

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

Consultation Paper

CP21/28**

September 2021

How to respond

We are asking for comments on this Consultation Paper (CP) by **29 October 2021**.

You can send them to us using the form on our website at: www.fca.org.uk/cp21-28-response-form

Or in writing to:

Law and Policy
Enforcement and Market Oversight
Financial Conduct Authority
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London E20 1JN

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1 Summary

Why we are consulting

- 1.1** To reduce the risk of harm to consumers, only firms that continue to carry on 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 could assume that some of the 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 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.
- 1.4** Since 2001, we have had a power to cancel or vary these permissions without application by or consent from the relevant firm. We can use this power in various situations, including where the firm has, for 12 months or more, not been conducting an activity covered by its permission.
- 1.5** The recent Financial Services Act 2021 (FS Act) has now given us an additional power to cancel or vary permissions without such application or consent. We can use this new power if we consider that a firm is currently carrying on none of the regulated activities it has permission for. We no longer have to wait 12 months. The FS Act also sets a more streamlined procedure for us to follow when using this new power.
- 1.6** The Government has stated, in its Explanatory Notes to the FS Act, that the intent of the Act, in granting us this new power, was to ensure that we can cancel or vary authorised firms' permissions more quickly and efficiently if they are no longer using them, and then amend the Register accordingly.
- 1.7** The new power is set out in the new Schedule 6A to the Financial Services and Markets Act 2000 (FSMA), which Schedule was inserted by the FS Act. We have already publicly warned that we will use the new power to reduce the risks of consumer harm described above and that firms should use or lose their permissions.
- 1.8** Schedule 6A also gives us the ability to retrospectively reverse our decisions to use the new power, if firms apply for such reversal and it is just and reasonable that we should do so. Such reversal is described in Schedule 6A and below as annulment.
- 1.9** We have already publicly consulted, through our Quarterly Consultation Paper (QCP) published on 4 June 2021, on amendments, reflecting the possibility of annulment, to our Handbook of rules and guidance. We have since considered responses to that consultation and made those amendments.

- 1.10** In this Consultation Paper (CP) we are now consulting on further changes to our Handbook, as well as on additions to our Enforcement Guide (EG), reflecting in each case the new power and the possibility of annulment.

Who this applies to

- 1.11** The Handbook and EG changes we are now consulting on will 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 applies only to these firms.
- 1.12** The changes will not therefore apply to firms authorised by the Prudential Regulation Authority (PRA) 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.
- 1.13** The changes we are now consulting on may also be of interest to individuals who hold approved functions at Part 4A FCA-authorized firms and to professional advisers to such firms.

What we want to change

- 1.14** As described in greater detail below and set out fully in the draft instrument appended to this CP, the changes we propose, subject to consideration of responses to this CP, to our Handbook and EG are, in summary, as follows:

Handbook Glossary

- 1.15** We will introduce a new term to define the new power.

Supervision manual (SUP)

- 1.16** We will describe the new power in SUP, as well as the process that Schedule 6A requires us to follow when we use it, and will give guidance on our approach to doing so. We intend in particular to describe circumstances in which we may consider that a firm is not carrying on any FCA-regulated activities, as well as factors we may take into account when considering an application for annulment.
- 1.17** We also propose to signpost in SUP our potential use of the new power during an investigation or when we are considering an investigation. We will, in addition, explain that we are more likely to use the new power to cancel, rather than vary, firms' permissions. Lastly, we will make changes to existing wording to reflect the new power.

Enforcement Guide (EG)

- 1.18** We intend again, although more briefly than in SUP, to describe the new power and process and refer to our possible use of them alongside investigations. We will also note 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.

Compensation sourcebook (COMP)

- 1.19** We propose to add guidance to COMP to make it clear that, if we annul a decision to cancel, the Financial Services Compensation Scheme (FSCS) may be able to pay compensation in respect of claims against the relevant firm that arose in the period between cancellation and annulment.

Dispute resolution: Complaints sourcebook (DISP)

- 1.20** We propose to add guidance to DISP to make it clear that, if we annul a decision to cancel, the Financial Ombudsman Service (Ombudsman Service) may be able to consider complaints that arose in the period between cancellation and annulment.
- 1.21** We also propose a rule 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.

Next steps

- 1.22** We want to know what you think of our proposals in this CP.
- 1.23** Please send your comments to us by 29 October 2021, using one of options in the 'How to respond' section above. We will not treat your response as confidential unless you tell us that it is.

2 The wider context

The harms we are trying to reduce

- 2.1** The new power, set out in Schedule 6A to FSMA, allows us to more quickly and efficiently:
- 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, where 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 directed to our notices warning of the risk of such action, and
 - reflect such variations and cancellations on the Register.
- 2.2** We maintain the Register as a public record of many of the firms and individuals who or which are or have been regulated by the FCA. It is a valuable source of information for anyone who wants to check the regulatory and other details of those firms and individuals.
- 2.3** As we regularly warn, criminals try to defraud consumers by impersonating or cloning authorised firms, including by cold-calling, fake websites and online advertising. Unfortunately, they sometimes succeed. Consumers should therefore only engage with authorised firms using contact details on the Register.
- 2.4** This risk of impersonation or cloning can be reduced if the Register records that firms no longer conducting any FCA-regulated activities are no longer authorised, having had their statutory permissions to do so cancelled.
- 2.5** Firms no longer conducting those activities can apply for cancellation themselves. They are required by our rules to inform us once they decide no longer to do so and are at risk of breaching FSMA if they do not so apply. However, it is clear that many firms do not take either step.
- 2.6** A separate risk, highlighted in the November 2020 report by Dame Elizabeth Gloster into our regulation of London Capital & Finance Plc, is that FCA-authorized firms that no longer conduct any FCA-regulated activities may, by remaining authorised, give consumers the falsely reassuring impression that we regulate their products or services.
- 2.7** One action we are already taking in response to that report is to undertake a 'use it or lose it' exercise. FCA-authorized firms that have not used their permissions for 12 months or more are, as a result, already at risk of having those permissions cancelled, through our use of the pre-FS Act power described above. This will reduce the risk that those firms add credibility to their unregulated activities.

- 2.8** In January 2021, when warning of our ability to use that power, we asked firms to review their permissions, to ensure they are up to date and removed if not needed. We also pointed out, when making that request, the risk of firms breaching FSMA if they fail to take those steps and noted the Government's intention to introduce the new Schedule 6A power.
- 2.9** In our June QCP, we made clear that we intend to use the new power, where the conditions set by Schedule 6A are satisfied, in our 'use it or lose it' exercise. As already noted above, the new power does not require us to wait 12 months.

The new power and process in more detail

- 2.10** We have summarised above and describe in greater detail below our proposed Handbook and EG changes. They are set out in full in the draft instrument appended to this CP. Before providing that description, we now provide further context about the new power and process.

Failure to pay a fee or levy or to provide information

- 2.11** Schedule 6A specifies some of the circumstances in which we may form the view, before using the new power, that a firm is no longer carrying on any FCA-regulated activities. These specified circumstances are the firm's failure to pay a periodic fee or levy or to provide the FCA with information, in each case where required by our Handbook. Such information would include a report required by Chapter 16 of SUP.

Notices warning of variation or cancellation

- 2.12** Before we use the new power, we must give the firm a notice warning it of the risk of variation or cancellation of its permission. If the firm does not respond as we direct, we must give a second notice, again warning of the risk. In this second notice, we must also specify the proposed date of the cancellation or variation, the proposed extent of the variation and the steps we direct the firm can take to avoid whichever outcome we are proposing.
- 2.13** We do not intend to specify either of those sets of directions in the Handbook or EG. The specifics will depend on the wide range of potential circumstances that lead us to decide that a firm is not conducting any FCA-regulated activities. Instead, we are likely to specify the directions in the notices themselves.
- 2.14** Those directions may include that the firm should provide an explanation for those circumstances. They are also likely to include that the firm should confirm that it is still conducting one or more of those activities and provide supporting evidence, including a senior manager's attestation.

Representations and evidence

- 2.15** While the firm can avoid cancellation or variation by responding as directed to our notices, it otherwise has no right to make representations in response to them. We also do not have to provide to the firm our relevant evidence with those notices. These features make the new process more streamlined by comparison with the process required to use the pre-FS Act power described above.

Informing firms of our decisions and publication

2.16 Once we have decided whether or not to cancel or vary, after sending the notices described above and having considered any responses, we will send a notice of our decision to the firm. If our decision is to vary or cancel, this third notice must specify the date of the cancellation or variation and, if relevant, the extent of the variation. If we decide to publish any of these three notices, Schedule 6A allows us to do so in any manner we consider appropriate.

Firms' right to apply for annulment

2.17 When giving notice of a decision to vary or cancel, we are required by Schedule 6A to tell the relevant firm that it has the right to apply for annulment. The firm must apply within 12 months of the cancellation or variation taking effect and must apply in the manner we direct. We will provide those directions in that notice.

2.18 Schedule 6A allows us to annul a cancellation or variation, subject to conditions or without conditions, when we consider it just and reasonable to do so. The conditions may include a variation of the relevant firm's permission. We have to inform the firm of those conditions and notify it of the result of its application more generally.

Refusal to annul

2.19 If we propose to refuse to annul, we must give the firm in question a warning notice. We must also provide, subject to some exceptions, copies of the relevant evidence. The firm has the right to respond by making representations, which we will consider before we decide whether to annul. If we then decide to refuse to annul, we must give the firm a decision notice.

Referral to the Upper Tribunal

2.20 Whatever we decide on an application to annul, both we and the relevant firm have the right to refer the matter to the Upper Tribunal (Tribunal). The Tribunal can decide whether we should annul and, if we should, with what conditions. It can also, if it decides or it is agreed that we should annul, issue directions and orders to restore, within reason, the firm and others to the position they were in before the variation or cancellation.

The effect of annulment

2.21 If we grant a firm's application to annul or the Tribunal directs us to do so, Schedule 6A provides that the effect of the annulment is that the cancellation or variation is to be treated as never having happened.

2.22 The relevant firm will therefore be considered to have had to meet:

- the same obligations, throughout the period covered by the annulment, as it did before the cancellation or variation, as well as
- any obligations that would have arisen during that period if it had not been for the cancellation or variation

unless there is some reason, other than the cancellation or variation, for those obligations to have changed.

2.23 We recognise in particular that, as a result, where we cancel a firm's permission and subsequently annul the cancellation, any deadlines to report matters to us that arose between cancellation and annulment will be reinstated. This means the firm will, on annulment, be in breach of those deadlines.

2.24 We therefore propose, as summarised above, to move to a date after the annulment the deadline imposed by DISP to report complaints to us. We have made similar changes to a number of deadlines to pay fees or levies or to provide related information, imposed by our Fees manual, having consulted on those changes in our QCP published on 4 June 2021.

Forbearance on annulment

2.25 If:

- we have functions in relation to a statutory obligation, including an obligation imposed by our Handbook, and
- an annulment causes any person to become subject to that obligation

Schedule 6A gives us a power to exercise those functions as though that person had not become subject to that obligation.

2.26 We intend to use this forbearance power, which can operate retrospectively, when we consider that the effect of an annulment creates unfairness, including in relation to reporting requirements. We are required by Schedule 6A to notify those in whose favour we use this power.

2.27 We propose to point out the availability of this forbearance power in our new Handbook guidance, specifically in SUP 7.4.6G (2). However, given the wide range of obligations to which the power could apply, we do not propose to specify those obligations in that guidance.

2.28 Instead, we are likely to explain if and how we intend to use this power when we notify firms of their right to apply for annulment. At the same time, we will invite them to specify, if and when they apply, particular obligations they would like us to consider for this purpose.

Withdrawal or variation of approvals on annulment

2.29 One of the conditions we can impose when we annul is to withdraw or vary an approval we have granted for an individual to perform a controlled function at the relevant firm. As we propose to state in our new Handbook guidance, specifically in SUP 7.4.3G (2), we consider that this power can only apply to approvals that are restored as a result of annulment.

2.30 While we may use this power for other purposes, we intend to use it particularly to address potentially unfair effects of annulment. For example, an individual approved at a firm as a senior manager before cancellation may remain with the firm but, on annulment of that cancellation, no longer want to have the responsibilities of a senior manager under our Handbook.

- 2.31** We may also use the forbearance power described above to address such an individual's obligations arising retrospectively, as a result of the annulment, in the period between the cancellation and the annulment.
- 2.32** Again, given the range of circumstances in which we may use the power to impose conditions on annulment, we do not propose to specify those circumstances in our new guidance. Again, we will notify firms appropriately when informing them of their right to apply for annulment.
- 2.33** We welcome your views on our proposed approach, described above, to dealing with obligations on firms and individuals on annulment.

How this links to our objectives

- 2.34** As we have explained above, we have been granted the new power in Schedule 6A and intend to use it to reduce particular risks of consumer harm. We will therefore do so in support of our consumer protection objective and we have had regard to the impact on consumers when considering our approach to doing so, as described above and below and in the draft instrument appended to this CP.

Equality and diversity considerations

- 2.35** We have considered the equality and diversity issues that may arise from the proposals in this CP.
- 2.36** We do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when finalising the relevant amendments to our Handbook and EG.
- 2.37** In the meantime, we welcome your input to this consultation on this point.

3 Changes to the Glossary

3.1 We intend to include in the Glossary a new term, 'additional own-initiative variation power', to define the new power to vary or cancel in Schedule 6A.

3.2 We also propose consequential amendments, including to existing terms that cover our own-initiative powers, to reference the new power.

Q1: **Do you have any comments on our proposed changes to the Glossary?**

4 Changes to the Supervision manual

4.1 In Chapters 6 and 7 of SUP (SUP 6 and 7) we already provide guidance on the pre-FS Act powers we have to cancel and vary firms' permissions. We will amend those chapters to reflect the new power, including by making consequential amendments to existing wording to ensure it is accurate and consistent.

No regulated activities

4.2 In addition to describing the new power in SUP 6 and 7, we will give examples, in SUP 7.2.2AG and SUP 7.2.2CG, of the circumstances in which we may conclude that a firm is carrying on no regulated activities for which it has permission.

4.3 The circumstances we consider may lead us to take such a view include, but are not limited to, when:

- a firm fails to pay a periodic fee or levy due under the Handbook
- a firm fails to provide us with information required under the Handbook

(as already noted above, these circumstances are specified in Schedule 6A itself)

- one or more reports from a firm indicate that it is no longer carrying on such activities
- a firm fails, twice or more, to respond substantively to our correspondence, when that correspondence, sent to an appropriate address, including potentially an email address, requested a response, or
- correspondence to such an address is returned to us or is otherwise notified to us as undelivered.

4.4 We will, as we propose to state in SUP 7.2.2DG, consider all the relevant facts and circumstances before deciding whether to cancel or vary a firm's permission using the new power. We will also make clear, in SUP 7.2.2AG, that a firm will be able to avoid cancellation or variation under Schedule 6A simply by responding to our relevant notices in the manner, or by taking the steps, we direct.

Variation or cancellation

4.5 As we will exercise the new power where it appears that a firm is not carrying on regulated activities, we are more likely to cancel its permission than vary it, which point we propose to make in SUP 7.2.2DG.

4.6 We will also note, however, in SUP 7.2.2DG and SUP 7.2.3AG, that:

- we may vary rather than cancel when, for example, we consider that there are matters that require investigation, and
- we may use the new power during an investigation.

Applications for annulment

- 4.7** As already described above, Schedule 6A allows firms that are unhappy with our decisions to cancel or vary to apply to have those decisions retrospectively annulled. We can only annul where we are satisfied in all the circumstances that it is just and reasonable to do so.
- 4.8** We will, as we propose to state in SUP 7.4.4G, consider all the relevant facts and circumstances when deciding whether and subject to what conditions to annul. We also propose to state in SUP 7.4.4G that, to satisfy us that it is just and reasonable to annul a decision to cancel or vary will require the relevant firm to explain:
- why it did not respond as directed to our notices warning of cancellation or variation
 - the circumstances that led us to consider that the firm was not carrying on regulated activities, and
 - if appropriate, the remedial steps the firm will take in that regard.
- 4.9** Other factors may also be relevant to whether it is just and reasonable, or to the conditions on which it is just and reasonable, to annul. We propose to set some of these out in SUP 7.4.5G, including:
- concerns about the relevant firm meeting the threshold conditions
 - how promptly the firm applied for annulment
 - whether the firm continued to conduct regulated activities in breach of section 19 or 20 of FSMA after the decision it asks us to annul came into effect
 - where the application is for the annulment of a cancellation:
 - the firm's compliance, when cancelled, with the requirements of the regulatory system that would have applied to it but for the cancellation, including those in DISP and COMP, and
 - the firm's willingness, if it was unable to follow those requirements during the period of cancellation, to address the results after annulment, in particular the effects on other persons, and
 - whether there are any outstanding Ombudsman Service awards or directions against the firm.
- Q2: Do you have any comments on our proposed changes to SUP?**
- Q3: Do you have any views on our proposed approach, described in paragraphs 2.26 to 2.32 above, to dealing with obligations on firms and individuals on annulment?**

5 Changes to the Enforcement Guide

5.1 We propose in EG to briefly describe the new power and to cross-refer to the more detailed guidance on it we propose in SUP.

5.2 Otherwise we propose to:

- repeat the point we intend to make in SUP about our potential use of the new power in an enforcement context, and
- note that we may use the new power with immediate effect but always with effect from a specified date at least 14 days after we give the second of the notices warning of variation or cancellation, as described above.

Q4: Do you have any comments on our proposed changes to EG?

6 Changes to the Compensation sourcebook

- 6.1** The FSCS is the UK's statutory financial services compensation scheme of last resort. It can step in when an authorised financial services firm is, or is likely to be, unable to pay claims against it.
- 6.2** Section 213(3)(a)(i) of FSMA provides that FSCS protection applies to claims against certain authorised firms or appointed representatives whether or not the relevant person was carrying on the relevant regulated activities with permission.
- 6.3** If we vary a firm's permission under Schedule 6A of FSMA, the firm remains authorised. If the relevant conditions for paying compensation in COMP are met, FSCS cover may apply even if the firm was acting outside the scope of its permission.
- 6.4** If we cancel a firm's Part 4A permission so it should no longer carry on any regulated activities, any claim against it for activities it carried on after cancellation will not be protected by the FSCS. This is because the firm will no longer be an authorised person. The FSCS will continue to be able to consider claims about acts or omissions which happened before the cancellation took effect, if the relevant conditions in COMP are met.
- 6.5** We propose to add guidance to COMP to clarify that the effect of annulment is that a firm will be treated as a participant firm for FSCS purposes for claims that may arise in the period between cancellation or variation and annulment.

Q5: Do you have any comments on our proposed changes to COMP?

7 Changes to the Dispute resolution: Complaints sourcebook

- 7.1** The Ombudsman Service was set up under FSMA to resolve financial services disputes quickly and with minimum formality. The service is free to use for complainants.
- 7.2** We propose to add guidance to DISP to explain the effect of annulment under Schedule 6A. In summary, where we grant an application for annulment, the cancellation or variation of a firm's permission is treated as if it had never taken place. So the guidance explains that – if the Ombudsman Service could not otherwise consider a complaint about the firm's activities during the period when its permission was cancelled or varied – the effect of the annulment means that the Ombudsman Service will be able to consider the complaint.
- 7.3** Since the effect of an annulment is that the cancellation or variation never took place, annulment may also put a firm in breach of the complaints reporting requirements set out in DISP 1.10 if the deadline for submission passed before annulment. So we propose a rule to delay the deadline for submitting the complaints return.
- 7.4** We also propose to state in our amendments to SUP that, if we cancel a firm's permission, we may take into account, when considering whether to annul the cancellation and on what conditions, whether the firm:
- since the cancellation, has followed the DISP requirements that would have applied to it but for the cancellation, and
 - is willing, as far as it was unable to follow those requirements during the period of cancellation, to take action to address any resulting consumer harm after annulment, which may include consumers not being provided with rights to refer to the Ombudsman Service.
- 7.5** We may also request complaints data from firms when we are considering their applications for annulment. We may use this data to identify whether and how we might use the annulment condition power in Schedule 6A to protect consumers.
- 7.6** If firms do not provide complaints data before annulment and the period for submitting complaints data has passed, we propose that they should provide it within 30 business days of the date of annulment. We will give firms an opportunity during the annulment application process to raise any reasonable concerns they might have about reporting this data.

Q6: Do you have any comments on our proposed changes to DISP?

Q7: Do you agree that firms should have up to 30 business days from the date of annulment to submit a complaints return when the deadline for doing so passed before annulment?

Annex 1

Questions in this Consultation Paper

- Q1:** Do you have any comments on our proposed changes to the Glossary?
- Q2:** Do you have any comments on our proposed changes to SUP?
- Q3:** Do you have any views on our proposed approach, described in paragraphs 2.26 to 2.32 above, to dealing with obligations on firms and individuals on annulment?
- Q4:** Do you have any comments on our proposed changes to EG?
- Q5:** Do you have any comments on our proposed changes to COMP?
- Q6:** Do you have any comments on our proposed changes to DISP?
- Q7:** Do you agree that firms should have up to 30 business days from the date of annulment to submit a complaints return when the deadline for doing so passed before annulment?

Annex 2

Cost benefit analysis

1. All of our proposals in this CP result, as described above, from a new power given to the FCA, in Schedule 6A to FSMA, by the FS Act. Our proposals, as also described above, signpost the legislation, clarify the effect of the legislation in particular circumstances and give additional guidance on the use of the new power.
2. The Government produced an impact assessment of the FS Act, when it was a Bill. The part of that document relevant to the new power is at pages 84 to 86.
3. Under section 138I of FSMA, when the FCA wishes to introduce any new rules, it must publish a cost benefit analysis (CBA) along with the proposed rules, unless we consider that the proposal will not give rise to any cost or that the increase in costs will be of minimal significance.
4. Our proposals to amend SUP, COMP and EG do not impose additional obligations on firms. They are not related to rule changes or guidance on rules. We are not therefore required to carry out a CBA in relation to those proposals.
5. Our proposals to amend DISP include the modification of an obligation on firms. If we did not make the new rule in DISP delaying the submission of the complaints return, a firm might be in breach of the complaints reporting requirements set out in DISP 1.10 if the deadline for submission passed before annulment.
6. We expect firms to incur minimal or no additional costs as a result of the proposals to amend DISP as firms will just need to familiarise themselves with the proposed changes if they apply for annulment. As such, we have not conducted a CBA as per the exemption under FSMA.

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals we are consulting on, including an explanation of the FCA's reasons for concluding that those proposals are compatible with certain requirements under FSMA.
2. When consulting on new rules, the FCA is required by section 138I(2)(d) of FSMA to include an explanation of its reasons for believing that making the proposed rules is compatible with:
 - its general duty, under section 1B(1) of FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives; and
 - its general duty, under section 1B(5)(a) of FSMA, to have regard to the regulatory principles in section 3B of FSMA.
3. The FCA is also required by section 138K(2) of FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under section 1JA of FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex also describes the requirements we are required to comply with by the Equality Act 2010.
6. Further, under the Legislative and Regulatory Reform Act 2006 (LRRRA), the FCA is subject to requirements to have regard to a number of high-level principles in the exercise of some of our regulatory functions and to have regard to the Regulators' Code when determining general policies and principles and giving general guidance. This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. We consider that the proposed new rule in DISP is compatible with the FCA's strategic objective of ensuring that relevant markets function well because it will avoid relevant firms being unnecessarily in breach of DISP 1.10 obligations. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by section 1F of FSMA.

8. Having regard to our duties, referred to above, under sections 138I(2)(d) and 1B(1) of FSMA, the single proposed rule on which we are consulting is intended to advance the FCA's operational objective of promoting effective competition in the interests of consumers in the markets for regulated financial services. Ensuring that we receive appropriate complaints data from firms for supervisory purposes also advances our consumer protection objective.
9. More particularly, we consider that, by extending the deadline, as described above, for relevant firms to comply with the obligation in DISP 1.10 to submit complaints reports, we will make it less likely that firms, which might otherwise breach that obligation as a result of an annulment, decide not to seek annulment and cease operating. That might, having regard to section 1E(2)(c) of FSMA, reduce consumers' ability to change the firm from which they obtain regulated financial services.
10. In preparing the proposal to make the new rule, the FCA has had regard to the regulatory principles set out in section 3B of FSMA, as follows:

The need to use our resources in the most efficient and economic way

11. We consider that it is unlikely to be a cost-effective use of our resources to take action against firms that are retrospectively put in breach of the DISP 1.10 reporting obligation by an annulment.

The principle that a burden or restriction should be proportionate to the benefits

12. We think it would be disproportionate and of no benefit for firms to be put retrospectively in breach of the DISP 1.10 reporting obligation by an annulment.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

13. As indicated above, we consider that the proposed rule will maintain competition in the interests of consumers, which may have some small indirect beneficial impact on such growth.

The general principle that consumers should take responsibility for their decisions

14. We do not consider that this principle is relevant to the proposed rule, which is not directly or indirectly relevant to such consumer responsibility.

The responsibilities of senior management

15. We recognise that senior management of relevant firms may have been responsible for our relevant decisions to cancel or vary under Schedule 6A but the applicability of the new rule we propose depends on our having decided that it is just and reasonable to annul. We do not therefore consider that senior management responsibility is a factor relevant to the question whether we should introduce the new rule.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

16. We do not consider that this principle is relevant to the proposed rule, which we do not believe will have differing impacts on different types of firm subject to the DISP 1.10 obligation.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

17. Where firms are required to publish complaints data, the proposed rule will ensure that consumers are able to view complaints data for the relevant period.

The principle that we should exercise our functions as transparently as possible

18. We are publicly consulting on making the rule, which will, if and once made, apply without the FCA taking steps under it and will not give the FCA any discretion as to its application.
19. In formulating the proposed rule, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on:
- by an authorised person or a recognised investment exchange; or
 - in contravention of the general prohibition;

to be used for a purpose connected with financial crime (as required by section 1B(5)(b) of FSMA).

20. We do not believe that the rule will have more than a minimal potential negative impact in this regard, given that it merely briefly postpones a deadline to report complaints to us. We consider that any such impact is outweighed by the need for the rule.

Expected effect on mutual societies

21. The new rule we propose will not apply to mutual societies because they are authorised by the PRA and, as explained above, the new power in Schedule 6A does not apply to PRA-authorised firms.

Equality and diversity

22. We are required under the Equality Act 2010, in exercising our functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and foster good relations between people who share a protected characteristic and those who do not.
23. We therefore ensure that the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 2.36 above.

Legislative and Regulatory Reform Act 2006

- 24.** We have had regard to the principles in the LRRRA when developing the guidance we are now consulting on. In particular, we have sought:
- having regard to the transparency and consistency principles, to describe in some detail in that proposed guidance the new power, the possibility of annulment, the processes relevant to each and the factors we will or may relevantly take into account; and
 - having regard to the proportionality and targeting principles, to take a balanced and fair approach, having regard to the risks of harm described above, to the selection of those factors.
- 25.** We have also had regard to the Regulators' Code in developing the proposals described in this CP that consist of guidance. We have, in particular, in doing so, had regard to the provisions of the Code relating to:
- clear, accessible and concise guidance, which we have sought to produce; and
 - risk assessment and proportionality, having regard to the potential harms described above.

Treasury recommendations

- 26.** In his letter to the CEO of the FCA dated 23 March 2021, the Chancellor of the Exchequer stated that '*the government wants to see financial services work in the best interests of the consumers and businesses they serve*'. We have had regard to that statement in developing the proposals described in this CP, in light of the risks of harm described above.

Annex 4

Abbreviations used in this paper

Abbreviation	Description
CBA	Cost benefit analysis
COMP	Compensation sourcebook
CP	Consultation Paper
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
LRRA	Legislative and Regulatory Reform Act 2006
Ombudsman Service	Financial Ombudsman Service
PRA	Prudential Regulation Authority
QCP	Quarterly Consultation Paper
Register	Financial Services Register
SUP	Supervision manual
SUP 6 and 7	Chapters 6 and 7 of SUP
Tribunal	Upper Tribunal

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Appendix 1

Draft Handbook text and Enforcement Guide text

**PART 4A PERMISSION (OWN-INITIATIVE VARIATION AND CANCELLATION)
INSTRUMENT 2021**

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);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction); and
 - (5) paragraph 13 (FCA’s rules) of Schedule 17.
- 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 [*date*].

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
The Enforcement Guide (EG)	Annex E

Citation

- E. This instrument may be cited as the Part 4A Permission (Own-Initiative Variation and Cancellation) Instrument 2021.

By order of the Board
[*date*]

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, which 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

...

- 6.2.1 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) *Firms should be aware that the appropriate regulator may exercise its own-initiative variation power or, in respect of FCA-authorised persons, 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:*
- 2
- (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 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 persons, 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.

7.2.2 A 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.

- 7.2.2 B 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.

- 7.2.2 C 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.

- 7.2.2 D 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 cancel or vary.

...

7.2.3 G The FCA may use its *additional own-initiative variation power*, under
A 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.

...

7.2.5 G If the FCA exercises its *additional own-initiative variation power*, under
A 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 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-authorized 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 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 *persons* 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 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* 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*, 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-authorized 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 in urgent cases

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 an urgent variation of *Part 4A permission* under section 55J of the *Act* or an urgent 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

...

8.5.2 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.

