

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 (Text with EEA relevance)

TITLE III

REQUIREMENTS FOR DIFFERENT TYPES OF BENCHMARKS

CHAPTER 4

Critical benchmarks

Article 20

[^{F1}Critical benchmarks: conditions and other matters]

^{F2}A1 An administrator shall immediately notify the FCA when the administrator's benchmark:

- a exceeds the threshold in paragraph 1(a); or
- b fulfils the criterion in paragraph 1(c)(ii) and there is reason to believe that it also fulfils the criterion in paragraph 1(c)(iii).]

1 [^{F3}The conditions are:]

- a the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable;
- b the benchmark is based on submissions by contributors the majority of which are located in [^{F4}the United Kingdom] and is recognised as being critical ^{F5}... in accordance with the procedure laid down in paragraphs 2, 3, 4 and 5 of this Article;

c the benchmark fulfils [^{F6}both] of the following criteria:

- (i) ^{F7}...
- (ii) the benchmark has no, or very few, appropriate market-led substitutes;
- (iii) in the event that the benchmark ceases to be provided, or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or on the basis of unreliable input data, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in [^{F8}the United Kingdom];

^{F9}...

^{F10}d the benchmark has a sufficient number of appropriate market-led substitutes that it does not fulfil the criterion in point (c)(ii), but:

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i it is not reasonably practicable for one or more users of the benchmark to switch to one of those substitutes, and

ii the benchmark fulfils the criterion in point (c)(iii).]

^[F112] Where the FCA considers that a benchmark should be recognised as critical based on an assessment under paragraph 3, and that benchmark is based on submissions by contributors the majority of which are located in the United Kingdom, the FCA shall notify the Treasury and transmit to the Treasury a documented assessment.]

3 For the purposes of paragraph 2, the ^[F12]FCA] shall assess whether the cessation of the benchmark or its provision on the basis of input data or of a panel of contributors no longer representative of the underlying market or economic reality would have an adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in ^[F13]the United Kingdom]. The ^[F14]FCA] shall take into consideration in its assessment:

- a the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the ^[F15]United Kingdom] and their relevance in terms of the total value of financial instruments and of financial contracts outstanding, and of the total value of investment funds, in the ^[F15]United Kingdom];
- b the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the ^[F15]United Kingdom] and their relevance in terms of the gross national product of the ^[F15]United Kingdom];
- c any other figure to assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the ^[F15]United Kingdom].

^{F16} ...

4 Within six weeks of receipt of the notification referred to in paragraph 2, ^[F17]the Treasury must determine whether the FCA's assessment complies with the requirements of paragraph 3.]

^[F185] 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 ^[F19]determine] that the FCA's assessment complies with the requirements of paragraph 3.]

^[F205A] The FCA must:

- a review ^[F21]the value in point (a) of paragraph 1 (“the paragraph 1(a) value”)] 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 ^[F22]to the paragraph 1(a) value]; and
- b provide a written report to the Treasury setting out the results of the review and making a recommendation as to whether ^[F23]the paragraph 1(a) value] 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 IP completion day; and

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- b thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.]
- 6 ^[F24]The Treasury may by regulations]
- a specify 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, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the ^[F25]values] referred to in paragraph 1 of this Article and in point (a) of Article 24(1);
- ^[F26]b amend ^[F27]the value in point (a)] 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 specify how the criteria referred to in point (c)(iii) of paragraph 1 of this Article are to be applied, taking into consideration any data which helps assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in ^[F28]the United Kingdom].

Where applicable, the ^[F29]Treasury] shall take into account relevant market or technological developments.

Textual Amendments

- F1** Art. 20 heading substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Art. 20(A1) inserted by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(2A)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1385, regs. 1(4), 58(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 20(1) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 20(1)(b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 20(1)(b) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Word in Art. 20(1)(c) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 8(6)(a)**, 49(5); S.I. 2021/739, reg. 3(a)
- F7** Art. 20(1)(c)(i) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), **ss. 8(6)(b)**, 49(5); S.I. 2021/739, reg. 3(a)
- F8** Words in Art. 20(1)(c)(iii) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F9** Words in Art. 20(1) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Art. 20(1)(d) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 8(6)(c)**, 49(5); S.I. 2021/739, reg. 3(a)
- F11** Art. 20(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Word in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(aa)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(bb)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Word in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(cc)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in art. 20(3)(a)-(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in Art. 20(3) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in Art. 20(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(6)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Art. 20(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(7)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Word in Art. 20(5)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(2)**; S.I. 2021/739, reg. 3(n)
- F20** Art. 20(5A)(5B) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(8)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(c); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Words in Art. 20(5A)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(3)(a)**; S.I. 2021/739, reg. 3(n)
- F22** Words in Art. 20(5A)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(3)(b)**; S.I. 2021/739, reg. 3(n)
- F23** Words in Art. 20(5A)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(4)**; S.I. 2021/739, reg. 3(n)
- F24** Words in Art. 20(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F25** Word in Art. 20(6)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(5)**; S.I. 2021/739, reg. 3(n)
- F26** Art. 20(6)(b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F27** Words in Art. 20(6)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(6)**; S.I. 2021/739, reg. 3(n)
- F28** Words in Art. 20(6)(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Word in Art. 20(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)
- Art. 20 para. 1a addition by [EUR 2019/2175 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Title 6Ch. 4 addition by [EUR 2019/2175 Regulation](#) (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 3.1(24) words omitted by [S.I. 2019/657 reg. 5\(10\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(10)(f) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 58(4))
- Art. 51(1B)(a)(ii) words substituted in earlier amending provision S.I. 2019/657, reg. 42(2) by [S.I. 2019/1212 reg. 20\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 20(2) omitted (30.6.2020) by virtue of S.I. 2020/628, regs. 1(4), 16)
- Art. 51(2)(b) word substituted by [S.I. 2019/657 reg. 42\(3\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 42(3) substituted immediately before IP completion day by S.I. 2020/628, regs. 1(3), 12(6)(b))
- Art. 51(2)(b) words substituted by [S.I. 2019/657 reg. 42\(3\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 42(3) substituted immediately before IP completion day by S.I. 2020/628, regs. 1(3), 12(6)(b))