



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Rt Hon Nicky Morgan MP
Treasury Committee
House of Commons, Committee Office
London
SW1A 0AA

11 February 2019

Dear Nicky,

FINANCIAL SERVICES EU EXIT LEGISLATION FOR A NO-DEAL SCENARIO: EQUIVALENCE POWERS AND THE TEMPORARY PERMISSIONS REGIME

Thank you for your letter of 7 February following the evidence I gave to the Committee on the Financial Service and Markets Act (Amendment) (EU Exit) Regulations 2019 ("the FSMA SI"). I was pleased that the Committee acknowledged the need for need for a temporary transitional power, to be exercised by UK regulators (which is included in the FSMA SI), to help mitigate the pressures that financial services firms will face in a no-deal scenario.

In your letter you referred to a further statutory instrument which the Treasury laid on 17 January, the *Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019* ("the Equivalence SI"), which will be debated in a Delegated Legislation Committee on Tuesday 12 February.

I agree that Impact Assessments are an important part of the process of Parliament approving SIs. The Impact Assessments covering both the FSMA SI and the Equivalence SI have now been published. Both Impact Assessments received a green rating from the Regulatory Policy Committee.

You asked why the powers in the Equivalence SI are required given the regulators' powers and the temporary permissions regime. The temporary permissions regime, as implemented by the *EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018*, will allow those EEA firms that currently provide services to UK customers on the basis of an EEA financial services passport to continue operating in the UK after exit day for a limited period, while they apply for UK authorisation. This temporary regime and the process for authorising individual passporting firms are separate, and equivalence does not provide a replacement for passporting which only operates within the EEA.



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The EU equivalence framework allows the Commission to determine whether a third country has a regulatory and supervisory regime that is equivalent to the corresponding EU regime in a particular area of financial services. Equivalence decisions can reduce or eliminate overlaps in regulatory and supervisory requirements, thus decreasing the regulatory burdens on firms. Some equivalence decisions can also provide improved prudential treatment, or facilitate the exchange of services and products. In the EU, equivalence is generally determined by the Commission and it may request technical advice from the European Supervisory Authorities (ESAs) before making a determination.

The ability to grant equivalence will form a key part of the UK's financial services regime after exit day. Parliament has already approved the transfer of individual equivalence functions from the Commission to the Treasury from exit day in several SIs laid under the European Union (Withdrawal) Act 2018, granting the Treasury powers to determine whether third countries are equivalent for specific areas of the UK financial services regimes by regulations.

The Equivalence SI completes the UK's equivalence framework and fills the gap that arises on exit day, when the EU and the UK will become third countries to each other. Firstly, it fixes deficiencies in existing Commission equivalence decisions which will become retained EU law (such as replacing references to "Union" with "UK"), avoiding disruption for firms which rely on these existing decisions. Secondly, it revokes the ESA regulations, which grant advisory powers to the ESAs and are therefore no longer relevant in the UK after exit, and creates functions for the Bank of England, Prudential Regulation Authority and Financial Conduct Authority (the regulators) to provide technical advice to the Treasury.

Thirdly, the Equivalence SI contains a time-limited power for Treasury Ministers to make directions that EEA states are equivalent for the regimes listed in the SI, for up to 12 months after exit day. This power is required to allow the Treasury to make equivalence decisions for the EEA quickly and efficiently, in time for exit day, should Ministers determine that this is appropriate. The Treasury will apply the same substantive requirements as are currently applied to other third countries.

After this power expires, and also for any third country outside the EEA from exit day, the Treasury must make equivalence decisions by regulations subject to the negative resolution procedure as set out in the relevant legislation covering the regimes. The Treasury expects that the process for making third country equivalence decisions by regulations would be operable soon after exit day (the powers to make decisions by way of regulation and the obligations on the regulators do not come into force until exit day), and therefore the power in the Equivalence SI is appropriately time-limited.



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I am depositing a copy of this letter in the Libraries of the House.

with very best regards

John

JOHN GLEN —