

Changes to legislation: Financial Services Act 2021, SCHEDULE 11 is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 11

Section 28

VARIATION OR CANCELLATION OF PART 4A PERMISSION ON INITIATIVE OF FCA: ADDITIONAL POWER

1 The Financial Services and Markets Act 2000 is amended as follows.

Commencement Information

I1 Sch. 11 para. 1 in force at 1.7.2021 by S.I. 2021/739, reg. 3(p)

2 After section 55J insert—

“55JA Variation or cancellation on initiative of FCA: additional power

- (1) Schedule 6A confers an additional power on the FCA to vary or cancel an FCA-authorised person's Part 4A permission.
- (2) In this section and that Schedule “FCA-authorised person” means an authorised person who is not a PRA-authorised person.”

Commencement Information

I2 Sch. 11 para. 2 in force at 1.7.2021 by S.I. 2021/739, reg. 3(p)

3 After Schedule 6 insert—

“SCHEDULE 6A

Section 55JA

VARIATION OR CANCELLATION OF PART 4A PERMISSION ON INITIATIVE OF FCA: ADDITIONAL POWER

Additional power

- 1 (1) If it appears to the FCA that an FCA-authorised person with a Part 4A permission is carrying on no regulated activity to which the permission relates, the FCA may exercise its power under this paragraph.
- (2) The FCA's power under this paragraph is the power—
 - (a) to vary the Part 4A permission by—
 - (i) removing a regulated activity from those to which the permission relates, or
 - (ii) varying the description of a regulated activity to which the permission relates, or
 - (b) to cancel the Part 4A permission.

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- (3) The circumstances in which the FCA may form the view that an authorised person is carrying on no regulated activity include (but are not limited to) circumstances where the person fails—
 - (a) to pay any periodic fee or levy as is required by the FCA Handbook, or
 - (b) to provide such information to the FCA as is required by the FCA Handbook.
- (4) “The FCA Handbook” means the Handbook made by the FCA under this Act (as that Handbook is amended from time to time).
- (5) If, as a result of a variation of a permission under this paragraph, there are no longer any regulated activities for which the person has permission, the FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (6) The power to vary a permission under this paragraph 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 the FCA under section 55A.
- (7) The FCA's power under this paragraph must be exercised in accordance with paragraph 2.

Procedure etc

- 2 (1) The FCA may exercise its power under paragraph 1 in relation to an authorised person with a Part 4A permission only if the following conditions are met.
- (2) The first condition is that the FCA has given a notice in writing to the person—
 - (a) stating that it appears to the FCA that the person is carrying on no regulated activity to which the permission relates,
 - (b) inviting the person to respond in a specified manner, and
 - (c) warning of the potential consequences that may arise under this Schedule of a failure to do so.
- (3) The second condition is that—
 - (a) at least 14 days beginning with the date on which the notice was given have elapsed, and
 - (b) the person has failed to respond in the specified manner.
- (4) The third condition is that the FCA has given a further notice in writing to the person setting out—
 - (a) in a case where the FCA proposes to vary the permission—
 - (i) the proposed variation,
 - (ii) the date on which the FCA proposes to vary the permission (and, if different, the date on which the variation is to take effect), and
 - (iii) any specified steps the person may take that would (if taken) result in the FCA deciding not to vary the permission as proposed;

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- (b) in a case where the FCA proposes to cancel the permission—
 - (i) the date on which the FCA proposes to cancel the permission (and, if different, the date on which the cancellation is to take effect), and
 - (ii) any specified steps the person may take that would (if taken) result in the FCA deciding not to cancel the permission.
- (5) The fourth condition is that the date specified in the notice under subparagraph (4) is not earlier than the end of the period of 14 days beginning with the date on which the notice is given.
- (6) Where the FCA decides to publicise a notice given under this paragraph (or any details relating to it), it may do so in such manner as it considers appropriate.

Notice of decision

- 3 (1) Where the FCA decides to vary or cancel an authorised person's Part 4A permission under paragraph 1, the FCA must give the person a notice in writing setting out—
 - (a) in a case where the FCA varies the permission, the variation,
 - (b) the date on which the variation or cancellation takes effect, and
 - (c) the person's power to make an application under paragraph 4.
- (2) Where the FCA—
 - (a) has given the person a notice under paragraph 2(4), but
 - (b) decides not to vary or cancel the permission (whether or not because the specified steps referred to in that notice have been taken),the FCA must give the person a notice in writing of that decision.
- (3) A notice given under this paragraph may include such other information as the FCA considers appropriate.
- (4) Where the FCA decides to publicise a notice given under this paragraph (or any details relating to it), it may do so in such manner as it considers appropriate.

Application for decision to be annulled

- 4 (1) This paragraph applies where the FCA decides to vary or cancel an authorised person's Part 4A permission under paragraph 1.
- (2) If the person is aggrieved by the FCA's decision, the person may apply to the FCA to have the decision annulled.
- (3) An application under this paragraph must be made before the end of the period of 12 months beginning with the day on which the variation or cancellation took effect.
- (4) An application under this paragraph must be determined before the end of the period of 6 months beginning with the date on which the FCA received the completed application.

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- (5) The applicant may withdraw the application, by giving the FCA written notice, at any time before the FCA determines it.
- (6) The FCA may direct that an application under this paragraph must—
 - (a) contain specified information, or
 - (b) take a specified form.

Annulment etc

- 5 (1) This paragraph applies where the FCA receives an application under paragraph 4 in relation to a decision to vary or cancel an authorised person's Part 4A permission under paragraph 1.
- (2) The FCA may—
 - (a) annul the decision unconditionally,
 - (b) annul the decision subject to such conditions as it considers appropriate, or
 - (c) refuse to annul the decision.
- (3) The FCA may annul the decision (unconditionally or subject to conditions) only if satisfied that, in all the circumstances, it is just and reasonable to do so.
- (4) The FCA's power under sub-paragraph (2)(b) includes the power—
 - (a) to remove or describe differently a regulated activity specified in the permission, and
 - (b) to withdraw or vary an approval given under section 59 that has effect in relation to the carrying on of a regulated activity specified in the permission,
 provided that the activity in question was one to which the permission related immediately before the decision was taken.
- (5) Where the FCA annuls the decision it must give the person a notice in writing setting out—
 - (a) where the annulment is subject to conditions, the conditions, and
 - (b) the date on which the annulment takes effect.
- (6) If the FCA proposes to refuse to annul the decision it must give the person a warning notice.
- (7) If the FCA decides to refuse to annul the decision it must give the person a decision notice.

Effect

- 6 (1) Where the FCA—
 - (a) varies or cancels an authorised person's Part 4A permission under paragraph 1, but
 - (b) that decision is subsequently annulled under paragraph 5,
 the variation or cancellation is treated as if it had not taken place, subject as follows.

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- (2) The FCA does not become subject to any statutory obligation by virtue of sub-paragraph (1).
- (3) Where, by virtue of sub-paragraph (1)—
 - (a) a person becomes subject to a statutory obligation, and
 - (b) the FCA has functions in relation to the obligation,
 the FCA may, in exercising those functions, treat the person as if the person had not become subject to the obligation.
- (4) If the FCA treats a person as not having become subject to an obligation, it must notify the person of that fact in such manner as it considers appropriate.
- (5) In a case where paragraph 5(4)(a) applies—
 - (a) the permission is treated as if it had been varied in accordance with the FCA's own-initiative variation power, and
 - (b) that variation is treated as if it took effect on the date on which the annulment took effect.
- (6) In a case where paragraph 5(4)(b) applies—
 - (a) the approval is treated as if it had been withdrawn in accordance with section 63 or varied in accordance with section 63ZB (as the case may be), and
 - (b) that withdrawal or variation is treated as if it took effect on the date on which the annulment took effect.
- (7) In this paragraph “statutory obligation” means any obligation arising under or by virtue of this Act or any other enactment.
- (8) In sub-paragraph (7) “enactment” includes—
 - (a) the enactments listed in section 3T, and
 - (b) any retained direct EU legislation.

Right to refer matter to Tribunal

- 7 (1) This paragraph applies where the FCA—
 - (a) decides to vary or cancel an authorised person's Part 4A permission under paragraph 1,
 - (b) receives an application from the person under paragraph 4 in respect of that decision, and
 - (c) has disposed of that application under paragraph 5(2).
- (2) Either party may refer the matter to the Tribunal.
- (3) In determining a reference made under this paragraph, the Tribunal may give such directions, and may make such provision, as it considers reasonable for placing the person and other persons in the same position (as nearly as may be) as if the permission had not been varied or cancelled.

Supplementary

- 8 (1) Nothing in this Schedule affects the generality of any other provision made under or by virtue of this Act that confers power on the FCA to vary or cancel an authorised person's Part 4A permission.

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- (2) Nothing in paragraph 6(5) and (6) gives rise to a right to make a reference to the Tribunal.
- (3) Sections 55U to 55X (applications made under Part 4A: procedure) do not apply in relation to an application made under paragraph 4.
- (4) Section 55Z (cancellation of Part 4A permission: procedure) does not apply in relation to a proposal, or decision, to cancel an authorised person's Part 4A permission under paragraph 1.
- (5) Section 55Z3(1) (right to refer matters to the Tribunal) does not apply in relation to the determination of an application under paragraph 4.
- (6) In this Schedule “specified” means specified in a direction given by the FCA under this Schedule.
- (7) A direction made by the FCA under this Schedule may make different provision for different cases.
- (8) The FCA may revoke or amend a direction it makes under this Schedule.”

Commencement Information

I3 Sch. 11 para. 3 in force at 1.7.2021 by S.I. 2021/739, reg. 3(p)

- 4 In section 133 (proceedings before Tribunal: general provision), after subsection (5) insert—
- “(5A) In the case of a reference under paragraph 7 of Schedule 6A, the Tribunal—
- (a) must determine what (if any) is the appropriate action that must be taken in relation to the matter, and
 - (b) on determining the reference, must give such directions (if any) to such persons as the Tribunal considers appropriate for giving effect to its determination.”

Commencement Information

I4 Sch. 11 para. 4 in force at 1.7.2021 by S.I. 2021/739, reg. 3(p)

- 5 In section 392 (application of sections 393 and 394)—
- (a) in paragraph (a), at the end insert “ or paragraph 5(6) of Schedule 6A ”, and
 - (b) in paragraph (b), at the end insert “ or paragraph 5(7) of Schedule 6A ”.

Commencement Information

I5 Sch. 11 para. 5 in force at 1.7.2021 by S.I. 2021/739, reg. 3(p)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2021/671, reg. 5 by [S.I. 2021/1163 reg. 2](#)