

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 (Text with EEA relevance)

### TITLE III

## REQUIREMENTS FOR DIFFERENT TYPES OF BENCHMARKS

### CHAPTER 4

#### *Critical benchmarks*

#### *[<sup>F1</sup>Article A20*

#### **Critical benchmarks: review of critical benchmarks**

- 1 The FCA must conduct a proportionate review of critical benchmarks in accordance with paragraphs 2 to 4, taking into account information provided to it under paragraph A1 of Article 20.
- 2 The review must consider:
  - [<sup>F2</sup>a whether an administrator located in the United Kingdom provides a benchmark that satisfies one or more of conditions (a), (b), (c) or (d) of paragraph 1 of Article 20;] and
  - b where a benchmark satisfies [<sup>F3</sup>point (a)] of this paragraph, whether the FCA recommends that the benchmark is recognised as critical.
- 3 The FCA must provide a written report to the Treasury:
  - a setting out the result of the review; and
  - b making a recommendation as to whether any benchmark that satisfies [<sup>F4</sup>point (a)] of paragraph 2 should be recognised as critical.
- 4 The FCA must conduct the review and provide the report to the Treasury:
  - a within the period of two years beginning with IP completion day; and
  - b thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.
- 5 The Treasury must by regulations specify that a benchmark is critical if:
  - a the FCA has recommended that the benchmark is recognised as critical in accordance with the review procedure specified in paragraphs 2 and 3; and
  - b the Treasury [<sup>F5</sup>determine] that the FCA's review complies with the requirements of paragraphs 2 and 3.
- 6 The Treasury may by regulations specify that a benchmark is critical if:
  - a the benchmark is provided by an administrator located in the United Kingdom; and
  - [<sup>F6</sup>b the Treasury consider that the benchmark satisfies one or more of conditions (a), (b), (c) or (d) of paragraph 1 of Article 20.]

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7 The Treasury may not specify a regulated-data benchmark as a critical benchmark under paragraph 5 or 6 of this Article or under paragraph 5 of Article 20.]

#### Textual Amendments

- F1** Art. A20 inserted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/657), regs. 1(2), **15** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(b); S.I. 2020/1385, regs. 1(4), 58(6); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Art. A20(2)(a) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 8(2)**, 49(5); S.I. 2021/739, reg. 3(a)
- F3** Words in Art. A20(2)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 8(3)**, 49(5); S.I. 2021/739, reg. 3(a)
- F4** Words in Art. A20(3)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 8(4)**, 49(5); S.I. 2021/739, reg. 3(a)
- F5** Word in Art. A20(5)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), s. 49(5), **Sch. 5 para. 5**; S.I. 2021/739, reg. 3(n)
- F6** Art. A20(6)(b) substituted (1.7.2021) by [Financial Services Act 2021](#) (c. 22), **ss. 8(5)**, 49(5); S.I. 2021/739, reg. 3(a)

#### Article 20

#### [<sup>F7</sup>Critical benchmarks: conditions and other matters]

[<sup>F8</sup>A1 An administrator shall immediately notify the FCA when the administrator's benchmark:

- a exceeds the threshold in paragraph 1(a); or
- b fulfils the criterion in paragraph 1(c)(ii) and there is reason to believe that it also fulfils the criterion in paragraph 1(c)(iii).]

1 [<sup>F9</sup>The conditions are:]

- a the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable;
- b the benchmark is based on submissions by contributors the majority of which are located in [<sup>F10</sup>the United Kingdom] and is recognised as being critical <sup>F11</sup>... in accordance with the procedure laid down in paragraphs 2, 3, 4 and 5 of this Article;
- c the benchmark fulfils [<sup>F12</sup>both] of the following criteria:
  - (i) <sup>F13</sup>...
  - (ii) the benchmark has no, or very few, appropriate market-led substitutes;
  - (iii) in the event that the benchmark ceases to be provided, or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or on the basis of unreliable input data, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in [<sup>F14</sup>the United Kingdom];

<sup>F15</sup>...

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[<sup>F16</sup>d the benchmark has a sufficient number of appropriate market-led substitutes that it does not fulfil the criterion in point (c)(ii), but:

i it is not reasonably practicable for one or more users of the benchmark to switch to one of those substitutes, and

ii the benchmark fulfils the criterion in point (c)(iii).]

[<sup>F17</sup>2 Where the FCA considers that a benchmark should be recognised as critical based on an assessment under paragraph 3, and that benchmark is based on submissions by contributors the majority of which are located in the United Kingdom, the FCA shall notify the Treasury and transmit to the Treasury a documented assessment.]

3 For the purposes of paragraph 2, the [<sup>F18</sup>FCA] shall assess whether the cessation of the benchmark or its provision on the basis of input data or of a panel of contributors no longer representative of the underlying market or economic reality would have an adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in [<sup>F19</sup>the United Kingdom]. The [<sup>F20</sup>FCA] shall take into consideration in its assessment:

a the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the [<sup>F21</sup>United Kingdom] and their relevance in terms of the total value of financial instruments and of financial contracts outstanding, and of the total value of investment funds, in the [<sup>F21</sup>United Kingdom];

b the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the [<sup>F21</sup>United Kingdom] and their relevance in terms of the gross national product of the [<sup>F21</sup>United Kingdom];

c any other figure to assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the [<sup>F21</sup>United Kingdom].

[<sup>F22</sup> ...

4 Within six weeks of receipt of the notification referred to in paragraph 2, [<sup>F23</sup>the Treasury must determine whether the FCA's assessment complies with the requirements of paragraph 3.]

[<sup>F24</sup>5 The Treasury must make regulations specifying that a benchmark is critical if:

a the FCA has recommended that the benchmark is recognised as critical in accordance with the procedure specified in paragraphs 2 and 3; and

b the Treasury [<sup>F25</sup>determine] that the FCA's assessment complies with the requirements of paragraph 3.]

[<sup>F26</sup>5A The FCA must:

a review [<sup>F27</sup>the value in point (a) of paragraph 1 (“the paragraph 1(a) value”)] in the light of market, price and regulatory developments and the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close [<sup>F28</sup>to the paragraph 1(a) value]; and

b provide a written report to the Treasury setting out the results of the review and making a recommendation as to whether [<sup>F29</sup>the paragraph 1(a) value] should be amended.

5B The FCA must conduct the review and provide the report to the Treasury:

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- a within the period of two years beginning with IP completion day; and
  - b thereafter, at intervals of at least every two years, with each interval beginning with the date on which the last report was provided.]
- 6 <sup>[F30]</sup>The Treasury may by regulations]
- a specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the <sup>[F31]</sup>values] referred to in paragraph 1 of this Article and in point (a) of Article 24(1);
  - <sup>[F32]</sup>b amend <sup>[F33]</sup>the value in point (a)] of paragraph 1 having regard to:
    - i the matters referred to in point (a) of paragraph 5A; and
    - ii any report prepared by the FCA under paragraph 5A;]
  - c specify how the criteria referred to in point (c)(iii) of paragraph 1 of this Article are to be applied, taking into consideration any data which helps assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in <sup>[F34]</sup>the United Kingdom].

Where applicable, the <sup>[F35]</sup>Treasury] shall take into account relevant market or technological developments.

#### Textual Amendments

- F7** Art. 20 heading substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **16(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Art. 20(A1) inserted by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **16(2A)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1385, regs. 1(4), 58(7); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 20(1) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **16(3)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in Art. 20(1)(b) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **16(3)(b)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in Art. 20(1)(b) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **16(3)(b)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Word in Art. 20(1)(c) substituted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), **ss. 8(6)(a)**, 49(5); S.I. 2021/739, reg. 3(a)
- F13** Art. 20(1)(c)(i) omitted (1.7.2021) by virtue of [Financial Services Act 2021 \(c. 22\)](#), **ss. 8(6)(b)**, 49(5); S.I. 2021/739, reg. 3(a)
- F14** Words in Art. 20(1)(c)(iii) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **16(3)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F15** Words in Art. 20(1) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(3)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Art. 20(1)(d) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 8(6)(c)**, 49(5); S.I. 2021/739, reg. 3(a)
- F17** Art. 20(2) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Word in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(aa)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(bb)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Word in Art. 20(3) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(i)(cc)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Words in art. 20(3)(a)-(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in Art. 20(3) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(5)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in Art. 20(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(6)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Art. 20(5) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(7)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Word in Art. 20(5)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(2)**; S.I. 2021/739, reg. 3(n)
- F26** Art. 20(5A)(5B) inserted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(8)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4); S.I. 2020/1301, regs. 1, 3, Sch. para. 34(c); and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F27** Words in Art. 20(5A)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(3)(a)**; S.I. 2021/739, reg. 3(n)
- F28** Words in Art. 20(5A)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(3)(b)**; S.I. 2021/739, reg. 3(n)
- F29** Words in Art. 20(5A)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(4)**; S.I. 2021/739, reg. 3(n)
- F30** Words in Art. 20(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F31** Word in Art. 20(6)(a) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(5)**; S.I. 2021/739, reg. 3(n)
- F32** Art. 20(6)(b) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F33** Words in Art. 20(6)(b) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 6(6)**; S.I. 2021/739, reg. 3(n)
- F34** Words in Art. 20(6)(c) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(c)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F35** Word in Art. 20(6) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **16(9)(d)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## Article 21

### Mandatory administration of a critical benchmark

1 If an administrator of a critical benchmark intends to cease providing such benchmark, the administrator shall:

- a immediately notify [<sup>F36</sup>the FCA]; and
- b within four weeks of such notification submit an assessment of how the benchmark:
  - (i) is to be transitioned to a new administrator; or
  - (ii) is to be ceased to be provided, taking into account the procedure established in Article 28(1).

During the period referred to in point (b) of the first subparagraph, the administrator shall not cease provision of the benchmark.

2 Upon receipt of the assessment of the administrator referred to in paragraph 1, [<sup>F37</sup>the FCA] shall:

- <sup>F38</sup>a .....
- b within four weeks, make its own assessment of how the benchmark is to be transitioned to a new administrator or be ceased to be provided, taking into account the procedure established in accordance with Article 28(1).

During the period of time referred to in point (b) of the first subparagraph of this paragraph, the administrator shall not cease the provision of the benchmark without the written consent of [<sup>F39</sup>the FCA].

3 Following completion of the assessment referred to in point (b) of paragraph 2, [<sup>F40</sup>the FCA] shall have the power to compel the administrator to continue publishing the benchmark until such time as:

- a the provision of the benchmark has been transitioned to a new administrator;
- b the benchmark can be ceased to be provided in an orderly fashion [<sup>F41</sup>(whether by the exercise of the FCA's powers under Article 23D or otherwise)]; or
- c the benchmark is no longer critical.

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For the purposes of the first subparagraph, the period for which [F40the FCA] may compel the administrator to continue to publish the benchmark shall not exceed 12 months.

[F42By the end of that period, [F40the FCA] shall review its decision to compel the administrator to continue to publish the benchmark. [F40The FCA] may, where necessary, extend that period by an appropriate period not exceeding 12 months. The maximum period of mandatory administration shall not exceed [F4310 years].]

[F443A If the FCA decides to compel the administrator to continue publishing the benchmark under paragraph 3, the FCA must assess the capability of the benchmark to measure the underlying market or economic reality, taking into account, among other things, the procedure established by the administrator in accordance with Article 28(1).

3B After making its assessment under paragraph 3A, the FCA must give the administrator—

- a a written notice stating that it considers that the benchmark is not representative of the market or economic reality that it is intended to measure or that the representativeness of the benchmark is at risk, or
- b a written notice stating that it considers that the representativeness of the benchmark is not at risk.

3C The FCA must make its assessment under paragraph 3A, and give the notice under paragraph 3B, before the end of the period of 28 days beginning with the day on which the FCA notifies the administrator of its decision to compel the administrator to continue publishing the benchmark.]

4 Without prejudice to paragraph 1, in the event that the administrator of a critical benchmark is to be wound down due to insolvency proceedings, [F45the FCA] shall make an assessment of whether and how the critical benchmark can be transitioned to a new administrator or can cease to be provided in an orderly fashion, taking into account the procedure established in accordance with Article 28(1).

#### Textual Amendments

- F36** Words in Art. 21(1)(a) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **17(2)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Words in Art. 21(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **17(3)(a)(i)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F38** Art. 21(2)(a) omitted (31.12.2020) by virtue of [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **17(3)(a)(ii)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F39** Words in Art. 21(2) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **17(3)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F40** Words in Art. 21(3) substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), **17(4)** (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

- F41** Words in Art. 21(3)(b) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 5 para. 7**; S.I. 2021/739, reg. 3(n)
- F42** Substituted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F43** Words in Art. 21(3) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 9(2)**, 49(5); S.I. 2021/739, reg. 3(b)
- F44** Art. 21(3A)-(3C) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 9(3)**, 49(5); S.I. 2021/739, reg. 3(b)
- F45** Words in Art. 21(4) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **17(4)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### <sup>F46</sup> Article 21A

### Prohibition on new use where administrator to cease providing critical benchmark

1 Where the FCA has completed an assessment of a critical benchmark under Article 21(2), the FCA may, by publishing a notice, prohibit some or all new use of the benchmark by supervised entities.

2 In paragraph 1, the reference to new use of a benchmark is to doing the following on or after the day on which the prohibition takes effect (“the prohibition day”)—

- a issuing a financial instrument which references the benchmark, or amending the terms of a financial instrument so as to include a reference to the benchmark where the instrument did not reference the benchmark immediately before the prohibition day;
- b determining the amount payable under a financial instrument or a financial contract by referencing the benchmark, where the instrument or contract did not reference the benchmark immediately before the prohibition day;
- c being a party to a financial contract which references the benchmark—
  - i) where the contract is formed on or after the prohibition day, or
  - ii) where the contract was formed before the prohibition day but did not reference the benchmark immediately before that day;
- d providing a borrowing rate as described in point (7)(d) of Article 3(1) calculated by reference to the benchmark for the purposes of a financial contract—
  - i) where the contract is formed on or after the prohibition day, or
  - ii) where the contract was formed before the prohibition day but did not use the borrowing rate immediately before that day;
- e measuring the performance of an investment fund through the benchmark for a purpose described in point (7)(e) of Article 3(1), where the fund's constitutional documents or prospectus did not provide for its performance to be measured through the benchmark immediately before the prohibition day.

3 The FCA may only exercise the power under paragraph 1 if it considers it desirable to do so in order to advance either or both of the following—

- a its consumer protection objective (see section 1C of FSMA);
- b its integrity objective (see section 1D of that Act).



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4 In exercising the power under paragraph 1 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.

5 A notice under this Article may—

- a make different provision for different purposes;
- b make provision by reference to any aspect of the new use, including the persons involved in the use;
- c provide that the prohibition has effect only during a period specified in the notice;
- d make such transitional provision as the FCA considers appropriate.

6 A notice under this Article must—

- a give reasons for the prohibition,
- b specify when the prohibition is to take effect,
- c explain how the FCA has taken account of the relevant policy statement (see Article 23F), and
- d provide any further information that the FCA considers appropriate for assisting supervised entities to understand the prohibition.

7 A notice under this Article must be published in the manner that appears to the FCA to be best calculated to bring it to the attention of—

- a supervised entities, and
- b the public.

8 The FCA—

- a must give a copy of a notice under this Article to the Treasury before publishing it, and
- b may charge a reasonable fee for providing a person with a copy of a notice published under this Article.

9 In paragraph 2(a) to (e), references to referencing, or measuring performance through, the benchmark (however expressed) include referencing, or measuring performance through, a combination of indices that include the benchmark.]

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#### Textual Amendments

**F46** Art. 21A inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 10, 49(5); S.I. 2021/739, reg. 3(c)

### Article 22

#### Mitigation of market power of critical benchmark administrators

Without prejudice to the application of [<sup>F47</sup>United Kingdom] competition law, when providing a critical benchmark, the administrator shall take adequate steps to ensure that licences of, and information relating to, the benchmark are provided to all users on a fair, reasonable, transparent and non-discriminatory basis.

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#### Textual Amendments

**F47** Words in Art. 22 substituted (31.12.2020) by [The Benchmarks \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/657\)](#), regs. 1(2), 18 (with regs. 51-53, 65) (as

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amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## <sup>F48</sup> Article 22A

### **Assessment of representativeness of critical benchmarks: administrator**

- 1 This Article applies to a critical benchmark that—
  - a is based on submissions by contributors the majority of which are supervised entities or supervised third country entities, and
  - b is not an Article 23A benchmark.
- 2 An administrator of a critical benchmark must submit to the FCA an assessment of the capability of the benchmark to measure the underlying market or economic reality—
  - a at the end of the period of two years beginning with the day on which the benchmark became a critical benchmark, and
  - b at the end of each subsequent two year period.
- 3 The FCA may, by written notice, require an administrator of a critical benchmark to submit to the FCA an assessment of the capability of the benchmark to measure the underlying market or economic reality.
- 4 The FCA may only impose a requirement under paragraph 3 if it considers that—
  - a the benchmark does not, or may not, represent the underlying market or economic reality, or
  - b the representativeness of the benchmark is or may be at risk.
- 5 A notice under paragraph 3 may require the administrator to submit the assessment before a date specified in the notice, provided that date falls after the end of the period of two weeks beginning with the day on which the notice was given.
- 6 If a supervised contributor or a supervised third country contributor intends to cease contributing input data to a critical benchmark—
  - a the contributor must notify the benchmark administrator promptly in writing, and
  - b the notification must state the date on which it intends to cease contributing, which must be after the end of the period of 15 weeks beginning with the first working day after the day on which it gives the notification.
- 7 If an administrator of a benchmark is notified under paragraph 6, it must—
  - a inform the FCA promptly, stating the date on which the notification was given, and
  - b submit to the FCA an assessment of the implications of the contributor's withdrawal for the capability of the benchmark to measure the underlying market or economic reality.
- 8 An assessment under paragraph 7(b) must be submitted to the FCA before the end of the period of 14 days beginning with the first working day after the day on which the notification under paragraph 6 was given.
- 9 An administrator of a critical benchmark that is required to provide an assessment under this Article must not change the market or economic reality intended to be measured by the benchmark (as defined in the benchmark statement referred to in Article 27) during the assessment period, unless the FCA gives it written permission to do so.
- 10 For the purposes of paragraph 9, the assessment period begins—

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- a in the case of an assessment under paragraph 2, with the day falling one month before the end of the relevant two year period described in that paragraph;
  - b in the case of an assessment under paragraph 3, when the administrator receives the FCA's notice requiring the assessment;
  - c in the case of an assessment under paragraph 7(b), when the contributor notifies the administrator under paragraph 6.
- 11 For the purposes of paragraph 9, the assessment period ends—
- a when the FCA notifies the administrator that it considers that the representativeness of the benchmark is not at risk, whether by giving a notice under Article 22B(3)(b) or otherwise, or
  - b when the benchmark becomes an Article 23A benchmark.]

#### Textual Amendments

**F48** Arts. 22A, 22B inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), **ss. 11(2)**, 49(5) (with s. 11(3)); S.I. 2021/739, reg. 3(d)

### <sup>F48</sup> Article 22B

#### Assessment of representativeness of critical benchmarks: FCA

- 1 Where the FCA receives an assessment by a benchmark administrator under Article 22A within the period specified by or under that Article, the FCA must make its own assessment of the capability of the benchmark to measure the underlying market or economic reality, taking into account, among other things—
- a the procedure established by the administrator in accordance with Article 28(1), and
  - b the administrator's assessment.
- 2 If a benchmark administrator does not submit an assessment under Article 22A within the period specified by or under that Article, the FCA may make its own assessment of the capability of the benchmark to measure the underlying market or economic reality and, if it does so—
- a must take into account the procedure established by the administrator in accordance with Article 28(1), and
  - b may take into account, among other things, an assessment submitted by the administrator after the end of the specified period.
- 3 After making its assessment under this Article, the FCA must give the benchmark administrator—
- a a written notice stating that it considers that the benchmark is not representative of the market or economic reality that it is intended to measure or that the representativeness of the benchmark is at risk, or
  - b a written notice stating that it considers that the representativeness of the benchmark is not at risk.
- 4 Where the administrator's assessment was made under Article 22A(7)(b) (contributor intends to cease contributing input data), the FCA must make its assessment under paragraph 1 or 2, and give the notice under paragraph 3, before the end of the period of 28 days beginning with the first working day after the day on which the administrator was notified under Article 22A(6).]

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**Changes to legislation:** Regulation (EU) 2016/1011 of the European Parliament and of the Council, CHAPTER 4 is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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### Textual Amendments

**F48** Arts. 22A, 22B inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), **ss. 11(2)**, 49(5) (with s. 11(3)); S.I. 2021/739, reg. 3(d)

## Article 23

### Mandatory contribution to a critical benchmark

F<sup>49</sup><sub>1</sub> .....

F<sup>49</sup><sub>2</sub> .....

F<sup>49</sup><sub>3</sub> .....

F<sup>49</sup><sub>4</sub> .....

[<sup>F50</sup>5A If a supervised contributor or supervised third country contributor gives a notification under Article 22A(6), the contributor may not cease contributing input data before the date specified in the notification as the date on which it intends to cease contributing, unless the FCA gives it written permission to do so.

5B Paragraph 5A does not require a contributor to trade or commit to trade.]

6 [<sup>F51</sup>If the FCA gives the administrator of a critical benchmark a notice under Article 21(3B)(a) or Article 22B(3)(a) (benchmark unrepresentative or representativeness at risk), it has the power to—]

- a require supervised entities [<sup>F52</sup>and supervised third country entities] selected in accordance with paragraph 7 of this Article, including entities that are not yet contributors to the relevant critical benchmark, to contribute input data to the administrator in accordance with the administrator's methodology, the code of conduct referred to in Article 15 and other rules. Such requirement shall be in place for an appropriate period of time not exceeding 12 months <sup>F53</sup>...
- b extend the period of mandatory contribution by an appropriate period of time not exceeding 12 months, following a review under paragraph 9 of any measures adopted pursuant to point (a) of this paragraph;
- c determine the form in which, and the time by which, any input data is to be contributed without imposing an obligation on supervised entities [<sup>F54</sup>and supervised third country entities] to either trade or commit to trade;
- d require the administrator to change the methodology, the code of conduct referred to in Article 15 or other rules of the critical benchmark.

[<sup>F42</sup>The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed five years.]

[<sup>F55</sup>6A The FCA may only exercise the powers under paragraph 6 so far as it considers it appropriate to do so for the purpose of maintaining, restoring or improving the representativeness of the benchmark.]

7 For the purposes of paragraph 6, supervised entities [<sup>F56</sup>and supervised third country entities] that are to be required to contribute input data shall be selected by the [<sup>F57</sup>FCA] on the basis of the size of the <sup>F58</sup>... entity's actual and potential participation in the market that the benchmark intends to measure.

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**Changes to legislation:** Regulation (EU) 2016/1011 of the European Parliament and of the Council, CHAPTER 4 is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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F598 .....

9 By the end of the period referred to in point (a) of the first subparagraph of paragraph 6, the [F60FCA] shall review the measures adopted under paragraph 6. It shall revoke any of them if it considers that:

- a the contributors are likely to continue contributing input data for at least one year if the measure were revoked, which shall be evidenced by at least:
  - (i) a written commitment by the contributors to the administrator and the [F61FCA] to continue contributing input data to the critical benchmark for at least one year if the measure were revoked;
  - (ii) a written report by the administrator to the [F61FCA] providing evidence for its assessment that the critical benchmark's continued viability can be assured once mandatory contribution has been revoked;
- b the provision of the benchmark is able to continue once the contributors mandated to contribute input data have ceased contributing;
- c an acceptable substitute benchmark is available and users of the critical benchmark can switch to this substitute at minimal costs which shall be evidenced by at least a written report by the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transitioning to this benchmark; or
- d no appropriate alternative contributors can be identified and the cessation of contributions from the [F62contributors mandated to contribute input data] would weaken the benchmark to such an extent to require the cessation of the benchmark.

[F639A In the case of an Article 23A benchmark, any measures adopted under paragraph 6 in relation to the benchmark are to be treated as being revoked when the designation of the benchmark under Article 23A takes effect.]

[F4210 In the event that a critical benchmark is to be ceased to be provided, each supervised contributor [F64and supervised third country contributor] to that benchmark shall contribute input data for a period of time determined by the [F65FCA], but not [F66extending beyond the end of the period of five years beginning with the day on which the administrator notified the FCA of its intention to cease providing the benchmark under Article 21(1)].]

11 The administrator shall notify the [F67FCA] in the event that any contributors breach the requirements set out in paragraph 6 as soon as reasonably possible.

F6812 .....

#### Textual Amendments

- F42** Substituted by Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Text with EEA relevance).
- F49** Art. 23(1)-(4) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), ss. 12(2), 49(5); S.I. 2021/739, reg. 3(e)
- F50** Art. 23(5A)(5B) substituted for Art. 23(5) (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 12(3), 49(5); S.I. 2021/739, reg. 3(e)
- F51** Words in Art. 23(6) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 12(4), 49(5); S.I. 2021/739, reg. 3(e)
- F52** Words in Art. 23(6)(a) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 12(5)(a), 49(5); S.I. 2021/739, reg. 3(e)

**Changes to legislation:** Regulation (EU) 2016/1011 of the European Parliament and of the Council, CHAPTER 4 is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F53** Words in Art. 23(6)(a) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), **ss. 12(5)(b)**, 49(5); S.I. 2021/739, reg. 3(e)
- F54** Words in Art. 23(6)(c) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 12(6)**, 49(5); S.I. 2021/739, reg. 3(e)
- F55** Art. 23(6A) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 12(7)**, 49(5); S.I. 2021/739, reg. 3(e)
- F56** Words in Art. 23(7) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 12(8)(a)**, 49(5); S.I. 2021/739, reg. 3(e)
- F57** Word in Art. 23(7) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **19(7)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F58** Word in Art. 23(7) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), **ss. 12(8)(b)**, 49(5); S.I. 2021/739, reg. 3(e)
- F59** Art. 23(8) omitted (31.12.2020) by virtue of The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **19(8)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F60** Word in Art. 23(9) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **19(9)(a)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F61** Word in Art. 23(9)(a) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **19(9)(b)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F62** Words in Art. 23(9)(d) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 12(9)**, 49(5); S.I. 2021/739, reg. 3(e)
- F63** Art. 23(9A) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 12(10)**, 49(5); S.I. 2021/739, reg. 3(e)
- F64** Words in Art. 23(10) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 12(11)(a)**, 49(5); S.I. 2021/739, reg. 3(e)
- F65** Word in Art. 23(10) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **19(10)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F66** Words in Art. 23(10) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), **ss. 12(11)(b)**, 49(5); S.I. 2021/739, reg. 3(e)
- F67** Word in Art. 23(11) substituted (31.12.2020) by The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657), regs. 1(2), **19(11)** (with regs. 51-53, 65) (as amended by S.I. 2019/1212, regs. 1(3), 20(3)(4) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F68** Art. 23(12) omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), **ss. 12(12)**, 49(5); S.I. 2021/739, reg. 3(e)

### *F69* Article 23A

#### **Designation of certain critical benchmarks**

1 If the FCA gives the administrator of a critical benchmark a notice under Article 21(3B)(a) or Article 22B(3)(a) (benchmark unrepresentative or representativeness at risk), the

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FCA must, before the end of the period of 21 days beginning with the day on which it gave the notice—

- a consider whether it is appropriate for the FCA to designate the benchmark under this Article, and
- b if it proposes to do so, inform the benchmark administrator by written notice.

2 The FCA may not designate a benchmark under this Article if it considers that it is, and is likely to continue to be, the case that—

- a the representativeness of the benchmark can reasonably be restored and maintained by the administrator or by the FCA exercising its powers under Article 23(6), and
- b there are good reasons to restore and maintain its representativeness.

3 A notice under paragraph 1(b) must—

- a explain when the FCA proposes that the designation of the benchmark should take effect,
- b give reasons for the FCA's proposed decision, and
- c state that the administrator may make written representations to the FCA during the period of 14 days beginning with the day on which the notice is given.

4 If, after considering any representations made in accordance with paragraph 3(c), the FCA decides to designate the benchmark under this Article, it must give the administrator a written notice of its decision.

5 A notice under paragraph 4 must—

- a state when the designation of the benchmark takes effect,
- b give reasons for the FCA's decision,
- c explain how the FCA has taken account of the relevant policy statement (see Article 23F),
- d state that the prohibition on use of the benchmark under Article 23B will take effect when the designation of the benchmark takes effect, unless the FCA exercises its powers under Article 23B(2) or 23C,
- e inform the administrator of its right to refer the decision to the Upper Tribunal and of the procedure for doing so, and
- f provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the designation of the benchmark.

6 The FCA may, before a designation under this Article takes effect, decide to change when it takes effect to a later time.

7 If it decides to make such a change—

- a the FCA must give the benchmark administrator a written notice of its decision, and
- b the notice must satisfy the requirements in paragraph 5(a) to (d) and (f).

8 The FCA may withdraw a designation of a benchmark under this Article if—

- a the designation has not taken effect,
- b paragraph 1 applies again in relation to the benchmark, and
- c the FCA designates the benchmark again under this Article with effect from an earlier date.

9 If the FCA decides to withdraw the designation of a benchmark under paragraph 8—

- a the FCA must include notice of the withdrawal in the notice under paragraph 4 of the further designation of the benchmark, and

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- b the notice must satisfy the requirements in paragraph 5(b), (c) and (f) in relation to the decision to withdraw.
- 10 A notice under paragraph 4 or 7—
- a may identify when the designation takes effect in any manner that the FCA considers appropriate, including by specifying a day or by describing a day by reference to the process for a reference to the Upper Tribunal or another process or event, and
- b must be published by the FCA—
- i) before the day on which the notice provides for the designation to take effect, and
- ii) in the manner that appears to the FCA to be best calculated to bring it to the attention of the public.
- 11 The FCA—
- a must give a copy of a notice under this Article to the Treasury before publishing it, and
- b may charge a reasonable fee for providing a person with a copy of a notice under this Article.
- 12 If the FCA decides to designate a benchmark under this Article and gives the administrator a notice under paragraph 4, the benchmark administrator may refer the matter to the Upper Tribunal.
- 13 Part 9 of FSMA (hearings and appeals) applies in relation to references to the Upper Tribunal made under this Article as it applies in relation to references made to that Tribunal under that Act.
- 14 In this Regulation, references to an “Article 23A benchmark” are to a benchmark in relation to which a designation under this Article has effect.]

#### Textual Amendments

**F69** Art. 23A inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 13, 49(5); S.I. 2021/739, reg. 3(f)

### [<sup>F70</sup> Article 23B

#### Prohibition on use of Article 23A benchmark

- 1 Supervised entities must not use an Article 23A benchmark, except where permitted to do so under paragraph 2 or Article 23C.
- 2 The FCA may, by publishing a notice before the day on which the designation of the benchmark under Article 23A takes effect, provide that the prohibition in paragraph 1 does not take effect until a date specified in the notice.
- 3 The date specified in a notice under paragraph 2 must fall before the end of the period of four months beginning with the day on which the designation of the benchmark under Article 23A takes effect.
- 4 A notice published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of—
- a supervised entities, and
- b the public.



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5 The FCA may charge a reasonable fee for providing a person with a copy of a notice published under this Article.]

**Textual Amendments**

**F70** Arts. 23B, 23C inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), ss. 14, 49\(5\); S.I. 2021/739, reg. 3\(g\)](#)

*[<sup>F70</sup> Article 23C*

**Exception from the prohibition for legacy use of Article 23A benchmark**

- 1 This Article applies to an Article 23A benchmark.
- 2 The FCA may, by publishing a notice, permit some or all legacy use of the benchmark by supervised entities.
- 3 The FCA may, by publishing a notice, alter or withdraw a permission under paragraph 2.
- 4 The FCA may only exercise a power under paragraph 2 or 3 if it considers it desirable to do so in order to advance either or both of the following—
  - a its consumer protection objective (see section 1C of FSMA);
  - b its integrity objective (see section 1D of that Act).
- 5 In exercising a power under paragraph 2 or 3 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.
- 6 A notice under this Article may—
  - a make provision by reference to any aspect of the legacy use of the benchmark, including the persons involved in the use;
  - b provide that the permission has effect only during a period specified in the notice;
  - c make different provision for different purposes;
  - d make such transitional provision as the FCA considers appropriate.
- 7 A notice under this Article must—
  - a give reasons for the permission, or the alteration or withdrawal of permission,
  - b specify when the permission, or the alteration or withdrawal, is to take effect,
  - c explain how the FCA has taken account of the relevant policy statement (see Article 23F), and
  - d provide any further information that the FCA considers appropriate for assisting supervised entities to understand the permission or the alteration or withdrawal of permission.
- 8 A notice under this Article must be published in the manner that appears to the FCA to be best calculated to bring it to the attention of—
  - a supervised entities, and
  - b the public.
- 9 The FCA—
  - a must give a copy of a notice under this Article to the Treasury before publishing it, and

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- b may charge a reasonable fee for providing a person with a copy of a notice published under this Article.

10 In this Article—

- a references to legacy use of a benchmark are to use that is not new use, and
- b “new use” has the same meaning, in connection with the prohibition under Article 23B, as it has in connection with a prohibition under Article 21A (see Article 21A(2) and (9)).]

#### Textual Amendments

**F70** Arts. 23B, 23C inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 14, 49(5); S.I. 2021/739, reg. 3(g)

### [<sup>F71</sup> Article 23D

#### Orderly cessation of Article 23A benchmarks

- 1 This Article applies to an Article 23A benchmark.
- 2 The FCA may by written notice impose requirements on the benchmark administrator relating to any of the following—
  - a the way in which the benchmark is determined, including the input data,
  - b rules of the benchmark, and
  - c where the benchmark is based on submissions by contributors, the code of conduct referred to in Article 15.
- 3 The FCA may only exercise the powers under paragraph 2 if—
  - a it considers it appropriate to do so having regard to the desirability of securing that the cessation of the benchmark takes place in an orderly fashion, and
  - b it considers it desirable to do so in order to advance either or both of the following—
    - i) its consumer protection objective (see section 1C of FSMA);
    - ii) its integrity objective (see section 1D of that Act).
- 4 In exercising a power under paragraph 2 in relation to a benchmark that is used outside the United Kingdom, the FCA may, among other things, have regard to the likely effect outside the United Kingdom of the exercise of the power.
- 5 The powers under paragraph 2—
  - a may be exercised so as to confer a discretion on the administrator,
  - b include power to specify when a requirement must be satisfied, and
  - c include power to vary or withdraw a requirement from time to time.
- 6 The powers under paragraph 2 are not limited by the market or economic reality that was intended to be measured by the benchmark immediately before it became an Article 23A benchmark (as defined in the benchmark statement referred to in Article 27), although the FCA may have regard to that when exercising those powers.
- 7 A notice under paragraph 2 must—
  - a explain the exercise of the power,
  - b give reasons for the decision to exercise the power,

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- c specify when the requirement (or variation or withdrawal of a requirement) is to take effect,
  - d explain how the FCA has taken account of the relevant policy statement (see Article 23F), and
  - e provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the exercise of the power.
- 8 The benchmark administrator may not change anything described in paragraph 2 unless—
- a the FCA requires it to do so, or gives it a discretion to do so, under paragraph 2, or
  - b the FCA has given a written notice permitting it to do so and has not given a written notice withdrawing the permission.
- 9 A notice under paragraph 2 or 8(b) must be published as soon as reasonably practicable in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- 10 The FCA—
- a must give a copy of a notice under paragraph 2 or 8(b) to the Treasury before publishing it, and
  - b may charge a reasonable fee for providing a person with a copy of a notice under paragraph 2 or 8(b).
- 11 In relation to an Article 23A benchmark, this Regulation applies with the modifications specified in or under Annex 4 (and see also Articles 22A(1)(b) and 23(9A)).]

#### Textual Amendments

**F71** Art. 23D inserted (1.7.2021) by Financial Services Act 2021 (c. 22), ss. 15(1), 49(5); S.I. 2021/739, reg. 3(h)

### *[<sup>F72</sup> Article 23E*

#### **Review of exercise of powers under Article 23D**

- 1 Where the FCA has exercised a power under Article 23D(2) in relation to a benchmark, the FCA must, for each review period—
- a review its exercise of its powers under Article 23D(2) in relation to that benchmark during the period, and
  - b publish a report setting out the outcome of the review.
- 2 For the purposes of paragraph 1, the review periods are—
- a the period of two years beginning with the day on which the first notice under Article 23D(2) relating to the benchmark is published, and
  - b each subsequent period of two years, excluding the period in which the benchmark ceases to be provided and subsequent periods.
- 3 The FCA must publish a report under paragraph 1(b) as soon as reasonably practicable after the end of the review period.
- 4 Where the FCA, having exercised a power under Article 23D(2) in relation to a benchmark, exercises a power under Article 23D(2) again in relation to the benchmark, it must—

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- a carry out a review of the most recent previous exercise of that power in relation to that benchmark, and
  - b publish a report setting out the outcome of the review.
- 5 The FCA must take the action described in paragraph 4—
- a before its subsequent exercise of a power under Article 23D(2), where that is reasonably practicable, or
  - b otherwise, as soon as reasonably practicable afterwards.
- 6 The FCA may fulfil the duty in paragraph 1 and satisfy paragraph 4 by means of the same review and report.
- 7 In a review under this Article, the FCA must—
- a consider whether the exercise of the power has advanced, or is likely to advance, the objectives mentioned in Article 23D(3)(b), and
  - b have regard to the policy statement with respect to the exercise of its powers under Article 23D (see Article 23F).
- 8 A report published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- 9 The FCA—
- a must give a copy of a report of a review under this Article to the Treasury before publishing it, and
  - b may charge a reasonable fee for providing a person with a copy of a report published in accordance with this Article.]

#### Textual Amendments

**F72** Art. 23E inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. 16, 49(5); S.I. 2021/739, reg. 3(i)

#### [<sup>F73</sup> Article 23F

#### Policy statements

- 1 The FCA must prepare and publish a statement of its policy with respect to—
- a the exercise of its power under Article 21A,
  - b the designation of benchmarks under Article 23A,
  - c the exercise of its powers under Article 23C, and
  - d the exercise of its powers under Article 23D.
- 2 The FCA—
- a may alter or replace a statement published under this Article, and
  - b if it does so, must publish the altered or replacement statement.
- 3 A statement published under this Article must be published in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- 4 The FCA—
- a must give a copy of a statement under this Article to the Treasury before publishing it, and

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- b may charge a reasonable fee for providing a person with a copy of a statement published under this Article.

5 In making a decision under Article 23A, or exercising its powers under any of Article 21A, 23C or 23D, the FCA must have regard to any relevant statement of policy published under this Article and in force at the time.]

#### Textual Amendments

**F73** Art. 23F inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), ss. [17\(1\)](#), [49\(5\)](#) (with s. [17\(2\)](#)); [S.I. 2021/739](#), reg. [3\(j\)](#)

### <sup>F74</sup> Article 23FA

#### References to Article 23A benchmarks

1 A reference to a benchmark in a contract or other arrangement is, at any time when the benchmark is an Article 23A benchmark, to be treated for all purposes as including the benchmark as it exists—

- a when it is an Article 23A benchmark,
- b when the FCA has exercised a power under Article 23D(2) in respect of the benchmark, and
- c when the benchmark administrator has exercised a discretion or permission conferred on it by the FCA under Article 23D in respect of the benchmark,

whether or not the benchmark is representative of the Article 27 market or economic reality at those times.

2 If a contract or other arrangement describes a benchmark or other figure (rather than naming a benchmark), paragraph 1 applies as if the description were a reference to—

- a each benchmark that falls within the description, and
- b each Article 23A benchmark that fell, or was being treated by the parties to the contract or arrangement as falling, within the description immediately before it became an Article 23A benchmark.

3 For the purposes of paragraph 2(b), where the description is of a benchmark or other figure that measures, or is intended to measure, a market or economic reality, a benchmark fell within the description immediately before it became an Article 23A benchmark if its Article 27 market or economic reality fell within the description.

4 Paragraphs 1 and 2 apply—

- a to any contract or other arrangement, whenever it was formed, and
- b to any reference to a benchmark or other figure, however expressed.

5 Where paragraph 1 applies in a case in which the reference formed part of the contract or other arrangement—

- a immediately before this Article came into force, or
- b immediately before the benchmark became an Article 23A benchmark,

the contract or arrangement is to be treated for all purposes as having always provided for the reference to have the meaning provided for by paragraph 1 (and, where relevant, paragraph 2) when the benchmark is an Article 23A benchmark.

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6 Nothing in this Article is to be taken to create any right, obligation or liability of a party to a contract or other arrangement or of another person—

- a in relation to an act or omission that is relevant to the formation or variation of the contract or arrangement (such as, among other things, an act or omission in connection with the making of a representation or the giving of advice), where the formation or variation took place before the benchmark in question became an Article 23A benchmark, or
- b in relation to the operation of the contract or arrangement before the benchmark in question became an Article 23A benchmark.

7 Nothing in this Article is to be taken to extinguish, or otherwise affect, any cause of action that arose in relation to a contract or arrangement before the benchmark in question became an Article 23A benchmark, except that the effect of this Article is to be taken into account when determining any loss or damage incurred.

8 This Article has effect subject to Article 23FB and any regulations made under that Article.

9 For the purposes of this Article and Article 23FB, a contract or other arrangement refers to a benchmark if it refers to an index, whether or not the index is used as a benchmark for the purposes of the contract or arrangement (and references to a benchmark are to be interpreted accordingly).

10 In this Article and Article 23FB—

- a “arrangement” means a legally binding arrangement between two or more parties;
- b references to a contract or an arrangement—
  - i are to a contract or arrangement entered into by or on behalf of any person (including the Crown), and
  - ii include any document referred to in, or otherwise forming part of, a contract or arrangement;
- c “Article 27 market or economic reality”, in relation to an Article 23A benchmark, means the market or economic reality that was intended to be measured by the benchmark immediately before it became an Article 23A benchmark (as defined in the benchmark statement referred to in Article 27).]

#### Textual Amendments

**F74** Arts. 23FA, 23FB inserted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021 \(c. 33\), ss. 1, 4\(3\)](#)

#### <sup>F74</sup> Article 23FB

#### References to Article 23A benchmarks: further provision

1 Article 23FA(1) and (2) do not apply to the extent that the contract or arrangement provides expressly that those paragraphs do not apply.

2 Article 23FA(1) does not apply to a reference to a benchmark to which it would otherwise apply (taking account of Article 23FA(2), where relevant) to the extent that the contract or arrangement provides expressly that the reference does not include the benchmark as it exists at the times described in Article 23FA(1).

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3 Article 23FA(1) to (5) do not prevent or otherwise affect the operation of fallback provision, either before or after the benchmark in question became an Article 23A benchmark, subject to paragraph 5 and any regulations made under paragraph 6.

4 “Fallback provision” means express provision for the contract or arrangement—

- a to operate, or to be varied so as to operate, by reference to something other than the benchmark in question (temporarily or permanently), or
- b to terminate,

either on a particular date or in particular circumstances (such as, among other things, circumstances relating to the benchmark’s representativeness, its designation under Article 23A or the way in which it is determined).

5 To the extent that fallback provision provides that it is triggered when the benchmark in question ceases to exist or to be published or otherwise made available (temporarily or permanently), Article 23FA(1) to (5) prevent it from being triggered by reason of the benchmark’s designation under Article 23A or the exercise of a power, discretion or permission under Article 23D.

6 The Treasury may by regulations provide—

- a that Article 23FA(1) and (2) do not apply—
  - i to a specified benchmark or to benchmarks of a specified description;
  - ii to contracts or other arrangements of a specified description;
- b that references in this Article to “fallback provision” include (in addition to the provision described in paragraph 4) express provision of a specified description;
- c that fallback provision is not triggered in cases of a specified description relating to a benchmark’s designation under Article 23A (in addition to the cases described in paragraph 5).

In this paragraph “specified” means specified in the regulations.

7 Regulations under paragraph 6 may make provision that applies generally or only for specific purposes (for example, provision that only applies in relation to a particular benchmark, a particular description of contracts or other arrangements or a particular type of fallback provision).]

#### Textual Amendments

**F74** Arts. 23FA, 23FB inserted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021 \(c. 33\), ss. 1, 4\(3\)](#)

### *<sup>F75</sup> Article 23FC*

#### **Liability of administrator of Article 23A benchmark**

1 An administrator of an Article 23A benchmark, and its officers and employees, are not liable in damages—

- a for action or inaction required by a notice under Article 23D(2) or by Article 23D(8), or
- b for publishing the benchmark as it exists as a result of such action or inaction.

2 Paragraph 1 does not remove liability in respect of loss or damage arising from the exercise of a discretion conferred on the administrator under Article 23D(2) or as part of a permission given under Article 23D(8)(b).

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**Changes to legislation:** Regulation (EU) 2016/1011 of the European Parliament and of the Council, CHAPTER 4 is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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3 Paragraph 1(b) does not remove liability in respect of loss or damage arising from the exercise of any other discretion of the administrator as to the time or manner of publication.]

#### Textual Amendments

**F75** Art. 23FC inserted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021 \(c. 33\), ss. 2, 4\(3\)](#)

### [<sup>F76</sup> Article 23G

#### Critical benchmarks provided for different currencies etc

1 This Article makes provision about critical benchmarks provided for different currencies, maturities or tenors (“umbrella benchmarks”).

2 References in this Article to a “version” of an umbrella benchmark are to the benchmark as provided for a particular currency, maturity or tenor or, where the benchmark is provided for a combination of two or more of those factors, the benchmark as provided for each combination.

3 Articles 11(4), (4A) and (4B), 21, 21A, 22A, 22B, 23 [<sup>F77</sup>, 23A to 23E and 23FA to 23FC] and Annex 4 apply in relation to an umbrella benchmark as if each version of the umbrella benchmark were—

- a a separate critical benchmark, and
- b intended to measure the market or economic reality defined in the benchmark statement for the umbrella benchmark (whether defined there separately for different versions of the benchmark or for the umbrella benchmark taken as a whole),

subject to the modifications in paragraph 4.

4 The modifications are as follows—

- a the reference in point (c) of Article 21(3) to the benchmark ceasing to be critical is a reference to the umbrella benchmark ceasing to be critical;
- b the reference in Article 22A(1)(a) to a benchmark being based on particular submissions is a reference to the umbrella benchmark, taken as a whole but disregarding any versions that are Article 23A benchmarks, being based on such submissions;
- c the benchmark administrator's duty under Article 22A(2) is a duty to submit an assessment dealing separately with each version of the umbrella benchmark;
- d the FCA's duty under Article 23E(1) is a duty to carry out a review of its exercise of its powers under Article 23D(2) in relation to each version of the umbrella benchmark (and the first review period begins when the first notice under Article 23D(2) relating to any version of the benchmark is published).

5 Notices given under the provisions listed in paragraph 3 may relate to one version, several versions or all versions of the umbrella benchmark.

6 The FCA may exercise its functions under Articles 21, 21A, 22A, 22B, 23 and 23A to 23E and paragraph 3 of Annex 4 in different ways in relation to different versions of the umbrella benchmark.

7 Nothing in this Article is to be interpreted as implying anything about the operation, in relation to umbrella benchmarks, of provisions of this Regulation not mentioned in this Article.



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**Changes to legislation:** Regulation (EU) 2016/1011 of the European Parliament and of the Council, CHAPTER 4 is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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8 The Treasury may by regulations make provision about the operation of this Regulation in relation to umbrella benchmarks, including provision amending or revoking provisions of this Article (other than this paragraph).]

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**Textual Amendments**

- F76** Art. 23G inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), **ss. 18(1)**, 49(5); S.I. 2021/739, reg. 3(k)
- F77** Words in Art. 23G(3) substituted (15.12.2021) by [Critical Benchmarks \(References and Administrators' Liability\) Act 2021 \(c. 33\)](#), **ss. 3(2)**, 4(3)

**Changes to legislation:**

Regulation (EU) 2016/1011 of the European Parliament and of the Council, CHAPTER 4 is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)

**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Title 6Ch. 4 addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 3.1(24) words omitted by [S.I. 2019/657 reg. 5\(10\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(10)(f) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 58(4))
- Art. 51(1B)(a)(ii) words substituted in earlier amending provision S.I. 2019/657, reg. 42(2) by [S.I. 2019/1212 reg. 20\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 20(2) omitted (30.6.2020) by virtue of S.I. 2020/628, regs. 1(4), 16)
- Art. 51(2)(b) word substituted by [S.I. 2019/657 reg. 42\(3\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 42(3) substituted immediately before IP completion day by S.I. 2020/628, regs. 1(3), 12(6)(b))
- Art. 51(2)(b) words substituted by [S.I. 2019/657 reg. 42\(3\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 42(3) substituted immediately before IP completion day by S.I. 2020/628, regs. 1(3), 12(6)(b))