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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019

PART 2

Amendment of EU Regulations

CHAPTER 1

Amendment of [Regulation \(EU\) 2016/1011](#)

**Definitions**

- 5.—(1) Article 3 (definitions) is amended as follows.
- (2) Paragraph 1 is amended as follows.
- (3) In point (10) (definition of ‘supervised contributor’), for “Union” substitute “United Kingdom”.
- (4) In point (16) (definition of ‘financial instrument’)—
- (a) for “listed in Section C of Annex I to [Directive 2014/65/EU](#)” substitute “specified in Part 1 of Schedule 2 to the Regulated Activities Order”;
- (b) for the words from “trading venue”, where first occurring, to the end substitute “UK trading venue has been made, or which is traded on a UK trading venue or via a systematic internaliser as defined in Article 2(1)(12) of the Markets in Financial Instruments Regulation;”.
- (5) In point (17) (definition of ‘supervised entity’)—
- (a) for points (a) and (b) substitute—
- “(a) a CRR firm as defined in Article 4(1)(2A) of [Regulation \(EU\) No 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending [Regulation \(EU\) No 648/2012](#), which is a credit institution referred to in point (a)(i) of that definition;
- (b) a UK investment firm, which means an investment firm as defined in Article 2(1A) of the Markets in Financial Instruments Regulation which has its head office in the United Kingdom;”;
- (b) in point (c), for the words from “point (1)” to the end substitute “section 417(1) of FSMA”(1);

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(1) [2000 c. 16](#). The definition of “insurance undertaking” was inserted by [S.I. 2015/575](#) and substituted by [FSMA SI]. There are other amendments to section 417(1) which are not relevant.

- (c) in point (d), for the words from “point (4)” to the end substitute “section 417(1) of FSMA”(2);
- (d) in point (e)—
  - (i) for “UCITS as defined in Article 1(2) of [Directive 2009/65/EC](#)” substitute “UK UCITS as defined in section 237(3) of FSMA”(3);
  - (ii) for the words from “UCITS management company” to the end substitute “management company as defined in section 237(2) of FSMA”(4);
- (e) in point (f), for the words from “point (b)” to the end substitute “regulation 4 of the Alternative Investment Fund Managers Regulations 2013”(5);
- (f) after point (g) insert—
  - “(ga) an occupational pension scheme as defined in section 1(1) of the Pension Schemes Act 1993;”(6);
- (g) in point (h), for the words from “purposes of” to the end substitute—
  - “purposes of:
    - (i) a credit agreement which, immediately before exit day, satisfied the definition of a credit agreement in Article 3(17)(h) of the EU Benchmarks Regulation; or
    - (ii) a credit agreement as defined in point (c) of Article 3 of [Directive 2008/48/EC](#) read in accordance with the modifications made to that Directive by points (18A) and (18B);”.
- (h) for point (i) substitute—
  - “(i) a non-credit institution, which means a mortgage creditor (as defined in s.423A of FSMA) that is not a credit institution (as defined in Article 4(1)(1) of [Regulation \(EU\) No 575/2013](#)), for the purposes of a mortgage agreement (as defined in section 423A of FSMA;”(7);
- (i) in point (j), for “point (18) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(10) of the Markets in Financial Instruments Regulation”.
- (6) For point (18) (definition of ‘financial contract’) substitute—
  - “(18) ‘financial contract’ means:
    - (a) a credit agreement which, immediately before exit day, satisfied the definition of a credit agreement in Article 3(17)(h) of the EU Benchmarks Regulation;
    - (aa) a credit agreement as defined in point (c) of Article 3 of [Directive 2008/48/EC](#) read in accordance with the modifications made to that Directive by points (18A) and (18B);
    - (b) a mortgage agreement as defined in section 423A of FSMA;”.
- (7) After point (18) insert—

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(2) The definition of “reinsurance undertaking” was inserted by [S.I. 2015/575](#) and substituted by [FSMA SI]. There are other amendments to section 417(1) which are not relevant.

(3) Section 237(3) was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012 (c.21), [S.I. 2011/1613](#) and [S.I. 2013/1388](#). The definition of “UK UCITS” was inserted by [CIS SI]. There are other amendments to section 237(3) which are not relevant.

(4) The definition of “management company” was substituted by [CIS SI]. There are other amendments to section 237(2) which are not relevant.

(5) [S.I. 2013/1773](#) to which there are amendments not relevant to these Regulations.

(6) [1993 c. 48](#). Section 1(1) was amended by section 239 of the Pensions Act 2004 (c.35).

(7) Section 423A was inserted by [FSMA SI].

“(18A) For the purposes of points (17)(h)(ii) and (18)(aa), Article 2 of [Directive 2008/48/EC](#) is to be read as if:

- (a) in paragraph 1—
  - (i) for “Directive” there were substituted “Article”;
  - (ii) after “credit agreements” there were inserted “where the act of entering into the credit agreement or exercising the lender’s rights and duties under the credit agreement is carried on in the United Kingdom”.
- (b) in paragraph 2:
  - (i) in the opening words, for “Directive” there were substituted “Article”;
  - (ii) for points (a) and (b) there were substituted—
    - “(a) an agreement to which section 423A(2) of the Financial Services and Markets Act 2000 applies;”;
  - (iii) in point (h)—
    - (aa) for the words from “investment firms” to “financial instruments” there were substituted “a UK investment firm (as defined in Article 3(1)(17)(b) of [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](#)”;
    - (bb) for “as defined in Article 4 of [Directive 2006/48/EC](#)” there were substituted “(as defined in Article 4(1)(1) of [Regulation \(EU\) No 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending [Regulation \(EU\) No 648/2012](#)”;
    - (cc) for “listed in Section C of Annex 1 to [Directive 2014/65/EU](#)” there were substituted “specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”;
- (c) in paragraph 2a, for “Directive” there were substituted “Article”;
- (d) paragraphs 3 to 6 were omitted.

(18B) For the purposes of points (17)(h)(ii) and (18)(aa), Article 3(a) of [Directive 2008/48/EC](#) is to be read as if for “transactions covered by this Directive” there were substituted “respect of a credit agreement to which Article 2 applies”.

(8) For point (19) (definition of ‘investment fund’) substitute—

“(19) ‘investment fund’ means:

- (a) an AIF as defined in regulation 3 of the Alternative Investment Fund Managers Regulations 2013<sup>(8)</sup>;
- (b) a UK UCITS as defined in section 237(3) of FSMA;”.

(9) In point (23) (definition of ‘commodity benchmark’), for the words from “is a commodity” to the end substitute—

“is:

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<sup>(8)</sup> [S.I. 2013/1773](#).

- (a) a commodity, which means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity;
  - (b) not an emission allowance referred to in paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order;”.
- (10) In point (24), in point (a) of the definition of “regulated-data benchmark”—
- (a) for point (i) substitute—
    - “(i) a UK trading venue, but only with reference to transaction data concerning financial instruments;
    - (ia) a trading venue (as defined in Article 2(1)(16) of the Markets in Financial Instruments Regulation) in a third country if:
      - (aa) the Treasury have made regulations determining that the legal and supervisory framework of the third country is equivalent in accordance with paragraph 4 of Article 28 of the Markets in Financial Instruments Regulation, or
      - (bb) a decision has been adopted by the European Commission before exit day determining that the legal and supervisory framework of the third country is equivalent in accordance with paragraph 4 of Article 28 of [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](#)(9) as it had effect in the European Union immediately before exit day,
 but only with reference to transaction data concerning financial instruments;
    - (ib) a regulated market (as defined in Article 2(1)(13) of the Markets in Financial Instruments Regulation) that is considered to be equivalent in accordance with:
      - (aa) regulations made by the Treasury under Article 2a of [Regulation \(EU\) No 648/2012](#), or
      - (bb) an implementing act adopted by the European Commission before exit day under Article 2a of [Regulation \(EU\) No 648/2012](#) as it had effect in the European Union immediately before exit day(10),
 but only with reference to transaction data concerning financial instruments;”;
  - (b) in point (ii)—
    - (i) for “point (52) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(34) of the Markets in Financial Instruments Regulation”;
    - (ii) for “point (53) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(35) of the Markets in Financial Instruments Regulation”;
    - (iii) before “trading venue” insert “UK”;
  - (c) in point (iii)—
    - (i) for “point (54) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(36) of the Markets in Financial Instruments Regulation”;
    - (ii) before “trading venue” insert “UK”;
  - (d) in point (iv), for the words from “as referred to” to the end substitute “operating in an electricity market in the United Kingdom;”;

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(9) OJ L 173, 12.6.2014, p.84-148

(10) OJ L 201, 27.7.2012, p.1-59

- (e) in point (v), for the words from “as referred to” to the end substitute “operating in a gas market in the United Kingdom;”;
  - (f) omit point (vi);
  - (g) in point (vii), for “(vi)” substitute “(v)”.
- (11) For point (25) (definition of ‘critical benchmark’) substitute—
- “(25) ‘critical benchmark’ means a benchmark listed in:
    - (a) Commission Implementing [Regulation \(EU\) 2016/1368](#) of 11 August 2016 establishing a list of critical benchmarks used in financial markets pursuant to [Regulation \(EU\) 2016/1011](#) of the European Parliament and of the Council; or
    - (b) regulations made by the Treasury under paragraph 5 or 6 of Article A20 or paragraph 5 of Article 20;”.
- (12) In point (27) (non-significant benchmark), for the words from “does not” to the end substitute “is not a critical benchmark or a significant benchmark”.
- (13) At the end insert—
- “(30) ‘EU Benchmarks Regulation’ means [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](#) as it had effect in the European Union before exit day;
  - (31) ‘FCA register’ means the register of administrators and benchmarks established and maintained by the FCA in accordance with Article 36(1);
  - (32) ‘FSMA’ means the Financial Services and Markets Act 2000;
  - (33) ‘Markets in Financial Instruments Regulation’ means [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](#);
  - (34) ‘Regulated Activities Order’ means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (35) ‘third country’ means a country outside the United Kingdom;
  - (36) ‘UK trading venue’ has the meaning given in Article 2(1)(16A) of the Markets in Financial Instruments Regulation.”.
- (14) In paragraph 2—
- (i) in the first subparagraph, for the words from “Commission” to “in order to” substitute “Treasury may by regulations”;
  - (ii) in the second subparagraph, for “Commission” substitute “Treasury”.
- (15) In paragraph 3—
- (a) in the first subparagraph—
    - (i) for the words from “Commission” to “review” substitute “Treasury may by regulations specify”;
    - (ii) for “Union” substitute “United Kingdom”;
    - (iii) omit the second sentence;
  - (b) in the second subparagraph, for “Commission” substitute “Treasury”.

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 No. 657

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