FINANCIAL CONDUCT AUTHORITY

New cancellation and variation power: Changes to the Handbook and Enforcement Guide

Policy Statement
PS22/5

May 2022

This relates to

Consultation Paper 21/28
which is available on our website at
www.fca.org.uk/publications

Email:
cp21-28@fca.org.uk

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1 Summary

1.1 To reduce risks of harm to consumers, only firms that carry on one or more FCA-regulated activities should generally remain FCA-authorised and appear as so authorised on our public Financial Services Register (Register).

1.2 This accuracy is important. Otherwise consumers are more likely to believe that products and services firms offer are regulated by us when they are not. They are also at risk of being defrauded by criminals impersonating or cloning authorised firms that no longer conduct FCA-regulated activities.

1.3 FCA-authorised firms that do not carry on any such activities for prolonged periods may also be unable to maintain the level of necessary relevant experience on the part of their staff or the systems and controls we expect of them and thereby, when they do then carry on such activities, put consumers at risk.

1.4 FCA-authorised firms that no longer intend to carry on any such activities can and should apply to us to have their statutory permissions to do so cancelled. When they do so and we agree to cancel, we update the Register to show that they are no longer authorised. Unfortunately, many firms do not do this.

1.5 The Financial Services Act 2021 (FS Act) gave us an additional power to cancel or vary, without such application, the permissions to carry on such activities of firms authorised or, as explained below, deemed to be authorised by us under Part 4A of the Financial Services and Markets Act 2000 (FSMA).

1.6 We consulted on initial changes to our Handbook relating to that new power in our Consultation Paper 21/16 (CP21/16). We publicly confirmed making that first set of changes in our Handbook Notice 90 in July 2021. In September 2021 we consulted, in our Consultation Paper 21/28 (CP21/28), on further such changes, as well as on associated changes to our Enforcement Guide (EG).

1.7 We have now made the changes we consulted on in CP21/28, with some minor modifications, and are publishing them in Appendix 1 to this Policy Statement (PS), which also explains those modifications and sets out our responses to relevant feedback we received to CP21/28.

1.8 The new power allows us to cancel or vary firms' permissions, without their consent, when it appears to us that they are carrying on no FCA-regulated activities within the scope of those permissions and when certain additional conditions, described below, are met.

1.9 As explained in CP21/28, the changes we have made to the Handbook and EG describe the new power to vary or cancel, give guidance as to when and how we may use it and associated powers also granted to us by the FS Act and introduce, for the benefit of relevant firms, a single new rule.

Who this affects

1.10 The Handbook and EG changes we have made apply only to firms authorised or deemed, under the temporary permissions or supervised run-off regimes, to be authorised by the FCA under Part 4A of FSMA. This is because the new power only applies to such firms.

1.11 The changes will not therefore apply to firms authorised by the Prudential Regulation Authority rather than by the FCA. The changes will also not apply to firms authorised by the FCA otherwise than under Part 4A, for example as payment service providers or electronic money issuers.

1.12 The changes may affect individuals who hold approved functions at Part 4A FCA-authorised firms and be of interest to professional advisers to such firms and to consumers, whether wholesale or retail.

1.13 Some of our responses below to feedback to CP21/28 may also be of interest to those that use or do business with FCA-authorised firms that are debt collectors, credit brokers, buy-to-let mortgage brokers or corporate finance advisers or to those that are appointed representatives (ARs) of FCA-authorised firms.

The wider context of this policy statement

Background to our consultation

1.14 The new power granted to us by the FS Act allows us to:

- vary or cancel the statutory permissions to conduct FCA-regulated activities of firms we have authorised under Part 4A of FSMA, as well as the permissions of firms deemed to be so authorised, when those firms:
  - appear to us to be carrying on no FCA-regulated activities for which they have permission, and
  - have not responded as we have invited in our notices warning of the risk of such action, and
- reflect such variations and cancellations on the Register.

1.15 The new power is set out in Schedule 6A to FSMA, which also provides for a streamlined procedure for us to follow when using the power and gives us the ability to retrospectively reverse our decisions to use it, if firms apply for such reversal and it is just and reasonable that we should do so. This reversal is described as annulment in Schedule 6A and this PS.

1.16 As we stated in CP21/16 and CP21/28, we intend to use the new power, when the conditions set by Schedule 6A and described above are satisfied, in the 'use it or lose it' exercise we have for some time been undertaking in response to the report by Dame Elizabeth Gloster into our regulation of London Capital & Finance plc.

1.17 We are already, in the course of that exercise and using a pre-existing power under section 55J of FSMA, described in more detail below, cancelling the permissions of

FCA-authorised firms that have not used those permissions for 12 months or more. Under the new power, we no longer have to wait 12 months.

1.18 We may additionally use the new power otherwise than in the course of that exercise, including, as we stated in CP21/28, while investigating or taking disciplinary action against firms and others or otherwise in an enforcement context.

How it links to our objectives

1.19 We intend to use the new power to reduce particular risks of consumer harm, described above and further in our responses to feedback below. We will therefore do so, in the manner described in the Handbook and EG guidance we have now made, in support of our statutory consumer protection objective.

1.20 Our use of the new power will also advance our statutory competition objective by reducing the risk that consumers are led to believe that we regulate the unregulated activities of FCA-authorised firms. Consumers will have more accurate information in that regard and will be better able to make informed choices.

What we are changing

1.21 Our changes to the Handbook and EG:

- describe the new Schedule 6A power to cancel or vary as well as the process that Schedule 6A requires us to follow when we use it, and
- give guidance on our approach to doing so, in particular the circumstances in which we may consider that a firm is not carrying on any FCA-regulated activities.

1.22 We additionally signpost in the guidance our potential use of the power in an enforcement context. This may be, without restriction, during or when considering an investigation or disciplinary proceedings.

1.23 We note in the new guidance that we can use the new power with immediate effect, although only after sending the relevant firm notices warning of the possibility of variation or cancellation and considering its responses to those notices.

1.24 We also describe factors we will or may take into account when considering an application for annulment, as well as conditions we can impose on annulment and the additional power we have under Schedule 6A to forbear in relation to obligations arising as a result of annulment.

1.25 In our changes to our Compensation sourcebook (COMP) and Dispute resolution: Complaints sourcebook (DISP), both in our Handbook, we additionally give guidance on the potential effect of an annulment on the ability of the Financial Services Compensation Scheme (FSCS) to consider paying compensation and the ability of the Financial Ombudsman Service (Ombudsman Service) to consider complaints.

1.26 Beyond that guidance in the Handbook and EG, we have also introduced a new rule in DISP to delay, in certain circumstances and in the interests of firms whose applications to annul are successful, the deadline for submitting their complaints returns following annulment.

Outcome we are seeking

1.27 Our new guidance seeks to assist firms by providing information as to when and how we may use the new power to cancel or vary, as well as the associated annulment and forbearance powers also provided by Schedule 6A and described above, consistent with the level of information we provide in the Handbook and EG about our use of similar FCA powers.

1.28 We intend to use the new power to reduce particular risks of consumer harm, described above and in more detail in our responses to feedback below, by more quickly varying or cancelling, when appropriate, the permissions of FCA-authorised firms that appear no longer to be carrying on FCA-regulated activities.

Measuring success

1.29 The amendments to the Handbook and EG we have now made will be successful if, as they are intended to, they help firms understand why and how we may use the new power to vary or cancel and the other powers described above that we also now have under Schedule 6A and what their rights and choices are if we do so.

1.30 We intend to make those points additionally clear to relevant firms via the notices or other documents we will give them when we use those powers or inform them that we may do so.

1.31 We have a discretion whether to use the power to cancel or vary in relation to firms not carrying on FCA-regulated activities within the scope of their permissions. We address that discretion further in our responses below to the feedback we received to CP21/28.

1.32 Given that discretion, it would be inappropriate for us to set targets for the number of firms in relation to which we will use the power. We can nevertheless say that we expect to reduce the number of FCA-authorised firms not carrying on any FCA-regulated activity. That may be via use of the new power or because such firms are prompted, if they have not already been, by our publicity relating to the new power to apply for cancellation of their permissions or to commence or recommence such activity.

Summary of feedback and our responses

1.33 We received 12 substantive responses to CP21/28. Several respondents expressed their support for the new power and our proposed use of it to reduce risks of harm to consumers. Annex 1 to this PS lists those respondents who did not request relevant confidentiality.

1.34 In summary, respondents made relevant points in relation to the following matters and our responses, which should be read in full in Chapter 2 below, are as follows:

- Our use of the new power to cancel or vary the permissions of firms that carry on one or more of the regulated activities within the scope of those permissions. Our response is that we cannot so use the power.

- Firms that carry on a regulated activity without being paid to do so. Our response is that we recognise that, in certain circumstances, a firm can be treated as carrying on a regulated activity without being paid to do so.
- Firms with no retail but only wholesale clients. Our response is that we can and will use the new power in relation to such firms.
- How we will exercise our discretion whether to use the power in relation to firms carrying on no regulated activity within the scope of their permissions. In particular:
  - How recently a firm needs to have carried on such an activity to avoid being subject to the power.
  - Whether we will take into account:
    - a firm's intention to carry on such an activity in future
    - a firm's reasons for not carrying on such an activity, for example market conditions, and
    - that a firm may intend to carry on such an activity by offering an innovative product or service but may first need to spend time on its development.

  Our responses are:
  - We cannot fetter that discretion by stating that we will not use the power in particular circumstances.
  - We can use the power whenever a firm is not carrying on any regulated activities within the scope of its permission. That does not mean that we will always do so.
  - We will exercise the discretion proportionately, having regard to all relevant facts and circumstances and the risks our statutory objectives are intended to minimise, in particular the risks of consumer harm caused by firms' unregulated activities.
  - Among other factors, we will have regard to a firm's evidenced intention, ability and concrete plans to commence or recommence regulated activity in the near future and the genuinely beneficial value of any innovative product or service it seeks to offer in carrying on such activity.

- Firms' current or potential clients or counterparties may require them to be FCA-authorised before they will do unregulated business with them. Our response is that we will not take such requirements into account when considering the exercise of the discretion referred to above. We will not, however, depending on other factors, prioritise use of the power in relation to such firms for a period of 3 months from publication of this PS.
- Whether regulated activity by an AR can be treated as regulated activity by its relevant authorised principal firm for the purposes of Schedule 6A. Our response is that it can.
- The relevance of firms' willingness and ability to deal with complaints in accordance with DISP to our decisions whether to annul and impose conditions on annulment. Our response is that we may decline to annul or may impose conditions on annulment in light of concerns about that willingness or ability.
- Our use of the power under Schedule 6A to withdraw or vary our approvals of individuals on annulment as a disciplinary measure. Our response is that we cannot use it as such a measure.
- Our use of the power under Schedule 6A to impose conditions on annulment to require firms to certify particular employees. Our response is that we cannot use the power for that purpose.

- The obligations in respect of which we may use the forbearance power under Schedule 6A, in particular those in Chapter 16 of our Supervision manual (SUP 16). Our response is that there is a wide range of obligations in respect of which we may use the power, including those in SUP 16.
- The provision of reasons for our decisions to use the power to vary or cancel in the notices we give under paragraph 2 of Schedule 6A and the timing of those notices. Our responses are that those notices are given before any such decision is made, that we will comply with paragraph 2 as to the timing of those notices and that firms can request extensions to respond to those notices.
- The speed and fairness of the process by which we will take decisions whether to cancel or vary, our associated willingness to take risks, the identity of our relevant decision-makers and firms' rights of appeal against those decisions. Our responses are:
  - We will use the new power to vary or cancel proportionately, having regard to the relevant facts, circumstances and risks but taking advantage of the streamlined relevant process provided by Schedule 6A.
  - That process does not include such a right of appeal but allows us to annul those decisions and provides a right of appeal in relation to annulment.
  - Those decisions will be taken by appropriately senior, experienced and supervised staff.
- The potentially immediate effect of our decisions to cancel or vary and the possibilities that firms can apply for annulment before those decisions come into effect and that the effect of annulment can be delayed at the relevant firm's request. Our responses are:
  - Those decisions may have immediate effect.
  - If they do not, firms can apply for annulment before they come into effect.
  - Firms can ask that the effect of annulment should be delayed.
- Whether firms should update the Register to reflect our decisions to cancel or vary under Schedule 6A and potential misunderstanding of those decisions on the Register. Our responses are that the FCA rather than relevant firms will update the Register to reflect those decisions and that the Register will not indicate that the cancellation or variation was for a reason other than absence of regulated activity.
- Individual accountability, including for not informing the FCA of absence of regulated activity. Our response is that Schedule 6A gives us no power to take disciplinary action but that, if we suspect serious misconduct by individuals associated with failures on the part of their firms, we will investigate it and take appropriate disciplinary or other action if it is established.
- The new rule in DISP giving firms 30 business days from annulment to submit complaints returns outstanding as a result of annulment. Our response is that we will consider requests from firms for additional time beyond those 30 business days.

1.35 We set out respondents' relevant points in full and respond to them in Chapter 2 below. We have made one minor change to SUP 7.2.2DG, since consulting on it. This change makes clearer that, as we stated in CP21/28, we will consider all relevant facts and circumstances when deciding whether to use the new power. We have otherwise made some non-substantive conforming and grammatical changes to the Handbook and EG text we consulted on. Our final amendments to the Handbook and EG are set out in Appendix 1 to this PS.

Equality and diversity considerations

1.36 We stated in CP21/28 that we did not consider that the changes to the Handbook and EG we were consulting on materially affected any of the groups with protected characteristics under the Equality Act 2010. That remains our view, taking into consideration the minor amendments to those changes referred to above. Nor did any respondents to CP21/28 suggest otherwise.

Next steps

What you need to do next

1.37 If you are an FCA-authorised firm that is not carrying on any FCA-regulated activity, please consider, having regard to our responses to feedback below, asking us to cancel your permission, further to which we will record you as no longer authorised on the Register. Guidance as to how to make such a request is linked here.

1.38 Similarly, FCA-authorised firms that no longer carry on particular regulated activities within the scope of their permissions should consider asking us to remove those activities from their permissions. Guidance as to how to make such a request is linked here.

1.39 We also remind FCA-authorised firms that, as we explain in our new Handbook guidance, Schedule 6A to FSMA states that we may form the view that they are carrying on no regulated activity if they breach any Handbook requirement to pay a periodic fee or levy or to provide us with information. We may, on the basis of such a breach, begin the process potentially leading, within as little as 28 days, to cancellation or variation of their permissions.

What we will do next

1.40 We will start using the new power, to which this PS and the Handbook and EG amendments we have now made primarily relate, to cancel or vary the permissions of FCA-authorised firms.

2 Feedback to our consultation and our responses

Introduction

2.1 In the sections below, we set out the relevant feedback we received to the proposals we made in CP21/28 to amend our Handbook and EG. Subject to one slight clarificatory change described above and to other non-substantive changes, we have now made those amendments and they are set out in Appendix 1 to this PS. We also set out below our responses to that feedback.

2.2 Those firms, trade associations and other interested parties that provided feedback focused on actual and potential relevant situations in which firms or their senior managers find or might find themselves. Those respondents sought to influence or understand further the approaches we will take in considering whether to use the new power to vary or cancel and whether to take other steps under Schedule 6A.

2.3 We set out that feedback and our responses below by issue raised. Some of the feedback we received was not relevant in that it did not relate to our use of that power, nor to the other features of Schedule 6A. We do not generally set out and respond to that non-relevant feedback below and, where we do, we do not generally respond to it fully, although we will consider it separately.

Our guidance on our approaches to using the new power to vary or cancel, annulment and forbearance

Firms' continued regulated activity

2.4 Several respondents raised questions about our potential removal of one or more regulated activities from a firm's permission, on our own initiative rather than at the request of the firm, where:

- it appears to us that that activity or those activities is or are not being carried on by the firm, but
- we are satisfied that the firm continues to carry on one or more other regulated activities to which its permission relates.

2.5 One respondent asked that we take into account, when considering whether to use the new power to cancel or vary, that a firm may carry on a regulated activity without being paid to do so and therefore without reporting income from that activity to the FCA.

Our response

The new power in Schedule 6A to cancel or vary firm permissions is available to the FCA only when it appears to us that a firm is carrying on none of the regulated activities within the scope of its permission.

If, therefore, a firm has several regulated activities specified in its permission and is carrying on one of them, the FCA cannot use the new power in relation to that firm, even if it is carrying on none of the others.

As we pointed out in CP21/28, since 2001 the FCA has had a separate power, already referred to above and currently provided by section 55J of FSMA, to vary or cancel the permissions of firms authorised under Part 4A of FSMA.

The detail of the section 55J power is beyond the scope of this PS but it allows the FCA to remove an individual regulated activity from a firm's permission. We may so vary a firm's permission if it has not carried on that activity for 12 months (or 6 months in the case of mortgage intermediaries and certain mortgage-related activities).

Guidance on the section 55J power is already set out in our Handbook and EG. It also allows the FCA to cancel, rather than merely vary, the permissions of certain types of firm if they have not carried on particular regulated activities within the scope of those permissions for 6 months, even if they have carried on others in that period.

Given that this PS relates only to Schedule 6A, the feedback provided by respondents to CP21/28 about the possibility that we might cancel or vary other than under Schedule 6A is not addressed further in this PS. We will consider it separately.

However, we remind firms that in January 2021, in the context of our 'use it or lose it' exercise referred to above and as described in CP21/28, we publicly requested them, as we have again above, to review their permissions and ask us to remove from them any regulated activities they no longer need.

A firm may, in certain circumstances, be treated as carrying on a regulated activity without being paid to do so. Such a firm, if it receives a notice from us under paragraph 2 of Schedule 6A, warning of the risk of variation or cancellation, can respond by providing us with satisfactory evidence of that ongoing regulated activity.

Firms with no retail clients

2.6 One respondent asked whether the new power to cancel or vary applies to firms with no retail clients, given our references in CP21/28 to our intended use of that power to reduce particular risks of consumer harm.

Our response

We intend to use the new power in relation to both retail and wholesale firms.

We stated in CP21/28 that we intend to use the new power to reduce particular risks of consumer harm, in support of our statutory consumer protection objective, set out in section 1C of FSMA.

The definition, specified by section 1G of FSMA, of 'consumer', for the purposes of that objective, is not, however, restricted to individuals, let alone to individuals who might be characterised as retail clients because they are acting outside the scope of their trade, business or profession. Further, that definition encompasses potential clients and current and potential investors.

Wholesale current and potential clients and investors, including corporates, of whatever size, are therefore as much consumers for the purposes of that objective as individuals. They too can be misled, whether deliberately or otherwise, to over-rely on firms' authorised status, including to believe that the FCA supervises authorised firms' unregulated activities. Even if not so misled, they can be harmed if prolonged absence of regulated activity on the part of relevant authorised firms undermines those firms' staff experience or systems and controls relating to that activity.

We therefore intend to use the new power to protect wholesale consumers, while recognising, as does section 1C, that it is current and potential retail clients and investors who are most at risk in this regard and therefore focusing our relevant efforts on them.

Our discretion whether to use the new power

2.7 One respondent asked us to specify for how long a firm can carry on no regulated activity within the scope of its permission before being subject to the Schedule 6A power to vary or cancel that permission.

2.8 Other respondents variously requested or suggested that, when deciding whether to use that power in relation to a firm that is not carrying on any such activity, we consider:

- whether the firm intends to use its permission by carrying on such an activity at some point in the future
- the firm's reasons for not carrying on any such activity, potential reasons given being:
  - market conditions
  - the need to prioritise the firm's unregulated activity in the face of resource challenges
  - clients taking their relevant business elsewhere, or
  - clients temporarily, albeit potentially for some time, not instructing the firm to carry on any such activity

- whether the firm is seeking to carry on such an activity by offering an innovative product or service but must, before it can do so, design, develop and find a market for that product or service, which preliminary steps may take time and could not be started before the firm was authorised, and/or
- whether the firm has only recently been authorised and should be given time to begin such activity.

Our response

The conditions required by Schedule 6A to be met before we can use the power can be met however recently the relevant firm last carried on any FCA-regulated activity or however recently it was authorised by the FCA without since carrying on any such activity. That does not mean, however, that we intend to use the power whenever those conditions are met.

We have a discretion whether to use the power, even when those conditions are met. Our general approach to exercising that discretion will, as is required by section 1B of FSMA, include considering the proportionate use of the power to advance our statutory objectives of securing an appropriate degree of protection for consumers, enhancing the integrity of the UK financial system and promoting effective competition in consumers' interests.

As already noted above, we identified, after publishing CP21/28, that the Handbook guidance we consulted on in CP21/28, specifically SUP 7.2.2DG, required slight amendment to make clear that we will consider all relevant facts and circumstances, including any responses from the relevant firm to our notices given under paragraph 2 of Schedule 6A, before deciding whether to use the power. That amendment has been made in the final version of that guidance appended to this PS.

We cannot, however, fetter our discretion referred to above by specifying situations in which we will not use the power in relation to firms not carrying on any FCA-regulated activity.

When deciding whether to give those notices and when considering responses to them from such firms, our general approach will include taking proportionate account of the risks arising that our statutory objectives are intended to minimise. As we made clear in CP21/28, we will take particular note of any risk of consumer harm, especially from any unregulated activity carried on by such a firm.

In assessing those risks, we will consider, among other factors, what type of firm it is, what sector it operates in, for how long it has not carried on any regulated activity, its compliance history and the nature of its unregulated activity, about which we may, when giving those notices, require full disclosure from the firm.

That compliance history will encompass any failings, including as described in paragraph 1(3) of Schedule 6A and SUP 7.2.2AG (1), that led us to consider that the firm was not carrying on any regulated activity.

We will, however, when giving our notices under paragraph 2, invite the firm to inform us of any facts and matters it considers relevant to our discretion. We will, in particular, invite it to provide us with persuasive evidence of its intention, ability and concrete plans to carry on, compliantly and in the near future, any of the FCA-regulated activities for which it has permission. We will also invite it to provide evidence of the genuinely innovative value of any of the products or services it seeks to offer in carrying on any of those activities.

The FCA's public and concrete support of innovation by authorised firms is long-standing, in particular but not only via our ground-breaking Regulatory Sandbox. We recognise that firms that seek to develop innovative financial products or services, intended and genuinely likely to be of direct or indirect benefit to consumers, may be unable to raise the funding and/or recruit the staff needed for that development until they are authorised by us.

We also recognise that that development may take some time. In the meantime, such firms may give us no cause for concern, having regard, without restriction, to their unregulated activities, if any, and their compliance with the applicable requirements of the regulatory system.

As noted above, we cannot fetter our discretion by stating that we will not use the Schedule 6A power in particular circumstances in relation to firms carrying on no FCA-regulated activity. We will, however, having regard to our statutory objective to promote effective competition in the interests of consumers, take account of our existing awareness of firms seeking to develop such products or services when deciding whether to give notices under paragraph 2 of Schedule 6A.

If we do give such firms such notices, we will, when considering whether to use the power in relation to them, balance the degree of likely consumer benefit resulting from their innovation against the countervailing factors described above. In addition to the relevant evidence such firms may provide at our invitation, as described above, we will expect them to supply prompt and complete additional relevant evidence on request, including as to that degree of benefit.

We do not consider the other factors put forward by respondents and described above to be relevant to our discretion. We recognise that an authorised firm that, for example, is unable to carry on any FCA-regulated activity due to market conditions may be blameless. We consider, however, given the relevant risks, that firms should generally not remain FCA-authorised unless they need to be to carry on such an activity, currently or in the near future. Such a firm can always, if market conditions change, apply for reauthorisation.

A firm that is currently unable to carry on such an activity for reasons beyond its control but has done so relatively recently and compliantly and about which we have no other cause for concern need not expect to receive a notice from us under paragraph 2, especially if we consider its type and sector low risk.

A firm, however, carrying on no regulated activity and which receives such a notice from us, if it is not seeking to develop an innovative product or service and cannot provide sufficient evidence of its intention, ability and concrete plans described above, will need to inform us in response of other facts and matters sufficient to persuade us that we should not use the power in relation to it.

We cannot predict all the potential circumstances of individual firms and do not rule out the possibility that we will be so persuaded. Even if, however, the firm carries on no unregulated activity and has a spotless compliance history, one concern, as indicated above and without restriction, we will have will be as to its ability to maintain, while having carried and/or carrying on no regulated activity for a potentially prolonged period, the level of necessary relevant experience on the part of its staff, as well as the systems and controls we expect, relevant to all the regulated activities for which it has permission.

The most appropriate way forward in such a situation may be that the firm should apply for reauthorisation once it is in a position to commence or recommence FCA-regulated activity.

This response to the feedback set out above is subject to the responses we give below in relation to the commercial requirements imposed on firms in certain sectors to be FCA-authorised and in relation to ARs.

Client and counterparty requirements to be authorised

2.9 One respondent raised a point in relation to small FCA-authorised firms that specialise in corporate finance. Some work in this field involves FCA-regulated activity but other such work, possibly the greater proportion for most such firms, does not.

2.10 That respondent described such firms being willing and able to carry on regulated activities within the scope of their permissions and:

- being retained by clients for lengthy projects, potentially to carry on both regulated and unregulated activities, on condition that they remain authorised, but
- being instructed under those retainers to carry on only or almost only unregulated activities
- having occasional shorter-term instructions from other clients to carry on regulated activities, but leaving lengthy periods in which the firms' only activities are unregulated, and
- losing those long-term retainers, potentially while they are ongoing, and the chance of future instructions of either type, from existing and other clients, if subject to cancellation under Schedule 6A in light of that temporary, albeit potentially prolonged, absence of regulated work.

2.11 That respondent asserted that, if many such firms have their permissions cancelled for that reason, there will be a potentially significant impact on the ability of relevant UK corporate clients to efficiently raise finance and thereby grow and invest in the UK economy.

2.12 Other respondents raised a similar point in relation to debt collection and credit broking, which can both be regulated activities in certain circumstances:

- It is common for significant creditors and lenders to require debt collecting and credit broking firms to be FCA-authorised before the former will use the latter or, as regards credit broking, consider clients of the latter as potential borrowers.
- These FCA-authorisation requirements can apply even though the creditors and lenders in question know in advance that little or none of the authorised firms' relevant work will involve regulated activity.

2.13 Those respondents expressed the following concerns:

- Many FCA-authorised firms that work in these sectors depend on such creditors or lenders but are, in light of that level of regulated activity, at risk of being subject to cancellation under Schedule 6A and thereby losing their access to that unregulated work.
- Such cancellations will lead to significant disruption and reduction of competition in the relevant markets, including potentially those for the regulated work in question.

2.14 We have also become aware, since publishing CP21/28 but other than from a response to it, that requirements to be FCA-authorised, to access unregulated work, are also commercially imposed by at least some lenders on buy-to-let mortgage brokers, whose work can also involve regulated activity in certain circumstances.

Our response

As explained above, we do not generally consider that firms should remain authorised by the FCA unless they need to be to carry on an FCA-regulated activity currently or in the near future.

We recognise that we have a discretion whether to use the Schedule 6A power to cancel or vary in relation to firms carrying on no such activity. We will, as described in more detail above, exercise that discretion proportionately, having regard, without restriction, to the relevant risks and to advance our statutory objectives to protect consumers and promote effective competition in the consumer interest by facilitating beneficial innovation by authorised firms.

However, given those risks, we do not consider it appropriate, when exercising that discretion, to take into account that the relevant firm is commercially required, by one or more current and/or potential clients and/or counterparties, to be authorised by the FCA to do business with or for them not amounting to or including a regulated activity. That is already our approach when deciding on applications for authorisation and when considering whether to use our power to vary or cancel permissions under section 55J of FSMA, described above.

We acknowledge that such requirements are common, although by no means universal, in the UK markets for debt collection, credit broking and buy-to-let finance intermediation. Such requirements may also be imposed in other UK markets.

However, as we stated in CP21/28 and have repeated above, we will have regard, without restriction, to a key risk when considering use of the Schedule 6A power. This is that – deliberately or otherwise – authorised firms give consumers the misleadingly reassuring impression that we regulate all of those firms' activities.

It may be that the great majority of the clients and counterparties that impose such commercial requirements do so without being under that impression. But many borrowers may take comfort from their brokers' authorisation, without realising that the broking carried out on their behalf is not regulated by the FCA and that their brokers are unnecessarily required by lenders to be FCA-authorised. Similarly, many of those whose debts are collected by FCA-authorised firms may take equivalent comfort without realising that that collection is not FCA-regulated and that those firms are unnecessarily required by creditors to be FCA-authorised.

We can see that some creditors may require all the firms they use to collect their debts to be authorised, and that some lenders may do the same in relation to all credit and buy-to-let finance brokers they engage with, as a matter of regulatory convenience. We nevertheless consider the imposition of those requirements unnecessary and, given the risks arising, irrelevant to our exercise of the discretion referred to above.

We realise that FCA-authorised firms subject to such requirements can give the misleadingly reassuring impression we refer to above while carrying on FCA-regulated activities such that they cannot be subject to the new power. We would remind all authorised firms of the obligation we impose on them, subject to certain exceptions, by a rule in Chapter 4 of the General Provisions section of our Handbook (GEN 4), specifically GEN 4.5.4R, not to imply to customers or in financial promotions that we regulate their unregulated activities.

When exercising the discretion referred to above, we will not treat the fact that an authorised firm is subject to such a requirement as indicating that we should use the power to vary or cancel under Schedule 6A in relation to that firm. Rather we will not treat it as indicating to the contrary. Authorised firms should consider the separate response we give above in relation to the detail of that discretion.

We have considered the potential impact of our approach described in this response on competition in the regulated segments of the relevant markets.

Before using the Schedule 6A power, we will, as explained in more detail above, invite relevant authorised firms to provide persuasive evidence that they are able to and have concrete plans to start or restart regulated activity compliantly in the near future. We will do this for all firms, including those subject to commercial requirements to be authorised.

That evidence may not be sufficient if we have other relevant concerns about the firm in question. A firm can, however, if unable to address those concerns or to provide other persuasive evidence as also detailed

above, if we cancel its permission, apply for reauthorisation as soon as it is able to start or restart regulated activity.

While our approach may have some impact on competition in those regulated segments, we consider that any such impact is outweighed by the risks to consumers arising from the current relevant position.

Given how common the practice of unnecessarily requiring firms to be FCA-authorised appears to be, some time may be needed to unwind it or for relevant authorised firms to prepare to start or re-start regulated activity. We do not therefore intend to prioritise use of the Schedule 6A power in relation to such firms for 3 months after publishing this PS.

That non-prioritisation depends on such firms giving us no other cause for concern, in light of, without restriction, their historic and ongoing compliance with the applicable requirements of the regulatory system and any immediate risks to consumers arising from their unregulated activities.

We accept that the situation is slightly different for the corporate finance firms referred to in the feedback set out above. Clients may view it as more than merely convenient to require such firms to be authorised before instructing them on particular long-term specialist projects that may involve a limited amount of regulated activity at some point.

However, we believe such requirements are also unnecessary and that there will be no material impact on capital raising by UK companies if we do not take such requirements into account when exercising the discretion described above.

We are confident that such clients can, with minimal disruption, generally continue to use, on such projects, the services of small unauthorised UK firms that are specialist and efficient experts in particular unregulated corporate finance activities.

Such clients can, during those projects, retain the services of other firms that are FCA-authorised to carry on any necessary regulated activity. Those authorised firms should carry on that activity regularly and therefore be more likely to have the relevantly experienced staff and systems and controls, appropriate to that activity, that we expect. This will benefit those clients.

Appointed representatives

2.15 One respondent asked us to make clear:

- how long an authorised firm with one or more ARs can remain authorised while carrying on no regulated activity, and
- our expectations as to whether and when an authorised firm with one or more ARs should terminate its relationship with an AR that is carrying on no regulated activity and whether it makes a difference, as to this point, that the AR is an introducer appointed representative.

Our response

Schedule 6A only allows us to cancel or vary the permissions of firms authorised by the FCA under Part 4A of FSMA. ARs can, in certain circumstances, be so authorised. If they are, we can cancel or vary their permissions, although not in relation to activities they carry on as ARs. If they are not so authorised then we cannot vary or cancel their permissions because they do not have any.

Our use of the new power to cancel or vary may, however, affect an AR. If we cancel the permission of a firm that has an AR, which firm we call the 'principal' of that AR, that AR will cease to be such, in relation to that principal firm at least. That former AR will no longer be able to lawfully carry on any regulated activity, unless it is authorised and has permission to do so or it is relevantly an AR of a different principal firm.

Similarly, if we vary the permission of a principal firm under Schedule 6A so that it no longer has permission to carry on a particular regulated activity, that may have an impact on the firm's ARs. An AR cannot, unless it is itself an authorised firm, carry on a regulated activity for which none of its principal firms has permission, unless one of those firms benefits from an exemption in relation to that activity and the activity is appropriately specified in the relevant agreement between the AR and that principal firm.

We treat an AR as using the permission of its principal firm, at least in relation to the regulated activities covered by the relevant agreement between the former and the latter. We do not therefore expect principal firms to carry on any of their own regulated activity and will apply Schedule 6A accordingly.

We may, however, use the Schedule 6A power in relation to a principal firm if it is not carrying on any regulated activity and none of its ARs is carrying on regulated activities within the scope of the relevant agreements between the former and the latter. In such a case we will exercise the discretion described above having regard to all the ARs of the principal firm, and therefore, for example, to their unregulated activities, as well as to the principal firm.

As to the steps principal firms should take in relation to their ARs that carry on no regulated activity, we expect principal firms to monitor the type, volume and source of business being submitted by their ARs. Where an AR has not carried on any regulated activity for some time, its principal should consider whether the AR relationship remains appropriate. If it appears that an AR is carrying on no regulated activity, its principal should consider suspending or terminating the relationship as appropriate and submitting the appropriate forms to allow us to reflect this change on the Register. Our expectations in this regard apply equally to introducer ARs.

We publicly consulted, via our Consultation Paper 21/34 (CP21/34), published in December 2021, on amendments to our Handbook relating to the AR regime. That consultation has now closed and we are considering feedback to it.

One of the proposed changes we consulted on via CP21/34 is that principals be required to report to us the revenue from the regulated activity of their ARs, on an annual basis. If this proposal becomes a rule, we will have data on ARs that have no such revenue and are therefore likely to be conducting no regulated activities. Based on that data, we may choose to ask principals why they have not suspended or terminated ARs that conduct no regulated activities.

Annulment – complaints handling

2.16 One respondent urged us to consider, when deciding whether to annul or to impose conditions on annulment, the relevant firm's willingness and ability to deal with complaints in compliance with the requirements of DISP.

Our response

Although the point is not made expressly in the guidance we consulted on via CP21/28 and have now issued, we believe it makes clear – in SUP 7.4.5G – that we may well decline to annul or impose conditions when annulling in light of concerns on our part regarding the relevant firm's willingness and ability to deal with complaints in compliance with the requirements of DISP.

Conditions on and forbearance following annulment

2.17 We described in CP21/28 the features of Schedule 6A. One is a specific power it grants us, when annulling a decision we have taken under Schedule 6A to cancel or vary the permission of a firm, to withdraw or vary the approval of one or more of the senior managers of that firm, as a condition of the annulment.

2.18 One respondent asked us to clarify that we will not use that power as a disciplinary measure. They also asked us to make clear that we will consider using that power, when annulling a decision to cancel, to restore the relevant firm's certification of particular senior managers and other individuals.

2.19 The separate forbearance power under Schedule 6A allows us, as we explained in CP21/28, if we have functions in relation to a statutory obligation, including an obligation imposed by our Handbook, and if an annulment under Schedule 6A causes any person to become subject to that obligation, to exercise those functions as though that person had not become subject to that obligation.

2.20 One respondent asked for additional guidance on the extent to which we may consider using that forbearance power and on the obligations in respect of which we may use it, in particular whether we may use it in respect of obligations imposed by SUP 16. The same respondent expressed a concern that we may use the power only in respect of the complaints reporting obligations in DISP 1.10.

Our response

We cannot use the power granted to us by Schedule 6A to withdraw or vary the approval of a senior manager on annulment as a disciplinary measure. However, we may use it if an approval will be restored by an annulment and we are concerned enough about the individual in question that we consider that the annulment will not be just and reasonable without such action.

As explained in CP21/28, we may alternatively use that power, for the benefit of individuals whose approvals as senior managers will be restored by annulment, where they no longer wish to be subject to the resulting ongoing responsibilities from the point of annulment.

We are responsible for approving individuals at relevant firms under the Senior Managers Regime. Under the Certification Regime, by contrast, it is the relevant firm that certifies that an employee is fit and proper to perform a particular function.

While we can impose a condition on annulment requiring the relevant firm to ensure that it has certified employees in place within a certain period, during which period we may appropriately vary the firm's permission, we cannot require the firm to certify particular employees.

We may use the separate forbearance power, described above, in relation to certification. Specifically, we may use it, when annulling the cancellation of a firm's permission, in relation to the certification obligations to which the firm is retrospectively subject because of the annulment. We will expect such a firm, before applying for annulment, to have at least taken reasonable steps to comply with those obligations from annulment.

We may also temporarily vary the permission of a firm on annulment pending our consideration whether to approve at the firm proposed replacements for senior managers whose approvals were restored by the annulment but then withdrawn by us because they did not wish to act as such in future or whose restored approvals we have decided for other reasons to withdraw.

On the possibility of additional guidance in SUP on forbearance, we explained in CP21/28 that, given the wide range of obligations to which the power could apply, we did not propose to specify those obligations in SUP. That remains our position.

We did, however, refer expressly in CP21/28 to obligations to report, which would indeed include obligations imposed by SUP 16, as potentially causing unfairness on annulment such that we might use the forbearance power in respect of them. We will not restrict our potential use of the power to the obligations imposed by DISP 1.10 or SUP 16.

Paragraph 2 notices

2.21 One respondent asked us to consider providing, in or with the notices we give firms under paragraph 2 of Schedule 6A, our reasons for deciding that their permissions should be varied or cancelled. Those notices warn firms that their permissions may be varied or cancelled because it appears to us that they are carrying on no regulated activity to which those permissions relate.

Our response

Where we give notices under paragraph 2 of Schedule 6A, we need only give, as a reason for them, the fact that it appears to us that the relevant firm is carrying on no regulated activity to which its permission relates.

Further, Schedule 6A makes clear that we should give those notices before deciding whether the permission of the relevant firm should be varied or cancelled. Once we have considered any responses to those notices and then decided whether to vary or cancel, we are required to give the firm a notice of that decision under paragraph 3 of Schedule 6A.

When responding to our notices given under paragraph 2, firms can inform us they are still carrying on such a regulated activity and provide satisfactory supporting evidence. Indeed we intend, as we stated in CP21/28 we were likely to, to expressly invite firms to provide such evidence.

Decision-making – speed, risk, fair treatment and appeals

2.22 One respondent asked us to ensure, in the interests of consumers, that our decisions to use the new power are taken sufficiently swiftly so as not to undermine its purpose – to allow us to cancel or vary FCA-authorised firms' permissions more quickly and efficiently if they are not being used.

2.23 That respondent also raised a concern that we are generally risk-averse when deciding whether to use such powers. They expressed the hope that, in the interests of consumers and in order to achieve that purpose, we will not be risk-averse when considering whether to use the new power.

2.24 Other respondents asked that the internal process by which we reach decisions whether to cancel or vary should ensure fair treatment of firms by allowing for case-by-case treatment of individual firms' situations. They also asked that there should be an effective and independent process allowing firms to appeal against those decisions.

Our response

Our general approach to using the new power will be as required by section 1B of FSMA. We will therefore use it in a proportionate manner to advance our statutory objectives, having regard to the risks, especially those to consumers, that those objectives are intended to minimise but also to the need to use our resources in the most efficient and economic way.

We will indeed take advantage of the fact that we can use the new power quickly, but we will only do so if it appears to us that relevant firms are not carrying on any regulated activity within the scope of their permissions and having considered their responses to our relevant notices, as described above.

Further, as also described above, we may exercise our discretion not to use the power in relation to firms not carrying on any such activity. We have described above limited circumstances in which, subject to countervailing factors, we may so exercise that discretion, including in the consumer interest. But we have also made it clear above that we do not rule out that there may be other such circumstances that firms can draw to our attention.

As to appeal against our decisions to vary or cancel under Schedule 6A, firms subject to those decisions have, as we explained in CP21/28 and record in SUP 7.2.7G (1), no right to refer them to the Upper Tribunal. Nor is there otherwise a right of appeal against those decisions.

But firms can ask us to retrospectively annul those decisions and can refer to the Upper Tribunal, which is fully independent of the FCA, our decisions to annul, our decisions to refuse to annul and our decisions to annul with conditions. We describe this right in more detail in CP21/28 and in SUP 7.4.7G.

Decision-making – staff seniority

2.25 One respondent asked that any response from a firm to the second notice we are required to give under paragraph 2 of Schedule 6A should be considered by an FCA employee more senior than the one who considered any response to the first notice.

Our response

We will always consider fully any responses to our notices given under paragraph 2 of Schedule 6A before deciding whether to cancel or vary the relevant firm's permission. Those responses will be considered by FCA employees of sufficient seniority, with the right experience and subject to appropriate supervision. We do not consider it necessary for responses to the two notices to be considered by different FCA employees.

Time periods

2.26 One respondent asked that:

- firms should have at least 28 days to respond to the two notices we are required to give under paragraph 2 of Schedule 6A, which notices warn firms that they are at risk of action by us under Schedule 6A to cancel or vary their permissions
- there should be a specified minimum period between the first and second of those notices, and

- our notices given under paragraph 3 of Schedule 6A, if they inform firms that we have decided to cancel or vary their permissions, should not have immediate effect unless we consider that immediate harm would otherwise be caused.

2.27 The same respondent also asked:

- whether firms could be permitted to apply for annulment before being subject to the relevant variation or cancellation under Schedule 6A, and
- if there could be a 28-day period between a firm being notified of our decision to annul and the annulment coming into effect, to allow the firm, if carrying on any regulated activity, to avoid disruption and harm by obtaining necessary support and making appropriate preparations.

Our response

We are required by Schedule 6A to wait at least 14 days, after giving the first notice under paragraph 2, before giving the second. Schedule 6A also requires that the proposed date of variation or cancellation specified in the second notice is at least 14 days after the date on which that notice is given.

There will always therefore be at least 28 days between the date on which that first notice is given and the date of variation or cancellation and there is already a specified minimum period between the two notices. If firms need more time to respond to our notices given under paragraph 2, they can ask for it, giving reasons and we will consider such requests.

As we state above, we will always consider fully the relevant facts and circumstances, including any responses to our notices given under paragraph 2, when deciding whether to cancel or vary the relevant firm's permission.

We may then decide that the relevant cancellation or variation should take immediate effect, as long as 14 days have elapsed since we gave the second of those notices. The purpose of the new power is to allow us to more quickly and efficiently cancel or vary authorised firms' permissions, if they are not being used, and then amend the Register accordingly. It will be appropriate in many cases that the variation or cancellation should take effect immediately upon the decision.

A firm should not wait for us to decide to cancel or vary under Schedule 6A if it considers that it has grounds for that cancellation or variation to be annulled. Instead it should inform us of those grounds as soon as possible before we take that decision, given that those grounds may be relevant to that decision.

However, if we notify a firm that we have decided to take that step, it can apply for annulment even if the relevant variation or cancellation has not yet taken effect. We will make that point clear in or with our notices of such decisions.

Schedule 6A sets no minimum or maximum period between notification of annulment and annulment taking effect. We will invite firms, when informing them of their right to apply for annulment, to tell us whether they have any preference in this regard and will take any such request into consideration. A firm, however, that intends to make or has made an application for annulment should not, subject to any applicable exemptions, carry on any regulated activity outside the scope of any permission it retains before any annulment. A firm that does so may commit a criminal offence.

The Register

2.28 One respondent asked how a cancellation of permission under Schedule 6A will be articulated on the Register, to avoid it appearing that the cancellation was the result of anything other than absence of regulated activity.

2.29 Another respondent asked that we make clear that firms must update the Register as soon as possible after the FCA uses its power under Schedule 6A to vary or cancel their permissions, whether or not they intend to apply for annulment.

2.30 That respondent stressed, in support of its request, that it is important that consumers can rely on the accuracy of the Register, as to whether firms are authorised, when considering engaging with such firms, in particular as to the protections and redress possibilities resulting from authorisation.

Our response

We agree that it is important that consumers should be able to rely on the Register. However, the FCA, rather than relevant firms, is responsible for updating the Register to reflect variations and cancellations under Schedule 6A. We will do so without delay.

The Register will not indicate that we cancelled or varied the relevant firm's permission for a reason other than absence of regulated activity. We may, however, publish the notice of cancellation or variation and link it to the relevant firm's Register entry.

Individual accountability

2.31 One respondent asked us to make clear:

- how we will use the new power in relation to individuals at relevant firms, to ensure their accountability and to prevent harm to consumers, and
- that we will hold individuals at relevant firms accountable if they do not inform us that those firms are not carrying on any regulated activity within the scope of their permissions.

Our response

Schedule 6A gives us no power to take action against individuals.

We may, as already stated above, impose as a condition of an annulment the withdrawal of our approval of a senior manager where that approval will be restored by the annulment, even if that senior manager is content for that approval to be restored.

That will not, however, be a disciplinary action. Nor are any of the other steps we can take under Schedule 6A disciplinary in nature, albeit that we may, as we state in SUP 7.2.3AG and above, cancel or vary a firm's permission under Schedule 6A while we are investigating or taking action against the firm or otherwise in an enforcement context.

It is possible that the facts that lead us to consider that a firm is no longer carrying on any regulated activity within the scope of its permission or that it is not just and reasonable for us to annul may amount to misconduct or another failing on the part of the firm.

If we suspect serious associated or other misconduct on the part of one of the firm's senior managers or other employees, we will investigate it and, if that investigation concludes that there was such misconduct, we will consider imposing a disciplinary sanction. But the detail of that possibility and of other associated action we might take in relation to such individuals is beyond the scope of this PS.

Changes to the Compensation sourcebook

2.32 We proposed in CP21/28 adding guidance to COMP to clarify that the effect of annulment may be that a firm will be treated as a participant firm for FSCS purposes in relation to claims that arose in the period between cancellation or variation and annulment.

2.33 We received feedback that was broadly supportive of that new guidance. We also received other feedback, set out in paragraph 2.30 above, that did not relate to that new guidance. The new guidance has now been added to COMP.

Changes to the Dispute resolution: Complaints sourcebook

2.34 We proposed in CP21/28 adding guidance to DISP to make it clear that, if we annul a decision to cancel or vary, the Ombudsman Service may be able to consider complaints that arose in the period between cancellation or variation and annulment.

2.35 We also proposed a new rule in DISP that will delay the deadline for submitting the relevant firm's complaints return if the due date was between the decision to vary or cancel taking effect and its annulment. Specifically, the firm will have 30 business days from the date of the annulment taking effect to submit the return.

2.36 In Annex 2 to the CP, we explained that we expected that firms would incur minimal or no additional costs as a result of the proposals to amend DISP. This is because firms will just need to familiarise themselves with the changes if they apply for annulment. We did not receive any comments on this and so we have not conducted a cost benefit analysis, as per the exemption under FSMA referred to in the CP.

2.37 The only feedback we received relating to the new DISP guidance was supportive of it. We received a couple of comments about the proposed rule relating to the complaints return. One respondent took the view that the proposed 30-business day deadline was too generous. Another respondent asked whether mitigating factors would be considered if a firm was unable to provide the information within 30 business days.

Our response

We have considered the feedback received and intend to proceed with the guidance and rule change that we consulted on. We will give firms an opportunity during the annulment application process to raise any reasonable concerns they might have about reporting this data within the 30-business day timeframe.

Annex 1
List of non-confidential respondents

Association of Professional Compliance Consultants

Comprehensive Financial Planning Limited

Credit Services Association

Depositary and Trustee Association

Financial Services Consumer Panel

The GI Consultant

NFU Mutual

Personal Investment Management and Financial Advice Association

Transparency Task Force

Annex 2
Abbreviations used in this paper

Abbreviation	Description
AR	appointed representative
COMP	Compensation sourcebook
CP 21/16	Consultation Paper 21/16
CP 21/28	Consultation Paper 21/28
CP 21/34	Consultation Paper 21/34
DISP	Dispute resolution: Complaints sourcebook
EG	Enforcement Guide
FCA	Financial Conduct Authority
FS Act	Financial Services Act 2021
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions
GEN 4	Chapter 4 of GEN
Ombudsman Service	Financial Ombudsman Service
PS	Policy Statement
Register	Financial Services Register
SUP	Supervision manual
SUP 7 and 16	Chapters 7 and 16 of SUP

Appendix 1
Made rules (legal instrument)

PART 4A PERMISSION (OWN-INITIATIVE VARIATION AND CANCELLATION) INSTRUMENT 2022

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (The FCA's general rules);
(2) section 137T (General supplementary powers); and
(3) section 139A (Power of the FCA to give guidance).

B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 19 May 2022.

Amendments to the Handbook

D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C
Compensation sourcebook (COMP)	Annex D

Amendments to material outside the Handbook

E. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

Citation

F. This instrument may be cited as the Part 4A Permission (Own-Initiative Variation and Cancellation) Instrument 2022.

By order of the Board
16 May 2022

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

additional own-initiative variation power	the *FCA's* power under Schedule 6A to the *Act* (Variation or cancellation of *Part 4A permission* on initiative of *FCA*: additional power) to vary or cancel the *Part 4A permission* of an *FCA-authorised person* otherwise than on the application of that *person*.

Amend the following definitions as shown.

limitation	a limitation incorporated in a *Part 4A permission* under section 55E(5) of the *Act* (Giving permission~~)~~: the FCA), section 55F(4) of the *Act* (Giving permission: the PRA) ~~or~~, section 55J(10) of the *Act* (Variation or cancellation on initiative of regulator) or paragraph 1(6) of Schedule 6A to the *Act* (Variation or cancellation of *Part 4A permission* on initiative of FCA: additional power).
own-initiative powers	the *FCA's* or the *PRA's own-initiative variation power* and *own-initiative requirement power*, which powers are supplemented, in respect of *FCA-authorised persons*, by the *FCA's additional own-initiative variation power*. The latter power is, for the avoidance of doubt, not within the scope of this definition.
own-initiative variation power	~~The~~ the *FCA's* or the *PRA's* power under section 55J of the *Act* (Variation or cancellation on initiative of regulator) to vary or cancel a *Part 4A permission* otherwise than on the application of a *firm*, which power is supplemented, in respect of *FCA-authorised persons*, by the *FCA's additional own-initiative variation power*. The latter power is, for the avoidance of doubt, not within the scope of this definition.

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

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

6.1 Application, interpretation and purpose

…

Purpose

…

6.1.6 G This chapter does not cover the *FCA's* use of its *own-initiative variation power* or, in respect of *FCA-authorised persons*, its *additional own-initiative variation power* to vary or cancel a *firm's Part 4A permission* or its *own-initiative requirement power* to impose, vary or cancel a *requirement* (see *SUP* 7 (Individual requirements) and *EG* 8 (Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms)).

6.2 Introduction

…

Firms with long term liabilities to customers

…

6.2.10A G In certain circumstances the *FCA* and/or the *PRA* may use their *own-initiative powers* or the *FCA* may use its *additional own-initiative variation power* (see *SUP* 7 and *EG* 8) (Variation and cancellation of permission and imposition of requirements on the *FCA's* own initiative and intervention against incoming firms)).

…

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

…

Commencing new regulated activities

…

6.3.4 G (1) *Firm*s should be aware that the *appropriate regulator* may exercise its *own-initiative variation power* or, in respect of *FCA-authorised person*s, the *FCA* may exercise its *additional own-initiative variation power*, in each case 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))~~)~~ and Schedule 6A to the *Act* (Variation or cancellation of *Part 4A permission* on initiative of *FCA*: additional power)) if the firm does not:

(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 *permission* to carry on that particular activity; ~~or~~

(b) carry on a particular *regulated activity* for which they have *Part 4A permission* for a period of at least 12 months (irrespective of the date of grant)~~.~~; or

(c) respond, in the manner or by taking the steps directed by the *FCA*, to notices given by the *FCA* under paragraph 2 of Schedule 6A to the *Act*, which notices are given on the basis that it appears to the *FCA* that the relevant *firm* is carrying on no *regulated activity* to which its *permission* relates (for detail on the circumstances in which such notices may be issued, see *SUP* 7.2.2AG to *SUP* 7.2.2DG and *SUP* 7.2.3AG).

(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) and, if the *investment firm* is an *FCA-authorised person*, note also the *FCA's additional own-initiative variation power*.

[**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.~~ [deleted]

…

7 Individual requirements

7.1 Application and purpose

…

Purpose

…

7.1.5 G …

7.1.6 G In some circumstances, the *FCA* may consider that it is insufficient to impose such *requirements*, amendments or *limitations* and that it will use its powers under the *Act* to remove one or more such activities from or cancel the *Part 4A permission* of a *firm*, whether under its *own-initiative variation power* or, where the relevant *firm* is an *FCA-authorised person*, under its *additional own-initiative variation power*.

7.2 The FCA's powers to set individual requirements and limitations and cancel Part 4A permissions on its own initiative

7.2.1 G The *FCA* has the power under ~~sections 55J and 55L~~ section 55J of the *Act* and, in respect of *FCA-authorised person*s, Schedule 6A to the *Act* to vary or cancel a *firm's Part 4A permission* and/or, under section 55L of the *Act*, to impose a *requirement* on a *firm*. Varying a *firm's Part 4A permission* ~~includes~~ can include removing one or more *regulated activities* from those to which the *Part 4A permission* relates, varying the description of such an activity and/or imposing a *limitation* on that *Part 4A permission*.

7.2.2 G The circumstances in which the *FCA* may vary or cancel a *firm's Part 4A permission* on its own initiative or impose a *requirement* on a *firm* under sections 55J or 55L of the *Act* include where it appears to the *FCA* that:

(1) one or more of the threshold conditions for which the *FCA* is responsible is or is likely to be no longer satisfied by the *firm*; or

(2) it is desirable to vary or cancel a *firm's permission* in order to meet any of the *FCA's statutory objectives* under the *Act*; or

(3) a *firm* has not carried out ~~a~~ one or more *regulated ~~activity~~ activities* to which its *Part 4A permission* applies for a period of at least 12 months, in which case those activities may be removed from the *permission*.

7.2.2A G The *FCA* may also decide to vary or cancel an *FCA-authorised person's Part 4A permission* on its own initiative under Schedule 6A to the *Act*:

(1) if that *person* appears to the *FCA* not to be carrying on any *regulated activity* to which the *permission* relates, including, without restriction, if the *person* has failed to:

(a) pay a periodic fee or levy under the *Handbook*; or

(b) provide the *FCA* with information required under the *Handbook*; and

(2) if that *person*, when served by the *FCA* with two notices under paragraph 2 of Schedule 6A, has not:

(a) responded in the manner directed, in those notices or otherwise, by the *FCA*; nor

(b) taken other steps as may also be so directed by the *FCA*;

the second of which notices will specify any proposed variation and its effective date or the effective date of the proposed cancellation.

7.2.2B G (1) The *FCA*, having served on the relevant *firm* notices under paragraph 2 of Schedule 6A to the *Act*, as described in *SUP* 7.2.2AG, must serve notice, under paragraph 3 of Schedule 6A, on the *firm* of its subsequent decision whether or not to vary or cancel.

(2) If the *FCA* decides to vary or cancel, the notice served under paragraph 3 must specify any variation and the date on which the variation or cancellation takes effect.

(3) The *FCA* may publish, on the *Financial Services Register* and otherwise, notices it serves under paragraph 2 or 3 of Schedule 6A to the *Act* and will record on the *Financial Services Register* any such variation or cancellation.

7.2.2C G Apart from the circumstances described in *SUP* 7.2.2AG(1), the *FCA* may also form the view, under Schedule 6A to the *Act*, that a *firm* is no longer conducting any *regulated activity* to which its *permission* relates in light of, without restriction:

(1) one or more reports, provided to the *FCA* by the *firm*, under *SUP* 16 or otherwise, indicating that it is no longer doing so;

(2) the *firm's* failure, on two or more occasions, to respond substantively to *FCA* correspondence, requesting a response, sent to:

(a) the address of the *firm's* principal place of business in the *United Kingdom*, as notified to the *FCA* in accordance with *SUP* 15.5.4R(1); or

(b) one or more other postal or electronic addresses previously provided to the *FCA* by the *firm*, or otherwise used by the *firm*, for the purpose of correspondence with the *FCA* and not known by the *FCA* to have been superseded in that regard; or

(3) correspondence from the *FCA*, sent to such an address, being returned or otherwise notified to the *FCA* as undelivered.

7.2.2D G (1) The *FCA's additional own-initiative variation power* under Schedule 6A to the *Act* has, unlike the *FCA's own-initiative variation power* under section 55J of the *Act*, a single basis: that it appears to the *FCA* that the relevant *FCA-authorised person* is not carrying on any *regulated activity* to which its *Part 4A permission* relates.

(2) If the *FCA* uses its *additional own-initiative variation power*, it is therefore more likely to cancel the relevant *firm's permission*, rather than merely vary it by removing or amending the description of one or more such activities or by imposing one or more *limitations*.

(3) The *FCA* will, however, consider all relevant facts and circumstances, including, without restriction:

(a) the relevant *firm's* responses, if any, to the notices given by the *FCA* under paragraph 2 of Schedule 6A; and

(b) if applicable, the factors described in *SUP* 6.4.22G, including whether there are any matters relating to the *firm* requiring investigation,

before deciding whether to use its *additional own-initiative variation power* and whether to use it to cancel or vary.

…

7.2.3A G The *FCA* may use its *additional own-initiative variation power*, under Schedule 6A to the *Act*, where it appears to the *FCA* that an *FCA-authorised person* is conducting no *regulated activity* to which its *Part 4A permission* relates, in an enforcement context, including, without restriction:

(1) during an investigation into the *FCA-authorised person* in question and/or a *person* associated with that *FCA-authorised person*;

(2) when considering the possibility of such an investigation; or

(3) during proceedings against the *FCA-authorised person* in question and/or a *person* associated with that *FCA-authorised person*.

7.2.4 G The *FCA* may use its *own-initiative powers* and *additional own-initiative variation power* only in respect of a *firm's Part 4A permission*; that is, a *permission* granted to a *firm* under sections 55E or 55F of the *Act* (Giving permission) or having effect as if so given.

…

7.2.5A G If the *FCA* exercises its *additional own-initiative variation power*, under Schedule 6A to the *Act*, it will do so, as described more fully in *SUP* 7.2.2AG and *SUP* 7.2.2BG, after:

(1) issuing notices under paragraph 2 of that Schedule; and

(2) deciding to exercise the power, issue a notice under paragraph 3 of that Schedule,

which notices the *FCA* may decide to publish, in which case Schedule 6A to the *Act* provides that the *FCA* may do so in such manner as it considers appropriate.

…

7.2.7 G (1) A *firm* has no right of referral to the *Tribunal* in respect of the *FCA* exercising its *additional own-initiative variation power*, under Schedule 6A to the *Act*, on the *firm's Part 4A permission*.

(2) The *FCA* cannot exercise that power, on which *guidance* is given in *SUP* 7.2.2AG to *SUP* 7.2.2DG, until it has given the *firm* two notices in writing and considered any response to those notices.

(3) Such response will, if it complies with an applicable *FCA* direction, given in those notices or otherwise, lead to the *FCA* not exercising that power.

(4) The date on which the *FCA* proposes to exercise that power and, if different, the date on which the resulting variation or cancellation of the *firm's Part 4A permission* is proposed to take effect, must be specified in the second of those notices and both dates must be at least 14 *days* after the date on which that notice is given.

(5) Further, a *firm* can apply, within 12 *months* of the exercise of the *FCA's* power taking effect, to the *FCA* under Schedule 6A to the *Act* for the retrospective annulment of the decision to exercise it.

(6) More detailed *guidance* on such annulment is given in *SUP* 7.4.

(7) Whatever decision the *FCA* takes on that application, both the *firm* and the *FCA* have a right of referral to the *Tribunal* in respect of the matter.

7.3 Criteria for varying a firm's permission or imposing, varying or cancelling requirements on the FCA's own initiative

…

7.3.2 G The *FCA* may also seek to exercise its *own-initiative powers* in certain situations, including the following:

(1) …

…

(5) The *FCA* may separately exercise its *additional own-initiative variation power*, as described in *SUP* 7.2.2AG to *SUP* 7.2.2DG and *SUP* 7.2.3AG.

…

7.3.4 G The *FCA* will seek to give a *firm* reasonable notice of an intent to vary its *permission* or impose a *requirement* and, except when exercising its *additional own-initiative variation power*, to agree with the *firm* an appropriate timescale. However, if the *FCA* considers that a delay may create a risk to any of the *FCA's statutory objectives*, the *FCA* may need to act immediately using its powers under section 55J and/or 55L of the *Act* with immediate effect.

Insert the following new section, SUP 7.4, after SUP 7.3 (Criteria for varying a firm's permission or imposing, varying or cancelling requirements on the FCA's own initiative). The text is not underlined.

7.4 Annulment of FCA decision to exercise its additional own-initiative variation power

7.4.1 G If the *FCA* decides to exercise its *additional own-initiative variation power*, the relevant *FCA-authorised person* can apply, under paragraph 4 of Schedule 6A to the *Act*, within 12 *months* of the decision taking effect, to the *FCA* for that decision to be retrospectively annulled. The *FCA* must notify that *person* of its right to apply when notifying that *person*, under paragraph 3 of Schedule 6A, of the decision to exercise the power and can direct what information should be included in the application and what form it should take.

7.4.2 G The *FCA* can annul the decision unconditionally or subject to such conditions as it considers appropriate or refuse to annul. The *FCA* is permitted by Schedule 6A to the *Act* to annul, whether unconditionally or subject to conditions, only if satisfied that, in all the circumstances, it is just and reasonable to do so.

7.4.3 G Schedule 6A to the *Act* specifies that the conditions that the *FCA* can impose when annulling include, without restriction:

(1) the removal or modification of the description of one or more of the *regulated activities* that the relevant *firm* was permitted to carry on immediately before the decision annulled was taken; and

(2) the withdrawal or variation of one or more approvals previously given by the *FCA* under section 59 of the *Act* in respect of one or more roles at the *firm*, which condition, if imposed, the *FCA* considers can apply only to approvals that will otherwise be restored as a result of the annulment.

Schedule 6A specifies that such variations of *permission* and withdrawals or variations of approval take effect, if imposed as conditions, on the date on which the relevant annulment takes effect.

7.4.4 G In determining whether and subject to what conditions it is just and reasonable to annul, the *FCA* will consider all the relevant circumstances, including, without restriction:

(1) the applicant *firm's* reasons for failing to respond as directed to the relevant notices served on it under paragraph 2 of Schedule 6A to the *Act*;

(2) what explanation the *firm* has for the facts that led the *FCA* to form the view that it was no longer carrying on any *regulated activity* to which its *permission* related; and

(3) if applicable, what remedial steps the *firm* proposes to take in relation to those.

7.4.5 G Other factors the *FCA* may consider, in so determining, may include, without restriction:

(1) the applicant *firm's* ability to comply, after annulment, with the *threshold conditions* and whether any concerns arising in this regard can be addressed via the imposition of conditions;

(2) whether the *firm* applied promptly after the cancellation or variation of its *permission* has taken effect and, if it did not, its reasons for such delay;

(3) whether and, if so, in what manner, to what extent and why the *firm* has breached section 19 or 20 of the *Act* since the cancellation or variation took effect;

(4) where the relevant decision is that the applicant *firm's permission* be cancelled, the extent to which the *firm*:

(a) has followed, since the cancellation, the requirements of the regulatory system that would have applied to it but for the cancellation, including, without restriction, those in *DISP* and *COMP*; and

(b) is willing, to the extent it was unable to follow those requirements during the period of cancellation, to address, after annulment, the consequences of not following those requirements, in particular the effects on other *persons*; and

(5) whether any awards or directions by the *Ombudsman* against the *firm* have not yet been complied with.

7.4.6 G The effect of annulment is specified by Schedule 6A to the *Act*:

(1) the relevant variation or cancellation is treated as never having taken place; but

(2) where, by virtue of that fact, any *person* becomes subject to a statutory obligation in relation to which the *FCA* has functions, the *FCA* is permitted, in exercising those functions, to treat that *person* as not having become subject to that obligation;

(3) in which case the *FCA* must notify that *person* appropriately.

7.4.7 G (1) If the *FCA* decides to annul, it will give the relevant *firm* a notice in writing, specifying the date on which the annulment takes effect and the conditions, if any, attached to the annulment.

(2) Where the *FCA* proposes to refuse to annul, it will give the relevant *firm* a *warning notice* and, where the *FCA* decides to refuse to annul, it will give the relevant *firm* a *decision notice*. Detail of the procedure under which those two notices will be provided is given in *DEPP* 2 and 3.

(3) Whatever the *FCA's* decision, either or both of the *firm* and the *FCA* can refer the matter to the *Tribunal*.

(4) In determining such a reference, the *Tribunal* may give such directions, and may make such provision, as it considers reasonable for placing the *firm* and other *person*s in the same position (as nearly as may be) as if the *firm's permission* had not been varied or cancelled.

7.4.8 G The following other chapters of the *Handbook* contain *rules* making provision for and *guidance* as to the effect of annulment:

(1) *FEES* 4, *FEES* 4A, *FEES* 5, *FEES* 6, *FEES* 7A to *FEES* 7D and *FEES* 13;

(2) *DISP* 1 and *DISP* 2; and

(3) *COMP* 6.

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Treating complainants fairly

…

1.10 Complaints reporting rules

…

Information requirements

…

1.10.5A R Where the *FCA* grants a *person's* application for annulment of a cancellation or variation of its *Part 4A permission* under Schedule 6A to the *Act* and on the date of the annulment, the period for reports to be submitted to the *FCA* in accordance with *DISP* 1.10.5R has passed, the period within which the reports are to be submitted under *DISP* 1.10.5R does not apply. The *person* must submit such reports to the *FCA* within 30 *business days* of the date on which the annulment takes effect.

…

2 Jurisdiction of the Financial Ombudsman Service

…

2.3 To which activities does the Compulsory Jurisdiction apply?

…

General

…

2.3.6 G Schedule 6A to the *Act* sets out a procedure to enable the *FCA* to cancel or vary the *Part 4A permission* of a *person* who, it appears to the *FCA*, is not carrying on the *regulated activity* to which the *Part 4A permission* relates. In some cases, this may result in the *person* no longer being a *respondent* following cancellation of all their *Part 4A permissions*. Paragraph 5 of Schedule 6A to the *Act* sets out a procedure for the subsequent annulment of the decision to cancel or vary the *person's Part 4A permission* in specified circumstances where the *FCA* is satisfied that it is just and reasonable to do so. Where the *FCA* grants an application for annulment, either with conditions or unconditionally, paragraph 6 of Schedule 6A to the *Act* sets out

its effect, which includes that the cancellation or variation of the *Part 4A permission* is treated as if it had never taken place. As a result of the effect of the annulment, the *person* may therefore be a *respondent* for the purposes of any *complaints* which arise during the period in which the *person's Part 4A permission* was cancelled or varied.

Annex D

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6 Relevant persons and successors in default

…

6.2 Who is a relevant person?

…

6.2.5	G	Schedule 6A to the *Act* sets out a procedure to enable the *FCA* to cancel or vary the *Part 4A permission* of a *person* who, it appears to the *FCA*, is not carrying on the *regulated activity* to which the *Part 4A permission* relates. In some cases, this may result in the *person* no longer being a *relevant person* following cancellation of all their *Part 4A permissions*. Paragraph 5 of Schedule 6A to the *Act* sets out a procedure for the subsequent annulment of the decision to cancel or vary the *person's Part 4A permission* in specified circumstances where the *FCA* is satisfied that it is just and reasonable to do so. Where the *FCA* grants an application for annulment, either with conditions or unconditionally, paragraph 6 of Schedule 6A to the *Act* sets out its effect, which includes that the cancellation or variation of the *Part 4A permission* is treated as if it had never taken place. As a result of the effect of the annulment, the *person* may therefore be a *relevant person* for the purposes of any *claims* which arise during the period in which the *person's Part 4A permission* was cancelled or varied.

Annex E

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

8.1 Introduction

…

8.1.2 The powers under sections 55J and 55L of the *Act* to vary and cancel a *person's Part 4A permission* and to impose ~~requirements~~ *requirements* are exercisable in the same circumstances. However, the statutory procedure for the exercise of the *own-initiative powers* to vary a *permission* or impose a *requirement* is different to the statutory procedure for the exercise of the cancellation power under section 55J and this may determine how the *FCA* acts in a given case. Certain types of behaviour which may cause the *FCA* to cancel ~~permission~~ *permission* in one case, may lead it to impose ~~requirements~~ *requirements*, vary, or vary and later cancel, ~~permission~~ *permission* in another, depending on the circumstances. The non-exhaustive examples provided below are therefore illustrative but not conclusive of which action the *FCA* will take in a given case.

8.1.3 Separately, the *FCA* has its *additional own-initiative variation power*, under Schedule 6A to the *Act*, to vary or cancel the *Part 4A permission* of a *firm* that is an *FCA-authorised person* if:

(1) it appears to the *FCA* that that *person* is carrying on no *regulated activity* to which the *permission* relates; and

(2) that *person* has failed to respond as directed by the *FCA* to notices served by the *FCA* on that *person* under paragraph 2 of Schedule 6A.

Guidance on that power, which may be used in an enforcement context, is provided in *SUP* 7.

8.2 Varying a firm's Part 4A permission or imposing requirements on the FCA's own initiative

…

8.2.4 *SUP* 7 provides more information about the situations in which the *FCA* may decide to take formal action in the context of its supervision activities, including the use of its *additional own-initiative variation power*.

…

8.3 Use of the own-initiative powers

8.3.1 The *FCA* may impose, under sections 55J or 55L of the *Act*, a variation of ~~permission~~ *permission* or a ~~requirement~~ *requirement* so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation or *requirement* to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its *own-initiative powers*.

…

8.3.4 The *FCA* will consider the full circumstances of each case when it decides whether a variation of *Part 4A permission* under section 55J of the *Act* or an imposition of a ~~requirement~~ *requirement* under section 55L of the *Act* is appropriate. The following is a non-exhaustive list of factors the *FCA* may consider.

…

…

8.5 Cancelling a firm's Part 4A permission on its own initiative

…

8.5.2A The *FCA* may also vary or cancel, under Schedule 6A to the *Act*, the *Part 4A permission* of a *firm* that is an *FCA-authorised person* if:

(1) it appears to the *FCA* that that *person* is carrying on no *regulated activity* to which the *permission* relates; and

(2) that *person* has failed to respond as directed to notices served by the *FCA* on that *person* under paragraph 2 of Schedule 6A.

Schedule 6A specifies that the *FCA* may form the view that a *firm* is carrying on no such *regulated activity* on the basis of its failure to pay a periodic fee or levy or provide information to the *FCA*, in each case as required by the *Handbook*. Further *guidance* on this power is given in *SUP* 7.

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12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk