

Chapter 9

Prohibition Orders and withdrawal of approval

9.9 The effect of the FCA's decision to withdraw approval

- 9.9.1** When the *FCA's* decision to withdraw an approval has become effective, the position of the *firm* which applied for that approval depends on whether it directly employs the *person* concerned, or whether the *person* is employed by one of its contractors.
- 9.9.2** Section 59(1) is relevant where the *firm* directly employs the *person* concerned. Under the provision, a *firm* ('A') must take reasonable care to ensure that no *person* performs a *controlled function* under an *arrangement* entered into by A in relation to the carrying on by it of a *regulated activity*, unless the *appropriate regulator* (as defined in section 59(4) of the *Act*) approves the performance by that *person* of the *controlled function* to which the approval relates. Therefore, if the *firm* continues to employ the *person* concerned to carry out a *controlled function*, it will be in breach of section 59(1) and the *FCA* may take enforcement action against it (save where the *firm* concerned is a *PRA-authorised person* and the approval concerned falls to be given by the *PRA*).
- 9.9.3** Section 59(2) is relevant where the *person* is employed by a contractor of the *firm*. It requires a *firm* ('A') to take reasonable care to ensure that no *person* performs a *controlled function* under an arrangement entered into by a contractor of A in relation to the carrying on by A of a *regulated activity*, unless the *appropriate regulator* (as defined in section 59(4) of the *Act*) approves the performance by that *person* of the *controlled function* to which the approval relates. Therefore, if a contractor of the *firm* employs the *person* concerned, and the contractor continues to employ the *person* to carry out a *controlled function*, the *firm* itself will be in breach of section 59(2) unless it has taken reasonable care to ensure that this does not happen. The *FCA* may take enforcement action against a *firm* that breaches this requirement (save where the *firm* concerned is a *PRA-authorised person* and the approval concerned falls to be given by the *PRA*).
- 9.9.4** *Firms* should be aware of the potential effect that these provisions may have on their contractual relationships with *approved persons* employed by them and with contractors engaged by them, and their obligations under those contracts.