



Scott-Moncrieff
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The extension of the Senior Managers and Certification Regime to all FCA solo regulated firms

Background

The SMCR represents a complete overhaul of the current Approved Persons regime. In 2016 the SMCR commenced for banks, building societies and PRA designated investment firms following the financial crisis of 2007-08.

The extension of the SMCR seeks to unify the standards applied to all financial services firms and apply a consistent approach to foster a culture of greater individual accountability and to help restore confidence in the financial services industry.

Key differences between the existing and new regime

The key differences between the new SMCR and the outgoing Approved Persons regime are:

- the current Approved Persons regime will disappear and be replaced by the Senior Managers Regime for the highest ranking management, but for the most part by the Certification Regime (which will apply to at least as many people as the Approved Persons regime, and probably more);
- Senior Managers will be created and they will have clearer individual responsibilities and accountability than before;
- firms will take on the responsibility for the certification (and assessing suitability, fitness and propriety) of certain individuals from the FCA;
- there will be a new Duty of Responsibility for Senior Managers, making them more accountable for regulatory contraventions in the part of the business for which they are responsible; and
- new 'simple' code of conduct rules will apply to almost everyone in the firm.

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The new regime in outline

The three main elements of the new regime, are called the 'core regime' which will now apply to almost all firms. There are increased obligations for firms covered by the 'enhanced regime' (larger and more complex firms), and reduced obligations for firms covered by the 'limited scope' regime.



| Element | Comprising |
|-------------------------------|--|
| Senior Managers Regime | <p>Introduces new Senior Management functions to replace existing significant influence and controlled functions.</p> <p>The most senior people in a firm will be approved by the FCA, with firms also having a responsibility to ensure they are suitable (fit and proper) for their role (with a review at least once a year). The Senior Managers will be required to have:</p> <ul style="list-style-type: none">• a Statement of Responsibilities – mapping what they are responsible and accountable for;• a Duty of Responsibility – meaning that if something goes wrong in an area they are responsible for, the FCA will consider if they took “reasonable steps” to stop it from occurring; and• Prescribed Responsibilities – responsibilities that the FCA will require firms to allocate to their Senior Managers. |
| Certification Regime | <p>This covers people who are not Senior Managers, but who can have a significant impact on customers, markets, or the firm (‘significant harm functions’). The roles include proprietary traders, the CASS oversight function, functions subject to qualification requirements, client dealing functions, algorithmic traders, material risk takers, and any supervisor or manager of someone who is a certified person.</p> <p>These individuals will not be approved by the FCA, but will be approved by their own firm. The firm will have to certify they are suitable (fit and proper) to carry out their job (with a review taking place at least once a year). Firms will also have to issue individuals with certificates to that effect, at least annually.</p> |
| Conduct Rules | <p>These rules will apply to almost all people working in financial services and will be:</p> <ul style="list-style-type: none">• you must act with integrity;• you must act with due skill, care and diligence;• you must be open and cooperative with the FCA, the PRA and other regulators;• you must pay due regard to the interests of customers and treat them fairly;• you must observe proper standards of market conduct. <p>There are additional conduct rules applying to Senior Managers:</p> <ul style="list-style-type: none">• you must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively;• you must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system; |



| Element | Comprising |
|---------|--|
| | <ul style="list-style-type: none"> • you must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee this effectively; • you must disclose appropriately any information of which the FCA or PRA would reasonably expect notice. <p>Firms are obliged to make an annual report to the FCA notifying of any breaches of the Conduct Rules in a 12 month period. Where there have been no breaches, nil returns are still required.</p> |

Senior Manager functions

Core and enhanced regime firms are required to have the following Senior Manager functions:

| Governing functions | | Required functions | |
|----------------------------------|--------|------------------------------------|--------|
| Chair function | SMF 9 | Compliance Oversight function | SMF 16 |
| Chief Executive Officer function | SMF 1 | Money Laundering Reporting Officer | SMF 17 |
| Executive Director function | SMF 3 | | |
| Partner function | SMF 27 | | |

Prescribed responsibilities

Core and enhanced regime firms will have to allocate Prescribed Responsibilities to Senior Managers including those below (limited scope firms will not be subject to this).

- performance of obligations under the Senior Manager Regime (including implementation and oversight);
- performance of obligations under the Certification Regime;
- performance of the firm in relation to notifications and training on the Conduct Rules;
- firm's policies and procedures regarding countering the risk of firm being used for financial crime;
- firm's compliance with CASS (as applicable);
- value for money assessments, independent director representation and acting in investors' best interests (Authorised Fund Managers only).



Regulatory references

The regulatory references scheme contained in SMCR requires firms to request references from past employers, and also to provide such references. This is a step up from previous referencing obligations and requirements, and enables firms to get the information they need to assist in assessing suitability and fitness and propriety. It applies to Senior Managers, Certification staff and non-approved NED roles.

Enhanced regime firms

An enhanced regime firm will have:

- more Senior Manager functions;
- more Prescribed Responsibilities for those Senior Managers;
- other requirements including:
 - a full responsibilities map for their business (setting out the firm's management and governance arrangements);
 - full handover procedures (ensuring every Senior Manager role has the information and materials needed to do the job effectively); and
 - a Senior Manager responsible for every area of their business. • the regulatory references scheme introduced for banks and insurers will extend to all firms in the financial services sector, thus increasing each firm's obligations for both obtaining, and giving, references.

So when does the SMCR take effect?

**Commencement
9 December
2019**

Conduct rules will apply to Senior Managers and Certification Staff, thus prior to commencement firms must:

- identify Senior Managers and Certification Staff;
- train them on the Conduct Rules;
- review and update contracts of employment.

**Transitional
period 9
December 2019
to 8 December
2020**

During the one transitional year period, firms must:

- train all other Conduct Rules staff in preparation for when it applies to them on 9 December 2020;
- assess existing Certification Staff for suitability; and
- identify and assess any new Certification Staff for suitability.

**Post transitional
period 9
December 2020**

During the post transitional period, firms must:

- ensure Conduct Rules apply to all relevant staff;
- complete Initial Certification Assessments completed;
- check that the firm's information is correct on the financial services register after automatic conversion;
- ongoing requirements to train new staff in the Conduct Rules and to re-certify Certification Staff as fit and proper at least annually.



How conversion to Senior Managers is to work

For core firms, Senior Managers will be automatically converted wherever possible with little or no action required by firms, and there is no need to perform any extra checks (such as mandatory criminal records checks and regulatory references) because firms should already be ensuring that these individuals are, and continue to be, fit and proper by performing such checks. The one exception to the automatic conversion rule is where a CF2 Non-Executive Director is going to be performing the Chair function (SMF 9), where the firm must notify the FCA using Form K.

For enhanced firms, there will be no automatic conversion to Senior Manager roles. To convert existing approved individuals to the Senior Manager functions, enhanced firms will need to submit a Form K conversion notification for each function together with Statements of Responsibilities and the firm's Responsibilities Map.

Next steps for firms

Firms now have approximately 18 months to prepare for implementation of the new regime and you now need to start those preparations. Firms will need to consider:

| Area | Considerations |
|-------------------------|--|
| Project planning | |
| | What type of firm are you? Core, enhanced or limited scope? <input type="checkbox"/> |
| | Who is planning and running your preparations? <input type="checkbox"/> |
| | Who needs to be engaged in the project? <input type="checkbox"/> |
| | Do you have a project plan? <input type="checkbox"/> |

Consider preparing a responsibilities map. Whilst only enhanced firms are required to produce a full responsibilities map, this is a good exercise for all firms to carry out as it will assist in the transition to SMCR.

| | |
|------------------------|--|
| Senior managers | |
| | Who are our Senior Managers going to be? <input type="checkbox"/> |
| | Are they fit and proper <input type="checkbox"/> |
| | What will their responsibilities be? <input type="checkbox"/> |



| Area | Considerations |
|----------------------|---|
| | Are the allocated prescribed responsibilities clearly included in their Statement of Responsibilities? <input type="checkbox"/> |
| | Are all prescribed responsibilities which apply to your firm covered? <input type="checkbox"/> |
| | Are the current Approved Person functions correct to ensure easy conversion to Senior Manager functions? <input type="checkbox"/> |
| | Do the Senior Managers need training on the Duty of Responsibility and the Conduct Rules? <input type="checkbox"/> |
| | Are the Senior Managers happy with their Statements of Responsibility? <input type="checkbox"/> |
| | Which (if any) of the defined Certification Functions apply to your firm? <input type="checkbox"/> |
| Certification | |
| | Have you identified your Certified persons before commencement? <input type="checkbox"/> |
| | Are they fit and proper now? |
| | How will you assess their ongoing fitness and propriety and fit these into existing HR processes? <input type="checkbox"/> |
| | What will be the process for issuing and renewing their annual certificates? <input type="checkbox"/> |
| | What training do you need to give them? <input type="checkbox"/> |
| Conduct rules | |
| | Who will the rules cover? <input type="checkbox"/> |
| | Are they trained now and in the future? <input type="checkbox"/> |
| | How are the notification requirements embedded into your HR processes? <input type="checkbox"/> |
| | How will breaches be monitored and reported? <input type="checkbox"/> |



| Area | Considerations |
|---------------------------|---|
| Enhanced firms | How are you going to address the handover procedures requirements? <input type="checkbox"/> |
| | How are you going to ensure your responsibilities map is up to date? <input type="checkbox"/> |
| | Have you addressed the Overall Responsibility requirements? <input type="checkbox"/> |
| Human resources functions | <input type="checkbox"/> |
| | Do you need to review and update your employment contracts? <input type="checkbox"/> |
| | Are revisions to policies and procedures required? <input type="checkbox"/> |
| | How are criminal records checks and regulatory references going to be addressed both on recruitment and ongoing? <input type="checkbox"/> |



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