FPC judgement of progress against actions to mitigate the risk of disruption to end users of financial services as at 12 March 2018.

Notes: Risks are categorised as low, medium or high. The judgement reflects the underlying scale of disruption to end users and probability of that materialising, taking account of progress made in mitigating actions. Arrows reflect developments since November. A downward arrow indicates a reduction in risk. Blue text denotes news since November.

Legal frameworks

	Risk to UK	Risk to EU	
Ensure UK legal and regulatory framework is in place	↓		Much of the UK's legal and regulatory framework for financial services is derived from EU law. Directly applicable EU law will need to be brought into UK law. Changes will need to be made to the resulting legal framework to make it workable when the UK is no longer a member of the EU. The Government plans to achieve this with the EU Withdrawal Bill and related secondary legislation. The Bill continues to progress through Parliament and is now under scrutiny in the House of Lords. HM Treasury has begun drafting the secondary legislation, including the highest priority for early progress (e.g. those delivering the temporary permissions regimes).
Implementation period to allow mitigating actions by firms	↓	↓	Financial institutions will need time to complete any necessary restructuring of their operations, re-papering of contracts and obtain necessary regulatory permissions. Timely agreement on an implementation period would significantly reduce all of the risks set out below. In December, the European Council agreed that "sufficient progress" had been made in the first phase of negotiations, such that they could move on to transitional arrangements and the framework on the future relationship. Negotiations between the UK and EU are ongoing.

Preserving the continuity of outstanding cross-border contracts

	Risk to UK	Risk to EU	
Insurance contracts	↓		Insurers in the UK and the European Economic Area (EEA) may not be able to pay claims to, or receive premiums from, policyholders in the other jurisdiction. Based on latest data, this could affect around £27 billion of insurance liabilities and 10 million UK policyholders. Around £55 billion of insurance liabilities and 38 million EEA policyholders could also be affected. On 20 December 2017 the UK Government committed to legislate, if necessary, to allow EEA insurance companies to continue to service insurance policies held by UK-based customers (through a temporary permissions regime and additional legislation). EEA customers are currently reliant on their UK insurance company transferring existing contracts to legal entities located in the EU.
Derivative contracts (uncleared)	↓		UK and EEA parties may no longer have the necessary permissions to service over-the-counter (OTC) derivative contracts with parties in the other jurisdiction. Around a quarter of contracts entered into by parties in both the UK and EEA, with a notional value of £26 trillion, could be affected. The UK Government committed on 20 December to legislate, if necessary, to allow EEA counterparties to service contracts with UK entities (through a temporary permissions regime and additional legislation if required). However, the majority of contracts also require the UK counterparty to have permission from the EEA. EU authorities have not announced their intention to grant such permissions.
Derivative contracts (cleared)			Many major UK and EEA counterparties are obliged to clear contracts in certain products using central counterparties (CCPs) that are authorised or recognised under EU legislation. EEA banks and their clients currently rely heavily on CCPs based in the UK. The ECB estimates that UK CCPs clear approximately 90% of euro denominated interest rate swaps used by euro-area banks. A loss of recognition could interfere with EEA clearing members' ability to meet existing contractual obligations to the CCP. Migration of existing contracts to address this would be complex and difficult to achieve. The notional amount of outstanding cleared OTC derivative contracts that could be affected is over £70 trillion (around £27 trillion of which matures after 2019 Q1). The Bank of England is in active discussions with UK CCPs on options to address these risks.

Avoiding disruption to availability of new financial services

	Risk to UK	Risk to EU	
Clearing services	↓		In the absence of an agreement or recognition by ESMA of UK CCPs (see above), EEA banks and their clients will need new arrangements for future clearing services with other CCPs. Given their current heavy reliance on UK CCPs, this could disrupt the availability of services to EEA end-users. UK banks use EU-based CCPs for some clearing activities. The UK Government has committed to legislate regarding the recognition of non-UK CCPs so that they would continue to be able to provide clearing services to UK banks if necessary to avoid disruption.
Banking services	↓	↓	EEA businesses rely on UK-based banks for certain services. UK-incorporated banks provide around half of wholesale banking services used by EEA customers. Disruption to this would create risks to the availability of services to end users in the EEA. To continue providing these services, some UK-based banks are in the process of undertaking restructuring and obtaining necessary regulatory permissions for EU subsidiaries. There are 77 branches of EEA banks operating in the UK under the current 'passporting' regime. These provide services to both UK and EEA end users. These firms will require new regulatory permissions from the Prudential Regulation Authority (PRA) after Brexit. The PRA has announced that it intends to permit branch structures for banks that are not conducting material retail business and where sufficient supervisory cooperation and assurance on resolution exists. The UK Government has committed to legislate, if necessary, for a temporary permissions regime that would enable EEA banks to continue to operate pending authorisation should a fallback be required.
Asset management			Delegation of fund management across borders is a global practice. It is estimated that the management of around 10% of funds domiciled in non-UK EEA countries is undertaken in the UK. The management of at least an additional estimated 20% of funds domiciled in these countries is delegated to countries outside the EEA and UK. Restrictions on this delegation could require disruptive changes to asset managers' business models. Both EU and UK investors use funds domiciled in the EU. Further, asset managers require authorisation to market funds across borders. To enable funds domiciled in the EU to continue to be marketed to investors in the UK, the UK government has committed to legislating for a temporary permissions regime if necessary.
Personal data			Even with the necessary regulatory permissions, the ability of financial companies to carry out both new and existing financial services may be impaired by barriers to the cross-border flow of personal data between the UK and EEA. These barriers could disrupt firms' ability to service EEA clients from their data centres, which are typically located in the UK. This risk could be mitigated if the UK and EU were to recognise each other's data protection regimes as 'adequate'. The UK Government has indicated it is pursuing such an EU-UK agreement. Companies can also take steps to mitigate this risk by, for example, introducing new clauses into contracts that permit data transfer, but this solution may not be comprehensive or completely effective.