

2021 No. 000

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

**The Markets in Financial Instruments, Benchmarks and
Financial Promotions (Amendment) (EU Exit) Regulations 2021**

<i>Sift requirements satisfied</i>	***
<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	18th October 2021

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 (“the 2018 Act”)(a).

The requirements of paragraph 3(2) of Schedule 7 to the 2018 Act (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021.

(2) These Regulations come into force on 18th October 2021.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Amendment of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

2.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(b) is amended as follows.

(2) In article 2(1) (interpretation: general), after the definition of “relevant investment activities” insert—

““relevant UK market” means a market that meets the criteria specified in Part A1 of Schedule 3;”.

(3) In article 37(4) (financial markets), before sub-paragraph (a) insert—

(a) 2018 c. 16. Paragraph 21 was amended by paragraph 53 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(b) S.I. 2005/1529, as amended by S.I. 2005/3392, 2010/905, 2011/1265, 2017/488, 2018/1252, 2019/632, 2019/1361, 2019/680. There are other amendments that are not relevant.

“(za) is a relevant UK market;”.

(4) In article 41(4) (bearer instruments: promotions required or permitted by market rules), before sub-paragraph (a) insert—

“(za) is a relevant UK market;”.

(5) In article 67(2) (promotions required or permitted by market rules), before sub-paragraph (a) insert—

“(za) is a relevant UK market;”.

(6) Article 68 (promotions in connection with admission to certain EEA markets) is amended as follows—

(a) in the heading, after “certain” insert “UK and”;

(b) in paragraph (1)(b), after “relevant” insert “UK market or relevant”.

(7) In article 69(1) (promotions of securities already admitted to certain markets), in the definition of “relevant market”, before sub-paragraph (a) insert—

“(za) is a relevant UK market;”.

(8) In Schedule 3 (markets and exchanges), before Part 1 (criteria for Relevant EEA or Gibraltar Markets) insert—

“PART A1

Criteria for Relevant UK Markets

The criteria for a “relevant UK market” are—

- (a) the head office of the market must be situated in the United Kingdom; and
- (b) the market must satisfy any requirements of the law of the United Kingdom as to—
 - (i) the manner in which it operates;
 - (ii) the means by which access may be had to the facilities it provides;
 - (iii) the conditions to be satisfied before an investment may be traded or dealt in by means of its facilities; and
 - (iii) the reporting and publication of transactions effected by means of its facilities.

Amendment of the Markets in Financial Instruments Regulation

3.—(1) 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) is amended as follows.

(2) In Article 35—

(a) in paragraph 1, after “648/2012”, the first time it occurs, insert “and subject to paragraph 1A”;

(b) after paragraph 1 insert—

“1A. Paragraph 1 does not apply in relation to exchange-traded derivatives.”;

(c) in paragraph 3, omit “and within six months in the case of exchange-traded derivatives.”;

(d) in paragraph 4—

(i) omit point (a), and “or” at the end of the point”;

(a) EUR 2014/600, as amended by S.I. 2018/1403 (itself amended by 2019/576, 710, 1212, 2020/1055, 1301), and by EUR 2019/2175.

- (ii) omit the second and third sub-paragraphs.
- (3) In Article 36—
 - (a) in paragraph 1, after “648/2012”, the first time it occurs, insert “and subject to paragraph 1A”;
 - (b) after paragraph 1 insert—
 - “1A. Paragraph 1 does not apply in relation to exchange-traded derivatives.”;
 - (c) in paragraph 3, omit “and within six months in the case of exchange-traded derivatives.”;
 - (d) in paragraph 4—
 - (i) omit point (a), and “or” at the end of the point;
 - (ii) omit the second and third sub-paragraphs.
 - (e) omit paragraphs 5 and 6(d).

Amendment of Commission Delegated Regulation (EU) 2017/581

4.—(1) Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties^(a) is amended as follows.

- (2) Omit Articles 18, 19 and 20.
- (3) In the Annex, omit forms 4.1 and 4.2.

Amendment of Commission Delegated Regulation (EU) 2020/1816

5.—(1) Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published^(b) is amended as follows.

- (2) In Article 1 (definitions)—
 - (a) before point (a) insert—
 - “(za) “environmental goods and services sector” means the production activities that generate environmental products (environmental goods and services);
 - (zb) “environmental products” means products that have been produced for the purpose of environmental protection and resource management;
 - (zc) “environmental protection” includes all activities and actions which have as their main purpose the prevention, reduction and elimination of pollution and of any other degradation of the environment, and—
 - (i) includes all measures taken in order to restore the environment after it has been degraded; and
 - (ii) excludes activities which, while beneficial to the environment, primarily satisfy the technical needs or the internal requirements for hygiene or safety and security of an enterprise or other institution;”;
 - (b) after point (b) insert—

(a) EUR 2017/581. This has been amended by the Financial Conduct Authority by Technical Standards (Markets in Financial Instruments Regulation) (EU Exit) (No. 2) Instrument 2019. A copy of this instrument is available at https://www.handbook.fca.org.uk/instrument/2019/FCA_2019_61.pdf, and may be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

(b) EUR 2020/1816.

- “(ba) “resource management” includes the preservation, maintenance and enhancement of the stock of natural resources and therefore the safeguarding of those resources against depletion;
- (bb) “SIC” means the UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007) published by the Office for National Statistics, as amended from time to time(a);”.

(3) In Annex I (template for explaining how Environmental, Social and Governance (ESG) factors are reflected in the benchmark statement)—

- (a) for “EU Climate Transition Benchmarks”, in each place it occurs, substitute “UK Climate Transition Benchmarks”;
- (b) for “EU Paris-aligned Benchmarks”, in each place it occurs (including in the heading for Section 2), substitute “UK Paris-aligned Benchmarks”;
- (c) in the heading for Section 2 (additional disclosure requirements for EU Climate Transition and EU Paris-aligned Benchmarks), for “EU Climate Transition” substitute “UK Climate Transition”;
- (d) in Item 9—
 - (i) in the opening words—
 - (aa) for “EU Climate Transition Benchmark” substitute “UK Climate Transition Benchmark”;
 - (bb) for “EU Paris-aligned Benchmark” substitute “UK Paris-aligned Benchmark”;
 - (ii) in point (c), in the text of the footnote, for “Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (See page 17 of this Official Journal)” substitute “EUR 2020/1818”.

(4) In Annex II (Environmental, Social and Governance (ESG) factors to be considered by underlying assets of the benchmark), in the tables in Sections 1 (equity), 2 (fixed income), 3 (sovereign debt) and 5 (other)—

- (a) for “Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council” substitute “SIC”;
- (b) for “Annex I to Regulation (EC) No 1893/2006”, in each place it occurs, substitute “SIC”;
- (c) omit “, as defined in Article 2, point (5) of Regulation (EU) No 691/2011 of the European Parliament and of the Council”;
- (d) for “national law”, in each place it occurs, substitute “UK law”.

Amendment of Commission Delegated Regulation (EU) 2020/1818

6.—(1) Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks**(b)** is amended as follows.

(2) In the title of the Regulation, for “EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks” substitute “UK Climate Transition Benchmarks and UK Paris-aligned Benchmarks”.

(3) In Article 1 (definitions)—

(a) Available at: <https://www.ons.gov.uk/methodology/classificationsandstandards/ukstandardindustrialclassificationofeconomicactivities> (last accessed 8th July 2021).

(b) EUR 2020/1818.

- (a) in point (a), for “greenhouse gas emissions as defined in Article 3, point (1), of Regulation (EU) 2018/842 of the European Parliament and of the Council” substitute “emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), nitrogen trifluoride (NF₃) and sulphur hexafluoride (SF₆)”;
 - (b) in point (b), omit “, as defined in Article 2, point (7), of Regulation (EU) No 517/2014 of the European Parliament and of the Council”;
 - (c) after point (b), insert—
 - “(ba) “emissions”, in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity;
 - (bb) “global warming potential” and “GWP” have the same meaning as in Article 2(6) of Regulation (EU) No 517/2014(a);
 - (bc) a “tonne(s) of CO₂ equivalent” means a quantity of greenhouse gases, expressed as the product of the mass of the greenhouse gases in metric tonnes and of their global warming potential (GWP);”;
 - (d) in point (c), for “euros” substitute “pounds sterling”;
 - (e) after point (f) insert—
 - “(g) “SIC” means the UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007) published by the Office for National Statistics, as amended from time to time.”.
- (4) In Section 1 (minimum standards common for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks: comprising Articles 2 to 8)—
- (a) for “EU Climate Transition Benchmarks”, in each place it occurs (including in the heading), substitute “UK Climate Transition Benchmarks”;
 - (b) for “EU Paris-aligned Benchmarks”, in each place it occurs (including in the heading), substitute “UK Paris-aligned Benchmarks”;
 - (c) in Article 3 (equity allocation constraint), for “Annex I to Regulation (EC) No 1893/2006” substitute “SIC”;
 - (d) in Article 5(1) (phase-in of Scope 3 GHG emissions data in the benchmark methodology), for “Annex I to Regulation (EC) No 1893/2006”, in each place it occurs, substitute “SIC”;
 - (e) in Article 7 (setting a decarbonisation trajectory)—
 - (i) in paragraph 1, for “Union”, in each place it occurs, substitute “UK”;
 - (ii) in paragraph 5—
 - (aa) for “an EU Climate Transition Benchmark” substitute “a UK Climate Transition Benchmark”;
 - (bb) for “an EU Paris-aligned Benchmark” substitute “a UK Paris-aligned Benchmark”;
 - (f) in Article 8(1) (change in GHG intensity and absolute GHG emissions)—
 - (i) for “EU Climate Transition Benchmark” substitute “UK Climate Transition Benchmark”;
 - (ii) for “EU Paris-aligned Benchmark” substitute “UK Paris-aligned Benchmark”.
- (5) In Section 2 (minimum standards for EU Climate Transition Benchmarks: comprising Articles 9 and 10), for “EU Climate Transition Benchmarks”, in each place it occurs (including in the headings), substitute “UK Climate Transition Benchmarks”.
- (6) In Section 3 (minimum standards for EU Paris-aligned Benchmarks: comprising Articles 11 and 12)—

(a) EUR 2014/517, as amended by S.I. 2019/583.

- (a) for “EU Paris-aligned Benchmarks”, in each place it occurs (including in the headings), substitute “UK Paris-aligned Benchmarks”;
- (b) in Article 12(1) (exclusions for EU Paris-aligned Benchmarks), for “national legislation” substitute “UK legislation”.

(7) In Chapter 3 (transparency and accuracy: comprising Articles 13 to 15)—

- (a) for “EU Climate Transition Benchmarks”, in each place it occurs, substitute “UK Climate Transition Benchmarks”;
- (b) for “EU Paris-aligned Benchmarks”, in each place it occurs, substitute “UK Paris-aligned Benchmarks”.

(8) In Article 15(1) (accuracy of data sources), for “or European standards, such as the Product Environmental Footprint (PEF), the Organisation Environmental Footprint (OEF) methods, the Corporate Value Chain (Scope 3) Accounting and Reporting Standard, the EN ISO 14064 or the EN ISO 14069” substitute “standards”.

	<i>Name, Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in the exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 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 under paragraphs (a), (d) and (e) of section 8(2)).

Regulation 2 amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 to provide that UK markets that meet the criteria in new Part A1 of Schedule 3 (to be inserted into that Order by regulation 2(8) of this instrument) are covered by the exemptions in that Order from the prohibition on financial promotions in section 21 of the Financial Services and Markets Act 2000.

Regulations 3 and 4 amend Regulation (EU) No 600/2014 on markets in financial instruments and Commission Delegated Regulation (EU) 2017/581 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties, to provide that the requirement for trading venues and central counterparties to grant each other non-discriminatory access does not apply in relation to exchange traded derivatives and to make consequential amendments, as that requirement does not operate appropriately in a UK-only context.

Regulations 5 and 6 amend Commission Delegated Regulation (EU) 2020/1816 and Commission Delegated Regulation (EU) 2020/1818 on low carbon benchmarks. The amendments correct deficiencies in the Delegated Regulations as they form part of retained EU law, removing inappropriate references to EU institutions or provisions of EU law.

A full impact assessment has not been produced for these Regulations, as no, or no significant, impact on the private, voluntary or public sector is foreseen.