Title: European Union (Withdrawal) Act – Financial Services Statutory Instruments (V)	Impact Assessment (IA)
IA No: RPC-4331(1)-HMT	**Date: 15/02/2019**
RPC Reference No: RPC-4331(1)-HMT	**Stage: Final**
	Source of intervention: Domestic
Lead department or agency: HM Treasury	**Type of measure: Secondary Legislation**
Other departments or agencies: Department for Exiting the European Union	**Contact for enquiries:** Sebastian Astin-Chamberlain Sebastian.astin-chamberlain@hmtreasury.gov.uk
Summary: Intervention and Options	**RPC Opinion: GREEN**

Cost of Preferred (or more likely) Option (£m) (in 2016 prices)				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year**	**One-In, Three-Out**	**Business Impact Target Status**
Unknown: likely significant	Unknown: likely significant	Unknown: likely significant	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 29 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, these SIs would ensure that a functioning and stable financial services regulatory regime is in place at the point of exit on 29 March 2019, in any scenario, including in the 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, other than to ensure a functioning financial services framework and to provide for a smooth transition in the event that 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.

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

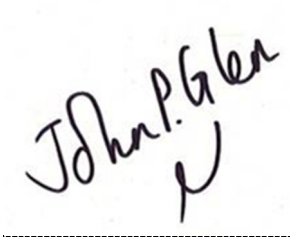
As noted in the EU (Withdrawal) Bill Impact Assessment, 'the Government does not consider that there are alternative ways to prepare the domestic statute book for our exit from the European Union within the timetable dictated by the Article 50 process.' The policy positions presented in these SIs are 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 2018 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. Most of the changes to retained EU law made by these SIs will not come into effect in March 2019 if 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: 15/02/2019

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

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

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	Unknown: likely significant	Unknown: likely significant	Unknown: likely significant

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 (FS) regulation, quantifiable costs on business that are directly attributable to these SIs are marginal compared to the overall costs arising from the UK leaving the EU, 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 business processes, and reporting requirements. Given the wide range of firms affected by these changes, the differences in their size and the activities they undertake, and the interactions between these SIs and other legislation and regulator rules, some not yet finalised at the time of publication, it has not been possible to monetise these costs.

In addition, HM Treasury has brought forward legislation to provide the financial services regulators with temporary transitional powers to phase in any changes to requirements on firms resulting from the UK leaving the EU. This 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	Total Benefit (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	significant	significant	significant

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) help 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**	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 Annex A.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual)			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:**	**Net:**	
Unknown: likely significant	Significant	Unknown: likely significant	N/A

Evidence Base (for summary sheets)

Impact Assessment of Financial Services Statutory Instruments – European Union (Withdrawal) Act 2018

This Impact Assessment is one of a set of Impact Assessments covering Financial Services Statutory Instruments under the European Union (Withdrawal) Act 2018 (EUWA). It sets out the background to the EUWA and the context for financial services, the overall approach taken by HM Treasury to 'onshoring' legislation through secondary legislation under the EUWA, the approach taken to assessing the costs and benefits of this legislation, and provides an assessment of the impact of 5 statutory instruments:

- Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019
- Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019
- Payment Accounts (Amendment) (EU Exit) Regulations 2019
- Securitisation (Amendment) (EU Exit) Regulations 2019
- Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019

This is the final stage Impact Assessment for these SIs. HM Treasury has not undertaken a formal consultation on this legislation, and therefore no Consultation Stage Impact Assessment was prepared.

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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.[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]

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 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 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 subject to further restrictions, such as the inability to use the power to impose or increase taxation or fees, or establish a public authority.

5. However, in some cases, adequately addressing a deficiency does require policy changes to be made: for example, where supervisory functions are currently carried out by EU bodies who will not have jurisdiction in the UK after exit, it is necessary to give a UK body responsibility for these functions. This would mean that UK firms may be supervised by a different body after exit, and there will be costs associated with that transfer, but the scope of the supervision, and the way that they are required to engage with supervisors, would be maintained as far as possible.

6. The power under the EUWA is also time-limited: it can only be used for 2 years after exit day. However, any secondary legislation made using the powers is not time-limited (unless it specifically includes provision to that effect) and will remain in place after the end of that 2 year period.

1. The implementation period and contingency planning for a "no deal" scenario

7. The UK and EU have reached agreement on the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. Therefore, should a deal be approved, the implementation period would provide time to introduce the new arrangements that will underpin our future relationship, and provide valuable certainty for businesses and individuals. During an implementation period, common rules would continue to apply, and the UK will continue to implement new EU law that comes into effect. This would mean that access to each other's markets would continue on current terms, and businesses, including financial services firms, would be able to trade on the same terms as now until the end of 2020. The Withdrawal Agreement ensures the UK can choose to request an extension of the implementation period, or enter into a backstop arrangement with the EU if the terms of the future relationship have not been confirmed by 1 January 2021.

[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

8. However, the government has 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.

9. To prepare for the possibility of leaving the EU on 29 March 2019 without an implementation period, HM Treasury is using powers in the EUWA to bring forward legislation (including the SIs covered by this Impact Assessment) to ensure that the UK continues to have a functioning financial services regulatory regime by fixing any deficiencies in financial services legislation to ensure that it continues to operate effectively when the UK is outside the EU.

10. These SIs have been prepared solely for a "no deal" scenario. They will not take effect in March 2019 if an implementation period is in place.

11. Some or all of these SIs may come into effect at the end of an implementation period, amended as necessary to reflect the UK's position at that point, including our future relationship with the EU, and to reflect any developments in EU law during the implementation period.

12. In the event that there is an implementation period and these SIs, or some amended version of them, comes into effect at the end of an implementation period, HM Treasury will prepare an Impact Assessment that considers the impact of the SIs, as amended, and in the specific scenario that is applicable at that point in time.

13. A small number of provisions in these SIs come into effect before 29 March 2019. These are provisions which allow the regulators to make the necessary preparations, but they are also specifically designed to prepare for a "no deal" scenario. Where SIs contain these provisions, it is summarised in Annex B.

2. Context for Financial Services

14. 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 over 280 pieces of UK secondary legislation and 24 pieces of UK primary legislation. This Impact Assessment covers 5 SIs that address deficiencies in UK law and retained EU law relating to financial services regulation that arise from the UK leaving the EU. Taken together with the other financial services SIs laid under the EUWA, these SIs will ensure that there is a functioning regulatory framework in place on exit day, in any scenario.

15. Consistent with the enabling powers in the EUWA which only extend to correcting deficiencies, these SIs are not intended to make policy changes other than to ensure the UK's regulatory framework continues to 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 from the pre-exit framework other than to ensure a functioning regime.

16. 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 regulatory regime at the point of exit, but their effectiveness is dependent on other EU exit-related SIs. In addition to these SIs, there will be amendments to the financial services regulators' rulebooks and handbooks, 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 been consulting on these rule changes since Autumn 2018.

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

17. 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. These includes, for example, changes to law dealing with insolvency law, data sharing and data protection, and accounting standards.

II. Approach

1. Principles of onshoring

18. 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.

19. Examples of deficiencies in financial services legislation include:

- Functions that are currently carried out by EU authorities and 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 Member States, and European Consumer Credit Information);
- Provisions that would be inconsistent with ensuring a functioning regulatory framework – for example, requirements regarding automatic recognition by a UK body of an act of an EU 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 leaves the EU.

20. If the UK were to leave the EU without a deal, the UK would be outside 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.[3]

21. 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 (and EEA states) largely as it does other third (non-EEA) 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, and has worked closely with the financial services regulators to analyse and determine the appropriate approach for each SI:

- 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.

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

22. 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 and with no new special arrangements in place, in the event of a 'no deal' scenario. These changes would not take effect in 29 March 2019 if, as is the government's priority, we leave the EU with a deal and enter an implementation period.

23. This general approach was already reviewed by the RPC in its assessment of the Withdrawal Bill Impact Assessment.[4]

24. HM Treasury also brought forward legislation to give the Bank of England, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) temporary transitional powers to phase in changes to firms' regulatory obligations where those obligations have changed as a result of EU exit or 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.

25. 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.

Regulatory rules and guidance

26. The financial services regulators provide a range of information and guidance to firms and consumers, including on preparing for when the UK leaves the EU.[5] 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. This will include guidance on complying with the onshored regime.

2. Alternatives to onshoring

27. 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.'[6] The policy positions presented in these SIs are the result of systematically applying the principles set out above to deficiencies in the statute book.

28. 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

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[4] 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

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

[6] 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

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.

29. Generally, fixing deficiencies does not involve different policy options. However, there are a limited number of instances where there may be more than one equally valid way of fixing a deficiency. For example, if powers are being transferred from an EU body to a UK body, there may be a choice of which body it is transferred to. Where provisions are currently EEA-wide in scope, it may be feasible to change the scope in one of two different ways so that the framework is not deficient after exit: the scope could be reduced to cover the UK only, or it could be widened to include "third countries".

30. Where this is the case, HM Treasury has made the decision on which policy approach to take with reference to the onshoring principles set out above: i.e. it has chosen the option that will best ensure a functioning regime where regulators are able to fulfil their statutory responsibilities, that will minimise disruption and promote continuity of service provision, protect UK consumers' existing rights, and protect the UK's financial stability.

3. Do nothing

31. If the EUWA came into force but these SIs were not made, 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. 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. For example, securitisations that include parties in the UK would no longer be permitted to be recognised as simple, transparent and standardised (STS) securitisations, as the EU Securitisation Regulation requires all parties in a securitisation to be located in the EU in order to be designated as STS.
- 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.
- 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.

32. These deficiencies, if not addressed, would mean that the UK legislative framework would no longer be functional. This could generate legal uncertainty for financial firms' ability to conduct business and affect the UK authorities' ability to effectively regulate and oversee the financial services sector. This could pose financial stability risks from exit, with potential wider economic impacts (such as reduction in the availability of credit or effects on interest rates) that would have a broader impact on UK businesses.

33. These SIs are laid to avoid these and other possible adverse 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.

34. As set out above, the financial services industry is highly important to the UK economy, and the cost of 'doing nothing' both to business directly, and the UK economy as a whole, 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 the UK have left the EU.

4. Choice of baseline

35. This Impact Assessment baselines against the UK statute book as it is expected to be before the UK leaves the EU 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 of regulator – not the full cost of UK regulation.

36. 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.

37. 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 the rest of the set of 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

38. This Impact Assessment primarily measures the impact on UK-based businesses of the changes to legislation resulting from these SIs. As for certain SIs the regulatory impacts stretch to EEA firms that have a branch in the UK, these firms have also been included. The Impact Assessment makes clear where figures refer to UK firms, or to UK and EEA firms.

39. 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 and the Prudential Regulation Authority and the Bank of England.

III. Assessment

1. Assumptions and limitations

40. As set out above, these SIs have been designed for a "no deal" scenario and this Impact Assessment considers them only from that point of view. If any of the legislation comes into effect at a later date following an implementation period, HM Treasury will complete new Impact Assessments considering their impact in that scenario.

41. A number of assumptions and limitations frame our analysis. First, the impacts analysed in this document are limited to those that stem directly from these 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 the regulators' rulebooks, amendments to existing EU technical standards to address deficiencies, and amendments to other related legislation – not all of which had been finalised at the time this Impact Assessment was being prepared.

42. While HM Treasury continues to engage with stakeholders including the financial services industry on the changes being made by these SIs and their impact, 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. This means it has not been possible to discuss the impact of the full package of changes with firms as this Impact Assessment was being produced, and has therefore not been possible to produce a monetised estimate of their full impact at this stage.

43. There are complex interdependencies between these SIs and the changes they make. For example, firms entering into a Temporary Permissions Regime for inbound EEA passporting firms may become subject to the PRA rules, and may 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.[7]

44. 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 what changes to IT systems are required.

45. Secondly, since these SIs are designed only for a "no deal" scenario, the practical impact of these SIs on affected businesses will be significantly influenced by wider factors and, for example, decisions made by the UK and EU in the event that this scenario materialises. Different scenarios and responses could change how firms must respond to the changes made by these SIs.

46. Finally, HM Treasury has brought forward legislation 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.

[7] EU-derived technical standards are a type of EU legislation that sets out the technical details of how requirements set in the parent legislation are to be met.

47. For these reasons, in many instances it has not been possible to quantify costs with precision or by estimation. Where this is the case, an explanation has been provided as to why it has not been possible at this stage.

48. Given these limitations, HM Treasury recognises that this Impact Assessment is not able to fully quantify the potential impact of these SIs on industry. It undertakes that, if the UK were to leave the EU without a deal and therefore these SIs did come into effect in March 2019, it will at the appropriate time complete further analysis considering all of the relevant SIs as a package, once some of the limitations described above are no longer relevant. This would also allow for further stakeholder engagement.

49. A number of these SIs contain temporary transitional arrangements that are designed to allow firms to adapt to the changes made by the UK leaving the EU in a smooth way, rather than facing an immediate change at the point of exit. The SIs specify the length of these temporary arrangements, and in many cases, allow HM Treasury to extend these temporary arrangements if necessary.

50. Given this, we have considered what the appropriate appraisal period is for these SIs. However, only particular parts of these SIs are temporary: each of them also contains provision with indefinite effect and this forms the majority of the content. For this reason, we have concluded that the standard 10-year appraisal period is appropriate.

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

2. Benefits to business

52. The purpose of these SIs (when taken together with the rest of the FS onshoring SIs, and subsequent changes to FS regulator rules and associated legislation) is 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 where no deal is agreed. They also take action to avoid businesses facing a regulatory cliff-edge.

53. The Impact Assessment for the EUWA set out that the impact of not proceeding with this legislation would be that the UK statute book would no longer function correctly, and this would cause widespread and severe confusion for business, government and wider society.

54. Without these SIs, financial services firms would face much greater costs, and far greater uncertainty. UK legislation would be defective; this means 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 stopping certain activities, to seek costly legal advice on their responsibilities due to the legal ambiguities that would exist, or potentially expose them to legal risks that could mean they incur costs (for example if they continued an activity which they were no longer permitted to do, or failed to alert customers to important changes). As set out in section II (3) 'Do nothing', the impact of not proceeding with this legislation would be to have a defective legislative and regulatory framework for financial services when the UK leaves the EU. Therefore, the benefits of these SIs to directly affected firms, wider UK business and the UK economy as a whole, are highly significant.

55. In addition to the general benefit to firms from a functioning regulatory regime, these SIs put in place provisions which will be of specific benefit to firms, as they act to smooth the transition to the post-EU regulatory regime, reducing or eliminating cliff-edge risks, and costs to firms. These benefits are detailed by SI in section IV below.

3. Costs to business

56. The costs incurred by businesses as a result of these SIs are set out in the categories below. 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 costs incurred at this point should be mainly familiarisation costs.

Familiarisation costs

57. 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. On the whole, none of the SIs present substantial familiarisation costs. These should be one-off costs as the regulations introduced will not require ongoing updating or monitoring for changes from business.

58. As detailed in the limitations above, HM Treasury continues to engage regularly with the financial services industry on the changes being made by these SIs and their impact. This engagement, along with the publication of SIs in draft alongside explanatory policy notes, will help to mitigate the costs of disseminating regulatory updates to the impacted parties, by giving industry an understanding of the approach that has been taken, and how that will impact on their business.

59. 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 to address deficiencies there will be limited information that needs to be disseminated beyond the businesses' internal EU Exit compliance and legal teams.

60. The familiarisation costs below are therefore not intended to cover any wider costs of disseminating information throughout the business (where necessary), or costs of further discussions with legal advisers following the initial legal advice. They also do not include the costs of implementing changes to business processes following familiarisation. Such costs will be dependent on the nature of the firm in question, and the types of activities they undertake, and it has not been possible for HM Treasury to undertake the level of engagement with firms required to estimate such costs in the time available.

61. Our methodology for quantifying familiarisation costs is presented in the Annex A. Given the complex interdependencies between the whole package of financial services EU Exit SIs (covered in this and other impact assessments) and the changes they make, it is likely that firms would have to seek legal advice on multiple SIs.

Table 1. Quantified Familiarisation costs by SI

SI title	Familiarisation cost per firm (£) (2 significant figures)	Total familiarisation cost to all impacted firms (3) (2 significant figures)
Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019	340	550,000
Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019	400	56,000
Payment Accounts (Amendment) (EU Exit) Regulations 2019	85	9,300
Securitisation (Amendment) (EU Exit) Regulations 2019	450	Unable to quantify

Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019	440	Unable to quantify

Other business costs

62. 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).

63. Unless specified below, these SIs do not give the regulators the power to charge additional fees, however, any firm that is UK authorised will be subject to regulator fees by virtue of that authorisation. Under FSMA, the regulators can adjust these fees to meet their funding needs, details of which are published in their yearly annual reports.

64. It has not been possible to quantify these costs, as these SIs need to be considered alongside all other financial services SIs made under the EUWA, consequential amendments to the regulators' rulebooks, amendments to existing EU technical standards to address deficiencies, and amendments to other related legislation – not all of which had been finalised at the time this Impact Assessment was being prepared.

65. 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, these were not considered suitable proxies and have therefore not been used here.

4. Impacts on the public sector

66. Besides business, the financial services regulators are the other key group impacted by these SIs, along with HM Treasury itself. Where the functioning of the regulatory regime relies on functions currently carried out by EU bodies (the European Commission and the European Supervisory Authorities), these functions will need to be transferred to an equivalent UK body (HM Treasury or the UK financial services regulators).

67. In most cases, the UK regulators are currently responsible for supervising UK regulated firms, so they will not need to take on entirely new regulatory regimes. However, the regulators will need to take on new functions, and make changes to their operations, resulting in costs. An example of this would be transferring responsibility for determining the discount rates (usually updated on a monthly basis) that insurance firms must use to value their liabilities from the European Insurance and Occupational Pensions Authority (EIOPA) to the PRA, so that discount rates reflect market conditions and ensure insurance liabilities are correctly valued.

68. Where 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, and the requirements the UK domestic framework, including the Better Regulation framework, places on regulators in relation to consultation and impact analysis, providing certainty and continuity for firms.

69. Where changes to the regulators' rulebooks, or to EU technical standards, are required as a result of leaving the EU, the regulators intend to consult on these changes wherever possible.

70. HM Treasury will also need to take on responsibilities for functions currently being carried out by the European Commission. For example, HM Treasury will take on the function of making equivalence determinations - determining whether a third country's regulatory and supervisory regime is equivalent to the UK's corresponding framework, providing a certain level of market access, or preferential regulatory treatment to the third country being assessed. Where these SIs transfer functions to HM Treasury, these functions will be exercised through legislation, following the usual Parliamentary procedures for secondary legislation, unless otherwise specified below.

5. Indirect impacts

71. 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.

6. Post-Implementation Review

72. As set out above, this secondary legislation is being made under the EU (Withdrawal) Act, and follows the approach taken by the Act. As set out in the Impact Assessment on the EU Withdrawal Bill, the Act disapplies the requirement for post-implementation reviews of the statutory instruments that are brought forward under the Act, given the unique set of circumstances. As set out in that IA, these SIs make corrections to existing laws, meaning any repeal or modification could leave the statute book deficient. In addition, the regulations are being made under a power that will cease to exist after two years and therefore the power would not be available to make any changes following a review.

73. This does not remove the general need to review and improve legislation, which HM Treasury remains committed to doing in due course and where appropriate; however, the need for, timing and nature of any such review would be dependent on the circumstances in which the UK leaves the EU.

74. These SIs are specifically intended to prepare for the possibility of the UK leaving the EU without a deal on 29 March 2019. HM Treasury recognises that at some point following that, there would need to be decisions about how financial services legislation is reviewed and updated in the future. That would be likely to include a review of the effectiveness of the existing financial services framework as introduced by these SIs.

IV. Assessment by SI

1. Summary table

75. The table below summarises the types of costs that we have identified firms will face as a result of these SIs. Where a type of cost is not indicated for a particular SI, it is because HM Treasury is of the view that costs of those type will not arise as a result of the SI.

76. The types of cost considered are:
    - **Familiarisation costs** – impacted businesses will need to familiarise themselves with the legislation, in order to determine whether they need to make further changes as a result of the SI;
    - **Transition costs** – impact businesses will incur one-off transitional costs in order to comply with this legislation, e.g. costs of submitting a one-off notification to the UK regulator;
    - **Changes to IT systems** – impacted businesses will need make changes to IT systems in order to comply with this legislation;

- **Changes to business processes** – impacted businesses will need to amend back office processes in order to comply with a new requirement caused by the legislation;
- **Changes to reporting requirements** – impacted businesses required to provide additional information to UK regulators as a consequence of this legislation;
- **Capital requirements changes** – the legislation changes the capital requirements for impacted businesses;
- **Other costs** – as described below for the SI in question.

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
Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019	X						X
Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019	X				X[8]		
Payment Accounts (Amendment) (EU Exit) Regulations 2019	X			X			X
Securitisation (Amendment) (EU Exit) Regulations 2019	X	X	X		X	X	
Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019	X[9]						

[8] In the event an equivalence decision is made on a third country jurisdiction, and the Bank of England recognises a third country CSD, they would be expected to comply with the reporting requirements created by this SI (further information in the relevant section below).

[9] The reporting requirements under the EU Transparency of Securities Financing regime is not currently in force. The impact of these requirements will be covered in the Impact Assessment prepared alongside future legislation bringing the reporting requirement into force (further detail in the relevant section below).

2. Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019

Background: the regulatory regime.

77. The Credit Institutions (Reorganisation and Winding Up) Directive[10] and Title IV of the Solvency II Directive (2009/138/EC)[11] (the Directives) establish EEA-wide frameworks for the reorganisation and winding up of EEA credit institutions and insurers in the event of their insolvency.

78. Under the Directives, the administrative or judicial authorities of the home Member State are granted exclusive jurisdiction for the reorganisation and winding up of institutions (which they have authorised) and their branches across the EEA, and any action they take is automatically recognised throughout the EEA. This means that the failed firm is treated as a single entity across the EEA by the home state's reorganisation measure or during its winding up proceedings.

79. The Directives also ensure that EEA creditors are notified, maintain their rights and ability to lodge a claim in another EEA state and are protected from discrimination based on their place of residence or the nature of their claims. Additionally, the Directives set out which law applies to certain rights and contracts. They also set out requirements for the co-operation and sharing of information between EEA competent authorities.

80. The Directives were transposed into UK law in the Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/1045), and the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998).

81. **Size of sector.** This SI will impact credit institutions, insurers and the association of underwriters known as Lloyd's. However, it will only directly affect firms that enter insolvency, reorganisation or winding up proceedings. It is not possible to estimate how many financial sector firms with EU business may become insolvent in future and therefore how many firms may be affected by this SI. There are, however, some 1,300 active PRA/FCA authorised credit institutions in the UK.[12] The Insurers (Reorganisation and Winding up) Regulations 2004 cover the same population of firms as the Solvency II Regulations (284 firms).[13]

Interdependencies with other financial services EU Exit SIs

82. Firms affected by this SI will also be affected by the Solvency II (Amendment) (EU Exit) Regulations 2019, as the Insurance Undertakings Reorganisation and Winding Up Regulations brought into effect parts of the Solvency II Directive (2009/138/EC)).

83. This SI is also related to the Bank Recovery and Resolution and Miscellaneous Provision (Amendment) (EU Exit) Regulations 2018. These regulations fix deficiencies in legislation relating to the Bank Recovery and Resolution Directive (BRRD), which establishes a common approach within the EU to the recovery

[10] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.
[11] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Text with EEA relevance)
[12] Credit Institution (CSV).csv as downloaded from the Financial Services Register: https://register.fca.org.uk/SHPo_registerdownload?file=CreditInstitutions. Of 2,556 total firms, 1,307 are authorised
[13] Firm numbers provided by the PRA.

and resolution of banks, investment firms and group companies. The Credit Institutions (Reorganisation and Winding Up) Directive, meanwhile, establishes that resolution actions taken by EU authorities are automatically recognised across the EU.

84. Firms affected by this SI may also be affected by other financial services EU Exit SIs, depending on the activities they undertake.

Deficiencies this SI remedies

85. This SI amends the Credit Institutions (Reorganisation and Winding up) Regulations 2004, the Insurers (Reorganisation and Winding up) Regulations 2004, and the Insurers (Lloyds) Winding-up Regulations 2005, to ensure that HM Treasury's modifications of general insolvency law for financial sector firms still operate effectively once the UK leaves the EU. This SI also contains transitional provisions for insolvency measures which are ongoing at the time of the UK's exit from the EU.

86. When the UK leaves the EU, it will no longer be included in the frameworks provided for in the Directives as it will no longer be an EEA member state. It would therefore not be appropriate to retain provisions in the UK legislation which provide for a reciprocal system between EEA member states. Therefore, this SI removes the provisions in UK law that conferred exclusive jurisdiction for, and automatic recognition of, EEA insolvencies. This will not affect the relevant UK insolvency law for UK firms or the normal tests for opening an insolvency proceeding in the UK.

87. **Removal of prohibition on UK winding up (and other related orders) of EEA firms.** Currently, the regulations prohibit UK courts from making winding-up or administration orders against EEA credit institutions. This prohibition is based on the principle of EEA states granting the home state of the institution exclusive jurisdiction, on a reciprocal basis across the EEA. This principle will not be extended to the UK after exit in a "no deal" scenario, and thus it is not appropriate to retain it in UK law. This SI therefore removes these provisions.

88. The EU winding up regime does not prohibit multiple insolvency proceedings against third country (non-EEA) firms. This means that when the UK leaves the EU, multiple insolvency proceedings could be opened against an insolvent UK insurance undertaking or credit institution with business in EU Member States. This change occurs as a result of the UK leaving the EU and so falling outside of the EU regime, not as a result of this SI, and so is outside the scope of this Impact Assessment. The effect of removing this prohibition in UK law, through this SI, is that for insolvencies which commence after exit day it will be possible for proceedings to be opened by UK courts in respect of a failed EEA firm if the normal UK jurisdictional and insolvency tests have been met. Both the UK and the EU could choose to continue a reciprocal system of mutual recognition of insolvency actions post-exit, however this would not be consistent with the "no deal" scenario this SI is designed for, which does not assume any bespoke arrangements between the UK and the EU after exit.

89. **Removal of automatic recognition.** Currently, EEA insolvency measures have effect in the UK in respect of the branches, property or debt of credit institutions, insurers, investments firms and group companies as if they were part of the general law of insolvency of the UK. This operates on a reciprocal basis across the EEA. As other EEA Member States will not extend this treatment to the UK after exit in a "no deal" scenario, it is not appropriate to retain it in UK law.

90. The impact of this will be that EEA insolvency measures would be treated the same as third country insolvency measures under UK law, meaning that there will be no prohibition against UK courts making winding-up or administration orders against a failed EEA credit institution or insurance undertaking.

91. **Removal of EEA preferential treatment.** UK legislation currently provides that certain contracts or rights within a reorganisation or winding-up proceedings should be dealt with under the law of an EEA Member State. These amount to a form of preferential treatment for EEA countries, and it is thus not appropriate to retain this after exit.

92. However, this approach will not affect the provisions that allow for any applicable law (English, EEA, or otherwise). Such applicable law provisions are being retained and not removed by this SI; these include the creditors' right to set off, regulated market transactions, (for credit institutions) repurchase agreements and netting agreements. Choosing to remove these applicable law provisions may have had an adverse impact on capital requirements for banks, and this is therefore avoided by the approach taken in the SI.

93. **Notification, publication and language requirements.** Currently, in line with the Directives, there are requirements on UK authorities to notify relevant EEA regulators when a court makes a decision, order or appointment as part of an insolvency. As the Directives will no longer apply to the UK, when the UK leaves the EU, EEA regulators would not be required to notify UK authorities in these circumstances. Therefore, these obligations on UK authorities will be removed. Instead, UK authorities will rely on the existing domestic framework for cooperation and information sharing with third countries, which allows for this on a discretionary basis.

94. Moreover, the SI removes provisions requiring the publication of arrangements and orders in the Official Journal of the European Union and the corresponding need for UK insolvency practitioners to notify the relevant EU authorities of proceedings. The general UK corporate insolvency law requirements to publish such information will not be affected by this SI. Equally, creditors can currently submit claims in a language other than English providing it is the official language of an EEA state. This provision is also being removed by this SI.

95. **Transitional provisions**. For the purpose of ensuring certainty for market participants, HM Treasury recognises that it is necessary to make provision for insolvency measures which are ongoing at the time of the UK's exit from the EU. The greatest certainty is continuation of the status quo. Thus, this SI establishes that where a credit institution, insurer, investment firm or group company is subject, on exit day, to a directive reorganisation measure or winding-up proceeding which was begun before exit day, the current law will continue to apply to that insolvency. This provides continuity and certainty for firms with regard to which legislation is appropriate.

96. However, this provision is subject to a safeguard. This is that, where a court determines that any one of three conditions is met, the status quo will not continue and so there will be no prohibition on commencing UK insolvency proceedings, or requirement to automatically recognise EEA proceedings. These three conditions are that an ongoing EEA measure or proceeding will have an adverse effect on financial stability in the UK, that UK creditors would not receive the same treatment as creditors located in the EEA, or that continuation of the status quo would be unlawful under the Human Rights Act 1998. These safeguards allow for UK insolvency proceedings to begin even whilst an EEA proceeding is ongoing at the time of Exit, provided one of the three conditions are met. However, the safeguards are necessary to protect the financial stability of the UK, prevent discrimination against UK creditors and meet the UK's obligations under Human Rights Act 1998.

97. This SI also contains safeguarding provisions in relation to an ongoing EEA-led credit institution insolvency process which protects the operation of certain financial markets. These provide that an EU insolvency officer cannot take action in the UK that is inconsistent with the protections in the UK

settlement finality and financial collateral framework. These provisions have been included as these protections are vital for ensuring the stability of UK financial markets.

98. These provisions do not apply to resolution actions which are ongoing at the time of the UK's exit from the EU. HM Treasury has made transitional provisions for such actions in the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018.[14]

Impact on firms

99. As this SI only amends legislation relating to winding up or insolvency proceedings, the changes it makes do not affect the ongoing regulatory burden on firms, aside from familiarisation costs. These familiarisation costs can furthermore be expected to primarily fall on insolvency practitioners, who will need to familiarise themselves with the changes made in this SI in order to undertake the reorganisation or winding up of a firm, rather than on going concern businesses themselves. For gone concern businesses, the changes this SI makes may add to the costs associated with a winding up or insolvency.

100. **Transitional provisions.** The transitional provisions put in place by this SI are of benefit to firms, as they provide continuity and certainty with regard to which legislation is appropriate, by providing that where a firm that is subject, on exit day, to a directive reorganisation measure or winding-up proceeding which was begun before exit day, the current law will continue to apply to that insolvency. The safeguards described above can be expected to provide a benefit to firms as they will help to safeguard UK financial stability and also protect the rights of UK creditors should they suffer material prejudice. For example, should a UK creditor be prejudiced by the decision of a EEA authority to award fewer assets to a UK creditor on the basis of their nationality, in such a circumstance a UK creditor could petition a UK court to begin a UK insolvency proceeding to deal separately with UK assets.

101. **Familiarisation costs.** Impacted firms will need to understand these changes to the regulatory environment. But for going concern businesses, as noted, these costs can be expected to be limited, with familiarisation costs falling primarily on insolvency practitioners. This will involve practitioners examining the SI and the relevant sections of legislation amended by this SI to determine how they should respond in conducting the reorganisation or winding up of a firm. We expect this will be a one-off cost.

102. **Other impacts.** As set out above, gone concern businesses undergoing winding-up or insolvency proceedings, may face higher costs as a result of this SI, due to the possibility of multiple insolvency proceedings which would increase their costs. This is due to the potential for additional legal costs owing to the possibility of multiple insolvency proceedings rather than a single unified insolvency proceeding. However, it is not necessarily the case that this will increase costs. For example, UK courts may be more experienced in winding up UK businesses than an EEA court, which may reduce legal costs. As such the overall costs in the reorganisation or winding up of a firm which arise from the changes in this SI will vary on a case by case basis.

103. As mentioned above, creditors can currently submit claims in a language other than English providing it is the official language of an EEA state, and this will be removed by this SI. This will mean that firms that would previously have submitted claims in another EEA language will incur translation costs if they wish to submit a claim in the UK. We expect this would primarily impact EEA creditors (who are out of scope of this Impact Assessment), as UK creditors will likely already be submitting claims in English. However, this will reduce costs for UK courts as documents will not need to be translated into English.

[14] Further details of this instrument can be found here: http://www.legislation.gov.uk/uksi/2018/1394/contents/made

104. The removal of the provisions requiring the publication of arrangements and orders in the Official Journal of the European Union means that the obligation on insolvency practitioners to notify the relevant EU authorities no longer applies, which will reduce the regulatory burden on UK insolvency practitioners. The general UK corporate insolvency law requirements to publish such information will not be affected by this SI.

3. Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019

Background: the regulatory regime.

105. The domestic regulatory regime for recognised investment exchanges[15], EEA market operators[16], clearing houses (including central counterparties ('CCPs')[17], and central securities depositories ('CSDs')[18] operating in, or offering services to (in the case of certain CSDs) the UK, is set out in the Financial Services and Markets Act (FSMA) 2000: Part 18, 18A and Schedule 17A, along with the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001/995 ('RRRs'), which are made under Part 18 of FSMA. Amongst other provisions, Part 18 of FSMA sets out:

- The exemptions to the general prohibition, under which recognised investment exchanges (RIEs), clearing houses, CCPs and CSDs are able to carry on a regulated activity in the UK without being authorised under FSMA;
- The recognition and supervisory powers of the relevant regulators – the Financial Conduct Authority (FCA) in respect of RIEs and the Bank of England in respect of recognised clearing houses, CCPs and CSDs;
- The regulatory framework for acquisitions of control over RIEs; and,
- The 'passporting' rights of EEA market operators in the UK and RIEs operating in EEA states.

106. The domestic regulatory regime also has separate regimes available to overseas (third country) investment exchanges. A third country investment exchange may apply to the FCA to be a Recognised Overseas Investment Exchange ('ROIE') to enable participation of the exchange in UK markets. While there is no mandated form of application to be a ROIE, the FCA look to firms to provide written evidence that they are held to requirements in their home jurisdiction which have equivalent effect to the UK regime) and pay an application fee of £50,000. In addition, a third country investment exchange which does not maintain a permanent place of business in the UK may be able to rely on the overseas persons exclusion ('OPE') to participate in UK markets, to the extent that they would otherwise be deemed to be carrying on a regulated activity in the UK.

107. Unlike third country investment exchanges, EEA market operators (as defined by EU legislation) currently rely on EEA passport rights to enable members based in the UK access to their markets, where they engage in regulated activities to do so.[19] However, if the UK leaves the EU without a deal, passport

[15] A recognised investment exchange is a UK-recognised body under Part 18 of FSMA which has been granted a recognition order by the FCA

[16] A market operator is a firm which manages and/or operates the business of a regulated market – a system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments.

[17] A clearing house is a separate, third party, entity that acts as a go-between for buyers and sellers in financial markets.

[18] Central Securities Depositories (CSDs) are financial market infrastructures (FMIs) which keep a record of who owns individual securities, such as shares or bonds. They facilitate the transfer of securities between people and companies by registering a change of ownership after a trade is agreed. CSDs also provide for the initial recording of new securities.

[19] Passporting rights for EEA market operators are currently provided for under the Markets In Financial Instruments II Directive (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU)

rights will no longer apply to EEA market operators seeking to facilitate the participation of the exchange in UK markets, and therefore EEA market operators who currently make use of passport rights may wish to use the existing third country regimes described above.

108. **Size of sector.** CCPs, CSDs, RIEs and EEA market operators are directly impacted by this SI. There are 7 FCA-recognised RIEs (and 8 ROIEs which are not impacted by this instrument) on the FCA register and some 55 firms that are EEA market operators on the European Securities and Markets Authority (ESMA) register. There is 1 UK CSD and estimated 11 Non-UK CSDs (this figure may be higher) and some 62 CCPs. CCP clearing members, clients of, and participants in CSDs, and their respective clients, and firms that use or provide services in connection with RIEs and EEA market operators (which includes investment firms, insurance firms, asset managers, pension funds, banks, etc.) are also indirectly impacted.

Interdependencies with other financial services EU Exit SIs

109. This SI is closely linked to EU legislation which is being amended by number of other EU Exit SIs, and is covered in this and previous HM Treasury Impact Assessments - the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 ('CCR'), the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 ('CSDR'), the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, the Trade Repositories (Amendment and Transitional Provision) (EU exit) Regulations 2018, the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, and the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.[20]

110. As such, the above legislation is also relevant to CCPs, CSDs, RIEs and EEA market operators, as well as CCP clearing members, clients of, and participants in CSDs, and their respective clients, and firms that use or provide services in connection with RIEs and EEA market operators. These impacts are covered in this and other Impact Assessments.

Deficiencies this SI remedies

111. This instrument addresses deficiencies in FSMA and the RRRs arising from the withdrawal of the UK from the EU, ensuring the legislation continues to operate effectively if the UK were to leave the EU without a deal. This aims to ensure that the UK domestic regulatory regime for RIEs, EEA market operators, CCPs and CSDs continues to be clearly defined after exit day in a no-deal scenario.

112. Amendments introduced through this instrument are generally technical in nature and are not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to this situation. As such, amendments introduced through this SI intend to make only technical changes to existing legislation to ensure that it continues to operate effectively once the UK leaves the EU

113. As mentioned above, the domestic law that this SI amends is closely linked to EU legislation which is being amended by a number of other financial services EU Exit SIs, covered in this and previous Treasury Impact Assessments.

114. **Removal of passport rights for EEA market operators in the UK and RIEs operating in EEA States.** The passporting system relies upon a legal framework agreed between EEA member states and

[20] European Union (Withdrawal) Act – Financial Services Statutory Instruments (I) (https://www.legislation.gov.uk/uksi/2018/1184/impacts), European Union (Withdrawal) Act – Financial Services Statutory Instruments (II) (http://www.legislation.gov.uk/uksi/2018/1403/impacts), European Union (Withdrawal) Act – Financial Services Statutory Instruments (III) (https://www.legislation.gov.uk/ukdsi/2018/9780111176214/impacts)

implemented in their domestic legislation. If the UK leaves the EU without a deal, the UK's participation in the EEA passporting system will cease and any references in UK legislation to the EEA passporting system will be deficient at the point of exit. This SI removes the section in the domestic legislation which provides the passport rights of EEA market operators in the UK and RIEs operating in EEA States. (Other financial services EU exit legislation deals with passporting legislation for other types of firm).

115. **Transfer of functions.** As a consequence of the UK exiting the EU, ESMA 'will no longer carry out functions determining whether third-country CCPs and CSDs can provide services in the UK post exit. Following from this, previous financial services EU Exit SIs transfer functions from ESMA to the UK regulators: the CSDR transferring responsibility for recognising third country CSDs, and the CCR transferring responsibility for recognising third country CCPs, to the Bank of England. As a consequence, this instrument provides the Bank of England with the appropriate supervisory powers over third country CSDs.

116. **Change of scope.** Reflecting the UK's position outside the EU, this SI amends the definition of third country CSD (currently defined as any CSD located outside the EEA) to any CSD outside the UK.

117. It also amends the Bank of England's functions relating to public records and disclosure, extending them from EEA CSDs to cover third country CSDs, in light of the Bank's new responsibility for recognising third country CSDs and the deletion of existing powers over EEA CSDs. If HM Treasury makes an equivalence decision on a third country jurisdiction and the Bank has recognised a third country CSD, this will mean that the third country CSD will be subject to FSMA part 18, meaning:

i. The Bank will be able to make rules requiring a third country CSD to give it notice of and information about certain events, as specified in those rules. Further, a third country CSD will be required to give written notice to a regulator of a change to its own rules or guidance;
ii. The Bank will be able to require a third country CSD to give reports on the CSD services it provides in the UK and related statistical information;
iii. The Bank may, on reasonably notice and at a reasonable time, inspect any branch of a third country CSD in the UK. This power is enforceable by injunction

The SI also includes a provision which moderates the effect of i and ii above, meaning that, for instance, the Bank may waive the above rules in respect of a third country CSD where it is satisfied that compliance with those rules would be unduly burdensome and the waiver would not result in undue risk.

Impact on firms

118. **Passporting rights.** EEA market operators who currently make use of passport rights, and wish to continue to offer services to UK markets, will need to either seek recognition as a ROIE or use the OPE (where relevant) – the existing third country regimes described above. EEA market operators should seek their own advice on the application of the UK regulatory framework to their circumstances. The loss of passporting rights, and the need for market operators to enter the existing UK third country regimes if they wish to continue doing business in the UK, arises as a consequence of the UK leaving the EU, not of this SI.

119. In seeking recognition as a ROIE, EEA market operators would incur costs by way of the application process – for example, firms will need to use their internal resources to submit the application details required by the FCA, and pay a fee, described above. These costs arise a result of their decision to continue operating in the UK, under the existing regime, once the UK has left the EU. This is an impact of the UK leaving the EU, and not this SI, and so is outside the scope of this Impact Assessment.

120. **Change in regulatory burden.** In the event that HM Treasury makes an equivalence decision on a third country jurisdiction and the Bank has recognised a third country CSD, under this SI and the CSDR SI, the Bank of England would have new responsibilities, including extending existing powers that relate to EEA CSDs, in relation to third country CSDs. These powers will allow the Bank to request information from a third country CSD, such as reports on services to the UK and details of its rule book and if the third country CSD has a branch in the UK undertake an inspection that is enforceable by injunction. It is difficult to quantify the costs to these firms as it will depend on type of services provided by the CSD and the action taken forward by the Bank, as this SI also allows the Bank to waive requirements where it is satisfied compliance with those rules would be unduly burdensome and the waiver would not create undue risk.

121. **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 the impact on their business, and how they should respond. We expect this will be a one-off cost.

4. Payment Accounts (Amendment) (EU Exit) Regulations 2019

Background: the regulatory regime

122. The Payment Accounts (Amendments) (EU Exit) Regulations 2019 make amendments to the Payment Accounts Regulations 2015 (PARs) which implemented the Payment Accounts Directive ('PAD')[54] in the UK. PAD had three main objectives:

- Improve the transparency and comparability of fees related to payment accounts that are used for day-to-day payment transaction;
- Facilitate switching of those accounts;
- Ensure access to payment accounts with basic features (basic bank accounts) to all consumers legally resident in the EU.

123. **Size of the sector** This SI will affect all payment service providers (PSPs) which provide payment accounts as defined in the PARs. HM Treasury estimates that this is approximately 110 firms.[55] The Payment Services Regulator (PSR) and the FCA will have regulatory responsibilities over the areas of law this SI amends.

Interdependencies with other financial services EU Exit SIs

124. Payment service providers will likely undertake a range of regulated activities, meaning they would be affected by other financial services EU Exit SIs, covered in this and other impact assessments. Which SIs will depend on the activities undertaken by the entity in question.

Deficiencies this SI remedies

125. This SI addresses deficiencies in the Payment Accounts Regulations 2015, and other related legislation (e.g. the Financial Services and Markets Act 2000 (FSMA)), that arise from the UK leaving the EU. The Payment Accounts Regulations 2015 implement the EU Payment Accounts Directive in the UK. Among other things, these regulations set requirements for the provision of payment accounts with

[54] Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features

[55] Figure taken from 2015 Impact Assessment: Implementation of the EU Payment Accounts Directive https://www.legislation.gov.uk/ukia/2015/315/pdfs/ukia_20150315_en.pdf

basic features – known as basic bank accounts in the UK. These are a specific type of payment account designed to ensure that everyone legally resident in the EU has access to basic banking services, to reduce financial and social exclusion. In the UK, it is a payment account which must be fee-free and have no overdraft facility but otherwise offers the same standard features as an average current account e.g. direct debits, cash withdrawals, online payments.

126. **Transfers of functions and regulatory responsibilities.** This SI transfers power from the European Banking Authority to the FCA to make new technical standards. Existing technical standards will become retained EU law under the EUWA. In a separate SI, the FCA has been delegated the power to amend the existing technical standards to correct deficiencies.[21]

127. Under the current regime, the FCA are also required to review a linked services list (a list of the most common services provided to customers of payment accounts in the UK, which should make use of EU standardised terminology). This SI keeps this requirement to review the list, but removed the requirement that the FCA revise the linked services list to reflect changes adopted by the EU Commission to the regulatory technical standards setting out the EU standardised terminology.

128. **Changes to requirements on firms.** This SI changes the requirements on firms which offer payment accounts, primarily with regards to what products and services they must offer their customers:

- The Payment Account Regulations (PARs) will no longer require Payment Service Providers (PSPs) to facilitate the cross-border opening of accounts but does not prevent them from continuing to do so. The size of this impact is unknown, as only firms hold information on how many cross-border accounts have been opened since the regulations came into force in 2016. Furthermore, this SI does not prevent customers from opening an account outside the UK, it only affects the steps a firm needs to take to support customers who want to switch their payment account into the EU.

- There are 9 designated providers of basic bank accounts in the UK.[22] This SI retains requirements on them to provide basic bank accounts to people resident in the UK, but makes amendments so that after exit, it will be at the providers' discretion as to whether to offer cash withdrawal or payment transactions outside the UK or in a currency other than sterling on any basic bank account (including basic bank accounts held by UK residents). The size of this impact is unknown because HM Treasury and the financial services regulators do not hold numbers on how many non-UK EU transactions are made with UK basic bank accounts. Only firms hold this information.

- Following the changes made by this SI, it will be at the discretion of UK payment account providers as to whether to continue to offer basic bank accounts to EU residents or keep existing accounts open. This is because it would not be appropriate to continue to oblige UK payment account providers to continue to offer basic bank accounts to EU residents once the UK is no longer an EU member state. This could affect EU residents who wish to open a basic bank account in the UK after exit, as UK providers may decide to stop offering this product for EU residents. It could also affect existing holders of UK basic bank accounts who are resident in the EU, as UK providers will no longer be obliged to keep these accounts open, but may choose to do so. Based on conversations with industry, HM Treasury expects this will affect very few accounts. The 9 UK designated basic bank account providers must, however, continue to offer fee-free basic bank accounts in sterling to customers who are legally resident in the UK. Basic bank

[21] The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 https://www.legislation.gov.uk/uksi/2018/1115/pdfs/uksi_20181115_en.pdf

[22] Basic bank accounts: July 2016 to June 2017 https://www.gov.uk/government/publications/basic-bank-accounts-july-2016-to-june-2017

accounts are only for individuals, not businesses – and therefore no businesses will be affected by the potential loss of a basic bank account.

- Payment accounts include current accounts, the most common form of payment account in the UK. There are around 73 million current accounts in the UK.[23] This SI will affect every provider of payment accounts which fall under the definition set out in the Payment Accounts Regulations 2015, which we estimate to be around 110 firms. 9 designated credit institutions are required to offer payment accounts with basic features. As of June 2018 (the most recent published figures), around 7.5 million payment accounts with basic features had been opened (but the majority of these had been opened prior to the Payment Accounts Regulations). Between July 2017 and June 2018 (the most recent published figures) around 820,000 basic bank accounts were opened in the UK. These figures can be found in HM Treasury's Basic Bank Account publication.[24]

Impacts on firms

129. **Changes to business processes and regulatory requirements.** Under this SI, we expect there to be a decrease of the regulatory burdens on payment account providers, as they will no longer be required to facilitate cross-border opening of payment accounts. There may also be a reduction in regulatory burden because, while the FCA will still be required to review the linked services list, the FCA will no longer be required to revise the linked services list to reflect changes adopted by the EU Commission to the regulatory technical standards setting out the EU standardised terminology.

130. For the 9 designated credit institutions who must provide payment accounts with basic features, we expect there to be a decrease of the regulatory burdens under this SI because the instrument allows for more commercial discretion in the provision of these accounts, while still preserving the obligation to offer fee-free basic bank accounts in sterling to customers legally resident in the UK.

131. Firms will incur some **other costs** in reviewing this legislation, and deciding whether to change the products they offer as a result, these costs are within scope of this Impact Assessment. If firms chose to make changes permitted by this SI, they will need to make further changes, for example, credit institutions which are required to offer basic bank accounts may need to retrain staff to familiarise them with any changes to basic bank account eligibility or product features, should they choose to make the changes permitted by this SI. They may also need to make IT systems changes, in order to identify accounts affected by changes in eligibility or product features. As these changes will be made in response to business decision by the firms in question, they are out of scope of this Impact Assessment.

132. Given that the changes permitted by this SI reduce regulatory burdens on payment service providers, the overall impact will be beneficial to firms.

133. **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 the impact on their business, and how they should respond. We expect this will be a one-off cost.

134. They will then need to consider whether and how they intend to make any changes to their business as a result of the changes made by the SI, and if so inform affected customers of the changes. However, since these changes are not required by the SI, they are not directly in scope of this Impact Assessment.

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[23] FCA Strategic Review of Retail Banking Business Models Final Report, p.5 https://www.fca.org.uk/publication/multi-firm-reviews/strategic-review-retail-banking-business-models-final-report.pdf

[24] All data quoted from Basic bank accounts: July 2017 to June 2018 https://www.gov.uk/government/publications/basic-bank-accounts-july-2017-to-june-2018

5. Securitisation (Amendment) (EU Exit) Regulations 2019

Background: the regulatory regime

135. Securitisation is the process of pooling various financial assets to form a financial instrument that can be marketed to investors. This packaging allows banks to transfer the risks of some loans to other banks or long-term investors such as insurance companies and asset managers.

136. A securitisation will typically involve three parties:

- A sponsor: a credit institution or investment firm that arranges the securitisation;
- An originator: the entity in a securitisation that owns or generates the cash flow that is securitised—for example, cash flow can include the repayments on a mortgage, which can be securitised and sold to investors who then receive the repayments instead of the originator; and
- A Securitisation Special Purpose Entity (SSPE): a special purpose vehicle established to carry out one or more securitisations.

137. Securitisation played a significant role in the global financial crisis, which created an impetus for reforms that would introduce stricter standards and make securitisations simpler and more transparent.

138. The Securitisation Regulation (Regulation (EU) 2017/2402)[25] came into force in the EU on 17 January 2018 and took effect from 1 January 2019. The Regulation consolidates various pieces of legislation related to European securitisations, imposing requirements to both creators of securitisations and to institutional investors in securitisations. The Regulation also introduces rules for issuing 'simple, transparent and standardised' (STS) securitisations, which are intended to be safer than traditional securitisations.

139. Firms are not required to issue STS securitisations, but they may choose to do so as investors can benefit from better capital treatment if they invest in STS securitisations. There is therefore an incentive to invest in this new kind of securitisation over others. Issuers wishing to obtain the STS label need to ensure that their securitisation meets the criteria set out in the Regulation and notify their regulator and the European Securities and Markets Authority using a prescribed template. As the Regulation has only been in force since January 2019, the market for STS securitisations is not yet developed.

140. Currently, for a securitisation to be eligible for STS status under the Securitisation Regulation, the sponsor, originator and SSPE for that securitisation must be located in the EU.

141. **Size of the sector**. Many firms across the UK are involved in the securitisation industry – and this number will fluctuate over time. This SI will affect financial and non-financial firms that engage in the creation of securitisations, institutional investors in securitisation, spanning many banks, investment firms and securitisation repositories.

142. The Association for Financial Markets in Europe's (AFME) Securitisation Data Report Q3 2018 set out that €53.6 billion of securitised product was issued in Europe. The AFME report also contains a breakdown of issuance by country of collateral. The AFME report estimates that the total 2017 issuance with predominantly UK collateral was €47.2bn. For Q3 2018, the estimated amount of outstanding

[25] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012

securitisation with predominantly UK collateral was €305.1bn. UK firms may also invest in or perform a role in the creation and management of securitisation which is backed by collateral from outside the UK, so this may underestimate the full extent of UK activity. See the AFME report for more details on the methodology used to calculate these figures.[26]

143. It is not possible for the regulators to put together a figure for the total number of firms affected by this Regulation. This is due to its very broad scope, capturing both regulated and unregulated firms, and due to fact that the regulation only recently came into application on the 1st January 2019. As set out above, firms can choose to designate their securitisations as STS, and not many firms have done so to date. Although the PRA receives data on the securitisation activity of firms it has authorised, there is very little reliable data available for either regulator at this early stage on the number of unregulated entities involved in securitisation.

Interdependencies with other financial services EU Exit SIs

144. As set out above, many firms are involved in the securitisation industry. These firms undertake a range of regulated activities, meaning they would be affected by other financial services EU Exit SIs, covered in this and other impact assessments. Which SIs will depend on the activities undertaken by the entity in question.

145. As this SI includes provisions that grant preferential capital treatment to holders of STS securitisations, it is related to the Capital Requirements (Amendment) (EU Exit) Regulations 2018,[27] which implements the EU Capital Requirements Regulation (CRR). This SI incorporates and amends those parts of the CRR relating to the prudential treatment of securitisations.

Deficiencies this SI remedies

146. This SI remedies several deficiencies within the EU text to ensure that the securitisation regime remains operative in once the UK has left the EU.

147. **Transitional provisions.** This SI introduces a transition period where all securitisations recognised as STS in the EU until January 2021 will continue to be recognised as STS in the UK until the securitisation's maturity. In the absence of this SI, UK firms would effectively be excluded from the STS market after exit, as the Securitisation Regulation does not contain any equivalence provisions.

148. This SI introduces a grandfathering regime for entities currently regulated by ESMA (such as securitisation repositories) that will ensure that there is no need for such entities to be re-authorised within the UK post-exit. Without this regime, ESMA-regulated entities would need to submit separate applications for authorisation in the UK, which would be a significant burden on UK firms from a cost and resourcing perspective. The details of the regime will be set out by the regulators in due course.

149. **Changes to reporting requirements and transfer of functions.** This SI will make changes to reporting requirements. A power for ESMA to submit draft regulatory technical standards is replaced with a power for the FCA to draft these technical standards. Reporting requirements where firms are obliged to report to ESMA are transferred to the FCA by this SI. Securitisation repositories will be required to register with the FCA rather than ESMA. Various other similar reporting and notification requirements are also transferred from ESMA to the FCA, or to the PRA in some cases.

[26] Association for Financial Markets in Europe (AFME) Securitisation Data Report Q3 2018 (https://www.afme.eu/globalassets/downloads/data/securitisation/2018/afme-stn-securitisation-data-report-3q-2018.pdf)

[27] The Capital Requirements (Amendment) (EU Exit) Regulations 2018 http://www.legislation.gov.uk/uksi/2018/1401/contents/made

150. **Change in geographical scope.** Firstly, this SI allows UK firms to create an STS securitisation where certain parties are located anywhere in the world, rather than relying them to be located in the EU. Specifically, asset-backed commercial paper (ABCP) securitisations—short-term investment vehicles backed by physical assets—will be eligible for STS recognition in the UK if the sponsor is located in the UK; the SSPE and/or originator can be located anywhere in the world. For non-ABCP cross-border securitisations, the sponsor and originator will need to be located in the UK for the securitisation to qualify for recognition as STS. This reflects the reality of most securitisation structures, which are cross-border, and allows a broader range of securitisations to qualify for recognition as STS, ensuring that more of the securitisation market benefits from the stricter standards introduced by the Securitisation Regulation. The requirement for the sponsor to be located in the UK in the case of ABCP securitisations, and the sponsor and originator for non-ABCP securitisations, mitigates any risk that may arise from changing the scope. These measures will facilitate the development of the post-exit UK STS market.

151. Secondly, this SI addresses the post-exit geographical scope of the definition of a securitisation's 'sponsor', and allows the bank or investment firm to delegate certain activities to a firm anywhere in the world, rather than just within the UK or EU. Currently, if the sponsor delegated day-to-day portfolio management of a securitisation, the delegated firm is defined by reference to one of three EU Directives, restricting their geographical scope to the EU. The European Commission has recognised that this is an unintended consequence of the cross-references to these Directives. A fix is being developed, although it is not expected to come into effect until after the UK leaves the EU. The SI corrects this by clarifying the geographical scope of the term "sponsor".

152. Thirdly, after exit any ESMA-regulated securitisation repositories will no longer be regulated for the purposes of the UK's domestic regime. Therefore, this SI puts a process in place that ensures that ESMA-regulated securitisation repositories will not need to be re-authorised within the UK post-exit, avoiding any cliff-edge impacts that might arise from the loss of recognition on exit. The mechanism by which this authorisation process will work is currently being considered by the FCA.

153. Finally, certain exemptions provided to securitisations whose underlying exposures are guaranteed by EU bodies, such as EU National Promotional Banks and EU central governments, will be amended to apply only to UK bodies after exit. This will ensure that after exit, the EU will be treated in a way that is consistent with the treatment of other third countries.

Impact on firms

154. **Transitional arrangements.** The transitional arrangements described above will benefit firms. The grandfathering arrangements will mean that ESMA-regulated entities will not need to be re-authorised within the UK post-exit.

155. In addition, the two-year transition period during which the FCA will recognise securitisations designated as STS in the EU as STS in the UK until the securitisation's maturity, will benefit firms because most of the market for STS securitisations is expected to be concentrated in the EU. Without the benefit of preferential regulatory treatment for STS securitisations originated in the EU, UK firms would therefore be excluded from a large part of the market for STS securitisations. Collectively, these measures will provide continuity for firms and will avoid introducing obstacles to the development of a market for STS securitisations in the UK.

156. As a result of the changes in geographical scope introduced by the SI, cross-border securitisations will be recognised as STS where the special purpose entity (SSPE) and, in certain cases, also where the originator is located outside the UK, in contrast to the default position which would have been to only recognise securitisations as STS if all relevant parties were located in the UK. This provides significant

benefit to industry as there are a number of securitisations issued or sponsored by UK banks where the SSPE is located in Ireland or Luxembourg.

157. Dependent on how the FCA decides to administer these transitional regimes, there may be some costs to firms of participating in the regimes (for example, FCA fees). There will also be a cost to firms of adjusting to the new regime once the transitional provisions end, however, this cost arises because of the UK leaving the EU, not because of this SI, and so is out of scope of this Impact Assessment.

158. **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 the impact on their business, and how they should respond. This will be a one-off cost and affected firms are likely to have carried out a significant part of the work already, given that the EU Securitisation Regulation has been in effect since 1 January 2019 and firms will already have familiarised themselves with this new legislation.

159. **Changes to reporting requirements.** As set out above, this SI makes changes to reporting requirements for firms. This will involve an increase in the regulatory burden in the case of firms that are required to report to both the ESMA and the FCA or PRA (this should not be the case for securitisations where all parties are located in the UK). To minimise this additional burden, this SI keeps the reporting requirements the same, meaning firms would be reporting the same data on very similar templates, but to two different authorities. The precise format of the templates will be set out by the FCA in due course. There are likely to be some IT costs associated with making systems changes to facilitate reporting to the FCA after exit, albeit the same information is being reported, in the same format.

6. Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019

Background: regulatory regime

160. Securities financing transactions (SFTs) are any transactions where securities are used to borrow cash, or vice versa, which includes repurchase agreements (repos), securities lending activities, and sell/buy-back transactions. SFT markets were not covered by other legislation before 2015, and there are ongoing concerns that SFTs allow the build-up of leverage, pro-cyclicality and interconnectedness in the financial markets.

161. The EU Transparency of Securities Financing Transactions and of Reuse Regulation (SFTR)[28] was introduced to enhance the transparency of securities financing markets and thus of the financial system following the financial crisis. The SFTR implemented recommendations from the Financial Stability Board (FSB) who identified the potential risks posed by SFTs.

162. The SFTR creates an EU framework that increases the transparency of SFTs by requiring all SFTs, except those concluded with central banks, to be reported to central databases known as Trade Repositories (TRs). TRs are institutions that centrally collect and maintain records of over-the-counter derivatives transactions. UK TRs currently provide most reporting services within the EU. The UK currently has the largest market share for reporting services with five of the eight registered EU TRs, including the largest (both in the EU and globally), Depository Trust & Clearing Corporation. SFTR also requires information on the use of SFTs by investment funds to be disclosed to investors in the regular reports and pre-investment documents issued by the funds. Furthermore, SFTR also sets minimum

[28] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012

transparency conditions to be met when collateral is reused, such as disclosure of the risks and the obligation to acquire prior content.

163. The requirement for firms to report transactions to TRs under Article 4(1) of the SFTR is not currently in force, and will not be in force at the point at which the UK leaves the EU in March 2019. Amendments related to this requirement therefore fall outside the scope of the powers under the European Union (Withdrawal) Act. This requirement is therefore not covered in this SI and is not covered in this Impact Assessment. The Financial Services (Implementation of Legislation) Bill, currently before Parliament, provides the powers necessary to bring this requirement into effect through future secondary legislation.[29]

164. **Size of sector.** This SI will affect TRs and the clients of TRs. There are eight TRs in the EU. TRs are currently regulated by ESMA, meaning that UK regulators do not have direct access to information relating their clients, including their number, and so the total numbers of firms affected.

Interdependencies with other financial services EU Exit SIs

165. This SI is related to the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018, which amends the European Market Infrastructure Regulation (EMIR), the EU regulation which sets rules for TRs. Firms affected by this SI will also be affected by the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.

Deficiencies this SI remedies

166. This SI makes the necessary amendments to the SFTR to ensure that it remains operable in the UK after exit. This regulation acts to manage the risks posed by securities financing transactions, by creating a framework under which details of transactions can be reported to trade repositories, and information around risks associated with reuse of collateral pledged can be disclosed to investors.

167. This SI will ensure that UK TRs are bound by the same transparency requirements as EU TRs after exit, ensuring that we deliver certainty to firms and TRs operating in the UK.

168. **Treatment of branches**: Under the EU SFTR, branches of UK firms in the EU and vice versa would be able to report to a single TR based in either the EU27 or the UK. As a consequence of the UK leaving the EU, this SI transfers the reporting function from EU27 TRs to UK TRs. UK branches of EU firms will therefore be required to report to both EU TRs and UK TRs. However, HM Treasury's analysis shows that this should not have a significant effect on firms' business, as the format and content of reports should be largely the same across the UK and EU27.

169. **Transfer of functions: The power to amend the list of entities that are exempt from the reporting** requirements under SFTRs transferred from the European Commission to HM Treasury by this SI, in line with the general approach to the transfer of functions. This SI also transfers ESMA's functions relating to the requirements for registering TRs to the FCA. Before the Article 4(1) reporting requirement comes into force, the primary impact of the changes in this SI will be on the regulators.

170. **Changes to reporting requirements:** The reporting requirements under the SFTR are not currently in effect. When the UK leaves the EU, and once the reporting requirement in Article 4(1) of the SFTR comes into effect, branches of UK firms in the EU, and vice versa, will have to report the details of their SFTs to both UK and EU TRs, thereby creating a dual reporting burden on firms. This additional burden is not

[29] Financial Services (Implementation of Legislation) Bill [HL] 2017-19, https://services.parliament.uk/bills/2017-19/financialservicesimplementationoflegislation.html

expected to be significant as firms would be reporting the same data on the same templates but to two separate TRs. However, the requirement to report to both is likely to involve some additional IT costs to establish those reporting lines.

171. This SI amends legislation setting out the reporting requirements firms will have to comply with once Article 4(1) of the SFTR comes into effect, however, it does not switch on this reporting requirement. This Impact Assessment therefore does not cover the impact on firms of complying with these reporting requirements, or any changes they may need to make to prepare for the reporting requirements coming into force. These impacts will be covered in the Impact Assessment prepared alongside future legislation bringing the reporting requirement into force.

Impact on firms

172. **Familiarisation costs** This SI will impact any financial entities that carry out Securities Financing Transactions (SFTs), including banks, brokers, funds, insurance companies, pension funds, other financing companies and non-financial companies. 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 the impact on their business, and how they should respond. This will be a one-off cost and should not involve any costs associated with changes to IT systems and business processes that firms would not have had to incur under the EU SFTR in any event.

173. As set out above, impacts on firms arising from the reporting requirement under SFTR will be dealt with in the in the Impact Assessment prepared alongside future legislation bringing the reporting requirement into force.

V. Small and Micro Business Assessment (SaMBA)

174. 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 but maintain them. Equally, they do not place new requirements on Small and Micro Businesses (SMBs), beyond those changes required to fix deficiencies arising from the UK's exit from the EU, in line with powers in the EUWA.

175. As the intention of these SIs is to prepare a workable regime for financial services firms, exempting SMBs would leave small and micro businesses disadvantaged when compared to larger businesses, as the regulations they would be subject to would not have been amended to reflect the UK's position outside of the EU and would therefore continue to be deficient. This would cause significant disruption to SMBs.

176. 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. The Government has also published a series of information for firms and customers on banking, insurance and other financial services if there's no Brexit deal.

1. Information for firms, including SMBs

177. The government's Technical Notice on Banking, Insurance and Other Financial Services, published on 23 August 2018[30], provided information for personal and business customers of financial services firms and funds, and financial services firms, funds and financial market infrastructure with information about the impact of the UK leaving the EU without a deal, and the government's approach to ensuring that the UK has a functioning financial services regulatory framework in any scenario.

178. HM Treasury has published the SIs covered in this Impact Assessment in draft, in order to provide Parliament, firms and other stakeholders with further details on our approach to onshoring financial services legislation. These publications[31] are accompanied by explanatory information, setting out the key changes made by SI.

179. The financial services regulators provide a range of information and guidance to firms, an example of which is the FCA's guidance for firms on preparing for Brexit.[32] The regulators will continue to provide information and 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. Subject to circumstances in which the UK leaves the EU, this will include guidance on complying with the onshored regime.

2. Impact of individual SIs on SMBs

180. The below table outlines whether Small and Micro Businesses (SMB) are directly in scope of these SIs, and, where that is the case, provides some further information on the provisions made for SMBs in

[30] Banking, insurance and other financial services if there's no Brexit deal, 23 August 2018, https://www.gov.uk/government/publications/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal/banking-insurance-and-other-financial-services-if-theres-no-brexit-deal

[31] https://www.gov.uk/government/collections/financial-services-legislation-under-the-eu-withdrawal-act

[32] FCA, 'Preparing your firm for Brexit' (https://www.fca.org.uk/firms/preparing-for-brexit)

the regulations these SIs amend. In many cases, HM Treasury, the FCA and Bank of England/PRA do not have access to data which would allow us to determine the number of SMBs affected on an individual SI basis, in particular, data on number of employees. Due to the nature of the activities undertaken by the firms affected, other data, such as turnover or balance sheet data, does not provide a reasonable proxy (for example, a fund may meet the headcount definition of SMB, but would not fall within other thresholds due to the volume of assets under management). Where these figures are available for numbers of SMBs, or previous analysis is available, this is detailed below.

Table 2. Impact on SMBs

SI title	Applicable to small (inc. micro) businesses?
Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019	Yes
Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019	Yes
Payment Accounts (Amendment) (EU Exit) Regulations 2019	Yes
Securitisation (Amendment) (EU Exit) Regulations 2019	Yes
Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019	Yes

Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019

181. This legislation applies to activities that are undertaken by small and micro businesses. While no deposit-taking banks or building societies in the UK are likely to meet the definition of a small or micro business, there may be investment firms covered by this SI which qualify as a small or micro businesses. It is not possible to estimate how many financial sector firms with EU business may become insolvent in future and therefore how many small and micro businesses may be affected by this SI. In total there are, however, some 1,300 active PRA/FCA authorised credit institutions in the UK that could potentially be in scope of this SI[33]. The Insurers (Reorganisation and Winding up) Regulations 2004 covers the same population of firms as the Solvency II Regulations (284 firms).

182. This SI implements amendments to domestic UK law that would otherwise no longer operate effectively once the UK has left the EU, in order to help smooth the transition for all businesses participating in the UK's financial markets, irrespective of their size. It amends legislation relating to winding up or insolvency proceedings, and so the changes it makes do not affect the ongoing regulatory burden on small businesses, aside from familiarisation costs. The primary impact will be on firms undergoing winding up or insolvency proceedings, where the changes this SI make may add to the costs associated with a winding up or insolvency.

[33] Credit Institution (CSV).csv as downloaded from the Financial Services Register: https://register.fca.org.uk/SHPo_registerdownload?file=CreditInstitutions. Of 2,556 total firms, 1,307 are authorised.

Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019

183. It is possible that some securities settlement and clearing participants, investment firms that participate in trading activity on trading venues, or the issuers of securities themselves, may be small businesses. However, the Regulations primarily affect large firms that operate trading venues, CCPs and CSDs.

184. The instrument implements amendments to domestic UK law that would otherwise no longer operate effectively once the UK has left the EU, and in order to help smooth the transition for all businesses participating in the UK's financial markets, irrespective of their size. This instrument is therefore aimed at minimising the impact of these regulatory changes on all firms, including small businesses.

Payment Accounts (Amendment) (EU Exit) Regulations 2019

185. The legislation applies to activities that are undertaken by small and micro businesses, if they provide payment accounts and are currently in scope of the Payment Accounts Regulations 2015. However, this SI is making very few changes to the existing regulations and, where it is making changes, it is reducing regulatory burdens, for example, by removing the requirement to facilitate the cross-border opening of accounts, and so the impact on small businesses will be minimal. An Impact Assessment was published in 2015 concerning the implementation of the EU Payment Accounts Directive[34]. This Impact Assessment estimated that more than 1,153 banks, building societies, authorised payment institutions and small payment institutions operated in the UK at that time, but did not specify how many of these qualify as small or micro businesses.

Securitisation (Amendment) (EU Exit) Regulations 2019

186. The legislation applies to activities undertaken by small and micro businesses. The EU's Securitisation Regulation does not provide any basis for excluding small and micro businesses from regulation. Exempting smaller firms from the Securitisation Regulation, or providing them with preferential treatment, would undermine the aims of the Regulation, to support stability and transparency in the financial system. The intention of this SI is to ensure that the Securitisation regime continues as intended when the UK leaves the EU, and therefore it will minimise disruption for all firms, including small and micro businesses.

Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019

187. The EU's Transparency of Securities Financing Transactions and of Reuse Regulation (SFTR) does not provide any basis for excluding small and micro businesses from regulation. Exempting smaller firms from the SFTR would hinder the effectiveness of the legislation, and run the risk of regulatory arbitrage based on firm size. The intention of this SI is to ensure that the SFTR regime continues as intended when the UK leaves the EU, and is therefore aimed at minimising disruption for all firms, including small and micro businesses. Although the main reporting obligation in the SFTR does not form part of this SI, other requirements (for example the obligation to keep records of SFTs that have been concluded, modified or terminated) do form part of this SI, and would apply to small and micro businesses carrying out such transactions.

[34] Impact Assessment: Implementation of the EU Payment Accounts Directive https://www.legislation.gov.uk/ukia/2015/315/pdfs/ukia_20150315_en.pdf

A. Annex A

Familiarisation Costs

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

$$\boldsymbol{Familiarisation\ cost\ of\ SI\ for\ 1\ firm} = \frac{N^o\ of\ words\ in\ SI}{words\ read\ per\ minute} \times \frac{1}{60} \times hourly\ wage\ rate$$

$$\boldsymbol{Familiarisation\ cost\ of\ SI\ for\ all\ firms} = \frac{N^o\ of\ words\ in\ SI}{words\ read\ per\ minute} \times \frac{1}{60} \times hourly\ wage\ rate \times N^o of\ businesses$$

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 the financial 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, 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.[35]

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. It is assumed that one professional per business is reading the SI and disseminating legal advice to firms' internal EU exit compliance and legal teams, and that this work will be billed to the firm on a per-minute 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.

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

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.

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	

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)

Monetised Familiarisation Costs by SI:

SI	Number of words in SI (rounded up to nearest 100)	Words read per minute	Number of businesses affected[36]	Familiarisation cost per firm (£) (2 significant figures)	Total familiarisation cost to all impacted firms (£) (2 significant figures)
Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019	6,300	100	1600*	340	550,000
Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019	7,300	100	approx. 140^	400	56,000
Payment Accounts (Amendment) (EU Exit) Regulations 2018	1,600	100	110*	85	9,300
Securitisation (Amendment) (EU Exit) Regulations 2019	11,000	100	Unknown[37]	570	Unable to quantify
Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019	8,100	100	Unknown - 8 Trade Repositories, plus the clients of trade repositories[38]	440	Unable to quantify

[36] ^Information provided by the Bank of England, FCA and PRA, *HM Treasury estimates.

[37] It is not possible for the regulators to put together a figure for the total number of firms affected by this regulation. This is due to its relative newness (the regulation came into application on 1 January 2019) and its very broad scope, capturing both regulated and unregulated firms. Further explanation, and information on the size of the sector, is provided in section IV(5) Securitisation (Amendment) (EU Exit) Regulations 2019.

[38] As TRs are currently regulated by ESMA, the UK regulators do not have direct access to information relating to clients of trade repositories, and so cannot provide an estimate of the number of firms affected.

B. Annex B – Summary of SI provisions which come into force pre-exit

As set out in section I (2), a small number of provisions in these SIs come into effect before 29 March 2019. These are provisions which allow the regulators to make the necessary preparations, but they are also specifically designed to prepare for a "no deal" scenario. The table below summarises these provisions.

SI	Pre-exit provisions
The Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019	Minor and technical amendments to ensure cross-references to other legislation work effectively
The Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019	Minor and technical amendments to ensure cross-references to other legislation work effectively
The Payment Accounts (Amendment) (EU Exit) Regulations 2019	None
The Securitisation (Amendment) (EU Exit) Regulations 2019	None
The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019	None