

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 VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 51

Transitional provisions

[^{F1}1 An index provider providing a benchmark to which paragraph 1A applies must have applied to the FCA for authorisation or registration in accordance with Article 34 of the EU Benchmarks Regulation on or before 31 December 2019, in order to provide a benchmark that may be used in the United Kingdom on or after 1 January 2020.

1A A supervised entity may, subject to paragraphs 1B and 1C, use a benchmark in the United Kingdom that:

- a is provided by a UK index provider who was providing a benchmark in the United Kingdom on 30 June 2016, or
- b is a benchmark (to which paragraph (a) does not apply) that was provided by a UK index provider in the United Kingdom in the period beginning with 1 July 2016 and ending with 31 December 2017,

1B A supervised entity may not use a benchmark under paragraph 1A if:

- a before 1 January 2020, the index provider providing the benchmark made an application to the FCA for authorisation or registration under Article 34 of the EU Benchmarks Regulation; and
- b the index provider is notified that the application is refused or approved.

1C Where the UK index provider is notified that the application is refused or approved on or after IP completion day, the benchmark may not be used under paragraph 1A:

- a where the application is refused, from the day after the date on which the index provider is notified of the refusal;
- b where the application is approved, from the day on which the index provider is recorded on the FCA register.]

^{F2}2

^{F3}3

4 Where [^{F4}a benchmark provided by a UK index provider] does not meet the requirements of this Regulation, but ceasing or changing that benchmark to fulfil the requirements of this Regulation would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund, which references that benchmark, [^{F5}the FCA shall permit the use of the benchmark in the United Kingdom]. No financial instruments, financial contracts, or measurements of the

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performance of an investment fund shall add a reference to such [^{F6}a benchmark] after 1 January 2020.

[^{F7}4a An index provider may continue to provide an existing benchmark that has been recognised as a critical benchmark by [^{F8}regulations made by the Treasury under Article 20(5)] until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.

4b An existing benchmark that has been recognised as a critical benchmark by [^{F9}regulations made by the Treasury under Article 20(5)] may be used for existing and new financial instruments, financial contracts, or for measuring the performance of an investment fund until 31 December 2021 or, where the index provider submits an application for authorisation in accordance with paragraph 1, unless and until such authorisation is refused.]

[^{F10}5 A supervised entity may use a benchmark provided by an administrator located in a third country as a reference for a financial instrument, a financial contract or for measuring the performance of an investment fund in the United Kingdom:

- a during the period beginning with IP completion day and ending with [^{F11}31 December 2025];
- b on and after [^{F12}1 January 2026], if the benchmark is used as a reference for that financial instrument, that financial contract or for measuring the performance of that investment fund on [^{F13}31 December 2025],

(but see paragraph 5A).

5A A benchmark may not be used under paragraph 5 if:

- a before IP completion day:
 - i) the administrator providing the benchmark makes an application for registration or authorisation under Article 34 of the EU Benchmarks Regulation; and
 - ii) the administrator is notified that the application is refused;
- b the benchmark, or the administrator providing the benchmark, is recorded on the FCA register in accordance with Article 36 of this Regulation.

5B A benchmark that:

- a is provided by an administrator to whom paragraph 5A(a) applies, and
- b is used as a reference for a financial instrument, a financial contract or for measuring the performance of an investment fund in the United Kingdom before the administrator is notified the application is refused,

may continue to be used in the United Kingdom as a reference for that financial instrument, that financial contract or for measuring the performance of that investment fund.]

6 The [^{F14}Treasury may make regulations to specify] the conditions on which the [^{F15}FCA] may assess whether the cessation or the changing of [^{F16}a benchmark provided by a UK index provider] to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund which references such benchmark.

[^{F17}7 In this Article:

“UK index provider” means an index provider located in the United Kingdom.]

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Textual Amendments

- F1** Art. 51(1)-(1C) substituted for Art. 51(1) (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(2)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(a)(f); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(i); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Art. 51(2) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(3)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(b)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Art. 51(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), **42(4)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 51(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(5)(a)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 51(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(5)(b)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 51(4) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(5)(c)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Inserted by [Regulation \(EU\) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation \(EU\) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks](#) (Text with EEA relevance).
- F8** Words in Art. 51(4a) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(5A)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(c)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 51(4b) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(5B)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(c)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Art. 51(5)-(5B) substituted for Art. 51(5) (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(6)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(d)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in Art. 51(5)(a) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 20(2)**, 49(5); S.I. 2021/739, reg. 3(m)
- F12** Words in Art. 51(5)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 20(3)(a)**, 49(5); S.I. 2021/739, reg. 3(m)
- F13** Words in Art. 51(5)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 20(3)(b)**, 49(5); S.I. 2021/739, reg. 3(m)
- F14** Words in Art. 51(6) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **42(7)(a)** (with regs. 42(9), 51-53,

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- 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Word in Art. 51(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(7)(b)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in Art. 51(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(7)(c)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and S.I. 2020/628, regs. 1(3), 12(6)(f) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F17** Art. 51(7) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **42(8)** (with regs. 42(9), 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/628, regs. 1(3), 12(6)(e)(f); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 52

Deadline for updating the prospectuses and key information documents

Article 29(2) is without prejudice to outstanding prospectuses approved under Directive 2003/71/EC prior to 1 January 2018. For prospectuses approved prior to 1 January 2018 under Directive 2009/65/EC, the underlying documents shall be updated at the first occasion or at the latest within 12 months after that date.

^{F18} Article 53

ESMA reviews

Textual Amendments

- F18** Arts. 53, 54 omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **43** (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} Article 54

Review

Textual Amendments

- F18** Arts. 53, 54 omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **43** (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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Article 55

Notification of benchmarks referenced and their administrators

When a benchmark is referenced in a financial instrument covered by Article 4(1) of Regulation (EU) No 596/2014, the notifications under Article 4(1) of that Regulation shall include the name of the benchmark referenced and its administrator.

Article 56

Amendments to Regulation (EU) No 596/2014

Regulation (EU) No 596/2014 is amended as follows:

(1) Article 19 is amended as follows:

(a) the following paragraph is inserted:

1a. The notification obligation referred to in paragraph 1 shall not apply to transactions in financial instruments linked to shares or to debt instruments of the issuer referred to in that paragraph where at the time of the transaction any of the following conditions is met:

- a the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the assets held by the collective investment undertaking;
- b the financial instrument provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the portfolio's assets;
- c the financial instrument is a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the person discharging managerial responsibilities or person closely associated with such a person does not know, and could not know, the investment composition or exposure of such collective investment undertaking or portfolio of assets in relation to the issuer's shares or debt instruments, and furthermore there is no reason for that person to believe that the issuer's shares or debt instruments exceed the thresholds in point (a) or (b).

If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the person discharging managerial responsibility or person closely associated with such a person shall make all reasonable efforts to avail themselves of that information.;

(b) in paragraph 7, the following subparagraph is inserted after the second subparagraph:

For the purposes of point (b), transactions executed in shares or debt instruments of an issuer or derivatives or other financial instruments linked thereto by managers of a collective investment undertaking in which the person discharging managerial responsibilities or a person

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closely associated with them has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking..

(2) Article 35 is amended as follows:

(a) in paragraphs (2) and (3), the phrase ‘and Article 19(13) and (14)’ is replaced by ‘, Article 19(13) and (14) and Article 38’;

(b) paragraph (5) is replaced by the following:

5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) or (14) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council..

(3) In Article 38, the following paragraphs are added:

By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 adjusting the thresholds in Article 19(1a)(a) and (b), if it determines in that report that those thresholds should be adjusted..

^{F19}Article 57

Amendments to Directive 2008/48/EC

Textual Amendments

F19 Art. 57 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **44** (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)

^{F20}Article 58

Amendments to Directive 2014/17/EU

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Textual Amendments

F20 Art. 58 omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **44** (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)

Article 59

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2018.

Notwithstanding the second paragraph of this Article, Articles 3(2), 5(5), 11(5), 13(3), 15(6), 16(5), Article 20 (excluding point (b) of paragraph (6)), Articles 21 and 23, Articles 25(8), 25(9), 26(5), 27(3), 30(5), 32(9), 33(7), 34(8), Article 46, and Articles 47(3) and 51(6) shall apply from 30 June 2016.

Notwithstanding the second paragraph of this Article, Article 56 shall apply from 3 July 2016.

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](#)

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))