration? Why is government intervention necessary?

These Statutory Instruments (SIs) form part of the wider work the government is undertaking to ensure that there will be a functioning financial services regulatory regime at the point where the UK leaves the EU, in any scenario. They are made using powers under the EU (Withdrawal) Act 2018 to prevent, remedy or mitigate any failure of retained EU law to operate effectively after the UK leaves the EU. The UK and EU have agreed the terms of an implementation period that will start on 30 March 2019 and last until 31 December 2020. However, the government has a duty to plan for all scenarios. Together with the other financial services SIs that will follow, these SIs will ensure that a functioning and stable financial services regulatory regime is in place at the point of exit on 29 March 2019, in the unlikely scenario in which there is no deal in place and the UK leaves the EU without an implementation period.

What are the policy objectives and the intended effects?

These SIs are not intended to make policy changes beyond those needed to ensure a functioning financial services framework and to provide for a smooth transition in the unlikely scenario where the UK leaves the EU without an implementation period being in place. The government's objectives in laying these SIs are:

- Having a functioning legislative and regulatory regime in place, in particular the financial services regulators' capability to fulfil their statutory objectives as set out in the Financial Services and Markets Act 2000 (FSMA);
- Enabling regulators and firms to be ready – by minimising disruption and avoiding material unintended consequences for the continuity of service provision to UK customers, investors and the market;
- Protecting the existing rights of UK consumers;
- Ensuring financial stability.

[1] Familiarisation costs only – excludes non-monetised impacts. Results given to two significant figures.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

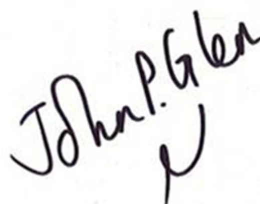
As noted in the EU (Withdrawal) Bill Impact Assessment, 'the Government does not consider that there are alternative ways to prepare the domestic statute book for our exit from the European Union within the timetable dictated by the Article 50 process.' The policy positions presented in these SIs are the result of systematically applying the principles set out above to deficiencies or inoperable provisions in the statute book.

The powers in the EU (Withdrawal) Act are limited to fixing deficiencies, and cannot be used to develop new policy beyond what is appropriate to address the deficiencies. The aim is to limit the disruption to and burden on firms by maintaining the status quo as far as possible. The changes to retained EU law made by these SIs will not come into effect in March 2019 if, as expected, the UK enters an implementation period.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?		N/A			
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes	
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A		**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 30/10/2018

Summary: Analysis & Evidence

Policy Option 1

Description: Proceed with secondary legislation to fix deficiencies in retained EU law relating to financial services.

FULL ECONOMIC ASSESSMENT [2]

Price Base Year 2018	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -1.02	**High:** -1.02	**Best Estimate:** -1.02

COSTS (£m)	**Total Transition** (Constant Price) Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	1.0	0	1.0
High	1.1	0	1.1
Best Estimate	1.1	0	1.0

Description and scale of key monetised costs by 'main affected groups'

The costs incurred by businesses as a result of these SIs are set out in the categories below. Since these SIs aim to broadly preserve the status quo in financial services regulation, quantifiable costs on business that are directly attributable to these SIs are minimal and mainly consist of familiarisation costs. On the whole, none of the SIs present substantial familiarisation costs, however they have been monetised using a standardised methodology.

Other key non-monetised costs by 'main affected groups'

While the majority of direct costs on business fall under the familiarisation costs category, there will be a limited set of other business costs linked to business operations that will be introduced by these SIs. These other business costs may include transition costs, such as changes to businesses processes and reporting requirements. Given the wide range of firms affected by these changes, and differences in their size and the activities they undertake, it has not been possible to monetise these costs in the time available.

In addition, HM Treasury intends to legislate to provide the financial services regulators with powers to introduce transitional measures that they could use to phase in any changes resulting from the UK leaving the EU, which could reduce the costs on business of adjusting to the new regulatory regime. It is not possible to monetise an estimate of the impact of this, as the regulators will have discretion as to how they exercise these powers.

BENEFITS (£m)	**Total Transition** (Constant Price) Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

[2] Familiarisation costs only – excludes non-monetised impacts. Results given to two significant figures.

Description and scale of key monetised benefits by 'main affected groups'
N/A
Other key non-monetised benefits by 'main affected groups'
These SIs (when taken together with the rest of the FS onshoring SIs, and subsequent changes to FS regulator rules and associated legislation) ensure that there will be a functioning financial services regulatory regime at the point where the UK leaves the EU, in any scenario. They also take action to avoid businesses facing a regulatory cliff-edge. Without these SIs, financial services firms would face much greater costs, and far greater uncertainty.

Key assumptions/sensitivities/risks **Discount rate (%)**	3.5
A number of assumptions and limitations frame our analysis: these are detailed in section III.1. Further assumptions relating to the quantification of familiarisation costs for these SIs can be found in the Annex.	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs: 0.1	**Benefits:** 0	**Net:** -0.1	N/A

Evidence Base (for summary sheets)

Impact Assessment of Financial Services Statutory Instruments – European Union (Withdrawal) Act (EUWA)

I. Overview: the EUWA and Financial Services

1. The Financial Services (FS) industry is highly important to the UK economy: in 2017, it contributed a total £130bn in gross value added (GVA) to the UK economy, 7.1% of the UK's total GVA.[3] Furthermore, a large amount of FS activity happens across borders, and trade between the UK and the rest of the EU represents an important element of this: in 2016, the UK exported £79bn of FS (including insurance & pension funding) in total worldwide, of which £29bn went to the EU (36%).[4]

2. In the context of the UK's withdrawal from the EU, the government recognises that it is crucial to ensure continuity of the FS regulatory framework. The European Union (Withdrawal) Act 2018 (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 made to implement our EU obligations – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law".

3. The EUWA also gives Ministers powers to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through Statutory Instruments (SIs). We sometimes refer to these contingency preparations for financial services legislation as 'onshoring'.

4. These SIs are not intended to make policy changes, other than those that are appropriate to ensure a smooth transition when the UK leaves the EU, or to reflect the UK's new position outside the EU. The scope of the power in the EUWA 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 fees, or establish a public authority. The power is also time-limited, and falls away two years after Exit Day.

1. The implementation period

5. The UK and the EU have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. This will provide time to introduce the new arrangements that will underpin our future relationship, and provide valuable certainty for businesses and individuals. During the implementation period, common rules will continue to apply, and the UK will continue to implement new EU law that comes into effect. This will mean that access to each other's markets will continue on current terms, and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020.

6. Whilst the government has every confidence that a deal will be reached and the implementation period will be in place, we have a duty to plan for all eventualities, including a 'no deal' scenario. The government is clear that this scenario is in neither the UK's nor the EU's interest, and we do not anticipate it arising. To prepare for this unlikely eventuality, HM Treasury intends to use powers in the EUWA to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios. This involves preparing SIs under the EUWA that fix deficiencies in retained EU law.

7. In general, these SIs will not take effect in March 2019 in the event that an implementation period is in place. In that scenario, the existing EU single market for financial services will continue to apply in the UK and firms will remain subject to current legislation.

---

[3] 'UK GVA(O) low level aggregates', Office for National Statistics, July 2018 (Current prices)

[4] Geographical breakdown of the current account, The Pink Book, ONS, July 2018

2. Context for FS

8. A significant proportion of existing UK FS legislation currently is derived from the EU. There are over 200 pieces of EU legislation that relate to FS, as well as over 280 pieces of UK secondary legislation and 24 pieces of UK primary legislation. This Impact Assessment covers five SIs that address deficiencies in UK law and retained EU law relating to financial services regulation that arise from the UK leaving the EU. HM Treasury intends to lay further SIs between now and March 2019, to address deficiencies across the entirety of EU financial services legislation. Taken as a whole, these SIs will ensure that there is a functioning regulatory framework in place on exit day, in any scenario.

9. These SIs are not intended to make policy changes, but simply to make the amendments to ensure the UK's regulatory framework continues operate effectively when the UK leaves the EU. In making these SIs, EU-derived laws and rules that are in place in the UK will continue to apply, as far as is practicable. The UK financial services framework on exit day will not deviate beyond what is appropriate to ensure a functioning regime.

10. The impact of these SIs on business is best understood when considering them as a package of interlinked reforms. Each SI contributes to the overall objective of ensuring that there is legal certainty and a functioning legal and regulatory regime at the point of exit, but their effectiveness is dependent on other EU Exit-related SIs. Firms will want to consider the full package of SIs, along with the associated changes to regulator rules, when making changes to business processes, for example deciding whether changes to IT systems are required.

11. There are complex interdependencies between these SIs and the changes that they make. For example, firms entering into a Temporary Permissions Regime may become subject to the Prudential Regulation Authority's (PRA) rules, and be affected by changes made in the legislation addressing deficiencies in other SIs. These interdependencies make it difficult to separate the effects of different SIs, and to give an assessment of the numbers of firms affected and exactly how they will be affected. In addition to these SIs, there will be amendments to the financial services regulators' rulebooks, and to the EU-derived technical standards.[5] These changes will be made by the regulators, and many of these changes will be consequential to HM Treasury's SIs. Rules made through these sub-delegated powers will be subject to broadly the same constraints as HM Treasury's use of the EUWA's powers, as well as additional mechanisms to ensure robust HM Treasury oversight. The regulators have announced that they intend to consult on these rule changes from Autumn 2018 onwards. There will also be changes to other relevant legislation that is not specific to the financial services sector, but will have an impact on it.

II. Approach

1. Principles of onshoring

12. Section 8 of the EUWA gives Ministers powers to make regulations to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law arising from the UK leaving the EU.

13. Examples of deficiencies in financial services legislation include:

- Functions that are currently carried out by EU authorities would no longer apply to the UK (for example, the supervision of trade repositories, which HM Treasury proposes to transfer to the Financial Conduct Authority);
- Provisions in retained EU law that would become redundant (for example, references to European Consumer Credit Information and Member States);

[5] EU-derived technical standards are defined in section IV. (2.)

- Provisions that would be inconsistent with ensuring a functioning regulatory framework – for example, requirements regarding automatic recognition of an action by an EU body by the relevant UK body – where alternative arrangements for cooperating with EU bodies would be more appropriate;
- Provisions requiring participation in EU institutions, bodies, offices and agencies (for example, joint decision making in supervisory and resolution colleges) which would no longer work after the UK leaving the EU.

14. In the unlikely scenario that the UK leaves the EU without a deal, the UK would be outside of the EU's framework for financial services, with no alternative bespoke arrangements in place. 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.[6]

15. In light of this, our 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 (non-EU) countries. However, HM Treasury recognises that in some areas, given the complex and highly integrated nature of the EU financial services system, deficiencies would not be adequately resolved by defaulting to existing third country frameworks alone. In such cases, we might need to take a different approach to manage the transition to a stand-alone UK regime. HM Treasury has identified several principles that would justify taking a different approach:

- Having a functioning legislative and regulatory regime in place, in particular the regulators' capability to fulfil their statutory objectives as set out in the Financial Services and Markets Act 2000 (FSMA);
- Enabling regulators and firms to be ready – by minimising disruption and avoiding material unintended consequences for the continuity of service provision to UK customers, investors and the market;
- Protecting the existing rights of UK consumers;
- Ensuring financial stability.

16. In addition, HM Treasury has confirmed its intention to temporarily empower the Bank of England, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) to make transitional provision by waiving or modifying changes to firms' regulatory obligations where those obligations have changed as a result of onshoring financial services legislation. For example, the power could be used to delay the application of onshoring changes. The power will enable transitional provision to be made in response to changes to the regulators' own rules, onshored EU regulations (that will form part of retained EU law) and EU-derived domestic primary and secondary legislation. The power could be used to grant transitional relief in respect of any existing regulatory requirements that would otherwise apply for the first time on exit day to a particular category of firm, for example firms in the temporary regimes referred to above.

17. Transitional relief could be granted to particular firms, classes of firms, or all firms to which a particular onshoring change applies, including firms that have entered into one of the transitional regimes referred to above. Firms would not need to apply for transitional relief in order to benefit from it. Rather, the regulators will issue "directions" that set out the terms of the proposed transitional relief, which would be published on the regulators' websites. It will be within the regulators' discretion as to how to exercise this power.

18. Wherever practicable, our approach is that the same laws and rules that are currently in place in the UK will continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, some changes would be required to reflect the UK's new position outside the EU. These changes would not take effect in 29 March 2019 if, as expected, we enter an implementation period.

[6] European Commission notice: https://ec.europa.eu/info/publications/180208-notices-stakeholders-withdrawal-uk-banking-and-finance_en

19. This general approach was already reviewed by the RPC in its assessment of the Withdrawal Bill Impact Assessment.[7]

Regulatory rules and guidance

20. HM Treasury is delegating powers to the UK's financial services regulators to address deficiencies in the regulators' rulebooks arising as a result of exit, and to the EU Binding Technical Standards (BTS) that will become part of UK law. Delegating the deficiency-fixing power in this way will give UK regulators the flexibility to ensure that the full set of EU-derived rules for which they are responsible will operate effectively from exit. Such sub-delegated powers will be subject to the same constraints as HM Treasury's use of the EU (Withdrawal) Act's powers, as well as additional mechanisms to ensure robust HM Treasury oversight. This will be achieved through the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 SI. The regulators will not be under a statutory obligation to consult on these changes, but they have chosen to consult, where possible, from Autumn 2018 onwards.[8]

21. In addition, the financial services regulators provide a range of information and guidance to firms and consumers, including on preparing for the UK leaving the EU.[9] The regulators will continue to provide guidance and information to firms as appropriate in the lead up to and beyond Exit day, in line with their statutory objectives.

2. Alternatives to onshoring

22. As noted in the European Union (Withdrawal) Bill Impact Assessment, 'the Government does not consider that there are alternative ways to prepare the domestic statute book for our exit from the European Union within the timetable dictated by the Article 50 process.'[10] The policy positions presented in these SIs are the result of systematically applying the principles set out above to deficiencies in the statute book.

23. The powers in the EUWA are limited to fixing deficiencies, and cannot be used to develop new policy beyond what is appropriate to address the deficiencies. The aim is to limit the disruption to and burden on firms by broadly maintaining the status quo. Therefore, the only conceivable alternative to laying these SIs would be to do nothing, and leave the statute book unchanged.

3. Do nothing

24. If the EUWA came into force but these SIs were not laid in Parliament then the EUWA would transfer EU law at the point of exit into the UK statute book, but it would not be appropriately amended to address deficiencies. Following the UK's exit, that law will, in many areas, fail to operate effectively or otherwise be deficient. Examples of this include:

- The scope of EU regulations is generally defined with reference to the EU and/or its Member States. Once the UK is no longer a Member State, it would no longer be within scope of the legislation leaving uncertainty about the regulatory requirements that apply to UK firms.
- UK Credit Ratings Agencies and Trade Repositories, which are currently supervised by EU regulators, would fall out of the EU supervisory framework, but no UK body would have powers to supervise them. This would leave these entities unregulated, causing financial stability risks.

---

[7] RPC opinion: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/675290/rpc-4105_1_-dexeu-eu-withdrawal-bill-opinion.pdf

[8] 'The FCA consults on its approach ahead of the UK's exit from the EU', 10 October 2018, https://www.fca.org.uk/news/press-releases/fca-consults-brexit-approach

9 An example of information provided by regulators: FCA, 'Preparing your firm for Brexit' (https://www.fca.org.uk/firms/preparing-for-brexit)

[10] EU Withdrawal Bill Impact Assessment: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/628004/2017-07-12_repeal_bill_impact_assessment__1_.pdf

- EU firms and funds could continue to access the UK market, but the UK would no longer be part of the EU regulatory framework that they were operating under. UK regulators' powers to supervise them would be limited.
- UK regulators would not be able to recognise third country central counterparties or central securities depositories, as these are currently recognised by EU regulators. These entities would lose access to UK markets, with significant impacts for their business and their customers.

25. These SIs are laid to avoid these and other related impacts, and ensure that there is a sound regulatory system, which will follow broadly the same rules and standards as now. If we left the EU without an agreement, but took no further action to prepare our domestic statute book, we would have an incomplete and incoherent legal system for financial services.

26. The cost of 'doing nothing' would far outweigh the costs that business will incur as a direct consequence of these SIs. 'Doing nothing' clearly goes against the government's commitment to prepare for all eventualities and provide business with clarity and certainty as they plan their response to EU exit. It is therefore essential that the appropriate adjustments to legislation are made before we have left the EU.

4. Choice of baseline

27. This Impact Assessment baselines against the UK statute book as it is expected to be before EU exit in March 2019. Therefore, the assessment considers what the marginal impact on business will be of the changes made in the SIs to fix deficiencies in the existing legislation. For example, where a supervisory function is currently carried out at EU level, and is being transferred to a UK regulator by these SIs, the relevant impact is the marginal impact of the change in regulator – not the full cost of the UK regulation.

28. The impacts presented for each SI are measured against a scenario where all other financial services legislation would function as intended on exit day. This makes it possible to consider the incremental impact of an individual SI on businesses. This IA does not consider the broader impact of the UK's departure from the EU.

29. This Impact Assessment provides an analysis of known costs that businesses will incur as a result of these SIs. Where possible, these costs have been quantified. However, these SIs represent only part of the picture for business impacts. In order to understand the full impact of the regulatory changes that will take place, it is necessary to consider these SIs alongside other financial services onshoring SIs, amendments to the regulators' rulebooks reflecting these SIs, the changes to EU binding technical standards made by regulators, and SIs amending other related legislation that is not specific to financial services.

5. Scope

30. This Impact Assessment measures primarily the impact on UK-based businesses of the changes to legislation resulting from these SIs. As for certain SIs the regulatory impacts extend to EEA firms that have a branch in the UK, these firms have also been included.

31. In addition to measuring business impact, this Impact Assessment describes the impact of the onshoring SIs on the UK financial regulators, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), Bank of England, and Payment Systems Regulator (PSR).

III. Assessment

1. Assumptions and limitations

32. A number of assumptions and limitations frame our analysis.

- First, the impacts analysed in this document are limited to those that stem directly from the SIs. As explained above, in order to understand the impact on business, these SIs need to be considered

alongside all other financial services SIs made under the EUWA, consequential amendments to regulators' rules, and amendments to existing EU technical standards, and amendments to other related legislation. It is therefore not possible to estimate their full impact at this stage.

- Second, these SIs are designed to come into effect in the unlikely scenario where the UK leaves the EU on 29 March 2019 without an implementation period. The large majority of changes made by these SIs would only come into effect in that scenario. It is important to remember that the most likely outcome is that these SIs will not come into effect in March 2019, and therefore business will not be impacted by them.
- Third, the constrained timeframes driven by the Article 50 process, which set the UK's withdrawal date from the EU as 29 March 2019, mean that it has not been possible to undertake a formal consultation with industry, and therefore no Consultation Stage Impact Assessment was prepared. While HM Treasury continues to engage regularly with the financial services industry on the changes being made by these SIs and their impact, it has not been possible to undertake engagement in the detail required to monetise estimates of the costs associated with these SIs in the time available. In addition, time constraints have meant that industry engagement has proceeded largely on an SI by SI basis, and it has not been possible to share the full package of onshoring SIs, along with accompanying regulator rule changes, with industry in parallel – meaning it has not been possible to discuss the impact of the full package of changes with firms as this impact assessment was being produced.
- Fourth, HM Treasury intends to legislate to provide the financial services regulators with powers to introduce transitional measures that they could use to phase in any onshoring changes. Where the powers are used, this could reduce the costs for business of adjusting to the onshoring changes.

Where it has not been possible to quantify costs with precision or by estimation an explanation has been provided as to why this is the case.

33. There are further specific limitations which pertain to individual SIs. These limitations are detailed in the relevant sections covering each SI.

2. Benefits to business

34. These SIs (when taken together with the rest of the FS onshoring SIs, and subsequent changes to FS regulator rules and associated legislation) ensure that there will be a functioning financial services regulatory regime at the point where the UK leaves the EU, in any scenario, including where no deal is agreed. They also take action to avoid businesses facing a regulatory cliff-edge.

35. Without these SIs, financial services firms would face much greater costs, and far greater uncertainty, due to issues including:

- UK legislation would be defective: legislation would at times be contradictory, its scope would be unclear, and the requirements that apply to UK firms would be unclear. This could lead to firms to stop certain activities, to seek legal advice, or potentially expose them to legal risks that could mean they incur costs.
- Non-UK central counterparties that were operating in the UK prior to exit would not be able to continue to access the UK market and would need to stop providing services in the UK. This would cause significant disruption to them, and to the firms that access the services of these central counterparties.

3. Costs to business

36. The costs incurred by businesses as a result of these SIs fall into the categories set out below. Because these SIs aim to broadly preserve the status quo in FS regulation, costs on business are minimal and mainly consist of familiarisation costs. Financial services firms can plan on the assumption that an implementation period will be in place when the UK leaves the EU. Firms are not expected to prepare now to

implement the onshoring changes by 29 March 2019. This means that firms should not incur any costs at this point.

Familiarisation costs

37. These SIs are not intended to make any substantial changes to the legislative framework beyond what is appropriate to address any deficiencies, but they still give rise to a requirement for impacted businesses to familiarise themselves with the regulatory changes. These should be one-off costs as the regulations introduced will not require ongoing updating or monitoring for changes from business and are not substantial for individual businesses. As detailed in the limitations above, it has not been possible for HM Treasury and the regulators to engage with firms and industry bodies in the drafting of these SIs. However, where possible, subsequent engagement, once the SIs are published, will help mitigate the costs of disseminating regulatory updates to the impacted parties, by giving them an understanding of the approach that has been taken, and how that will impact on their business.

38. One component of familiarisation costs is the cost of disseminating information about regulatory changes throughout a business. As the SIs under consideration do not make regulatory changes beyond what is appropriate there will be limited information that needs to be disseminated beyond the businesses internal compliance and legal teams.

39. Our methodology for measuring familiarisation costs is presented in the Annex.

Table 1. Familiarisation costs by SI

SI title	Familiarisation cost per firm (2 significant figures)	Total familiarisation cost to all impacted firms (2 significant figures)
Consumer Credit (Amendment) (EU Exit) Regulations 2018	£33	£990,000
Building Societies Legislation (Amendment) (EU Exit) Regulations 2018	£88	£3,800
Friendly Societies (Amendment) (EU Exit) Regulations 2018	£94	£7,500
Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018	£230	£14,000

Other business costs

40. While the majority of direct costs to business fall under the familiarisation costs category, there will be a limited set of other business costs linked to business operations that will be introduced by these SIs. These will primarily be one-off costs to adapt to the changes introduced and include changes to business processes and reporting requirements (for example, reporting to a UK regulator when previously firms had reported to an EU regulator).

41. In most cases, it is not currently possible to quantify these costs without further consultation with industry due to the need to better understand exactly what changes businesses will need to make, which depends on how their systems are currently set up. Further engagement with industry will lead to a better understanding of these costs as HM Treasury proceeds with this preparation for EU Exit, and this will inform later Impact Assessments.

42. HM Treasury has considered whether suitable proxies exist that could be used to provide an estimate of these costs – for example by drawing on the impact assessments prepared when this legislation was introduced, where they are available. However, since these SIs generally make changes to the scope of this legislation, then these were not considered suitable proxies and have not been used here.

43. Some onshoring SIs make changes which will result in certain EEA firms being subject to regulation by a UK regulatory body while remaining under the regulations of an EU or national regulatory body in their home jurisdiction. This IA states if this is the case for each SI.

4. Small and Micro Business Assessment (SaMBA)

44. As set out above, our approach is that, wherever possible, the same laws and rules that are currently in place in the UK will continue to apply at the point of exit, providing continuity and certainty as we leave the EU. These SIs are not intended to make policy changes, other than those that are appropriate to ensure a smooth transition when the UK leaves the EU, or to reflect the UK's new position outside the EU. As such, where the existing framework includes exemptions, or other provisions, for small and micro businesses, these SIs do not remove these provisions. Equally, they do not add in new provisions for SMBs, or otherwise make changes that are not required to fix deficiencies arising from the UK's exit from the EU, as this is not a permitted use of the powers in the EUWA.

45. As the intention of these SIs is to prepare a workable regime for financial services firms, the usual 'exemption' test that would be applied to Small and Micro Businesses (SMBs) is not relevant. Small or micro businesses would be disadvantaged if they were exempt from the changes made by these SIs, as the regulation they would be subject to would not have been amended to reflect the UK's position outside of the EU. This would disrupt their ability to operate after Exit, leaving them at a disadvantage compared to larger businesses. The financial services regulators provide a range of information and guidance to firms, including

on preparing for the UK leaving the EU.[11] The regulators will continue to provide guidance to firms, including SMBs in the lead up to, and beyond, the UK leaving the EU, as appropriate, and in line with their statutory objectives. This will include guidance on complying with the onshored regime.

46. These SIs will indirectly impact a large number of small businesses who use financial services firms and funds in order to do business. These firms will indirectly benefit from these SIs due to the fact that they will ensure that there is a clear and workable financial services regulatory regime in "no deal" EU exit scenario, limiting disruption to firms and customers and enabling financial services firms to continue operating.

47. The below table outlines whether SMBs are directly in scope of these SIs.

Table 2. Impact on SMBs

SI title	Applicable to small (inc. micro) businesses?	SMBs affected
Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018	No	0
Consumer Credit (Amendment) (EU Exit) Regulations 2018	Yes	c. 7,000
Building Societies Legislation (Amendment) (EU Exit) Regulations 2018	Yes	8
Friendly Societies (Amendment) (EU Exit) Regulations 2018	Yes	<20
Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018	No	0

48. **Consumer Credit.** No specific action is proposed to minimise regulatory burdens on small businesses. The Consumer Credit Directive (CCD), from which the pre-contractual information requirements derive, does not provide flexibility to disapply the CCD's requirements to small businesses, or to apply them in a different way. The CCD intended to ensure that an equivalent level of consumer protection applies across the consumer credit sector and it would not be appropriate to lessen protection for consumers where they use the services of a small business.

49. **Building Societies.** The SI does not introduce new requirements on small businesses. Instead it corrects deficiencies arising from the UK's withdrawal from the EU in legislation which applies to small businesses. Building societies will still be able to enter into EEA lending but will need to account for such lending differently with regards to the lending limit as set out in section 6A of the Building Societies Act 1986. The position of such lending – as regards the lending limit - undertaken by an SMB building society prior to the SI coming into effect will not change. Most SMB building societies have not previously undertaken EEA lending, or expressed an interest in undertaking such lending in future. Therefore we do not expect an impact on small businesses through this change.

50. **Friendly Societies.** The SI does not introduce new requirements on small businesses. It corrects deficiencies arising from the UK's withdrawal from the EU in legislation which applies to small businesses, but these corrections do not change the requirements on businesses. Therefore, no impact on small businesses is expected.

5. Impacts on regulators

51. Besides business, the financial services regulators are the other key group impacted by these SIs. They will need to take on new functions, and make changes to their operations, resulting in costs. Where

[11] An example of information provided by regulators: FCA, 'Preparing your firm for Brexit' (https://www.fca.org.uk/firms/preparing-for-brexit)

these SIs transfer new functions to the regulators, HM Treasury proposes to follow the model outlined in the Financial Services and Markets Act 2000 and allocate functions to UK regulators in a way which is consistent with the responsibilities already conferred on them by Parliament, thus providing certainty and continuity for firms.

52. In addition, where changes to the regulators' rulebooks, or to EU technical standards, are required as a result of leaving the EU, the regulators will be consulting on these changes.

6. Indirect impacts

53. Where firms face increased costs as a result of these changes, they may choose to pass on these costs to their customers, which will include other UK businesses. Since this impact is determined by firm behaviour and not a direct consequence of the SIs, it is not considered further in this Impact Assessment.

IV. Assessment by SI

1. Summary table

Table 3. Summary of anticipated costs by SI

	Familiarisation Costs	Transition Costs	Changes to IT Systems	Changes to Business Process	Changes to Reporting Requirements	Capital Requirements Change	Other Costs
Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018	X*						
Consumer Credit (Amendment) (EU Exit) Regulations 2018	X	X					
Building Societies Legislation (Amendment) (EU Exit) Regulations 2018	X						
Friendly Societies (Amendment) (EU Exit) Regulations 2018	X						
Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018	X	X		X			

*: Familiarisation costs for the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 will apply to regulators, not business.

2. Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018

54. The Financial Regulators' Powers SI makes provision to ensure that Binding Technical Standards (BTS) – a type of EU legislation that sets out the technical details of how requirements set in the parent legislation are to be met – continue to function by:

    1. Transferring ongoing responsibility after Exit for these Technical Standards to the UK financial services regulators;
    2. Setting out the statutory basis on which the regulators will exercise this responsibility; and
    3. Delegating to UK regulators the EU Withdrawal Act Section 7(1) power to fix deficiencies, in order to ensure that all Technical Standards continue to function appropriately in the UK after exit.

55. This SI only impacts the UK financial regulators (the FCA and PRA, Bank of England, and Payment Systems Regulator (PSR)) by giving them new responsibilities, and setting out how they must exercise those responsibilities. It has no direct impact on business. Any indirect impacts that firms may incur as a consequence of the delegated powers granted to the financial regulators (i.e. though the way in which the regulators exercise these powers) by this SI are outside the scope of this assessment.

56. **Familiarisation costs.** There is no requirement for businesses to familiarise themselves with this SI as it does not directly affect them. Therefore it is assumed that there are no familiarisation costs for businesses.

57. **Impact on regulators.** This SI transfers responsibility for certain EU 'Level 2' technical rules, known as Binding Technical Standards (BTS), from the European Supervisory Authorities to the UK financial

regulators – the Bank of England, the PRA, the FCA and the PSR. UK financial regulators will also be given the power to correct deficiencies in BTS arising from EU withdrawal.

58. Furthermore, UK financial regulators will be delegated the EUWA deficiency-fixing power to correct deficiencies in existing regulator rules (or FSMA rules) that arise as a result of the UK's withdrawal from the EU.

59. **Impact on business.** This SI will not impose any regulatory requirements on business so there will be no impact on industry.

3. Consumer Credit (Amendment) (EU Exit) Regulations 2018

60. This SI makes technical amendments to existing domestic legislation[12] implementing the Consumer Credit Directive (CCD) so that borrowers' consumer protection rights that derive from the Consumer Credit Directive will continue to operate effectively after the UK leaves the EU.

61. This SI will impact the UK consumer credit sector. The main type of activities that are impacted by the changes that this SI introduces are credit lending and credit brokerage, although the consumer credit sector also includes debt collection, debt adjusting and a host of other activities. The majority of consumer credit is issued by banks, but non-bank consumer credit providers and brokers (such as gyms, golf clubs, shops, etc.) are also in scope of the regulations. The FCA regulates the consumer credit sector. There are around 30,000 FCA-authorised consumer credit firms which will be impacted by this SI.[13] Credit to consumers (i.e. personal loans) of up to £60,260 is in scope (excluding mortgages), and business loans up to £25,000. This SI will not introduce any new regulatory burdens on businesses. There will however be some limited, one-off familiarisation and transitional costs.

62. **Familiarisation costs.** Impacted firms will need to understand the changing regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, in order to advise businesses of the cost.

63. **Transition costs.** Firms will need to amend the titles of the pre-contractual information forms that they must provide to consumers, and will need to amend references within these forms from 'Member State' to 'United Kingdom'. It may be possible to provide an estimate of the cost associated with this change in processes following engagement with impacted firms. By amending references that will no longer be appropriate once the UK exits the EU, firms will have clarity about the information that they should provide to borrowers. There will be no change to the level of information that firms issue to borrowers.

4. Building Societies Legislation (Amendment) (EU Exit) Regulations 2018

64. This SI makes technical amendments to the Building Societies Act 1986 and related legislation[14], to ensure building societies legislation continues to operate effectively after the UK leaves the EU.

65. This SI will impact the UK building societies sector, which is primarily active in the mortgage, savings account, and current account markets. There are 43 building societies in the UK.[15] Building societies are regulated by the FCA and the PRA.

[12]The Consumer Credit Act 1974, the Consumer Credit (Disclosure of Information) Regulations 2010 (S.I. 2010/1013), the Consumer Credit (Green Deal) Regulations 2012 (S.I. 2012/2798) and the Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882)

[13] Information provided by the FCA

[14] The Building Societies Act 1986, the Building Societies (Transfer of Business) Regulations 1998(S.I. 1998/212), the Building Societies (Accounts and Related Provisions) Regulations 1998(S.I. 1998/504), the Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007 (S.I. 2007/860), the Mutual Societies (Transfers) Order 2009(S.I. 2009/509)

[15] https://www.bsa.org.uk/statistics/sector-info-performance/sector-information

66. Existing legislation imposes lending limits that require that 75% of a building society's assets are secured on residential property. Currently, lending against property located in the UK or the rest of the EEA counts towards that target. However, as a result of the UK leaving the EU, this SI amends the legislation so that, after Exit day, only loans secured on properties in the UK will count towards that target. Loans taken out after Exit day and secured on properties in the EEA will no longer count towards the calculation of the building societies' lending limits. However, in order to minimise the impact on building societies, the SI provides that loans secured on EEA residential properties which were taken out before Exit day will still count towards the calculation of the lending limit. This means there will be no impact on building societies existing lending – it only affects future lending.

67. Furthermore, borrowers taking out a mortgage with a building society on property in the EEA will no longer automatically become members of that society. However, impacts are expected to be limited, as EEA lending is a very small proportion of overall building society activity since building societies are almost entirely domestically focussed institutions.

68. **Familiarisation costs.** Impacted firms will need to understand these changes to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to advise firms of their impact on their business, and how they should respond.

5. Friendly Societies (Amendment) (EU Exit) Regulations 2018

69. This SI makes technical amendments to the Friendly Societies Act 1992 and related legislation[16], to ensure friendly societies legislation continues to operate effectively after the UK leaves the EU. This SI aims to ensure that the UK continues to have a functioning regime in this area, making technical amendments to the Friendly Societies Act 1992 and related legislation, to ensure friendly societies legislation continues to operate effectively in a no deal scenario.

70. This SI will impact the UK friendly societies incorporated under the Friendly Societies Act 1992. These are a sub-set of the mutual insurance sector, who affect and carry out contracts of insurance. There are around 80 active mutual insurers operating in the UK,[17] although only those incorporated as friendly societies will be affected by this regulation. Friendly societies incorporated under the 1992 Act are only a subset of this market, but separate figures only for friendly societies are not available. The FCA is the registration authority for all friendly societies. Some friendly societies undertake 'regulated activities', and these are regulated by both the FCA and the PRA.

71. **Familiarisation costs.** Impacted firms will need to understand the changing regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI.

6. Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

72. Under the European Market Infrastructure Regulation ('EMIR'), third country central counterparties (CCPs) that intend to provide clearing services to clearing members or trading venues established in the EU must be recognised by the European Securities and Markets Authority (ESMA). ESMA can only recognise a third country CCP if various conditions are met. While the UK is a member of the EU, then ESMA recognition allows a third country CCP to provide services to UK clearing members.

73. Once the UK leaves the EU, non-UK CCPs will need to be recognised by the Bank of England in order to continue to provide clearing services in the UK.

74. In order to avoid the risk that non-UKs CCPs are unable to offer clearing services in the event of the UK leaving the EU without a deal in March 2019, this SI allows for temporary recognition (the "temporary recognition regime"). This allows non-UK CCPs who apply for permanent recognition or notify the Bank of

[16] The Friendly Societies Act 1992 (c.40) and the Friendly Societies (Accounts and Related Provisions) Regulations 1994 (S.I. 1994/1983)

[17] Information provided by the Association of Financial Mutuals

England of their intent to provide clearing services in the UK to continue to provide services for three years (extendable by HM Treasury) after exit day.

75. In December 2017 HM Treasury announced that the Bank of England would take on responsibility for recognising third country (i.e. non-UK) CCPs, a function which currently sits with ESMA. This will enable EEA and other third country CCPs currently offering services to the UK market to continue to offer those services post-Exit. This SI makes appropriate amendments to the relevant legislation[18] to deliver HM Treasury's announcement, bringing into domestic law the EU third country CCP recognition regime with appropriate amendments. It transfers the function of recognising non-UK CCPs to the Bank of England (from ESMA). It also transfers the function of recognising third country jurisdictions as equivalent from the European Commission to HM Treasury (this is a pre-condition of recognition). The SI also empowers HM Treasury and the Bank of England to make these equivalence and recognition decisions in advance of exit day (coming into effect on exit day) as appropriate.

76. Familiarisation and transition costs will apply to non-UK CCPs that wish to provide clearing services in the UK after exit. This is because, as a consequence of the UK's withdrawal from the EU, EEA and non-EEA CCPs will need to apply for recognition to provide clearing services in the UK, having previously been able to do so as a result of ESMA recognition or EEA home authority authorisation. Non-EU CCPs operating in the UK are currently recognised by EU regulators, and as a result of this change will need to be recognised by the Bank of England.

77. This legislation ensures that non-UK CCPs currently providing clearing services in the UK can continue to do so after exit. They would also have the option of withdrawing from providing clearing services to the UK market, in which case they would need to make a determine whether or not they still require authorisation in the UK post exit day.

78. **Familiarisation costs.** Impacted firms (i.e. non-UK CCPs who wish to continue accessing the UK market after Exit) will need to understand the change to the regulatory environment. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI.

79. **Business processes.** There is a new requirement for non-UK CCPs to notify the Bank of England with any material changes that impact their recognition application. It may be possible to provide an estimate of the cost associated with this change in processes following engagement with impacted firms. This new requirement is not expected to give rise to ongoing costs to business beyond the period of the recognition application and is unlikely to give rise to a requirement for new back office processes.

80. **Transition requirements.** There will be one-off costs for non-UK CCPs of providing updated information, or (in the case of EU CCPs) entirely new recognition applications, for the new UK application process set out in this SI. The new process will be the same as they would have followed when applying to ESMA but information will need to be updated. The requirement for non-UK CCPs to submit recognition applications is a consequence of the UK's withdrawal from the EU, due to the fact that ESMA will no longer have any jurisdiction in the UK. It is therefore outside the scope of this Impact Assessment.

[18] The Financial Services and Markets Act 2000, Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (commonly known as the EMIR Regulation), and implementing acts and ESMA recognition decisions made under the EMIR Regulation

V. Annex

Familiarisation Costs

Method:
The following formulae are used to estimate familiarisation costs consistently across all SIs:

$$Familiarisation\ cost\ of\ SI\ for\ 1\ firm = (No\ \ of\ words\ in\ SI)/(words\ read\ per\ minute)\ \times\ 1/60\ \times hourly\ wage\ rate$$

$$Familiarisation\ cost\ of\ SI\ for\ all\ firms = (No\ \ of\ words\ in\ SI)/(words\ read\ per\ minute)\ \times\ 1/60\ \times hourly\ wage\ rate \times No\ of\ businesses$$

Assumptions and evidence base:

1. It is assumed that the affected business population will evenly incur costs (time and labour) in familiarising themselves with the relevant SI, specifically reading and comprehending the SI.
2. Information regarding the numbers of businesses affected by relevant SIs has been provided by the financial services regulators (the Prudential Regulation Authority, the Financial Conduct Authority, and the Bank of England) or is based on Treasury estimates.
3. In calculating the labour cost of reading the SI, it is assumed that affected firms will procure the services of an external solicitor or legal expert to read the SI. We have based the cost of this legal advice on the government guidelines on solicitors' hourly rates[19], using an hourly rate of £330, based on the following assumptions:
    a. As legal expertise in financial services resides predominantly among City law firms, we have used a London, rather than UK-wide value for legal costs.
    b. As this work will be undertaken by a variety of individuals with varying levels of experience at different firms. Therefore, we have used the middle range value (i.e. the value for solicitors and legal executives with over 4 years' experience)
    c. As these rates are based on 2010 figures, so we have adjusted the 2010 figure of £296, to account for inflation.[20]

    Under this assumption, these hourly rates would reflect the full cost incurred by businesses: no non-wage costs would be incurred since it is assumed the work is not carried out in-house. Under this assumption, one professional per business is assumed to be reading the SI, and that this work will be billed to the firm on a per-minute basis. The familiarisation costs are set out on an SI by SI basis, however, we would expect that firms would buy in legal advice on all onshoring SIs that affect them, rather that procuring on an SI-by-SI basis.

Solicitors and legal executives with over 4 years' experience	
Hourly wage rate	£330

The time spent reading and familiarising is based on the word length of the SI and the difficulty of the text based on the Flesch Reading Scale.

It is assumed that, as legal experts, readers will generally be familiar with this type of literature so we have taken the upper bound of the reading speed of difficult text, i.e. 100 words per minute. Furthermore, it is assumed that this form of familiarisation will be undertaken on a one-off basis.

---

[19] Solicitors' guideline hourly rates: https://www.gov.uk/guidance/solicitors-guideline-hourly-rates

[20] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

Assumed reading speed (wpm) by Flesch Reading Score:

Fleisch Reading Ease	Level of difficulty	Words per minute assumptions
90–100	Very easy	250-300wpm (assume similar reading speed as prose)
80–90		
70-80	Fairly easy	
60–70	Standard	Around 200wpm (assume average reading speed)
50–60	Fairly difficult	50-100wpm (assume similar reading speed as technical text)
30–50	Difficult	
0–30	Very difficult	

Template – Breakdown of Familiarisation Costs:

Time spent on familiarisation (hrs)	Hourly rate (£)	Number of businesses affected	Familiarisation cost per firm	Total familiarisation cost to all impacted firms
(Number of words in SI) / (words read per minute) * 1/60	£330	Dependent on SI	(Time spent on familiarisation) * (Hourly rate)	(Familiarisation cost per firm) * (Number of impacted firms)

Familiarisation Costs by SI:

SI	Number of words in SI (rounded up to nearest 100)	Words read per minute	Number of businesses affected[21]	Familiarisation cost per firm (2 significant figures)	Total familiarisation cost to all impacted firms (2 significant figures)
Consumer Credit (Amendment) (EU Exit) Regulations 2018	600	100	30,000 (i)	£33	£990,000
Building Societies Legislation (Amendment) (EU Exit) Regulations 2018	1,600	100	43 (i)	£88	£3,800
Friendly Societies (Amendment) (EU Exit) Regulations 2018	1,700	100	80(ii)	£94	£7,500
Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018	4,200	100	60(iii)	£230	£14,000

(ii) Treasury estimate based on information provided by the Association of Financial Mutuals
(iii) Treasury estimate based on ESMA's list of EEA CCPs, third country CCPs recognised by ESMA, and third country CCPs who have applied for ESMA authorisation. Lists available at www.esma.europa.eu.

Total Familiarisation Costs in scope of this Impact Assessment (2 s.f): £1.0m

[21](i) Figures on numbers of businesses affected are provided by the UK financial services regulators (FCA and Bank of England/PRA). Where SIs create new regimes which firms may chose not to enter these figures are estimates, based on expected take-up by firms