Title: Miscellaneous Amendments) (EU Exit) Regulations 2022)	De minimis assessment
SI (Statutory Instrument) No: Click here to enter text.	**Date: 28/06/2022**
Other departments or agencies: Click here to enter text.	**Type of regulation: Domestic**
Contact for enquiries: **William Geeson (William.geeson@hmtreasury.gov.uk**	**Date measure comes into force:**
Cost of Preferred (or more likely) Option £133,500 (rounded to 2 significant figures)	**Equivalent Annual Net Direct Cost to Business per year** £26,700 (rounded to 2 significant figures (EANDCB in 2019 prices)

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

This instrument is being made in order to fix deficiencies in the Central Counterparties (Amendment, etc., and Transitional Provision (EU Exit) Regulations 2018 (SI 2018/1184) (the "TRR Regulations"), which is one of the statutory instruments that amended the European Market Infrastructure Regulation No 648/2012 ("EU EMIR") into UK law**;** retained Regulation 1060/2009 on Credit Rating Agencies ("the CRAR"), the principal regulation governing the regulation of credit rating agencies in the UK; and the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, which is one of the statutory instruments that impacted the application of the Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR); the Payment Services Regulations 2017 (PSR 2017), which transposed the Second Payment Services Directive (PSD2) (EU) 2015/2366 into UK law; Regulation (EU) 2017/2402 (the 'Securitisation Regulation'), which laid down a general framework for securitisation and created a specific framework for simple, transparent and standardised securitisation.

<u>Amendments relating to the Payment Services Regulations</u>

Under the EU Withdrawal Act, EU law that had previously applied across the EEA was imported into UK statute with small modifications to reflect the UK's jurisdiction. As part of this, references in the Payment Services Regulations 2017 (PSR 2017) to "close links" – closely-linked persons to applicant firms – were intended to be amended to refer to persons outside the UK's jurisdiction (in place of outside the EEA), reflecting the UK's position outside the European single market. As part of the authorisation or registration process of an applicant, the FCA needs to verify that the 'close link' does not impede its ability to supervise and enforce the payment services regime.

Under Article 14(8)(b) of PSR 2017, the conditions of registration require an applicant small payment institution to demonstrate there is no such impediment; the legislation refers to such persons as being those who are subject to legal, regulatory or administrative provisions of a jurisdiction that is "not an EEA state". The amendment would refer instead to the UK, and would align with a corresponding provision where a change has already been made to refer to persons outside the UK's jurisdiction, in Article 6(9) of the legislation, as well as similar provisions under the Electronic Money Regulations 2011.

Under Article 13 of PSR 2017, applicant firms are in any event required to provide all information necessary for the FCA to assess an application. The FCA already has a power to require firms to provide any information as reasonably necessary for the assessment. It is therefore likely that, in practice, the FCA may already be requesting the information required under this amendment. This amendment would therefore clarify firms' legal duty to declare 'close links' outside the UK, and remedy an inconsistency and inefficiency in retained EU law. It is also the appropriate policy outcome, to ensure that the FCA is satisfied in relation to persons outside the UK's jurisdictional reach.

Amendments relating to the Temporary Recognition Regime

The TRR Regulations established a temporary recognition regime ("TRR") for overseas central counterparties (CCPs), allowing them to continue to provide services, activities and classes of financial instrument ("products") in the UK whilst their applications for full recognition are being assessed. Section 17(5) of the TRR Regulations sets out the restriction on the products that overseas CCPs can offer whilst in the TRR. This restriction was put in place to avoid overseas CCPs being able to change or amend the products that they provide in the UK without going through the full procedure for recognition under UK law. However, before exit, the UK onshored "EMIR 2.2" into UK law, and therefore the limitation on offering new products will in practice apply for much longer than was envisaged when the TRR regulations were made in 2018. This may undermine the UK's aim of having an open and fair regime for overseas CCPs, and could lead to competitive distortion in the market.

Amendments to the Credit Rating Agencies Regulation (CRAR)

When the UK left the European Union, the regulatory framework for Credit Rating Agencies (CRAs) was brought into the UK statute book. As part of this, provisions in the EU Credit Rating Agency Regulation were deleted and replaced by equivalent provisions within the UK's domestic framework (such as the Financial Services and Markets Act 2000). However, in the case of provisions dealing with sharing information between the FCA and other regulatory authorities, these amendments left some legislative ambiguity. This SI seeks to address this, by strengthening and clarifying the legal gateway which enables the FCA to share information with the other regulatory authorities.

Amendments relating to securitisations

This instrument will help bridge a gap until a permanent framework for designating equivalent jurisdictions with regard to securitisation regimes is in effect and an assessment of the EU can be undertaken under it.

Securitisation is the process of pooling various financial exposures (such as mortgages, car loans, or consumer loans) to create a financial instrument that can be marketed to investors. These financial instruments are 'tranched', which means that they carry different levels of risk and return to suit the appetite of different investors. This process allows lenders (such as banks) to transfer the risks of loans or other assets to other banks or investors (such as insurance companies or asset managers). This process can help free up lenders' balance sheets to allow for further lending to the economy.

The Securitisation Regulation (EU) 2017/2402 (the 'EU Securitisation Regulation') outlined general rules for securitisation, including transparency and due diligence requirements. It also created a framework for designating specific securitisations as STS (Simple, Transparent, and Standardised).

STS securitisations are designed to make it easier for investors to understand and assess the risks of a securitisation investment by excluding more complex features. The UK STS framework is in line with international standards for Simple, Transparent, and Comparable securitisation, set by the Basel Committee on Banking Supervision and International Organization of Securities Commissions.

Some firms who invest in securitisations (in particular banks, building societies, investment firms and insurance firms) are subject to prudential regulation. Prudential regulation seeks to ensure that financial institutions have adequate financial resources and risk management processes so they can continue to provide vital services to the real economy throughout economic and financial cycles. Banks, building societies, and PRA-designated investment firms are subject to prudential requirements in the Capital Requirements Regulation and relevant PRA rules (these will be referred to as 'CRR firms'), and some insurance firms are subject to prudential requirements under the Solvency II regime (these will be referred to as 'Solvency II firms'). These two regimes require firms to hold capital against their exposures, including exposures to securitisations, dependent on the risk attached to them.

CRR firms and Solvency II firms who invest in STS securitisations can benefit from preferential capital treatment for these investments, compared to investing in non-STS securitisations. Preferential treatment means they can be eligible for lower capital requirements compared to other securitisations, reflecting their adherence to simple, transparent, and standardised criteria.

To be considered STS under the EU Securitisation Regulation, all parties involved in a securitisation – the originator, sponsor, and Securitisation Special Purpose Entity (SSPE) – must be located within the EU.

The Securitisation (Amendment) (EU Exit) Regulations 2019 No. 660 ('the Securitisation Exit SI') made changes to ensure that, following EU Exit, in order for a securitisation to be designated as STS, the originator[1] and sponsor[2] (or for Asset-Backed Commercial Paper (ABCP) securitisations,[3] just the sponsor) of a securitisation must be established in the UK. In addition, the Securitisation Exit SI made provision for certain STS securitisations designated under the EU Securitisation Regulation (with the originator and sponsor in the EU) before 31 December 2022 to be recognised as STS in the UK for the lifetime of the securitisation.

The Explanatory Memorandum for the Securitisation Exit SI noted that the government took this approach while it intended to develop a more permanent solution.[4] As a next step, a framework to assess and recognise STS equivalent non-UK securitisations has been introduced to Parliament in the Financial Services and Markets Bill. This framework would allow HM Treasury to make regulations designating a country or territory equivalent in relation to specified description of securitisations.

This instrument will extend the transitional period by allowing certain EU STS securitisations issued between 31 December 2022 until 31 December 2024 to be recognised as STS in the UK for the life of the securitisation. This will help bridge the gap until a permanent framework for designating equivalent jurisdictions is in effect and an assessment of the EU can be undertaken under it.

Amendments relating to the FCA's Temporary Transitional Power

The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (2019 Regulations) provide a power (the Temporary Transitional Power, or TTP) for the FCA to modify obligations imposed on persons where the nature of the obligation has been altered by the exercise of section 8 of the EUWA, up until 31 December 2022. One of the ways the FCA has used its TTP is to modify the UK's versions of the Share Trading Obligation (STO) and Derivatives Trading Obligation (DTO). These obligations require investment firms and certain counterparties, respectively, to ensure that the trades they undertake in shares admitted to trading and certain classes of derivatives take place on UK regulated trading venues, or third-country trading venues benefitting from an equivalence decision in respect of the STO or DTO.

[1] The entity which originates the loans being securitised or purchases a third party's loans to be securitised.
[2] A credit institution or investment firm, which is not an originator, and establishes and manages certain types of securitisations.
[3] A type of short-term securitisation, where the securities issued have an original maturity of one year or less.
[4] Available at: https://www.legislation.gov.uk/uksi/2019/660/pdfs/uksiem_20190660_en.pdf.

The EU also have an STO and DTO. In the absence of the UK and EU granting each other mutual equivalence the FCA are using their TTP to limit the overlap between the UK and EU's trading obligations and mitigate disruption for UK firms, so that UK firms can continue to trade EU shares where they can get the best price for investors, and trade derivatives with EU clients in line with the DTO if those clients do not have arrangements in place to execute trades on a venue that has been recognised as equivalent by both the UK and EU. This instrument extends the period during which the FCA may give transitional directions modifying the STO and the DTO, and the length of such transitional directions, including of the existing directions, is extended up to the end of 2024.

2. What are the policy objectives and the intended effects?

Amendments to the FCA's conditions for declaring 'close links'

This legislation intends to amend the PSR 2017 to apply the UK's geographical boundary to Article 14(8)(b), in relation to the FCA's conditions regarding 'close links', and ensure greater policy consistency and coherence.

Amendments relating to the Temporary Recognition Regime

HM Treasury is making this instrument to permit overseas CCPs that are in the TRR to offer services, activities or classes of financial instrument ("products") that the overseas CCPs are permitted to offer in the country in which they are established, provided that they have notified the Bank of England of their intention to offer such products in the UK.

Amendments to the Credit Rating Agencies Regulation

The intended outcome of this legislation is to allow the FCA to share essential information with the Bank/PRA and other third country regulatory authorities under a clear, strengthened gateway. This measure does not represent a change in the government's policy approach, which is that the FCA should be able to share information obtained under the CRAR with the other regulatory authorities in line with its statutory objectives.

Amendments relating to securitisations

This legislation intends to maintain increased choice for UK investors who want to invest in certain EU STS securitisations. This will be done by extending the existing capital treatment for investment in EU STS securitisations, for securitisations issued until 31 December 2024. This should support the growth of the STS securitisation market, both in the UK and internationally. It will also re-affirm the UK's commitment to a stable and resilient securitisation framework which conforms to international standards.

Amendments relating to the FCA's Temporary Transitional Power

The intended outcome of this legislation is to allow the FCA to continue to use its TTP to modify the DTO and STO until 31 December 2024. This will help firms continue to access the most liquid markets, get the best outcomes for investors and help reduce liquidity fragmentation. It will also prevent firms from having to temporarily make operational changes ahead of the permanent changes to the STO and DTO being implemented via the FSM Bill, subject to parliamentary approval.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

Amendments relating to the FCA's conditions for declaring 'close links'

Do nothing: Doing nothing would mean that applicant firms would not have a specified legal requirement to satisfy the FCA about closely-linked persons outside the UK's jurisdiction. Although the FCA has powers to request any information from firms as reasonably necessary, and could therefore require that 'close links' within the EEA's jurisdiction be provided by the firm, small payment institutions would not be explicitly obliged to do this. As the FCA has no supervisory reach in relation to the EEA, the current legislative position is unsatisfactory from a supervision and enforcement perspective. No amendment would also be inconsistent with parallel provisions elsewhere in the payment services and e-money regulations, and the wider approach adopted to onshoring EU legislation for it to apply to the UK's own market.

Preferred option: To amend Article 14(8)(b) of PSR 2017 by substituting the reference to the EEA with the UK, such that applicant firms have a duty to satisfy the FCA about their 'close links' to persons outside the UK's jurisdiction.

<u>*Amendments relating to the Temporary Recognition Regime*</u>

Do Nothing – If the TRR regulations remain un-amended, overseas CCPs would not be able to offer new products in the UK while still in the TRR. This option is not considered appropriate, as it would perpetuate the element of competitive distortion in the market which the restriction has created. Furthermore, it also does not fit with the UK's openness objective, as it may imply the UK is restricting the effective functioning of an open market.

Preferred option – Amending the TRR regulations to permit overseas CCPs that are in the TRR to offer services, activities or classes of financial instrument ("products") that the overseas CCPs are permitted to offer in the country in which they are established, provided that they have notified the Bank of England of their intention to offer such products in the UK. This is the preferred option, as the barrier restricting overseas CCPs from offering new products in the UK is set out in the TRR Regulations and legislation is therefore needed in order to amend this requirement.

<u>*Amendments to the Credit Rating Agencies Regulation*</u>

Do Nothing – If the CRAR remains un-amended then the legal basis for the FCA to share information with the Bank/PRA and third country authorities would be ambiguous. The proposed measure will address that.

Preferred Option – The preferred option is to amend the CRAR using an SI to strengthen and clarify the information sharing gateway that the FCA has with the Bank/PRA and other third country authorities, bringing it into line with the information sharing gateways relating to the FCA's other regulatory functions. It will enable the FCA to share information on an appropriate legal basis.

<u>*Amendments relating to securitisations*</u>

Do Nothing – UK investors would stop being able to receive preferential capital treatment for investing in any EU STS securitisation issued after 31 December 2022.This would reduce the breadth of investor choice in securitisation investment, which could result in lower liquidity of STS securitisations.

Preferred Option – Extending the temporary arrangement for recognising EU STS securitisations for an additional two years, which will enable UK investors to continue to receive the same capital treatment for their investment in EU STS securitisations as for UK STS securitisations. This will apply for any new securitisations issued between 31 December 2022 and 31 December 2024. This should maintain better UK investor choice until the EU STS securitisation framework can assessed under the new framework for recognising STS-equivalent non-UK securitisations.

<u>*Amendments relating to the FCA's Temporary Transitional Power*</u>

Do Nothing – In respect of the DTO, doing nothing would mean that UK firms may be subject to disruption from conflicting obligations and would not be able to service EU clients, who, in absence of mutual recognition, are not permitted to trade on UK and EU equivalent venues. This would cause market fragmentation and liquidity to move away from the UK, potentially causing disruption for clients and increased costs for investors.

In respect of the STO, doing nothing would mean that UK firms would not be able to trade EU shares in the EU (which is the most liquid market for EU shares, in most cases). This would result in these firms facing increased costs and could negatively impact UK investors.

Preferred option – The preferred option is to extend the FCA's TTP for an additional two years. This will enable the FCA to maintain the modifications it previously made to the STO and DTO.

Alternative option – A non-regulatory option was considered; this option would be for the FCA to forbear taking regulatory action against firms who did not comply with the STO and DTO once the TTP expired on 31 December 2022. However, this solution would have left persons under the scope of the STO and DTO in technical breach of their MiFIR obligations potentially causing legal uncertainty for regulated firms. In respect of the DTO, this could result in some derivatives trading moving away from the UK.

4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £5 million a year.

Amendments relating to the FCA's conditions for declaring 'close links'

In theory there could be a greater number of disclosures in firms' applications for registration relating to their 'close links' outside the UK jurisdiction, and not the EEA. In practice, however, the FCA already has the ability to request this information through additional powers in the legislation and there is likely to be an efficiency benefit in firms knowing what information they need to provide within their application, reducing unnecessary exchange between the FCA and applicant firms and potentially delays, in order to determine this information. Because this is a such a minor and trivial change we do think it is possible to meaningfully estimate the impact on business, which are expected to be very low.

Amendments relating to the Temporary Recognition Regime

The amendments to the TRR Regulations under this instrument do not impose additional requirements or administrative burdens on businesses, other than familiarisation costs. Some overseas CCPs may choose to begin offering new products in the UK under the amended regime. However, the government expects that this will be a small number of firms and this change will only have a practical effect for a limited amount of time (i.e., up until firms' applications for permanent recognition are decided).

There are currently 48 overseas CCPs in the TRR which could benefit from this change.

Amendments *to the Credit Rating Agencies Regulation*

There will be no difference to how businesses operate as a result of this SI and therefore no additional cost to business. Credit rating agencies may wish to familiarise themselves with the legislative change, the costs of which are estimated below, however they are not required to do so as the legislation does not affect them directly.

There are 12 credit rating agencies that are currently regulated by the FCA. The CRAs will not be directly affected by this change as the proposal makes no change to information CRAs are already required to provide the FCA under the CRAR.

Amendments relating to securitisations

This measure will extend existing provisions concerning securitisation to maintain the status quo for an additional two years. As such, the amendments made by the instrument will not impose any new requirements or administrative burdens on businesses therefore causes no extra cost.

This measure relates to any firm investing or seeking to invest in EU STS securitisation, in particular: CRR firms (banks, building societies, and PRA-designated investment firms) and firms subject to Solvency II (insurance firms). There are around 380 CRR firms and 270 Solvency II firms in the UK.

Firms and the regulators (the FCA and PRA) are not expected to face familiarisation or transitional costs, as they are already attuned to the existing temporary arrangements, which are being extended by two years.

Amendments relating to the FCA's Temporary Transitional Power

This measure will extend existing provision concerning the STO and DTO to maintain the status quo for an additional two years. As such, the amendments made by the instrument will not impose any new requirements or administrative burdens on businesses.

The STO requires investment firms to ensure that the trades they undertake in shares admitted to trading, or traded on a trading venue, take place on a regulated market, MTF or SI. There are 6 recognised investment exchanges and 31 authorised UK firms operating multilateral trading facilities. RIEs may also operate MTFs, and some investment firms operate multiple MTFs.

There are approximately 3,000 investment firms that are authorised by the FCA (we have used the number of authorised firms at the time of drafting for the calculation costs). There are also currently 54 individual firms that have notified the FCA that they are acting as systematic internalisers.

For the DTO, as the scope affects both financial and certain non-financial companies, we are unable to provide a definitive estimate of the number of firms affected. However, all firms listed above for the STO will be affected where they trade or facilitate the trading of derivatives in scope of the DTO.

Table showing cost estimates for amendments relating to the Temporary Recognition Regime, to the Credit Rating Agencies Regulation, to Securitisations and to the FCA's Temporary Transitional Power

We do not anticipate costs to be high as this instrument is maintaining the status quo. We therefore expect the familiarisation costs associated with these four measures will be limited to the cost of a lawyer reading the relevant provisions. The familiarisation cost of each measure is estimated below:

Measure	Number of words in this instrument (rounded up to nearest 100)	Words read per minute	Hourly rate (£)	Number of businesses affected	Familiarisation costs per firm (£) (rounded to 2 significant figures)**	Total familiarisation costs (£) (rounded to 2 significant figures)
Temporary Recognition Regime	300	100	330	48	£33**	£1,600

Credit Rating Agencies Regulation	100	100	330	12	£33**	£400
Securitisation	100	100	330	650	£33*	£21,500
Temporary Transitional Power	300*	100	330	3,200	£33**	£110,000

* We expect that asset managers will be required to read the text as well but not all are authorised, and we therefore do not have a definitive number of those affected.

** Assuming legal advice will be billed in 6-minute increments

5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
No
b) **Disproportionate burdens on small businesses**
No
c) **Significant gross effects despite small net impacts**
No
d) **Significant wider social, environmental, financial or economic impacts**
No
e) **Significant novel or contentious elements**
No

<u>Sign-off for de minimis assessment: SCS</u>

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Policy team

Signed: ***Daniel Rusbridge*** Date: 30/06/2022

SCS of Better Regulation Unit

Signed: ***Linda Timson*** Date: 29/06/2022

<u>Sign-off for de minimis assessment: Minister</u>

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

(Name, Ministerial role)

Signed: ***John Glen MP, Economic Secretary to the Treasury*** Date: 04/07/2022