

MEMO# 33518

May 4, 2021

LIBOR Update: UK Financial Services Bill Enacted with FCA Transition Powers

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TO: ICI Global Regulated Funds Committee

LIBOR Transition Working Group RE: LIBOR Update: UK Financial Services Bill Enacted with FCA Transition Powers

Last week, the UK Financial Services Bill was enacted by royal assent, becoming the Financial Services Act 2021.[\[1\]](#) With respect to benchmarks, the new Act provides the Financial Conduct Authority (FCA) the powers to oversee an orderly transition away from the LIBOR benchmark.

FCA Powers to Govern LIBOR

Largely consistent with the bill introduced in October, the Act amends the Benchmarks Regulation to reduce disruption to tough legacy LIBOR contracts by empowering the FCA to:

- Enable the designation of a benchmark as "critical" and compel an administrator to continue publishing the benchmark. The FCA would also conduct an assessment of the benchmark's capability to be representative of the underlying market and economic reality.
- Prohibit some or all new use of the critical benchmark by UK supervised entities. New use includes, among other activities, issuing a financial instrument that references the benchmark.
- Require a benchmark administrator to change how a critical benchmark is determined, including its input data and the rules for the benchmark. This is known colloquially as "synthetic" LIBOR. The FCA may exercise these powers to secure an orderly wind down of a benchmark and to further consumer protection and market integrity.
- Consider the likely effect outside the UK of the FCA using its powers to prohibit new use or to compel a change in the calculation of a critical benchmark.
- Extend the expiration of the transitional period for third country benchmarks until the end of 2025.
- Exercise its powers in different ways in relation to in different currencies or tenors of the same critical benchmark, as if they were separate benchmarks.

The FCA had begun consultations on the use of these powers even before the enactment of

the Act and is expected to issue further consultations on the use of "synthetic" LIBOR in upcoming months.

Update on Status of Safe Harbour

Earlier this year, the UK Treasury issued a consultation regarding introducing a legal safe harbour for legacy contracts affected by changes to the calculation of the benchmark rate made pursuant to the FCA's powers under the Benchmarks Regulation.^[2]

The Working Group on Sterling Risk Free Rates recently sent a letter to the Treasury to ask for an update on the status of that legislative proposal. The Working Group noted "[g]iven the impending deadline for GBP LIBOR cessation at the end of 2021, the Working Group believes that timely clarity on this point is critical given the concerns regarding potential market disruption or other unintended consequences that may arise from the transition of tough legacy contracts." The Working Group noted "strong and broad support for safe harbour protection."

Bridget Farrell
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endnotes

[1] See https://www.legislation.gov.uk/ukpga/2021/22/pdfs/ukpga_20210022_en.pdf. For background on the bill, see ICI Memorandum No. 32855, *available at* <https://www.ici.org/memo32855>.

[2] See ICI Memorandum No. 33108, *available at* <https://www.ici.org/memo33108>. See also ICI's response to the consultation at ICI Memorandum No. 33194, *available at* <https://www.ici.org/memo33194>.