

*Draft Regulations laid before Parliament under paragraph 1(1) and (2) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**EXITING THE EUROPEAN UNION**

**FINANCIAL SERVICES**

**The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019**

*Made* - - - -

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*Coming into force in accordance with regulation 1*

The Treasury make these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

A draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament in accordance with paragraph 1(1) and (2) of Schedule 7 to that Act.

**PART 1**

**General**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

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(a) 2018 c. 16.

## PART 2

### Amendment of EU Regulations

#### CHAPTER 1

#### Amendment of Regulation (EU) 2016/1011

##### **Amendment of Regulation (EU) 2016/1011**

2. Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 is amended as follows.

##### **Subject-matter**

3. In Article 1 (subject-matter)—

- (a) omit “common”;
- (b) for “Union” substitute “United Kingdom”;
- (c) for “internal market” substitute “UK financial markets”.

##### **Scope**

4. In Article 2 (scope)—

- (a) in paragraph 1, for “Union” substitute “United Kingdom”;
- (b) in paragraph 2—
  - (i) in point (c), after “(CCP)” insert “as defined in Article 2(1) of Regulation (EU) No 648/2012 of 4 July 2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories”;
  - (ii) in point (d), for “listed in Section C of Annex 1 to Directive 2014/65/EU” substitute “specified in Part 1 of Schedule 2 to the Regulated Activities Order”(a);
  - (iii) in point (g)(i), for the words from “trading venue” to “2014/65/EU,” substitute “UK trading venue”.

##### **Definitions**

5.—(1) Article 3 (definitions) is amended as follows.

(2) Paragraph 1 is amended as follows.

(3) In point (10) (definition of ‘supervised contributor’), for “Union” substitute “United Kingdom”.

(4) In point (16) (definition of ‘financial instrument’)—

- (a) for “listed in Section C of Annex I to Directive 2014/65/EU” substitute “specified in Part 1 of Schedule 2 to the Regulated Activities Order”;
- (b) for the words from “trading venue”, where first occurring, to the end substitute “UK trading venue has been made, or which is traded on a UK trading venue or via a systematic internaliser as defined in Article 2(1)(12) of the Markets in Financial Instruments Regulation;”.

(5) In point (17) (definition of ‘supervised entity’)—

- (a) for points (a) and (b) substitute—

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(a) S.I. 2001/544. Part 1 of Schedule 2 was substituted by S.I. 2006/3384 and amended by S.I. 2017/488.

- “(a) a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, which is a credit institution referred to in point (a)(i) of that definition;
- (b) a UK investment firm, which means an investment firm as defined in Article 2(1A) of the Markets in Financial Instruments Regulation which has its head office in the United Kingdom;”;
- (b) in point (c), for the words from “point (1)” to the end substitute “section 417(1) of FSMA”(a);
- (c) in point (d), for the words from “point (4)” to the end substitute “section 417(1) of FSMA”(b);
- (d) in point (e)—
- (i) for “UCITS as defined in Article 1(2) of Directive 2009/65/EC” substitute “UK UCITS as defined in section 237(3) of FSMA”(c);
- (ii) for the words from “UCITS management company” to the end substitute “management company as defined in section 237(2) of FSMA”(d);
- (e) in point (f), for the words from “point (b)” to the end substitute “regulation 4 of the Alternative Investment Fund Managers Regulations 2013”(e);
- (f) after point (g) insert—
- “(ga) an occupational pension scheme as defined in section 1(1) of the Pension Schemes Act 1993;”(f);
- (g) in point (h), for the words from “purposes of” to the end substitute—
- “purposes of:
- (i) a credit agreement which, immediately before exit day, satisfied the definition of a credit agreement in Article 3(17)(h) of the EU Benchmarks Regulation; or
- (ii) a credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC read in accordance with the modifications made to that Directive by points (18A) and (18B);
- (h) for point (i) substitute—
- “(i) a non-credit institution, which means a mortgage creditor (as defined in s.423A of FSMA) that is not a credit institution (as defined in Article 4(1)(1) of Regulation (EU) No 575/2013), for the purposes of a mortgage agreement (as defined in section 423A of FSMA;”(g);
- (i) in point (j), for “point (18) of Article 4(1) of Directive 2014/65/EU” substitute “Article 2(1)(10) of the Markets in Financial Instruments Regulation”.
- (6) In point (18) (definition of ‘financial contract’)
- “(18) ‘financial contract’ means:
- (a) a credit agreement which, immediately before exit day, satisfied the definition of a credit agreement in Article 3(17)(h) of the EU Benchmarks Regulation;

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(a) 2000 c. 16. The definition of “insurance undertaking” was inserted by S.I. 2015/575 and substituted by [FSMA SI]. There are other amendments to section 417(1) which are not relevant.

(b) The definition of “reinsurance undertaking” was inserted by S.I. 2015/575 and substituted by [FSMA SI]. There are other amendments to section 417(1) which are not relevant.

(c) Section 237(3) was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012 (c.21), S.I. 2011/1613 and S.I. 2013/1388. The definition of “UK UCITS” was inserted by [CIS SI]. There are other amendments to section 237(3) which are not relevant.

(d) The definition of “management company” was substituted by [CIS SI]. There are other amendments to section 237(2) which are not relevant.

(e) S.I. 2013/1773 to which there are amendments not relevant to these Regulations.

(f) 1993 c. 48. Section 1(1) was amended by section 239 of the Pensions Act 2004 (c.35).

(g) Section 423A was inserted by [FSMA SI].

- (aa) a credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC read in accordance with the modifications made to that Directive by points (18A) and (18B);
- (b) a mortgage agreement as defined in section 423A of FSMA;”;

(7) After point (18) insert—

“(18A) For the purposes of points (17)(h)(ii) and (18)(aa), Article 2 of Directive 2008/48/EC is to be read as if:

(a) in paragraph 1—

- (i) for “Directive” there were substituted “Article”;
- (ii) after “credit agreements” there were inserted “where the act of entering into the credit agreement or exercising the lender’s rights and duties under the credit agreement is carried on in the United Kingdom”.

(b) in paragraph 2:

- (i) in the opening words, for “Directive” there were substituted “Article”;
- (ii) for points (a) and (b) there were substituted—

“(a) an agreement to which section 423A(2) of the Financial Services and Markets Act 2000 applies;”

(iii) in point (h)—

- (aa) for the words from “investment firms” to “financial instruments” there were substituted “a UK investment firm (as defined in Article 3(1)(17)(b) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014”;
- (bb) for “as defined in Article 4 of Directive 2006/48/EC” there were substituted “(as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012”;
- (cc) for “listed in Section C of Annex 1 to Directive 2014/65/EU” there were substituted “specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”;

(c) in paragraph 2a, for “Directive” there were substituted “Article”;

(d) paragraphs 3 to 6 were omitted.

(18B) For the purposes of points (17)(h)(ii) and (18)(aa), Article 3(a) of Directive 2008/48/EC is to be read as if for “transactions covered by this Directive” there were substituted “respect of a credit agreement to which Article 2 applies”.”.

(8) For point (19) (definition of ‘investment fund’) substitute—

“(19) ‘investment fund’ means:

- (a) an AIF as defined in regulation 3 of the Alternative Investment Fund Managers Regulations 2013(a);
- (b) a UK UCITS as defined in section 237(3) of FSMA;”.

(9) In point (23) (definition of ‘commodity benchmark’), for the words from “is a commodity” to the end substitute “is:

- (a) a commodity, which means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity;

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(a) S.I. 2013/1773.

- (b) not an emission allowance referred to in paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order;”.
- (10) In point (24), in point (a) of the definition of “regulated-data benchmark”—
- (a) for point (i) substitute—
- “(i) a UK trading venue, but only with reference to transaction data concerning financial instruments;
- (ia) a trading venue (as defined in Article 2(1)(16) of the Markets in Financial Instruments Regulation) in a third country if:
- (aa) the Treasury has made regulations determining that the legal and supervisory framework of the third country is equivalent in accordance with paragraph 4 of Article 28 of the Markets in Financial Instruments Regulation, or
- (bb) a decision has been adopted by the European Commission before exit day determining that the legal and supervisory framework of the third country is equivalent in accordance with paragraph 4 of Article 28 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012(a) as it had effect in the European Union immediately before exit day,
- but only with reference to transaction data concerning financial instruments;
- (ib) a regulated market (as defined in Article 2(1)(13) of the Markets in Financial Instruments Regulation) that is considered to be equivalent in accordance with:
- (aa) regulations made by the Treasury under Article 2a of Regulation (EU) No 648/2012, or
- (bb) an implementing act adopted by the European Commission before exit day under Article 2a of Regulation (EU) No 648/2012 as it had effect in the European Union immediately before exit day(b),
- but only with reference to transaction data concerning financial instruments;”;
- (b) in point (ii)—
- (i) for “point (52) of Article 4(1) of Directive 2014/65/EU” substitute “Article 2(1)(34) of the Markets in Financial Instruments Regulation”;
- (ii) for “point (53) of Article 4(1) of Directive 2014/65/EU” substitute “Article 2(1)(35) of the Markets in Financial Instruments Regulation”;
- (iii) before “trading venue” insert “UK”;
- (c) in point (iii)—
- (i) for “point (54) of Article 4(1) of Directive 2014/65/EU” substitute “Article 2(1)(36) of the Markets in Financial Instruments Regulation”;
- (ii) before “trading venue” insert “UK”;
- (d) in point (iv), for the words from “as referred to” to the end substitute “operating in an electricity market in the United Kingdom;”;
- (e) in point (v), for the words from “as referred to” to the end substitute “operating in a gas market in the United Kingdom;”;
- (f) omit point (vi);
- (g) in point (vii), for “(vi)” substitute “(v)”.
- (11) For point (25) (definition of ‘critical benchmark’) substitute—
- “(25) ‘critical benchmark’ means a benchmark listed in:

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(a) OJ L 173, 12.6.2014, p.84-148

(b) OJ L 201, 27.7.2012, p.1-59

- (i) Commission Implementing Regulation (EU) 2016/1368 of 11 August 2016 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council; or
- (ii) regulations made by the Treasury under paragraph 5 of Article A20;”.

(12) In point (27) (non-significant benchmark), for the words from “does not” to the end substitute “is not a critical benchmark or a significant benchmark”.

(13) At the end insert—

“(30) ‘competent authority’ means:

- (a) in relation to an EEA State, the authority which is designated by that State as its competent authority for the purposes of Article 40 of the EU Benchmarks Regulation; and
- (b) in relation to a third country which is not an EEA State, the supervisory authority which exercises functions equivalent to those exercised by competent authorities in EEA States in accordance with the EU Benchmarks Regulation;

(31) ‘EU Benchmarks Regulation’ means Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014(a) as it had effect in the European Union before exit day;

(32) ‘FCA register’ means the register of administrators and benchmarks established and maintained by the FCA in accordance with Article 36(1);

(33) ‘FSMA’ means the Financial Services and Markets Act 2000;

(34) ‘Markets in Financial Instruments Regulation’ means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;

(35) ‘Regulated Activities Order’ means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

(36) ‘third country’ means a country outside the United Kingdom;

(37) ‘UK trading venue’ has the meaning given in Article 2(1)(16A) of the Markets in Financial Instruments Regulation.”.

(14) In paragraph 2—

- (i) in the first subparagraph, for the words from “Commission” to “in order to” substitute “Treasury may by regulations”;
- (ii) in the second subparagraph, for “Commission” substitute “Treasury”.

(15) In paragraph 3—

- (a) in the first subparagraph—
  - (i) for the words from “Commission” to “review” substitute “Treasury may by regulations specify”;
  - (ii) for “Union” substitute “United Kingdom”;
  - (iii) omit the second sentence;
- (b) in the second subparagraph, for “Commission” substitute “Treasury”.

## **Governance and conflict of interest requirements**

6. In Article 4 (governance and conflict of interest requirements), in paragraphs 3, 4 and 5, for “relevant competent authority” substitute “FCA”.

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(a) OJ L 171, 29.6.2016, p.1-65.

### **Oversight function requirements**

- 7.—(1) Article 5 (oversight function requirements) is amended as follows.
- (2) In paragraphs 2 and 3(i), for “relevant competent authorities” substitute “FCA”.
  - (3) In paragraph 5—
    - (a) in the first subparagraph—
      - (i) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
      - (ii) the words from “the procedures regarding” to the end of the first sentence become point (a);
      - (iii) the second sentence becomes point (b);
      - (iv) in point (b), omit “In particular, ESMA shall develop”;
    - (b) in the second subparagraph—
      - (i) for “ESMA”, where it first occurs, substitute “The technical standards”;
      - (ii) before “shall take into” insert “when making the standards, the FCA”;
      - (iii) omit “ESMA draft regulatory”;
    - (c) omit the third and fourth subparagraphs.
  - (4) Omit paragraph 6.

### **Accountability framework requirements**

8. In Article 7 (accountability framework requirements), in paragraph 4, for “relevant competent authority”, each time it occurs, substitute “FCA”.

### **Outsourcing**

9. In Article 10 (outsourcing)—
- (a) in paragraph 1, for “relevant competent authority” substitute “FCA”;
  - (b) in paragraph 3—
    - (i) in point (b), for “relevant competent authorities” substitute “FCA”;
    - (ii) in point (f), for “relevant competent authority”, each time it occurs, substitute “FCA”.

### **Input data**

- 10.—(1) Article 11 (input data) is amended as follows.
- (2) In paragraph 5—
    - (a) in the first subparagraph—
      - (i) in the first sentence, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
      - (ii) in the second sentence, omit “ESMA draft regulatory”;
    - (b) in the second subparagraph, for “ESMA” substitute “The FCA”;
    - (c) omit the third and fourth subparagraphs;
  - (3) Omit paragraph 6.

### **Transparency of methodology**

- 11.—(1) Article 13 (transparency of methodology) is amended as follows.
- (2) In paragraph 3—
    - (a) in the first subparagraph—

- (i) in the first sentence, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
  - (ii) in the second sentence, for “ESMA” substitute “The FCA”;
  - (iii) in the third sentence, omit “ESMA draft regulatory”;
- (b) omit the second and third subparagraphs;
- (3) Omit paragraph 4.

### **Reporting of infringements**

**12.** In Article 14 (reporting of infringements)—

- (a) in paragraph 1, for “competent authority” substitute “FCA”;
- (b) in paragraph 2—
  - (i) in the first subparagraph, for “competent authority” substitute “FCA”;
  - (ii) omit the second subparagraph.

### **Code of conduct**

**13.**—(1) Article 15 (code of conduct) is amended as follows.

- (2) In paragraph 4, for “a relevant competent authority” substitute “the FCA”.
- (3) In paragraph 5, for “relevant competent authority”, each time it occurs, substitute “FCA”.
- (4) In paragraph 6—
  - (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
  - (b) in the second subparagraph, for “ESMA” substitute “The FCA”;
  - (c) omit the third and fourth subparagraphs.

### **Governance and control requirements for supervised contributors**

**14.**—(1) Article 16 (governance and control requirements for supervised contributors) is amended as follows.

- (2) In paragraph 4, for “relevant competent authority” substitute “FCA”.
- (3) In paragraph 5—
  - (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
  - (b) in the second subparagraph—
    - (i) in the first sentence, for “ESMA” substitute “The FCA”;
    - (ii) in the second sentence, omit “ESMA draft regulatory”;
  - (c) omit the third and fourth subparagraphs.
- (4) Omit paragraph 6.

### **Critical benchmarks: review of critical benchmarks**

**15.** Before Article 20 (critical benchmarks) insert—

*“Article A20*

#### **Critical benchmarks: review of critical benchmarks**

1. The FCA must conduct a review of critical benchmarks in accordance with paragraphs 2 to 4.
2. The review must consider:



- (a) whether an administrator located in the United Kingdom provides a benchmark that either:
    - (i) satisfies one or more of conditions (a), (b) or (c) of paragraph 1 of Article 20; or
    - (ii) satisfies only point (c)(ii) and (iii) of paragraph 1 of Article 20; and
  - (b) where a benchmark satisfies point (a)(i) or (ii) of this paragraph, whether the FCA recommends that the benchmark is recognised as critical.
3. The FCA must provide a written report to the Treasury:
- (a) setting out the result of the review; and
  - (b) making a recommendation as to whether any benchmark that satisfies point (a)(i) or (ii) of paragraph 2 should be recognised as critical.
4. The FCA must conduct the review and provide the report to the Treasury:
- (a) within the period of two years beginning with exit day; and
  - (b) thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.
5. The Treasury may by regulations specify that a benchmark is a critical benchmark where:
- (a) the benchmark is provided by an administrator located in the United Kingdom; and
  - (b) the Treasury considers that the benchmark either:
    - (i) satisfies one or more of conditions (a), (b), or (c) in paragraph 1 of Article 20; or
    - (ii) satisfies only the criteria in point (c)(ii) and (iii) in paragraph 1 of Article 20.

When considering whether to make regulations and what provision to make in those regulations, the Treasury must have regard to any report provided by the FCA under this Article.

6. The Treasury may not specify a regulated-data benchmark as a critical benchmark under paragraph 5.”.

#### **Critical benchmarks: amendments to Article 20**

- 16.**—(1) Article 20 is amended as follows.
- (2) For the heading substitute “Critical benchmarks: conditions and other matters”.
  - (3) In paragraph 1—
    - (a) for the opening words substitute “The conditions are:”;
    - (b) in point (b)—
      - (i) for “one Member State” substitute “the United Kingdom”;
      - (ii) omit “in that Member State”;
    - (c) in point (c), at (iii), for “one or more Member States” substitute “the United Kingdom”;
    - (d) omit the words from “If a benchmark meets” to the end.
  - (4) In paragraph 2—
    - (a) for the words from “competent authority” to “paragraph 1” substitute “FCA”;
    - (b) after “benchmark that” insert “does not satisfy either condition (a) or (c) of paragraph 1 but”;
    - (c) for “ESMA”, both times it occurs, substitute “the Treasury”.
  - (5) In paragraph 3—
    - (a) in the first subparagraph—
      - (i) in the opening words—

- (aa) for “competent authority”, where first occurring, substitute “FCA”;
  - (bb) for “its Member State” substitute “the United Kingdom”;
  - (cc) for “competent authority”, where second occurring, substitute “FCA”;
  - (ii) in points (a) to (c), for “Member State”, each time it occurs, substitute “United Kingdom”;
  - (b) omit the second subparagraph.
- (6) In paragraph 4, for the words from “ESMA” to the end substitute “the Treasury must determine whether the FCA’s assessment complies with the requirements of paragraph 3.”.
- (7) For paragraph 5 substitute—
- “5. The Treasury must make regulations specifying that a benchmark is critical if:
- (a) the FCA has recommended that the benchmark is recognised as critical in accordance with the procedure specified in paragraphs 2 and 3; and
  - (b) the Treasury determines that the FCA’s assessment complies with the requirements of paragraph 3.”.
- (8) Before paragraph 6 insert—
- “5A. The FCA must:
- (a) review the values in point (a) and (c)(i) of paragraph 1 (the “thresholds”) in the light of market, price and regulatory developments and the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close to the thresholds; and
  - (b) provide a written report to the Treasury setting out the results of the review and making a recommendation as to whether the thresholds should be amended.
- 5B. The FCA must conduct the review and provide the report to the Treasury:
- (a) within the period of two years beginning with exit day; and
  - (b) thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.”.

(9) In paragraph 6—

    - (a) for the opening words substitute “The Treasury may by regulations”;
    - (b) for point (b) substitute—

“(b) amend the thresholds in point (a) and (c)(i) of paragraph 1 having regard to:

    - (i) the matters referred to in point (a) of paragraph 5A; and
    - (ii) any report prepared by the FCA under paragraph 5A;”;
    - (c) in point (c), for “one or more Member States” substitute “the United Kingdom”;
    - (d) in the second subparagraph, for “Commission” substitute “Treasury”.

#### **Mandatory administration of a critical benchmark**

- 17.—(1) Article 21 (mandatory administration of a critical benchmark) is amended as follows.
- (2) In paragraph 1, in point (a), for “its competent authority” substitute “the FCA”.
  - (3) In paragraph 2—
- (a) in the first subparagraph--
- (i) in the opening words, for “the competent authority” substitute “the FCA”;
  - (ii) omit point (a);
- (b) in the second subparagraph, for “the competent authority” substitute “the FCA”.

(4) In paragraphs 3 and 4, for “the competent authority”, each time it occurs, substitute “the FCA”.

#### **Mitigation of market power of critical benchmark administrators**

**18.** In Article 22 (mitigation of market power of critical benchmark administrators), for “Union” substitute “United Kingdom”.

#### **Mandatory contribution to a critical benchmark**

**19.**—(1) Article 23 (mandatory contribution to a critical benchmark) is amended as follows.

(2) In paragraph 2, for “their competent authority” substitute “the FCA”.

(3) In paragraph 3—

- (a) in the first sentence, for “its competent authority” substitute “the FCA”;
- (b) omit the second sentence;
- (c) in the third sentence, for “its competent authority” substitute “the FCA”.

(4) In paragraph 4, for the words from “competent authority” to “Article 46, and” substitute “FCA must”.

(5) In paragraph 5, for “competent authority of the administrator” substitute “FCA”.

(6) In paragraph 6, for “competent authority” substitute “FCA”.

(7) In paragraph 7, for the words from “competent authority” to “entities,” substitute “FCA”.

(8) Omit paragraph 8.

(9) In paragraph 9—

- (a) in the opening words, for “competent authority of the administrator” substitute “FCA”;
- (b) in point (a), for “competent authority”, both times it occurs, substitute “FCA”.

(10) In paragraph 10, for “competent authority” substitute “FCA”.

(11) In paragraph 11, for “relevant competent authority” substitute “FCA”.

(12) In paragraph 12, for “its Member State” substitute “the United Kingdom”.

#### **Significant benchmarks**

**20.**—(1) Article 24 (significant benchmarks) is amended as follows.

(2) In paragraph 1—

- (a) in the opening words, for “does not fulfil any of the conditions laid down in Article 20(1)” substitute “is not a critical benchmark”;
- (b) in point (b), for “one or more Member States” substitute “the United Kingdom”.

(3) In paragraph 2—

- (a) for the words from “Commission” to “this Article”, substitute “FCA must.”;
- (b) the words from “in the light of” to the end of the first sentence become point (a);
- (c) at the beginning of point (a) insert “review the value in point (a) of paragraph 1 (“the threshold”)”;
- (d) omit the second sentence;
- (e) after point (a) insert—  
“; and

(b) provide a written report to the Treasury setting out the results of the review and making a recommendation as to whether the threshold should be amended.”.

(4) After paragraph 2 insert—

“2A. The FCA must conduct the review and provide the report to the Treasury:

- (a) within the period of two years beginning with exit day; and
- (b) thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.

2B. The Treasury may by regulations amend the threshold in point (a) of paragraph 1 having regard to:

- (i) the matters referred to in point (a)(i) and (ii) of paragraph 2; and
- (ii) any report prepared by the FCA under paragraph 2.”.

(5) In paragraph 3, for “its competent authority” substitute “the FCA”.

### **Exemptions from specific requirements for significant benchmarks**

**21.**—(1) Article 25 (exemptions from specific requirements for significant benchmarks) is amended as follows.

(2) In paragraph 2, for “the competent authority” substitute “the FCA”.

(3) In paragraph 3—

- (a) for “A competent authority” substitute “The FCA”;
- (b) for “the competent authority” substitute “the FCA”.

(4) In paragraph 4, for “the competent authority”, both times it occurs, substitute “the FCA”.

(5) In paragraphs 5 and 6, for “a competent authority” substitute “the FCA”.

(6) In paragraph 8—

- (a) in the first subparagraph, for “ESMA shall develop draft implementing” substitute “The FCA may make”;
- (b) omit the second and third subparagraphs.

(7) In paragraph 9—

- (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
- (b) omit the second and third subparagraphs.

### **Non-significant benchmarks**

**22.**—(1) Article 26 (non-significant benchmarks) is amended as follows.

(2) In paragraphs 2 and 3, for “its competent authority” substitute “the FCA”.

(3) In paragraph 4—

- (a) in the first sentence, for “relevant competent authority” substitute “FCA”;
- (b) in the second sentence—
  - (i) for “competent authority” substitute “FCA”;
  - (ii) for “Article 41” substitute “any United Kingdom legislation which was relied on by the United Kingdom before exit day to implement Article 41 of the EU Benchmarks Regulation”.

(4) In paragraph 5—

- (a) in the first subparagraph, for “ESMA shall develop draft implementing” substitute “The FCA may make”;
- (b) omit the second and third subparagraphs.

### **Benchmark statement**

23.—(1) Article 27 (benchmark statement) is amended as follows.

(2) In paragraph 1—

- (a) for “register referred to in Article 36” substitute “FCA register”;
- (b) for “Union”, both times it occurs, substitute “United Kingdom”.

(3) In paragraph 3—

- (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
- (b) in the second subparagraph, for “ESMA” substitute “The FCA”;
- (c) omit the third and fourth subparagraphs.

### **Changes to and cessation of a benchmark**

24. In Article 28 (changes to and cessation of a benchmark)—

- (a) in paragraph 1, for “Union” substitute “United Kingdom”;
- (b) in paragraph 2, for “relevant competent authority” substitute “FCA”.

### **Title V**

25. In the heading of Title V, for “Union” substitute “United Kingdom”.

### **Use of a benchmark**

26.—(1) Article 29 (use of a benchmark) is amended as follows.

(2) In paragraph 1—

- (a) for “Union”, where it first occurs, substitute “United Kingdom”;
- (b) for the words from “benchmark is provided by” substitute—

“benchmark:

- (a) is on the FCA register; or
- (b) is provided by an administrator who is on the FCA register and located in the United Kingdom.”.

(3) In paragraph 2—

- (i) for “under Directive 2003/71/EC or Directive 2009/65/EC” substitute “in accordance with rules made by the FCA under section 84 or 248 of FSMA, as those rules have effect on exit day”(a);
- (ii) for “register referred to in Article 36 of this Regulation” substitute “FCA register”.

### **Equivalence**

27.—(1) Article 30 (equivalence) is amended as follows.

(2) In paragraph 1—

- (a) in the opening words—
  - (i) for “Union” substitute “United Kingdom”;
  - (ii) for “register referred to in Article 36” substitute “FCA register”;
- (b) for point (a) substitute—

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(a) Section 84 was substituted by S.I. 2005/1433 and amended by section 16(3)(a) of the Financial Services Act 2012 (c.21) and S.I. 2012/1538. Section 248 was amended by paragraph 9(2)(b) of Part 1 of Schedule 18 to that Act.

- “(a) either:
  - (i) the Treasury has made regulations in accordance with paragraph 2 or 3 of this Article; or
  - (ii) the European Commission has adopted a decision before exit day in accordance with paragraph 2 or 3 of Article 30 of the EU Benchmarks Regulation;”;
- (c) in point (c)—
  - (i) for “ESMA” substitute “the FCA”;
  - (ii) for “Union”, both times it occurs, substitute “United Kingdom”.
- (3) In paragraphs 2 and 3—
  - (a) in the opening words, for “Commission may adopt an implementing decision stating” substitute “Treasury may by regulations specify”;
  - (b) omit the second subparagraph.
- (4) In paragraph 4—
  - (a) in the opening words—
    - (i) for “ESMA” substitute “The FCA”;
    - (ii) after “third countries” insert “, or a body representing the competent authorities of one or more third countries (a “representative body”),”;
    - (iii) after “2 or 3” insert “of this Article (on or after exit day) or paragraph 2 or 3 of Article 30 of the EU Benchmarks Regulation (before exit day)”;
  - (b) in point (a)—
    - (i) for “ESMA”, both times it occurs, substitute “FCA”;
    - (ii) before “concerned” insert “or the representative body”;
  - (c) in point (b)—
    - (i) for “ESMA” substitute “the FCA”;
    - (ii) before “deems” insert “or a representative body”.
- (5) For paragraph 5 substitute—

“5. The FCA may make technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 4 so as to ensure that the FCA is able to exercise all its supervisory powers under this Regulation.”.

#### **Withdrawal of registration of an administrator located in a third country**

- 28.**—(1) Article 31 (withdrawal of registration of an administrator located in a third country) is amended as follows.
- (2) In paragraph 1—
    - (a) in the opening words—
      - (i) for “ESMA” substitute “The FCA”;
      - (ii) for “register referred to in Article 36” substitute “FCA register”;
    - (b) in point (b), for the words from “Commission” to the end substitute “Treasury has made regulations in accordance with Article 30(2) or (3) (on or after exit day) or the Commission adopted an implementing decision in accordance with Article 30(2) or (3) of the EU Benchmarks Regulation (before exit day)”.
  - (3) In paragraph 2—
    - (a) in the opening words, for “ESMA” substitute “The FCA”;
    - (b) in point (a)—
      - (i) for “ESMA” substitute “the FCA”;
      - (ii) for “Union” substitute “United Kingdom”;

(c) in point (b), for “ESMA” substitute “the FCA”.

(4) In paragraph 3, for the words from “ESMA shall” to “delay and” substitute “The FCA”.

### **Recognition of an administrator located in a third country**

**29.**—(1) Article 32 (recognition of an administrator located in a third country) is amended as follows.

(2) In paragraph 1—

(a) for the words from “an equivalence” to “adopted” substitute “regulations are made in accordance with Article 30(2) or (3)”;

(b) for “Union” substitute “United Kingdom”;

(c) for “competent authority of its Member State of reference” substitute “FCA”.

(3) In paragraph 2, in the second subparagraph, for “competent authority of the Member State of reference” substitute “FCA”.

(4) In paragraph 3—

(a) for “its Member State of reference” substitute “the United Kingdom”;

(b) for “Union”, both times it occurs, substitute “United Kingdom”;

(c) for “competent authority of the Member State of reference” substitute “FCA”.

(5) Omit paragraph 4.

(6) In paragraph 5—

(a) in the first subparagraph—

(i) for “competent authority of its Member State of reference” substitute “FCA”;

(ii) for “satisfy the competent authority” substitute “satisfy the FCA”;

(iii) for “Union” substitute “United Kingdom”;

(b) in the second subparagraph—

(i) for “competent authority” substitute “FCA”;

(ii) for “2, 3 and 4” substitute “2 and 3”;

(c) in the third subparagraph—

(i) in the first sentence—

(aa) for “competent authority” substitute “FCA”;

(bb) for “2, 3 and 4” substitute “2 and 3”;

(ii) in point (a)—

(aa) for “competent authority of the Member State of reference” substitute “FCA”;

(bb) for “regulatory technical standards adopted” substitute “technical standards made”;

(cc) for “allows the competent authority” substitute “allows the FCA”;

(iii) in point (b), for “competent authority” substitute “FCA”.

(7) Omit paragraphs 6 and 7.

(8) In paragraph 8, for “competent authority of the Member State of reference” substitute “FCA”.

(9) In paragraph 9—

(a) in the first subparagraph—

(i) for “ESMA may develop draft regulatory” substitute “The FCA may make”;

(ii) omit the words from “and, in particular,” to the end;

(b) omit the second and third subparagraphs.

### **Endorsement of benchmarks provided in a third country**

**30.**—(1) Article 33 (endorsement of benchmarks provided in a third country) is amended as follows.

- (2) In paragraph 1—
  - (a) in the first subparagraph—
    - (i) in the opening words—
      - (aa) for “Union”, each time it occurs, substitute “United Kingdom”;
      - (bb) for “relevant competent authority” substitute “FCA”;
    - (ii) in point (a), for “its competent authority” substitute “the FCA”;
    - (iii) in point (c), for “Union” substitute “United Kingdom”;
  - (b) in the second subparagraph, for “competent authority” substitute “FCA”.
- (3) In paragraph 2, for “competent authority” substitute “FCA”.
- (4) In paragraph 3—
  - (a) for “relevant competent authority” substitute “FCA”;
  - (b) omit the second sentence.
- (5) In paragraph 6—
  - (a) for “competent authority of the endorsing administrator or other supervised entity” substitute “FCA”;
  - (b) omit “and shall inform ESMA thereof”.
- (6) In paragraph 7—
  - (a) for the words from “Commission”, where first occurring, to “measures” substitute “Treasury may make regulations”;
  - (b) for “relevant competent authorities” substitute “FCA”;
  - (c) for “Union” substitute “United Kingdom”;
  - (d) for “The Commission”, where second occurring, substitute “When determining the conditions, the Treasury”.

### **Authorisation and registration of an administrator**

**31.**—(1) Article 34 (authorisation and registration of an administrator) is amended as follows.

- (2) In paragraph 1, in the opening words—
  - (a) for “Union” substitute “United Kingdom”;
  - (b) for the words from “competent” to “located” substitute “FCA”.
- (3) In paragraphs 2 and 4, for “competent authority” substitute “FCA”.
- (4) In paragraph 5, for “relevant competent authority”, both times it occurs, substitute “FCA”.
- (5) In paragraph 6—
  - (a) in the opening words, for “relevant competent authority” substitute “FCA”;
  - (b) in the second subparagraph, for “competent authority”, both times it occurs, substitute “FCA”.
- (6) Omit paragraph 7.
- (7) In paragraph 8—
  - (a) in the first subparagraph--
    - (i) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
    - (ii) for “competent authorities” substitute “the FCA”;
  - (b) omit the second and third subparagraphs.



### **Withdrawal or suspension of authorisation or registration**

**32.**—(1) Article 35 (withdrawal or suspension of authorisation or registration) is amended as follows.

- (2) In paragraph 1, for “A competent authority” substitute “The FCA”.
- (3) In paragraph 2—
  - (a) omit the first subparagraph;
  - (b) in the second subparagraph—
    - (i) for “ESMA” substitute “The FCA”;
    - (ii) for “register provided for in Article 36” substitute “FCA register”.
- (4) in paragraph 3—
  - (i) for “delegated act adopted” substitute “2018 Delegated Regulation or regulations made by the Treasury”;
  - (ii) for “relevant competent authority of the Member State where the administrator is located” substitute “FCA”.
- (5) After paragraph 4 insert—

“5. In paragraph 3, the “2018 Delegated Regulation” means Commission Delegated Regulation (EU) 2018/67 of 3 October 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to the establishment of the conditions to assess the impact resulting from the cessation of or change to existing benchmarks.”.

### **Register of administrators and benchmarks**

**33.** In Article 36 (register of administrators and benchmarks)—

- (a) in paragraph 1—
  - (i) in the opening words, for “ESMA” substitute “The FCA”;
  - (ii) in point (a), for “the competent authorities responsible for the supervision thereof” substitute “that the FCA is responsible for the supervision thereof”;
  - (iii) in point (c), for “referred to in Article 32(7)” substitute “provided by the administrator in accordance with Article 32(5) which may be used in the United Kingdom”;
- (b) in paragraph 2, for “ESMA” substitute “the FCA”.

### **Competent authorities and cooperation**

**34.**—(1) Omit Articles 37 (delegation of tasks between competent authorities) to 40 (competent authorities).

- (2) In Article 41—
  - (a) omit paragraphs 1 to 3;
  - (b) in paragraph 4, for “to a competent authority in accordance with paragraph 1” substitute “at the request of the FCA or in response to a requirement imposed by the FCA in the exercise of its functions under Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC”.
- (3) Omit Articles 42 (administrative sanctions and other administrative measures) to 44 (obligation to cooperate).

### **Publication of decisions**

- 35.** In Article 45 (publication of decisions)—
- (a) in paragraphs 1 and 2, for “a competent authority”, each time it occurs, substitute “the FCA”;
  - (b) in paragraphs 2 and 3, for “the competent authority” substitute “the FCA”;
  - (c) in paragraph 4, for “competent authority”, both times it occurs, substitute “FCA”;
  - (d) omit paragraph 5.

### **Colleges**

- 36.**—(1) Article 46 (colleges) is amended as follows.
- (2) For the heading substitute “Cessation of a critical benchmark in certain circumstances”.
  - (3) Omit paragraphs 1 to 7.
  - (4) In paragraph 8—
    - (a) omit the first two subparagraphs;
    - (b) in the third subparagraph—
      - (i) before “benchmark”, where first occurring, insert “critical”;
      - (ii) for the words from “Union” to “college” substitute “United Kingdom, within the meaning specified in Commission Delegated Regulation (EU) 2018/67 or regulations made by the Treasury under Article 51(6), the FCA”.
  - (5) Omit paragraphs 9 to 11.

### **Cooperation with ESMA**

- 37.** Omit Article 47 (cooperation with ESMA).

### **Professional secrecy**

- 38.** In Article 48 (professional secrecy)—
- (a) in paragraph 2, for “competent authority”, each time it occurs, substitute “FCA”;
  - (b) in paragraph 3, for “Union or national law” substitute “the law of the United Kingdom or any part of the United Kingdom”;
  - (c) in paragraph 4—
    - (i) for “exchanged between the competent authorities under this Regulation” substitute “exchanged between the FCA and competent authorities”;
    - (ii) for “competent authority” substitute “authority from whom the information is received”.

### **Title VII**

- 39.** For the heading of Title VII, substitute “Power to make regulations”.

### **Exercise of the delegation**

- 40.** For Article 49 (exercise of the delegation) substitute—

*“Article 49*

#### **Regulations made by the Treasury**

1. Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.

2. Such regulations may:
  - (a) contain incidental, supplemental, consequential and transitional provision; and
  - (b) may make different provision for different purposes.
3. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.”.

### **Committee procedure**

41. Omit Article 50 (committee procedure).

### **Transitional provisions**

- 42.—(1) Article 51 (transitional provisions) is amended as follows.

- (2) For paragraph 1 substitute—

“1. An index provider providing a benchmark to which paragraph 1A applies must apply for authorisation or registration in accordance with Article 34 on or before 31 December 2019, in order to provide a benchmark that may be used in the United Kingdom on or after 1 January 2020.

1A. A supervised entity may, during the period specified in paragraph 1D, use a benchmark in the United Kingdom that:

- (a) is provided by a UK index provider who was providing a benchmark in the United Kingdom on 30 June 2016, or
- (b) is a benchmark (to which paragraph (a) does not apply) that was provided by a UK index provider in the United Kingdom in the period beginning with 1 July 2016 and ending with 31 December 2017,

(but see paragraph 1B).

1B. A supervised entity may not use a benchmark under paragraph 1A if:

- (a) the index provider providing the benchmark either:
  - (i) before exit day, makes an application to the FCA for registration or authorisation under Article 34 of the EU Benchmarks Regulation; or
  - (ii) during the transition period, makes an application to the FCA for registration or authorisation under Article 34 of this Regulation; and
- (b) the index provider is notified that the application is refused or approved.

1C. Where the UK index provider is notified that the application is refused or approved on or after exit day, the benchmark may not be used under paragraph 1A:

- (a) where the application is refused, from the day after the date on which the index provider is notified of the refusal;
- (b) where the application is approved, from the day on which the index provider is recorded on the FCA register.

1D. For the purposes of paragraph 1A, the period begins with exit day and ends with:

- (a) if the index provider has made an application in accordance with paragraph 1, the day referred to in paragraph 1C(a) or (b) (as applicable); or
- (b) if the index provider has not made an application in accordance with paragraph 1, 31 December 2019.”.

- (3) In paragraph 2—

- (a) in the opening words, for the words from “competent” to “that index provider” substitute “FCA may register an index provider providing a benchmark to which paragraph 1A applies (who makes an application under Article 34)”;

- (b) in point (b)—
    - (i) for “competent authority” substitute “FCA”;
    - (ii) for the words from “Member State” to the end substitute “United Kingdom”;
  - (c) omit the second subparagraph;
  - (d) in the third subparagraph, for “competent authority”, both times it occurs, substitute “FCA”.
- (4) Omit paragraph 3.
- (5) In paragraph 4—
- (a) for “an existing benchmark”, where first occurring, substitute “a benchmark provided by a UK index provider”;
  - (b) for the words from “the use of” to “located” substitute “the FCA shall permit the use of the benchmark in the United Kingdom”;
  - (c) for “an existing benchmark”, where second occurring, substitute “a benchmark”.
- (6) For paragraph 5 substitute—
- “5. A supervised entity may use a benchmark provided by an administrator located in a third country as a reference for a financial instrument, a financial contract or for measuring the performance of an investment fund in the United Kingdom:
- (a) during the transition period;
  - (b) on and after 1 January 2020, if the benchmark is used as a reference for that financial instrument, that financial contract or for measuring the performance of that investment fund on 31 December 2019,
- (but see paragraph 5A).
- 5A. A benchmark may not be used under paragraph 5 if:
- (a) before exit day:
    - (i) the administrator providing the benchmark makes an application for registration or authorisation under Article 34 of the EU Benchmarks Regulation; and
    - (ii) the administrator is notified that the application is refused;
  - (b) the benchmark, or the administrator providing the benchmark, is recorded on the FCA register in accordance with—
    - (i) Chapter 2 of Part 3 of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019; or
    - (ii) Article 36 of this Regulation.
- 5B. A benchmark that:
- (a) is provided by an administrator to whom paragraph 5A(a) applies, and
  - (b) is used as a reference for a financial instrument, a financial contract or for measuring the performance of an investment fund in the United Kingdom before the administrator is notified the application is refused,
- may continue to be used in the United Kingdom as a reference for that financial instrument, that financial contract or for measuring the performance of that investment fund.”.
- (7) In paragraph 6—
- (a) for the words from “Commission” to “determine” substitute “Treasury may make regulations to specify”;
  - (b) for “relevant competent authority” substitute “FCA”;
  - (c) for “an existing benchmark” substitute “a benchmark provided by a UK index provider”.
- (8) After paragraph 6 insert—

“7. In this Article:

“transition period” means the period beginning with exit day and ending with 31 December 2019;

“UK index provider” means an index provider located in the United Kingdom.”.

## Reviews

43. Omit Articles 53 (ESMA reviews) and 54 (review).

## Directives

44. Omit Articles 57 (amendments to Directive 2008/48/EC) and 58 (amendments to Directive 2014/17/EC).

## Final provisions

45. Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.” following Article 59.

## CHAPTER 2

### Amendment of other EU Regulations

#### Amendment of Commission Implementing Regulation (EU) 2016/1368

46.—(1) Commission Implementing Regulation (EU) 2016/1368 of 11 August 2016 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council is amended as follows.

(2) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.” after Article 2.

(3) In the Annex (list of critical benchmarks pursuant to Article 20(1) of Regulation (EU) 2016/1011), for the table substitute “London Interbank Offered Rate (LIBOR), administered by the ICE Benchmark Administration (IBA), London, United Kingdom”.

#### Amendment of Commission Delegated Regulation (EU) 2018/64

47.—(1) Commission Delegated Regulation (EU) 2018/64 of 29 September 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to specifying how the criteria of Article 20(1)(c)(iii) are to be applied for assessing whether certain events would result in significant and adverse impacts on market integrity, financial stability, consumers, the real economy or the financing of households and businesses in one or more Member States is amended as follows.

(2) In Article 1 (assessment by competent authorities)—

(a) in the heading, for “competent authorities” substitute “the FCA”;

(b) in the first paragraph—

(i) for “Competent authorities” substitute “The FCA”;

(ii) for “one or more Member States” substitute “the United Kingdom”;

(c) omit paragraph 2.

(3) In Article 2 (significant and adverse impact on market integrity)—

(a) in the opening words, for “Competent authorities” substitute “The FCA”;

(b) in point (a)—

(i) for “Member States in question” substitute “United Kingdom”;

(ii) for “those Member States” substitute “the United Kingdom”;

- (c) in point (b)—
  - (i) for “Member States in question” substitute “United Kingdom”;
  - (ii) for “Member States considered” substitute “United Kingdom”;
- (d) in point (c)—
  - (i) for “Member States considered” substitute “United Kingdom”;
  - (ii) for “those Member States” substitute “the United Kingdom”.
- (4) In Article 3 (significant and adverse impact on financial stability)—
  - (a) in the opening words, for “Competent authorities” substitute “The FCA”;
  - (b) in point (a)—
    - (i) in the opening words, for “Member States in question” substitute “United Kingdom”;
    - (ii) in points (i) and (ii) for “those Member States” substitute “the United Kingdom”.
- (5) In Article 4 (significant and adverse impact on consumers)—
  - (a) in the opening words, for “Competent authorities” substitute “The FCA”;
  - (b) in point (a), in points (i) and (ii)—
    - (i) for “Member States in question” substitute “United Kingdom”;
    - (ii) for “those Member States” substitute “the United Kingdom”;
  - (c) in point (b)—
    - (i) in points (i) and (ii)—
      - (aa) for “Member States in question” substitute “United Kingdom”;
      - (bb) for “those Member States” substitute “the United Kingdom”;
    - (ii) in point (iii), for “Member States” substitute “United Kingdom”;
  - (d) in point (c)—
    - (i) in points (i) and (ii), for “those Member States” substitute “the United Kingdom”;
    - (ii) in points (i), (ii) and (iii), for “Member States in question” substitute “United Kingdom”.
- (6) In Article 5 (significant and adverse impact on the real economy)—
  - (a) for “Competent authorities” substitute “The FCA”;
  - (b) for “Member States in question” substitute “United Kingdom”;
  - (c) for “those Member States” substitute “the United Kingdom”.
- (7) In Article 6 (significant and adverse impact on the financing of households and businesses)—
  - (a) for “Competent authorities” substitute “The FCA”;
  - (b) for “one or more Member States” substitute “the United Kingdom”;
  - (c) for “Member States in question”, each time it occurs, substitute “United Kingdom”;
  - (d) for “those Member States”, each time it occurs, substitute “the United Kingdom”.
- (8) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.” after Article 7.

#### **Amendment of Commission Delegated Regulation (EU) 2018/65**

48. In Commission Delegated Regulation (EU) 2018/65 of 29 September 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council specifying technical elements of the definitions laid down in paragraph 1 of Article 3 of the Regulation, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.” after Article 3.

### **Amendment of Commission Delegated Regulation (EU) 2018/66**

**49.**—(1) Commission Delegated Regulation (EU) 2018/66 of 29 September 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council specifying how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed is amended as follows.

(2) In Article 3 (net asset value of collective investment undertakings)—

(a) in paragraph (a)—

(i) for the words from “subject” to “Council” substitute “that are UK UCITS (as defined in section 237(3) of the Financial Services and Markets Act 2000)”**(a)**;

(ii) for “Article 68(2) of that Directive” substitute “section 4.5 of the Collective Investment Schemes sourcebook in the Handbook of Rules and Guidance published by the Financial Conduct Authority under the Financial Services and Markets Act 2000 as it has effect on exit day”**(b)**;

(b) in paragraph (b), for the words from “subject” to “Council” substitute “that are AIFs (as defined in regulation 3 of the Alternative Investment Fund Managers Regulations 2013)”**(c)**.

(3) In Article 4 (use of alternative amounts and values)—

(a) for “the competent authority” substitute “the FCA”;

(b) for “that competent authority” substitute “the FCA”.

(4) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.” after Article 7.

### **Amendment of Commission Delegated Regulation (EU) 2018/67**

**50.**—(1) Commission Delegated Regulation (EU) 2018/67 of 3 October 2017 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to the establishment of the conditions to assess the impact resulting from the cessation of or change to existing benchmarks is amended as follows.

(2) In Article 1, in the opening words, for “A competent authority” substitute “The FCA”.

(3) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.” after Article 2.

## **PART 3**

### **Transitional provision**

#### **CHAPTER 1**

#### **Registration**

### **Conditions to be satisfied for information to be recorded on the FCA register**

**51.**—(1) Information that satisfies conditions A and B must, on exit day, be recorded on the register to be established by the FCA under Article 36 of the UK Benchmarks Regulation.

(2) Condition A is that the information is recorded on the ESMA register at 5pm on the day on which exit day occurs.

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(a) 2000 c. 16. The definition of “UK UCITS” was inserted by S.I. 2011/1613 and amended by S.I. 2013/1388.

(b) The Handbook of Rules and Guidance published by the Financial Conduct Authority is available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

(c) S.I. 2013/1773.

(3) Condition B is that the information is listed in regulation 52.

#### **Information to be recorded on the FCA register**

**52.** The information is—

- (a) the identity of an administrator who has acquired recognition from the FCA in accordance with Article 32 of the EU Benchmarks Regulation, the list of benchmarks referred to in Article 32(7) of that Regulation and, where applicable, the third country competent authority responsible for the administrator’s supervision;
- (b) where the FCA has authorised the endorsement of a benchmark under Article 33 of the EU Benchmarks Regulation, the benchmark that has been endorsed, the identity of the benchmark’s administrator and the identity of the endorsing administrator or endorsing supervising entity;
- (c) the identity of an administrator who has been authorised or registered by the FCA under Article 34 of the EU Benchmarks Regulation and that the FCA is responsible for the supervision of the administrator.

#### **Application of the UK Benchmarks Regulation**

**53.** Where the FCA approved an application made under Article 32, 33 or 34 of the EU Benchmarks Regulation before exit day, the UK Benchmarks Regulation applies as if the application were approved under Article 32, 33 or 34 (respectively) of the UK Benchmarks Regulation.

### **CHAPTER 2**

#### **Temporary registration**

#### **The temporary registration period**

**54.** The temporary registration period is the period of two years beginning with exit day.

#### **Conditions to be satisfied for information to be temporarily recorded on the FCA register**

**55.—**(1) Information that meets conditions A and B must be recorded on the FCA register during the temporary registration period (but see regulation 58).

(2) Condition A is that the information is recorded on the ESMA register at 5pm on the day on which exit day occurs.

(3) Condition B is that the information is listed in regulation 56.

#### **Information to be recorded on the FCA register**

**56.—**(1) The information is—

- (a) the identity of an administrator who complies with the conditions in Article 30(1) of the EU Benchmarks Regulation, the list of benchmarks referred to in point (c) of that provision and the third country competent authority responsible for the administrator’s supervision;
- (b) the identity of an administrator who has acquired recognition from a competent authority of an EEA State in accordance with Article 32 of the EU Benchmarks Regulation, the list of benchmarks referred to in Article 32(7) of that Regulation and, where applicable, the third country competent authority responsible for the administrator’s supervision;
- (c) where a competent authority of an EEA State has authorised the endorsement of a benchmark under Article 33 of the EU Benchmarks Regulation, the benchmark that has been endorsed, the identity of the benchmark’s administrator and the identity of the endorsing administrator or endorsing supervising entity;



- (d) the identity of an administrator who has been authorised or registered by a competent authority of an EEA State under Article 34 of the EU Benchmarks Regulation and the competent authority responsible for the administrator’s supervision.

(2) In this regulation—

“competent authority of an EEA State” means the authority designated by an EEA State as its competent authority for the purposes of Article 40 of the EU Benchmarks Regulation;

“third country competent authority” means the supervisory authority which exercises functions equivalent to those exercised by competent authorities in EEA States under the EU Benchmarks Regulation.

#### **Information to be added to the FCA register**

**57.**—(1) The FCA must add a benchmark to the FCA register that is—

- (a) recorded on the ESMA register during the temporary registration period; and
- (b) provided by an administrator whose information is recorded on the FCA register as a result of the application of sub-paragraph (a) or (b) of regulation 56(1).

(2) The benchmark must be recorded on the FCA register—

- (a) before the end of the period of five working days beginning with the day on which the benchmark is recorded on the ESMA register;
- (b) until the end of the temporary registration period (but see regulation 58).

#### **Removal of temporary information from the FCA register**

**58.**—(1) The FCA must remove temporary information from the FCA register if paragraph (2) or (3) applies during the temporary registration period (but see regulation 59).

(2) This paragraph applies if the corresponding information on the ESMA register is removed from that register.

(3) This paragraph applies if the temporary information relates to—

- (a) an administrator who is refused recognition by the FCA under Article 32 of the UK Benchmarks Regulation;
- (b) a benchmark in respect of which the FCA has refused an application for endorsement under Article 33 of that Regulation; or
- (c) an administrator who is refused authorisation or registration by the FCA under Article 34 of that Regulation.

(4) The benchmark must be removed from the FCA register before the end of the period of five working days beginning with the day on which paragraph (2) or (3) applies.

#### **Removal of temporary information and the FCA’s objectives**

**59.** The FCA may only remove temporary information from the FCA register under regulation 58 if it considers that removal—

- (a) is compatible with the FCA’s strategic objective as defined in section 1B(2) of the Financial Services and Markets Act 2000(a); and
- (b) advances one or more of its operational objectives as defined in section 1B(3) of that Act.

#### **Reinstatement of information on the FCA register**

**60.**—(1) The FCA must reinstate information on the FCA register if—

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(a) 2000 c. 16. Section 1B was inserted by s.6(1) of the Financial Services Act 2012 (c.21). There are amendments to section 1B which are not relevant.

- (a) the information has been removed from the FCA register under regulation 58(2); and
- (b) ESMA reinstates the corresponding information on the ESMA register during the temporary registration period.

(2) The information must be reinstated on the FCA register before the end of the period of five working days beginning with the day on which the benchmark is reinstated on the ESMA register.

#### **Use of a benchmark that is temporarily recorded on the FCA register**

**61.** During the temporary registration period, a supervised entity may use a benchmark in the United Kingdom that is—

- (a) recorded on the FCA register under this Chapter; or
- (b) provided by an administrator who is located in the European Union and recorded on the FCA register under this Chapter.

#### **Use of a benchmark that is removed from the FCA register**

**62.**—(1) A supervised entity may continue to use a benchmark in the United Kingdom which is—

- (a) used by virtue of regulation 61 as a reference for a financial instrument, a financial contract or for measuring the performance of an investment fund; and
- (b) either—
  - (i) removed from the FCA register; or
  - (ii) administered by an administrator who is removed from the FCA register.

(2) But the benchmark may only be used as a reference for the financial instrument, the financial contract or for measuring the performance of the investment fund referred to in paragraph (1)(a).

#### **Application of the UK Benchmarks Regulation**

**63.**—(1) The UK Benchmarks Regulation does not apply in respect of an administrator or benchmark recorded on the FCA register under this Chapter (but see paragraph 2 and regulation 64).

(2) Article 28(2) of the UK Benchmarks Regulation applies to a supervised entity using a benchmark by virtue of regulation 61.

(3) For the purposes of paragraph (2), Article 28(2) shall be read as if for “other than an administrator as referred to in paragraph 1” there were substituted “that are not administrators”.

#### **New applications made under the UK Benchmarks Regulation**

**64.**—(1) This paragraph applies to—

- (a) an administrator who satisfies the conditions in Article 30(1) of the UK Benchmarks Regulation;
- (b) an administrator who acquires recognition under Article 32 of that Regulation;
- (c) a benchmark that is endorsed under Article 33 of that Regulation;
- (d) an administrator who is authorised or registered under Article 34 of that Regulation.

(2) If paragraph (1) applies (or has applied) to an administrator or benchmark—

- (a) information recorded on the FCA register that relates to the administrator or benchmark is no longer temporary information (and so this Chapter does not apply to it, but see paragraph (3));
- (b) the FCA may remove temporary information relating to the administrator or benchmark from the FCA register; and

(c) regulation 63 no longer applies to the administrator or benchmark (and so the UK Benchmarks Regulation applies to it).

(3) If paragraph (1) applies (or has applied) to an administrator or benchmark, regulation 62 continues to apply.

## CHAPTER 3

### Interpretation

#### Interpretation of this Part

**65.**—(1) In this Part—

“ESMA register” means the register of administrators and benchmarks established and maintained by ESMA under Article 36(1) of the EU Benchmarks Regulation;

“EU Benchmarks Regulation” means Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014(a) as it had effect in the European Union before exit day;

“temporary information” means information recorded on the FCA register in accordance with regulation 55, 57 or 60;

“temporary registration period” has the meaning given in regulation 54;

“UK Benchmarks Regulation” means Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 as it applies in the United Kingdom on and after exit day;

“working day” means a day other than—

- (a) a Saturday or a Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(b) in any part of the United Kingdom.

(2) Terms defined in the UK Benchmarks Regulation have the same meaning in this Chapter as in that Regulation.

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular the deficiencies referred to in sub-paragraphs (a), (b), (c), (d) and (g) of section 8(2)).

Chapter 1 of Part 2 of these Regulations amends Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014. Chapter 2 of Part 2 amends five other EU Regulations. Part 3 makes transitional provision.

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(a) OJ L 171, 29.6.2016, p.1-65

(b) 1971 c. 80; amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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