

## Chapter 6

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



6.4 Applications for cancellation of permission

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|--------|---|---|
| 6.4.1  | G | [deleted]   |
| 6.4.1A | G | Under section 55H(3) of the Act (Variation by FCA at request of authorised person), if an <i>FCA-authorised person</i> applies to the FCA, the FCA may cancel its <i>Part 4A permission</i> . Cancellation applies to a <i>firm's</i> entire <i>Part 4A permission</i> , that is to every activity and every <i>specified investment</i> and not to the individual elements such as <i>specified investments</i> . Changes to the individual elements of a <i>permission</i> would require a variation.   |
| 6.4.2  | G | [deleted]   |
| 6.4.2A | G | Under section 55H(4) of the Act, the FCA may refuse an application from a <i>firm</i> to cancel its <i>Part 4A permission</i> if it considers that it is desirable to do so in order to advance any of its operational objectives.  |
| 6.4.3  | G | <p>(1) A <i>firm</i> may apply to the relevant regulator to cancel its <i>Part 4A permission</i> before it has ceased carrying on all <i>regulated activities</i>. However, where a <i>firm</i> makes a formal application for cancellation of its <i>permission</i> when it has not yet ceased carrying on <i>regulated activities</i>, the relevant regulator will expect the <i>firm</i>:</p> <p>(a) to cease those <i>regulated activities</i> within the short term (normally no more than six months from the date of application for cancellation); and</p> <p>(b) to have formal plans to cease its <i>regulated activities</i> in an orderly manner.</p> <p>(2) <i>Firms</i> should note, however, that the relevant regulator will not grant an application for cancellation of <i>Part 4A permission</i> until the <i>firm</i> can demonstrate that it has ceased carrying on all <i>regulated activities</i> (■ SUP 6.4.19 G).</p> <p>(3) The relevant regulator may apply additional procedures or require additional information, as if the <i>firm</i> had entered into a long term wind down of business (see ■ SUP 6 Annex 4), if it considers it appropriate to the circumstances of the <i>firm</i>.</p> |
| 6.4.4  | G | Additional guidance for a <i>firm</i> carrying on <i>insurance business</i> , accepting deposits, operating a <i>dormant asset fund</i> or which holds <i>client money</i> or   |

customer's assets is given in ■ SUP 6 Annex 4. As noted in ■ SUP 6.2.9 G, it will usually be appropriate for a *firm* to apply for variation of its *Part 4A permission* and/or the imposition, variation or cancellation of a *requirement* while winding down (running off) its *regulated activities* and before applying to cancel its *Part 4A permission*.

The application for cancellation of permission

6.4.5

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- (1) Subject to (1A), a *firm* other than a *credit union* wishing to cancel its *Part 4A permission*, must apply online at the *appropriate regulator* website using the form specified on the *online notification and application system*.
- (1A) An *FCA-authorised person* wishing to cancel its *Part 4A permission* which covers only *credit-related regulated activities* must submit any form, notice or application by using the form in ■ SUP 6 Annex 6 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) [deleted]
- (4) Until the application has been determined, a *firm* which submits an application for cancellation of *Part 4A permission* must inform the relevant regulator of any significant change to the information given in the application immediately it becomes aware of the change.
- (5) Where a *firm* is obliged to submit any form, notice or application online under (1), if the *online notification and application system* fails 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 Annex 6D 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).

6.4.5A

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- (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 6.4.5 D (5) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification) should be used.
- (2) Where ■ SUP 6.4.5 D (5) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

6.4.6

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- (1) In addition to applying for cancellation of *Part 4A permission* in accordance with ■ SUP 6.4.5 D, a *firm* may discuss prospective cancellations with its supervisory contact at the *appropriate regulator*. Alternatively a *firm* can contact the Supervision Hub on 0300 500 0597.
- (2) To contact the Cancellations Team:
  - (a) write to: Cancellations Team, The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN; or; or

|        |              |  |
|--------|--------------|--|
|        |              | <p>(b) email <a href="mailto:cancellation.team@fca.org.uk">cancellation.team@fca.org.uk</a></p> <p>(3) If a <i>firm</i> which has applied for cancellation decides to remain authorised it should inform the relevant regulator immediately using one of the methods in ■ <a href="#">SUP 6.4.6 G</a> (2).</p>   |
| 6.4.7  | <div>G</div> | <p>When an application is received, the relevant regulator will send the <i>firm</i> a written acknowledgement. The <i>firm</i> will be required to provide information which, in the opinion of the relevant regulator, is necessary for it to determine whether to grant or refuse the application for cancellation of <i>Part 4A permission</i>.</p>  |
|        |              | <p><b>Information to be supplied to the relevant regulator as part of the application for cancellation of permission</b></p>   |
| 6.4.8  | <div>G</div> | <p>The information which the relevant regulator may request on the circumstances of the application for cancellation and the confirmations which the relevant regulator may require a <i>firm</i> to provide will differ according to the nature of the <i>firm</i> and the activities it has <i>Part 4A permission</i> to carry on.</p>   |
| 6.4.9  | <div>G</div> | <p>A <i>firm</i> will be expected to demonstrate to the relevant regulator that it has ceased carrying on <i>regulated activities</i>. The relevant regulator may require, as part of the application, a report from the <i>firm</i> that includes, but is not limited to, the confirmations referred to in ■ <a href="#">SUP 6.4.12 G</a> (as appropriate to the <i>firm's</i> business). The relevant regulator may also require additional information to be submitted with the report including, in some cases, confirmation or verification from a professional adviser on certain matters to supplement the report (see ■ <a href="#">SUP 6.4.15 G</a>).</p>   |
| 6.4.10 | <div>G</div> | <p>(1) If a <i>firm</i> is subject to the complaints rules in <i>DISP</i>, the <i>FCA</i> may request confirmation from the <i>firm</i> that there are no unresolved, unsatisfied or undischarged complaints against the <i>firm</i> from a <i>customer</i> of the <i>firm</i>.</p> <p>(2) If there are unresolved or undischarged complaints against a <i>firm</i> from a <i>customer</i> of the <i>firm</i>, the <i>FCA</i> may request confirmation, as appropriate, of the steps (if any) which have been taken under the <i>firm's</i> complaints procedures and the amount of compensation claimed. The <i>FCA</i> may also request an explanation of the arrangements made for the future consideration of such complaints.</p> |
| 6.4.11 | <div>G</div> | <p>If the <i>firm</i> is carrying on <i>designated investment business</i> with <i>retail clients</i>, the <i>FCA</i> may request confirmation that the <i>firm</i> has written, or intends to write, to all <i>retail clients</i> with, or for whom, the <i>firm</i> has conducted <i>regulated activities</i> within a certain period.</p>   |
|        |              | <p><b>Confirmations and resolutions</b></p>  |
| 6.4.12 | <div>G</div> | <p>The relevant regulator will usually require the report in ■ <a href="#">SUP 6.4.9 G</a> to be signed by a <i>director</i> or other officer with authority to bind the <i>firm</i>. It may include confirmations from the <i>firm</i> that, in relation to business carried on under its <i>Part 4A permission</i>, it has:</p>  |

- (1) ceased carrying on all *regulated activities*;
- (2) properly disbursed funds in its *client bank accounts* and closed those accounts;
- (3) discharged all insurance or *deposit* liabilities; and
- (4) properly transferred all *investments*, title documents and other property that it held on behalf of *clients*.

6.4.13 G The relevant regulator may also require a resolution from the *firm's governing body*, for example to support the application for cancellation of *permission*, expressed to be irrevocable, and to give the signatory the authority to sign the formal report to the relevant regulator.

6.4.14 G Under section 398 of the Act (Misleading the FCA or PRA: residual cases), it is an offence, in purported compliance with a requirement imposed by or under the Act (including the directions in ■ SUP 6.4.5 D), for a *person* to knowingly or recklessly give the regulator information that is false or misleading. If necessary, a *firm* should take appropriate professional advice when supplying information required by the regulator(s). An *insurer*, for example, may ask an *actuary* to check assumptions in respect of future *claims* made under *contracts of insurance*.

Reports from professionals

6.4.15 G The relevant regulator may require additional information, including professional advice, to supplement or support the report in ■ SUP 6.4.9 G where it considers this appropriate. Examples of reports that may be requested by the relevant regulator include, but are not limited to those detailed in ■ SUP 6.4.16 G.

6.4.16 G Types of reports. See ■ SUP 6.4.15 G

| Category of firm              | Type of report  |
|-------------------------------|---|
| a bank or building society    | <ul style="list-style-type: none"><li>• an audited balance sheet which confirms that, in the auditor's opinion, the <i>firm</i> has no remaining <i>deposit</i> liabilities to <i>customers</i>;</li><li>• a report from auditors or <i>reporting accountants</i>;</li></ul>  |
| a securities and futures firm | <ul style="list-style-type: none"><li>• a report from auditors or <i>reporting accountants</i></li></ul>  |
| an insurer                    | <ul style="list-style-type: none"><li>• an audited closing balance sheet which demonstrates that the <i>firm</i> has no insurance liabilities to <i>policyholders</i>;</li><li>• a report from the auditors or <i>reporting accountants</i>; and</li><li>• in some cases, an actuarial opinion as to the likelihood of any remaining liabilities to <i>policyholders</i>.</li></ul> |

**6.4.17** G If a *firm* is transferring its business, the relevant regulator may require a professional opinion in respect of certain aspects of the transfer. For example, the relevant regulator may require a legal opinion on the validity of arrangements to transfer *regulated activities*, *client money*, *client deposits*, *custody assets* or any other property belonging to *clients*, to another *authorised person*. Alternatively, an auditor or *reporting accountant* may be requested to verify that a transfer has been properly accounted for in the *firm's* books and records. Transfers of insurance and banking business are subject to statutory requirements (see ■ SUP 18).

### Approved persons

**6.4.18** G (1) A *firm* which is applying for cancellation of *Part 4A permission* and which is not otherwise *authorised* by, or under, the *Act* should, at the same time:

(a) comply with:

(i) ■ SUP 10A.14.8R (for a *firm* that has *appointed representatives*);

(ii) ■ SUP 10C.14.5R (for an *SMCR firm*); or

(iii) the corresponding *PRA* requirements; and

(b) notify the the *FCA* or *PRA* of persons ceasing to perform *controlled functions* specified by that regulator.

These forms should give the effective date of withdrawal, if known (see ■ SUP 10A and ■ SUP 10C (*FCA's* regimes for approved persons)).

### When will the relevant regulator grant an application for cancellation of permission?

**6.4.19** G The relevant regulator will usually not cancel a *firm's Part 4A permission* until the *firm* can demonstrate that, in relation to business carried on under that permission, it has, as appropriate:

- (1) ceased carrying on *regulated activities* or fully run off or transferred all insurance liabilities;
- (2) repaid all *client money* and client deposits;
- (3) discharged *custody assets* and any other property belonging to *clients*; and
- (4) discharged, satisfied or resolved complaints against the *firm*.

**6.4.20** G If it is not possible for a *firm* to demonstrate a relevant matter referred to in ■ SUP 6.4.19 G, for example, depositors are uncontactable, the *firm* will be expected to have satisfied the relevant regulator that it has made adequate provisions for discharging any liabilities to *clients* which do not involve the *firm* carrying on *regulated activities*.

**6.4.21** G Before the relevant regulator cancels a *firm's Part 4A permission*, the *firm* will be expected to be able to demonstrate that it has ceased or transferred all *regulated activities* under that *permission*. For example, the *firm* may be

asked to provide evidence that a transfer of business (including, where relevant, any *client money*, *customer assets* or *deposits* or insurance liabilities) is complete. As noted in ■ SUP 6.4.9 G, the relevant regulator may require the *firm* to confirm this by providing a report, in a form specified by the relevant regulator:

- (1) as part of the application for cancellation of *permission*, if the *firm* has ceased carrying on all *regulated activities* under its *Part 4A permission* at the time of application (see ■ SUP 6.4.9 G); or
- (2) after the application but before its determination, if the *firm* has not ceased carrying on *regulated activities* under its *Part 4A permission* at the time of application.

### 6.4.22

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In deciding whether to cancel a *firm's Part 4A permission*, the relevant regulator will take into account all relevant factors in relation to business carried on under that *permission*, including whether:

- (1) there are unresolved, unsatisfied or undischarged complaints against the *firm* from any of its *customers*;
- (2) the *firm* has complied with ■ CASS 5.5.80 R and CASS 7.11.34R (Client money: discharge of fiduciary duty) and ■ CASS 7.11.50 R (Client money: allocated but unclaimed client money) if it has ceased to hold *client money*; these *rules* apply to both repayment and transfer to a third party;
- (3) the *firm* has ceased to hold or control *custody assets* in accordance with instructions received from *clients* and ■ COBS 6.1.7 R or article 49 of the *MiFID Org Regulation* (see ■ COBS 6.1ZA.9EU) (Information concerning safeguarding of designated investments belonging to clients and client money);
- (4) the *firm* has repaid all *client deposits*, if it is ceasing to carry on *regulated activities* including *accepting deposits*;
- (5) the relevant regulator or another regulator has commenced an investigation against the *firm* or continuing enforcement action against the *firm*;
- (6) there are any matters affecting the *firm* which should be investigated before a decision on whether the *firm* should have its *Part 4A permission* cancelled by the relevant regulator or be disciplined;
- (7) the *firm* has unsettled or unexpired liabilities to *consumers*, for example, outstanding contracts (such as *deposits* or insurance liabilities);
- (8) the *firm* has settled all its debts to the *appropriate regulator*; and
- (9) the factors set out in ■ SUP 6.4.19 G apply.



## The FCA and the PRA enforcement and investigation powers against a former authorised person

**6.4.23** **G** If an application for cancellation of a *firm's Part 4A permission* has been granted and a *firm's status as an authorised person* has been withdrawn (see ■ SUP 6.5) it will remain subject to certain investigative and enforcement powers as a former *authorised person*. These include:

- (1) information gathering and investigation powers in Part XI of the *Act* (Investigation gathering and investigations) (see ■ EG 3 (Use of information gathering and investigation powers));
- (2) powers to apply to court for *injunctions* and restitution orders in Part XXV of the *Act* (Injunctions and restitution) (see ■ EG 10 (Injunctions) and ■ EG 11 (Restitution and redress));
- (3) powers in Part XXIV of the *Act* (Insolvency) to petition for administration orders or winding up orders against *companies* or insolvent *partnerships*, or bankruptcy orders (or in Scotland sequestration awards) against individuals (see ■ EG 13 (Insolvency));
- (4) powers in Part XXVII of the *Act* (Offences) to prosecute offences under the *Act* and other specified provisions (see ■ EG 12 (Prosecution of criminal offences)).

**6.4.24** **G** However, the following powers may not be used against former *authorised persons*:

- (1) powers to take disciplinary action against *firms* by publishing statements of misconduct under section 205 of the *Act* (Public censure) or imposing financial penalties under section 206(1) of the *Act* (Financial penalties); and
- (2) the power to require *firms* to make restitution under section 384 of the *Act* (Power of FCA or PRA to require restitution).

**6.4.25** **G** Consequently, the relevant regulator considers that it will have good reason not to grant a *firm's* application for cancellation of *permission* where:

- (1) the *FCA* and/or the *PRA* proposes to exercise any of the powers described in ■ SUP 6.4.24 G; or
- (2) the *FCA* and/or the *PRA* has already begun disciplinary and/or restitution proceedings against the *firm* by exercising either or both of these powers against the *firm*.

**6.4.26** **G** The *FCA's* use of those powers is outlined in ■ DEPP 6 (Penalties).

## How long will an application take?

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



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|         |   | <div><div>(2) If the relevant regulator receives an application which is incomplete, that is, where information or a <i>document</i> required as part of the application is not provided, section 55V(2) of the <i>Act</i> requires the relevant regulator to determine the incomplete application within 12 months of the initial receipt of the application.</div><div>(3) Within these time limits, however, the length of the process will relate directly to the complexity of cancellation requested and whether the <i>firm</i> has fully wound down (run off) its activities at the time it applies.</div></div> |
| 6.4.27A | G | The <i>FCA</i> publishes standard response times on its website setting out how long the application process is expected to take in practice. From time to time, the <i>FCA</i> also publishes its performance against these times.  |
|         |   | <b>How will the relevant regulator make the decision?</b>  |
| 6.4.28  | G | A decision to grant an application for cancellation of <i>permission</i> will be taken by appropriately experienced staff at the relevant regulator. Where, however, the staff dealing with the application recommend that a <i>firm's</i> application for cancellation of <i>Part 4A permission</i> be refused, the decision will be subject to the regulator's formal decision making process.   |
| 6.4.29  | G | See <i>DEPP</i> for <i>guidance</i> on the <i>FCA's</i> decision making procedures, including the procedures it will follow if it proposes to refuse an application for cancellation of <i>Part 4A permission</i> .  |