
STATUTORY INSTRUMENTS

2018 No. 1253

The Financial Services and Markets Act 2000
(Claims Management Activity) Order 2018

PART 3

Transitional provisions

CHAPTER 5

Temporary Permission

Temporary permission

- 80.**—(1) In this article “relevant person” means a person who—
- (a) immediately before 1st April 2019—
 - (i) was a 2006 Act authorised person;
 - (ii) was providing services which, if Part 2 of the 2006 Act had extended to Scotland, would have been regulated claims management services (within the meaning given by section 4 of the 2006 Act); or
 - (iii) in relation to a claim which a person has by virtue of section 75(1) of the Consumer Credit Act 1974, was providing services of a kind which, if performed on or after 1st April 2019, would constitute the carrying on of an activity of the kind specified by—
 - (aa) article 89G (seeking out, referrals and identification of claims or potential claims) of the 2001 Order; or
 - (bb) article 89I (advice, investigation or representation of a financial services or financial product claim) of the 2001 Order; and
 - (b) during the period beginning with the date specified by the FCA in a direction given under article 81 and ending on 31st March 2019—
 - (i) notifies the FCA of a desire to be registered for temporary permission under this article; and
 - (ii) pays to the FCA any fee payable under its rules by any person desiring to be so registered.
- (2) Where the conditions set out in paragraph (3) are met, the reference in paragraph (1)(a) to a 2006 Act authorised person includes a person (“P”) who received from the Regulator—
- (a) written notice under regulation 13(5) of the 2006 Regulations of a decision to refuse to grant an authorisation (“refusal decision”); or
 - (b) written notice given under regulation 47 of the 2006 Regulations of a decision to cancel P’s authorisation (“cancellation decision”).
- (3) The conditions are that—
- (a) in the case of a notice under regulation 13(5) of the 2006 Regulations—

- (i) where, before 1st April 2019, P submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act⁽¹⁾ (appeals and references to Tribunal) with respect to the refusal decision, the appeal—
 - (aa) was not determined before 1st April 2019; or
 - (bb) was determined before 1st April 2019 by way of a remittal of the refusal decision to the Regulator under section 13(3)(e) of the 2006 Act but a further decision by the Regulator in relation to the remittal has not been taken; or
- (ii) where, before 1st April 2019, P did not submit such notice of appeal, the period within which an appeal may be made has not ended on that date;
- (b) in the case of a notice under regulation 47 of the 2006 Regulations, the cancellation had effect before 1st April 2019, and—
 - (i) where, before 1st April 2019, P submitted notice of an appeal to the First-tier Tribunal under section 13 of the 2006 Act with respect to the cancellation decision, the appeal—
 - (aa) was not determined before 1st April 2019; or
 - (bb) was determined before 1st April 2019 by way of a remittal of the cancellation decision to the Regulator under section 13(3)(e) of the 2006 Act but a further decision by the Regulator in relation to the remittal has not been taken; or
 - (ii) where, before 1st April 2019, P did not submit such notice of appeal, the period within which an appeal may be made has not ended on that date.
- (4) On and after 1st April 2019 a relevant person has a temporary permission to carry on—
 - (a) an activity of the kind specified by any of articles 89G to 89M of the 2001 Order (specified kinds of claims management activity); and
 - (b) so far as relevant to that activity, the activity specified by article 64 of the 2001 Order.
- (5) Subject to article 83(2), a temporary permission to carry on the activities referred to in paragraph (4) has effect—
 - (a) in the case of P, as a Part 4A permission to carry on those activities which has been suspended by the FCA under section 206A of the 2000 Act; or
 - (b) in the case of any other relevant person, as a Part 4A permission to carry on those activities.
- (6) For the purposes of paragraph (5)(a)—
 - (a) P’s temporary permission is to be treated as if the period for which the suspension is to have effect were such period as ends on the date on which that permission is to be treated, under paragraph (8) or (10), as if its suspension had been withdrawn; and
 - (b) section 206A of the 2000 Act is to be read as if subsection (3) were omitted.
- (7) “Relevant appeal” means—
 - (a) where paragraph (3)(a)(i) or (b)(i) applies, P’s appeal to the First-tier Tribunal with respect to the refusal decision or the cancellation decision;
 - (b) where paragraph (3)(a)(ii) or (b)(ii) applies, an appeal by P to the Tribunal with respect to the refusal decision or the cancellation decision made before the end of the period within which, in the absence of this Order, an appeal to the First-tier Tribunal could have been made.
- (8) Where the relevant appeal is determined in P’s favour—

(1) Section 13 was amended by the Financial Services (Banking Reform) Act 2013 (c. 33) and by S.I. 2010/22.

- (a) by a decision of the First-tier Tribunal or Tribunal (or by a decision of a higher court or tribunal made on an appeal against a decision of either tribunal); or
- (b) by a remittal of the refusal or cancellation decision under section 13(3)(e) of the 2006 Act which results in a reversal of that decision,

P's temporary permission is to be treated as if its suspension had, on the date of the determination, been withdrawn by the FCA under section 206A(6) of the 2000 Act.

(9) Where, before 1st April 2019, the First-tier Tribunal suspended the effect of the refusal decision or the cancellation decision under section 13(3A)(c) of the 2006 Act, P's temporary permission is to be treated as a Part 4A permission which is not subject to suspension by the FCA under section 206A of the 2000 Act.

(10) Where, at any time on or after 1st April 2019—

- (a) the First-tier Tribunal suspends the effect of the refusal decision or the cancellation decision under section 13(3A)(c) of the 2006 Act; or
- (b) the Tribunal suspends the effect of the refusal decision or the cancellation decision under rule 5(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008(2),

P's temporary permission is to be treated as if its suspension by virtue of paragraph (5)(a) had, at that time, been withdrawn by the FCA under section 206A(6) of the 2000 Act.

Procedure for notifying the FCA of a desire to be registered for temporary permission

81.—(1) The FCA may give a direction specifying—

- (a) the manner in which a desire to be registered for temporary permission under article 80 is required to be notified to the FCA;
- (b) the date on or after which notification of such a desire may be given; and
- (c) such information as the FCA may reasonably require to be contained in, or supplied with, that notification.

(2) A direction under this article may impose different requirements for different circumstances or different categories of notification.

(3) At any time after receiving notification under this article, the FCA may require the person giving the notification to provide the FCA with such further information as it reasonably considers necessary to enable it to discharge its functions.

(4) The FCA may require information to be provided in such form, or verified in such manner, as the FCA may direct.

(5) A direction given under this article may be amended by further direction.

Duration of temporary permission

82.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) In this article—

“last application date” means the last date on which a person (“A”) who has a temporary permission to carry on an activity referred to in article 80(4) (temporary permission) may make a relevant application; and

“relevant application” means—

- (a) where, immediately before 1st April 2019, A is a 2000 Act authorised person, an application by A under section 55H (variation by FCA at request of authorised person) to vary A's Part 4A permission by adding regulated claims management activity to the activities to which the permission relates;
 - (b) where, immediately before 1st April 2019, A is not a 2000 Act authorised person, an application by A under section 55A (application for permission) for permission to carry on regulated claims management activity.
- (3) The FCA must give a direction specifying the last application date.
- (4) A's temporary permission ceases to have effect—
- (a) where A makes a relevant application on or before the last application date, on the date on which that application is determined;
 - (b) where A does not make a relevant application on or before the last application date, on the date on which the period of 30 days, beginning with the day after the last application date, expires;
 - (c) on the date specified by the FCA in a notice of cancellation of A's temporary permission, which may be given where—
 - (i) by virtue of article 80(5)(a), A's temporary permission has effect as a Part 4A permission suspended by the FCA under section 206A of the 2000 Act; and
 - (ii) A's relevant appeal (within the meaning of article 80(7)) is determined otherwise than in A's favour.
- (5) Paragraph (4) does not affect the exercise by the FCA, in relation to A's temporary permission, of the powers conferred on it by the 2000 Act to vary, cancel or suspend a Part 4A permission.
- (6) For the purposes of paragraph (4)(a), the date on which a relevant application is determined is—
- (a) where A withdraws the application by written notice under section 55V(4), the date on which the period of 30 days beginning with the date on which the notice is given expires;
 - (b) where the FCA grants the application, the date stated in its written notice under section 55V(5) as the date from which the permission has effect;
 - (c) where the FCA decides to—
 - (i) give or vary a Part 4A permission under section 55X(4)(a), (b), (c) or (d); or
 - (ii) refuse the application under section 55X(4)(f),
- the date on which the period of 30 days, beginning with the date on which the FCA gives the decision notice under that section, expires.
- (7) During the period of 30 days referred to in paragraphs (4)(b) and (6)(a) and (c), A may not enter, or offer to enter, into an agreement the making or performance of which would constitute regulated claims management activity.
- (8) The prohibition in paragraph (7) has the same effect as a requirement imposed by the FCA under section 55L.
- (9) A direction given under paragraph (3) may—
- (a) specify different dates for different classes of person or for different descriptions of activities;
 - (b) specify a date before which a relevant application may not be made (“the opening date”), provided that the opening date is not less than two months before the last application date;
 - (c) be amended by further direction.

(10) Subject to article 83(7) and (8), a relevant application made before the opening date is to be treated as if it had not been made.

(11) Paragraphs (12) and (13) apply where—

- (a) A's temporary permission ceases to have effect by virtue of paragraph (4) or the exercise by the FCA of the powers conferred on it by the 2000 Act to cancel a Part 4A permission; and
- (b) A consequently ceases, on the date on which A's temporary permission ceases ("the cessation date"), to be a 2000 Act authorised person.

(12) Paragraph 13 applies in relation to—

- (a) any act or omission by A which occurred before the cessation date; or
- (b) the contravention by A of any requirement imposed on A under section 55L (imposition of requirements by FCA) or 404F(7) (other definitions) which—
 - (i) is in effect immediately before the cessation date; and
 - (ii) which continues to have effect in accordance with paragraph (14).

(13) Part 11 (information gathering and investigations), Part 14 (disciplinary measures) and section 384 (power of the FCA to require restitution) of the 2000 Act are to be read as if a reference to an authorised person included a reference to A.

(14) The requirement referred to in paragraph 12(b) continues to have effect after the cessation date until such time as it is cancelled by the FCA, which the FCA must do when it is satisfied that it is no longer necessary for that requirement to continue to have effect.

Application of the 2000 Act to persons with a temporary permission

83.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the 2000 Act.

(2) This article applies in relation to a person ("A") who has a temporary permission to carry on an activity referred to in article 80(4) ("temporary permission").

(3) A's temporary permission does not have effect as a Part 4A permission for the purposes of—

- (a) section 38(2) (exemption orders);
- (b) section 39(1C)(a) (exemption of appointed representatives);
- (c) section 55A(3) (application for permission).

(4) For the purposes of section 327(7) and (9)(3) (exemption from the general prohibition), A is not to be treated as carrying on a regulated claims management activity where A carries on that activity pursuant to A's temporary permission.

(5) For the purposes of section 21(2) (restrictions on financial promotion), if A does not have permission other than a temporary permission, A may only approve the content of a communication if the communication invites or induces a person to enter into (or offer to enter into) an agreement in respect of a regulated activity for which A has temporary permission.

(6) For the purposes of section 39 (exemption of appointed representatives), A may be an appointed representative in relation to an activity which A does not have temporary permission to carry on.

(7) Where A applies to the FCA—

- (a) under section 55A for permission to carry on a regulated activity which is not a regulated claims management activity; or

- (b) under section 55H to vary A's Part 4A permission by adding to the activities to which the permission relates a regulated activity which is not a regulated claims management activity,

the application may be treated by the FCA as relating also to some or all of the regulated activities for which A has temporary permission.

(8) If the FCA treats the application as relating to some or all of the regulated activities for which A has temporary permission, article 82(10) does not apply in relation to the application.

(9) The duty imposed by section 55B(3) (satisfaction of threshold conditions) does not apply where the FCA exercises its power in relation to A under—

- (a) section 55J(4) (variation or cancellation on initiative of regulator);
- (b) section 55H (variation by FCA at request of authorised person) to remove a regulated activity from those for which A has temporary permission;
- (c) section 55L (imposition of requirements by FCA).

(10) Where, immediately before 1st April 2019, A is not a 2000 Act authorised person, A is not to be treated, by virtue of article 80(5), as a 2000 Act authorised person for the purposes of Part 12 of the 2000 Act (control over authorised persons).

(11) For the purposes of the compensation scheme established under section 213, a claim made against A in connection with any activity which A's temporary permission permits A to carry on is to be treated as if it were not made in connection with regulated activities carried on by A.

(12) The activity which A's temporary permission permits A to carry on is to be treated as if it were not a regulated activity for the purposes of—

- (a) construing the reference to the only regulated activities that a person carries on, or seeks to carry on, which is contained in paragraphs 2C(1A), 2D(3A) and 2F(3) of Schedule 6 to the 2000 Act (threshold conditions: Part 4A permission: authorised persons who are not PRA-authorised persons); and
- (b) article 6A(1)(b) of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009(5).

(4) Section 55J was inserted by the Financial Services Act 2012 (c. 21), section 11(2) and amended by S.I. 2013/1773 and 3115, 2015/575, 1882 and 910, 2016/225 and 680, and 2018/135.

(5) S.I. 2009/774.