



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### [<sup>F1</sup>PART 4A

#### PERMISSION TO CARRY ON REGULATED ACTIVITIES

##### 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.](#)

##### Modifications etc. (not altering text)

- C1** Pt. 4A excluded by [S.I. 1998/1870](#), [reg. 14\(2\)\(c\)](#) (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. 22\(5\)\(b\)](#))
- C2** Pt. 4A modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), [arts. 1\(2\)\(6\)](#), [31\(6\)](#)
- C3** Pt. 4A modified (7.11.2018) by [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1149\)](#), [regs. 1\(2\)](#), [5-7](#) (with [regs. 4, 8-19](#))
- C4** Pt. 4A modified by [S.I. 2018/1149](#), [reg. 43](#) (as inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), [regs. 1\(2\)](#), [2](#))

#### *Application for permission*

##### **55A Application for permission**

- (1) An application for permission to carry on one or more regulated activities may be made to the appropriate regulator by—
- (a) an individual,
  - (b) a body corporate,
  - (c) a partnership, or

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- (d) an unincorporated association.
- (2) “The appropriate regulator”, in relation to an application under this section, means [<sup>F2</sup>(subject to subsection (2B))]<sup>F3</sup>—
- (a) the PRA, in a case where—
    - (i) the regulated activities to which the application relates consist of or include a PRA-regulated activity, or
    - (ii) the applicant is a PRA-authorized person otherwise than by virtue of a Part 4A permission;
  - (b) the FCA, in any other case.
- [ An application under this section for permission to carry on the regulated activity
- <sup>F3</sup>(2A) 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) An authorised person who has a permission under this Part which is in force may not apply for permission under this section.
- (4) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.
- (5) A permission given by the appropriate regulator under this Part or having effect as if so given is referred to in this Act as “a Part 4A permission”.

#### Textual Amendments

- F2** Words in s. 55A(2) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(2)(a)**
- F3** S. 55A(2A)(2B) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(2)(b)**

#### Modifications etc. (not altering text)

- C5** S. 55A(3) excluded by S.I. 2011/2832, art. 5(3) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 220(a)(iii)**
- C6** S. 55A(3) modified (2.4.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2013 \(S.I. 2013/655\)](#), arts. 1, **10(5)(b)**
- C7** S. 55A(3) modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(5), **59(2)(b)**
- C8** S. 55A(3) modified (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, **7(6)(b)**
- C9** S. 55A(3) modified (E.W.S.) (29.11.2018 for specified purposes) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), arts. 1(2)(3), **83(3)**

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## 55B The threshold conditions

- (1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in or specified under Schedule 6, as read with any threshold condition code made by either regulator under section 137O.
- (2) Any reference in this Part to the threshold conditions for which either regulator is responsible is to be read as a reference to the conditions set out in or specified under Schedule 6 that are expressed to be relevant to the discharge by that regulator of its functions, as read with any threshold condition code made by that regulator under section 137O.
- (3) In giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of this Part, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
- (4) But the duty imposed by subsection (3) does not prevent a regulator, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular person, in order to advance—
  - (a) in the case of the FCA, any of its operational objectives;
  - (b) in the case of the PRA, any of its objectives.

[ The duty imposed by subsection (3) does not apply in relation to the regulated activity<sup>F4</sup>(5) specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).]

### Textual Amendments

**F4** S. 55B(5) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(3)**

### Modifications etc. (not altering text)

**C10** S. 55B(3) modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(5), **59(6)**

## 55C Power to amend Schedule 6

- (1) The Treasury may by order amend Parts 1 and 2 of Schedule 6 by altering, adding or repealing provisions, or by substituting for those Parts as they have effect for the time being provisions specified in the order.
- (2) Different provision may be made under this section—
  - (a) in relation to the discharge of the functions of each regulator;
  - (b) in relation to different regulated activities;
  - (c) in relation to persons who carry on, or seek to carry on, activities that consist of or include a PRA-regulated activity and in relation to other persons.

## 55D Firms based outside EEA

- (1) This section applies in relation to a person (“the non-EEA firm”)—

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- (a) who is a body incorporated in, or formed under the law of, or is an individual who is a national of, any country or territory outside the EEA, and
  - (b) who is carrying on a regulated activity in any country or territory outside the United Kingdom in accordance with the law of that country or territory (“the overseas state”).
- (2) In determining whether the non-EEA firm is satisfying or will satisfy, and continue to satisfy, any one or more of the threshold conditions for which a UK regulator is responsible, the UK regulator may have regard to any opinion notified to it by a regulatory authority in the overseas state (“the overseas regulator”) which relates to the non-EEA firm and appears to the UK regulator to be relevant to compliance with those conditions.
- (3) In considering how much weight (if any) to attach to the opinion, the UK regulator must have regard to the nature and scope of the supervision exercised in relation to the non-EEA firm by the overseas regulator.
- (4) In this section “UK regulator” means the FCA or the PRA.

#### **55E Giving permission: the FCA**

- (1) This section applies where the FCA is the appropriate regulator in relation to an application for permission under section 55A.
- (2) The FCA may give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.
- (3) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.
- [ The FCA must consult the PRA before determining an application for permission to
- <sup>F5</sup>(3A) 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-authorised person otherwise than by virtue of a Part 4A permission.]
- (4) If it gives permission, the FCA must specify the permitted regulated activity or activities, described in such manner as the FCA considers appropriate.
- (5) The FCA may—
- (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  - (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  - (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates and is not a PRA-regulated activity.

#### **Textual Amendments**

- F5** [S. 55E\(3A\)](#) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(4)**

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**Modifications etc. (not altering text)**

- C11** S. 55E modified (2.4.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2013 \(S.I. 2013/655\)](#), arts. 1, **10(5)(c)**
- C12** Ss. 55E, 55F modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(5), **59(2)(c)**
- C13** S. 55E modified (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, **7(6)(c)**

**55F Giving permission: the PRA**

- (1) This section applies where the PRA is the appropriate regulator in relation to an application for permission under section 55A.
- (2) The PRA may with the consent of the FCA give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.
- (3) If it gives permission, the PRA must specify the permitted regulated activity or activities, described in such manner as the PRA considers appropriate.
- (4) The PRA may—
  - (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  - (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  - (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.
- (5) Consent given by the FCA for the purposes of this section may be conditional on the manner in which the PRA exercises its powers under subsections (3) and (4).
- (6) Subsections (3) and (4)(b) and (c) do not enable the PRA to give permission that relates only to activities that are not PRA-regulated activities, except where the applicant is a PRA-authorized person otherwise than by virtue of a Part 4A permission.

**Modifications etc. (not altering text)**

- C12** Ss. 55E, 55F modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(5), **59(2)(c)**
- C14** S. 55F modified (2.4.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2013 \(S.I. 2013/655\)](#), arts. 1, **10(5)(d)**
- C15** S. 55F modified (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, **7(6)(d)**

**55G Giving permission: special cases**

- (1) “The applicant” means an applicant for permission under section 55A.
- (2) If the applicant—

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- (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating to all the regulated activities which, if permission is given, the applicant will carry on.
- (3) If the applicant—
- (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of [F6F7... section 285], but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (4) If the applicant—
- (a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part 19, but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (5) Subsection (6) applies where either regulator (“the responsible regulator”) receives an application for permission under section 55A which is in the regulator’s opinion similar to an application which was previously made to the other regulator and was either—
- (a) treated by the other regulator as not being a valid application to that regulator because of the regulated activities to which it related, or
  - (b) refused by the other regulator after being considered.
- (6) The responsible regulator must have regard to the desirability of minimising—
- (a) the additional work for the applicant in dealing with the new application, and
  - (b) the time taken to deal with the new application.

#### **Textual Amendments**

- F6** Words in s. 55G(3)(a) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **3(2)** (with regs. 52-58)
- F7** Words in s. 55G(3)(a) omitted (28.11.2017) by virtue of [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **2(3)** (with regs. 7(4), 9(1))

### *Variation and cancellation of Part 4A permission*

#### **55H Variation by FCA at request of authorised person**

<sup>F8</sup>(1) .....

- (2) The FCA may, on the application of [<sup>F9</sup>an authorised person who has a Part 4A permission but is not a PRA-authorized person], vary the permission by—
- (a) adding a regulated activity, other than a PRA-regulated activity, to those to which the permission relates;
  - (b) removing a regulated activity from those to which the permission relates;

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- (c) varying the description of a regulated activity to which the permission relates.
- (3) The FCA may, on the application of [<sup>F10</sup>an authorised person who has a Part 4A permission but is not a PRA-authorised person], cancel the permission.
- [ The FCA may, on the application of a PRA-authorised person with a Part 4A  
<sup>F11</sup>(3A) 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).]
- (4) The FCA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its operational objectives.
- [ The FCA may also refuse an application under this section if it appears to the FCA that  
<sup>F12</sup>(4A) the authorised person would not comply with requirements in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers) that would apply to the authorised person.]
- (5) If [<sup>F13</sup>on an application under subsection (2) or (3)] the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.
- (6) 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 FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (7) The FCA's power 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 by it in response to an application under section 55A.

#### Textual Amendments

- F8** S. 55H(1) omitted (27.2.2018) by virtue of [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(5)(a)**
- F9** Words in s. 55H(2) substituted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(5)(b)**
- F10** Words in s. 55H(3) substituted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(5)(b)**
- F11** S. 55H(3A)(3B) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(5)(c)**
- F12** S. 55H(4A) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 4**
- F13** Words in s. 55H(5) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(5)(d)**

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## 55I Variation by PRA at request of authorised person

- (1) On the application of a PRA-authorised person with a Part 4A permission, the PRA may with the consent of the FCA vary the permission by—
  - (a) adding a regulated activity to those to which the permission relates;
  - (b) removing a regulated activity from those to which the permission relates;
  - (c) varying the description of a regulated activity to which the permission relates [<sup>F14</sup>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)].
- (2) On the application of a PRA-authorised person with a Part 4A permission, the PRA may, after consulting the FCA, cancel the permission [<sup>F15</sup>, 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)].
- (3) On the application of an authorised person other than a PRA-authorised person, the PRA may with the consent of the FCA vary the permission by adding to the regulated activities to which the permission relates one or more regulated activities which include a PRA-regulated activity [<sup>F16</sup>, 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)].
- (4) The PRA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its objectives.
- (5) The FCA may withhold its consent to a proposed variation under this section if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives.
- (6) 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 PRA must, once it is satisfied after consulting the FCA that it is no longer necessary to keep the permission in force, cancel it.
- (7) The PRA's power 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 by it in response to an application under section 55A.
- (8) Consent given by the FCA for the purposes of subsection (1) may be conditional on the manner in which the PRA exercises its powers under section 55F(3) and (4) (as a result of subsection (7)).

### Textual Amendments

- F14** Words in s. 55I(1) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(6)(a)**
- F15** Words in s. 55I(2) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(6)(b)**
- F16** Words in s. 55I(3) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(6)(c)**



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## **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,<sup>F17</sup>...
  - (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 [<sup>F18</sup>, 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
    - (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-authorised 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 authorised person who is not a PRA-authorised 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-authorised person, or
    - (ii) a member of a group which includes a PRA-authorised person, and
  - (b) in the case of a PRA-authorised 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

[<sup>F19</sup>, 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).]
- (5) The PRA—
  - (a) must consult the FCA before exercising its power under this section, and

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- (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 authorised 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.
- <sup>F20</sup> [ Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation (6A) to an authorised 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 [<sup>F21</sup>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—
    - (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; <sup>F22</sup>...
    - (iii) any provision made by or under this Act which implements that directive][<sup>F23</sup>, <sup>F24</sup> ...]
    - <sup>F25</sup>(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.][<sup>F26</sup>; or]
    - <sup>F27</sup>(v) [ a provision of the MMF Regulation or any directly applicable regulation or decision made under that Regulation.]
- <sup>F28</sup> [ Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation (6B) 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;

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- (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.
- [ Without prejudice to the generality of subsections (1) and (2), if it appears to the <sup>F29</sup>(7ZA) 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, <sup>F30</sup>...
  - (b) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011, [<sup>F31</sup>or
  - [ by the MMF Regulation or any directly applicable regulation or decision made <sup>F32</sup>(c) under that Regulation,]
- 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 (2), the FCA may, in relation <sup>F33</sup>(7ZB) to an authorised person who is an investment firm, exercise its power under this section if it appears to it that the authorised person has failed to comply with a requirement of the market abuse regulation or of a directly applicable EU regulation made under the market abuse regulation.]
- [ Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA, <sup>F34</sup>(7ZC) 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

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(b) to cancel the Part 4A permission.]

<sup>F35</sup>(7A) [ Without prejudice to the generality of subsections (1) and (3), if it appears to the PRA 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.

(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.

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- (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

- F17** 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)**
- F18** 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)**
- F19** Words in s. 55J(4) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(7)(a)**
- F20** 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)**
- F21** 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**
- F22** 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)**
- F23** 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)**
- F24** Word in s. 55J(6A)(e)(iii) omitted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by virtue of [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(2)(a)(i)**
- F25** 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)**
- F26** Word in s. 55J(6A)(e)(iv) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(2)(a)(ii)**
- F27** S. 55J(6A)(e)(v) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(2)(a)(iii)**
- F28** 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)
- F29** 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)**
- F30** Word in s. 55J(7ZA)(a) omitted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by virtue of [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(2)(b)(i)**
- F31** Word in s. 55J(7ZA)(b) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(2)(b)(ii)**
- F32** S. 55J(7ZA)(c) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **2(2)(b)(iii)**
- F33** S. 55J(7ZB) inserted (3.7.2016) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2016 \(S.I. 2016/680\)](#), regs. 1, **10(3)**
- F34** S. 55J(7ZC) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(7)(b)**
- F35** 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)**

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#### **Modifications etc. (not altering text)**

- C16** 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\(c\)\(i\)](#))
- C17** 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)**

### **55K Investment firms: particular conditions that enable cancellation**

- (1) The conditions referred to in section 55J(6) are as follows—
- (a) that the firm has failed, during a period of at least 6 months, to carry on a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - (b) that the firm obtained the Part 4A permission by making a false statement or by other irregular means;
  - (c) that the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - (d) that the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - <sup>F36</sup>(e) that the firm has seriously or systematically infringed the markets in financial instruments regulation.]
- (2) For the purposes of this section a regulated activity is an investment service or activity if it falls within the definition of “investment services and activities” in section 417(1).

#### **Textual Amendments**

- F36** S. 55K(1)(e) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), [Sch. 2 para. 4](#) (with reg. 7)

#### **Modifications etc. (not altering text)**

- C18** S. 55K(1)(a) 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(2)**

### <sup>F37</sup>**Insurance undertakings, reinsurance undertakings and third-country insurance undertakings: particular conditions that enable cancellation**

- (1) The conditions referred to in section 55J(7B) are—
- (a) that the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has failed to comply with the appropriate capital requirement; and
  - (b) that any of the following applies—

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- (i) the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has failed to submit a finance scheme in accordance with requirements imposed by or under this Act in pursuance of Article 139(2) of the Solvency 2 Directive, or of that provision with Article 74(7) of that directive;
  - (ii) the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has submitted to the PRA a finance scheme that is manifestly inadequate; or
  - (iii) after the PRA has approved a finance scheme submitted to it, the undertaking has failed to comply with the finance scheme within a period of three months beginning with the date when the undertaking first became aware that it had failed to comply with the appropriate capital requirement to which the scheme relates.
- (2) In subsection (1) “the appropriate capital requirement” means—
- (a) except in a case within paragraph (b) or (c), the minimum capital requirement;
  - (b) in the case of an insurance undertaking or reinsurance undertaking whose Part 4A permission relates to both contracts of long-term insurance and to contracts of general insurance, requirements imposed by or under this Act in pursuance of Article 74(2) of the Solvency 2 Directive;
  - (c) in the case of a third-country insurance undertaking whose Part 4A permission relates both to contracts of long-term insurance and to contracts of general insurance, requirements imposed by or under this Act in pursuance of Articles 74(2) and 166 of the Solvency 2 Directive.]

#### Textual Amendments

**F37** S. 55KA inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 1 para. 3](#)

### *Imposition and variation of requirements*

#### **55L Imposition of requirements by FCA**

- (1) Where a person has applied (whether to the FCA or the PRA) for a Part 4A permission or the variation of a Part 4A permission, the FCA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the FCA considers appropriate.
- (2) The FCA may exercise its power under subsection (3) in relation to an authorised person with a Part 4A permission (whether given by it or by the PRA) (“A”) if it appears to the FCA that—
- (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the FCA 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, or
  - (c) it is desirable to exercise the power in order to advance one or more of the FCA's operational objectives.
- (3) The FCA's power under this subsection is a power—
- (a) to impose a new requirement,

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- (b) to vary a requirement imposed by the FCA under this section, or
  - (c) to cancel such a requirement.
- (4) The FCA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.
- (5) The FCA may, on the application of an authorised person with a Part 4A permission—
- (a) impose a new requirement,
  - (b) vary a requirement imposed by the FCA under this section, or
  - (c) cancel such a requirement.
- (6) The FCA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its operational objectives.
- (7) The FCA must consult the PRA before imposing or varying a requirement which relates to—
- (a) a person who is, or will on the granting of an application for Part 4A permission be, a PRA-authorised person, or
  - (b) a person who is a member of a group which includes a PRA-authorised person.

**Modifications etc. (not altering text)**

- C19** S. 55L(1) modified (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, **7(4)**
- C20** S. 55L(2) 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)**
- C21** S. 55L(2) modified (2.4.2013) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2013 \(S.I. 2013/655\)](#), arts. 1, **10(4)**
- C22** S. 55L(2) modified (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, **7(5)**

**55M Imposition of requirements by PRA**

- (1) Where—
- (a) a person has applied for a Part 4A permission in relation to activities which consist of or include a PRA-regulated activity,
  - (b) a PRA-authorised person has applied for a Part 4A permission or the variation of a Part 4A permission, or
  - (c) an authorised person other than a PRA-authorised person has applied for a Part 4A permission to be varied by adding to the regulated activities to which it relates one or more regulated activities which include a PRA-regulated activity,
- the PRA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the PRA considers appropriate.
- (2) The PRA may exercise its power under subsection (3) in relation to a PRA-authorised person with a Part 4A permission (“P”) if it appears to the PRA that—
- (a) P is failing, or is likely to fail, to satisfy the threshold conditions for which the PRA is responsible,



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- (b) P has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance any of the PRA's objectives.
- (3) The PRA's power under this subsection is a power—
- (a) to impose a new requirement,
  - (b) to vary a requirement imposed by the PRA under this section, or
  - (c) to cancel such a requirement.
- (4) The PRA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.
- (5) The PRA may, on the application of a PRA-authorised person with a Part 4A permission—
- (a) impose a new requirement,
  - (b) vary a requirement imposed by the PRA under this section, or
  - (c) cancel such a requirement.
- (6) The PRA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its objectives.

[ The PRA may not exercise its powers under this section to impose a requirement <sup>F38</sup>(6A) relating to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).]

- (7) The PRA must consult the FCA before imposing or varying a requirement.

#### Textual Amendments

**F38** S. 55M(6A) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(8)**

#### Modifications etc. (not altering text)

**C23** S. 55M(2) 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)**

### 55N Requirements under section 55L or 55M: further provisions

- (1) A requirement may, in particular, be imposed—
- (a) so as to require the person concerned to take specified action, or
  - (b) so as to require the person concerned to refrain from taking specified action.
- (2) A requirement may extend to activities which are not regulated activities.
- (3) A requirement may be imposed by reference to the person's relationship with—
- (a) the person's group, or
  - (b) other members of the person's group.
- (4) A requirement may be expressed to expire at the end of such period as the regulator imposing it may specify, but the imposition of a requirement that expires at the end of a specified period does not affect the regulator's power to impose a new requirement.

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- (5) A requirement may refer to the past conduct of the person concerned (for example, by requiring the person concerned to review or take remedial action in respect of past conduct).
- (6) In this section “requirement” means a requirement imposed under section 55L or 55M.

## **55O Imposition of requirements on acquisition of control**

- (1) This section applies if it appears to the appropriate regulator that—
  - (a) a person has acquired control over a UK authorised person who has a Part 4A permission, but
  - (b) there are no grounds for exercising its own-initiative requirement power.
- (2) If it appears to the appropriate regulator that the likely effect of the acquisition of control on the UK authorised person, or on any of its activities, is uncertain, the appropriate regulator may—
  - (a) impose on the UK authorised person a requirement that could be imposed by that regulator under section 55L or 55M (as the case may be) on the giving of permission, or
  - (b) vary a requirement imposed by that regulator under that section on the UK authorised person.
- (3) “The appropriate regulator” means—
  - (a) in a case where the UK authorised person is a PRA-authorized person, the FCA or the PRA;
  - (b) in any other case, the FCA.
- (4) This section does not affect any duty of the appropriate regulator to consult or obtain the consent of the other regulator in connection with the imposition of the requirement.
- (5) Any reference to a person having acquired control is to be read in accordance with Part 12.

## **55P Prohibitions and restrictions**

- (1) This section applies if—
  - (a) on a person being given a Part 4A permission, either regulator imposes an assets requirement on that person,
  - (b) an assets requirement is imposed on an authorised person, or
  - (c) an assets requirement previously imposed on such a person is varied.
- (2) A person on whom an assets requirement is imposed is referred to in this section as “A”.
- (3) The “appropriate regulator” is the regulator which imposed the requirement.
- (4) “Assets requirement” means a requirement under section 55L or 55M—
  - (a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
  - (b) that all or any of A's assets, or all or any assets belonging to consumers but held by A or to A's order, must be transferred to and held by a trustee approved by the appropriate regulator.

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- (5) If the appropriate regulator—
- (a) imposes a requirement of the kind mentioned in subsection (4)(a), and
  - (b) gives notice of the requirement to any institution with whom A keeps an account,
- the notice has the effects mentioned in subsection (6).
- (6) Those effects are that—
- (a) the institution does not act in breach of any contract with A if, having been instructed by A (or on A's behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
  - (b) if the institution complies with such an instruction, it is liable to pay to the appropriate regulator an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.
- (7) If the appropriate regulator imposes a requirement of the kind mentioned in subsection (4)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the appropriate regulator.
- (8) If, while a requirement of the kind mentioned in subsection (4)(b) is in force, A creates a charge over any assets of A held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A's creditors.
- (9) Assets held by a person as trustee (“T”) are to be taken to be held by T in accordance with any requirement mentioned in subsection (4)(b) only if—
- (a) A has given T written notice that those assets are to be held by T in accordance with the requirement, or
  - (b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.
- (10) A person who contravenes subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) “Charge” includes a mortgage (or in Scotland a security over property).
- (12) Subsections (7) and (9) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (4)(b).

### **Assets requirements imposed on insurance undertakings or reinsurance**

#### **<sup>F39</sup>55PA. undertakings**

- (1) If either of the following cases arises in relation to an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, the PRA must inform the supervisory authority of each host EEA State of that undertaking.
- (2) The first case is where the PRA intends to impose an assets requirement on the undertaking because the undertaking has not complied with rules implementing Section 2 of Chapter 6 of Title 1 of the Solvency 2 Directive.
- (3) The second case is where—

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- (a) the undertaking has notified the PRA that—
    - (i) the undertaking does not comply with the solvency capital requirement, or
    - (ii) there is a risk that at some time within the next 3 months the undertaking may not comply with the solvency capital requirement, and
  - (b) because the PRA is of the opinion that the financial situation of the undertaking will deteriorate after the PRA has received the notification, the PRA imposes an assets requirement on the undertaking.
- (4) In this section—
- (a) “assets requirement” has the same meaning as in section 55P(4); and
  - (b) “host EEA State” means—
    - (i) in relation to an insurance undertaking or reinsurance undertaking, an EEA State which is a “host Member State” for the purposes of the Solvency 2 Directive (which is to be determined in accordance with Article 13(9) of that directive);
    - (ii) in relation to a third-country insurance undertaking, an EEA State other than the United Kingdom from which the undertaking has received authorisation in accordance with Article 162 of the Solvency 2 Directive.]

#### Textual Amendments

**F39** S. 55PA inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 1 para. 4](#)

#### <sup>F40</sup> Requirements relating to general meetings

**55PB.**

- (1) This section applies where—
  - (a) either regulator has imposed a general meeting requirement on an authorised person who is a bank, building society or investment firm,
  - (b) the authorised person has not complied with the general meeting requirement, and
  - (c) the appropriate regulator considers that the authorised person has infringed, or is likely in the near future to infringe—
    - (i) a relevant requirement within the meaning of section 204A; or
    - (ii) one or more of Articles 3 to 7, 14 to 17 or 24 to 26 of Regulation (EU) No 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments.
- (2) A general meeting requirement is a requirement under section 55L or 55M that the authorised person call a general meeting of its shareholders or members.
- (3) The appropriate regulator may call a general meeting of the shareholders or members of the authorised person.
- (4) The appropriate regulator may propose business for consideration and decision at the general meeting.

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- (5) The meeting must be called in the same manner, as far as practicable, as that in which meetings are required to be called by the board of directors (or the equivalent management body) of the authorised person.
- (6) For the purposes of this section—
  - “bank” has the meaning given in section 2 of the Banking Act 2009;
  - “building society” has the meaning given in the Building Societies Act 1986;
  - “investment firm” has the meaning given in section 258A of the Banking Act 2009;
  - “the appropriate regulator” means the regulator who imposed the general meeting requirement.]

#### Textual Amendments

**F40** S. 55PB inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), 31

### *Exercise of power in support of overseas regulator*

#### **55Q Exercise of power in support of overseas regulator**

- (1) Either UK regulator's own-initiative powers may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, an overseas regulator of a prescribed kind.
- (2) Subsection (1) applies whether or not the UK regulator has powers which are exercisable in relation to the authorised person by virtue of any provision of Part 13.
- (3) Subsection (1) does not affect any duty of one UK regulator to consult or obtain the consent of the other UK regulator in relation to the exercise of its own-initiative powers.
- (4) If a request to a UK regulator for the exercise of its own-initiative powers has been made by an overseas regulator who is—
  - (a) of a prescribed kind, and
  - (b) acting in pursuance of provisions of a prescribed kind,the UK regulator must, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary to do so in order to comply with an EU obligation.
- (5) In deciding whether or not to do so, in any case in which the UK regulator does not consider that the exercise of its own-initiative powers is necessary in order to comply with an EU obligation, it may take into account in particular—
  - (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;

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- (c) the seriousness of the case and its importance to persons in the United Kingdom;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (6) The UK regulator may decide not to exercise its own-initiative powers, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of their exercise as the UK regulator considers appropriate.
- (7) Subsection (6) does not apply if the UK regulator decides that it is necessary for it to exercise its own-initiative powers in order to comply with an EU obligation.
- (8) In subsection (6) “request” means a request of a kind mentioned in subsection (1).
- (9) In this section—
- (a) “UK regulator” means the FCA or the PRA;
  - (b) “overseas regulator” means a regulator outside the United Kingdom;
  - (c) “own-initiative powers”, in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

### *Connected persons*

#### **55R Persons connected with an applicant**

- (1) In considering—
- (a) an application for a Part 4A permission,
  - (b) whether to vary or cancel a Part 4A permission,
  - (c) whether to impose or vary a requirement under this Part, or
  - (d) whether to give any consent required by any provision of this Part,
- the regulator concerned may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or a person given permission which is relevant.
- (2) Before—
- (a) giving permission in response to an application under section 55A made by a person who is connected with an EEA firm (other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance [<sup>F41</sup>, ancillary insurance] and reinsurance intermediaries)) [<sup>F42</sup> or “an EEA market operator], or
  - (b) cancelling or varying a Part 4A permission given to such a person,
- the regulator concerned must in prescribed circumstances consult the firm's [<sup>F43</sup> or the market operator's] home state regulator.
- (3) A person (“A”) is connected with an EEA firm if—
- (a) A is a subsidiary undertaking of the firm, or
  - (b) A is a subsidiary undertaking of a parent undertaking of the firm.
- [ A person (“P”) is connected with an EEA market operator if—
- <sup>F44</sup>(3A) (a) P is an investment firm and is a subsidiary undertaking of the market operator, or
- (b) P is an investment firm and is a subsidiary undertaking of a parent undertaking of the market operator.

- (3B) In subsection (2)—

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“EEA market operator” has the meaning given in section 312D (interpretation of Chapter 3A); and

“home state regulator”, in relation to an EEA market operator, has the meaning given in section 312D.]

[ Subsection (5) applies where—

- <sup>F45</sup>(4) (a) a credit institution (“B”) makes an application for permission under section 55A; and
- (b) B is controlled by a person who also controls a credit institution, insurance undertaking or investment firm authorised in another EEA State.
- (5) Before granting B’s application for permission, the regulator concerned must consult the competent authorities of the other EEA State.
- (6) In subsections (4) and (5), “credit institution”, “insurance undertaking” and “investment firm” have the meaning given in Article 4(1) of the capital requirements regulation.]

[ Subsection (8) applies where—

- <sup>F46</sup>(7) (a) an investment firm (“C”) makes an application for permission under section 55A to carry on a regulated activity which is any of the investment services and activities;
- (b) the requirement for C to obtain permission under section 55A to carry on that activity derives from Chapter 1 of Title II of the markets in financial instruments directive; and
- (c) C is controlled by a person who also controls—
- (i) an EEA credit institution,
  - (ii) an EEA investment firm, or
  - (iii) an EEA insurance undertaking.
- (8) Before granting C’s application for permission, the regulator concerned must—
- (a) in a case falling within subsection (7)(c)(i) consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the credit institution;
  - (b) in case falling within subsection (7)(c)(ii) consult the competent authority of the other EEA State responsible for the authorisation of the investment firm;
  - (c) in a case falling within subsection (7)(c)(iii), consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the insurance undertaking.

(9) In subsections (7)—

“controls” has the same meaning as in Article 4.1.35(b)(definitions) of the markets in financial instruments directive;

“EEA credit institution” means a credit institution, as defined by Article 4.1.27 of the markets in financial instruments directive, authorised in another EEA State pursuant to Title III of the capital requirements directive;

“EEA insurance undertaking” means an insurance undertaking, as defined by Article 13.1 of the Solvency 2 Directive, authorised in another EEA State;

“EEA investment firm” means an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive, authorised in another EEA State pursuant to Chapter 1 of Title II of that directive.]

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### Textual Amendments

- F41** Words in s. 55R(2)(a) inserted (1.10.2018) by [The Insurance Distribution \(Regulated Activities and Miscellaneous Amendments\) Order 2018 \(S.I. 2018/546\)](#), arts. 1(2), **10(1)**
- F42** Words in s. 55R(2)(a) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 5(2)(a)** (with reg. 7)
- F43** Words in s. 55R(2) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 5(2)(b)** (with reg. 7)
- F44** S. 55R(3A)(3B) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 5(3)** (with reg. 7)
- F45** S. 55R(4)-(6) inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 6**
- F46** S. 55R(7)-(9) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 2 para. 5(4)** (with reg. 7)

### *Additional permissions*

#### **55S Duty of FCA or PRA to consider other permissions**

- (1) “Additional Part 4A permission” —
- (a) in relation to either regulator, means a Part 4A permission which is in force in relation to an EEA firm or a Treaty firm, and
  - (b) in relation to the FCA, also includes a Part 4A permission which is in force in relation to a person authorised as a result of paragraph 1(1) of Schedule 5.
- (2) If either regulator is considering whether, and if so how, to exercise its own-initiative variation power or its own-initiative requirement power in relation to an additional Part 4A permission, it must take into account—
- (a) the home state authorisation of the authorised person concerned,
  - (b) any relevant directive, and
  - (c) relevant provisions of the Treaty.

### *Persons whose interests are protected*

#### **55T Persons whose interests are protected**

For the purpose of any provision of this Part which refers to the FCA's operational objectives, or the PRA's objectives in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.



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## Procedure

### 55U Applications under this Part

- (1) An application for a Part 4A permission must—
  - (a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission, and
  - (b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act.
- (2) An application for the variation of a Part 4A permission must contain a statement—
  - (a) of the desired variation, and
  - (b) of the regulated activity or regulated activities which the applicant proposes to carry on if the permission is varied.
- (3) An application for the variation of a requirement imposed under section 55L or 55M or for the imposition of a new requirement must contain a statement of the desired variation or requirement.
- (4) An application under this Part must—
  - (a) be made in such manner as the regulator to which it is to be made may direct, and
  - (b) contain, or be accompanied by, such other information as that regulator may reasonably require.
- (5) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.
- (6) In subsection (5), the “appropriate regulator” means—
  - (a) in a case where the application is made to the FCA, the FCA;
  - (b) in a case where the application is made to the PRA, the FCA or the PRA.
- (7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (8) Each regulator may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the regulator may direct.
- (9) The PRA must consult the FCA before—
  - (a) giving a direction under this section in relation to a class of applications, or
  - (b) imposing a requirement under this section in relation to a class of applications.

#### Modifications etc. (not altering text)

- C24** S. 55U(1)-(4) excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **31(7)**, 33(5)

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- C25** S. 55U(1)-(4) excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **33(5)**
- C26** S. 55U(1)-(4) excluded (E.W.S.) (29.11.2018 for specified purposes) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), arts. 1(2)(3), **41(7)**
- C27** S. 55U(4)(5)(7)(8) applied (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **4**
- C28** S. 55U(4)(5)(7)(8) applied (with modifications) (26.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Consumer Credit\) \(Miscellaneous Provisions\) Order 2014 \(S.I. 2014/208\)](#), arts. 1(3)(4), **2(1)**
- C29** S. 55U(5) applied (with modifications) (26.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Consumer Credit\) \(Miscellaneous Provisions\) Order 2014 \(S.I. 2014/208\)](#), arts. 1(3)(4), **2(1)**
- C30** S. 55U(5) applied (14.2.2014 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **4**
- C31** S. 55U(7) applied (with modifications) (26.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Consumer Credit\) \(Miscellaneous Provisions\) Order 2014 \(S.I. 2014/208\)](#), arts. 1(3)(4), **2(1)**
- C32** S. 55U(7) applied (14.2.2014 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **4**
- C33** S. 55U(8) applied (14.2.2014 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), arts. 1(3)(4), **4**
- C34** S. 55U(8) applied (with modifications) (26.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Consumer Credit\) \(Miscellaneous Provisions\) Order 2014 \(S.I. 2014/208\)](#), arts. 1(3)(4), **2(1)**

## **55V Determination of applications**

- (1) An application under this Part must be determined by the regulator to which it is required to be made (“the appropriate regulator”) before the end of the period of 6 months beginning with the date on which it received the completed application.
- (2) The appropriate regulator may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within 12 months beginning with the date on which it received the application.
- (3) Where the application cannot be determined by the appropriate regulator without the consent of the other regulator, the other regulator's decision must also be made within the period required by subsection (1) or (2).
- (4) The applicant may withdraw the application, by giving the appropriate regulator written notice, at any time before the appropriate regulator determines it.
- (5) If the appropriate regulator grants an application—
  - (a) for Part 4A permission,
  - (b) for the variation or cancellation of a Part 4A permission,
  - (c) for the variation or cancellation of a requirement imposed under section 55L or 55M, or
  - (d) for the imposition of a new requirement under either of those sections,
 it must give the applicant written notice.

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- (6) The notice must state the date from which the permission, variation, cancellation or requirement has effect.
- (7) A notice under this section which is given by the PRA and relates to the grant of an application for Part 4A permission or for the variation of a Part 4A permission must state that the FCA has given its consent to the grant of the application.
- [ In the case of an application for permission under this Part which—
- <sup>F47</sup>(8) (a) relates to the regulated activity of managing an AIF, and  
(b) would if granted result in the applicant becoming a full-scope UKAIFM, this section has effect subject to [<sup>F48</sup>regulation 5][<sup>F48</sup>regulations 5 and 5A] of the Alternative Investment Fund Managers Regulations 2013 and, accordingly, subsections (1) to (3) do not apply.]
- [ In the case of an application which—
- <sup>F49</sup>(9) (a) is for a Part 4A permission or a variation of a Part 4A permission, and  
(b) relates only to the undertaking of insurance distribution activity, subsection (1) has effect as if the reference to “6 months” were to “3 months”.
- (10) In this section, “insurance distribution activity” has the meaning given in article 92 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]

#### Textual Amendments

- F47** S. 55V(8) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 6**
- F48** Words in s. 55V(8) substituted (coming into force in accordance with reg. 1(3) of the amending S.I.) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2013 \(S.I. 2013/1797\)](#), reg. 1(3), Sch. 1 para. 1(2)
- F49** S. 55V(9)(10) inserted (1.10.2018) by [The Insurance Distribution \(Regulated Activities and Miscellaneous Amendments\) Order 2018 \(S.I. 2018/546\)](#), arts. 1(2), **10(2)**

#### Modifications etc. (not altering text)

- C35** S. 55V modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **31(8)**
- C36** S. 55V modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **33(6)**
- C37** S. 55V modified (E.W.S.) (29.11.2018 for specified purposes) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), art. 1(2)(3), **41(8)**
- C38** S. 55V(1) excluded (1.4.2017 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **15(1)** (with art. 16)
- C39** S. 55V(1) excluded (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2017 \(S.I. 2017/488\)](#), arts. 1(2), **15(1)** (with art. 16)
- C40** S. 55V(4) modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **32(3)(b)**

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## **55W Applications under this Part: communications between regulators**

The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of—

- (a) an application for permission under section 55A,
- (b) an application under section 55I, or
- (c) an application under section 55M(5).

## **55X Determination of applications: warning notices and decision notices**

(1) If a regulator proposes—

- (a) to give a Part 4A permission but to exercise its power under section 55E(5) (a) or (b) or 55F(4)(a) or (b),
- (b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for permission,
- (c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
- (d) to vary a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for variation, or
- (e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission,

it must give the applicant a warning notice.

(2) If a regulator proposes to refuse an application made under this Part, it must (unless subsection (3) applies) give the applicant a warning notice.

(3) This subsection applies if it appears to the regulator that—

- (a) the applicant is an EEA firm, and
- (b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.

(4) If a regulator decides—

- (a) to give a Part 4A permission but to exercise its power under section 55E(5) (a) or (b) or 55F(4)(a) or (b),
- (b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the giving of the permission,
- (c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
- (d) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55L(1) or 55M(1) in connection with the variation,
- (e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, or
- (f) to refuse an application under this Part,

it must give the applicant a decision notice.

[ This section does not apply to applications to which section 55XA applies.]

*Status: Point in time view as at 26/03/2019.*

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#### Textual Amendments

**F50** S. 55X(5) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(9)**

#### Modifications etc. (not altering text)

**C41** S. 55X applied (with modifications) (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **6(5)**

### **Applications relating to administering a benchmark**

**F51**  
**55XA**

(1) If the FCA decides—

- (a) to give a Part 4A 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) or (b) in connection with the application for permission,
- (b) to give a Part 4A 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) 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 (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.

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- (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.]

#### Textual Amendments

**F51** S. 55XA inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(10)**

#### **55Y Exercise of own-initiative power: procedure**

- (1) This section applies to an exercise of either regulator's own-initiative variation power or own-initiative requirement power in relation to an authorised person (“A”).
- (2) A variation of a permission or the imposition or variation of a requirement takes effect—
  - (a) immediately, if the notice given under subsection (4) states that that is the case,
  - (b) on such date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (3) A variation of a permission, or the imposition or variation of a requirement, may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising its own-initiative variation power or own-initiative requirement power, reasonably considers that it is necessary for the variation, or the imposition or variation of the requirement, to take effect immediately (or on that date).
- (4) If either regulator proposes to vary a Part 4A permission or to impose or vary a requirement, or varies a Part 4A permission or imposes or varies a requirement, with immediate effect, it must give A written notice.
- (5) The notice must—
  - (a) give details of the variation of the permission or the requirement or its variation,
  - (b) state the regulator's reasons for the variation of the permission or the imposition or variation of the requirement,
  - (c) inform A that A may make representations to the regulator within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal),

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- (d) inform A of when the variation of the permission or the imposition or variation of the requirement takes effect, and
  - (e) inform A of A's right to refer the matter to the Tribunal.
- (6) The regulator may extend the period allowed under the notice for making representations.
- (7) If, having considered any representations made by A, the regulator decides—
- (a) to vary the permission, or impose or vary the requirement, in the way proposed, or
  - (b) if the permission has been varied or the requirement imposed or varied, not to rescind the variation of the permission or the imposition or variation of the requirement,
- it must give A written notice.
- (8) If, having considered any representations made by A, the regulator decides—
- (a) not to vary the permission, or impose or vary the requirement, in the way proposed,
  - (b) to vary the permission or requirement in a different way, or impose a different requirement, or
  - (c) to rescind a variation or requirement which has effect,
- it must give A written notice.
- (9) A notice under subsection (7) must inform A of A's right to refer the matter to the Tribunal.
- (10) A notice under subsection (8)(b) must comply with subsection (5).
- (11) If a notice informs A of A's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

**Modifications etc. (not altering text)**

- C42** S. 55Y applied (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), regs. 1, **22(4)**
- C43** S. 55Y applied by S.I. 2013/1773, reg. 22(4) (as substituted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), arts. 1(2), **4(3)**)(as amended by S.I. 2014/1313, arts. 1, 2(a))
- C44** S. 55Y applied by S.I. 2013/1773, reg. 75(8) (as added) (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), arts. 1(2), **4(7)(e)**(as amended by S.I. 2014/1313, arts. 1, 2(a))
- C45** S. 55Y excluded (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, **8(2)**
- C46** S. 55Y applied (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 \(S.I. 2015/910\)](#), arts. 1(5), **19(6)** (with Pt. 4)
- C47** S. 55Y applied (with modifications) (3.1.2018) by [The Data Reporting Services Regulations 2017 \(S.I. 2017/699\)](#), regs. 1(2)(b), **22(6)**
- C48** S. 55Y applied (with modifications) (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **6(6)**

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- C49** S. 55Y(5)(6) excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **35(2)**, 37(3)(b), 39(2)(a)(i)(b), 41(2)
- C50** S. 55Y(7) excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **36(2)**
- C51** S. 55Y(9) excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), 38(3)(b), **40(2)(a)(i)(b)**, 42(2)

## **55Z Cancellation of Part 4A permission: procedure**

- (1) If a regulator proposes to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a warning notice.
- (2) If a regulator decides to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a decision notice.

### **Modifications etc. (not altering text)**

- C52** S. 55Z excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **32(3)(a)**
- C53** S. 55Z excluded (1.4.2015) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2015 \(S.I. 2015/369\)](#), arts. 1, **5(7)**
- C54** S. 55Z excluded (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **30(8)**
- C55** S. 55Z excluded (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **29(8)**

## *Notification*

### **55Z1 Notification of ESMA**

A regulator must notify ESMA of—

- (a) the giving by it of a Part 4A permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,
- (b) the giving by it of a Part 4A permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,
- (c) the cancellation by it of a Part 4A permission of a description falling within paragraph (b), or
- (d) the cancellation by it of a Part 4A permission under section 55J(6), in reliance on any one or more of the conditions in section 55K(1)(b) to (d).



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#### Modifications etc. (not altering text)

- C56** S. 55Z1 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Permission and Approval\) Order 2013 \(S.I. 2013/440\)](#), arts. 1(1), **11(2)**

### 55Z2 Notification of EBA

(1) A regulator must notify EBA of—

- (a) the giving by it of a Part 4A permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2, <sup>F52</sup>...
- (b) the cancellation by it of a Part 4A permission of a description falling within paragraph (a) [<sup>F53</sup>and the reasons for the cancellation; or]
- <sup>F54</sup>(c) [the giving by it of a Part 4A permission to a credit institution whose head office is not in an EEA State.]

<sup>F55</sup>(1A) [A notification given in accordance with paragraph (a) or (c) of subsection (1) must contain a statement to the effect that the compensation scheme makes provision for cases where the credit institution concerned is unable, or likely to be unable, to satisfy claims against it.]

(2) “Credit institution” has the meaning given in section 1H(8).

#### Textual Amendments

- F52** Word in s. 55Z2(1)(a) omitted (1.1.2014) by virtue of [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 7(a)**
- F53** Words in s. 55Z2(1)(b) inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 7(b)**
- F54** S. 55Z2(1)(c) inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 7(c)**
- F55** S. 55Z2(1A) inserted (26.3.2015) by [The Deposit Guarantee Scheme Regulations 2015 \(S.I. 2015/486\)](#), regs. 1(2), **13(2)**

#### Modifications etc. (not altering text)

- C57** S. 55Z2 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Permission and Approval\) Order 2013 \(S.I. 2013/440\)](#), arts. 1(1), **12(2)**

### <sup>F56</sup>55Z2A Notification of the European bodies

A regulator must notify the European Commission and the European Banking Committee established by European Commission Decision [2004/10/EC](#) of any authorisation granted for the purposes of the capital requirements directive to a credit institution whose head office is not in an EEA State.]

#### Textual Amendments

- F56** S. 55Z2A inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 8**

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### References to the Tribunal

#### 55Z3 Right to refer matters to the Tribunal

- (1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.
- (2) An authorised person who is aggrieved by the exercise by either regulator of its own-initiative variation power or its own-initiative requirement power may refer the matter to the Tribunal.

[ Where there is a review under section 55XA(3) of a determination within <sup>F57</sup>(3) section 55XA(1), subsection (1) applies only in relation to the determination made on the review.]

#### Textual Amendments

**F57** S. 55Z3(3) inserted (27.2.2018) by [The Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(S.I. 2018/135\)](#), regs. 1(2), **40(11)**

#### Modifications etc. (not altering text)

- C58** S. 55Z3 excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **34(3)**, 36(3), 38(4), 40(3), 42(3)
- C59** S. 55Z3(1) excluded (E.W.S.) (29.11.2018 for specified purposes) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), arts. 1(2)(3), **46(4)**
- C60** S. 55Z3(1) excluded (E.W.S.) (29.11.2018 for specified purposes) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), art. 1(2)(3), **42(3)**
- C61** S. 55Z3(1) excluded (E.W.S.) (29.11.2018 for specified purposes) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), art. 1(2)(3), **44(3)**
- C62** S. 55Z3(2) applied by S.I. 2013/1773, reg. 22(4) (as substituted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), arts. 1(2), **4(3)**)(as amended by S.I. 2014/1313, arts. 1, 2(a))
- C63** S. 55Z3(2) applied by S.I. 2013/1773, reg. 75(8) (as added) (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), arts. 1(2), **4(7)(e)** (as amended by S.I. 2014/1313, arts. 1, 2(a))
- C64** S. 55Z3(2) applied (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 \(S.I. 2015/910\)](#), arts. 1(5), **19(6)** (with Pt. 4)

### Interpretation

#### 55Z4 Interpretation of Part 4A

In this Part—

“own-initiative requirement power”, in relation to the FCA or the PRA, is to be read in accordance with section 55L(4) or 55M(4);

“own-initiative variation power”, in relation to the FCA or the PRA, is to be read in accordance with section 55J(12).]

**Status:**

Point in time view as at 26/03/2019.

**Changes to legislation:**

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