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Guidance

# Banking, insurance and other financial services if there's no Brexit deal

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This publication is available at 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

A scenario in which the UK leaves the EU without agreement (a 'no deal' scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome.

Negotiations are progressing well and both we and the EU continue to work hard to seek a positive deal. However, it's our duty as a responsible government to prepare for all eventualities, including 'no deal', until we can be certain of the outcome of those negotiations.

For two years, the government has been implementing a significant programme of work to ensure the UK will be ready from day 1 in all scenarios, including a potential 'no deal' outcome in March 2019.

It has always been the case that as we get nearer to March 2019, preparations for a no deal scenario would have to be accelerated. Such an acceleration does not reflect an increased likelihood of a 'no deal' outcome. Rather it is about ensuring our plans are in place in the unlikely scenario that they need to be relied upon.

This series of technical notices sets out information to allow businesses and citizens to understand what they would need to do in a 'no deal' scenario, so they can make informed plans and preparations.

This guidance is part of that series.

Also included is an overarching framing notice (https://www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario) explaining the government's overarching approach to preparing the UK for this outcome in order to minimise disruption and ensure a smooth and orderly exit in all scenarios.

We are working with the devolved administrations on technical notices and we will continue to do so as plans develop.

## Purpose

The purpose of this notice is to provide stakeholders (including 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 we have a functioning financial services regulatory framework in any scenario.

## Before 29 March 2019

The majority of the UK's financial services legislation currently derives from EU law.

Financial services is a highly regulated sector, and the EU internal market for financial services is highly integrated, underpinned by common rules and standards, and extensive supervisory cooperation between regulatory authorities at an EU and member state level. Firms, financial market infrastructures, and funds authorised in any European Economic Area (EEA) country can carry out many activities in any other EEA country through a process known as "passporting", as a direct result of their EU authorisation, or via similar arrangements. This means that if these entities are authorised in one member state, they can provide services to customers in other member states, without requiring authorisation or supervision from the local regulator.

Some types of financial services entities operating in the UK are currently supervised by EU agencies. For example, credit rating agencies (CRAs) and trade repositories (TRs) established in the UK are currently authorised and regulated by the European Securities and Markets Authority (ESMA).

## After 29 March 2019 if there's 'no deal'

The European Union (Withdrawal) Act 2018 transfers EU law, including that relating to Financial Services, to the UK statute book on exit day. It also gives Ministers powers to amend the law to ensure that there is a fully functioning financial services regulatory framework at the point of exit.

When the UK leaves the EU, it will be outside of the EU's framework for financial services regulation. In a 'no deal' scenario, UK firms' position in relation to the EU would be determined by the relevant member state rules and any applicable EU rules that apply to third countries (countries outside of the EEA) at that time.

The UK will also, in general, default to treating EEA states and EEA firms largely as it does other third countries and their firms. However, the government has confirmed that there will be instances where we diverge from this approach in order to ensure that a functioning legislative regime is in place, to minimise disruption and avoid material unintended consequences for the continuity of financial services provision, to protect the existing rights of UK consumers, or to ensure financial stability.

One key example of this is the government's commitment to introduce a Temporary Permissions Regime (TPR) that will allow EEA firms currently passporting into the UK to continue operating in the UK for up to three years after exit, while they apply for full authorisation from UK regulators. The government has published in draft the legislation that will deliver the TPR (https://www.gov.uk/government/publications/temporary-permissions-regime-for-firms) and the financial regulators, the Financial Conduct Authority (FCA) has published its approach to implementing the TPR (https://www.fca.org.uk/markets/eu-withdrawal/temporary-permissions-regime) and the Prudential Regulation Authority (PRA) has also set out its expectations for the TPR (https://www.bankofengland.co.uk/news/2018/july/temporary-permissions-and-recognition-regimes). Similar temporary regimes will be provided for EEA electronic money and payment institutions, registered account information service providers, and EEA funds that are marketed into the UK.

The government has also committed to legislation alongside this, if necessary, to ensure that contractual obligations (such as under insurance contracts) between EEA firms and UK-based customers that are not covered by the temporary permissions regime can continue to be met.

The government has already laid draft secondary legislation that will establish a temporary recognition regime (TRR) for central counterparties (CCPs). This regime will allow non-UK CCPs to continue to provide clearing services to UK firms for a period of up to three years while those CCPs apply for recognition in the UK. The Bank of England has published further details on the approach to recognising non-UK CCPs (https://www.bankofengland.co.uk/news/2017/december/approach-to-authorisation-and-supervision-of-international-banks-insurers-central-counterparties).

The government will also be bringing forward legislation to deliver transitional arrangements for:

- Central Securities Depositories
- Credit Rating Agencies
- Trade Repositories
- Data Reporting Service Providers
- Systems currently under the Settlement Finality Directive
- Depositaries for authorised funds.

The government has also committed to using the powers in the European Union (Withdrawal) Act 2018 to provide the financial services regulators with a general transitional tool that will allow them to phase in post-exit regulatory requirements for firms where these are related to the UK leaving the EU, including firms in the TPR and TRR. This will give firms the necessary time to adjust, and avoid cliff-edges at the point of exit.

The government will transfer functions currently carried out by European bodies to the appropriate UK body.

Along with these unilateral actions, the government is committed to working with our European partners to identify risks arising from a no deal scenario. The Bank of England and the European Central Bank (ECB) have convened a technical working group, as announced by HM Treasury and the European Commission, focusing on risk management in the period around 29 March 2019, in the area of financial services. Where necessary, the Bank of England and the ECB will invite other relevant authorities, such as the Financial Conduct Authority, where their expertise is required to support discussions.

## Implications for individuals and business customers

How customers of financial services firms will be affected will depend on where they are based, where their firm is based and under what regulatory authorisations they operate, and the services that that they access. If action by customers is needed, then firms should communicate this to their customers at an appropriate time.

## Individual and business customers - UK-based customers of UK based providers

For UK-based customers accessing domestic services in the UK provided entirely by UK-based providers, there is unlikely to be any change as a result of exit. If UK customers will be affected by their firm's planning for exit, then this should be clearly communicated to customers by the firm.

Some EEA firms that provide deposit taking and retail banking services in the UK do so via a UK-authorised subsidiary. There will be no change to their UK authorisation as a result of the UK leaving the EU, and they will be able to continue providing services. You can find out whether your firm is authorised by the UK regulators by looking it up on the Financial Services Register (https://register.fca.org.uk/), checking correspondence from your firm, checking your firm's website, or contacting them directly.

In this scenario, UK-based payment services providers would lose direct access to central payments infrastructure – such as TARGET2 and the Single Euro Payments Area (SEPA) – meaning customers (including business using these providers to process euro payments) could face increased costs and slower processing times for Euro transactions. The government is looking to align payments legislation to maximise the likelihood of remaining a member of SEPA as a third country. This would ensure lower value Euro transactions are processed in the same amount of time as they are today.

The cost of card payments between the UK and EU will likely increase, and these cross-border payments will no longer be covered by the surcharging ban (which prevents businesses from being able to charge consumers for using a specific payment method).

## Individual and business customers - UK-based customers of EEA firms operating in the UK

For UK-based customers who access banking, insurance, investment funds and other financial services with EEA firms currently passporting into the UK, the temporary permissions regimes will enable these firms to continue to provide those services to UK customers for up to three years after exit. This will allow time for these firms to apply for authorisation to continue operating in the UK. If they receive authorisation covering the full scope of the services that they currently provide, then they will be able to continue to provide services as before.

The UK's Financial Services Compensation Scheme (FSCS) protects customers of UK-authorised firms who have eligible products in the case of firm failures, including some products with EEA firms. The regulators will consult on arrangements for continuing this coverage this autumn.

### Individual and business customers - EEA customers (including UK citizens living abroad) of UK firms operating in the EEA

By contrast, in the absence of action from the EU, EEA-based customers of UK firms currently passporting into the EEA, including UK citizens living in the EEA, may lose the ability to access existing lending and deposit services, insurance contracts (such as a life insurance contracts and annuities) due to UK firms losing their rights to passport into the EEA, affecting the ability of their EEA customers to continue accessing their services. This could impact these firms' ability to continue to service their existing products.

For example, the UK is a major centre for investment banking in Europe, with UK investment banks providing investment services and funding through capital markets to business clients across the EU. In the absence of EU action, EEA clients will no longer be able to use the services of UK-based investment banks, and UK-based investment banks may be unable to service existing cross-border contracts.

The government has committed to putting in place unilateral action, if necessary, to resolve these issues as far as possible on the UK side. For example, the government has committed to continue to treat prospectuses that are valid in the UK before exit (including those approved by a competent authority in a different EU member state) as valid for the remainder of the 12 months from their date of approval, including where that includes a period after the UK exits the EU.

However, the UK authorities are not able through unilateral action to fully address risks to the EEA customers of UK firms currently providing services into the EEA using the financial services passport. The government is committed to working with EU partners to identify and address such risks.

Many UK financial services firms who currently passport into the EEA are taking steps to ensure that they could continue to operate after exit, for example by establishing a new EU-authorised subsidiary. This would allow the UK firm to offer new services after exit through its EEA subsidiary, and in some cases existing contracts could be transferred to the new entity.

### Financial services firms and funds

HM Treasury is continuing to engage with stakeholders as it drafts the legislation, under the EU Withdrawal Act 2018, to ensure that there is a fully functioning financial services regulatory framework at the point where the UK leaves the EU.

At this stage, firms should continue to plan on the basis that an implementation period will be in place from March 2019 to December 2020, and continue to follow guidance from the regulators.

The regulators have set out what action EEA firms and funds currently operating or marketing in the UK via an EEA passport will need to take, and will provide further details in due course.

For any firm that does not wish to continue carrying out regulated activities in the UK, or is unsuccessful in applying for authorisation, provision will be made for them to discontinue their UK regulated activities in an orderly manner.

Unless the EU acts to maintain continuity, then UK financial services firms passporting into the EEA will lose the ability to do that at the point of exit. This may have implications for their ability to meet contractual obligations with EEA-based clients, where to do so without EEA permissions would breach relevant member state rules and any applicable EU rules that apply to third countries.

The government has committed to taking unilateral action, if necessary, to resolve this issue on the UK side. However, this is not sufficient to fully address the risks, and coordinated action with the EU is necessary. An example of this is derivatives contracts between UK and EU financial firms, where permissions may be necessary from both sets of regulators to support continuity of service provision. The government is committed to working with EU partners to identify and address such risks.

Under EU legislation it is possible for fund managers to delegate portfolio management services to a third party in another country, including countries outside the EU. In relation to funds and managers authorised under the relevant EU legislation, there are requirements for cooperation between the supervisory authorities in the relevant EU member state and the non-EU country concerned. The UK authorities are ready to agree cooperation arrangements with their EU counterparts as soon as is possible, which is a technical exercise to bring the UK into line with other third countries. Unless the EU confirms it does not intend to put such arrangements in place, asset management firms can continue to plan on the basis that the delegation model will continue.

## Financial Market Infrastructure (FMI)

There will be no need for UK-based clearing members (and for example UK-based clients of UK clearing members) using UK central counterparties (CCPs) to take any action as a result of EU exit.

To ensure that there will be no significant impact for UK-based users of non-UK CCPs (including EEA CCPs) as a result of EU exit, the government has provided for a temporary regime that will enable non-UK CCPs to continue to provide services to the UK for a period of up to three years. To enter into the temporary regime, non-UK CCPs will simply have to notify the Bank of England before Exit that they would like to continue to providing clearing services in the UK. The Bank of England will provide further detail on this in due course. However, without EU action, EEA clearing members and trading venues will no longer be able to use UK CCPs to provide their clearing services. In addition, EEA customers could no longer meet the requirement to centrally clear for some products that are in scope of the clearing obligation by clearing through UK CCPs, such as interest rate swaps.

The UK's Central Securities Depository (CSD) currently provides services to both the UK and Irish markets. For customers settling UK securities at the UK CSD there will be no change as a result of exit. If no action is taken by the EU authorities and EU countries, EU securities may no longer be able to be directly settled in the UK.

To ensure that there is no significant impact on UK customers of non-UK CSDs, including those within the EU, the government is bringing forward legislation that will allow these CSDs to benefit from transitional provisions. These CSDs will be able to continue to provide services to the UK until both equivalence and recognition decisions are made. Further details on this regime are expected to be provided by HM Treasury and the Bank of England in September 2018.

There will be no need to take any action for FMIs that are already designated on Exit day under the UK Settlement Finality Regulations (SFR). Their designation in respect to UK insolvency will carry on.

When the UK leaves the EU, it will no longer be a part of the EU Settlement Finality Directive (SFD) framework which allows designated Financial Market Infrastructures (FMIs) to benefit from protections from insolvency actions. The government has announced that it intends to bring forward legislation to continue protections granted by the SFR which implement the SFD. This legislation would allow designations of financial market infrastructure

(FMIs) that are outside of the UK and give powers to the Bank of England to designate these FMIs. This legislation will also provide for a temporary regime that would enable certain non-UK FMIs to continue to benefit from UK protections currently provided for by the EU Settlement Finality Directive.

Without EU action to designate UK FMIs, EU settlement finality protection for UK FMIs will cease to be in place. This will mean that EU customers will present higher risks to these FMIs and may no longer be able to access their services.

Without action from the EU, when the UK leaves the EU, UK trading venues would no longer qualify as EU trading venues. This means that, under their national law, EEA firms may not be able to be members of UK venues. UK venues will also not be eligible venues for EEA firms to execute certain equity and derivatives trades. This may prevent EEA firms from being able to trade in certain derivatives, where there is no alternative venue available in the EU. This would reduce market liquidity in the UK and EU.

EU market operators that currently passport into the UK do not have to be recognised by the FCA in order to have UK firms participate in their markets. However, EU market operators who undertake regulated activities in the UK should seek recognition as a Recognised Overseas Investment Exchange. In addition, UK-based firms may also no longer be able to undertake certain equity and derivatives trades on EEA trading venues. However, alternative UK and international venues exist, and would be available for UK market participants.

The government intends to give the FCA powers to authorise and regulate both UK and non-UK Credit Rating Agencies (CRAs) and Trade Repositories (TRs) after exit. The government intends to grant powers to the FCA to allow UK CRAs and TRs to convert their existing EU authorisation into a UK authorisation, so UK customers of both UK CRAs and TRs that convert will not have to take any action.

If no action is taken by the EU, EEA firms will no longer be able to access these UK firms.

Unless the EU acts by endorsing or finding UK-based CRAs equivalent, the ratings of UK-based CRAs will no longer be able to be used in the EU for regulatory purposes when the UK exits the EU.

The government is legislating to bring in a temporary regime in order to minimise the impact on UK customers of both EU CRAs and TRs. Further details of the regimes for TRs and CRAs are expected to be provided by HM Treasury in September 2018.

## Data sharing

The government will publish a technical notice on transfers of personal data between the UK and the EU. Organisations that receive or transfer personal data between the UK and the EU (including financial institutions) should refer to this document for further information on preparing for the UK leaving the EU without a deal .

## More information

The Treasury has published details on its approach to financial services legislation under the EU (Withdrawal) Act 2018 (https://www.gov.uk/government/collections/financial-services-legislation-under-the-eu-withdrawal-act). Draft legislation and policy notes can also be found here, along with links to legislation that has been laid before Parliament.

The FCA has published guidance for firms on preparing for the UK's exit from the EU (https://www.fca.org.uk/firms/preparing-for-brexit).

The Bank of England has published a document setting out its approach to financial services legislation under the European Union (Withdrawal) Act 2018 (https://www.bankofengland.co.uk/news/2018/june/boes-approach-to-financial-services-legislation-under-the-eu-withdrawal-act).

The FCA has published information about the Temporary Permissions Regime (https://www.fca.org.uk/markets/eu-withdrawal/temporary-permissions-regime), including what action firms should take now.

The PRA has published information about the Temporary Permissions and Temporary Recognition Regimes (https://www.bankofengland.co.uk/news/2018/july/temporary-permissions-and-recognition-regimes), including what action firms or FMIs should take now.

This technical notice will be updated as needed.

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

It is part of the government's ongoing programme of planning for all possible outcomes. We expect to negotiate a successful deal with the EU.