

Chapter 6

Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements



6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

What is a variation of permission?

- 6.3.1 **G** [deleted]
- 6.3.1A **G** Under section 55H of the *Act*, an *FCA-authorised person* may apply to the *FCA* to vary its *Part 4A permission* to:
- (1) allow it to carry on further *regulated activities*, other than a *PRA-regulated activity*; or
 - (2) reduce the number of *regulated activities* it is permitted to carry on; or
 - (3) vary the description of its *regulated activities* (including by the removal or variation of any *limitations*).
- 6.3.1B **G** Under section 55I of the *Act*, an *FCA-authorised person* may apply to the *PRA* to vary its *Part 4A permission* to add *regulated activities* which include a *PRA-regulated activity*.
- 6.3.2 **G** [deleted]

Applications to impose, vary or cancel requirements

- 6.3.2A **G** Under section 55L(5) of the *Act* a *firm* with a *Part 4A permission* may apply to the *FCA* for the imposition of a new *requirement* and/or the variation or cancellation of any *requirement* previously imposed by the *FCA*.

The scope of applications

- 6.3.2C **G** An application may relate to one or more of **■ SUP 6.3.1A G** and **■ SUP 6.3.2A G**. For example, a *firm* may apply to vary its *Part 4A permission* to add a new *regulated activity* and at the same time remove a *regulated activity* for which it currently has *permission*.
- 6.3.2D **G**

6.3.3 **G** In applying for a variation of *Part 4A permission*, a branch of a *firm* from outside the *EEA* should be mindful of any continuing requirements referred to in the rest of the *Handbook*.

Applications to add additional regulated activities

6.3.4 **G** In determining the activities and *specified investments* for which a *Part 4A permission* is required, and whether to apply for a variation of that *permission*, a *firm* may need to take professional advice and may also wish to discuss this with its appropriate supervisory contact.

6.3.5 **G** Before applying to vary its *permission*, a *firm* should determine whether there are any statutory restrictions that do not allow combinations of certain types of *regulated activity*, particularly for *insurance business* or *UCITS managers*. For example, the *PRA* will not grant a variation of *Part 4A permission* to allow a *friendly society* to carry on reinsurance business as this is not permitted under the Friendly Societies Acts 1974 and 1992. A *firm* should discuss its plans with its appropriate supervisory contact.

6.3.6 **G** If a *firm* is seeking a variation of *Part 4A permission* to add categories of *regulated activities*, it should be mindful of the directive requirements referred to at ■ SUP 6.3.42 G relating to the need to commence new activities within 12 months.

Applications to remove certain regulated activities

6.3.7 **G** If a *firm* wishes to cease carrying on an activity for which it has *Part 4A permission*, it will usually apply to vary its *Part 4A permission* to remove that activity. If a *firm* wishes to cease carrying on an activity in relation to any *specified investment*, it will usually apply to vary its *Part 4A permission* to remove that *specified investment* from the relevant activity.

How a variation of permission may affect the firm's approved persons

6.3.8 **G**

- (1) Where a *firm* is submitting an application for variation of *Part 4A permission* which would lead to a change in the *controlled functions* of its *approved persons*, it should, at the same time and as appropriate:
 - (a) make an application for an internal transfer of an *approved person*, Form E (Internal transfer of a person performing a controlled function), or make an application for an individual to perform additional *controlled functions*, the relevant Form A (Application to perform controlled functions); see:
 - (i) ■ SUP 10A.13.3D to ■ SUP 10A.13.5G (for a *firm* that is not an *SMCR firm*);
 - (ii) ■ SUP 10C.10 (for an *SMCR firm*); or
 - (iii) the corresponding *PRA* requirements;
 - (b) notify the *FCA* or *PRA* of any *approved person* who has ceased to perform a *controlled function* specified by that regulator, Form C (Notice of ceasing to perform controlled functions (including senior management functions)); see:

- (i) ■ SUP 10A.14 (for a *firm* that is not an *SMCR firm*);
 - (ii) ■ SUP 10C.14 (for an *SMCR firm*); or
 - (iii) the corresponding *PRA* requirements.
- (2) If the *firm* intends to recruit new individuals to perform *controlled functions*, it should apply for approval of the individuals as *approved persons* as soon as possible using Form A (Application to perform controlled functions); see:
- (a) ■ SUP 10A.13 (for a *firm* that is not an *SMCR firm*);
 - (b) ■ SUP 10C.10 (for an *SMCR firm*); or
 - (c) the corresponding *PRA* requirements.
- 6.3.9** G A variation of a *firm's Part 4A permission* may mean that it becomes an *SMCR firm* or that it changes from one type of *SMCR firm* to another. This would have a number of significant consequences, which include:
- (1) the application of the special powers in relation to misconduct by *approved persons* (see ■ DEPP 6.2.9-AG);
 - (2) the *approved persons* regime switches from ■ SUP 10A to ■ SUP 10C;
 - (3) *COCON* applies in place of *APER*; and
 - (4) the other elements of the regime for *SMCR firms* described in SYSC 23.4 (Overview of the senior managers and certification regime) apply (which differ depending on the type of *SMCR firm*).
 - (5) [deleted]
 - (6) [deleted]
- 6.3.10** G [deleted]
- Variation of permission involving insurance business**.....
- 6.3.11** G A *firm* with *Part 4A permission* to carry on *insurance business*, which is applying for a variation of its *Part 4A permission* to add further insurance activities or *specified investments*, will be required to submit particular information on its existing activities as part of its application. This includes the *scheme of operations* which is required to be submitted as part of the application pack (for further details on the *scheme of operations*, see ■ SUP App 2 (Insurers: scheme of operations)).
- 6.3.12** G In applying to vary its *Part 4A permission* to add categories of *specified investments*, in relation to *insurance business*, a *firm* carrying on *insurance business* will need to determine the *classes of specified investments* relating to *effecting* and *carrying out contracts of insurance* for which variation of *Part 4A permission* will be necessary, having regard to whether certain *classes* of contract may qualify to be effected or carried out on an ancillary or supplementary basis.

6.3.13 G The application for variation of *Part 4A permission* will need to provide information about the *classes of contract of insurance* for which variation of *Part 4A permission* is requested and also those *classes* qualifying to be carried on, on an ancillary or supplementary basis. For example, an *insurer* applying to vary its *permission* to include *class 10* (motor vehicle liability, other than carrier's liability) must satisfy the *FCA* that it will meet, and continue to meet, *threshold condition 3F* (Appointment of claims representatives). *Firms* should note that, although the relevant regulator is able in principle to use its power to give *Part 4A permission* for an applicant to carry on a *regulated activity* for which it did not originally apply, this is not possible under the *Solvency II Directive*, which sets out minimum information requirements for an application for *authorisation* including information on the specified investments the applicant proposes to deal in.

The application for variation of permission and/or imposition, variation or cancellation of requirements

6.3.15 D

(1) Subject to (1A), a *firm* other than a *credit union* wishing to make an application under ■ SUP 6 must apply online using the forms specified on the *online notification and application system*.

(1A) A *firm* wishing to make an application under ■ SUP 6 which covers only *credit-related regulated activities* must submit any form, notice or application by using the form in ■ SUP 6 Annex 5 and submitting it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

(2) [deleted]

(3) Until the application has been determined, a *firm* which submits an application must inform the relevant regulator of any significant change to the information given in the application immediately it becomes aware of the change.

(3A) Where an application requires the consent of the *FCA*, a *firm* which submits an application must inform the *FCA* of any significant change to the information given in the application immediately it becomes aware of the change.

(4) Where a *firm* is obliged to submit any form, notice or application online under (1), if the *online notification and application system* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must submit any form, notice or application by using the form in ■ SUP 6 Ann 5D and submitting it in the way set out in ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

6.3.15A G

(1) If the *online notification and application system* fails and online submission is unavailable for 24 hours or more, the relevant regulator will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 6.3.15 D (4) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.

(2) Where ■ SUP 6.3.15 D (4) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

6.3.16

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(1) Section 55(U)(2) of the *Act* (Applications under this Part) requires that the application for variation of *Part 4A permission* must contain a statement:

- (a) of the desired variation; and
- (b) of the *regulated activity* or *regulated activities* which the *firm* proposes to carry on if its *permission* is varied.

(1A) Section 55(U)(3) of the *Act* requires that an application for variation of a *requirement* imposed under section 55L or 55M or the imposition of a new *requirement* must contain a statement of the desired variation or *requirement*.

(2) The full form and content of the application for variation of *Part 4A permission* or for the imposition or variation of a *requirement* is a matter for direction by the relevant regulator, who will determine the additional information and documentation required on a case by case basis.

6.3.17

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(1) [deleted]

(2) A *firm* is advised to discuss its application with the relevant regulator before submission, particularly if it is seeking a variation of *Part 4A permission* or imposition, variation or cancellation of a *requirement* within a short timescale. A *firm* is also advised to include as much detail as possible (including any additional information identified by its supervisors at this stage) with its application.

6.3.18

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The relevant regulator, as soon as possible after receipt of an application, will advise the *firm* of any additional information which is required as part of its application (see ■ SUP 6.3.23 G to ■ SUP 6.3.27 G). The amount of information required will vary depending on the scale of the variation in the context of the *firm* as a whole, and the nature, risk profile and complexity of the variation.

Applications from firms winding down (running off) business over the long term

6.3.19

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A *firm* which is making an application for variation of *Part 4A permission* to wind down (run off) its business before applying for a cancellation of that *permission* (see ■ SUP 6.2.9 G) should read ■ SUP 6 Annex 4 for details of the additional procedures that apply.

Applications involving significant changes

6.3.20

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In certain cases, the relevant regulator may consider that granting an application for imposition, variation or cancellation of any *requirement* or for variation of *Part 4A permission* which includes adding further *regulated activities* or changing a *limitation* would cause a significant change in the *firm's* business or risk profile. In these circumstances, the relevant regulator may require the *firm* to complete appropriate parts of the full application

pack (see the relevant regulator's website), as directed by the relevant regulator. Applications for variation involving significant changes may be processed by the *firm's* appropriate supervisory contact in conjunction with the Authorisations Team. Examples of an application for imposition, variation or cancellation of a *requirement* and for variation of *Part 4A permission* which may represent a significant change include, but are not limited to, an application:

- (1) to carry on new *regulated activities* such as *accepting deposits*;
- (2) to extend the *insurance business* of a *firm* which already has *Part IV permission* which includes *carrying out or effecting contracts of insurance* (or both), to new *classes of specified investment*; or
- (3) to remove a *requirement* preventing a *firm* from holding or controlling *client money*.
- (4) [deleted]

6.3.21 **G** A *firm* that wishes to make a significant change to its business, or is unsure whether the changes it is proposing would be considered to be significant, should contact the relevant regulator. The relevant regulator will discuss with the *firm* whether it will be required to submit parts of the application pack and whether any reports from third parties may be required.

6.3.22 **G** The fees payable for a *firm* applying for the imposition, variation or cancellation of any *requirements* and/or a variation of its *Part 4A permission* are set out in ■ FEES 3.

Information to be supplied to the relevant regulator as part of the application

6.3.23 **G**

- (1) The relevant regulator may ask for any information it reasonably requires before determining the application. The information required will be determined on a case by case basis, taking into account the relevant regulator's existing knowledge of the *firm* and the change requested. The relevant regulator will advise the *firm* of the information required at an early stage in the application process.
- (2) The nature of the information and documents requested will be related to the risks posed to the relevant regulator's *statutory objectives* by the *regulated activities* and any *unregulated activities* that the *firm* is carrying on or is seeking to carry on. This information will be proportional to the nature of the business which the *firm* intends to carry on or the risks posed by the *firm*.

6.3.24 **G** (1) The information the relevant regulator may require includes, but is not limited to, the examples given in ■ SUP 6.3.25 G:

6.3.25 **G** **Information which may be required. See ■ SUP 6.3.24 G**

Type of business	Information which may be required
All	1. Details of how the <i>firm</i> plans to comply with the relevant regulator's regulatory requirements relating to any additional <i>regulated activities</i> it is seeking to carry on.
	2. Descriptions of the <i>firm's</i> key controls, senior management arrangements and audit and proposed compliance arrangements in respect of any new <i>regulated activity</i> (see SYSC).
	3. Organisation charts and details of individuals transferring or being recruited to perform new <i>controlled functions</i> (see SUP 10A and SUP 10C, and the corresponding <i>PRA</i> requirements for details of the application or transfer procedures under the <i>approved persons</i> or senior managers regime).
Insurance business	1. A <i>scheme of operations</i> in accordance with SUP App 2.
	2. (If the application seeks to vary a <i>permission</i> to include <i>motor vehicle liability insurance business</i>) details of the claims representatives required by <i>threshold condition</i> 3F (Appointment of claims representatives), if applicable.
Accepting deposits and designated investment business	1. A business plan which includes the impact of the variation on the <i>firm's</i> existing or continuing business financial projections for the <i>firm</i> , including the impact of the requested change on the <i>firm's</i> financial resources and capital adequacy requirements.

6.3.26 G Specific information may also be required by the relevant regulator on the activities the *firm* intends to cease, or cease carrying on in relation to any *specified investments* (see ■ SUP 6 Annex 4).

6.3.27 G When determining whether to grant an application, the relevant regulator may request further information, including reports from third parties such as the *firm's* auditors, and may require meetings with, and visits to, the *firm*. The relevant regulator may also require a statement from members of the *firm's governing body* confirming, to the best of their knowledge, the completeness and accuracy of the information supplied. The relevant regulator may also discuss the application with other regulators or exchanges.

When will an application for variation of permission and/or imposition or variation of requirements be granted?

6.3.28 G (1) The relevant regulator is required by section 55B(3) of the *Act* to ensure that a *firm* applying to gain or vary a *Part 4A permission* or to impose or vary a *requirement* satisfies and will continue to satisfy the *threshold conditions* in relation to all the regulated activities for which the *firm* has or will have a *Part 4A permission*.

(2) [deleted]

6.3.28A G Where a *firm* applies to the *PRA* for the variation of its *Part 4A permission*, the *FCA*, in giving consent to such an application or imposing any requirements on the *firm*, is required by section 55B(3) of the *Act* to ensure

that the *firm* satisfies and will continue to satisfy the *threshold conditions* for which the *FCA* is responsible in relation to all the *regulated activities* for which the firm has or will have *Part 4A permission* after the variation.

- 6.3.28B G (1) The *FCA's* duty under section 55B(3) of the *Act* does not prevent it, having regard to that duty, from taking such steps as it considers necessary in relation to a particular *firm*, to meet any of its operational objectives. This may include granting or consenting to (as the case may be) a *firm's* application for variation of *Part 4A permission* when it wishes to wind down (run off) its business activities and cease to carry on new business as a result of no longer being able to satisfy the *threshold conditions*.
- (2) The *FCA* may refuse an application, or refuse to give its consent to an application, under section 55B(3) of the *Act* if it considers that it is desirable to do so in order to advance any of its operational objectives.

6.3.29 G In determining whether the *firm* satisfies and continues to satisfy the *threshold conditions*, the regulator concerned will consider whether the *firm* is ready, willing and organised to comply with the regulatory requirements it will be subject to if the application is granted.

6.3.30 G The specific requirements that apply to certain types of activity will also need to be considered as these may not allow certain combinations of activity.

6.3.31 G In considering whether to grant (or consent to, as the case may be) a *firm's* application to vary its *Part 4A permission* or impose or vary a *requirement*, the regulator concerned will also have regard, under section 55R(1) of the *Act* (Persons connected with an applicant), to any *person* appearing to be, or likely to be, in a relationship with the *firm* which is relevant. The *Financial Groups Directive Regulations* make special consultation provisions where the regulator is exercising its functions under Part 4A of the *Act* (Permission to carry on regulated activities) for the purposes of carrying on supplementary supervision. Broadly, where a regulator, in the course of carrying on supplementary supervision, is considering varying the *Part 4A permission* of a *person* who is a member of a *group* which is a *financial conglomerate*, the consultation provisions in section 55R(2) of the *Act* are disapplied. In their place, the regulations impose special obligations, linked to the *Financial Groups Directive*, to obtain the consent of the relevant competent authorities, to consult those authorities and to consult with the *group* itself.

The regulator's powers in respect of application for variation of Part IV permission

6.3.32 G [deleted]

6.3.32A G The *FCA's* power to vary a *Part 4A permission* after it receives an application from a *firm* extends to including in the *Part 4A permission* as varied any provision that could be included as though a fresh *permission* was being given in response to an application under section 55A of the *Act* (Application

for permission). Under section 55E of the *Act* (Giving permission: the FCA) the *FCA* may:

- (1) incorporate in the description of a *regulated activity* such *limitations* (for example, as to the circumstance in which a *regulated activity* may or may not be carried on) as it considers appropriate; or
- (2) specify a narrower or wider description of *regulated activity* than that to which the application relates; or
- (3) 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*.

6.3.32B **G** Thus, when determining an application for variation of *Part 4A permission*, the *FCA* can, include new *limitations* and vary existing *limitations*, either on application from the *firm* (for example, the *customer* categories with which a *firm* may carry on a specified activity) or, if considered appropriate, by the *FCA* under section 55E(5) of the *Act*.

6.3.32C **G** If a *firm* has applied (whether to the *FCA* or the *PRA*) for the variation of a *Part 4A permission*, the *FCA* has the power to impose on that person such *requirements*, taking effect on or after the variation of permission, as the *FCA* considers appropriate.

6.3.33 **G** [deleted]

6.3.34 **G** If *limitations* are varied or imposed or *requirements* are imposed by the relevant regulator which were not included in the *firm's* application for variation of *Part 4A permission*, the relevant regulator will be required to issue the *firm* with a *warning notice* and *decision notice* (see ■ SUP 6.3.39 G).

6.3.34A **G** Where a *firm* has made an application to the *PRA* for the variation of its *Part 4A permission* and *requirements* are imposed by the *FCA* which were not included in the *firm's* application, the *FCA* will be required to issue the *firm* with a *warning notice* and *decision notice* (see ■ SUP 6.3.39 G).

How long will an application take?

6.3.35 **G** Under section 55V(1) of the *Act* (Determination of applications), the relevant regulator has six months to consider a completed application from the date of receipt.

6.3.36 **G** If the relevant regulator receives an application which is incomplete (that is, if information or a document required as part of the application is not provided), section 55V(2) of the *Act* requires the relevant regulator to determine that incomplete application within 12 months of the initial receipt of the application.

6.3.36A **G** Where the application cannot be determined by the *PRA* without the consent of the *FCA*, section 55V(3) of the *Act* requires that the *FCA*'s decision must also be made within the period required in **■ SUP 6.3.35 G** or **■ SUP 6.3.36 G** as appropriate.

6.3.37 **G** Within these time limits, however, the length of the process will relate directly to the complexity of the application.

6.3.37A **G** The *FCA* publishes standard times on its website setting out how long the application process is expected to take. From time to time, the *FCA* also publishes its performance against these times.

6.3.38 **G** At any time after receiving an application and before determining it, the relevant regulator may require the applicant to provide additional information or documents. The circumstances of each application will dictate what additional information or procedures are appropriate.

6.3.38A **G** If the relevant regulator fails to determine an application within the time period specified in section 55V of the *Act*, this does not mean that the application is deemed to be granted.

How will the relevant regulator make the decision?.....

6.3.39 **G** A decision to grant an application will be taken by appropriately experienced staff at the relevant regulator. However, if the staff dealing with the application recommend that a *firm*'s application for variation of *Part 4A permission* be either refused or granted subject to *limitations* or *requirements* or a narrower description of *regulated activities* than applied for, the decision will be subject to the regulator's formal decision making process.

6.3.40 **G** *DEPP* gives guidance on the *FCA*'s decision making procedures including the procedures it will follow if it proposes to refuse an application for variation of *Part 4A permission* or for imposition or variation of a *requirement* either in whole or in part (for example, an application granted by the *FCA* but subject to *limitations* or *requirements* not applied for).

Commencing new regulated activities.....

6.3.41 **G** If the variation of *Part 4A permission* is given, the relevant regulator will expect a *firm* to commence a new *regulated activity* in accordance with its business plan (revised as necessary to take account of changes during the application process) or scheme of operations for an *insurer*. *Firms* should take this into consideration when determining when to make an application to the relevant regulator.

6.3.42 **G** (1) *Firms* should be aware that the *appropriate regulator* may exercise its *own-initiative variation power* to vary or cancel their *Part 4A permission* if they do not (see section 55J of the *Act* (Variation or cancellation on initiative of regulator)):

- (a) commence a *regulated activity* for which they have *Part 4A permission* within a period of at least 12 months from the date of being given; or
- (b) carry on a *regulated activity* for which they have *Part 4A permission* for a period of at least 12 months (irrespective of the date of grant).

(1A) The *appropriate regulator* may exercise its *own-initiative variation power* to cancel an *investment firm's Part 4A permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 55Z(1) of the Act is given (see ■ EG 8).

[Note: article 8(a) of MiFID]

- (2) If the *appropriate regulator* considers that such a variation or cancellation of the *firm's Part 4A permission* is appropriate, it will discuss the proposed action with the *firm* and its reasons for not commencing or carrying on the *regulated activities* concerned.

6.3.43

G When a *firm* commences new *regulated activities* following a variation of a *Part 4A permission*, it should have particular regard to the requirements of *Principle 11* (Relations with regulators) (see ■ SUP 15.3.8 G (1)(c)).