



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 4A

PERMISSION TO CARRY ON REGULATED ACTIVITIES

Variation and cancellation of Part 4A permission

[^{F1}55J Variation or cancellation on initiative of regulator

- (1) Either regulator may exercise its power under this section in relation to an authorised person with a Part 4A permission (“A”) if it appears to the regulator that—
- (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the regulator is responsible,
 - (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, ^{F2}...
 - (c) it is desirable to exercise the power in order to advance—
 - (i) in the case of the FCA, one or more of its operational objectives,
 - (ii) in the case of the PRA, any of its objectives [^{F3}, or
 - (d) in the case of the FCA, A has failed to comply with a requirement in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement].
- (2) The FCA's power under this section is the power—
- (a) to vary the Part 4A permission by—
 - (i) adding a regulated activity other than a PRA-regulated activity to those to which the permission relates,
 - (ii) removing a regulated activity from those to which the permission relates, or

Status: Point in time view as at 21/03/2016. This version of this provision has been superseded.

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- (iii) varying the description of a regulated activity to which the permission relates in a way which, if it is a PRA-regulated activity, does not, in the opinion of the FCA, widen the description, or
 - (b) to cancel the Part 4A permission.
- (3) The PRA's power under this section is the power—
- (a) in the case of a PRA-authorized person, to vary the Part 4A permission in any of the ways mentioned in section 55I(1) or to cancel it;
 - (b) in the case of an authorized person who is not a PRA-authorized person, to vary the Part 4A permission by adding a PRA-regulated activity to those to which the permission relates and, if the PRA does so, to vary the Part 4A permission in any of the other ways mentioned in section 55I(1).
- (4) The FCA—
- (a) must consult the PRA before exercising its power under this section in relation to—
 - (i) a PRA-authorized person, or
 - (ii) a member of a group which includes a PRA-authorized person, and
 - (b) in the case of a PRA-authorized person, may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the PRA.
- (5) The PRA—
- (a) must consult the FCA before exercising its power under this section, and
 - (b) may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the FCA.
- (6) Without prejudice to the generality of subsections (1) to (3), a regulator may, in relation to an authorized person who is an investment firm, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the conditions in section 55K is met.
- [Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation
- ^{F4}(6A) to an authorized person who is a full-scope UKAIFM, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the following conditions is met—
- (a) the person has failed, during a period of at least six months, to carry on the regulated activity of managing an AIF;
 - (b) the person obtained the Part 4A permission to carry on the regulated activity of managing an AIF by making a false statement or by any other irregular means;
 - (c) in a case where the Part 4A permission includes permission to provide the discretionary portfolio management service referred to in Article 6.4(a) of the alternative investment fund managers directive, the person no longer complies with [^{F5}the capital requirements regulation or the capital requirements directive];
 - (d) the person no longer meets the conditions that a person must meet in order to obtain a Part 4A permission to carry on the regulated activity of managing an AIF;
 - (e) the person has seriously or systematically infringed—

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- (i) any provision of the Alternative Investment Fund Managers Regulations 2013;
 - (ii) a provision of any directly applicable EU regulation made under the alternative investment fund managers directive; ^{F6} ...
 - (iii) any provision made by or under this Act which implements that directive] ^{F7};
 - ^{F8}(iv) [a provision of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds or any directly applicable regulation made under that Regulation.]
- ^{F9}(6B) [Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation to an authorised person who is a mortgage intermediary and who has a Part 4A permission to carry on a relevant mortgage activity, exercise its power under this section to cancel the Part 4A permission or to vary the Part 4A permission by removing a relevant mortgage activity from the activities to which the permission relates, if it appears to the FCA that any of the following conditions is met—
- (a) during a period of at least six months, the person has not carried on a relevant mortgage activity;
 - (b) the person obtained the Part 4A permission to carry on a relevant mortgage activity by making a false statement or by any other irregular means;
 - (c) the person no longer meets the conditions which the person was, in accordance with Chapter 11 of the mortgages directive, required to meet in order to be granted a Part 4A permission to carry on a relevant mortgage activity; or
 - (d) the person has seriously or systematically infringed any provision made by or under this Act which implements the operating conditions for mortgage intermediaries set out in the mortgages directive.
- (6C) In subsection (6B) “relevant mortgage activity” means—
- (a) an activity of a kind specified in article 25A (arranging regulated mortgage contracts), article 53A (advising on regulated mortgage contracts) or article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or
 - (b) an activity of a kind specified in article 36A of that Order (credit broking) which is referred to in Article 33(1)(a) of the mortgages directive.]
- (7) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (which relates to bids in emission allowance auctions), exercise its power under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates if it appears to the FCA that the person has seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.
- ^{F10}(7ZA) [Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA that there has been a serious failure, by a person with permission to carry on the regulated activity specified in article 51ZA of the Financial Services and Markets Act (Regulated Activities) Order 2001 (managing a UCITS), to comply with the requirements imposed—
- (a) by or under this Act in pursuance of the UCITS Directive, or

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(b) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011,

the FCA may exercise its powers under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates, or to cancel the person's Part 4A permission.]

[Without prejudice to the generality of subsections (1) and (3), if it appears to the PRA^{F11}(7A) that there has been a serious failure by a PRA-authorized person who is an insurance undertaking or reinsurance undertaking to comply with requirements imposed by or under this Act in pursuance of the Solvency 2 Directive, the PRA may exercise its powers under this section to cancel the undertaking's Part 4A permission.

(7B) If it appears to the PRA that the conditions in section 55KA are met in relation to a PRA-authorized person who is an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, the PRA must—

(a) in relation to the undertaking's Part 4A permission so far as the permission relates to the regulated activity of effecting contracts of insurance as principal ("activity A"), exercise the PRA's powers under this section by varying the permission—

(i) where the permission relates to activity A in relation to both contracts of long-term insurance and contracts of general insurance and the conditions in section 55KA are met only in relation to the business of the undertaking so far as relating to contracts of one of those kinds, so as to remove activity A so far as relating to contracts of that kind from the regulated activities to which the permission relates, and

(ii) in any other case, so as to remove activity A from the regulated activities to which the permission relates;

(b) in relation to the undertaking's Part 4A permission so far as the permission relates to the regulated activity of carrying out contracts of insurance as principal ("activity B"), exercise the PRA's powers under this section, if it appears to the PRA to be necessary to do so to protect the interests of the undertaking's policyholders, by varying the Part 4A permission—

(i) where the permission relates to activity B in relation to both contracts of long-term insurance and contracts of general insurance and the conditions in section 55KA are met only in relation to the business of the undertaking so far as relating to contracts of one of the those kinds, so as to remove activity B so far as relating to contracts of that kind from the regulated activities to which the permission relates, and

(ii) in any other case, so as to remove activity B from the regulated activities to which the permission relates.

(7C) If the effect of a variation required by subsection (7B) is to remove all the regulated activities to which the Part 4A permission relates, the PRA must instead cancel the permission.]

(8) If, as a result of a variation of a Part 4A permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the regulator responsible for the variation must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(9) Before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorized person, the regulator must consult the other regulator.

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- (10) The power of either regulator to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application to that regulator under section 55A.
- (11) Consent given by one regulator for the purpose of subsection (4)(b) or (5)(b) may be conditional on the manner in which the other regulator exercises its powers under section 55E(4) and (5) or 55F(3) and (4) (as a result of subsection (10)).
- (12) The power of the FCA or the PRA under this section is referred to in this Part as its own-initiative variation power.]

Textual Amendments

- F1** Pt. 4A substituted for ss. 40-55 (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 11(2)**, 122(3) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(b)(c), [Sch. Pts. 2, 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F2** Word in s. 55J(1) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 5(a)(i)**
- F3** S. 55J(1)(d) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 5(a)(ii)**
- F4** S. 55J(6A) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 5(b)**
- F5** Words in s. 55J(6A)(c) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 5**
- F6** Word in s. 55J(6A)(e)(ii) omitted (3.12.2015) by virtue of [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **3(2)(a)**
- F7** Word in s. 55J(6A)(e)(iii) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **3(2)(b)**
- F8** S. 55J(6A)(e)(iv) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **3(2)(c)**
- F9** S. 55J(6B)(6C) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 1(3)** (with Pt. 4)
- F10** S. 55J(7ZA) inserted (18.3.2016) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2016 \(S.I. 2016/225\)](#), regs. 1, **2(2)**
- F11** S. 55J(7A)-(7C) inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), **Sch. 1 para. 2(2)**

Modifications etc. (not altering text)

- C1** S. 55J(1) modified by S.I. 1995/1442, reg. 49(2) (as substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#)), **Sch. 2 para. 12(c)(i)**
- C2** S. 55J(1)(b) modified (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Permission and Approval\) Order 2013 \(S.I. 2013/440\)](#), arts. 1(1), **8(1)**

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