Title: The Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021	De minimis assessment
SI No: Click here to enter text.	**Date:** Click here to enter a date.
Other departments or agencies: N/A **Contact for enquiries**: Click here to enter text.	**Type of regulation:** **Domestic**
	Date measure comes into force: **13/10/2021**
Cost of Preferred (or more likely) Option **N/A**	**Equivalent Annual Net Direct Cost to Business per year** (EANDCB in 2019 prices) 0

1. What is the problem under consideration? Why is government intervention necessary?

This instrument is being made in order to fix deficiencies in the Markets in Financial Instruments Regulation (MiFIR) and the Benchmarks Regulation, which became part of retained EU law at 11pm on 31 December, and in the Financial Services and Market Act 2000 (Financial Promotion) Order 2005 (FPO).

The non-discriminatory access regime for exchange-traded derivatives (ETDs), which is set out in Articles 35 and 36 of MiFIR, requires trading venues and central counterparties to grant each other non-discriminatory and transparent access. It was originally designed to improve cross-border capital markets by increasing competition and facilitating access across the EU's single market. However, it has never been used by market participants in the UK. A review of the regime conducted by HMT has concluded that it is not suitable in a UK-only context, now that we have left the EU.

The low carbon benchmarks regime sets out requirements and voluntary standards for firms that administer benchmarks under the Benchmarks Regulation. On 23 December 2020, three European Commission Delegated Acts which set out standards necessary for the operation and implementation of the low benchmarks regime came into force. The amendments made by this instrument are necessary to provide for the effective operation of the legislation introduced by the EU delegated acts in a UK-only context.

The amendments made by this instrument to the FPO are necessary to ensure that exemptions contained in the FPO can apply to UK markets, as well as EEA and Gibraltar markets.

2. What are the policy objectives and the intended effects?

HM Treasury is making this instrument to remove the non-discriminatory access regime for ETDs, to fix deficiencies in three European Commission Delegated Regulations which set out technical standards for the implementation of the low carbon benchmarks regulatory regime, and to ensure that exemptions which concern communications relating to relevant markets in the FPO apply to UK markets.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

There is no alternative to legislation to remove the non-discriminatory access regime for ETDs, to fix deficiencies in the Commission Delegated Regulations for low carbon benchmarks which form part of retained EU law or to fix deficiencies to the FPO which forms part of UK statute. Therefore, no other policy options have been considered.

4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

The amendments made by this instrument will not impose any additional requirements or administrative burdens on businesses. The principal cost to affected businesses will be familiarisation costs. These, and detailed information about the costings for each measure, are below.

The total cost to business is estimated to be £5,940.

What will businesses have to do differently?

Non-discriminatory access for ETDs:

Although the non-discriminatory access regime for exchange traded derivatives has legally been in force since July 2020, the regime has not been used. Therefore, removing the regime should not result in any impact or transition costs for firms. Approximately 50 firms will face familiarisation costs.

Low carbon benchmarks:

The amendments to the Benchmarks Regulation under this instrument do not impose additional requirements on businesses, other than familiarisation costs. Approximately 38 benchmark administrators will face familiarisation costs (as of 06/07/21).

Financial Promotion Order:

The amendments to the Financial Promotion Order will allow firms using relevant UK markets to rely on exemptions to the financial promotion restriction under Article 37, 41, 67, 68, and 69 which concern communications relating to relevant markets. This will ensure the legislation aligns with HMT's policy position, and existing activity by firms, which means there will be no impact.

How many businesses will this impact per year?

Non-discriminatory access: Approximately 50 firms.

Low carbon benchmarks: 38 benchmark administrators (as of 06/07/21).

Financial Promotion Order: No firms are affected as this is to enable the continuation of existing activity. We believe, the number of firms that currently use these exemptions is likely to be no more than 100 and so have provided familiarisation costs on that basis.

What is the direct cost/benefit per business per year?

In summary, the familiarisation cumulative costs of is estimated to be £5,940. This has been calculated as:

Non-discriminatory access familiarisation cost:

Number of words in this instrument (rounded up to nearest 100)	Words read per minute	Hourly rate (£)	Number of business affected	Familiarisation costs per firm (£) (rounded to 2 significant figures)	Total familiarisation costs (£) (rounded to 2 significant figures)
600	100	330	50	£33	£1,650

Low carbon benchmarks familiarisation cost:

Number of words in this instrument (rounded up to nearest 100)	Words read per minute	Hourly rate (£)	Number of business affected	Familiarisation costs per firm (£) (rounded to 2 significant figures)	Total familiarisation costs (£) (rounded to 2 significant figures)
1000	100	330	38	£55	£2,090

FPO:

Number of words in this instrument (rounded up to nearest 100)	Words read per minute	Hourly rate (£)	Number of business affected	Familiarisation costs per firm (£) (rounded to 2 significant figures)	Total familiarisation costs (£) (rounded to 2 significant figures)
400	100	330	100	£ 22	£ 2,200

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
   No.
b) **Disproportionate burdens on small businesses**
   No.

Non-discriminatory access for ETDs:
The non-discriminatory access regime applies in the same way to all firms which are regulated under MiFIR. As no access arrangements have been granted under the regime for ETDs since it entered into force, there will be no change to the operational practices of small businesses.

Low carbon benchmarks:
The amendments to the low carbon benchmarks regime will ensure that the regime operates effectively. This legislation is already in force but is not yet coherent in a UK-only context. The 38 benchmark administrators authorised in the UK vary in size; but must all comply with requirements under the Benchmarks Regulation to ensure the robustness and integrity of financial benchmarks in the UK.

Financial Promotion Order:
This amendment remedies deficiencies to ensure that legislation aligns with HMT's policy position and the existing activities of firms. Therefore, it will not have an impact on small businesses.

c) Significant gross effects despite small net impacts
No.
d) Significant wider social, environmental, financial or economic impacts
No.
e) Significant novel or contentious elements
No.

<u>Sign-off for de minimis assessment: SCS</u>

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of [Policy team]

Signed: ***Tom Duggan*** Date: 12/07/2021

SCS of Better Regulation Unit

Signed: ***Linda Timson*** Date: 08/07/2021

<u>Sign-off for de minimis assessment: Minister</u>

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

(name, Ministerial role)

Signed: ***John Glen*** Date: 16/07/2021

Further information sheet

Please provide additional evidence in subsequent sheets, as required.