

# Hot TopICS

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## SM&CR final implementation deadline fast approaching

The original date for compliance with the Senior Managers and Certification Regime (SM&CR) Conduct Rules and Certification requirements was extended last year because of the pandemic. The SM&CR now comes into full force for solo-regulated firms on 31st March 2021.

Firms must ensure they have implemented the SM&CR including the Conduct Rules training requirements and, where necessary, the Certification of relevant personnel. Firms are also required to upload their Directory Persons data, if they have any, by the deadline or risk incurring fines. Whether or not firms have already taken the relevant steps, this article provides a reminder of various issues they may need to address.

### Background

The SM&CR came into force on 9 December 2019 for solo regulated firms, including insurance intermediaries. Most of the controlled functions that applied under the Approved Persons Regime were transitioned automatically to corresponding Senior Management Functions<sup>1</sup>. However, it is up to firms to check the Financial Services Register to verify the details of all relevant individuals and to notify any changes.

Solo-regulated firms have been categorised as Enhanced, Core or Limited Scope depending on their size, complexity and activities, so the rules apply proportionally - with enhanced firms being subject to the most extensive set of rules and limited scope firms being subject to the fewest. The majority of insurance intermediaries fall in the middle, Core, category. However, sole-traders and firms whose main business is not regulated (where their only regulated activity is insurance distribution) are likely to be in the Limited Scope category.

Previous Hot TopICS have explained more about the SM&CR based on the [FCA Guide for Solo-Regulated Firms](#). In summary, there are three main elements to the regime:

1. The Senior Managers Regime, which applies to those individuals who have responsibility for running a regulated firm, performing a Senior Management Function, such as Chairman function (SMF9), the Chief Executive function (SMF1), the Executive Director function (SMF3), and the Partner function (SMF27).  
Senior Managers must be approved by the FCA and they must each have an up-to-date Statement of Responsibilities with Prescribed Responsibilities suitably allocated.
2. The Certification Regime, which applies to those individuals who are not Senior Managers but whose remit is significant enough for them to potentially do harm to the firm, its customers or markets. Certification personnel must be deemed Fit and Proper annually by the firm and issued with a Certificate. The FCA sets out which roles require certification – including the Significant

Management role but insurance intermediary firms might not have any certification personnel, if they do not believe those roles meet the criteria for certification.

3. The Conduct Rules which apply to all individuals working in the regulated financial services industry other than “ancillary staff” (such as receptionists, HR personnel and cleaners). An enhanced tier of Conduct Rules applies to Senior Managers.

It is important for firms to check they are now meeting the SM&CR requirements and to carry out periodic reviews. On-going compliance monitoring tend to fall, generally, under these headings:

- Financial Services Register, Senior Managers & Directory Persons
- Certification Regime
- Conduct rules
- Reporting

## **The Financial Services Register - Senior Managers and Directory Persons**

### Senior Managers

The Financial Services Register provides a public record of FCA approved individuals (Senior Managers) and regulated firms designed to enhance consumer protection. The Register now includes information on Directory Persons as well as individuals who are formally approved by the regulator.

It is important to ensure that the Senior Management Functions (SMF) shown on the Register are correct. A Senior Manager’s job may change from time to time and where the changes involve them performing a different SMF from those for which approval has already been granted, an application must be made to the FCA for approval for the Senior Manager to perform those new functions (ahead of undertaking those new functions). This should be accompanied by an updated copy of the individual’s Statement of Responsibility.

Any changes to a Senior Manager’s personal details must also be notified using the appropriate form on Connect, usually with 7 business days. In turn, if any significant changes to the Statement of Responsibility occur e.g. change to allocation of a Prescribed Responsibility, this should be notified to the FCA, via a Form J.

The 12-week rule allows an individual to cover for a Senior Manager without being approved, where the absence is temporary or reasonably unforeseen, and the appointment is for less than 12 consecutive weeks. If temporary arrangements last longer than 12-weeks as a result of the pandemic, firms can notify the FCA that they consent to a modification of the 12-week rule. In these cases, temporary arrangements can be extended up to 36 weeks.

### Directory Persons

Solo-regulated firms must submit any Directory Persons data via Connect by 31 March 2021, using the directory persons Connect form.

Directory persons are:

- all certified staff (see below)
- directors who are not performing Senior Manager Functions (SMFs) – both executive and non-executive

- other individuals who are sole traders or ARs – but only where they are undertaking business with clients and require a qualification to do so

Some insurance intermediary firms will have no Directory Persons but it is important to be aware of the requirements should the situation change; for instance if the firm decides to appoint a new non-executive director.

Bear in mind that the FCA expects firms to regularly check the information held by the FCA and notify any changes via Connect. Even if there have been no changes firms must check their basic ‘firm details’ and report annually (usually within 60 days of the firm’s accounting reference date) to confirm these are correct. In addition, firms will now be required to submit a report at least annually confirming whether their Directory information is accurate and correct. This report can be submitted at any time but must be no later than 364 days after the last Directory Report was submitted.

### **Certification Regime**

The FCA has set out certain functions that apply to employees of a regulated firm which it describes as Certification Functions:

- those responsible for CASS oversight
- those responsible for benchmark submission and administration
- proprietary traders
- managers of significant business areas
- individuals in consumer-facing roles which are subject to qualification requirements (financial advisors, mortgage advisors)
- managers of Certified Persons
- other ‘Material Risk-Takers’ (those who are subject to the Remuneration Code)

Clearly, some of these functions are not relevant to general insurance. If, having carried out a review of senior staff and their roles, a firm has no-one performing a certification function, no action would be required on this. However, some firms will identify that they do have individuals performing a Certification Function.

For example, some larger insurance intermediary firms may have managers of significant business areas who would have held CF29 under the Approved Persons Regime. Individual sole traders, staff of appointed representatives and non-executive directors are not regarded as “employees” and are not subject to the Certification Regime.

However, a Senior Manager of the firm will have a prescribed responsibility for overseeing compliance with the Certification Regime and firms should continue to monitor employees’ roles and responsibilities in order to identify if and when someone is to undertake such a role. Firms are responsible for certifying, at least annually, that all staff falling under the Certification Regime are Fit and Proper to perform their role. On assessing an individual as being Fit and Proper to perform his/her role, the firm must issue a Certificate to that individual which, again, must be updated annually. The approval process for individuals under the Certification Regime is the firm’s responsibility.

Any Fit and Proper assessments, Certification and Conduct Rules training should be carried out by 31 March 2021.

## Conduct rules

The Conduct Rules apply to regulated and unregulated financial services activities. Firms are required to make staff aware of the Conduct Rules and to provide training as to how the rules apply in the context of individual roles. People who are subject to the Conduct Rules are known as 'Conduct Rules Staff'.

Almost all employees of a regulated firm will be subject to the Individual Conduct Rules (Tier 1 Individual Conduct Rules). This includes all Senior Managers, Certification Staff, Non-Executive Directors and all other staff except those who do not perform a role specific to financial services (ancillary roles). Directors, Partners and any others with Senior Management Functions are subject to an additional set of Conduct Rules relevant to the running of their firms (Tier 2 Senior Manager Conduct Rules).

The definition of employees for the purposes of SM&CR covers those who provide services to the firm and are subject to supervision, direction or control by the firm. This means that personnel at all levels including branch, temporary, agency or contract staff should receive training and understand how the rules apply to them.

A Senior Manager in each firm is responsible for overseeing the SM&CR training arrangements. The FCA doesn't specify what the training should cover but it needs to be appropriate to the audience with a view to everyone understanding how the rules affect them. Firms are likely to have a store of material to draw on such as job descriptions, internal policies and procedures and complaints records. Training should cover how breaches can arise and how to avoid them.

Whichever methods are used, the training should be tailored towards the roles and responsibilities of the participants. One-to-one meetings with senior staff and team leaders, for example, could enable them to evaluate what the Conduct Rules mean for them on a personal level. It is important for the firm to record that such discussions have taken place and how they contribute to the Conduct Rules training requirement.

Flexibility as to how the training is delivered means that it could be provided in-house, perhaps through an eLearning platform, using the firm's own resources or through specialist training providers. Team meetings could be a useful vehicle for training, creating awareness of the SM&CR requirements and how they relate to the business - looking at and discussing examples of compliant and non-compliant behaviour would be a good way to promote understanding generally.

The key is to maintain evidence that relevant training has been provided for each employee. Minutes and notes could record what the training consisted of, and who attended. Individual personnel or training files should be kept updated with details of the training undertaken and relevant and achievements. As most employees must undertake CPD (in accordance with professional body requirements and/or the Insurance Distribution Directive), Conduct Rules training can be included in CPD activity statements and logs.

## Reporting

As well as notifying the FCA of any changes to SMFs and Directory Persons, firms are required to report to the FCA on disciplinary action taken against Conduct Rules Staff for a Conduct Rules breach.

For Senior Managers, firms must notify the FCA within 7 business days. For other individuals, notification is to be made every year via the on-line reporting system - most firms will report for the year 1 September to 31 August, with a due date of 2 months later (end of October).

The relevant conduct rule(s) that have been breached which form the basis of the disciplinary action taken must be identified for reporting purposes. Firms need to make the annual notification of Conduct Rules breaches even if there have been no breaches. This is to make sure firms correctly monitor and identify Conduct Rule breaches.

Firms should bear in mind that, not only must they report conduct breaches to the FCA, they are also obliged to disclose them in regulatory references they supply to a new employer.

**What to do next**

Essentially, by 31 March 2021, firms must ensure they have submitted their Directory Persons data to the FCA, where applicable, and be able to show through internal records that their Senior Managers and other staff have received training on the Conduct Rules. The training must be refreshed annually.

Other, on-going measures to meet SM&CR requirements should already be in place. These are likely to include:

- Reviewing organisational structure charts, who does what and individual responsibilities
- Ensuring Senior Managers’ Statements of Responsibilities are accurate and up to date with appropriate Prescribed Responsibilities allocated
- Ensuring training records, including individual training/CPD logs and certificates are up to date and maintained to include details of Conduct Rules Training
- Establishing consistent procedures for disciplinary action - carefully recording details of any disciplinary action for regulatory reporting and regulatory reference purposes
- Reviewing and updating job descriptions, contracts of employment, appraisal procedures and staff handbooks, in particular, to take account of the Conduct Rules, the requirement to obtain regulatory references and the need to carry out criminal records checks on Senior Managers
- Maintain internal processes for fit and proper annual assessments for Senior Managers and any Certified Persons
- Review record keeping processes and procedures to ensure all relevant records are retained and accessible
- Where applicable monitoring of the threshold (£35m annual income) that would tip a Core firm into the enhanced category.

**If you would like any help or information in relation to this update or any FCA-related compliance issues or ICS Services, please contact your usual ICS representative or Head Office on 01892 539600 or [admin@insurancecompliance.co.uk](mailto:admin@insurancecompliance.co.uk) and we will be happy to discuss further.**

<p>The above information is a summary of certain matters which will affect the majority of firms conducting Insurance Mediation and reflects ICS’s views at the date of publication. Each firms’ requirements are individual, and rules are regularly changing; it is therefore important that you always seek specific advice from ICS before acting on anything contained in this publication. Hot TopICS 2020-03 (issued 15/03/2020) <span style="float: right;">© 2021 Insurance Compliance Services Ltd</span></p>
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<sup>1</sup> Senior individuals of appointed representatives currently retain their controlled functions and Code of Conduct (APER) under the Approved Persons Regime.