Title: European Union (Withdrawal) Act – EEA Passport Rights (Amendment etc., and Transitional Provisions) (EU Exit) Regulations 2018	**Impact Assessment (IA)**
IA No: Not applicable	**Date: 30/11/2018**
RPC Reference No: RPC-4296(1)-HMT	**Stage: Final**
Lead department or agency: HM Treasury	**Source of intervention:**
Other departments or agencies: Department for Exiting the European Union	**Type of measure: Secondary Legislation**
	Contact for enquiries: Richard Lowe-Lauri Richard.Lowe-Lauri@hmtreasury.gov.uk

Summary: Intervention and Options

RPC Opinion: N/A – de minimis

Cost of Preferred (or more likely) Option (£m)				
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**
-£0.59	-£0.59	-£0.1	Not in scope	Non-qualifying provision

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

This Statutory Instrument (SI) forms 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. It is 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, this SI would ensure that a functioning and stable financial services regulatory regime is in place in any scenario including 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?

This SI is not intended to make policy changes beyond what is appropriate in order to ensure a functioning financial services framework in the unlikely scenario where the UK leaves the EU without an implementation period being in place. It establishes a 'Temporary Permissions Regime' (TPR) that will enable EEA firms that are currently operating in the UK under financial services passporting rules, and who will lose these passporting rights as a result of the UK leaving the EU, to continue operating in the UK for a limited period after exit day in order to allow them to obtain UK authorisation or transfer business to a UK entity as necessary. This is designed to minimise the disruption faced by EEA firms and UK businesses and consumers due to the loss of passporting rights arising from EU withdrawal. The Government's objectives in laying this SI are:

- to have a functioning regime in place for day one after the UK's departure from the EU, in particular to ensure the FCA and the PRA have the capability to fulfil their objectives;
- to support regulator and business readiness for exit day. The onshored regime, alongside transitional arrangement and waivers, will minimise disruption, and avoid material unintended consequences for the continuity of service provision to UK customers, investors and the market,
- to protect the existing rights of UK consumers.

The TPR is an example of unilateral action that can be taken by the UK to maintain financial stability risks which flow from the inoperability of financial services passport rights. It forms the basis of potential agreement with the EU on reciprocal action to safeguard financial stability and consumer protection.

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

This SI legislates for a temporary permissions regime for EEA inward passporting firms. Not introducing a TPR would mean—in a scenario where the UK leaves the EU in March 2019 without entering an implementation period—EEA firms passporting into the UK that had not been able to secure full UK authorisation ahead of March 2019 would suddenly lose their right to conduct regulated activity as normal in the UK. This would result in significant market disruption in the UK, as UK consumers and firms serviced by EEA inward passporting firms would be unable to access these services immediately after the UK's exit from the EU.

Independently of whether the TPR is legislated for, the loss of passporting as a result of EU withdrawal will result in the volume of applications for UK authorisation received by the PRA and the FCA increasing significantly, as the EEA firms that currently carry out business in the UK via an EEA financial services passport will have to submit applications for domestic authorisation if they wish to continue conducting regulated activity in the UK. The FCA and the PRA must process applications for UK authorisation in line with the statutory objectives, regardless of the previous status of the firm applying. Thus, applications from EEA firms in the TPR will be assessed to the same standard as applications received from any other third country or domestic firm that wishes to conduct regulated activities in the UK. This will take time. Indeed, the volume of applications, some of which are expected from firms that already have a substantial and complex UK presence, will be unprecedented, raising significant risks to the ability of the PRA and the FCA to conduct a smooth and orderly authorisation process in support of their statutory objectives. Additionally, many EEA firms that wish to continue operating in the UK will require more time beyond exit day in which to prepare for and submit applications for UK authorisation, and to complete any required restructuring as part of that authorisation process. The TPR ensures both firms and FCA and the PRA the appropriate time to marshal this process in a smooth and orderly manner. Without the regime, the UK's exit from the EU would create significant disruption for the firms and their UK customers.

It is not possible to implement the TPR without legislation.

As noted in the EU (Withdrawal) Act 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 position presented in this SI is the result of systematically applying the principles 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 deficiencies. The aim is to limit disruption to and burden on firms by maintaining the status quo as far as possible.

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: John P. Glen Date: 19/11/2018

Summary: Analysis & Evidence Policy Option 1

Description: Proceed with secondary legislation creating a Temporary Permissions Regime.

FULL ECONOMIC ASSESSMENT

Price Base Year	**PV Base Year**	**Time Period Years**	**Net Benefit (Present Value (PV)) (£m)**		
			Low	**High:**	**Best Estimate:**
2017	2017	10	-£0.71	-£0.47	-£0.59

COSTS (£m)	**Total Transition** (Constant Price) Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	£0.5	£0	£0.5
High	£0.7	£0	£0.7
Best Estimate	£0.6	£0	£0.6

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

The costs incurred by businesses as a result of this SI are set out in the categories below. Since this SI broadly aims to preserve the status quo in enabling EEA inbound firms to continue to carry out regulated activities as they do now, quantifiable costs on business that are directly attributable to this SI are minimal and consist only of familiarisation costs. This SI does not present substantial familiarisation costs which have been monetised using a standardised methodology.

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

It is not possible to monetise any additional costs because at present—and in many cases—the Government and the FCA and the PRA do not have detailed information on the specific makeup and operational systems of the firms that might join the temporary permissions regime. This is because when an EEA firm requests to conduct regulated activities in other Member States via a passport, it commonly will apply for access to many if not all EU28 states. This is the case even when it only, for example, intends at present to passport into one or two of those states. Consequently, the Government and the FCA and the PRA only have figures for EEA firms that have the *right* to conduct regulated activity in the UK rather than the figures of firms that actually do so. Additionally, in the majority of cases—and especially for firms that have not yet applied for authorisation—they do not have information on the characteristics of these firms, including the systems and business operations they currently use and would therefore be affected by this instrument. This information is instead held by the competent authorities of the firms' respective member states.

Beyond the estimated volume of applications, as these firms are able to conduct regulated activities in the UK under the primary supervision of their home EEA competent authority, the FCA and the PRA have very little information about the characteristics of some of these firms, particularly those that operate on a cross-border basis without a physical presence here in the UK. This means that it is difficult to ascertain the extent on the changes required on a firm-by-firm basis and therefore the subsequent costings. Combined with the uncertainty of the number of firms that will join the regime, providing a quantified estimate on the total costs to firms who join the TPR would not be helpful since any estimate would be far too wide in range.

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 EU exit, 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

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

N/A

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

This SI (when taken together with the rest of the Financial Services onshoring SIs, and subsequent changes to FS regulator rules and associated legislation) helps ensure there will be a functioning financial services regulatory regime at the point where the UK leaves the EU in any scenario.

It implements a 'temporary permissions regime', following the government's announcement on 20 December 2017 that it would put forward such legislation to enable EEA firms operating in the UK via a financial services passport to continue, if they so choose, their activities in the UK for a limited period after exit day in order to allow them to obtain UK authorisation or transfer business to a UK entity as necessary. The regime is designed to minimise the disruption faced by EEA firms and UK businesses and consumers due to the loss of passporting rights arising from EU withdrawal and will ensure that: 1) firms can continue to carry out business as before, writing new contracts and servicing existing contracts entered into before exit day for a temporary period after exit day; 2) firms have appropriate time to prepare for and submit applications for UK authorisation and complete any necessary restructuring; and 3) the PRA and the FCA can manage the expected applications for UK authorisation from EEA firms that were previously operating in the UK via a passport in a smooth and orderly manner. Not introducing a TPR would mean—in a scenario where the UK leaves the EU in March 2019 without entering an implementation period—EEA firms passporting into the UK that had not been able to secure full UK authorisation ahead of March 2019 would lose their right to conduct regulated activity as normal in the UK. This would result in significant market disruption in the UK, as UK consumers and firms serviced by EEA inward passporting firms would be unable to access these services immediately after the UK's exit from the EU.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

This SI, alongside other SIs, are designed to ensure that there will be a functioning financial services regulatory regime at the point where the UK leaves the EU, in any scenario including in the event that the UK leaves the EU in March 2019 without a deal.

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 this SI can be found in the Annex.

BUSINESS ASSESSMENT (Option 1)

<table>
<tr><td colspan="3">Direct impact on business (Equivalent Annual) £m:</td><td>Score for Business Impact Target (qualifying provisions only) £m:</td></tr>
<tr><td rowspan="2">Costs:
£0.1</td><td rowspan="2">Benefits: £0</td><td rowspan="2">Net:
- £0.1</td><td></td></tr>
<tr><td>N/A</td></tr>
</table>

Evidence Base (for summary sheets)

Impact Assessment of EEA Passport Rights (Amendment etc., and Transitional Provisions) (EU Exit) Regulations 2018

I. Overview: the EUWA and Financial Services

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.[1] 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%).[2]

In the context of the UK's withdrawal from the EU, the Government recognises that it is important 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 will also create temporary powers to make secondary legislation to enable amendments to be made where these laws would otherwise no longer function appropriately once the UK has left the EU. We sometimes refer to these contingency preparations for financial services legislation as 'onshoring'. This SI is not intended to make policy changes, other than those that are appropriate to ensure a smooth transition when the UK leaves the EU.

The implementation period

The UK and the EU have agreed the terms of an implementation period that will start at 11pm on 29 March 2019 and end on 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.

Whilst the Government has every confidence that an implementation period will be in place, we have a duty to plan for all eventualities, including in the unlikely event of 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, regardless of whether an implementation period with the EU is fully in place from the 29 March 2019. This involves preparing SIs under the EUWA that fix deficiencies in retained EU law.

1. Context for FS

A significant proportion of existing UK FS legislation is currently 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 the SI on the 'Temporary Permissions Regime' (TPR) that will enable EEA firms that are currently operating in the UK via a financial services passport to continue conducting regulated activities in the UK for a limited period after exit day in order to allow them to obtain UK authorisation or transfer business to a UK entity as necessary.

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

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

In addition to the SI covered by this Impact Assessment, 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.

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.

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 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.

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 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 FCA's and the PRA's rulebooks, and to the EU-derived technical standards.[3] These changes will be made by the FCA and the PRA, and many of these changes will be consequential to HM Treasury's SIs. Rules made through these sub-delegated powers will be subject to 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 will be consulting 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

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.

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, 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);
- 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 that would lead to significant disruption for firms or customers of firms, unless action is taken to avoid that disruption (for example, to minimise the disruption that would result from the sudden inoperability of the inward passporting rights of EEA firms currently performing regulated activities in the UK);
- 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 exit.

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

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 and is making its own provisions for such a scenario.[4]

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 FCA's and the PRA's capability to fulfil their statutory objectives as set out in the Financial Services and Markets Act 2000 (FSMA);
- Enabling the FCA, the PRA, 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

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. 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 how to exercise this power.

Wherever practicable, our approach is that EU-derived 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 and would have no new special arrangements in place in the unlikely event of a 'no deal' scenario. The vast majority of these changes would not take effect in 29 March 2019 if, as expected, we enter an implementation period.

This general approach was already reviewed by the RPC in its assessment of the Withdrawal Bill Impact Assessment[5].

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

[5] 5 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

Passporting and the temporary permissions regime

The EEA financial services 'passporting' system enables financial services firms authorised by the regulatory authorities in their home EEA member state to provide their services to customers in any other EEA member state without having to obtain authorisation from the other member states' regulatory authorities.

This includes firms with a physical branch presence in the UK, as well as firms with no physical presence here but who provide services via the EEA passport. There are many more services firms with a registered right to provide services in the UK via the EEA passport than branches. The FCA estimates that out of the total number (c8,000) of firms registered to provide services in the UK via the EEA passport, roughly 5% of these are branches and 95% services firms, equating to c420 and c8200 respectively.

Passporting arrangements will cease when the UK ceases to be a member of the EU, and a person that wishes to carry on a regulated activity in the UK after exit will need to be authorised by a domestic financial services regulator in accordance with the existing regulatory requirements.

In the absence of further provision, these repeals would mean that any EEA firms currently operating in the UK via a passport would lose their permission to do so on exit day. As a result, the firm would not be able to continue to carry on regulated activities in the UK, with consequent harm to UK businesses and consumers. Firms needing permission would have to seek authorisation from the UK's regulatory authorities—the PRA and the FCA if they wish to continue providing services to customers located in the UK. As a consequence, the volume of applications for UK authorisation received by the PRA and the FCA is expected to increase significantly as over 1000 firms would be expected to apply for UK authorisation. This volume of applications—some of which are expected from firms that already have a substantial UK presence and complex business models—will be unprecedented.

As a result, on 20 December 2017 the government announced that it would put forward legislation to establish a 'temporary permissions regime', enabling EEA firms and funds operating in the UK via a passport to continue their activities in the UK for a limited period after exit day. The SI sets out the design and structure of such a regime for EEA firms and gives powers to the regulators to deliver it in accordance with their statutory objectives.

The regime is designed to minimise the disruption faced by EEA firms and UK businesses and consumers due to the loss of passporting rights arising from EU withdrawal and will ensure that:

1. firms can continue to carry out business as before, writing new contracts and servicing existing contracts entered into before exit day for a temporary period after exit day
2. firms have appropriate time to prepare for and submit applications for UK authorisation and complete any necessary restructuring
3. the PRA and the FCA can manage the expected applications for UK authorisation from EEA firms that were previously operating in the UK via a passport in a smooth and orderly manner

This SI sets out the design and structure of the TPR and gives powers to the PRA and FCA to deliver it in accordance with their statutory objectives. The instrument also makes appropriate consequential amendments to domestic primary legislation and secondary legislation such as the Financial Services and Markets Act 2000 to reflect in the statute book the fact that EU passporting rights will no longer apply. Approximately 8,000 EEA firms are registered to passport into the UK and will therefore be in scope of the SI.[6] For business planning purposes, however, the PRA estimates it will receive approximately 160 applications for authorisation from EEA firms looking to continue performing regulated activities in the UK following the cessation of passporting. The FCA will also play a role in the authorisation of these 'dual regulated' firms. The FCA is operating under a working assumption of a total of 1,000 solo-regulated—whose applications will be handled by the FCA only—and duel-regulated firms that may use the regime. The assessment of the possible familiarisation costs borne by firms therefore uses the FCA's estimate of 1,000 firms. To account for uncertainty, we have included a range based on numbers being 20% higher or lower than currently estimate.

[6] Information provided by the FCA

This SI will have no impact on firms that already fully authorised by the UK regulators and are not operating in the UK on the basis of a passport.

Regulatory rules and guidance

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.[7]

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.[8] The regulators will continue to provide guidance to firms as appropriate in the lead up to and beyond Exit day, in line with their statutory objectives.

2. Alternatives to onshoring

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.'[9] The policy positions presented in this SI are the result of systematically applying the principles set out above to deficiencies in the statute book.

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.

In this case of the TPR, the alternative would be not introducing a transitional regime, meaning that, in a scenario where the UK leaves the EU in March 2019 without entering an implementation period, EEA firms passporting into the UK that had not undergone the full UK authorisation process would immediately lose their passporting rights and would be unable to continue providing services in the UK.

Firms needing permission would have to seek authorisation from the UK's regulatory authorities—the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA)—if they wish to continue providing services to customers located in the UK. As a consequence, the volume of applications for UK authorisation received by the PRA and the FCA is expected to increase significantly as many hundreds, perhaps thousands, of EEA firms submit applications for UK authorisation. This volume of applications—some of which are expected from firms that already have a substantial UK presence and complex business models—would be unprecedented, and there is a significant risk that they could not all be processed ahead of March 2019.

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[7] '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

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

[9] 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

3. Do nothing

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 would, in many areas, fail to operate effectively or otherwise be deficient.

This SI forms part of a package designed to avoid these and other related impacts, and to ensure that there is a sound regulatory system, which will follow broadly the same rules and standards as now. If the UK 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: the consequences of which would be significant. As well as the direct impact of any gaps in the regulatory regime on individual sectors and firms, and on our ability to regulate the financial sector effectively, the wider impact would be to undermine credibility of the UK's financial system. This would affect market confidence and create instability.

This SI legislates for a temporary permissions regime for EEA inward passporting firms. Not introducing a TPR would mean—in a scenario where the UK leaves the EU in March 2019 without entering an implementation period—EEA firms passporting into the UK that had not been able to secure full UK authorisation ahead of March 2019 would lose their right to conduct regulated activity as normal in the UK. This would result in significant market disruption in the UK, as UK consumers and firms serviced by EEA inward passporting firms would be unable to access these services immediately after the UK's exit from the EU.

The FCA and the PRA must process all applications for UK authorisation in line with the statutory objectives, regardless of the previous status of the firm applying. Thus, applications from EEA firms in the TPR will be assessed to the same standard as applications received from any other third country or domestic firm that wishes to conduct regulated activities in the UK. This will take time. Additionally, many EEA firms that wish to continue operating in the UK will require more time beyond exit day in which to prepare for and submit applications for UK authorisation, and to complete any required restructuring as part of that authorisation process. The TPR ensures both firms and FCA and the PRA the appropriate time to marshal this process in a smooth and orderly manner. Without the regime, the UK's exit from the EU would create significant disruption for the firms and their UK customers.

The cost of 'doing nothing' would far outweigh the costs that affected businesses (EEA firms currently operating in the UK using a passport) will incur as a direct consequence of this SI. '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

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 SI 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.

The impacts presented for this 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 Impact Assessment provides an analysis of known costs that businesses will incur as a result of this SI. Where possible, these costs have been quantified. In many instances, however, presenting even estimates of expected costs is very difficult as the Government and the FCA and the PRA do not have access to detailed information about the firms that will make use of the TPR beyond the small number of firms that have already submitted applications for domestic authorisation to the PRA. This SI represents 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 this SI alongside the rest of the set of financial services onshoring SIs, the FCA's and the PRA's rulebooks which will be amended to reflect these SIs, the changes to EU binding technical standards made by the FCA and the PRA, and SIs amending other related legislation that is not specific to financial services.

5. Scope

This Impact Assessment measures the impact on EEA-based businesses of the changes to legislation resulting from this SI. UK based firms will not be affected by these regulations .

In addition to measuring business impact, this Impact Assessment describes the impact of the onshoring SIs on the FCA and the PRA, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) where appropriate.

III. Assessment

1. Assumptions and limitations

A key limitation of this analysis is the difficulty in estimating how many firms will enter the TPR.

When an EEA firm requests to conduct regulated activities in other Member States via a passport, it will commonly apply for access to many if not all EU member states. This is the case even when it only, for example, intends to passport into one or two. Consequently, the Government and the FCA and the PRA only have figures for EEA firms that have the *right* to conduct regulated activity in the UK rather than the figures of firms that actually do so and will therefore need to make use of the TPR. If an EEA firm does not conduct regulated activity in the UK ahead of exit day, there will be very little incentive for it to join the regime.

Approximately 8,000 EEA firms are registered to passport into the UK and will therefore potentially be in scope of the SI.[10] For business planning purposes, however, the PRA estimates it will receive approximately 160 applications for authorisation from EEA firms looking to continue performing regulated activities in the UK following the cessation of passporting. The FCA will also play a role in the authorisation of these 'dual regulated' firms. For 'solo-regulated' firms—whose applications will be handled by the FCA only—the FCA is operating under a working assumption of 1000 firms that may use the regime.

We have used these estimates to provide our best estimates of the impact. To account for uncertainty, we have included here a range based on numbers of applications being 20% higher or lower than currently estimated.

A number of additional 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, amendments to existing EU technical standards to address deficiencies, and amendments to other related legislation. This work is ongoing and will follow the coming into force of these SIs. It is therefore not possible to estimate them 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, and 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

[10] Information provided by the FCA

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 the impact of a particular measure is uncertain, an estimated range of costs has been provided, except where doing so would be misleading. 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.

2. Benefits to business

This introduces a Temporary Permissions Regime, enabling EEA firms that are currently operating in the UK via a financial services passport to continue conducting regulated activities in the UK for a limited period after exit day in order to allow them to obtain UK authorisation or transfer business to a UK entity as necessary. This is designed to minimise the disruption faced by EEA firms and UK businesses and consumers due to the loss of passporting rights arising from EU withdrawal.

Without this SI, financial services firms currently operating in the UK via a passport would face much greater costs, and far greater uncertainty.

This SI (when taken together with the rest of the FS onshoring SIs, and subsequent changes to FS regulator rules and associated legislation) ensures 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.

3. Costs to business

The costs incurred by businesses as a result of this SI fall into the categories set out below. Financial services firms should continue to plan on the assumption that an implementation period will be in place when the UK leaves the EU. Firms are in general not expected to prepare now to implement the onshoring changes by 29 March 2019. However, firms that wish to enter the TPR will, ahead of exit day, either need to submit an application for UK authorisation or a notification of their intent to enter the regime. The FCA and the PRA will provide further details to firms on how and when to do this.

As detailed in the limitations above, it has not been possible for HM Treasury to engage with firms and industry bodies in the drafting of these SIs. However, where possible, subsequent engagement 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.

Familiarisation costs

This SI is not intended to make any substantial changes to the legislative framework beyond what is appropriate to address any deficiencies, but it still gives 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. As detailed in the limitations above, it has not been possible for HM Treasury and the FCA and the PRA to engage with firms and industry bodies in the drafting of this SI. 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.

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.

Our methodology for measuring familiarisation costs is presented in Annex 2.

For this SI, the familiarisation cost per firm is estimated to be £590, and the total familiarisation costs across all affected firms is £590,000 (± 20%).

Other business costs

Familiarisation costs. Impacted firms will need to understand the changes to the regulatory environment under the TPR. This will involve legal experts examining the SI, and the relevant sections of legislation amended by this SI, to provide advice to firms.

Overall change in regulatory burden. Under the TPR, firms' relationship with UK supervisors will change because the allocation of supervisory responsibilities between competent authorities under EU law will no longer apply. Consequently, there will be some change to regulatory burden faced by these firms. However, the exact nature of this shift in supervisory jurisdiction and corresponding regulatory changes will depend on a number of factors and will to some extent be at the discretion of the FCA and the PRA. HM Treasury is aware that firms would need time to adjust to this changed regulatory regime in the unlikely event it is needed, and therefore intends to provide the FCA and the PRA with a general power to phase in post-exit requirements, allowing flexibility for firms to transition to a fully domestic UK regulatory framework. Broadly speaking, most TPR firms, however, will in effect be required to continue to comply with the rules that currently apply to them as passporting firms, and will thus see minimal increase in regulatory burden for the duration of the regime.

Part 4A application. The need for an EEA firm to submit a Part 4A application to continue conducting regulated activities as normal in the UK is a consequence of the UK's exit from the EU, as previously these firms relied upon passporting rights to conduct regulated activities in the UK. These rights will no longer be operable in UK law, as they relate to Single Market activity. This SI removes these rights from UK law, as a consequence of the UK's exit. While the costs associated with submitting a Part 4A application are directly associated with this regulatory change, they fall outside the scope of this Impact Assessment as they are a consequence of the UK's political decision to leave the EU, not from changes in regulatory burdens caused by this SI.

4. Small and Micro Business Assessment (SaMBA)

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. This SI is 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, this SI does not remove these provisions. Equally, it does not add in new provisions for SMBs, or otherwise makes 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.

As the firms entering the TPR are not currently UK regulated, the FCA and the PRA hold limited information about them, however the government expects that few firms impacted by this SI will Small (defined at less than 49 employees) or Micro (less than 10) Businesses.

The TPR is designed to minimise the disruption faced by EEA firms and UK business and consumers due to the loss of passporting rights arising from EU withdrawal. Therefore, any derogation for small or micro firms would disadvantage said firms, since, if they are currently passporting into the UK, then they would need to have applied for and received UK authorisation at the point of Exit, whilst larger firms would be able to benefit from the TPR.

This SI does not modify the existing application process firms will need go to through to apply for UK authorisation once they have entered the TPR. These existing processes, which are outside the scope of this assessment, are proportional to the nature of the firm in question, its size and complexity being relevant factors.

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. Where appropriate, the regulators will provide guidance to firms, including SMBs, on complying with these regulations, in line with their statutory objectives.

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, Exit day, as appropriate, and in line with their statutory objectives. This will include guidance on complying with the onshored regime and how the regulators plan to operationalise the regime[12].

This 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 this 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.

5. Impacts on regulators

Besides business, the FCA and the PRA 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. In particular, the FCA and the PRA will need to make arrangements to communicate to affected firms and to build systems that will enable them to receive notifications from affected firms. These costs are not estimated to be significant. The costs of assessing the large volume of applications for full UK authorisation, however, are likely to be high, though the requirement that passporting EEA firms must apply for full UK authorisation in preparation for the UK's exit from the EU is not a consequence of this instrument but is instead a broader consequence of Brexit. As such the costs borne by the FCA and the PRA in assessing the applications for full UK authorisation received by firms in the TPR is not in scope of this assessment.

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

Other businesses indirectly impacted by this SI are professional services firms, such as law, accountancy and other advisory firms, that provide services to the impacted businesses. As professional services firms are not directly affected by the regulation, these impacts are outside the scope of this Impact Assessment.

Where firms do 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.

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[11] An example of information provided by regulators: FCA, 'Preparing your firm for Brexit' (https://www.fca.org.uk/firms/preparing-for-brexit)
[12] See, for example, the FCA's consultation paper on "The Temporary Permissions Regime for Inbound Firms and Funds" (https://www.fca.org.uk/publication/consultation/cp18-29.pdf)

As a result of the UK leaving the EU, EEA firms will lose the ability to passport into the UK. If firms wish to continue conducting regulated activity as usual and on a continuing basis in the UK beyond the timeframe of the TPR, then they will need to apply for UK authorisation from the relevant regulator, in the same way that non-EEA firms wishing to operate in the UK currently do. The FCA and the PRA charge fees to apply for authorisation – these depend on the complexity of the authorisation, and details of the FCA's and the PRA's approach to authorisation and fees are available on their websites. These fees are outside the scope of this assessment as the necessity for EEA firms to seek UK authorisation is a direct consequence of the UK's exit from the EU.

In addition, from March 2019, firms within the TPR will be covered by the same regulatory requirements as UK authorised firms. In most cases this will be in lieu of the regulatory requirements currently placed on them by their home state. However, in some cases these requirements will act at group level. 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 onshoring changes, which may affect the overall costs on business of the new regulatory regime. These changes in regulatory requirements are outside the scope of this assessment as the necessity for EEA firms to seek UK authorisation is a direct consequence of the UK's exit from the EU.

IV. Annex

Familiarisation Costs

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

$$Familiarisation\ cost\ of\ SI\ for\ 1\ firm = (N\hat{}o\ \ of\ words\ in\ SI)/(words\ read\ per\ minute)\ \times\ 1/60\ \times hourly\ wage\ rate$$

$$Familiarisation\ cost\ of\ SI\ for\ all\ firms = (N\hat{}o\ \ of\ words\ in\ SI)/(words\ read\ per\ minute)\ \times\ 1/60\ \times hourly\ wage\ rate \times N\hat{}o\ of\ businesses$$

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 number of businesses affected by relevant SIs has been provided by FCA, PRA and 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, 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 four years' experience)
    c. As these rates are based on 2010 figures, so we have adjusted the 2010 figure of £296, to account for inflation.[13]

    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.
    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

Calculating Hourly Pay[14]:

Solicitors and legal executives with over four years' experience	
Hourly 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.

[13] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp
[14] Solicitors' guideline hourly rates: https://www.gov.uk/guidance/solicitors-guideline-hourly-rates, adjusted for inflation

The EEA Passport Rights (Amendment etc. and Transitional Provisions) (EU Exit) Regulations 2018 would be classed as a difficult text in terms of Flesch Reading ease. It is assumed that as legal experts, readers will generally be familiar with this type of literature (i.e. legislation) 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.

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	1,000[15]	(Time spent on familiarisation) * (Hourly rate)	(Familiarisation cost per firm) * (Number of impacted firms)

Familiarisation Costs:

SI	Number of words in SI	Words read per minute	Number of businesses affected	Familiarisation cost per firm (2 significant figures)	Total familiarisation cost to all impacted firms (2 significant figures)
The EEA Passport Rights (Amendment and Transitional Provision) (EU Exit) Regulations 2018	10,800	100	800 - 1200	£590	£470,000 – 710,000 (middle range: £590,000)

[15] Figure provided by the FCA (includes the ~160 dual-regulated firms, as these will be authorised by both the FCA and the PRA)