
STATUTORY INSTRUMENTS

2018 No. 135

The Financial Services and Markets Act
2000 (Benchmarks) Regulations 2018

PART 5

Amendments to the Act

Amendments to Part 4A (permission to carry on regulated activities)

40.—(1) Part 4A^{M1} of the Act (permission to carry on regulated activities) is amended as follows.

(2) In section 55A (application for permission)—

- (a) in subsection (2), after “means” insert “ (subject to subsection (2B)) ”;
- (b) after subsection (2) insert—

“(2A) An application under this section for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 may not include an application for permission to carry on any other regulated activity.

(2B) The appropriate regulator, in relation to an application under this section for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, is the FCA.”.

(3) In section 55B (the threshold conditions) after subsection (4) insert—

“(5) The duty imposed by subsection (3) does not apply in relation to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.

(4) In section 55E (giving permission: the FCA) of the Act after subsection (3) insert—

“(3A) The FCA must consult the PRA before determining an application for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark) made by a person who is a PRA-authorized person otherwise than by virtue of a Part 4A permission.”.

(5) Section 55H (variation by FCA at request of authorised person) is amended as follows—

- (a) omit subsection (1);
- (b) in subsections (2) and (3) for “the authorised person” there is substituted “ an authorised person who has a Part 4A permission but is not a PRA-authorized person ”;
- (c) after subsection (3) insert—

“(3A) The FCA may, on the application of a PRA-authorized person with a Part 4A permission, vary the permission by—

- (a) adding to the regulated activities to which the permission relates the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark),

- (b) removing that regulated activity from those to which the permission relates, or
 - (c) varying the description of that regulated activity.
- (3B) The FCA must consult the PRA before exercising its power under subsection (3A).”; and
- (d) in subsection (5) before “the applicant” insert “ on an application under subsection (2) or (3) ”.
- (6) In section 55I (variation by PRA at request of authorised person)—
 - (a) in subsection (1) after paragraph (c) insert—

“but the PRA may not under this subsection add, remove or vary the description of the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”;
 - (b) at the end of subsection (2) insert—

“, but the PRA may not under this subsection cancel a permission where the only regulated activity to which the permission relates is the regulated activity in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”; and
 - (c) at the end of subsection (3) insert—

“, but the PRA may not under this subsection add the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.
- (7) In section 55J^{M2} (variation or cancellation on initiative of regulator)—
 - (a) in subsection (4), after paragraph (b) insert—

“, but paragraph (b) does not apply in relation to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”; and
 - (b) after subsection (7ZB) insert—

“(7ZC) Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA, in relation to a person who has a permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark), that the conditions in Article 35(1) of the EU Benchmarks Regulation 2016 are met, the FCA may exercise its powers under this section—

 - (a) to vary the Part 4A permission by removing that activity from those to which the permission relates, or
 - (b) to cancel the Part 4A permission.”.
- (8) In section 55M (imposition of requirements by PRA) after subsection (6) insert—

“(6A) The PRA may not exercise its powers under this section to impose a requirement relating to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).”.
- (9) In section 55X (determination of applications: warning notices and decision notices) after subsection (4) insert—

“(5) This section does not apply to applications to which section 55XA applies.”.
- (10) After section 55X (determination of applications: warning notices and decision notices) insert—

“55XA Applications relating to administering a benchmark

(1) If the FCA decides—

- (a) to give a Part 4A ^{M3} permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) but to exercise its power in section 55E(5)(a) ^{M4} or (b) in connection with the application for permission,
- (b) to give a Part 4A ^{M5} permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) but to exercise its power in section 55L(1) ^{M6} in connection with the application for permission,
- (c) to vary a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO ^{M7} (administering a benchmark) on the application of an authorised person but to exercise its power in section 55E(5)(a) or (b) in connection with the application for variation,
- (d) to vary a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) on the application of an authorised person but to exercise its power in section 55L(1) in connection with the application for variation,
- (e) to refuse an application for a Part 4A permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark), or
- (f) to refuse an application for a variation of a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark),

it must give the applicant a written notice.

(2) A written notice under subsection (1) must—

- (a) give details of the decision made by the FCA,
- (b) state the FCA's reasons for the decision,
- (c) state whether the decision takes effect immediately or on such date as may be specified in the notice,
- (d) inform the applicant that the applicant may either—
 - (i) request a review of the decision, and make written representations for the purpose of the review, within such period as may be specified in the notice, or
 - (ii) refer the matter to the Tribunal within such period as may be specified in the notice, and
- (e) indicate the procedure on a reference to the Tribunal.

(3) If the applicant requests a review of the decision made by the FCA (“the original decision”), the FCA must consider any written representations made by the applicant and review the original decision.

(4) On a review under subsection (3) the FCA may make any decision (“the new decision”) the FCA could have made on the application.

(5) The FCA must give the applicant written notice of its decision on the review.

(6) If the new decision is to do any of the things mentioned in subsection (1)(a) to (f), the written notice under subsection (5) must—

- (a) give details of the new decision made by the FCA,
- (b) state the FCA's reasons for the new decision,

- (c) inform the applicant that the applicant may, within such period as may be specified in the notice, refer the new decision to the Tribunal, and
 - (d) indicate the procedure on a reference to the Tribunal.
- (8) In this section “the RAO” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.
- (11) In section 55Z3 after subsection (2) insert—
- “(3) Where there is a review under section 55XA(3) of a determination within section 55XA(1), subsection (1) applies only in relation to the determination made on the review.”.

Marginal Citations

- M1** Part 4A (sections 55A to 55Z4) of the Act was inserted by section 11(2) of the Financial Services Act 2012.
- M2** Subsection (7ZB) was inserted by regulation 10(3) of S.I. 2016/680. There are other amendments to section 55J none is relevant.
- M3** Part 4A was inserted by section 11 of the Financial Services Act 2012 and amended by S.I. 2011/1613, S.I. 2013/1773, S.I. 2013/3115, S.I. 2015/486, S.I. 2015/575, S.I. 2015/910, S.I. 2015/1882, S.I. 2016/225, S.I. 2016/680, S.I. 2016/1239 and S.I. 2017/1064.
- M4** Section 55E was inserted by section 11(2) of the Financial Services Act 2012.
- M5** Part 4A was inserted by section 11 of the Financial Services Act 2012 and amended by S.I. 2011/1613, S.I. 2013/1773, S.I. 2013/3115, S.I. 2015/486, S.I. 2015/575, S.I. 2015/910, S.I. 2015/1882, S.I. 2016/225, S.I. 2016/680, S.I. 2016/1239 and S.I. 2017/1064.
- M6** Section 55L was inserted by section 11(2) of the Financial Services Act 2012.
- M7** S.I. 2001/544.

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018, Section 40.