



# Financial Services Act 2021

## 2021 CHAPTER 22

### *Benchmarks*

#### **8 Review of which benchmarks are critical benchmarks**

- (1) Article A20 of the Benchmarks Regulation (review of critical benchmarks) is amended in accordance with subsections (2) to (5).
- (2) In paragraph 2, for point (a) (but not the “and” at the end) substitute—
  - “(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;”.
- (3) In paragraph 2(b), for “point (a)(i) or (ii)” substitute “point (a)”.
- (4) In paragraph 3(b), for “point (a)(i) or (ii)” substitute “point (a)”.
- (5) In paragraph 6, for point (b) substitute—
  - “(b) the Treasury consider that the benchmark satisfies one or more of conditions (a), (b), (c) or (d) of paragraph 1 of Article 20.”
- (6) In Article 20(1) of the Benchmarks Regulation (critical benchmarks: conditions and other matters)—
  - (a) in the opening words of point (c), for “all” substitute “both”,
  - (b) omit point (c)(i), and
  - (c) after point (c) insert—
    - “(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).”

## **9 Mandatory administration of a critical benchmark**

- (1) Article 21 of the Benchmarks Regulation (mandatory administration of a critical benchmark) is amended as follows.
- (2) In paragraph 3, for “five years” substitute “10 years”.
- (3) After paragraph 3 insert—
  - “3A 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.”

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

In the Benchmarks Regulation, after Article 21 insert—

*“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).
- 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.”

## 11 **Assessment of representativeness of critical benchmarks**

- (1) In Article 3(1) of the Benchmarks Regulation (definitions)—

- (a) after point (10) insert—

“(10A) ‘*supervised third country contributor*’ means a supervised third country entity that contributes input data to an administrator located in the United Kingdom;”, and

- (b) after point (17) insert—

“(17A) ‘*supervised third country entity*’ means an entity that would be a supervised entity by virtue of point (a) of the definition of that term (CRR firm that is a credit institution) but for the fact that it does not have its head office or registered office in the United Kingdom;”.

- (2) After Article 22 of the Benchmarks Regulation insert—

### *“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—
  - (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.

#### *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)."
- (3) Paragraph 2 of Article 22A of the Benchmarks Regulation (inserted by this section) applies in the case of a benchmark which became a critical benchmark before the day on which this section comes into force, but as if it only required the administrator to submit an assessment at the end of each two year period described in that paragraph which ends after that day.

## **12 Mandatory contribution to critical benchmarks**

- (1) Article 23 of the Benchmarks Regulation (mandatory contribution to a critical benchmark) is amended as follows.
- (2) Omit paragraphs 1 to 4.
- (3) For paragraph 5 substitute—
  - "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."
- (4) In paragraph 6, for the opening words substitute "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—".
- (5) In paragraph 6(a)—
  - (a) after "supervised entities" insert "and supervised third country entities", and
  - (b) omit "from the date" to the end.
- (6) In paragraph 6(c), after "supervised entities" insert "and supervised third country entities".
- (7) After paragraph 6 insert—

- “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.”
- (8) In paragraph 7—
- (a) after “supervised entities” insert “and supervised third country entities”, and
  - (b) omit “supervised” (in the second place it occurs).
- (9) In paragraph 9(d), for “relevant supervised entities” substitute “contributors mandated to contribute input data”.
- (10) After paragraph 9 insert—
- “9A. 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.”
- (11) In paragraph 10—
- (a) after “supervised contributor” insert “and supervised third country contributor”, and
  - (b) for “exceeding the maximum five year period laid down in the second subparagraph of paragraph 6” substitute “extending 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)”.
- (12) Omit paragraph 12.

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

In the Benchmarks Regulation, after Article 23 insert—

#### *“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 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
  - (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.”

#### **14 Use of Article 23A benchmarks**

In the Benchmarks Regulation, after Article 23A (inserted by section 13) insert—

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

##### *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
  - (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)).”

## 15 Orderly cessation of Article 23A benchmarks

- (1) In the Benchmarks Regulation, after Article 23C (inserted by section 14) insert—

*“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,
  - (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)).”

(2) In the Benchmarks Regulation, after Annex 3 insert—

“ANNEX 4

ARTICLE 23A BENCHMARKS

- 1. This Regulation applies in relation to an Article 23A benchmark with—
  - (a) the modifications listed in paragraph 2, and
  - (b) any modifications specified in a notice given by the FCA to the benchmark administrator under paragraph 6.
- 2. The modifications referred to in paragraph 1(a) are the following—
  - (a) Article 11(1) has effect as if—
    - (i) point (a) were omitted, and
    - (ii) in point (d), the words “and representative” (in the first place they occur) and “and representative of the market or economic reality that the benchmark is intended to measure” were omitted;
  - (b) point (a) in Article 27(1) has effect as if for “and the circumstances in which such measurement may become unreliable” there were substituted “immediately before it became an Article 23A benchmark”.
- 3. The FCA may, in accordance with paragraphs 4 to 9, provide that this Regulation applies to an Article 23A benchmark with modifications, where it considers it appropriate to do so having regard to the effects of the designation under Article 23A or the FCA’s exercise of its powers under Article 23D(2) (or both).
- 4. If the FCA proposes that this Regulation should apply to an Article 23A benchmark with modifications, or that existing modifications applied by a notice under paragraph 6 should be varied, it must inform the benchmark administrator by written notice.
- 5. A notice under paragraph 4 must—
  - (a) explain the proposed modifications or variations,
  - (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.
- 6. If, after considering any representations made in accordance with paragraph 5(c), the FCA decides to make the proposed modifications or variations, it must give the administrator a written notice of its decision.
- 7. A notice under paragraph 6 must—
  - (a) specify the modifications or variations,
  - (b) give reasons for the FCA's decision, and
  - (c) provide any further information that the FCA considers appropriate for assisting supervised entities to understand the effects of the modifications or variations.
- 8. A notice under paragraph 6 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.
- 9. The FCA—
  - (a) must give a copy of a notice under paragraph 6 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 Annex.
- 10. Paragraphs 11 to 13 apply where the FCA gives the administrator of an Article 23A benchmark a notice under Article 23D(2) or (8)(b).
- 11. The FCA must, before the end of the period of three months beginning with the day on which it gave the notice referred to in paragraph 10, consider whether to exercise its power under paragraph 3 in relation to the benchmark.
- 12. During the interim period, the benchmark administrator is only required to comply with this Regulation to the extent that, taking account of the changes made by the notice referred to in paragraph 10, it remains reasonably practicable to do so.
- 13. In paragraph 12, “interim period” means a period beginning when the notice referred to in paragraph 10 is given and ending—
  - (a) at the end of the three month period referred to in paragraph 11, if that period ends without the FCA giving a notice under paragraph 4, or
  - (b) when the FCA, having given the administrator a notice under paragraph 4, gives the administrator —
    - (i) a written notice that it has decided not to make the proposed modifications or variations, or
    - (ii) a notice under paragraph 6.
- 14. References in this Annex to varying modifications (however expressed) include removing or replacing some or all modifications.”

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

In the Benchmarks Regulation, after Article 23D (inserted by section 15) insert—

*“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—
  - (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.”

**17 Policy statements relating to critical benchmarks**

- (1) In the Benchmarks Regulation, after Article 23E (inserted by section 16) insert—

*“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
    - (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.”
- (2) The FCA’s duty under Article 23F(1) of the Benchmarks Regulation (inserted by subsection (1)) to prepare and publish a statement may be satisfied by things done by the FCA before subsection (1) comes into force (as well as by things done after that time).

**18 Critical benchmarks provided for different currencies etc**

- (1) In the Benchmarks Regulation, after Article 23F (inserted by section 17) insert—

*“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 and 23A to 23E 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.
- 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)."
- (2) In Article 49 of the Benchmarks Regulation (regulations made by the Treasury)—
  - (a) after paragraph 2 insert—
    - "2A. Regulations made under Article 23G may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.", and
  - (b) in paragraph 3, at the beginning insert "Subject to paragraph 2A,".

## 19 Changes to and cessation of a benchmark

- (1) Article 28 of the Benchmarks Regulation (changes to and cessation of a benchmark) is amended as follows.
- (2) In paragraph 1—
  - (a) omit "together with the benchmark statement referred to in Article 27,";
  - (b) for "a procedure" substitute "a robust procedure", and



(c) omit “and shall be updated and published whenever a material change occurs”.

(3) After paragraph 1 insert—

- “1A. The procedure described in paragraph 1—
- (a) must be published with the benchmark statement for the benchmark when that statement is published in accordance with the first or second subparagraph of Article 27(1), and
  - (b) must be updated and published whenever a material change occurs.
- 1B. In the case of a critical benchmark—
- (a) on the day on which a procedure described in paragraph 1 is published in accordance with paragraph 1A(a), the administrator must give the FCA an assessment of the matters described in paragraph 1C,
  - (b) the FCA must, before the end of the consideration period, consider whether a procedure published in accordance with paragraph 1A(a) satisfies paragraph 1,
  - (c) before publishing an update of a procedure described in paragraph 1 (whether in accordance with paragraph 1A(b) or otherwise), an administrator must give the update to the FCA, together with an assessment of the matters described in paragraph 1C,
  - (d) where the FCA is given an update of a procedure described in paragraph 1 by an administrator, it must, before the end of the consideration period, consider whether the update satisfies paragraph 1, and
  - (e) an administrator must not publish an update of a procedure described in paragraph 1 unless—
    - (i) the FCA has given a written notice to the administrator confirming that the update satisfies paragraph 1, or
    - (ii) the consideration period has expired without the FCA giving a written notice to the administrator stating that the update does not satisfy that paragraph.
- 1C. An assessment provided by an administrator for the purposes of paragraph 1B(a) or (c) must assess the following matters—
- (a) the nature and extent of the current use of the benchmark,
  - (b) the availability of suitable alternatives to the benchmark, and
  - (c) how prepared users of the benchmark are for changes to, or the cessation of, the benchmark.
- 1D. For the purposes of paragraph 1B, “the consideration period”, in relation to a procedure or an update of a procedure, means the period of 60 days beginning with the day on which the procedure is published or the update of the procedure is given to the FCA (as appropriate) (“the relevant day”), subject to any extension under paragraph 1E.
- 1E. The FCA may extend the consideration period by giving a written notice to the administrator before its expiry but may not extend the period beyond the end of the period of six months beginning with the relevant day.”

**20      Extension of transitional period for benchmarks with non-UK administrators**

- (1) Article 51(5) of the Benchmarks Regulation (transitional provision for benchmarks with administrators located in a country outside the UK) is amended as follows.
- (2) In point (a), for “31 December 2022” substitute “31 December 2025”.
- (3) In point (b)—
  - (a) for “1 January 2023” substitute “1 January 2026”, and
  - (b) for “31 December 2022” substitute “31 December 2025”.

**21      Benchmarks: minor and consequential amendments**

Schedule 5 contains minor and consequential amendments of the Benchmarks Regulation.