EXPLANATORY MEMORANDUM TO

THE BENCHMARKS (AMENDMENT AND TRANSITIONAL PROVISON) (EU EXIT) REGULATIONS 2019

2019 No. 657

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Act.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument is being made under the European Union (Withdrawal) Act 2018 (c.16) ("EUWA") to address deficiencies in retained European Union (EU) law that arise from the United Kingdom (UK) leaving the EU, specifically in relation to Regulation EU 2016/11 ("The Benchmarks Regulation" (BMR)) and related EU tertiary legislation – namely, Commission Implementing Regulation (EU) 2016/1368 and Commission Delegated Regulations 2018/64, 2018/65, 2018/66 and 2018/67.

Explanations

What did any relevant EU law do before exit day?

2.2 The primary objective of the BMR is to ensure the accuracy, robustness and integrity of financial benchmarks. Benchmarks are used in a wide range of markets to help set prices, measure performance, or work out amounts payable under financial contracts. They play a key role in the financial system's core functions of allocating capital and risk and impact huge volumes of credit products and derivatives. The BMR was introduced after a number of high profile misconduct cases, including the attempted manipulation of crucial interest rate benchmarks such as the London Interbank Offered Rate (LIBOR) and the European Inter Bank Offered Rate (EURIBOR). The BMR places requirements on administrators (a natural or legal person that has control over the provision of a benchmark), supervised users of, and supervised contributors to, benchmarks. These relate to a range of issues including benchmark methodology, governance and transparency.

2.3 The BMR sets out routes for benchmarks to become approved for use, and only those approved under these routes by the end of the existing transitional period in the EU BMR (which ends on 31 December 2019) may continue to be used in the EU after that date.

2.4 Routes to approval are as follows:

- EU administrators must apply for either authorisation or registration;
- third country administrators may become approved via equivalence or recognition or their individual benchmarks can be approved via endorsement.

2.5 Approved administrators and/or benchmarks are placed onto the publicly available European Securities and Markets Authority (ESMA) Benchmarks Register. It is important to note that following successful applications by EU administrators, only the administrator is added to the register and users may use any of their benchmarks. However, following a successful third country application, both the administrator and the approved benchmarks, are added to the register and users may only use third country benchmarks which are listed on the register.

Why is it being changed?

2.6 This instrument forms part of HM Treasury's contingency planning for a no-deal scenario, making the appropriate changes to ensure the UK continues to have a functioning financial services regime from exit day. Without these provisions, the FCA would not have an effective framework designed to prevent benchmark manipulation in the UK, affecting the integrity and attractiveness of the UK's financial markets. Additionally, whilst the EU BMR is currently in a transitional phase, many firms have already begun work to ensure compliance with the regime, including submission of regulatory applications and ensuring modifications to their business models to meet requirements. If this instrument were not made, there would be significant market uncertainty among UK and third country providers over whether they would still need to be compliant by 2020, and among users over which benchmarks they could lawfully use.

What will it now do?

2.7 This instrument makes changes that are appropriate to ensure that the existing regime under the Benchmarks Regulation and related EU legislation continues to operate effectively once the UK is outside the EU. Consistent with the government's policy of providing continuity to business and consumers when the UK leaves the EU, the policy approach set out in BMR legislation will not change after the UK has left the EU. This SI ensures that UK financial markets will continue to operate in a fair, stable and transparent manner post EU withdrawal.

2.8 The key changes are:

- Amending the scope of the BMR so that after exit day it applies to the UK, and not the whole of the EU.
- Creating an FCA register of approved benchmarks and benchmark administrators to replace the register maintained by ESMA. Benchmarks and administrators who appeared on the ESMA register as the result of a successful application to the FCA will be migrated onto the UK register.
- Temporarily migrating benchmarks which appear on the ESMA register at exit day, as a result of a successful application outside of the UK, to the new FCA register for a period of 24 months after exit day. Supervised entities will automatically be able to continue to use these benchmarks, or benchmarks provided by these administrators, in the UK for up to 24 months after exit day, unless and until an application for approval in the UK is refused. These administrators or benchmarks must become approved by the FCA to enable their continued use in new contracts within the UK beyond this 24-month period.
- Ensuring that applications in respect of benchmarks and/or administrators that are approved by the FCA will be placed on the FCA register.

- Ensuring that EU located administrators are subject to the UK's third country regime, which (subject to transitional provisions) requires third country administrators or benchmarks to become approved via recognition or endorsement applications to the FCA to allow use of their benchmarks in the UK by supervised entities, unless and until they are approved under the equivalence provisions in the BMR.
- Transferring relevant non-legislative and legislative functions to the relevant UK bodies. Functions of the European Commission in the BMR are transferred to HM Treasury, and functions of ESMA are transferred to the FCA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument relies on provisions made by other EU exit instruments which have not yet been made. It is therefore conditional on the making of those instruments, which are as follows:

- The proposed Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (to be laid in due course);
- The laid Collective Investment Schemes (Amendment) (EU Exit) Regulations 2019;
- The laid Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019.

3.2 This instrument will be made once the above regulations have been made.

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)

3.3 The territorial application of this instrument includes Scotland and Northern Ireland.

3.4 The powers under which this instrument is made cover the entire United Kingdom (see section 8(1) of, and paragraph 21(b) of Schedule 7 to, the EUWA) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to the whole of the United Kingdom.

4.2 The territorial application of this instrument is to the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding Human Rights:

"In my view the provisions of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The instrument amends the following EU Regulations to address deficiencies arising from the UK's exit from the European Union: the BMR and related EU tertiary legislation – namely, Commission Implementing Regulation (EU) 2016/1368 and Commission Delegated Regulations 2018/64, 2018/65, 2018/66 and 2018/67.

7. Policy background

What is being done and why?

7.1 The UK will leave the EU on 29 March 2019. The UK and EU have reached agreement on the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. Therefore, should a deal be approved, the implementation period will provide time to introduce the new arrangements that will underpin the UK-EU future relationship, and provide valuable certainty for businesses and individuals. During an implementation period, common rules would continue to apply. The UK would continue to implement new EU law that comes into effect and the UK would continue to be treated as part of the EU's single market in financial services. This would mean that access to each other's markets would continue on current terms and businesses, including financial services firms, would be able to trade on the same terms as now until 31 December 2020. UK firms would need to comply with any new EU legislation that becomes applicable during the implementation period.

7.2 The government is seeking a deep and special future partnership with the EU, which should be greater in scope and ambition than any such agreement before and encompass financial services. Given the highly regulated nature of financial services, the volume of trade between UK and EU markets, and a shared desire to manage financial stability risks, the UK proposes a new economic and regulatory arrangement that will preserve mutually beneficial cross-border business models and economic integration for the benefit of businesses and consumers. Decisions on market access would be autonomous in our proposed model, but would be underpinned by stable institutional processes in a bilateral agreement and continued close regulatory and supervisory cooperation.

7.3 While the government believes that there will be a deal with an implementation period in place, it must plan for all eventualities, including a 'no deal' scenario. Therefore, HM Treasury intends to use powers in the EUWA to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.

7.4 The EUWA repeals the European Communities Act 1972 and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through statutory instruments. These contingency preparations for financial services legislation are sometimes referred to as 'onshoring'. These statutory instruments are not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to this situation. The scope of the power is drafted to reflect this purpose and is subject to further restrictions, such as the

inability to use the power to impose or increase taxation, or establish a public authority. The power is also time-limited and falls away two years after exit day.

7.5 Wherever practicable, the proposed approach is that the same laws and rules that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, if the UK does not enter an implementation period, some changes would be required to reflect the UK's new position outside the EU from 29 March 2019.

7.6 If the UK were to leave the EU without a deal, the UK would be outside the EU's framework for financial services. The UK's position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.

7.7 In light of this, the approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed including to provide for a smooth transition to the new circumstances.

7.8 HM Treasury published a document on 27 June 2018, which sets out in more detail HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act. (https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act).

Deficiencies this SI remedies

7.9 To ensure that the existing regime under the Benchmarks Regulation and related EU legislation continues to operate effectively once the UK has left the EU, certain amendments to the relevant legislation are appropriate. These deficiency fixes are explained in greater detail below.

Amending the scope of the Regulation from EU to UK

7.10 Regulation 4 amends the scope of the BMR, as it will apply in the UK, to the UK only. This means that the BMR governs the provision and use of benchmarks, and the contribution of input data to benchmarks, only in the UK.

7.11 Regulation 5 amends references to various definitions contained in EU Regulations and Directives to refer to the definitions in retained EU law so that their scope is appropriate in the UK. A definition of a 'third country' is also inserted, to mean any country outside the UK.

7.12 The changes made to the scope of the BMR ensure that, from exit day, any administrators located outside of the UK will be subject to the onshored third country regime, which requires third country administrators or benchmarks to become approved via recognition or endorsement applications to the FCA to allow use of their benchmarks in the UK by supervised entities (unless and until they are approved under the equivalence provisions under the BMR).

Creation of an FCA register

7.13 Under the EU BMR, when a national competent authority in an EU member state approves an application under the Regulation, the benchmark and/or administrator is

added to the centrally held and publicly accessible ESMA register of benchmarks. A supervised entity may only use a benchmark, or combination of benchmarks, in the Union where the administrator of that benchmark (for EU located administrators) or the benchmark itself (for third country located administrators) appears on the ESMA register, subject to the transitional provisions of the EU BMR.

7.14 Continuing to rely on the ESMA register after exit day would mean that the FCA would be unable to supervise some of the administrators on the register and would be unable to accept new applications for authorisation. It is important that the FCA is able to regulate the use of benchmarks in its jurisdiction. Therefore, consistent with the general approach to transfer functions, the functions of ESMA in the EU BMR will be transferred to the FCA. Regulation 33 of this instrument creates an FCA register of benchmarks which the FCA will have the responsibility for maintaining from exit day ("the FCA register"). The BMR is amended so that supervised entities may only use benchmarks in the UK if either the administrator providing the benchmark (for UK located benchmarks) or the benchmark itself (for third country benchmarks) is on the UK register, subject to the transitional provisions of BMR.

Migrating UK approved benchmarks and benchmark administrators onto UK register on exit day

7.15 This instrument provides that at exit day, administrators that have already been authorised or registered in the UK by the FCA, and which are on the ESMA register at 5pm on the day on which exit day occurs, must be automatically migrated to the FCA register without the need to submit a new application to the FCA. It makes the same provision for third country benchmarks and/or administrators that have been recognised by the FCA, or endorsed by UK administrators or supervised entities (with such endorsement authorised by the FCA) prior to exit day.

Part 3 Transitional Provision: temporarily migrating EU27 approved benchmarks onto the UK register on exit day

7.16 Benchmark administrators that are located outside the UK will be subject to the third country regime which will require the administrator or benchmark to become approved by equivalence, recognition or endorsement in the UK in order to be added to the FCA register. This will apply to third country benchmarks and administrators even if they already appear on the ESMA register (unless they appear there as the result of recognition by, or endorsement authorised by, the FCA, as set out in the preceding paragraph).

7.17 However, it is important to avoid any market disruption which could result from a sudden loss of UK access at the end of the transitional period in the BMR to benchmarks which already appear on the ESMA register at exit day, or benchmarks provided by administrators which already appear on the ESMA register at exit day. Therefore, a new transitional provision (in Part 3) temporarily migrates over to the FCA register any benchmarks or administrators which appear on the ESMA register at 5pm on the day on which exit day occurs as a result of a successful application under the EU BMR outside of the UK, or as a result of an equivalence decision by the European Commission.

7.18 This transitional provision will allow, for a 24-month period, the use of any benchmark administered by a EU located administrator which appeared on the ESMA register at 5pm on the day on which exit day occurs. It also allows, during that period,

the use of any third country benchmark provided by an administrator located outside the EU where those benchmarks are included on the ESMA register at exit day. Where a third country administrator, which appeared on the ESMA register at exit day as the result of an equivalence decision or a successful recognition application outside of the UK, subsequently has a new benchmark added to the ESMA register during this period, this will be copied over to the FCA register and can therefore also be used in the UK during this period.

7.19 The third country administrators or benchmarks subject to this transitional provision must become approved by the FCA under the third country regime to enable the continued use of those benchmarks, or benchmarks provided by those administrators, in new contracts within the UK beyond this 24-month period.

7.20 The instrument provides that, where a benchmark or benchmark administrator subject to this transitional provision is removed from the ESMA register after exit day, it will also be removed from the UK register, but only if the FCA considers that doing so would be compatible with the FCA's strategic objective and would advance one or more of the FCA's operational objectives. To prevent any contractual frustration, a benchmark which is removed from the FCA register (or which is provided by an administrator who is removed from that register) will continue to be permitted for use in contracts where the reference to it was added prior to its removal. Where a benchmark subject to this transitional is removed from the register prior to end-2019, they will still be able to take advantage of the transitional provisions in Article 51 of the BMR as onshored. This allows supervised entities to use until end-2019 third country benchmarks which do not appear on the FCA register (but see the exception set out in paragraph 7.21).

Maintaining pre-exit day application refusal decisions

7.21 The existing transitional provisions in the EU BMR stipulate that where an EU administrator has had its application for authorisation or registration refused, the use of the benchmarks it provides becomes prohibited within the EU until the point at which the administrator makes a subsequent successful application. Conversely, the BMR transitional provisions also stipulate that third country administrators may continue to provide benchmarks during the transitional period even if they have had an application refused. Given that EU member states will be subject to the third country regime after exit, such prohibitions would no longer apply on exit day unless expressly provided for.

7.22 This instrument therefore contains a provision to maintain, after exit day, those prohibitions which were in place at exit day in the UK as a result of refused authorisation or registration applications from administrators located within the EU. These prohibitions will remain valid in the UK until an application is approved in the UK, or a relevant equivalence decision is made in the UK.

Transfer of Functions

7.23 To ensure that the UK's benchmarks regime will work effectively, the functions of ESMA in the EU BMR will be transferred to the FCA. ESMA's responsibilities for drafting binding technical standards under the BMR are also transferred to the FCA.

7.24 The European Commission's power to adopt delegated acts will be transferred to the Treasury. This includes a power to update which benchmarks are designated as critical benchmarks. In order to be designated a critical benchmark, benchmarks must

fulfil at least one of the conditions relating to critical benchmarks as set out in the BMR. This instrument divides functions between the Treasury and the FCA, such that the FCA assesses benchmarks against the critical criteria and presents its conclusions to the Treasury. The Treasury have the power to make regulations to designate a benchmark as critical where a benchmark meets the criteria. The FCA is the appropriate body to carry out the assessment of benchmarks due to its technical expertise. Similarly, the requirements to review the thresholds for critical and significant benchmarks are transferred to the FCA, whilst the Treasury has the power to implement by regulations any changes on the basis of these recommendations.

7.25 The European Commission's role in assessing the equivalence of third countries' regulatory regimes relating to benchmarks will be transferred to the Treasury. Where a positive decision on equivalence of the supervisory regime of a third country has been taken by the Treasury, the FCA must establish a suitable cooperation arrangement with the national competent authority of that third country. Following this, third country administrators who notify the FCA of consent to use of their benchmarks in the UK will be added to the FCA register, along with the list of benchmarks they administer and consent to use of.

Cooperation and Information Sharing

7.26 When the UK is no longer part of the single market, it would not be appropriate for UK supervisors to be unilaterally obliged to share information or cooperate with EU authorities, without any guarantee of reciprocity. As such, provisions relating to cooperation and information sharing have been removed. However, this will not preclude UK supervisors from sharing information with EU authorities, as the existing domestic framework for cooperation and information sharing with countries outside the UK already allows for this on a discretionary basis.

Correcting deficiencies in Commission Delegated Acts

7.27 This instrument makes minor amendments to delegated acts pertaining to the EU BMR to ensure they function after exit day. This includes amending the list of critical benchmarks to remove benchmarks administered in the EU.

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

8.1 This instrument is being made using the power in section 8 of the EUWA, in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the paragraph 21 of Schedule 7 of the EUWA. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 HM Treasury has not undertaken a consultation on the instrument, but has engaged with relevant stakeholders on its approach to Financial Services legislation under the

EUWA, including on this instrument, in order to familiarise them with the legislation ahead of laying.

10.2 The instrument was also published in draft on the 8th January 2019 in order to maximise transparency ahead of laying. (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769684/Draft_Benchmarks_EU_Exit_SI.pdf).

10.3 An explanatory policy note on this instrument was published on the 23rd November 2018 (https://www.gov.uk/government/publications/draft-benchmarks-amendment-and-transitional-provision-eu-exit-regulations-2019/the-benchmarks-amendment-eu-exit-regulations-2018-explanatory-information) and the FCA undertook a public consultation in November on changes they propose to make to BTS and rules made under the powers conferred upon them by the Financial Services and Markets Act (2000) (https://www.fca.org.uk/publication/consultation/cp18-36.pdf).

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

12.1 There is an impact on business particularly UK located benchmark administrators, as well as third country benchmark administrators who intend to provide benchmarks for use within the UK. The SI will also affect supervised users of benchmarks in the UK, who will need to consult the FCA register rather than the ESMA register for details on UK-approved benchmark administrators or benchmarks after the UK leaves the EU.

12.2 There is no impact on charities and voluntary bodies.

12.3 The impact on the public sector relates to the new functions that the FCA will take on – primarily, responsibility for maintaining an FCA register of benchmarks and administrators, and assessing applications from a wider scope of third country administrators than before exit (as applications will now be made by EU administrators as well.

12.4 A full Impact Assessment will be published alongside the Explanatory Memorandum on the legislation.gov.uk website, when an opinion from the Regulatory Policy Committee has been received.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. Some benchmark administrators are small businesses. However, the BMR categorises benchmarks by significance, i.e. the total value of financial instruments and contracts referencing them, and regulates accordingly; as such small businesses will likely face lighter requirements than administrators of interest rate benchmarks or others with systemic importance.

13.2 More broadly, the FCA takes a risk based approach to supervision in general, which means that businesses are supervised in accordance with the risk they present to the financial sector or consumers. This instrument will maintain this proportionality.

13.3 The changes made by this instrument address deficiencies in retained EU legislation to ensure that it continues to operate effectively after the UK leaves the EU, and are therefore aimed at minimising disruption for all firms, including small businesses.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Martin Booth at HM Treasury, Telephone: 0207 270 1434 or email: martin.booth@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 Clare Bolingford, 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.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Benchmarks (Amendment and Transitional Provision) (EU Exit Regulation 2019 do no more than is appropriate".

1.2 This is the case because the instrument goes no further than doing what is appropriate to mitigate against the risk that the UK will not have an effective framework for regulating benchmarks from exit day, affecting the integrity and attractiveness of the UK's financial markets. This instrument ensures that Benchmarks Regulation will continue to operate and apply effectively in a UK-only context.

2. Good reasons

2.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: without these provisions, the FCA would not have an effective framework designed to prevent benchmark manipulation in the UK, affecting the integrity and attractiveness of the UK's financial markets. Additionally, whilst the Regulation is currently in a transitional phase, many firms have already begun work to ensure compliance with the regime, including submission of regulatory applications and ensuring modifications to their business models to meet requirements. Without the changes made in this Si, there would be significant market uncertainty among UK and third country providers over whether they would still need to be compliant by 2020, and among users over which benchmarks they could lawfully use

3. Equalities

3.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement:

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Economic Secretary to the Treasury, John Glen MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, John Glen MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

5.1 The Economic Secretary to the Treasury, John Glen, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view it is appropriate to create a relevant sub-delegated power in the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019."

5.2 This is appropriate because the EU Benchmarks Regulation mandates ESMA to draft technical standards. In order to remedy a deficiency created by the UK leaving the EU, it is appropriate to transfer this function to the appropriate UK body. This instrument transfers that function to the FCA. This is considered appropriate because the FCA will have the necessary technical knowledge and resource to ensure that the relevant technical standards are maintained appropriately after the UK's exit from the EU. Any required corrections and amendments to these binding technical standards will be of a highly technical nature and the FCA will be best placed to assess what amendments to the standards are required post-exit to ensure that these operate effectually in a UK-only context. The transfer of functions for binding technical standards to the regulators is also consistent with the general onshoring approach to such standards (as per the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018).