



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART IV

PERMISSION TO CARRY ON REGULATED ACTIVITIES

Application for permission

40 Application for permission

- (1) An application for permission to carry on one or more regulated activities may be made to the Authority by—
 - (a) an individual;
 - (b) a body corporate;
 - (c) a partnership; or
 - (d) an unincorporated association.
- (2) An authorised person may not apply for permission under this section if he has a permission—
 - (a) given to him by the Authority under this Part, or
 - (b) having effect as if so given,which is in force.
- (3) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.
- (4) A permission given by the Authority under this Part or having effect as if so given is referred to in this Act as “a Part IV permission”.

41 The threshold conditions

- (1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in Schedule 6.
- (2) In giving or varying permission, or imposing or varying any requirement, under this Part the Authority must ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which he has or will have permission.
- (3) But the duty imposed by subsection (2) does not prevent the Authority, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular authorised person, in order to secure its regulatory objective of the protection of consumers.

Permission

42 Giving permission

- (1) “The applicant” means an applicant for permission under section 40.
- (2) The Authority may give permission for the applicant to carry on the regulated activity or activities to which his application relates or such of them as may be specified in the permission.
- (3) If the applicant—
 - (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but
 - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating to all the regulated activities which, if permission is given, he will carry on.
- (4) If the applicant—
 - (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but
 - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (5) If the applicant—
 - (a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part XIX, but
 - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (6) If it gives permission, the Authority must specify the permitted regulated activity or activities, described in such manner as the Authority considers appropriate.
- (7) The Authority may—
 - (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;

- (b) specify a narrower or wider description of regulated activity than that to which the application relates;
- (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

43 Imposition of requirements

- (1) A Part IV permission may include such requirements as the Authority considers appropriate.
- (2) A requirement may, in particular, be imposed—
 - (a) so as to require the person concerned to take specified action; or
 - (b) so as to require him to refrain from taking specified action.
- (3) A requirement may extend to activities which are not regulated activities.
- (4) A requirement may be imposed by reference to the person's relationship with—
 - (a) his group; or
 - (b) other members of his group.
- (5) A requirement expires at the end of such period as the Authority may specify in the permission.
- (6) But subsection (5) does not affect the Authority's powers under section 44 or 45.

Variation and cancellation of Part IV permission

44 Variation etc. at request of authorised person

- (1) The Authority may, on the application of an authorised person with a Part IV permission, vary the permission by—
 - (a) adding a regulated activity to those for which it gives permission;
 - (b) removing a regulated activity from those for which it gives permission;
 - (c) varying the description of a regulated activity for which it gives permission;
 - (d) cancelling a requirement imposed under section 43; or
 - (e) varying such a requirement.
- (2) The Authority may, on the application of an authorised person with a Part IV permission, cancel the permission.
- (3) The Authority may refuse an application under this section if it appears to it—
 - (a) that the interests of consumers, or potential consumers, would be adversely affected if the application were to be granted; and
 - (b) that it is desirable in the interests of consumers, or potential consumers, for the application to be refused.
- (4) If, as a result of a variation of a Part IV permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

- (5) The Authority's power to vary a Part IV permission under this section extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40.

45 Variation etc. on the Authority's own initiative

- (1) The Authority may exercise its power under this section in relation to an authorised person if it appears to it that—
- (a) he is failing, or is likely to fail, to satisfy the threshold conditions;
 - (b) he has failed, during a period of at least 12 months, to carry on a regulated activity for which he has a Part IV permission; or
 - (c) it is desirable to exercise that power in order to protect the interests of consumers or potential consumers.
- (2) The Authority's power under this section is the power to vary a Part IV permission in any of the ways mentioned in section 44(1) or to cancel it.
- (3) If, as a result of a variation of a Part IV permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the Authority must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (4) The Authority's power to vary a Part IV permission under this section extends to including any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40.
- (5) The Authority's power under this section is referred to in this Part as its own-initiative power.

46 Variation of permission on acquisition of control

- (1) This section applies if it appears to the Authority that—
- (a) a person has acquired control over a UK authorised person who has a Part IV permission; but
 - (b) there are no grounds for exercising its own-initiative power.
- (2) If it appears to the Authority that the likely effect of the acquisition of control on the authorised person, or on any of its activities, is uncertain the Authority may vary the authorised person's permission by—
- (a) imposing a requirement of a kind that could be imposed under section 43 on giving permission; or
 - (b) varying a requirement included in the authorised person's permission under that section.
- (3) Any reference to a person having acquired control is to be read in accordance with Part XII.

47 Exercise of power in support of overseas regulator

- (1) The Authority's own-initiative power may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, a regulator who is—
- (a) outside the United Kingdom; and

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- (b) of a prescribed kind.
- (2) Subsection (1) applies whether or not the Authority has powers which are exercisable in relation to the authorised person by virtue of any provision of Part XIII.
- (3) If a request to the Authority for the exercise of its own-initiative power has been made by a regulator who is—
 - (a) outside the United Kingdom,
 - (b) of a prescribed kind, and
 - (c) acting in pursuance of provisions of a prescribed kind,the Authority must, in deciding whether or not to exercise that power in response to the request, consider whether it is necessary to do so in order to comply with a Community obligation.
- (4) In deciding in any case in which the Authority does not consider that the exercise of its own-initiative power is necessary in order to comply with a Community obligation, it may take into account in particular—
 - (a) whether in the country or territory of the regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
 - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
 - (c) the seriousness of the case and its importance to persons in the United Kingdom;
 - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (5) The Authority may decide not to exercise its own-initiative power, in response to a request, unless the regulator concerned undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate.
- (6) Subsection (5) does not apply if the Authority decides that it is necessary for it to exercise its own-initiative power in order to comply with a Community obligation.
- (7) In subsections (4) and (5) “request” means a request of a kind mentioned in subsection (1).

48 Prohibitions and restrictions

- (1) This section applies if the Authority—
 - (a) on giving a person a Part IV permission, imposes an assets requirement on him; or
 - (b) varies an authorised person’s Part IV permission so as to alter an assets requirement imposed on him or impose such a requirement on him.
- (2) A person on whom an assets requirement is imposed is referred to in this section as “A”.
- (3) “Assets requirement” means a requirement under section 43—
 - (a) prohibiting the disposal of, or other dealing with, any of A’s assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings; or

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- (b) that all or any of A’s assets, or all or any assets belonging to consumers but held by A or to his order, must be transferred to and held by a trustee approved by the Authority.
- (4) If the Authority—
 - (a) imposes a requirement of the kind mentioned in subsection (3)(a), and
 - (b) gives notice of the requirement to any institution with whom A keeps an account,
 the notice has the effects mentioned in subsection (5).
- (5) Those effects are that—
 - (a) the institution does not act in breach of any contract with A if, having been instructed by A (or on his behalf) to transfer any sum or otherwise make any payment out of A’s account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement; and
 - (b) if the institution complies with such an instruction, it is liable to pay to the Authority an amount equal to the amount transferred from, or otherwise paid out of, A’s account in contravention of the requirement.
- (6) If the Authority imposes a requirement of the kind mentioned in subsection (3)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the Authority.
- (7) If, while a requirement of the kind mentioned in subsection (3)(b) is in force, A creates a charge over any assets of his held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A’s creditors.
- (8) Assets held by a person as trustee (“T”) are to be taken to be held by T in accordance with a requirement mentioned in subsection (3)(b) only if—
 - (a) A has given T written notice that those assets are to be held by T in accordance with the requirement; or
 - (b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.
- (9) A person who contravenes subsection (6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) “Charge” includes a mortgage (or in Scotland a security over property).
- (11) Subsections (6) and (8) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (3)(b).

Connected persons

49 Persons connected with an applicant

- (1) In considering—
 - (a) an application for a Part IV permission, or
 - (b) whether to vary or cancel a Part IV permission,

the Authority may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or person given permission which is relevant.

- (2) Before—
 - (a) giving permission in response to an application made by a person who is connected with an EEA firm, or
 - (b) cancelling or varying any permission given by the Authority to such a person, the Authority must consult the firm’s home state regulator.
- (3) A person (“A”) is connected with an EEA firm if—
 - (a) A is a subsidiary undertaking of the firm; or
 - (b) A is a subsidiary undertaking of a parent undertaking of the firm.

Additional permissions

50 Authority’s duty to consider other permissions etc

- (1) “Additional Part IV permission” means a Part IV permission which is in force in relation to an EEA firm, a Treaty firm or a person authorised as a result of paragraph 1(1) of Schedule 5.
- (2) If the Authority is considering whether, and if so how, to exercise its own-initiative power under this Part in relation to an additional Part IV permission, it must take into account—
 - (a) the home State authorisation of the authorised person concerned;
 - (b) any relevant directive; and
 - (c) relevant provisions of the Treaty.

Procedure

51 Applications under this Part

- (1) An application for a Part IV permission must—
 - (a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which he wishes to have permission; and
 - (b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on him under this Act.
- (2) An application for the variation of a Part IV permission must contain a statement—
 - (a) of the desired variation; and
 - (b) of the regulated activity or regulated activities which the applicant proposes to carry on if his permission is varied.
- (3) Any application under this Part must—
 - (a) be made in such manner as the Authority may direct; and
 - (b) contain, or be accompanied by, such other information as the Authority may reasonably require.

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- (4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (6) The Authority may require an applicant to provide information which he is required to provide under this section in such form, or to verify it in such a way, as the Authority may direct.

52 Determination of applications

- (1) An application under this Part must be determined by the Authority before the end of the period of six months beginning with the date on which it received the completed application.
- (2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it received the application.
- (3) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.
- (4) If the Authority grants an application for, or for variation of, a Part IV permission, it must give the applicant written notice.
- (5) The notice must state the date from which the permission, or the variation, has effect.
- (6) If the Authority proposes—
 - (a) to give a Part IV permission but to exercise its power under section 42(7)(a) or (b) or 43(1), or
 - (b) to vary a Part IV permission on the application of an authorised person but to exercise its power under any of those provisions (as a result of section 44(5)),it must give the applicant a warning notice.
- (7) If the Authority proposes to refuse an application made under this Part, it must (unless subsection (8) applies) give the applicant a warning notice.
- (8) This subsection applies if it appears to the Authority that—
 - (a) the applicant is an EEA firm; and
 - (b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.
- (9) If the Authority decides—
 - (a) to give a Part IV permission but to exercise its power under section 42(7)(a) or (b) or 43(1),
 - (b) to vary a Part IV permission on the application of an authorised person but to exercise its power under any of those provisions (as a result of section 44(5)), or
 - (c) to refuse an application under this Part,it must give the applicant a decision notice.

53 Exercise of own-initiative power: procedure

- (1) This section applies to an exercise of the Authority's own-initiative power to vary an authorised person's Part IV permission.
- (2) A variation takes effect—
 - (a) immediately, if the notice given under subsection (4) states that that is the case;
 - (b) on such date as may be specified in the notice; or
 - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (3) A variation may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).
- (4) If the Authority proposes to vary the Part IV permission, or varies it with immediate effect, it must give the authorised person written notice.
- (5) The notice must—
 - (a) give details of the variation;
 - (b) state the Authority's reasons for the variation and for its determination as to when the variation takes effect;
 - (c) inform the authorised person that he may make representations to the Authority within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);
 - (d) inform him of when the variation takes effect; and
 - (e) inform him of his right to refer the matter to the Tribunal.
- (6) The Authority may extend the period allowed under the notice for making representations.
- (7) If, having considered any representations made by the authorised person, the Authority decides—
 - (a) to vary the permission in the way proposed, or
 - (b) if the permission has been varied, not to rescind the variation,it must give him written notice.
- (8) If, having considered any representations made by the authorised person, the Authority decides—
 - (a) not to vary the permission in the way proposed,
 - (b) to vary the permission in a different way, or
 - (c) to rescind a variation which has effect,it must give him written notice.
- (9) A notice given under subsection (7) must inform the authorised person of his right to refer the matter to the Tribunal.
- (10) A notice under subsection (8)(b) must comply with subsection (5).
- (11) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

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- (12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

54 Cancellation of Part IV permission: procedure

- (1) If the Authority proposes to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a warning notice.
- (2) If the Authority decides to cancel an authorised person's Part IV permission otherwise than at his request, it must give him a decision notice.

References to the Tribunal

55 Right to refer matters to the Tribunal

- (1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.
- (2) An authorised person who is aggrieved by the exercise of the Authority's own-initiative power may refer the matter to the Tribunal.