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## Are you ready for the Senior Managers & Certification Regime?

The Senior Managers & Certification Regime (SM&CR) is looming. The new Regime will apply to insurance intermediaries and other solo-regulated firms from 9 December 2019, having been introduced for banking firms in 2016 and insurers in December 2018. The main features of SM&CR were set out in our October 2018 edition of Hot TopICS.

This article follows the publication of Policy Statement (PS 19/20), which confirmed the final rules for the SM&CR, and looks further at some of the implications for insurance intermediaries.

### Duty of responsibility

A Statutory Duty of Responsibility came into force in 2016 under the Bank of England and Financial Services Act. This Duty is being extended to solo-regulated firms on 9 December 2019, providing the FCA's with weaponry that underpins the SM&CR Conduct Rules.

Under the Duty of Responsibility, the FCA can take enforcement action against a Senior Manager if:

- there was a contravention of a relevant requirement by the Senior Manager's firm
- at the time of the contravention or during any part of it, the Senior Manager was responsible for the management of any of the firm's activities in relation to which the contravention occurred
- the Senior Manager did not take such steps as a person in their position could reasonably have been expected to take to avoid the contravention occurring or continuing

The burden of proof for all these elements lies with the FCA. The Senior Manager does not need to show that they took reasonable steps; it is for the FCA to prove that they did not.

Although the statutory duty doesn't impose additional record keeping requirements, the FCA acknowledges that it may be in the interests of a Senior Manager to keep records of relevant steps they take in case questions are raised, whether by the firm, its lawyers, auditors, insurers or customers, the FCA or another regulator.

### Is your category correct?

The SM&CR classifies firms according to their size and the risks they pose to customers and financial markets. Insurance intermediary firms (other than the largest firms) generally fall into the category of 'core' firms. They are expected to self-assess their category annually and notify the FCA where they have (as a 3 year rolling average) over £35m in regulated revenue. The three categories for SM&CR purposes are:

1. 'core' firms subject to the baseline requirements - includes most insurance intermediaries
2. 'enhanced' firms with more stringent and extensive requirements - larger firms including intermediaries with a turnover of £35m+
3. 'limited scope' firms with relatively few requirements - includes secondary intermediaries and sole traders

Though unlikely, core firms may choose to opt-up into the enhanced regime - the FCA has a new form (Form O) for those wishing to do so.

Most firms will already have received notification from the FCA of their SM&CR category and are able to check whether it is correct via the Firm Checker Tool - see 'Further Information'. If they disagree with the FCA's assessment they must notify the regulator without delay.

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## Conversion to Senior Manager

The SM&CR largely replaces the Approved Persons Regime. Existing Approved Persons will be automatically converted to Senior Managers as long as their Controlled Function has a corresponding Senior Management Function (SMF); for example, an Executive Director with the current Controlled Function of CF1 will become SMF3 under SM&CR. No forms are required and no extra 'fit and proper' checks will be required for 'converted' individuals if their role doesn't change. Firms should consider whether they need to make any changes to the Controlled functions of their current Approved Persons ahead of the commencement date.

Senior Managers will need to understand their Statutory Duty of Responsibility and abide by the Conduct Rules from the start of the new regime. They must also draw up and maintain their Statement of Responsibility (SoR).

When conversion to the new regime takes place, firms must check the updated Financial Services Register to ensure their SMFs have been shown correctly. There is a new rule under which firms are obliged, in the month beginning five business days after the commencement date, to check whether the Financial Services Register:

- correctly records who are the firm's Senior Managers
- correctly records the FCA-designated Senior Management Functions for which the firm has approval
- does not include incorrect information about the firm's Senior Managers and does not omit information about them that it says it includes
- includes everyone performing an FCA-designated Senior Management Function for the performance of which the firm should have obtained approval
- includes all the FCA-designated Senior Management Functions for which the firm should have obtained approval

## Assigning Responsibilities

Firms are expected to use their most up-to-date organisational charts to review reporting lines to assist in the analysis of which individuals will have responsibility for key functions. Re-organisation is not necessarily a consequence of the SM&CR but firms will need to consult and agree with individual employees on relevant responsibilities, including Prescribed Responsibilities which must be listed on the individual's Statement of Responsibilities.

## Prescribed Responsibilities

Firms must allocate 'Prescribed Responsibilities', as appropriate, to their Senior Managers. These are specific responsibilities to ensure that each firm has a Senior Manager accountable for certain aspects of the SM&CR. For Core firms, these are:

- Performance by the firm of its obligations under the Senior Managers Regime, including implementation and oversight
- Performance by the firm of its obligations under the Certification Regime
- Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules
- Responsibility for the firm's policies and procedures for countering the risk that the firm might be used for financial crime

Firms will need to consider carefully which Senior Manager is the best person to hold each of these responsibilities. The FCA expects that a person who has the responsibility will generally be the most senior employee or officer responsible for managing that area (or the most senior below the chief executive); and will have sufficient resources and authority to be able to exercise their management and oversight responsibilities effectively.

A Prescribed Responsibility is normally held by one person but they can be held by more than one individual if the firm can show that this is appropriate and justifiable, for example a job share. Where responsibilities are shared or divided, this must be clearly explained in the Statements of Responsibilities.

ICS understands that core firms that do not have any Certified Staff will still need to allocate the Prescribed Responsibility for the performance of the firm of its obligations under the Certification Regime. The rationale seems to be that a Senior

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Manager should be accountable for verifying whether there are any employees carrying out Certified Functions, even if there are none.

### Preparing Statements of Responsibility

Each Senior Manager is required to have a Statement of Responsibilities (SoR) from the commencement date; i.e. one document for each SMF manager for each firm. The SoR sets out what the person is responsible and accountable for under the ultimate accountability of a firm's governing body. It should be clear and easy for regulators, the Senior Manager and others in the firm to understand it with enough information to clearly describe the Senior Manager's actual responsibilities (including any Prescribed Responsibilities) and accountabilities, but without unnecessary detail.

Generally, a SoR should be a stand-alone document set out along the lines of the template 'Statement of Responsibilities for solo-regulated firms', provided in the FCA Handbook. This shouldn't prevent firms being able to annex or file the SoR alongside an individual's job description.

Firms are not required to submit SoRs to the FCA for converted individuals but they must be able to send them to the FCA on request and when a significant change to the individual's responsibilities takes place. A complete set of up-to-date SoRs must be retained by the firm - showing past and present responsibilities.

The FCA has provided guidance and some examples of SoRs in FG19/2 - see 'Further Information.'

### How the Certification Regime might apply

The FCA has drawn up a list of roles to which the Certification Regime applies. It means that some employees, other than Senior Managers, that carry out specific roles known as Certification Functions (generally those which would make it possible for them to cause significant harm to the firm or its customers) must be deemed **by the firm** to be fit and proper and issued with a certificate.

Certificates issued by firms should:

- state that the authorised person is satisfied that the person is a fit and proper person to perform the Certification Function
- set out the aspects of the firm's business in which the individual will be involved

Where a Senior Manager performs a Certification Function that is closely linked to their role as a Senior Manager, the FCA says they won't need to be certified under the Certification Regime.

If, having carried out a review of senior staff and their roles, a firm has no-one performing a Certification Function, the Certification Regime will not apply. As far as insurance intermediaries are concerned, the Certification Regime will be mainly applicable to larger firms which have personnel carrying out a Significant Management Function (currently CF29) or a CASS Operational Oversight Function (currently CF10a). Individuals carrying out these roles will not be approved by the FCA under the new regime and firms will need to take steps to apply the Certification Regime, as appropriate.

### The Conduct Rules

The Conduct Rules set minimum standards of individual behaviour across the spectrum of financial services. By applying the Conduct Rules to a broad range of staff, the aim is to improve individual accountability and awareness of conduct issues across firms. The Conduct Rules apply to a firm's regulated and unregulated financial services activities including any related ancillary activities.

Tier 1 Conduct Rules closely reflect the FCA's existing Principles for Businesses. They apply to almost all employees who do financial services activities, or linked activities, in a firm. Senior Managers are subject to both Tier 1 and Tier 2 Conduct Rules. The Tier 2 rules relate more directly to the role of Senior Managers in running the business.

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Firms are required to train relevant staff on how the Conduct Rules apply to their role, with a Senior Manager at the firm taking on the Prescribed Responsibility for training.

Senior Managers and any Certification Staff will need to have been trained in, and abide by the Conduct Rules from the start of the new regime. However, firms will have 12 months from the commencement date to put in place processes to comply with the reporting requirements, and train their other relevant staff on the Conduct Rules

Conduct rule breaches that result in the firm taking disciplinary action against a Senior Manager or other employee must be reported to the FCA.

*A subsequent edition of Hot TopICS will cover the Conduct Rules training and reporting requirements and other HR implications in more detail.*

## What do we need to do now?

As always, preparation is the key and there are various steps that firms should be taking ahead of the conversion date, such as ensuring:

- the organisational structure and decision-making process of the firm is documented and in line with the Senior Managers' functions and responsibilities
- the controlled functions of existing Approved Persons are appropriate so that the conversion process is as straightforward as possible
- Senior Managers are aware of their statutory duty of responsibility and understand their Prescribed Responsibilities and any other responsibilities which must be set out in their Statement of Responsibilities
- record keeping takes account of the new rules particularly as regards Statements of Responsibilities, Conduct Rules training and breach reporting
- the FCA has placed the firm in the relevant SM&CR category – notify the FCA immediately if the category allocated appears incorrect

## Further information

The following links are SM&CR-related publications on the FCA website:

- PS19/20: Optimising the Senior Managers & Certification Regime: <https://www.fca.org.uk/publication/policy/ps19-20.pdf>
- Firm Checker Tool: <https://www.fca.org.uk/decision-tree/firm-checker-tool>.
- SM&CR Guide for solo-regulated firms: <https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>
- CP17/42 Statutory Duty of Responsibility: <https://www.fca.org.uk/publication/consultation/cp17-42.pdf>
- FG19/2: SM&CR: Guidance on Statements of Responsibilities and Responsibilities Maps: <https://www.fca.org.uk/publications/finalised-guidance/fg19-2-SM&CR-guidance-statements-responsibilities-and-responsibilities-maps>

**The ICS online Compliance Manual has been updated to assist firms with the SM&CR –see Section 1.11. If you would like any further help with this or information on any other FCA regulation issues or ICS Services, please contact your usual ICS representative, Head Office on 01892 539600 or [admin@insurancecompliance.co.uk](mailto:admin@insurancecompliance.co.uk)**