



# **Benchmarks Regulation and amendments under the Financial Services Act 2021**

December 2023

This document provides background to the Benchmarks Regulation and amendments introduced under the [Financial Services Act 2021](#) (FS Act) to give us enhanced powers, in particular in relation to managing the orderly wind-down of critical benchmarks. As is widely known, these powers were introduced in order to allow us to properly address the issues relating to LIBOR transition.

We set out below the details of those powers as provided in the FS Act and provide links to relevant consultations about our proposed policies and decisions in respect of those powers. We are updating this document over time to reflect new consultations, market changes and publications of Statements of Policy and decisions following our consultations.

## **Benchmarks Regulation**

- 1.1 Benchmarks are used in a wide range of markets to help set prices, measure performance or compute performance fees, define asset allocation, or work out amounts payable under financial instruments and contracts. They are integral to the functioning of financial markets.
- 1.2 In 2013, the International Organisation of Securities Commissions (IOSCO) published its overarching framework of [Principles for Financial Benchmarks](#), in particular, to address conflicts of interest in the benchmark-setting process. This provided the foundations for the EU Benchmarks Regulation (EU BMR) which took full effect on 1 January 2018.
- 1.3 The EU BMR places requirements on benchmark administrators and contributors, and supervised entities which use benchmarks, to ensure that benchmarks are robust and reliable. It replaced the previous UK regulatory regime that regulated eight benchmarks specified by HM Treasury. Since 31 December 2020, the EU BMR has formed part of retained EU law (with some necessary amendments): the [UK Benchmarks Regulation](#) (BMR) continues to apply in the UK.
- 1.4 Under the BMR, we are responsible for the authorisation and registration of UK benchmark administrators as well as the supervision of administrators, contributors and supervised entities which are users in the UK.
- 1.5 The BMR defines 'critical benchmarks' and imposes additional regulatory requirements on the administrators of, and contributors to, these benchmarks. LIBOR is a critical benchmark under the BMR.
- 1.6 Under Article 21(3) of the BMR, we can require the administrator of a critical benchmark to continue publishing a critical benchmark that it otherwise intends to cease, until such time as:
  - the provision of the benchmark has been transitioned to a new administrator
  - the benchmark can be ceased to be provided in an orderly fashion, or
  - the benchmark is no longer critical.
- 1.7 Where we use the Article 21(3) power, we are required to review annually whether the exercise of this power remains necessary. The maximum period of

mandatory administration is 10 years (extended from 5 years by the changes introduced under the FS Act).

- 1.8 We are obliged to conduct assessments of whether a critical benchmark is representative of the market(s) it is intended to measure (paragraph 4.7).
- 1.9 Where we find that the benchmark is not representative, or its representativeness is at risk, under Article 23(6) we can require supervised contributors and supervised third country entities, including entities that are not yet contributors to the relevant critical benchmark, to contribute input data in order to maintain, restore or improve representativeness. We are required to review our exercise of the Article 23(6) power annually. The maximum period of mandatory contribution shall not exceed five years in total.
- 1.10 A benchmark administrator is obliged under Article 11(4) to cease the provision of an unrepresentative critical benchmark or to make changes (to the benchmark's input data, contributors or methodology) to restore its representativeness, within a reasonable time period.

## **LIBOR transition**

- 2.1 LIBOR is currently the only critical benchmark in the UK. In 2014, the [Financial Stability Board recommended](#) transition away from certain major interest rate benchmarks generally known as IBORs or Interbank Offered Rates, including LIBOR, to alternative risk-free rates (RFRs). This is because the underlying markets that IBORs intend to measure are no longer sufficiently active and panel banks which contribute input data to IBORs are increasingly reliant on 'expert judgement' for submissions.
- 2.2 In November 2017, we [announced](#) that the LIBOR panel banks had agreed to support the LIBOR benchmark until end-2021. We also [said publicly](#) in July 2017 that it may not be possible for the administrator to produce LIBOR after end-2021 if the panel banks are unwilling to continue to contribute to the rate. In the same speech in July 2017, we stated our intention that "at the end of this period, it would no longer be necessary for us to persuade, or compel, banks to submit to LIBOR".
- 2.3 On [18](#) and [30](#) November 2020, we published two statements acknowledging the intention of the LIBOR administrator (IBA) to consult the market on the future of LIBOR after end-2021.
- 2.4 On 4 December 2020, IBA published a [Consultation](#) on its intention to cease publishing:
  - all GBP, EUR, CHF and JPY LIBOR settings, and the one week and two month USD LIBOR settings immediately following the LIBOR publication on 31 December 2021 and
  - the overnight and one, three, six and 12 month USD LIBOR settings immediately following the LIBOR publication on 30 June 2023.
- 2.5 IBA stated that cessation would be subject to any decision by the FCA to compel IBA to continue publication using powers available to the FCA under the BMR.

- 2.6 In March 2021, we published a [statement](#) on the future cessation and loss of representativeness for the LIBOR benchmark settings (in line with the dates above). We also announced our intention to [consult in Q2 2021](#) on any decision to use our powers for certain LIBOR currency-tenor settings to continue their publication under a changed methodology. We describe the relevant powers, introduced under the FS Act, below.
- 2.7 Where parties to contracts referencing LIBOR cannot reach agreement on how those contracts would operate in the event of LIBOR's cessation, discontinuation could cause uncertainty, litigation or loss of value because contracts no longer function as intended. If this problem affects large volumes of contracts it could pose risks to wider market integrity.
- 2.8 We, alongside the Bank of England and other regulators internationally, have been encouraging an industry-led transition away from LIBOR, primarily through the use of alternative RFRs. The Working Group on Sterling Risk-Free Reference Rates (RFRWG) has been working with the Bank of England and us to catalyse a broad-based transition to SONIA, the RFR for sterling LIBOR. There are similar working groups in other LIBOR currency jurisdictions. We have also been encouraging adoption of robust fallbacks into all new and, where possible, legacy contracts so they continue to operate when LIBOR ceases or becomes permanently unrepresentative.
- 2.9 However, we expect that there will be a pool of contracts, identified by the RFRWG as 'tough legacy', that have no realistic prospect of being amended to transition away from LIBOR and that therefore may not function as intended upon the cessation of LIBOR. This could lead to disruption that is incompatible with our operational objectives of ensuring an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

## **Amendments to the BMR under the Financial Services Act**

- 3.1 To help ensure an orderly wind-down of a critical benchmark, such as LIBOR, the Government introduced provisions under the FS Act to amend and enhance our powers under the BMR. These provisions took effect on 1 July 2021.
- 3.2 These provisions allow us to require the administrator of a critical benchmark to change how a benchmark is determined, rules of the benchmark, and the code of conduct (if the benchmark is based on submissions from contributors) if the benchmark is designated as an Article 23A benchmark (i.e. it has become permanently unrepresentative, see 3.4 below). Where a critical benchmark is based on submissions from contributors - as is the case with LIBOR - these powers allow us to direct a change of methodology so that it is no longer reliant on these contributions, in order to wind it down in an orderly fashion before its eventual cessation.
- 3.3 We may only exercise this power if we consider it appropriate to do so having regard to the desirability of securing that the cessation of the benchmark takes place in an orderly way and it is desirable to advance either or both of our objectives of ensuring an appropriate degree of protection for consumers and protecting and enhancing the integrity of the financial system.

- 3.4 We will be able to 'designate' a benchmark, such as LIBOR, as an 'Article 23A benchmark' (see details below) if its representativeness cannot reasonably be restored or maintained, or if the representativeness can be restored or maintained but there are not good reasons to do so.
- 3.5 Following any designation of a benchmark as an Article 23A benchmark, we will have access to a range of new, enhanced powers, as described below in section 4.

## **Decision-making under the Financial Services Act**

- 4.1 We describe below our key decision-making process that could unfold following a range of circumstances. These circumstances include the receipt of a cessation notice from the administrator of a critical benchmark, and/or where contributors have notified the administrator of their intention to cease contributing input data to the benchmark.

### **Assessment of representativeness of critical benchmarks by us under Article 21**

#### **Article 21**

- 4.2 Under Article 21(1), the administrator of a critical benchmark that intends to cease providing that benchmark is required to give us notice and submit to us an assessment of how the benchmark is to be ceased. Upon receiving the administrator's assessment, we are required to make our own assessment of the administrator's plan (under Article 21(2)). If we decide to compel the administrator to continue publication (under Article 21(3)) after having completed our own assessment, we are required under Article 21(3A) to conduct an assessment of the capability of the benchmark to measure the underlying market or economic reality.
- 4.3 We are required by Article 21(3B) and Article 21(3C) to conduct our assessment within a limited time period and to issue a Notice to the administrator on the outcomes of our assessment under Article 21(3A), stating:
- that we consider 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
  - that we consider that the representativeness of the benchmark is not at risk

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

#### **Article 21A**

- 4.4 Following our assessment under Article 21(2) of the administrator's cessation plan, we have the power under Article 21A to prohibit some or all new use of the benchmark by publishing a Notice. 'New use of a benchmark' is set out under Article 21A(2).

- 4.5 We may only exercise this power if we consider it desirable to advance either or both of our objectives of ensuring an appropriate degree of protection for consumers and protecting and enhancing the integrity of the financial system. We will also be able to consider the effect of the exercise of this power outside the UK.
- 4.6 Before exercising our power under Article 21A, we are required under Article 23F to publish a Statement of Policy and we must have regard to it in exercising the power. See our [Consultation](#) about our proposed policy in respect of our powers under Article 21A and our [Statement of Policy](#).

## **Assessment of representativeness of critical benchmarks by us under Articles 22A and Article 22B**

### **Article 22A**

- 4.7 Article 22A requires the administrator of a critical benchmark which is based on submissions by contributors, the majority of which are supervised entities or supervised third country entities (and which is not an Article 23A benchmark as described below), to conduct an assessment of the capability of the benchmark to measure the underlying market or economic reality it is intended to measure:
- at two yearly intervals
  - subject to our written notice, where we have concerns with the representativeness of the benchmark or
  - where a supervised contributor gives notice of its intention to cease contributing input data
- 4.8 If a contributor gives notice to cease contribution, the administrator will need to submit its assessment to us within 14 days after the contributor notifies the administrator of its intention to cease contribution. The period between a contributor providing notice and ceasing to contribute input data must be no less than 15 weeks.

### **Article 22B**

- 4.9 Following receipt of the administrator's assessment as provided under Article 22A, we are required under Article 22B to conduct our own assessment of the capability of the benchmark to measure the underlying market or economic reality.
- 4.10 We are required to issue a written Notice to the administrator on the outcome of our assessment, stating:
- that we consider 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
  - that we consider that the representativeness of the benchmark is not at risk

4.11 In circumstances where a supervised contributor gives notice of its intention to cease contributing input data to the administrator, we must complete our assessment and issue a Notice to the administrator stating the outcome of our assessment, within 28 days after the administrator was notified of the contributor's departure.

## **To restore the representativeness of a critical benchmark**

### **Article 23**

4.12 Article 23(6) allows us to restore the representativeness of a critical benchmark, if following our assessment (under Article 21(3B)(a) or Article 22B(3)(a)), we consider that the benchmark is no longer representative or its representativeness is at risk but it is appropriate to maintain, restore or improve its representativeness.

4.13 We can use our Article 23(6) power to compel contributions from supervised entities and supervised third country entities, including those entities who are not currently contributors to the benchmark, for an appropriate period not exceeding 12 months, after which time we must review the measures. This period can be extended for further periods of up to 12 months, but only to a maximum of 5 years. We can also require the administrator to change the methodology, code of conduct or other rules of the benchmark in order to maintain, restore or improve the representativeness of the benchmark.

## **Designation of a critical benchmark**

### **Article 23A**

4.14 Following our giving the administrator of a critical benchmark a written Notice under Article 21(3B)(a) or Article 22B(3)(a) (benchmark unrepresentative or representativeness at risk), we have the power to designate the benchmark as an Article 23A benchmark unless we consider that it is, and is likely to continue to be, the case that:

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

4.15 To make a final designation decision, we are required to engage with the administrator through a process prescribed by the Act. The process also requires us to publish a Notice stating when the designation of the benchmark takes effect, which may be at a future date and after the decision to designate. Once it takes effect, it cannot be revoked.

4.16 We are required under Article 23F to publish a Statement of Policy before exercising the power to designate a benchmark as an Article 23A benchmark and we must have regard to the Statement in exercising the power. See [our Consultation](#) about our proposed policy on the designation of benchmarks under Article 23A and our [Statement of Policy](#).

## **Prohibition on use and exemption for legacy use of Article 23A benchmark**

### **Article 23B**

4.17 Article 23B provides that all use by supervised entities of an Article 23A designated benchmark is prohibited when the Article 23A designation takes effect, except where we permit it. We may do so either by issuing a public Notice delaying the prohibition for up to four months beginning with the day on which the Article 23A designation takes effect, or by using the power at Article 23C to permit some or all legacy use (see below). Our expectation is that the prohibition would only take effect when the benchmark becomes unrepresentative, for example, upon the withdrawal of panel banks.

### **Article 23C**

4.18 We have the power under Article 23C to permit some or all legacy use by supervised entities of an Article 23A designated benchmark, by publishing a Notice. We may alter or withdraw the permission by issuing a Notice. We may only exercise this power if we consider it desirable to advance either or both of our objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

4.19 We are required under Article 23F to publish a Statement of Policy before exercising our Article 23C power and we must have regard to it when exercising the power. See our [Consultation](#) about our proposed policy in respect of our powers under Article 23C and [Statement of Policy](#).

## **Orderly cessation of Article 23A benchmark**

### **Article 23D**

4.20 Once we designate a critical benchmark as an Article 23A benchmark, under Article 23D we may require changes to: the way in which the benchmark is determined, including its input data; rules of the benchmark; and, where the benchmark is based on submissions by contributors, the code of conduct. We will only be able to exercise this power if we consider 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 if we consider it is desirable to advance either or both of our objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

4.21 Before exercising this power, we are required under Article 23F to publish a Statement of Policy and we must have regard to it when exercising the power. See our [Consultation](#) about our proposed policy in respect of our powers under Article 23D and our [Statement of Policy](#).

4.22 Article 23D(11) provides that once a benchmark is designated as an Article 23A benchmark, the BMR will apply to the benchmark with modifications as set out in Annex 4. This is because, for example, rules around input data under Article 11(1) would no longer be applicable to an Article 23A benchmark.

## **Statements of Policy and Decisions**



- 5.1 We are required by the BMR as amended by the FS Act to publish Statements of Policy before exercising certain powers and we must have regard to them when exercising those powers (under Article 23F). These are in relation to:
- the exercise of our power under Article 21A
  - the designation of benchmarks under Article 23A
  - the exercise of our power under Article 23C
  - the exercise of our powers under Article 23D
- 5.2 The FS Act provides that we may prepare and publish statements of policy before the Act is enacted.
- 5.3 Although we are not required by the BMR to consult, we consulted on our policy approaches for exercising all of these powers, and have now published Statements of Policy (see [Article 21A](#), [Article 23A](#), [Article 23C](#) and [Article 23D](#)).
- 5.4 We [consulted](#) on our proposed decision to use our Article 23D powers for 6 sterling and Japanese yen LIBOR currency-tenor settings. Following the Consultation, we published a draft [Notice](#) confirming our decision to require a change of methodology after end-2021 for these sterling and Japanese yen LIBOR settings under Article 23D. We have also published a [Feedback Statement](#) on responses received to our Article 23D decision Consultation. On 1 January 2022, we published a [Notice](#) (substantially in the same form as the draft Notice) confirming our decision to require a change of methodology for the 6 sterling and Japanese yen LIBOR currency-tenor settings.
- 5.5 We [consulted](#) on our proposed decisions to use our Article 21A and 23C powers for LIBOR. Following the Consultation, we published:
- a [draft Notice](#) confirming our decision on permitting legacy use of the 6 sterling and Japanese yen LIBOR settings under Article 23C
  - a [Notice](#) confirming our decision on prohibiting new use of the continuing USD LIBOR settings under Article 21A
  - a [Feedback Statement](#) on responses received to our Article 21A and 23C decision Consultation
  - a [Notice](#) (substantially in the same form as the draft Notice) confirming our decision on permitting legacy use of the 6 sterling and Japanese yen LIBOR settings under Article 23C
- 5.6 We published [Notices](#) confirming that the 6 sterling and Japanese yen LIBOR settings will [become permanently unrepresentative 'Article 23A' benchmarks](#) on 1 January 2022, and that we will [compel the continued publication](#) of these settings under Article 21(3). We also published a [Notice](#) under Article 23B to ensure that the [Article 23C legacy use permission](#) for these 6 LIBOR settings becomes available at the same time that the prohibition on their use takes effect.
- 5.7 We [consulted](#) on winding down synthetic sterling LIBOR and US dollar LIBOR in June 2022. In September 2022, in line with consultation feedback, we

announced our [decision](#) that 1- and 6-month sterling LIBOR will cease permanently after 31 March 2023 (see our [Notice](#)).

- 5.8 In November 2022, we [announced](#) our intention to continue to require IBA to publish the 3-month synthetic sterling LIBOR setting until end-March 2024, after which the setting will cease permanently.
- 5.9 We also published a further [Consultation](#) in November 2022 on our proposal to require publication of the 1-, 3- and 6-month US dollar LIBOR settings (the 3 US dollar LIBOR settings) on a synthetic basis until end-September 2024, as well as on the appropriate methodology for constructing such synthetic US dollar LIBOR settings, and what use of them should be permitted. As part of this publication, we provided feedback on responses received to our [June 2022 Consultation](#).
- 5.10 In April 2023, following our November 2022 Consultation we [announced](#) that we had decided to:
- require LIBOR’s administrator to publish the 3 US dollar LIBOR settings using a synthetic methodology for a temporary period, [which we expect to cease at end-September 2024](#)
  - use the CME Term SOFR Reference Rate plus the relevant ISDA fixed spread adjustment as the [synthetic methodology](#) for the 3 US dollar LIBOR settings (draft Article 23D Notice)
  - [permit](#) all legacy contracts other than cleared derivatives to use the 3 US dollar LIBOR settings (draft Article 23C Notice)
- 5.11 In May 2023, following our November 2022 Consultation and our April 2023 announcement, we published:
- a [Feedback Statement](#) on responses received to our [November 2022 Consultation](#)
  - a [Notice](#) under Article 23B to ensure that the [Article 23C legacy use permission](#) for the 3 US dollar LIBOR settings becomes available at the same time that the prohibition on their use takes effect
- 5.12 In July 2023, we published:
- a [Notice](#) (substantially in the same form as the draft Notice) confirming our decision on permitting legacy use of the 3 US dollar LIBOR settings under Article 23C
  - a [Notice](#) (substantially in the same form as the draft Notice) confirming our decision to require a change of methodology for the 3 US dollar LIBOR settings under Article 23D
- 5.13 In November 2023, we published:
- a [Notice](#) confirming our decision that we will compel the continued publication of the 3-month sterling LIBOR setting until the end of March 2024 under Article 21(3)