
STATUTORY INSTRUMENTS

2018 No. 135

The Financial Services and Markets Act
2000 (Benchmarks) Regulations 2018

PART 7

Transitional provisions

Administrators of specified benchmarks: transitional provision

59. A person who carries on an activity of the kind specified in article 63O(1)(b) of the RAO in relation to a specified benchmark without permission to carry on that activity is not by virtue of section 20(1) of the Act (authorised person acting without permission) to be taken to have contravened a requirement imposed by the FCA if that person has a permission to carry on an activity of the kind specified in article 63S(1) of the RAO.

Submitters to specified benchmarks: transitional provision

60. A person who carries on an activity of the kind specified in article 63O(1)(a) of the RAO in relation to a specified benchmark without permission to carry on that activity—

- (a) does not contravene the general prohibition in section 19 of the Act (the general prohibition), and
- (b) is not by virtue of section 20(1) or (1A) of the Act (authorised persons acting without permission) to be taken to have contravened a requirement imposed by the FCA

if the administrator of that benchmark has a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO.

Existing administrators as at 30th June 2016: transitional provision

61.—(1) A person who does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO and who was administering one or more benchmarks on or before 30th June 2016 does not [^{F1}, subject to paragraph (3),]^{F2}...—

- (a) contravene the general prohibition in section 19 of the Act (the general prohibition), or
- (b) contravene a requirement imposed by the FCA or PRA by virtue of section 20(1) or (1A) of the Act (authorised person acting without permission)

in respect of carrying on the activity in article 63S(1) of the RAO until the relevant date.

(2) The relevant date in paragraph (1) is—

- (a) where the person has not applied for permission to carry on the activity in article 63S(1) of the RAO before 1st January 2020, 1st January 2020; and
- (b) where the person has applied for permission to carry on the activity in article 63S(1) of the RAO before 1st January 2020, the date on which the application is determined.

[^{F3}(3) Paragraph (1) does not apply if the benchmark may not be used by virtue of Article 51(1C) of the EU Benchmarks Regulation 2016.]

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| F1 | Words in reg. 61(1) inserted (31.12.2020) by The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710) , regs. 1(3), 12(9)(a) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F2 | Words in reg. 61(1) omitted (26.2.2018) by virtue of The Financial Services and Markets Act 2000 (Benchmarks) (Amendment) Regulations 2018 (S.I. 2018/204) , regs. 1(2), 2 |
| F3 | Reg. 61(3) inserted (31.12.2020) by The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710) , regs. 1(3), 12(9)(b) ; 2020 c. 1, Sch. 5 para. 1(1) |

Existing administrators as at 1st of January 2018: transitional provision

62.—(1) A person who does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO and who—

- (a) did not administer any benchmark on or before 30th June 2016;
- (b) began to administer one or more benchmarks between 30th June 2016 and 1st of January 2018; and
- (c) has not started to administer any new benchmarks since 1st January 2018;

does not [^{F4}, subject to paragraph (3),] breach the general prohibition in section 19 of the Act (the general prohibition) or contravene a requirement imposed by the FCA or PRA as defined in section 20(1) or (1A) of the Act (authorised person acting without permission) in respect of carrying on the activity in article 63S(1) of the RAO until the relevant date.

(2) The relevant date in paragraph (1) is the relevant date as defined in regulation 61(2).

[^{F5}(3) Paragraph (1) does not apply if the benchmark may not be used by virtue of Article 51(1C) of the EU Benchmarks Regulation 2016.]

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| F4 | Words in reg. 62(1) inserted (31.12.2020) by The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710) , regs. 1(3), 12(10)(a) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F5 | Reg. 62(3) inserted (31.12.2020) by The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710) , regs. 1(3), 12(10)(b) ; 2020 c. 1, Sch. 5 para. 1(1) |

New administrators: transitional provision

63.—(1) A person who—

- (a) does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO;
- (b) begins to administer one or more benchmarks after 1st January 2018; and
- (c) satisfies the conditions in paragraph (2);

does not breach the general prohibition in section 19 of the Act (the general prohibition) or contravene a requirement imposed by the FCA or PRA as defined in section 20(1) or (1A) of the Act (authorised person acting without permission) in respect of carrying on the activity in article 63S(1) of the RAO until their application mentioned in paragraph (2)(c) has been determined.

(2) The conditions in this paragraph are that—

- (a) a supervised entity has entered into a benchmark agreement in respect of a benchmark provided by the person;
- (b) the benchmark agreement was entered into before the person started carrying on the activity in article 63S(1) of the RAO; and

- (c) the person applied for permission to carry on the activity in article 63S(1) of the RAO within the later of 30 working days from the date on which the supervised entity entered into that benchmark agreement or 30 working days from 27th February 2018.

(3) In paragraph (2) “benchmark agreement” means an agreement of the type referred to in Article 34(3) of the EU Benchmarks Regulation 2016.

Use of an index: transitional provision

64.—(1) An index provider who does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO and who satisfies the condition in paragraph (2) does not—

- (a) contravene the general prohibition in section 19 of the Act (the general prohibition); or
- (b) contravene a requirement imposed by the FCA or PRA as defined in section 20(1) or (1A) of the Act (authorised person acting without permission).

in respect of carrying on the activity in article 63S(1) of the RAO.

(2) The conditions in this paragraph are that—

- (a) the index provider has become aware or has reasonable cause to suspect that their index is used for the purposes referred to in point (3) of Article 3(1) of the EU Benchmarks Regulation 2016; and
- (b) the index provider has applied for permission to carry on the activity in article 63S(1) of the RAO within 30 working days from the point at which they became aware or have reasonable cause to suspect that their index is used for the purposes referred to in point (3) of Article 3(1) of the EU Benchmarks Regulation 2016.

Administering a benchmark under Article 51(4) of the EU Benchmarks Regulation 2016

65. A person who does not have a Part 4A permission in relation to the activity specified in article 63S(1) of the RAO ^{M1} does not—

(1) contravene the general prohibition in section 19 of the Act (the general prohibition); or

(2) contravene a requirement imposed by the FCA or PRA as defined in section 20(1) or (1A) of the Act (authorised person acting without permission)

in respect of carrying on the activity in article 63S(1) of the RAO in relation to a benchmark if the FCA has permitted the use of that benchmark in accordance with Article 51(4) of the EU Benchmarks Regulation 2016 and that permission has not expired or been withdrawn.

Marginal Citations

M1 S.I. 2001/544.

Authorisations and registrations granted by the FCA prior to 27th February 2018

66.—(1) Regulations 61(1), 62(1) and 63(1) take effect subject to paragraphs (2) and (3).

(2) A person who—

(a) does not have a Part 4A permission; and

(b) obtained an authorisation or registration from the FCA under Article 34 of the EU Benchmarks Regulation 2016 before 27th February 2018;

shall be deemed to have a Part 4A permission granted by the FCA on 27th February 2018 in relation to the activity specified in article 63S(1) of the RAO.

(3) A person who—

- (a) has a Part 4A permission but not in relation to the activity specified in article 63S(1) of the RAO; and
- (b) obtained an authorisation or registration from the FCA under Article 34 of the EU Benchmarks Regulation 2016 before 27th February 2018;

shall be deemed to have their permission varied by the FCA on 27th February 2018 to include the activity specified in article 63S(1) of the RAO.

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, PART 7.