

**THE SENIOR MANAGERS & CERTIFICATION REGIME (SM&CR)  
Expands on 9 December 2019 – Are You Ready?**

**WHAT IS THE SENIOR MANAGER AND CERTIFICATION REGIME?**

Senior Managers Regime  
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**WHAT DO YOU NEED TO BE DOING NOW TO ENSURE COMPLIANCE?**

Checklist of steps for HR compliance



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## SENIOR MANAGERS & CERTIFICATION REGIME (SM&CR)

### EXPANDS ON 9 DECEMBER 2019 – ARE YOU READY?

The SM&CR was introduced for the banking sector and Prudential Regulatory Authority designated investment firms in March 2016. The aim behind the regulations being to further reduce the risk of harm to consumers and to strengthen market integrity by holding individuals more accountable for their conduct and competence. The regime was extended to insurers on 10 December 2018 and whilst it does not currently apply to firms authorised and regulated solely by the FCA, on 9 December 2019, this will change. With effect from that date the SM&CR regime will be expanded to include all firms authorised under the Financial Services and Markets Act 2000 (including consumer credit firms, financial advisers, asset managers and mortgage brokers) and branches of non-UK firms with permission to carry out regulated activities in the UK.



### Categories of Firm

There are three categories into which firms fall for the purpose of the regime:

**Core Firms** – the majority of solo-regulated firms are likely to fall into this category and will be subject to the core regime (Senior Manager’s Regime, Certification Regime and Conduct Rules).

**Limited Scope Firms** – these firms will have the fewest requirements and are likely to be the same firms that are currently subject to a limited application of the approved persons regime (mostly those who carry on activities other than regulated activities, e.g. sole traders, service companies and energy market participants).

**Enhanced Firms** – these firms will be subject to the most stringent requirements. There are certain detailed criteria that the FCA will use to determine whether a firm is an Enhanced Firm, but generally they are likely to be larger in size, have complex structures or be firms where failures in accountability could cause greater harm to consumers or the integrity of the market.

Firms are not expected to hire new staff to fill specific “senior management functions” but instead to encourage individuals to take a greater level of personal responsibility for their actions with a view to improving conduct at all levels and ensuring that firms and employees understand, and can demonstrate, where responsibility lies.

### WHAT IS THE SENIOR MANAGER AND CERTIFICATION REGIME?

The SM&CR consists of three elements:

- Senior Managers Regime (SMR);
- Certification Regime; and
- Conduct Rules.

### Senior Managers Regime (SMR)

The SMR applies to individuals performing “senior management functions”. This will include the Chief Executive, Chief Finance Officer, Head of Audit, Board members etc. but also any individuals who have overall responsibility for an area of the business or business function. There must be a senior manager accountable for every aspect of regulated activity within the firm. Some Non-Executive Directors (NED) also fall within the scope of the SMR (notably the regime applies to the Chair, senior independent directors and the chair of risk, audit, remuneration and nomination committees).

In addition to ensuring that all senior management functions (including prescribed responsibilities) required by the regulations have been allocated, firms are required to record the allocation of those responsibilities and functions in a “**Management Responsibilities Map**” and must ensure that all senior managers are issued with a “**Statement of Responsibilities**” detailing the functions and prescribed responsibilities for which they are responsible.

Not only must firms satisfy themselves that their senior managers are “**fit and proper**” both before appointment and on an annual basis, but the **regulators must approve** all senior managers before they are appointed. Should the same individual be responsible for more than one function, they must be approved by the relevant regulator for each function.

## Certification Regime

The Certification Regime applies to **all staff who could pose a risk of serious harm to the business or its customers or who are “significant risk takers”**. These staff do not need prior approval from regulators before appointment but firms must certify the individual’s capability to carry out their roles both prior to appointment and on an annual basis thereafter. It is notable that **human resources, compliance and legal staff** are likely to fall within the scope of the Certification Regime. The FCA will also introduce a new directory of financial service workers (running alongside the existing financial services register). This directory will provide information on individuals carrying out a wider range of roles than those currently required to appear on the financial services register (including those who the FCA do not approve). The directory will go live in December 2020.

## Fit and Proper Test

Managers subject to the SMR and staff subject to the Certification Regime are required to satisfy the “fit and proper” test. Firms are required to **assess fitness and propriety prior to appointment and on an annual basis** – the test differs slightly depending on whether a firm is solely FCA regulated or is subject to the PRA test. The FCA determines fitness and propriety by reference to a) honesty, integrity and reputation; b) competence and capability; and c) financial soundness. The PRA requires that in order to be fit and proper an individual must have personal characteristics, competence, knowledge experience, training and qualifications to enable the sound and prudent management of the firm.



In order to satisfy their obligations at the recruitment stage, firms must undertake criminal record checks (for senior managers), credit checks, and **obtain references to cover the individuals previous six years of employment** (regulatory reference regime) in the prescribed mandatory form. Thereafter firms must annually re-certify staff as fit and proper by reviewing their conduct and performance during that period.

## Conduct Rules

Conduct Rules apply to, senior managers, staff covered by the certification regime, NEDs, and all other staff at regulated firms, other than those in ancillary roles that are not related to the financial services business conducted (for example cleaners, reception, security etc.).



There are two tiers of conduct rules reflecting the principles that regulators expect of staff working in regulated businesses.

### First Tier: Individual Conduct Rules

1. You must act with integrity.
2. You must act with due skill, care and diligence.
3. You must be open and co-operative with the FCA, the PRA and other regulators.

4. You must pay due regard to the interests of the customer and treat them fairly.
5. You must observe proper standards of market conduct.

### Second Tier: Senior Manager Conduct Rules

1. You must take reasonable steps to ensure the business of the firm for which you are responsible is controlled effectively.
2. 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.
3. You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
4. You must disclose appropriately any information of which the FCA or PRA would reasonable expect notice.
5. You must pay due regard to the interests of current and potential future policyholders in ensuring the provisions by the firm of an appropriate degree of protection for their insured benefits (PRA).

**Notification of Conduct Breach** - Importantly, where there is a breach of the conduct rules and the firm takes formal disciplinary action (suspension, formal warnings, reduction in remuneration or dismissal) against an individual in respect of the same there is an obligation to notify the regulators. For senior managers notification must be given as soon as practicable – the firm must act swiftly as soon as disciplinary action is taken (i.e. a sanction imposed) and cannot wait for the conclusion of an internal process (such as an appeals process).

**Conduct Training** – In addition to a requirement to notify staff of the rules that apply to them, firms are obliged to take steps to ensure that staff understand those rules, which will include providing training to the particular staff roles and to managers so that they understand how to apply and enforce the rules.

## WHAT DO YOU NEED TO BE DOING NOW TO ENSURE COMPLIANCE?

The steps that firms need to take will vary slightly depending on whether they are core firms, limited scope firms or enhanced firms. However, from an employment law and HR compliance perspective firms will need to consider the following:



### Conversion

- There will be an automatic conversion of approved individuals under the Approved Person's Regime to the SM&CR. However, it is incumbent on firms to check whether the appropriate people are in the correct SM&CR approved functions and whether they will be automatically converted. If not, it may be necessary to submit a conversion notification form. Once the conversion takes place firms will need to check the updated financial services register to ensure that the right people are showing as holding the correct approvals.
- Bear in mind that the FCA will not know who currently occupies a NED Chair function and so firms that have this role will need to complete an appropriate conversion form (Form K) and inform the FCA that they wish to convert an approved non-executive director to the chair function, otherwise the individual's approval will lapse at the start of the new regime.

## Compliance

- Allocate all relevant senior management functions.
- Issue up to date Statement of Responsibilities to all senior managers.
- Allocate prescribed responsibilities for the firm's obligations under the Certification Regime.
- Allocate responsibility for the firm's obligations under the Conduct Rules.
- Record all senior management functions and prescribed responsibilities in the firms "Management Responsibilities Map".
- Conduct fit and proper tests on all senior managers.
- Identify the employees that will perform a certification function and, subject to being satisfied that the individual is "fit and proper", issue an appropriate certificate (certificates can be issued within 12 months of the date the regime starts to apply to the firm).

## Training

- Review training requirements across the firm to ensure obligations are understood and met.
- Ensure that senior managers understand the Conduct Rules and what is meant by "duty of responsibility" in relation to their role.
- Implement appropriate training for all staff on the applicable Conduct Rules (must be completed within 12 months of the date that regime starts to apply to the firm) and ensure that all staff understand how the rules apply to their role.

## HR

- Allocate responsibility for reviewing background checks and references and responsibility for confirming that they are satisfactory – a senior manager must ultimately be accountable for this function.
- Review recruitment processes to ensure appropriate background checks are undertaken.
- Implement processes for ensuring that appropriate references are sought and that where needed – senior managers, certification function roles, and relevant NEDs – references cover the applicable 6 year period. (Note that there is no requirement to obtain references for those already in post and maintaining the same role at the start of the new regime.)
- Make employment offers conditional upon "fit and proper" tests and update templates accordingly.
- Ensure manager level employment offers are conditional on approval by the regulator, and update templates accordingly.
- Review employment contracts and consider updating provisions to reflect the requirements of the new regime, in particular around conduct, performance, duties, references, and termination.
- Review policies to ensure they meet the requirements of the new regime, in particular consider disciplinary processes, rights of suspension, sanctions for misconduct, whistleblowing, recordkeeping requirements.



- Review whistleblowing policies and consider whether the requirement to appoint a “whistle-blower’s champion” applies and if so the need for whistle-blower’s training (which may be a requirement or recommended guidance depending on the firm).
- Consider how annual “fit and proper” tests will be conducted – bearing in mind the obligations of the senior manager who is responsible for ensuring fitness and propriety. If any delegation of that responsibility is to take place, for example to appraisal managers, consider how will that be supervised and responsibility requirements met.
- Review appraisal system to ensure appropriate monitoring of regime requirements.
- Update record keeping systems to ensure appropriate records are kept – fit and proper records must be kept for 6 years post termination and potentially longer in instances of serious misconduct.
- Implement a system to notify regulators in relation to disciplinary action taken for a breach of the conduct rules.
- Implement an appropriate handover system to ensure that senior manager responsibilities are properly handed over on departure – and ensure that you have a written policy in place documenting this.
- Update employee Data Privacy Notices to reflect revised record keeping timeframes and requirements.
- Review Settlement Agreement templates to ensure reference provisions are appropriate under the new regime.




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For further information on any of the topics discussed in this briefing or wider employment or data protection issues please contact:

Adele Martins (Partner) [adele.martins@magrath.co.uk](mailto:adele.martins@magrath.co.uk)  
 Nichola Gallen-Friend (Partner) [nichola.gallen-friend@magrath.co.uk](mailto:nichola.gallen-friend@magrath.co.uk)  
 Maria Krishnan (Senior Associate) [maria.krishnan@magrath.co.uk](mailto:maria.krishnan@magrath.co.uk)

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