

Brexit Considerations

Item	Why this may be an issue	Information source	Applicable to us - Y/N?	Probability: High x 3, Medium x 2 and Low x 1	Impact: High x 3, Medium x 2 and Low x 1	Probability x Impact Score	Suggested actions
People: ensuring personnel are briefed	No matter how great or otherwise the impact of Brexit is on the firm, it is suggested that the firm's personnel are briefed on the firm's conclusions as to the impact of Brexit.	Firms may wish to circulate this update and analysis once completed; and/or, refer to some of the information sources listed below as CPD reading.					See 'Information Source'.
Process: Transfers to QROPS	An overseas transfer charge upon transfer from a UK-registered scheme to a QROPS can potentially be avoided where both the QROPS and the scheme member's resident-status are within the EEA. If the UK is no longer part of the EEA, then were the scheme member still deemed to be resident in the UK at the point of transfer, then a tax charge could be incurred.	PTM101999 onwards. PTM102000 contains details of the five criteria required to avoid the overseas transfer charge.					Aside from the current QROPS transfer process, it is suggested that a) such transfers should be subject to appropriate, specialist advice; and, b) consideration is given to ensuring, prior to transfer, the residency status of the scheme member is obtained.
Process: Payment of benefits to EU residents	There are three potential issues: 1) The UK's withdrawal from the EU coincides with the implementation of regulatory EU technical standards for 'strong customer authentication and common and secure open standards of communication' (SCA-RTS) that apply to payment service providers. The FCA are currently consulting - CP18/44 - to import into the UK regulatory system, the relevant standards, with a view to plugging any regulatory gap that could exist in the event of a no-deal Brexit. 2) In the event of a UK-based bank/payment service provider being unable to operate or facilitate payments, delays in payments could ensue. (See in particular the reference to the Single Euro Payments Area (SEPA) in the gov.uk document opposite. 3) Currency fluctuations may impact on the value of the pension paid/received (although arguably, this may already be factored into exchange rates).	https://www.fca.org.uk/publications/consultation-papers/cp18-44-brexite-regulatory-technical-standards-strong-customer-authentication https://uk.reuters.com/article/uk-britain-eu-notices-finance/britons-living-in-eu-could-lose-access-to-uk-bank-services-in-no-deal-brexit-idUKKCN1L814C https://www.gov.uk/government/publications/banking-insurance-and-other-financial-services-if-theres-no-brexite-deal/banking-insurance-and-other-financial-services-if-theres-no-brexite-deal					This item is difficult to predict and clearly it is neither in the UK or EU's interest for impediments applying to cross-border bank payments and it seems that the UK authorities are working hard to ensure the cross-border payments system continues to operate unimpeded. That said, it may be worth firms: 1) Liaising with the scheme bank(s) to ascertain whether they foresee any potential issues with cross-border bank payments. 2) (If appropriate), identifying those scheme members who could be affected by any payment delays and/or currency fluctuations, and writing to inform them accordingly.

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<p>Process: monitoring EU based funds/investments or UK funds with exposure to EU counterparties</p>	<p>The Temporary Permissions Regime (TPR) announced by the FCA will ensure that EEA-based financial services firms operating in the UK under an inward-passport, will be able to continue operating in the UK (subject to their existing inbound passport arrangements), pending them obtaining direct authorisation, where required, within a stipulated time-frame. This means that EU-based funds marketed within the UK should remain largely unaffected by a 'no-deal' Brexit, at least in the short to mid-term (circa 2-3 years).</p> <p>That said, where such funds are currently classed as 'standard' investments (as per IPRU-INV 5.9.1), these should be monitored to ensure that their status remains unaltered. In essence, this is no different from any other fund/investment, however there may be heightened monitoring in the event of a no-deal Brexit. (See also the financial resource requirement later).</p> <p>The other reason this should be monitored is that whilst the TPR aims to facilitate EU firms operating in the UK on an inward-passport, the situation is less clear for UK firms who engage in cross-border activities (see also UK advisers advising EU residents later). From a funds/investment perspective, this is relevant where, for example, a UK-based fund manager takes derivative positions with EU counterparties, where two-way passporting of services is required. Whilst this will have little direct impact on scheme administrators, feasibly it could impact on the status of the underlying fund.</p>	<p>In addition to the Government 'no Brexit deal' link above, the following FCA link explains the TPR:</p> <p>https://www.fca.org.uk/brexit/temporary-permissions-regime</p>					<p>Identify EEA-based funds and monitor accordingly to ensure the fund remains authorised in the UK and that, where it is currently classed as a standard-asset that the criteria is maintained.</p> <p>As the EU withdrawal approaches, monitor the position with regards to UK firms' ability to undertake cross-border activities. It is presumed that fund managers who, for example, could be impacted by cross-border derivative positions, will take appropriate action prior to such a scenario coming to pass.</p>
<p>Customer: UK resident scheme members receiving advice from EU-based advisers</p>	<p>Accepting this is an unlikely scenario, as currently, any EEA based adviser operating in the UK should be subject to an inward-passport that appropriately covers the products being advised on. In the event of a 'no-deal' Brexit, the TPR (see above) will apply.</p> <p>Note: the TPR does not apply to Gibraltar based firms, for whom the current regulatory position is maintained - see SUP 13A.</p>	<p>See the above links.</p>					<p>As currently, check that the existing inward-passport sufficiently covers the activity undertaken by the adviser.</p>

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Customer: EU resident scheme members receiving advice from EU-based advisers	<p>This should be unaffected by Brexit on the basis that the advice and scheme member are outside the UK. Consequently, the same monitoring as now should apply in that the adviser's home-state permissions should be checked to ensure that they have the requisite regulatory permission to provide the advice and that the underlying products are also covered (on the basis that often the advice is restricted to 'insurance mediation').</p> <p>If the advice has been provided on a cross-border basis (i.e. an adviser whose home-state is France, advising a client in Italy) the regulatory status of the adviser in both countries should be checked.</p>	None, as no change to the current position.					None, as no change to the current position.
Customer: EU resident scheme members receiving advice from UK-based advisers	<p>The TPR covers EU-based advisers operating in the UK under an inbound-passport. At the time of compiling this table, the TPR had not been reciprocated by the EU in respect of UK-based advisers operating in the EU. Currently, they can do so under the passport arrangements, however in the event of a 'no-deal' Brexit, as matters stand, this outward-passport regime would cease and UK-based advisers will be unable to advise EU residents, unless alternative arrangements (to the passport) are in place. These include:</p> <ol style="list-style-type: none"> 1) The UK firm having some form of regulatory status or permission to operate under local laws (in regard to advice, our view is this is unlikely); or, 2) Regulatory exemptions, such as 'reverse solicitation' - PERG 2.9.17(2) provides a description insofar it applies to a regulated activity performed in the UK. It is important to note however that this description does not apply to other EU states, where either a different wording may apply, or it may not apply at all. 	See the Government 'no-deal' Brexit link previously.					Where advice is provided by a UK-based adviser to a scheme member, it is suggested that the basis of how the advice has been provided is fully understood.
Customer: online dispute resolution (ODR) changes	<p>The ODR applies to firms who sell goods and services online and gave consumers access to an EU-wide Alternative Dispute Resolution (ADR) service. Some firms who offer online services will have made reference to this on their website, in line with EU regulations.</p> <p>In the event of a 'no-deal' Brexit, customers who buy goods and services within the UK will no longer have access to the ADR, although access, where applicable, to services such as the Financial Ombudsman Service and the Pensions Ombudsman will remain unaffected.</p>	<p>See the relevant section in the link below:</p> <p>https://www.gov.uk/government/publications/consumer-rights-if-theres-no-brex-it-deal--2/consumer-rights-if-theres-no-brex-it-deal</p>					<p>Where reference is made within a website to the ODR and/or the ADR, this may require amendment on the basis that consumers may not be able to access the ODR platform, albeit resolution will remain unaffected within the UK.</p> <p>Firms should keep apprised of the situation as it develops both through the gov.uk links (as per this table) and https://www.tradingstandards.uk/</p>

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Commercial: Outsourcing arrangements with EU-based firms	This item is included partly in consideration of any regulated activities that may be being performed (although this is deemed unlikely for SIPP operators/scheme administrators) and partly in regard to the next two items (transfer of data and jurisdictional issues).	See the 'Contract Continuity' section in the link below: https://www.fca.org.uk/firms/preparing-for-brexit#uk-firms					Review any outsource arrangements in order to understand the jurisdiction in which the activities are conducted, particularly where these may either wholly or in part, be conducted within the EU. Where activities are preformed within the EU, to what extent will these be potentially affected? See also the two items below.
Commercial: transfer of data	The Data Protection Act 2018 incorporated the EU's General Data Protection Rules (GDPR) into UK legislation, thus making it compatible with EU-wide standards. This enabled data to freely flow between member states. To transfer data out of the EU to a 'third-country' is only allowable where there is a legal basis for doing so and subject to an 'adequacy decision' which effectively confirms that the third-country's data protection regime is of an acceptable standard. In the event of a 'no-deal' Brexit, the UK Government have confirmed that there would be no restriction on the transfer of data from the UK to the EU (on the basis that GDPR and member-state legislation is clearly compatible with UK legislation). At the time of compiling this table, the EU had not similarly reciprocated in terms of publishing an adequacy decision in respect of the UK as a 'third-country'. This does not mean that data is prevented from transferring from the EU to the UK, however in the first instance, a legal basis would need to be established (most likely, contractual obligations).	https://www.gov.uk/government/publications/data-protection-if-theres-no-brexit-deal/data-protection-if-theres-no-brexit-deal					It is suggested that firms identify their data flows (this should still be reasonably current from GDPR preparations in 2018) to establish in particular whether there are transfers of data from the EU to the UK. Where this is the case, the legal basis (or otherwise) should be established and documented.
Commercial: contracts, terms or agreements referring to EU law	Whilst our experience is that scheme administrators operate subject to UK legal jurisdictions, there may be occasions where contracts, terms or agreements are entered into with EU-based persons. Whilst at present there is a certain level of civil and commercial judicial cooperation, this would cease in the event of a 'no-deal' Brexit.	https://www.gov.uk/government/publications/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexit-deal/handling-civil-legal-cases-that-involve-eu-countries-if-theres-no-brexit-deal					Firms should satisfy themselves as to the jurisdiction that applies to contracts etc. that they have entered into. Where any such contracts etc. are subject to an EU member-state jurisdiction, then the firm may wish to seek legal advice as to the potential impact of a 'no-deal' scenario.

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Commercial: impact on financial resource requirements due to economic impact on investments	<p>There is much speculation as to the impact, or lack of impact, on the UK economy as a result of Brexit. Economic conditions could be such that more scheme members may seek to crystallise their benefits, especially in the event of requiring access to savings in the event of an economic downturn. This though is unlikely to impact significantly on scheme administrators, save for a potential outflow of funds.</p> <p>However, one aspect of an economic downturn could be the impact on the liquidity of certain funds. For example, we have seen previously that property funds have been suspended in certain adverse economic situations, This could have the impact that funds which currently meet the FCA's standard investment requirements, no longer do so.</p>	<p>Refer to the Prudential Sourcebook relevant to the firm - this is most likely to be IPRU-INV Chapter 5 or IFPRU.</p>					<p>Firms should consider stress-testing their financial resource requirements on the basis that certain investments, currently deemed standard, become non-standard.</p> <p>A suggested starting point could be property funds (on the basis these are widely held and have previously been suspended) although there may be other investments that could be considered too, such as for example, AIM-listed shares or low-grade listed corporate bonds.</p>
Commercial: firm ownership - being part of a corporate Group structure within the EU; and/or, receipt of funding from an EU based Group	<p>Whilst we are unaware of any restrictions in movements of funds between EU member-states and the UK as a 'third-country', as mentioned previously, there could be delays encountered in regard to the payment of funds.</p> <p>For EU-based businesses with operations in the UK, in practice there should be little difference on the basis that legislation such as and stemming from the Companies Act 2006 reflects EU rules and regulations. This should mean that <i>prima facie</i> UK businesses with EU-based owners/investment should see little change, on the basis that UK legalisation will prevail.</p> <p>On the other hand, for UK companies with business interests in the EU, as a third-country after the withdrawal, certain restrictions or changes may apply in regards to ownership and corporate structures. This is clearly a complex area which, other than flagging as a consideration in this table, falls outside the scope of this analysis.</p> <p>The legal jurisdiction applying to any such intra-group agreements would need to be considered as per the prior item. So too, would accounting/audit arrangements require consideration, although as with the aforementioned items, the likely impact is predicated on UK operations within the EU, rather than the other way round.</p>	<p>https://www.gov.uk/government/publications/structuring-your-business-if-theres-no-brex-it-deal-2/structuring-your-business-if-theres-no-brex-it-deal</p> <p>https://www.gov.uk/government/publications/accounting-and-audit-if-theres-no-brex-it-deal/accounting-and-audit-if-theres-no-brex-it-deal</p>					<p>Where the firm is funded by and/or part-owned by an EU-based person (natural or corporate), then whilst on the face of it, nothing really changes, both the firm and the investor/owner may wish to seek specialist advice.</p> <p>The situation is potentially more impactful and complex in the absence of a post-withdrawal transition period, where a UK firm is an investor and/or owner of an EU entity, meaning that specialist advice is essential.</p>