

# Chapter 8

## Benchmarks



8.7 Procedures for exercising powers in relation to critical benchmarks

Application and purpose

- 8.7.1
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- This section applies to *authorised persons* and to *unauthorised persons*.
- 8.7.2
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- (1) The purpose of this section is to set out the procedures which the *FCA* will follow when exercising its powers under articles 21 and 23 of the *benchmarks regulation*.

(1) ■ MAR 8.7.9G contains a table of definitions for the purpose of this section. Those defined terms are not shown in italics.

Compulsion powers under the benchmarks regulation

- 8.7.3
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- (1) The *FCA* has been designated as the *UK competent authority* for the purpose of the *benchmarks regulation*.

(2) The *benchmarks regulation* confers various directly applicable powers on the *FCA* in relation to *critical benchmarks*. In particular:

(a) article 21(3) of the *benchmarks regulation* gives a the *FCA* the power to compel the administrator of a *critical benchmark* to continue publishing the critical benchmark for up to 24 months; and

(b) article 23(6) of the *benchmarks regulation* gives a the *FCA* the power to take various steps where it considers that the representativeness of a *critical benchmark* is put at risk. That includes the power to require *supervised entities* to contribute *input data* to the administrator of a *critical benchmark* for up to 24 months.

(3) The two powers in (a) and (b) above are referred to in this section as the “compulsion powers”.

Exercise of compulsion powers: general

- 8.7.4
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- (1) Articles 21 and 23 of the *benchmarks regulation* set out the circumstances in which the *FCA* may exercise the compulsion powers.

(2) In some cases, the *FCA* may only have a short period in which to decide whether to exercise a compulsion power.

- (3) Where the *FCA* considers it necessary to exercise a compulsion power, it will make that decision on the basis of the information available to it at that time.
- (4) The *benchmarks regulation* does not require the *FCA* to consult on the use of compulsion powers .
- (5) Given that the compulsion powers may need to be exercised within short timescales, the *FCA* does not expect to consult on the use of its compulsion powers (other than consulting other *regulatory bodies* where required by the *Act* or the *benchmarks regulation*).
- (6) In some cases, it may be necessary to exercise compulsion powers in relation to more than one *person*. In those circumstances, it may be necessary to address a written notice under this section to more than one *person*.
- (7) The *FCA* will review a decision to exercise a compulsion power in the circumstances described in this section.

#### Decision to exercise a compulsion power

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If the *FCA* decides to exercise a compulsion power in respect of a *person* (P) (whether a *supervised entity* or an administrator), the *FCA* will give P a written notice which:

- (1) gives details of the decision ("the First Decision");
- (2) states the *FCA*'s reasons for the First Decision;
- (3) states the date on which the First Decision takes effect; and
- (4) states that P may make representations to the *FCA* in relation to the First Decision within a period specified in the written notice.

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In some cases, the decision in ■ MAR 8.7.5G may take effect immediately. This means that in some cases:

- (1) P will be required to comply with the decision from the date of the written notice; and
- (2) the decision will continue to have effect pending consideration of any representations made by P.

#### Review of the First Decision

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- (1) Where P makes written representations to the *FCA* in relation to the First Decision in accordance with ■ MAR 8.7.5G(4), the *FCA* will review that decision and will decide whether to maintain, vary or revoke it.
- (2) In conducting the review in (1), the matters which the *FCA* may have regard to include:
  - (a) the written representations made by P in relation to the First Decision; and

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- (b) any additional information relevant to the exercise of the compulsion power (whether obtained before or after the First Decision).
- (3) The review in (1) will be carried out by:
  - (a) a senior *FCA* staff member who did not participate in making the First Decision; or
  - (b) two or more senior *FCA* staff members including at least one person who did not participate in making the First Decision.
- (4) When the *FCA* has completed the review in (1), the *FCA* will give P a written notice which:
  - (a) gives details of the decision in response to the review (“the Second Decision”);
  - (b) states the *FCA*’s reasons for the Second Decision; and
  - (c) states the date on which the Second Decision takes effect.

Own initiative review of the exercise of compulsion powers

- (1) The *FCA* may, on its own initiative, decide to vary or revoke a requirement imposed under a compulsion power (an Own Initiative Variation or Own Initiative Revocation).
- (2) For instance, the *FCA* may decide to vary or revoke a requirement imposed under a compulsion power:
  - (a) where the *FCA* becomes aware of new information which is material to that requirement; or
  - (b) to extend the duration of the requirement in accordance with article 21(3) or article 23(6)(b) of the *benchmarks regulation*; or
  - (c) as result of a review under article 21(3) or article 23(9) of the *benchmarks regulation*.
- (3) The *FCA* will treat an Own Initiative Variation as a new First Decision and will follow the procedures in ■ MAR 8.7.5G and ■ MAR 8.7.7G for the purpose of that decision.

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Table of defined terms

For the purpose of this section, the terms in the first column of the table below have the meanings in the second column of that table.

Table: glossary of bespoke terms used in this section

administrator	has the meaning in article 3.1(6) of the <i>benchmarks regulation</i> ;
compulsion powers	means the <i>competent authority</i> ’s powers under articles 21(3) and 23(6) of the <i>benchmarks regulation</i> ;
First Decision	the <i>FCA</i> ’s decision in MAR 8.7.5G(1);
Own Initiative Revocation	has the meaning in MAR 8.7.8G(1);
Own Initiative Variation	has the meaning in MAR 8.7.8G(1);
Second Decision	the <i>FCA</i> ’s decision in MAR 8.7.7G(4).