

STATUTORY INSTRUMENTS

2018 No. 135

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

PART 6

Amendments to secondary legislation

**Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order
2001**

51. After article 63R of the RAO (specified benchmarks) insert—

“Administering a benchmark

63S.—(1) Administering a benchmark is a specified kind of activity.

(2) In paragraph (1) “administering a benchmark” means acting as an administrator of a benchmark within the meaning of Article 3 of Regulation EU 2016/1011^{M1} 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^{M2} and 2014/17/EU^{M3} and Regulation (EU) No 596/2014^{M4}.

Administration of a benchmark by the FCA

63T. The FCA does not carry on the activity of the kind specified by article 63S(1) in relation to a benchmark where the FCA administers the benchmark itself.”

Marginal Citations

- M1** OJ No. L171, 29.06.2016, p.1.
M2 OJ No. L133, 22.05.2008, p.66.
M3 OJ No. L60, 28.02.2014, p.34.
M4 OJ No. L173, 12.06.2014, p.1.

52. In article 64 (agreeing to carry on specified kinds of activity)—

- (a) omit “and” and insert “, ”;
(b) after “63N” insert “ and 63S ”.

53. The following provisions of the RAO are revoked—

- (a) article 63O (specified benchmarks);

- (b) article 63P (publicly available factual data and subscription services);
- (c) article 63Q (administration of a specified benchmark by the FCA);
- (d) article 63R (Schedule); and
- (e) Schedule 5 (specified benchmarks).

Commencement Information

I1 [Reg. 53](#) in force at 1.5.2020, see [reg. 1\(2\)\(b\)](#)

Amendment to the Financial Services and Markets Act 2000 (Exemption) Order 2001

54. The Financial Services and Markets Act 2000 (Exemption) Order 2001 ^{M5} is amended by inserting, after article 5—

“Persons exempt in respect of administering a benchmark

5A. Part 1 of the Schedule does not apply to the regulated activity specified in article 63S of the Regulated Activities Order (administering a benchmark). The persons exempt in respect of the regulated activity of administering a benchmark are those listed, or carrying out an activity listed, in Article 2(2) 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](#)^{M6} and [2014/17/EU](#)^{M7} and Regulation (EU) No 596/2014^{M8}”.

Marginal Citations

M5 [S.I. 2001/1201](#).
M6 OJ No L133 22.05.08, p.66.
M7 OJ No L60 28.02.14, p.34.
M8 OJ No L171 29.06.16, p.1.

Amendment to the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001

55. Article 4 ^{M9} of the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 ^{M10} is amended by inserting, after paragraph (h)—

“(i) article 63S (administering a benchmark).”.

Marginal Citations

M9 Article 4 was amended by [S.I. 2001/3650](#), [S.I. 2004/2737](#), [S.I. 2006/1969](#), [S.I. 2012/1906](#), [S.I. 2013/1773](#).
M10 [S.I. 2001/1227](#).

Amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

56.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 ^{M11} is amended as follows.

(2) In regulation 2 ^{M12} in the appropriate places insert—

““EU Benchmarks Regulation 2016” means Regulation EU 2016/1011 ^{M13} 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^{M14} and 2014/17/EU ^{M15} and Regulation (EU) No 596/2014 ^{M16}.”; and

“EU Benchmarks Regulation 2016 information” means information received by the FCA in the course of discharging its functions as a competent authority under the EU Benchmarks Regulation 2016.”.

(3) In regulation 12, after paragraph (5) insert—

“(6) This regulation does not permit disclosure of the EU Benchmarks Regulation 2016 information which has been received from another competent authority unless the disclosure is in accordance with Article 38 of the EU Benchmarks Regulation 2016.”.

Marginal Citations

M11 S.I. 2001/2188.

M12 Regulation 2 was amended by S.I. 1992/3218, S.I. 1994/1696, S.I. 1995/3275, S.I. 1997/2781, S.I. 1999/2094, S.I. 2003/693, S.I. 2003/2066, S.I. 2004/1862, S.I. 2004/3379, S.I. 2006/3413, S.I. 2010/2628, S.I. 2011/1043, S.I. 2011/1613, S.I. 2012/916, S.I. 2012/2554, S.I. 2013/472, S.I. 2013/504, S.I. 2013/1162, S.I. 2013/1773, S.I. 2013/3115, S.I. 2014/3329, S.I. 2014/3348, S.I. 2015/575, S.I. 2015/910, S.I. 2016/225, S.I. 2016/680, S.I. 2016/715 and S.I. 2017/1064.

M13 OJ No. L171, 29.06.2016, p.1.

M14 OJ No. L133, 22.05.2008, p.66.

M15 OJ No. L60, 28.02.2014, p.34.

M16 OJ No. L173, 12.06.2014, p.1.

Amendments to the Consumer Credit (Disclosure of Information) Regulations 2010

57.—(1) The Consumer Credit (Disclosure of Information) Regulations 2010 ^{M17} are amended as follows.

(2) In regulation 3(4)—

(a) in paragraph (u)(ii) omit “and”;

(b) in paragraph (v) omit “.” and insert “, and ”;

(c) after paragraph (v) insert—

“(w) where the agreement references a benchmark, as defined in point 3 of Article 3(1) of Regulation EU 2016/1011 ^{M18} 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^{M19} and 2014/17/EU ^{M20} and Regulation (EU) No 596/2014 ^{M21}, the name of the benchmark and of its administrator and the potential implications on the debtor.”.

(3) In regulation 4(2)(b), for “and (j)” substitute “, (j) and (w) ”.

(4) In regulation 8, after paragraph (5) insert—

“(6) Where a consumer credit agreement references a benchmark, the name of the benchmark and of its administrator and the potential implications for the debtor shall be provided by the creditor, or where applicable, by the credit intermediary, to the debtor in a separate document, which may be annexed to the form in Schedule 1.”.

Commencement Information

I2 Reg. 57 in force at 1.7.2018 by S.I. 2018/135, reg. 1(2)(a)

Marginal Citations

M17 S.I. 2010/1013.

M18 OJ No L171 29.06.2016, p.1.

M19 OJ No. L133, 22.05.2008, p.66.

M20 OJ No. L60, 28.02.2014, p.34.

M21 OJ No. L173, 12.06.2014, p.1.

Amendments to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

58.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013^{M22} is amended as follows.

(2) In article 1(2)^{M23} (citation, commencement and interpretation) in the appropriate place, insert—

““the EU Benchmarks Regulation 2016” means Regulation EU 2016/1011^{M24} 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^{M25} and 2014/17/EU and Regulation (EU) No 596/2014;”.

(3) In article 2^{M26} (qualifying EU provisions: general), after paragraph (11), insert—

“(12) The EU Benchmarks Regulation 2016 is a specified qualifying EU provision for the purpose of section 1A(6)(d)^{M27} of the Act.

(13) The EU Benchmarks Regulation 2016 and any directly applicable regulation made under the EU Benchmarks Regulation 2016 is a specified qualifying EU provision for the purposes of sections 1L(2)(b)^{M28}, 39(4)(b)^{M29}, 66A(4)(b)^{M30}, 168(4)(k)^{M31}, 192K(1)(c)^{M32} and 293A^{M33} of the Act.”.

(4) In article 3^{M34} (qualifying EU provisions: disciplinary measures)—

(a) in paragraph (2), at the end of sub-paragraph (l) for “.” substitute “ ;”;

(b) in paragraph (2) after sub-paragraph (l) insert—

“(m) the EU Benchmarks Regulation 2016 and any directly applicable regulation made under the EU Benchmarks Regulation 2016.”; and

(c) in paragraph (3) after sub-paragraph (j) insert—

“(k) in relation to a contravention of a requirement imposed by the EU Benchmarks Regulation 2016 or of any directly applicable regulation made under that Regulation, the FCA.”.

(5) In article 4 (qualifying EU provisions etc.: recognised investment exchanges and clearing houses) after paragraph (11) insert—

“(12) The EU Benchmarks Regulation 2016 or any directly applicable regulation made under that Regulation are specified qualifying EU provisions for the purposes of sections 296(1A)^{M35}, 297(2A)(c)^{M36} and 312E(2)(c)^{M37}.”

(6) In article 5^{M38} (qualifying EU provisions: injunctions and restitution) —

(a) at the end of paragraph (2)(l) for “.” substitute “ ; ”;

(b) after paragraph (2)(l) insert—

“(m) the EU Benchmarks Regulation 2016 and any directly applicable measure made under that Regulation.”;

(c) in paragraph (5)—

(i) at the end of sub-paragraph (k) for “.” substitute “ ; ”; and

(ii) after sub-paragraph (k) insert—

“(l) in relation to a contravention of a requirement imposed by the EU Benchmarks Regulation 2016 or any directly applicable measure made under that Regulation, the FCA.”

(7) In article 6(2)^{M39} (qualifying EU provisions: fees)—

(a) at the end of sub-paragraph (n) for “.” substitute “ ; ”;

(b) after sub-paragraph (n) insert—

“(o) the EU Benchmarks Regulation 2016 and any directly applicable regulation made under the EU Benchmarks Regulation 2016.”

Marginal Citations

M22 [S.I. 2013/419](#).

M23 [Article 1\(2\)](#) was amended by [S.I. 2013/1773](#), [S.I. 2014/2879](#), [S.I. 2014/3348](#) and [S.I. 2015/1882](#).

M24 [OJ No L171 29.06.2016](#), p.1.

M25 [OJ No. L133, 22.05.2008](#), p.66.

M26 [Article 2](#) was amended by [S.I. 2013/1773](#), [S.I. 2014/2879](#), [S.I. 2014/3348](#), [S.I. 2015/1882](#), [S.I. 2016/680](#), [S.I. 2016/715](#), [S.I. 2016/936](#) and [S.I. 2016/1023](#).

M27 [Section 1A\(6\)\(d\)](#) was inserted by section 6(1) of the Financial Services Act 2012.

M28 [Section 1L\(2\)\(b\)](#) was inserted by section 6(1) of the Financial Services Act 2012.

M29 [Section 39\(4\)\(b\)](#) was inserted by paragraph 5(3) of Schedule 18(1) to the Financial Services Act 2012.

M30 [Section 66A\(4\)\(b\)](#) was inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013.

M31 [Section 168\(4\)\(k\)](#) was inserted by paragraph 8(4) of Schedule 12 to the Financial Services Act 2012.

M32 [Section 192K\(1\)\(c\)](#) was inserted by section 27 of the Financial Services and Markets Act 2012 and [S.I. 2014/3329](#).

M33 [Section 293A](#) was inserted by paragraph 11 of Schedule 8 to the Financial Services Act 2012 and amended by [S.I. 2017/1064](#).

M34 [Article 3](#) was amended by [S.I. 2013/1773](#), [S.I. 2014/2879](#), [S.I. 2014/3348](#), [S.I. 2015/1882](#), [S.I. 2016/715](#) and [S.I. 2016/936](#).

M35 [Section 296\(1A\)](#) was added by [S.I. 2007/126](#).

M36 [Section 297\(2A\)\(c\)](#) was inserted by [S.I. 2007/126](#) and by paragraph 15(3)(c) of Schedule 8 to the Financial Services Act 2012.

M37 [Section 312E\(2\)\(c\)](#) was inserted by section 33 of the Financial Services Act 2012.

M38 [Article 5](#) was amended by [S.I. 2013/1773](#), [S.I. 2014/2879](#), [S.I. 2014/3348](#), [S.I. 2015/1882](#), [S.I. 2016/680](#), [S.I. 2016/715](#), [S.I. 2016/936](#) and [S.I. 2017/1127](#).

M39 [Article 6\(2\)](#) was amended by [S.I. 2013/1773](#), [S.I. 2014/2879](#), [S.I. 2014/3348](#), [S.I. 1025/1882](#), [S.I. 2016/680](#), [S.I. 2016/715](#) and [S.I. 2017/1127](#).

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, PART 6.