



HM Treasury

Amending the transitional period for third country benchmarks under the UK Benchmarks Regulation

Policy Statement

July 2020



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Chapter 1

Amending the transitional period for third country benchmarks under the UK Benchmarks Regulation

- 1.1 HM Treasury is proposing to extend the transitional period for third country benchmarks from 31 December 2022 to 31 December 2025. This policy statement sets out the rationale and proposed approach.
- 1.2 The EU Benchmarks regulation (BMR)¹ is a regulatory framework which places requirements on administrators, supervised contributors and supervised users of benchmarks. These requirements relate to benchmark methodology, governance and transparency. The BMR has directly applied in the UK since 1 January 2018. To ensure that the existing regime continues to operate effectively following EU Exit, the UK made amendments to the BMR to address deficiencies through the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019. The BMR as amended will become retained EU law (UK BMR) and will take effect in the UK at the end of the EU Exit Transition Period (TP).
- 1.3 The UK BMR stipulates that only benchmarks approved for use via one of the prescribed routes set out in the BMR may continue to be used within the UK:
 - i) By 31 December 2019, UK administrators must have applied for either authorisation or registration with the Financial Conduct Authority (FCA).²
 - ii) Third country administrators must become approved via equivalence, recognition or endorsement for continued access to UK markets after the end of a transitional period.
- 1.4 In September 2019, the UK extended the transitional period for third country benchmarks from end-2019 to end-2022 through the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU

¹ Regulation (EU) 2016/1011, June 2016

² With a further transitional period for critical benchmarks until 31 December 2021 under the BMR as amended by Regulation (EU) 2019/2089. Amendments to address deficiencies as a result of these changes were made by the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020

Exit) Regulations 2019 to provide additional time for third country benchmark administrators to apply to the FCA.

- 1.5 This means that by end-2022, third country benchmarks will need to have applied for endorsement of a specific benchmark(s), for recognition as an administrator or benefit from an equivalence determination made by HM Treasury for their benchmark(s) to continue to be used in the UK.
- 1.6 However, as of June 2020, only a limited number of third country benchmarks or administrators have come through the current BMR access routes. In response to the EU consultation on the BMR review published in October 2019³, industry has voiced concerns that many third country benchmark administrators are likely to be unable or unwilling to come through the existing regime and to be registered with relevant national competent authorities, including the FCA⁴.
- 1.7 To date, the European Commission has adopted two equivalence decisions⁵ pertaining to three financial benchmarks administered in Australia and Singapore⁶. These are directly applicable in the UK and will continue to apply at the end of the TP as a part of the UK's onshored equivalence framework. To be deemed equivalent, a third country will need to have equivalent regulatory and supervisory outcomes to those set out in both the EU and, after the end of the TP, the UK BMR. However, most non-EEA jurisdictions do not have benchmark-specific regulatory rules. The UK will explore how to best support the use of global non-UK benchmarks which adhere to equivalent regulatory outcomes.
- 1.8 In the absence of a positive equivalence determination, third country benchmark administrators can apply to access UK markets through endorsement or recognition. In the first instance, the endorsing entity, which must be a UK administrator approved under the UK BMR or a UK supervised entity, takes on a degree of responsibility for a benchmark(s) and ensures that it fulfils requirements which are at least as stringent as the UK BMR. To attain market access through recognition, the third country administrator must appoint a UK legal representative that is accountable to the FCA with regard to the administrator's obligations under UK BMR. However, industry stakeholders have expressed concerns about the lack of clarity around the legal framework for endorsement and recognition prescribed in the BMR⁷.
- 1.9 In addition, these access routes rely on third country benchmark administrators being willing to apply for market access. However, some third country benchmarks are provided on a non-commercial basis. Therefore, they lack economic incentives to come through the access routes for continued market access. There are currently only two third country

³ [Review of the EU Benchmarks Regulation Public Consultation Document](#), October 2019

⁴ [Feedback on the EU BMR Public Consultation](#), April 2020

⁵ [EU Press Release on Equivalence Decisions Adopted on 30th July 2019](#), July 2019

⁶ [The European Securities and Markets Authority \(ESMA\) Benchmarks Administrators Register](#), as of July 2020

⁷ See [ISDA, ASIFMA, FIA and GFXD EU Benchmarks Regulations Review Recommendations](#), June 2020

administrators registered under the BMR through endorsement, and eight registered through recognition⁸.

- 1.10 HM Treasury considers that additional time alone, even until December 2022 under the UK BMR transitional period, is unlikely to resolve these concerns and ensure that UK markets continue to have access to third country benchmarks. This is problematic, especially where there are few alternatives to replace third country benchmarks in the UK (e.g. foreign exchange spot rate benchmarks that are provided by third country benchmark administrators). Losing access to these benchmarks could have serious repercussions given their widespread use by UK firms for risk management, treasury financing and overseas investment.
- 1.11 In light of this, HM Treasury is proposing an extension to the transitional period for third country benchmarks to 31 December 2025. HM Treasury will bring this measure forward at the next legislative opportunity. The proposed extension will provide economic and legal certainty for UK markets for longer. The Government will also consider and operationalise potential changes to ensure an appropriate third country benchmarks regime for the UK.

⁸ [The European Securities and Markets Authority \(ESMA\) Benchmarks Administrators Register](#), as of July 2020

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