

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (BENCHMARKS)**  
**(AMENDMENT) REGULATIONS 2019**

**2019 No. 1256**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument makes amendments to The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (“the 2018 Regulations”) which gave effect to 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 investments and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (“the Benchmarks Regulation 2016”).
- 2.2 This instrument amends the definition of a Miscellaneous Benchmarks Person in regulation 5(2)(e) of the 2018 Regulations to include a person who administers a benchmark in accordance with Article 46(8) of the Benchmarks Regulation 2016. The Regulations also clarify the scope of the powers of the Financial Conduct Authority (“the FCA”) under regulation 6(1)(b) of the 2018 Regulations to impose requirements on Miscellaneous Benchmark Persons “in order to advance any of its operational objectives”. It limits these powers to Miscellaneous Benchmark Persons described in regulations 5(2)(d) or (e) of the 2018 Regulations.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 This instrument makes amendments to the 2018 Regulations, which gave effect to the Benchmarks Regulation 2016. These amendments are made under section 2(2) of the European Communities Act 1972.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The 2018 Regulations made administering a benchmark a regulated activity, enabling the FCA to regulate benchmark administrators. It also provided the FCA with powers in respect of other persons who are involved with the provision of benchmarks (Miscellaneous Benchmarks Persons).
- 7.2 Since their introduction, it has become clear that the scope of the FCA's powers to impose certain requirements on Miscellaneous Benchmarks Persons required further clarification to ensure that they could not be exercised more broadly than considered proportionate to enforce the Benchmarks Regulation 2016 effectively.
- 7.3 This instrument, therefore, amends the scope of these powers to provide that the FCA may only exercise its power to impose requirements "in order to advance any of its operational objectives" in respect of those Miscellaneous Benchmark Persons described in regulation 5(2)(d) or (e) of the 2018 Regulations.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 HM Treasury does not propose to consolidate any legislation in consequence of this instrument.

## **10. Consultation outcome**

- 10.1 HM Treasury has not undertaken a consultation on this instrument, but has engaged relevant stakeholders on its approach, in order to familiarise them with the legislation ahead of laying.

## **11. Guidance**

- 11.1 No further guidance is being published alongside this instrument.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The changes made by the instrument make specific amendments to ensure that certain powers under the 2018 Regulations are exercised proportionately with regards to small businesses.

#### **14. Monitoring & review**

14.1 The Economic Secretary to the Treasury, John Glen, has made the following statement regarding monitoring and review:

14.2 In my view this instrument does not include a statutory review clause under Section 28 of the Small Business, Enterprise and Employment Act 2015 as it would not be proportionate.

#### **15. Contact**

15.1 Martin Booth at HM Treasury Telephone: 0202701434 or email: martin.booth@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tom Duggan, Deputy Director for Securities, Markets and Banking at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Economic Secretary to the Treasury, John Glen, can confirm that this Explanatory Memorandum meets the required standard.