



# Financial Services Act 2021

## 2021 CHAPTER 22

### *Benchmarks*

#### **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;

---

**Changes to legislation:** Financial Services Act 2021, Section 10 is up to date with all changes known to be in force on or before 22 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

---

- (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.

---

**Changes to legislation:** Financial Services Act 2021, Section 10 is up to date with all changes known to be in force on or before 22 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](#)

---

- 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.”

---

**Commencement Information**

**II**   S. 10 in force at 1.7.2021 by S.I. 2021/739, reg. 3(c)

**Changes to legislation:**

Financial Services Act 2021, Section 10 is up to date with all changes known to be in force on or before 22 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.

[View outstanding changes](#)

**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](#)