
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Financial Services and Markets Act 2000
(Claims Management Activity) Order 2018

PART 3

Transitional provisions

CHAPTER 1

Interpretation

Interpretation

39.—(1) In this Part—

“the 2006 Act” means the Compensation Act 2006(1);

“the 2007 Act” means the Legal Services Act 2007(2);

“the 2001 Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(3);

“the 2006 Regulations” means the Compensation (Claims Management Services) Regulations 2006(4);

“a 2000 Act authorised person” means a person given a Part 4A permission;

“a 2006 Act authorised person” means an authorised person within the meaning given by section 4(2)(a) of the 2006 Act;

“Part 4A permission” means a permission given under Part 4A of the 2000 Act (permission to carry on regulated activities);

“the Regulator” means the Secretary of State(5).

(2) A reference to the Regulator includes a reference to a person acting on behalf of the Regulator or with the Regulator’s authority.

(3) An appeal submitted to the First-tier Tribunal under section 13 of the 2006 Act has not been determined when—

(a) such an appeal is awaiting determination by the First-tier Tribunal;

(b) an application for permission to appeal under section 11, 13, 14A or 14B of the Tribunals, Courts and Enforcement Act 2007(6) (“the Tribunals Act 2007”) could be made or is awaiting determination (other than an application out of time with permission);

(1) 2006 c. 29.

(2) 2007 c. 29.

(3) S.I. 2001/544.

(4) S.I. 2006/3322.

(5) For the purposes of Part 6 (legal complaints) of the 2007 Act (see section 161(1)(a) (extension of Part 6 to claims management services)), the Secretary of State (exercising the functions of the Regulator through the Claims Management Regulation Unit under section 5(9) of the 2006 Act), is to be treated as an approved regulator.

(6) 2007 c. 15.

- (c) an appeal under section 11, 13, 14A or 14B of the Tribunals Act 2007 is awaiting determination; or
- (d) an appeal decision has been reviewed by the First-tier Tribunal under section 9 or by the Upper Tribunal under section 10 of the Tribunals Act 2007 and is awaiting a further determination.

CHAPTER 2

Authorisation and regulation of 2006 Act authorised persons

Meaning of “relevant person”

40.—(1) In this Chapter “relevant person” means a person who—

- (a) immediately before 1st April 2019, was a 2006 Act authorised person; and
- (b) on 1st April 2019, is treated, by virtue of article 80(5), as having a Part 4A permission to carry on a regulated claims management activity.

(2) Where the conditions set out in paragraph (3) are met, the reference in paragraph (1)(a) to a 2006 Act authorised person includes a person (“P”) who received from the Regulator written notice given under regulation 47 of the 2006 Regulations of a decision to cancel P’s authorisation (“the cancellation decision”).

(3) The conditions are that the cancellation decision had effect before 1st April 2019, and—

- (a) where, before 1st April 2019, P submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act with respect to the cancellation decision, the appeal—
 - (i) has not been determined; or
 - (ii) has been determined by a remittal of the cancellation decision to the Regulator under section 13(3)(e) of the 2006 Act but a further decision by the Regulator in relation to the cancellation decision has not been taken; or
- (b) where, before 1st April 2019, P did not submit such notice of appeal, the period within which an appeal may be made has not ended on that date.

Applications for authorisation made to the Regulator: authorisation by the FCA

41.—(1) This article applies to an application under regulation 8 of the 2006 Regulations (application for authorisations) received by the Regulator before 1st April 2019, where on 1st April 2019—

- (a) the applicant (“A”) has not withdrawn the application; and
- (b) the Regulator has not given A a written instrument of authorisation in accordance with regulation 13(1) of the 2006 Regulations.

(2) Paragraphs (3) to (8) apply where the Regulator has not approved the grant of an authorisation to A.

(3) Where—

- (a) the conditions set out in paragraph (5) are met; and
- (b) immediately before 1st April 2019, A is a 2000 Act authorised person,

A’s application to the Regulator is to be treated as an application to the FCA under section 55H(7) of the 2000 Act (variation by FCA at request of authorised person) to vary A’s Part 4A permission by adding regulated claims management activity to the activities to which the permission relates.

(7) Section 55H was inserted by the Financial Services Act 2012 (c. 21), section 11(2).

(4) Where—

- (a) the conditions set out in paragraph (5) are met; and
- (b) immediately before 1st April 2019, A is not a 2000 Act authorised person,

A's application to the Regulator is to be treated as an application to the FCA under section 55A(8) (application for permission) of the 2000 Act for permission to carry on regulated claims management activity.

(5) The conditions are that A—

- (a) submits to the FCA such further application form as may be specified in a direction given by the FCA; and
- (b) pays to the FCA any further fee payable under its rules by any person making an application of a kind specified in paragraphs (3) or (4).

(6) If, before 1st April 2019, the Regulator notified A that the Regulator was minded to grant or refuse A's application, that fact is immaterial for the purposes of the determination of the application by the FCA.

(7) Section 55U(1) to (4)(9) of the 2000 Act (applications under Part 4A) does not apply to A's application.

(8) For the purposes of section 55V(10) of the 2000 Act (determination of applications) A's application is to be treated as if it had been received by the FCA on the date on which A met the conditions set out in paragraph (5).

(9) Paragraph (10) applies where—

- (a) the Regulator has on A's application approved the grant of an authorisation to A; and
- (b) A has not paid to the Regulator the fee referred to in regulation 13(1) of the 2006 Regulations.

(10) That fee is payable to the FCA, and on payment of that fee A is to be treated for the purposes of article 80 as if—

- (a) immediately before 1st April 2019, A was a 2006 Act authorised person; and
- (b) during the period referred to in paragraph (1)(b) of that article, A had notified the FCA of A's desire to be registered for temporary permission under that article and paid the fee payable by any person desiring to be so registered.

Applications for authorisation made to the Regulator: appeal of decision

42.—(1) This article applies where—

- (a) the Regulator gave notice to a person ("A") under regulation 13(5) of the 2006 Regulations of the Regulator's decision—
 - (i) to refuse to grant an authorisation to A; or
 - (ii) to grant an authorisation to A subject to a condition not sought by A; and
- (b) on 1st April 2019, the period within which an appeal relating to that decision may be made has not ended.

(2) The Regulator's notice is to be treated as a decision notice given under section 55X(4)(f) of the 2000 Act(11), and the notice is to be read for that purpose—

(8) Section 55A was inserted by the Financial Services Act 2012, section 11(2).

(9) Section 55U was inserted by the Financial Services Act 2012, section 11(2).

(10) Section 55V was inserted by the Financial Services Act 2012, section 11(2).

(11) Section 55X was inserted (together with the rest of Part 4A of the 2000 Act) by the Financial Services Act 2012 (c. 21), section 11(2).

- (a) as if any reference to the Regulator were a reference to the FCA; and
- (b) with any other necessary modifications.

(3) If, before 1st April 2019, A submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act in respect of the Regulator’s decision, section 55Z3(1) of the 2000 Act⁽¹²⁾ (right to refer matters to the Tribunal) does not apply.

Proposal by the Regulator to vary authorisation: determination by the FCA

43.—(1) This article applies where the Regulator—

- (a) gave written notice to a relevant person (“A”) under regulation 46(4) of the 2006 Regulations (cancellation, suspension and variation of authorisations) that the Regulator proposed to vary A’s authorisation; and
- (b) did not, on or before 1st April 2019, give written notice under regulation 47(1) of the 2006 Regulations (procedure for cancellation etc) of a decision to vary A’s authorisation.

(2) The Regulator’s notice is to be treated as written notice given by the FCA under section 55Y(4) of the 2000 Act⁽¹³⁾, and for this purpose—

- (a) subsection (2) of that section does not apply to the notice;
- (b) the notice is taken to comply with subsection (5) of that section;
- (c) the notice is to be read—
 - (i) as if the period specified in it for making a written submission (including any further period allowed under regulation 46(5) of the 2006 Regulations) were the period for making representations specified in accordance with section 55Y(5)(c) of the 2000 Act;
 - (ii) as if a reference to the Regulator were a reference to the FCA; and
 - (iii) with any other necessary modifications.

Variation of authorisation by the Regulator: appeal of decision

44.—(1) This article applies where—

- (a) the Regulator gave written notice to a relevant person (“B”) under regulation 47(1) of the 2006 Regulations of a decision to vary B’s authorisation; and
- (b) on 1st April 2019—
 - (i) the period within which an appeal relating to that decision may be made has not ended; or
 - (ii) an appeal submitted to the First-tier Tribunal by B before that date has not been determined.

(2) The Regulator’s notice is to be treated as written notice given by the FCA under section 55Y(7) of the 2000 Act, and for this purpose—

- (a) it is immaterial that the notice does not comply with subsection (9) of that section; and
- (b) the notice is to be read—
 - (i) as if a reference to the Regulator were a reference to the FCA; and
 - (ii) with any other necessary modifications.

⁽¹²⁾ Section 55Z3 was inserted by the Financial Services Act 2012, section 11(2) and amended by [SI 2018/135](#).

⁽¹³⁾ Section 55Y was inserted by the Financial Services Act 2012, section 11(2).

(3) If, before 1st April 2019, B submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act in respect of the Regulator’s decision, section 55Z(1) of the 2000 Act does not apply.

Proposal by the Regulator to cancel authorisation: determination by the FCA

45.—(1) This article applies where the Regulator—

- (a) gave written notice to a relevant person (“A”) under regulation 46(4) of the 2006 Regulations that the Regulator proposed to cancel A’s authorisation; and
- (b) did not, on or before 1st April 2019, give written notice under regulation 47(1) of the 2006 Regulations of a decision to cancel A’s authorisation.

(2) Where, immediately before 1st April 2019, A is not a 2000 Act authorised person, the Regulator’s notice is to be treated as a warning notice given under section 55Z(1)(14) of the 2000 Act, and for this purpose—

- (a) the notice is taken to comply with section 387(1) (warning notices) of the 2000 Act;
- (b) the notice is to be read—
 - (i) as if a reference to the Regulator were a reference to the FCA;
 - (ii) as if the period specified in it for making a written submission (including any further period allowed under regulation 46(5) of the 2006 Regulations) were the period for making representations specified in accordance with section 387(2) of the 2000 Act; and
 - (iii) with any other necessary modifications.

(3) Where, immediately before 1st April 2019, A is a 2000 Act authorised person, the Regulator’s notice is to be treated as written notice given by the FCA under section 55Y(4) of the 2000 Act, and for this purpose—

- (a) subsection (2) of that section does not apply to the notice;
- (b) the notice is taken to comply with subsection (5) of that section; and
- (c) the notice is to be read—
 - (i) as if a reference to the Regulator were a reference to the FCA;
 - (ii) as if the period specified in it for making a written submission (including any further period allowed under regulation 46(5) of the 2006 Regulations) were the period for making representations specified in accordance with section 55Y(5)(c) of the 2000 Act; and
 - (iii) with any other necessary modifications.

Cancellation of authorisation by the Regulator: appeal of decision

46.—(1) This article applies where—

- (a) the Regulator gave written notice to a relevant person (“B”) under regulation 47(1) of the 2006 Regulations of a decision to cancel B’s authorisation; and
- (b) on 1st April 2019—
 - (i) the period within which an appeal relating to that decision may be made has not ended; or
 - (ii) an appeal submitted to the First-tier Tribunal by B before that date has not been determined.

(14) Section 55Z was inserted by the Financial Services Act 2012, section 11(2).

(2) For the purposes only of an appeal in respect of the Regulator’s decision, the Regulator’s notice is to be treated—

- (a) where, immediately before 1st April 2019, B is not a 2000 Act authorised person, as a decision notice given under section 55Z(2) of the 2000 Act;
- (b) where, immediately before 1st April 2019, B is a 2000 Act authorised person, as written notice given by the FCA under section 55Y(7) of that Act.

(3) For the purposes of paragraph (2)—

- (a) where the notice is treated as written notice under section 55Y(7) of the 2000 Act, it is immaterial that it does not comply with subsection (9) of that section; and
- (b) the notice is to be read—
 - (i) as if any reference to the Regulator were a reference to the FCA; and
 - (ii) with any other necessary modifications.

(4) If, before 1st April 2019, B submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act in respect of the Regulator’s decision, section 55Z3(1) of the 2000 Act does not apply.

Proposal by the Regulator to suspend authorisation: determination by the FCA

47.—(1) This article applies where the Regulator—

- (a) gave written notice to a relevant person (“A”) under regulation 46(4) of the 2006 Regulations that the Regulator proposed to suspend A’s authorisation; and
- (b) on 1st April 2019, has not given written notice under regulation 47(1) of the 2006 Regulations of a decision to suspend A’s authorisation.

(2) The Regulator’s notice is to be treated as a warning notice given by the FCA under section 207(1)(c) of the 2000 Act⁽¹⁵⁾, and for this purpose—

- (a) the notice is taken to comply with section 387(1) of the 2000 Act; and
- (b) the notice is to be read—
 - (i) as if any reference to the Regulator were a reference to the FCA;
 - (ii) as if the period specified for making a written submission (including any further period allowed under regulation 46(5) of the 2006 Regulations) were the period for making representations specified in accordance with section 387(2) of the 2000 Act;
 - (iii) as if the period of the proposed suspension specified among the terms set out under regulation 46(4)(b) of the 2006 Regulations were the period for which the suspension is to have effect stated in accordance with section 207(4) of the 2000 Act⁽¹⁶⁾; and
 - (iv) with any other necessary modifications.

Suspension of authorisation by the Regulator: appeal of decision

48.—(1) This article applies where—

- (a) the Regulator gave written notice to a relevant person (“B”) under regulation 47(1) of the 2006 Regulations of a decision to suspend B’s authorisation; and
- (b) on 1st April 2019—

⁽¹⁵⁾ Paragraph (c) of section 207(1) was inserted by the Financial Services Act 2010 (c. 28), sections 24(1) and (2), paragraphs 1 and 18(1) and (3) of Schedule 2.

⁽¹⁶⁾ Subsection (4) of section 207 was inserted by the Financial Services Act 2010, sections 24(1) and (2), paragraphs 1 and 18(1) and (3) of Schedule 2.

- (i) the period within which an appeal relating to that decision may be made has not ended; or
- (ii) an appeal submitted to the First-tier Tribunal by B before that date has not been determined.

(2) For the purposes only of an appeal in respect of the Regulator's decision, the Regulator's notice is to be treated as a decision notice given by the FCA under section 208(1)(c) of the 2000 Act(17), and the notice is to be read for this purpose—

- (a) as if any reference to the Regulator were a reference to the FCA; and
- (b) with any other necessary modifications.

(3) For the purposes of section 206A(3) of the 2000 Act, the suspension is treated as having taken effect on 1st April 2019.

(4) If, before 1st April 2019, B submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act in respect of the Regulator's decision, section 208(4) of the 2000 Act(18) (right to refer matters to the Tribunal) does not apply.

Notice by the Regulator of proposed direction

49.—(1) This article applies where the Regulator—

- (a) notified a relevant person under regulation 29(4) of the 2006 Regulations(19) (directions of the Regulator about complaints handling and related matters) of a direction that the Regulator proposed to give under paragraph (3) of that regulation; and
- (b) on 1st April 2019, has not given the proposed direction.

(2) The Regulator's notice is to be treated as written notice given by the FCA under section 55Y(4) of the 2000 Act, and for this purpose—

- (a) subsection (2) of that section does not apply to the notice;
- (b) the notice is taken to comply with subsection (5) of that section; and
- (c) the notice is to be read—
 - (i) as if a reference to the Regulator were a reference to the FCA; and
 - (ii) with any other necessary modifications.

Compliance with information requirement imposed by the Regulator

50.—(1) This article applies where—

- (a) the Regulator—
 - (i) gave notice in writing to a person under—
 - (aa) regulation 33 of the 2006 Regulations (requirements for information under section 8(4) of the 2006 Act); or
 - (bb) regulation 36 of the 2006 Regulations (breaches by authorised persons of condition: requirement to provide information etc); or

(17) Paragraph (c) of section 208(1) was inserted by the Financial Services Act 2010, sections 24(1) and (2), paragraphs 1 and 18(1) and (3) of Schedule 2.

(18) Subsection (4) was amended by the Financial Services Act 2012 (c. 21), section 37(1), paragraphs 1 and 15 of Schedule 9; and the Financial Services Act 2010, section 24(1) and (2), paragraphs 1 and 19 of Schedule 2.

(19) Regulation 29(4) was amended by S.I. 2015/42.

- (ii) made a request to a person under rule 16 of the Conduct of Authorised Persons Rules 2018~~(20)~~; and
 - (b) on 1st April 2019, the period specified in the notice or request within which the information or documents specified or described in the notice or request are to be given to the Regulator, including any extra time allowed under regulation 33(6) or 36(6) of the 2006 Regulations, has not expired.
- (2) The Regulator’s notice or request is to be treated as a notice in writing given by the FCA under section 165(1) of the 2000 Act~~(21)~~ (regulators’ power to require information: authorised persons etc).
- (3) For the purposes of this article, section 165 of the 2000 Act has effect in relation to the Regulator’s notice or request as if—
- (a) in subsection (2)(a), the reference to such reasonable period as may be specified is to be read as a reference to the period referred to in paragraph (1)(b) or such longer period as the FCA may allow; and
 - (b) in subsection (2)(b), the reference to such place as may be specified is to be read as a reference to the place specified in the Regulator’s notice or request at which the information or documents specified or described in the notice or request are to be given to the Regulator.

Penalties for conduct for which the Regulator has not given notice of proposed penalty

51.—(1) This article applies where—

- (a) the FCA is satisfied that, after 28th December 2014 but before 1st April 2019, a relevant person (“A”)—
 - (i) failed to comply with any of the conditions of authorisation referred to in regulation 12(5)(a), (b), (d) or (i)~~(22)~~ of the 2006 Regulations;
 - (ii) failed to comply with a notice in writing given by the Regulator under regulation 36 of the 2006 Regulations; or
 - (iii) in relation to a warrant issued under regulation 40 of the 2006 Regulations (issue of warrants generally)~~(23)~~, obstructed an attempt to—
 - (aa) enter and search premises in accordance with the warrant;
 - (bb) take possession of written or electronic records in accordance with an authorisation under paragraph (4) of that regulation; or
 - (cc) take copies of written or electronic records in accordance with regulation 43~~(24)~~ of the 2006 Regulations (copying of documents); and
- (b) on 1st April 2019, the Regulator has not given written notice to A under regulation 51~~(25)~~ of the 2006 Regulations (notice of proposed penalty and written submissions) that the Regulator proposed to impose a penalty on A for the failure or the obstruction concerned (“the relevant default”).

(20) The Conduct of Authorised Persons Rules 2018 (<https://www.gov.uk/government/publications/claims-management-regulation-conduct-of-authorised-person-rules-2018>) are made by the Regulator under regulation 22 of the 2006 Regulations (Rules and Codes of Practice).

(21) Section 165(1) was amended by the Financial Services Act 2012 (c. 21), Schedule 12, paragraph 1(2).

(22) Regulation 12(5) was amended by S.I. 2015/42.

(23) Regulation 40 was amended by S.I. 2008/1441.

(24) Regulation 42 was amended by S.I. 2008/1441.

(25) Regulation 51 was amended by S.I. 2008/1441.

(2) For the purposes of the following sections of the 2000 Act, the relevant default is to be treated as a contravention of a relevant requirement (within the meaning given by section 204A(2) of that Act)—

- (a) section 206 (financial penalties);
- (b) section 206A (suspending permission to carry on regulated activities etc);
- (c) section 208 (decision notice).

(3) For the purposes of paragraph (2), sections 206 and 208 of the 2000 Act are to be read as if a reference to an authorised person included a person who was, at any time before 1st April 2019, a 2006 Act authorised person.

(4) In determining what, if any, financial penalty to impose on A, the FCA must have regard to—

- (a) any penalty or fine that has been imposed on A for the relevant default by another body;
- (b) any other steps that the Regulator or the FCA has taken, or that the FCA might take, in relation to the relevant default;
- (c) the nature and seriousness of the relevant default; and
- (d) the relevant turnover (within the meaning given by regulation 50(26)) of A's business.

(5) A financial penalty imposed by the FCA for the relevant default—

- (a) where the relevant turnover of A's business is less than £500,000, may not exceed £100,000;
- (b) where the relevant turnover of A's business is £500,000 or more, may not exceed an amount equal to 20 per cent of that turnover.

Penalties for conduct for which the Regulator has given notice of proposed penalty

52.—(1) In this article—

- (a) a reference to a numbered section is a reference to the section so numbered in the 2000 Act; and
- (b) a reference to a numbered regulation is a reference to the regulation so numbered in the 2006 Regulations.

(2) This article applies where the Regulator—

- (a) gave written notice to a person (“A”) under regulation 51(1) that the Regulator proposed to impose a penalty on A for a failure or obstruction of a kind specified in article 51(1) (“the relevant default”);
- (b) none of the evidence on which the Regulator relies, as set out in the summary of evidence set out in the notice in accordance with regulation 51(1)(e), relates to conduct that occurred on or before 28th December 2014; and
- (c) on 1st April 2019, the Regulator has not given written notice to A under regulation 52(27) (procedure for requiring an authorised person to pay a penalty) of a decision to require A to pay a penalty.

(3) The Regulator's notice is to be treated as a warning notice given by the FCA under section 207(1)(b) (proposal to take disciplinary measures)(28), and for this purpose—

- (a) the notice is taken to comply with section 387(1); and
- (b) the notice is to be read—

(26) Regulation 50 was amended by [S.I. 2014/3239](#).

(27) Regulation 52 was amended by [S.I. 2014/3239](#).

(28) Section 207(1) was amended by the Financial Services Act 2012 (c. 21), section 37(1), paragraphs 1 and 14 of Schedule 9.

- (i) as if a reference to the Regulator is a reference to the FCA;
 - (ii) as if the period specified in it for making a written submission (including any further period allowed under regulation 51(2)) is the period for making representations specified in accordance with section 387(2); and
 - (iii) with any other necessary modifications.
- (4) For the purposes of the following sections of the 2000 Act, the relevant default is to be treated as a contravention of a relevant requirement (within the meaning given by section 204A(2))—
- (a) section 206 (financial penalties);
 - (b) section 206A (suspending permission to carry on regulated activities etc);
 - (c) section 207 (proposal to take disciplinary measures);
 - (d) section 208 (decision notice).
- (5) For the purposes of paragraph (4), sections 206, 207 (except subsection (1)(c)), and 208 are to be read as if a reference to an authorised person included a person who was, at any time before 1st April 2019, a 2006 Act authorised person.
- (6) In determining what, if any, financial penalty to impose on A, the FCA must have regard to—
- (a) the considerations specified in article 51(4); and
 - (b) any written submissions made by A in relation to the matters in the Regulator’s notice within the period allowed under regulation 51(1)(g)(29) or any further period allowed by the Regulator.
- (7) A financial penalty imposed by the FCA for the relevant default—
- (a) where the relevant turnover of A’s business is less than £500,000, may not exceed £100,000;
 - (b) where the relevant turnover of A’s business is £500,000 or more, may not exceed an amount equal to 20 per cent of that turnover.

Penalties for conduct for which the Regulator has given penalty decision: appeal of decision

53.—(1) This article applies where—

- (a) the Regulator gave written notice to a person (“A”) under regulation 52 of the 2006 Regulations of a decision to require A to pay a penalty; and
 - (b) on 1st April 2019—
 - (i) the period within which an appeal relating to that decision may be made has not ended; or
 - (ii) an appeal submitted to the First-tier Tribunal by A before that date has not been determined.
- (2) The Regulator’s notice is to be treated as a decision notice given by the FCA under section 208(1)(b) of the 2000 Act, and is to be read for this purpose—
- (a) as if any reference to the Regulator were a reference to the FCA; and
 - (b) with any other necessary modifications.
- (3) If, before 1st April 2019, A submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act, section 208(4) of the 2000 Act(30) does not apply.

(29) Regulation 51 was amended by [S.I. 2013/3239](#).

(30) Section 208(4) was amended by the Financial Services Act 2012 (c. 21), section 37(1) and paragraphs 1 and 15 of Schedule 9 and the Financial Services Act 2010 (c. 28), section 24(1) and (2), and paragraphs 1 and 19(1) and (4).

Penalties for conduct for which the Regulator has given penalty decision: penalty due

- 54.**—(1) This article applies where, before 1st April 2019—
- (a) the Regulator gave written notice to a person (“A”) under regulation 52 of the 2006 Regulations of a decision to require A to pay a penalty; and
 - (b) on 1st April 2019—
 - (i) the period within which an appeal relating to that decision may be made has ended, or an appeal has been withdrawn or determined otherwise than in A’s favour; and
 - (ii) the penalty specified in the Regulator’s notice, or any part of it, is unpaid.
- (2) The penalty or unpaid part of the penalty is payable to the FCA rather than to the Regulator.
- (3) Where the penalty, or any part of it, is not paid by the date specified in the Regulator’s notice as the date by which it is required to be paid, the FCA may enforce the penalty or that part of it as a debt due to the FCA.
- (4) For the purposes of Part 3 of Schedule 1ZA to the 2000 Act (penalties and fees)—
- (a) any amounts received by the FCA by virtue of paragraph (2) are to be treated as amounts received by way of penalties imposed under the 2000 Act;
 - (b) any expenses incurred by the FCA in connection with the recovery of penalties payable to it by virtue of this article are to be treated as expenses incurred in connection with the recovery of penalties imposed under the 2000 Act.

Investigation and prosecution after 1st April 2019 in relation to conduct before that date

- 55.**—(1) This article applies for the purposes of—
- (a) an investigation on or after 1st April 2019 (“a relevant investigation”)—
 - (i) to determine whether an offence was committed by a person before that date under Part 2 of the 2006 Act;
 - (ii) of a complaint about the activities or professional conduct of a relevant person before that date;
 - (iii) into the professional conduct of a relevant person before that date otherwise than as a result of a complaint, where the FCA is satisfied that the Regulator could reasonably have made a decision to carry out such an investigation under regulation 35(2) of the 2006 Regulations; and
 - (b) the prosecution on or after 1st April 2019 of an offence committed before that date under Part 2 of the 2006 Act (“a relevant offence”).
- (2) The FCA may—
- (a) conduct any relevant investigation; or
 - (b) institute and prosecute criminal proceedings in respect of any relevant offence.
- (3) Paragraphs (4) to (9) apply for the purposes of paragraph (2).
- (4) The following sections of the 2000 Act are to be read as if a reference to an authorised person included a person who was, at any time before 1st April 2019, a 2006 Act authorised person—
- (a) section 165 (regulators’ power to require information), except subsection (7);
 - (b) section 166 (reports by skilled persons); and
 - (c) section 167(31) (appointment of persons to carry out general investigations).

(31) Section 167 was amended by the Financial Services Act 2012 (c. 21), section 41.

(5) Section 168 of the 2000 Act⁽³²⁾ is to be read as if, in subsection (4), after paragraph (a) there were inserted—

“(ab) a person may be guilty of an offence under section 10, 11(1) or (2) of the Compensation Act 2006;

(ac) a person may have contravened section 4(1) of the Compensation Act 2006 or failed to comply with a requirement made under section 8(4) of that Act;”.

(6) In section 175 (information and documents: supplemental provisions), subsections (2), (2A) and (2B)⁽³³⁾ have effect as if a reference to a document produced in response to a requirement imposed under Part 11 of the 2000 Act (“Part 11”) included a document given to the Regulator in compliance with a requirement made under—

(a) regulation 33(1) (requirements for information under section 8(4) of the 2006 Act) of the 2006 Regulations; or

(b) regulation 36(1) (breaches by authorised persons of condition: requirement to provide information etc) of the 2006 Regulations.

(7) In section 177 (offences)—

(a) subsection (3) is to be read as if the reference to an investigation being or likely to be conducted under Part 11 included a relevant investigation; and

(b) subsections (1) and (4) are to be read as if the references to a requirement imposed under Part 11 included a requirement made under—

(i) regulation 33(1) of the 2006 Regulations; or

(ii) regulation 36(1) of the 2006 Regulations.

(8) In section 398 (misleading FCA: residual cases) subsection (1A)(a) is to be read as if the reference to a requirement imposed by the 2000 Act included a requirement imposed under Part 11 (information gathering and investigations) as that Part applies with the modifications in paragraphs (4) to (7).

(9) In section 400 (offences by bodies corporate etc) a reference to an offence under the 2000 Act includes an offence under section 177(3) or (4) as that section applies with the modifications in paragraph (7).

Unprofessional conduct: continuation of investigation commenced by the Regulator

56.—(1) This article applies where—

(a) the Regulator commenced the investigation of a complaint or suspicion of unprofessional conduct of a person under regulation 35(1) or (2) of the 2006 Regulations (Regulator to investigate complaints or suspicions of unprofessional conduct); and

(b) on 1st April 2019, the investigation has not been concluded.

(2) The FCA is deemed to have decided, immediately before 1st April 2019, that there is good reason for the appointment under section 167 of the 2000 Act of one or more competent persons to conduct an investigation on its behalf into the complaint or suspicion referred to in paragraph (1).

⁽³²⁾ Section 168 was amended by the Counter Terrorism Act 2008 (c. 28), section 100(2), the Financial Services Act 2010 (c. 28), section 26(1)(g)(i), the Financial Services Act 2012, section 41, the Financial Guidance and Claims Act 2018 (c. 10), section 25, S.I. 2007/126, 2012/2554 and 2013/1773. There are other amendments, but none are relevant.

⁽³³⁾ Section 175 was amended by the Financial Services Act 2012 (c. 21), section 41.

Offences under the 2006 Act: continuation of investigation commenced by the Regulator and institution of criminal proceedings

57.—(1) This article applies where, before 1st April 2019, the Regulator commenced the investigation of an offence under Part 2 of the 2006 Act alleged to have been committed by any person (“A”).

(2) The FCA may continue the investigation and for that purpose—

(a) section 168 of the 2000 Act (appointment of persons to carry out investigations in particular cases) applies in relation to the investigation with the modification set out in paragraph (3); and

(b) for the purposes of that section as applied, the FCA is deemed to have decided, immediately before 1st April 2019, that there are circumstances suggesting that A may be guilty of an offence under Part 2 of the 2006 Act.

(3) For the purposes of paragraph (2), section 168 of the 2000 Act is to be read as if, in subsection (1)(b), at the end there were inserted “or under Part 2 of the Compensation Act 2006”.

(4) The FCA may institute criminal proceedings in respect of an offence under Part 2 of the 2006 Act in relation to which an investigation was continued by the FCA under paragraph (2).

Continuation of criminal proceedings instituted by the Regulator

58.—(1) This article applies to criminal proceedings (“relevant proceedings”) which—

(a) were instituted by the Regulator under section 8(3)(b) of the 2006 Act in respect of an offence under section 7(1), 10(1) or 11(1) or (2) of that Act; and

(b) on 1st April 2019, have not been concluded by acquittal or upon conviction and sentencing.

(2) The FCA may continue the prosecution of the defendant in relevant proceedings, and is for that purpose substituted for the Regulator as a party to the proceedings.

Continuation of injunction applications made by the Regulator

59.—(1) This article applies to an application for an injunction (“a relevant application”) which—

(a) was made by the Regulator under section 8(1) of the 2006 Act⁽³⁴⁾; and

(b) on 1st April 2019, has not been determined by the court.

(2) The FCA may continue the relevant application and is for that purpose substituted for the Regulator as a party to that application.

Continuation of application made by the Regulator for a search warrant

60.—(1) This article applies to an application for a search warrant made by the Regulator—

(a) under section 8(5) of the 2006 Act (enforcement: the Regulator); or

(b) under regulation 37(1) or (2) of the 2006 Regulations (search warrants for purposes of investigation of professional conduct).

(2) The FCA may continue the search warrant application and is for that purpose substituted for the Regulator as a party to that application.

⁽³⁴⁾ Section 8(1) was amended by the Legal Services Act 2007 (c. 29) and the Crime and Courts Act 2013 (c. 22).

Retention of records seized by an officer of the Regulator

61.—(1) This article applies where, before 1st April 2019, an officer of the Regulator took possession of any written or electronic records in accordance with an authorisation given by a judicial officer under regulation 40(4) of the 2006 Regulations.

(2) Section 176A(35) (retention of documents taken under section 176) of the 2000 Act has effect in relation to the written or electronic records concerned as if they were documents of which possession had been taken under section 176 of that Act.

Decision notices

62. In relation to any notice given by the Regulator to a person which, by virtue of this Chapter, is to be treated as a decision notice given under the 2000 Act—

- (a) it is immaterial that the notice does not meet the requirements specified in subsection (1) (b) to (e) of section 388 of that Act (decision notices); and
- (b) that section is to be read as if—
 - (i) subsection (2) were omitted;
 - (ii) in subsection (3) the words from “which relates” to the end were omitted;
 - (iii) for subsections (4) and (5) there were substituted—
 - “(4) A further decision notice given under subsection (3) may vary the original notice.

(5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the First-tier Tribunal under section 13 of the Compensation Act 2006, that person has the right to refer the matter to which the decision notice under subsection (3) relates to the Tribunal.”.

Conditions and directions

63.—(1) This article applies where, in relation to a relevant person—

- (a) the Regulator—
 - (i) granted an authorisation under regulation 12(1) of the 2006 Regulations subject to a condition (“relevant condition”);
 - (ii) in relation to an authorisation under regulation 12(1) of the 2006 Regulations—
 - (aa) made a variation of the authorisation under regulation 46(2)(b) of the 2006 Regulations (“relevant variation”) by limiting the classes of claims management services that the person authorised by the authorisation may undertake or provide or otherwise varying the conditions of the authorisation; or
 - (bb) suspended the authorisation for a period under regulation 46(2)(a) of the 2006 Regulations (“relevant suspension”); or
 - (iii) gave a direction (“relevant direction”) to the relevant person under regulation 29(3) of the 2006 Regulations; and
- (b) immediately before 1st April 2019, the relevant condition, the relevant variation, the relevant suspension or the relevant direction still has effect.

(35) Section 176A was inserted by the Financial Services Act 2012 (c. 21), section 41 and paragraph 15 of Schedule 12.

(2) A relevant condition is to be treated as a requirement imposed by the FCA under section 55L(1) of the 2000 Act⁽³⁶⁾ which took effect on the date on which the authorisation was granted, and for that purpose the grant of the authorisation is to be treated as the giving by the FCA of a Part 4A permission.

(3) A relevant suspension is to be treated as a suspension imposed by the FCA under section 206A(1) of the 2000 Act which took effect—

(a) on 1st April 2019 for the purposes of section 206A(3) of the 2000 Act; and

(b) on the date on which the authorisation was suspended for all other purposes.

(4) A relevant direction is to be treated as a requirement imposed by the FCA under section 55L(3) of the 2000 Act which took effect on the date on which the direction was given.

(5) Where a relevant variation imposed a limitation or, by varying conditions (including imposing any additional condition), imposed a new or revised requirement, the limitation or the requirement is to be treated as a requirement imposed by the FCA under section 55L(3) of the 2000 Act which took effect on the date on which the variation was made.

(6) For the purposes of paragraphs (4) and (5) the relevant person is to be treated as having had, on the date on which the direction was given or the variation was made, a Part 4A permission to carry on a regulated claims management activity.

Fees and invoices

64.—(1) This article applies where—

(a) the Regulator issued an invoice to a person under regulation 15(1)(b) of the 2006 Regulations (determinations of fees); and

(b) on 1st April 2019, that person has not paid the Regulator the amount of the annual fee in accordance with the invoice.

(2) The amount payable under the invoice is payable to the FCA.

(3) If the whole or any part of the amount payable under the invoice has not been paid within one month after the date on which the invoice was issued, the FCA may recover the amount outstanding as a civil debt.

CHAPTER 3

Appeals and references

Continuation of appeals commenced before 1st April 2019

65.—(1) This article applies where, on or before 1st April 2019—

(a) a person has submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act (appeals and references to Tribunal) against a decision of the Regulator (“the relevant decision”); and

(b) the appeal has not been determined.

(2) The appeal is to continue as if the FCA had made the relevant decision, and for that purpose the FCA is substituted for the Regulator as a party to the appeal.

Right to appeal after 1st April 2019 against a decision of the Regulator

66.—(1) This article applies where—

⁽³⁶⁾ Section 55L was inserted by the Financial Services Act 2012 (c. 21), section 11(2).

- (a) before 1st April 2019, a person (“A”) had a right to appeal to the First-tier Tribunal under section 13 of the 2006 Act against a decision of the Regulator (“the relevant decision”);
- (b) A had not exercised that right on or before 1st April 2019; and
- (c) on 1st April 2019, the period within which, in the absence of this Order, the appeal could have been made has not ended.

(2) A may appeal to the Tribunal in respect of the relevant decision before the end of the period within which, in the absence of this Order, an appeal to the First-tier Tribunal could have been made.

(3) Section 133 of the 2000 Act⁽³⁷⁾ (proceedings before Tribunal: general provision) applies in the case of an appeal to the Tribunal under paragraph (2).

(4) For the purposes of that section, in relation to such an appeal, the relevant decision is to be treated as a decision of the FCA and a disciplinary reference.

Continuation of references made by the Regulator to the First-tier Tribunal

67.—(1) This article applies to any reference of a complaint or question (“the relevant reference”) which—

- (a) was made by the Regulator to the First-tier Tribunal under section 13(2) of the 2006 Act; and
- (b) has not resulted, on or before 1st April 2019, in any decision or action taken by that tribunal under section 13(3) of that Act.

(2) The FCA may continue to refer the complaint or question which is the substance of the relevant reference, and is for that purpose substituted for the Regulator as a party to the reference.

CHAPTER 4

Complaints: the Legal Ombudsman and the Financial Ombudsman Service

Interpretation

68. In this Chapter—

- “compulsory jurisdiction” has the same meaning as it has in the 2000 Act⁽³⁸⁾;
- “former scheme” means the scheme operated by the Office for Legal Complaints under Part 6 of the 2007 Act (legal complaints)⁽³⁹⁾;
- “new scheme” means the scheme for which provision is made in Part 16 of the 2000 Act (the ombudsman scheme);
- “relevant complaint” means a relevant existing complaint or a relevant new complaint;
- “relevant existing complaint” means a complaint of a kind specified in article 69(1);
- “relevant new complaint” means a complaint of a kind specified in article 70(1); and
- “scheme operator” has the same meaning as it has in Part 16 of the 2000 Act⁽⁴⁰⁾.

⁽³⁷⁾ Section 133 was substituted by [S.I. 2010/22](#) and amended by the Financial Services Act 2012 ([c. 21](#)), section 23, the Financial Services (Banking Reform) Act 2013 ([c. 33](#)), section 4(2), the Crime and Courts Act 2013 ([c. 22](#)), section 17(5) and [S.I. 2013/1388](#), [2014/3329](#), [2016/680](#) and [2017/1064](#).

⁽³⁸⁾ For the meaning of “compulsory jurisdiction” see the 2000 Act, section 226(8).

⁽³⁹⁾ Section 115 of the 2007 Act provides that the scheme is to be operated under a name (which must include the word “ombudsman”) chosen by the Office for Legal Complaints. The chosen name is “The Legal Ombudsman Scheme”. Section 161 of the 2007 Act extends Part 6 of the 2007 Act to claims management services, and is repealed by this Order subject to saving provisions.

⁽⁴⁰⁾ For the meaning of “scheme operator” see the 2000 Act, section 225(2).

Complaints made before 1st April 2019 not concluded by that date

69.—(1) This article applies to a complaint which—

- (a) was referred under the former scheme before 1st April 2019 by a person who was at that time entitled under the terms of the former scheme to refer the complaint;
- (b) relates to the provision of claims management services (within the meaning given in section 4(2) of the 2006 Act); and
- (c) was not concluded on 1st April 2019.

(2) Subject to articles 71 and 72, a relevant existing complaint is to be dealt with as if it had been referred under the new scheme in compliance with rules made by the FCA under paragraph 13 of Schedule 17(41) to the 2000 Act.

(3) For the purposes of paragraph (1), except where paragraph (5) applies, a complaint is to be treated as concluded on 1st April 2019 where, before that date—

- (a) the complainant notified the ombudsman of the complainant's rejection of a determination under section 137 of the 2007 Act (determination of complaints);
- (b) the complainant accepted a determination under that section, and any direction contained in the determination was fully complied with;
- (c) the complaint was resolved otherwise than by a determination under that section, and any direction or agreement forming part of the resolution was fully complied with;
- (d) the complaint was dismissed in accordance with provision made in scheme rules under section 133(3)(a) of the 2007 Act; or
- (e) the complaint was referred with the consent of the complainant to another body in accordance with provision made in scheme rules under section 133(3)(b) of the 2007 Act.

(4) For the purposes of paragraph (3)(b) the cases in which a direction contained in the determination of a complaint was fully complied with include a case where, in relation to such a direction, the court has not yet heard an application under section 141(2) or (3) of the 2007 Act (enforcement by complainant of directions under section 137 of that Act).

(5) This paragraph applies where, in relation to a complaint referred under the former scheme—

- (a) an ombudsman did not decide, before 1st April 2019, whether the respondent would be required to pay a charge under rules made in compliance with section 136(1) of the 2007 Act; or
- (b) an ombudsman did, before that date, require the respondent to pay such a charge and the charge has not been paid.

(6) For the purposes of paragraph (2) it is immaterial that the condition set out in section 226(2)(c) of the 2000 Act (compulsory jurisdiction) is not met in relation to the complaint.

Complaints made on or after 1st April 2019 about acts or omissions before that date

70.—(1) This article applies to a complaint—

- (a) about an act or omission which occurred before 1st April 2019 in relation to the provision of claims management services (within the meaning given in section 4(2) of the 2006 Act);
- (b) which had not, before that date, been referred under the former scheme by a person who was entitled under the terms of the former scheme to refer the complaint; and
- (c) in relation to which the conditions set out in paragraph (2) are met.

(41) Paragraph 13 of Schedule 17 was amended by the Financial Services Act 2012 (c. 21), section 39 and by S.I. 2009/209, 2011/99, 2015/542, and 2017/752.

- (2) The conditions are that—
- (a) in relation to the compulsory jurisdiction, the complainant falls within a class of person specified as eligible in the compulsory jurisdiction rules (within the meaning given by section 226(3) of the 2000 Act); and
 - (b) the complainant wishes to have the complaint dealt with under the new scheme.
- (3) Where the condition set out in paragraph (2)(a) is not met in relation to a complaint, an ombudsman may nonetheless treat the complaint as if it does meet that condition if the complainant would have been entitled, immediately before 1st April 2019, to refer the complaint under the former scheme.
- (4) A relevant new complaint—
- (a) may be referred under the new scheme; and
 - (b) upon referral, subject to articles 71 and 73, is to be dealt with in the same way as any other complaint referred under the new scheme.
- (5) For the purposes of paragraph (4), it is immaterial that the conditions set out in section 226(2)(b) and (c) of the 2000 Act are not met in relation to the complaint.

Procedure for dealing with relevant complaints

71.—(1) In this article “scheme rules” means rules made under paragraph 14(1) of Schedule 17 to the 2000 Act (the scheme operator’s rules).

(2) A relevant existing complaint is to be treated as if it had been referred in accordance with any applicable procedure for reference of complaints set out in scheme rules.

(3) Relevant complaints are to be dealt with in accordance with the procedure for the investigation, consideration and determination of complaints set out in scheme rules, and for those purposes scheme rules apply with the modifications in paragraphs (4) to (7).

(4) In determining a relevant existing complaint, an ombudsman is to have no regard to rules made under paragraph 14(2)(a) of Schedule 17 to the 2000 Act (rules specifying matters to be taken into account in determining whether an act or omission was fair and reasonable).

(5) Where an ombudsman is deciding whether to dismiss a complaint without a consideration of its merits in accordance with rules made under paragraph 14(2)(b) and (3) of Schedule 17 to the 2000 Act (“relevant rules”)—

- (a) paragraph (6) applies if the complaint is a relevant existing complaint; and
- (b) paragraphs (6) and (7) apply if the complaint is a relevant new complaint.

(6) An ombudsman must consider whether the complaint would have been dismissed under the rules of the former scheme, if the decision were being made immediately before 1st April 2019, and if the ombudsman considers that the complaint—

- (a) would have been dismissed under the rules of the former scheme; or
- (b) should be dismissed under the relevant rules,

the ombudsman may dismiss the complaint.

(7) The corresponding rules of the former scheme are to be read as if they were subject to paragraph 13 of Schedule 3 to the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015(42) (grounds to refuse to deal with a dispute).

(8) Paragraph (9) applies to a relevant existing complaint where—

- (a) the complainant accepted a determination under section 137 of the 2007 Act before 1st April 2019; and
 - (b) a direction contained in that determination had not been complied with on or before that date.
- (9) A direction made under—
- (a) section 137(2)(c) of the 2007 Act is to be treated as a money award (within the meaning given by section 229(2)(a) of the 2000 Act) for the purposes of section 229(8)(b) and paragraph 16 of Schedule 17 to the 2000 Act; and
 - (b) any other sub-paragraph of section 137(2) of the 2007 Act is to be treated as a direction under section 229(2)(b) of the 2000 Act for the purposes of section 229(9) and (10) of the 2000 Act.

Determination of relevant existing complaints

72.—(1) In this article, except for the references in paragraphs (2) and (4) to sections of the 2007 Act, a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) Where a relevant existing complaint is to be determined under the new scheme, the complaint must, so far as practicable, be determined by reference to such criteria as would have applied to the determination of the complaint under the former scheme immediately before 1st April 2019 by virtue of scheme rules under section 133 of the 2007 Act.

(3) Sections 228(**43**) (determination under the compulsory jurisdiction) and 230A (reports of determinations) apply in relation to the determination of a relevant existing complaint with the following modifications—

- (a) section 228 is to be read as if subsection (2) were omitted; and
- (b) section 230A(1)(**44**) is to be read as if the reference to any determination made under Part 16 included the determination of the relevant existing complaint.

(4) The determination of a relevant existing complaint may contain any one or more of the directions set out in subsection (2) of section 137 of the 2007 Act, and for those purposes—

- (a) a direction under subsection (2)(c) of that section, is to be treated as a money award (within the meaning given by section 229(2)(a)(**45**)) for the purposes of paragraph 16 of Schedule 17 to the 2000 Act; and
- (b) any other direction is to be treated as a direction under section 229(2)(b) for the purposes of section 229(9) and (10).

(5) An ombudsman may, on determining a relevant existing complaint, award costs having regard to provision for the award of costs made in rules of the former scheme, and for those purposes—

- (a) it does not matter whether the award is attributable to an act or omission which occurs before 1st April 2019 or to an act or omission which occurs on or after that date; and
- (b) section 230(7) of, and paragraph 16 of Schedule 17 to, the 2000 Act apply in relation to the award as they apply in relation to an award of costs made in accordance with rules under section 230(1).

(43) Section 228 was amended by the Financial Services Act 2012 (c. 21), section 39 and S.I. 2013/1881.

(44) Section 230A was inserted by the Financial Services Act 2012, section 39.

(45) Paragraph 16 of Schedule 17 was amended by the Crime and Courts Act 2013 (c. 22), section 17(5) and the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 62(3).

Determination of relevant new complaints

73.—(1) In this article, except for the references in paragraph (5) to section 137 of the 2007 Act, a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) Subject to paragraphs (3) to (5), a relevant new complaint is to be determined by reference to the criteria applicable to the determination of any other complaint referred under the new scheme.

(3) The provisions specified in paragraph (4) apply in relation to a relevant new complaint with the modifications in paragraph (5).

(4) Paragraph (5) applies for the purposes of determining, in relation to a relevant new complaint—

- (a) under section 228(2), what is fair and reasonable in all the circumstances of the case;
- (b) under section 229(2)(a), what amount, if any, constitutes fair compensation for loss or damage suffered by the complainant; and
- (c) under section 229(2)(b), what steps would be just and appropriate in any direction under that section.

(5) An ombudsman may take into account—

- (a) what an ombudsman determining the complaint under the former scheme might reasonably have considered fair and reasonable in all the circumstances of the case;
- (b) what amount an ombudsman determining the complaint under the former scheme might reasonably have directed the respondent to pay under section 137(2)(c) of the 2007 Act; and
- (c) what other steps an ombudsman determining the complaint under the former scheme might reasonably have directed the respondent to take under section 137(2) of the 2007 Act.

Funding and charges

74.—(1) Paragraphs (2) and (3) apply to a complaint referred under the former scheme which is a relevant existing complaint by virtue only of article 69(5)(a).

(2) The ombudsman who is dealing with the complaint must decide under rules made in compliance with section 136(1) of the 2007 Act whether the respondent is to be required to pay a charge under those rules.

(3) Where the respondent is required to pay a charge under those rules, the charge is payable to the scheme operator.

(4) Paragraph (5) applies to a complaint referred under the former scheme which is a relevant existing complaint by virtue only of article 69(5)(b).

(5) The charge which the respondent was required to pay under rules made in compliance with section 136(1) of the 2007 Act is payable to the scheme operator.

Surplus fees

75.—(1) In this article, “relevant OLC expenditure”⁽⁴⁶⁾ has the meaning given in section 174A of the 2007 Act⁽⁴⁷⁾.

(2) Paragraph (3) applies to any periodic fees charged by the Lord Chancellor to 2006 Act authorised persons under section 174A of the 2007 Act for the purposes of meeting any costs incurred by the Lord Chancellor in respect of relevant OLC expenditure.

⁽⁴⁶⁾ The OLC is the Office for Legal Complaints established by section 114 of the Legal Services Act 2007 (c. 29).

⁽⁴⁷⁾ Section 174A was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 140(4) and (5) and is repealed by this Order.

(3) Where, immediately before 1st April 2019, the periodic fees held by the Lord Chancellor exceeded the Lord Chancellor's costs incurred in respect of relevant OLC expenditure, those fees may be paid—

- (a) to the OLC for the purpose of funding applications under section 141(2) or (3) of the 2007 Act falling within article 69(4); or
- (b) to the FCA or the scheme operator for the purpose of funding the operation of the new scheme under section 234(1)(b) of the 2000 Act (industry funding).

Exemption from liability in damages

76. Paragraph 10(1) of Schedule 17 to the 2000 Act(48) (exemption from liability in damages) applies to the discharge, or purported discharge, of any functions by virtue of this Chapter in relation to dealing with a relevant complaint (“relevant functions”), and is to be read for those purposes as if—

- (a) the reference to functions under the 2000 Act included a reference to relevant functions; and
- (b) the reference to the compulsory jurisdiction included a reference to the jurisdiction of the new scheme which results from this Chapter.

Privilege

77. Paragraph 11 of Schedule 17 to the 2000 Act(49) (privilege) applies to proceedings in relation to a relevant complaint, and is to be read for those purposes as if the reference to the compulsory jurisdiction included a reference to the jurisdiction of the new scheme enacted by this Chapter.

Record-keeping and reporting requirements relating to relevant complaints

78. The FCA may make rules applying to 2000 Act authorised persons with respect to the keeping of records and the making of reports in relation to relevant complaints.

Information and reports

79.—(1) Sections 230A, 231, 232 and 232A of the 2000 Act apply in relation to a relevant complaint as they apply in relation to a complaint which relates to an act or omission of a person in carrying on an activity to which compulsory jurisdiction rules (within the meaning given by section 226(3) of the 2000 Act) apply.

(2) This paragraph applies where—

- (a) the ombudsman who was dealing with a relevant complaint under the former scheme certified to the court under section 149(2) of the 2007 Act a failure to comply with a requirement imposed under section 147(1) of that Act; and
- (b) on 1st April 2019, the court had not concluded its enquiry into the case with a finding that the defaulter failed or did not fail without reasonable excuse to comply with the requirement.

(3) Where paragraph (2) applies—

- (a) the court may continue its enquiry into the case under section 149(3) of the 2007 Act; and

(48) Paragraph 10(1) of Schedule 17 was amended by the Consumer Credit Act 2006 (c. 14), section 61(10)(d) and S.I. 2013/1881.

(49) Paragraph 11 of Schedule 17 was amended by the Consumer Credit Act 2006, section 61(10)(d) and by S.I. 2013/1881.

- (b) the ombudsman dealing with the complaint under the new scheme may continue to assist the court with that enquiry, and for that purpose is to be treated as having made the certification under section 149(2).

CHAPTER 5

Temporary Permission

Temporary permission

80.—(1) In this article “relevant person” means a person who—

- (a) immediately before 1st April 2019—
- (i) was a 2006 Act authorised person;
 - (ii) was providing services which, if Part 2 of the 2006 Act had extended to Scotland, would have been regulated claims management services (within the meaning given by section 4 of the 2006 Act); or
 - (iii) in relation to a claim which a person has by virtue of section 75(1) of the Consumer Credit Act 1974, was providing services of a kind which, if performed on or after 1st April 2019, would constitute the carrying on of an activity of the kind specified by—
 - (aa) article 89G (seeking out, referrals and identification of claims or potential claims) of the 2001 Order; or
 - (bb) article 89I (advice, investigation or representation of a financial services or financial product claim) of the 2001 Order; and
- (b) during the period beginning with the date specified by the FCA in a direction given under article 81 and ending on 31st March 2019—
- (i) notifies the FCA of a desire to be registered for temporary permission under this article; and
 - (ii) pays to the FCA any fee payable under its rules by any person desiring to be so registered.

(2) Where the conditions set out in paragraph (3) are met, the reference in paragraph (1)(a) to a 2006 Act authorised person includes a person (“P”) who received from the Regulator—

- (a) written notice under regulation 13(5) of the 2006 Regulations of a decision to refuse to grant an authorisation (“refusal decision”); or
- (b) written notice given under regulation 47 of the 2006 Regulations of a decision to cancel P’s authorisation (“cancellation decision”).

(3) The conditions are that—

- (a) in the case of a notice under regulation 13(5) of the 2006 Regulations—
- (i) where, before 1st April 2019, P submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act⁽⁵⁰⁾ (appeals and references to Tribunal) with respect to the refusal decision, the appeal—
 - (aa) was not determined before 1st April 2019; or
 - (bb) was determined before 1st April 2019 by way of a remittal of the refusal decision to the Regulator under section 13(3)(e) of the 2006 Act but a further decision by the Regulator in relation to the remittal has not been taken; or
 - (ii) where, before 1st April 2019, P did not submit such notice of appeal, the period within which an appeal may be made has not ended on that date;

⁽⁵⁰⁾ Section 13 was amended by the Financial Services (Banking Reform) Act 2013 (c. 33) and by S.I. 2010/22.

- (b) in the case of a notice under regulation 47 of the 2006 Regulations, the cancellation had effect before 1st April 2019, and—
 - (i) where, before 1st April 2019, P submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act with respect to the cancellation decision, the appeal—
 - (aa) was not determined before 1st April 2019; or
 - (bb) was determined before 1st April 2019 by way of a remittal of the cancellation decision to the Regulator under section 13(3)(e) of the 2006 Act but a further decision by the Regulator in relation to the remittal has not been taken; or
 - (ii) where, before 1st April 2019, P did not submit such notice of appeal, the period within which an appeal may be made has not ended on that date.
 - (4) On and after 1st April 2019 a relevant person has a temporary permission to carry on—
 - (a) an activity of the kind specified by any of articles 89G to 89M of the 2001 Order (specified kinds of claims management activity); and
 - (b) so far as relevant to that activity, the activity specified by article 64 of the 2001 Order.
 - (5) Subject to article 83(2), a temporary permission to carry on the activities referred to in paragraph (4) has effect—
 - (a) in the case of P, as a Part 4A permission to carry on those activities which has been suspended by the FCA under section 206A of the 2000 Act; or
 - (b) in the case of any other relevant person, as a Part 4A permission to carry on those activities.
 - (6) For the purposes of paragraph (5)(a)—
 - (a) P’s temporary permission is to be treated as if the period for which the suspension is to have effect were such period as ends on the date on which that permission is to be treated, under paragraph (8) or (10), as if its suspension had been withdrawn; and
 - (b) section 206A of the 2000 Act is to be read as if subsection (3) were omitted.
 - (7) “Relevant appeal” means—
 - (a) where paragraph (3)(a)(i) or (b)(i) applies, P’s appeal to the First-tier Tribunal with respect to the refusal decision or the cancellation decision;
 - (b) where paragraph (3)(a)(ii) or (b)(ii) applies, an appeal by P to the Tribunal with respect to the refusal decision or the cancellation decision made before the end of the period within which, in the absence of this Order, an appeal to the First-tier Tribunal could have been made.
 - (8) Where the relevant appeal is determined in P’s favour—
 - (a) by a decision of the First-tier Tribunal or Tribunal (or by a decision of a higher court or tribunal made on an appeal against a decision of either tribunal); or
 - (b) by a remittal of the refusal or cancellation decision under section 13(3)(e) of the 2006 Act which results in a reversal of that decision,
- P’s temporary permission is to be treated as if its suspension had, on the date of the determination, been withdrawn by the FCA under section 206A(6) of the 2000 Act.
- (9) Where, before 1st April 2019, the First-tier Tribunal suspended the effect of the refusal decision or the cancellation decision under section 13(3A)(c) of the 2006 Act, P’s temporary permission is to be treated as a Part 4A permission which is not subject to suspension by the FCA under section 206A of the 2000 Act.
 - (10) Where, at any time on or after 1st April 2019—

- (a) the First-tier Tribunal suspends the effect of the refusal decision or the cancellation decision under section 13(3A)(c) of the 2006 Act; or
- (b) the Tribunal suspends the effect of the refusal decision or the cancellation decision under rule 5(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008(51),

P's temporary permission is to be treated as if its suspension by virtue of paragraph (5)(a) had, at that time, been withdrawn by the FCA under section 206A(6) of the 2000 Act.

Procedure for notifying the FCA of a desire to be registered for temporary permission

81.—(1) The FCA may give a direction specifying—

- (a) the manner in which a desire to be registered for temporary permission under article 80 is required to be notified to the FCA;
- (b) the date on or after which notification of such a desire may be given; and
- (c) such information as the FCA may reasonably require to be contained in, or supplied with, that notification.

(2) A direction under this article may impose different requirements for different circumstances or different categories of notification.

(3) At any time after receiving notification under this article, the FCA may require the person giving the notification to provide the FCA with such further information as it reasonably considers necessary to enable it to discharge its functions.

(4) The FCA may require information to be provided in such form, or verified in such manner, as the FCA may direct.

(5) A direction given under this article may be amended by further direction.

Duration of temporary permission

82.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) In this article—

“last application date” means the last date on which a person (“A”) who has a temporary permission to carry on an activity referred to in article 80(4) (temporary permission) may make a relevant application; and

“relevant application” means—

- (a) where, immediately before 1st April 2019, A is a 2000 Act authorised person, an application by A under section 55H (variation by FCA at request of authorised person) to vary A's Part 4A permission by adding regulated claims management activity to the activities to which the permission relates;
- (b) where, immediately before 1st April 2019, A is not a 2000 Act authorised person, an application by A under section 55A (application for permission) for permission to carry on regulated claims management activity.

(3) The FCA must give a direction specifying the last application date.

(4) A's temporary permission ceases to have effect—

- (a) where A makes a relevant application on or before the last application date, on the date on which that application is determined;

- (b) where A does not make a relevant application on or before the last application date, on the date on which the period of 30 days, beginning with the day after the last application date, expires;
 - (c) on the date specified by the FCA in a notice of cancellation of A's temporary permission, which may be given where—
 - (i) by virtue of article 80(5)(a), A's temporary permission has effect as a Part 4A permission suspended by the FCA under section 206A of the 2000 Act; and
 - (ii) A's relevant appeal (within the meaning of article 80(7)) is determined otherwise than in A's favour.
- (5) Paragraph (4) does not affect the exercise by the FCA, in relation to A's temporary permission, of the powers conferred on it by the 2000 Act to vary, cancel or suspend a Part 4A permission.
- (6) For the purposes of paragraph (4)(a), the date on which a relevant application is determined is—
- (a) where A withdraws the application by written notice under section 55V(4), the date on which the period of 30 days beginning with the date on which the notice is given expires;
 - (b) where the FCA grants the application, the date stated in its written notice under section 55V(5) as the date from which the permission has effect;
 - (c) where the FCA decides to—
 - (i) give or vary a Part 4A permission under section 55X(4)(a), (b), (c) or (d); or
 - (ii) refuse the application under section 55X(4)(f),
- the date on which the period of 30 days, beginning with the date on which the FCA gives the decision notice under that section, expires.
- (7) During the period of 30 days referred to in paragraphs (4)(b) and (6)(a) and (c), A may not enter, or offer to enter, into an agreement the making or performance of which would constitute regulated claims management activity.
- (8) The prohibition in paragraph (7) has the same effect as a requirement imposed by the FCA under section 55L.
- (9) A direction given under paragraph (3) may—
- (a) specify different dates for different classes of person or for different descriptions of activities;
 - (b) specify a date before which a relevant application may not be made ("the opening date"), provided that the opening date is not less than two months before the last application date;
 - (c) be amended by further direction.
- (10) Subject to article 83(7) and (8), a relevant application made before the opening date is to be treated as if it had not been made.
- (11) Paragraphs (12) and (13) apply where—
- (a) A's temporary permission ceases to have effect by virtue of paragraph (4) or the exercise by the FCA of the powers conferred on it by the 2000 Act to cancel a Part 4A permission; and
 - (b) A consequently ceases, on the date on which A's temporary permission ceases ("the cessation date"), to be a 2000 Act authorised person.
- (12) Paragraph 13 applies in relation to—
- (a) any act or omission by A which occurred before the cessation date; or
 - (b) the contravention by A of any requirement imposed on A under section 55L (imposition of requirements by FCA) or 404F(7) (other definitions) which—

- (i) is in effect immediately before the cessation date; and
- (ii) which continues to have effect in accordance with paragraph (14).

(13) Part 11 (information gathering and investigations), Part 14 (disciplinary measures) and section 384 (power of the FCA to require restitution) of the 2000 Act are to be read as if a reference to an authorised person included a reference to A.

(14) The requirement referred to in paragraph 12(b) continues to have effect after the cessation date until such time as it is cancelled by the FCA, which the FCA must do when it is satisfied that it is no longer necessary for that requirement to continue to have effect.

Application of the 2000 Act to persons with a temporary permission

83.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) This article applies in relation to a person (“A”) who has a temporary permission to carry on an activity referred to in article 80(4) (“temporary permission”).

(3) A’s temporary permission does not have effect as a Part 4A permission for the purposes of—

- (a) section 38(2) (exemption orders);
- (b) section 39(1C)(a) (exemption of appointed representatives);
- (c) section 55A(3) (application for permission).

(4) For the purposes of section 327(7) and (9)(**52**) (exemption from the general prohibition), A is not to be treated as carrying on a regulated claims management activity where A carries on that activity pursuant to A’s temporary permission.

(5) For the purposes of section 21(2) (restrictions on financial promotion), if A does not have permission other than a temporary permission, A may only approve the content of a communication if the communication invites or induces a person to enter into (or offer to enter into) an agreement in respect of a regulated activity for which A has temporary permission.

(6) For the purposes of section 39 (exemption of appointed representatives), A may be an appointed representative in relation to an activity which A does not have temporary permission to carry on.

(7) Where A applies to the FCA—

- (a) under section 55A for permission to carry on a regulated activity which is not a regulated claims management activity; or
- (b) under section 55H to vary A’s Part 4A permission by adding to the activities to which the permission relates a regulated activity which is not a regulated claims management activity,

the application may be treated by the FCA as relating also to some or all of the regulated activities for which A has temporary permission.

(8) If the FCA treats the application as relating to some or all of the regulated activities for which A has temporary permission, article 82(10) does not apply in relation to the application.

(9) The duty imposed by section 55B(3) (satisfaction of threshold conditions) does not apply where the FCA exercises its power in relation to A under—

- (a) section 55J(**53**) (variation or cancellation on initiative of regulator);

(52) Section 327(9) of the Financial Services and Markets Act 2000 (c. 8) is inserted by article 91(5) of this Order.

(53) Section 55J was inserted by the Financial Services Act 2012 (c. 21), section 11(2) and amended by S.I. 2013/1773 and 3115, 2015/575, 1882 and 910, 2016/225 and 680, and 2018/135.

(b) section 55H (variation by FCA at request of authorised person) to remove a regulated activity from those for which A has temporary permission;

(c) section 55L (imposition of requirements by FCA).

(10) Where, immediately before 1st April 2019, A is not a 2000 Act authorised person, A is not to be treated, by virtue of article 80(5), as a 2000 Act authorised person for the purposes of Part 12 of the 2000 Act (control over authorised persons).

(11) For the purposes of the compensation scheme established under section 213, a claim made against A in connection with any activity which A's temporary permission permits A to carry on is to be treated as if it were not made in connection with regulated activities carried on by A.

(12) The activity which A's temporary permission permits A to carry on is to be treated as if it were not a regulated activity for the purposes of—

(a) construing the reference to the only regulated activities that a person carries on, or seeks to carry on, which is contained in paragraphs 2C(1A), 2D(3A) and 2F(3) of Schedule 6 to the 2000 Act (threshold conditions: Part 4A permission: authorised persons who are not PRA-authorised persons); and

(b) article 6A(1)(b) of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009(54).