

**Changes to legislation:** Financial Services Act 2021, SCHEDULE 5 is up to date with all changes known to be in force on or before 12 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

## SCHEDULES

### SCHEDULE 5

Section 21

#### BENCHMARKS: MINOR AND CONSEQUENTIAL AMENDMENTS

1 The Benchmarks Regulation is amended as follows.

##### Commencement Information

**II** Sch. 5 para. 1 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

2 (1) Article 3(1) (definitions) is amended as follows.

(2) In point (6) (administrator)—

(a) after “means” insert—

“(a),  
and

(b) at the end insert “, or

(b) in the case of an Article 23A benchmark, a natural or legal person that would have control over the provision of the benchmark but for Article 23D;”.

(3) After point (25) insert—

“(25A) ‘*Article 23A benchmark*’ has the meaning given in Article 23A(14);”.

(4) After point (36) insert—

“(37) ‘*working day*’ means a day other than—

(a) Saturday or Sunday,

(b) Christmas Day or Good Friday, or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.”

##### Commencement Information

**I2** Sch. 5 para. 2 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

3 In Article 3, after paragraph 1 insert—

“1A References in this Regulation to the capability of a benchmark to measure the underlying market or economic reality are references to both its current capability to do so and its capability to do so in the future.”

##### Commencement Information

**I3** Sch. 5 para. 3 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

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- 4 In Article 11 (input data), after paragraph 4 insert—
- “4A In the case of a critical benchmark, paragraph 4 does not require the administrator to cease providing the benchmark before the end of a period during which the administrator is required to continue publishing the benchmark by Article 21(1) or (2) or by a decision of the FCA under Article 21(3).
- 4B In the case of a critical benchmark in respect of which measures adopted under Article 23(6) have effect—
- (a) paragraph 4 does not require the administrator to cease providing the benchmark while those measures have effect, and
  - (b) the administrator's duty under paragraph 4 to make changes is a duty to make changes so far as compatible with those measures.”

**Commencement Information**

**I4** Sch. 5 para. 4 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

- 5 In Article A20(5)(b) (review of critical benchmarks), for “determines” substitute “determine”.

**Commencement Information**

**I5** Sch. 5 para. 5 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

- 6 (1) Article 20 (critical benchmarks: conditions and other matters) is amended as follows.
- (2) In paragraph 5(b), for “determines” substitute “determine”.
- (3) In paragraph 5A(a)—
- (a) for “the values in points (a) and (c)(i) of paragraph 1 (the “thresholds”)” substitute “the value in point (a) of paragraph 1 (“the paragraph 1(a) value”)”, and
  - (b) for “to the thresholds” substitute “to the paragraph 1(a) value”.
- (4) In paragraph 5A(b), for “the thresholds” substitute “the paragraph 1(a) value”.
- (5) In paragraph 6(a), for “thresholds” substitute “values”.
- (6) In paragraph 6(b), for “the thresholds in points (a) and (c)(i)” substitute “the value in point (a)”.

**Commencement Information**

**I6** Sch. 5 para. 6 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

- 7 In Article 21(3) (mandatory administration of a critical benchmark), in the first subparagraph, in point (b), at the end insert “(whether by the exercise of the FCA's powers under Article 23D or otherwise)”.

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**I7** Sch. 5 para. 7 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

8 After Article 26 insert—

**“CHAPTER 7 COMPLIANCE WITH REQUIREMENTS**

*Article 26A*

***Compliance with requirements***

Supervised entities and supervised third country entities must comply with prohibitions and other requirements imposed on them by the FCA under this Regulation.”

**Commencement Information**

**I8** Sch. 5 para. 8 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

9 In Article 29 (use of a benchmark), after paragraph 1 insert—

“1A Paragraph 1 does not enable a supervised entity to use a benchmark in the United Kingdom in breach of a prohibition under Article 21A or 23B.

1B The use of a benchmark by a supervised entity for a financial contract, financial instrument or investment fund in breach of a prohibition under Article 21A or 23B does not affect the validity or enforceability of a contract or other arrangement.”

**Commencement Information**

**I9** Sch. 5 para. 9 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

10 In Article 36(1) (register of administrators and benchmarks), after point (d) insert—

“(e) any prohibitions under Article 21A or 23B on the use of benchmarks by supervised entities that are in force;

(f) any benchmarks that are Article 23A benchmarks.”

**Commencement Information**

**I10** Sch. 5 para. 10 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

11 After Article 48 insert—

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## “TITLE 6A

### PROVISION OF INFORMATION AND PERIODS OF TIME

#### *Article 48A*

##### ***Provision of information and documents***

- 1 The Treasury may by regulations make provision about the procedure to be followed, or rules to be applied, when a provision of or made under this Regulation—
  - (a) requires information or a document of any kind to be given, or
  - (b) authorises the imposition of a requirement.
- 2 The regulations may, among other things, make provision—
  - (a) requiring information to be given in writing;
  - (b) requiring, or allowing, information or a document to be sent electronically;
  - (c) requiring, or allowing, information or a document to be given in another manner;
  - (d) as to the address to which information or a document must or may be sent;
  - (e) requiring a person to provide an address to which information or a document must or may be sent;
  - (f) for treating information or a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
  - (g) as to what must, or may, be done if the person to whom information or a document is required to be given is not an individual;
  - (h) as to what must, or may, be done if the intended recipient of information or a document is outside the United Kingdom.
- 3 Paragraph 1 applies however the obligation to give information or a document is expressed (and so, among other things, includes a provision which requires a person to be notified of something and a provision which requires a document to be submitted).
- 4 Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Regulation subject to any provision made by regulations under this Article.

#### *Article 48B*

##### ***Periods of time***

The following provisions of Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits do not apply to a reference in this Regulation to a period of time—

- (a) Article 3(2)(c) (periods expressed in weeks, months or years);
- (b) Article 3(4) (periods ending with a weekend or public holiday).”

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**Commencement Information**

**I11** Sch. 5 para. 11 in force at 1.7.2021 by S.I. 2021/739, reg. 3(n)

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

- specified provision(s) amendment to earlier commencing S.I. 2021/671, reg. 5 by [S.I. 2021/1163 reg. 2](#)