



## Senior Managers and Certification Regime Overview

### Limited Scope Firms

#### SOLE TRADER - NO EMPLOYEES

This document is intended to assist members in understanding the intentions of the scheme specific to their scope requirements. These are not comprehensive but created to help firms know where to look for assistance, much of which is shown by links to the FCA website and documents.

**Where the business has any employees or directors, which might include family members or dependents, this guide is not appropriate.**

## Introduction

1. The Financial Conduct Authority (FCA) is changing how people working in financial services are regulated and this will affect almost every firm that is regulated by the FCA.
2. After the financial crisis it was recommended that the FCA develop a new accountability system that was more focused on senior managers and individual responsibility. The FCA have created the Senior Managers and Certification Regime (SM&CR), the regime was applied to banks and building societies from March 2016.
3. The UK Government agreed to extend the regime to all financial services firms and the FCA is replacing the existing Approved Persons Regime with the Senior Managers and Certification Regime from 9<sup>th</sup> December 2019.
4. The aims of the regime are to **raise the standards of conduct and culture** for everyone who works in financial services by making senior people in firms more responsible and accountable for their actions. Also, the regime will increase understanding of where responsibility lies.

Jonathan Davidson, Executive Director of Supervision- Retail and Authorisations at the FCA, said:

"Culture and governance in financial services and its impact on consumer outcomes is a priority for the FCA. The extension of the Senior Managers and Certification Regime is key to driving forward culture change in firms.

"This is about individuals, not just institutions. The new Conduct Rules will ensure that individuals in financial services are held to high standards, and that consumers know what is required of the individuals they deal with. The regime will also ensure that Senior Managers are accountable both for their own actions, and for the actions of staff in the business areas that they lead."

## FCA has stated that the aims of the Senior Management & Certification Regime are

"Reduce harm to consumers and strengthen market integrity by creating a system that enables firms and regulators to hold people to account"

The FCA website has a specific area to assist and guide solo-regulated firms and can be found here <https://www.fca.org.uk/firms/senior-managers-certification-regime/solo-regulated-firms>

## Design of the Regime

5. The regime has three elements: Senior Managers Regime, Certification Regime and Conduct Rules and all apply to each legal entity. The regime has three types of firms: Limited Scope, Core Regime and Enhanced Regime, with extra requirements for some bigger or more complex firms or groups.
6. In due course the FCA will be contacting every firm to tell them what regime the FCA has categorised the firm, waiting for this communication will limit the time available and it is strongly recommended that you consider their categorisation as soon as possible so that they are thinking and acting on what is required of them.

ACTION: The FCA have included an online 'firm checker tool' on the FCA website, accessed via the link below, firms answer a few questions about their activities and receive an immediate idea of their categorisation.

<https://www.fca.org.uk/decision-tree/firm-checker-tool>

7. In July 2018 the FCA published a guide for FCA solo-regulated firms, click on this link <https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf> to access the FCA guide. The FCA guide for solo-regulated firms provides a list of firm types and describes a 'Limited Scope firms' as;

Firms that will be subject to fewer requirements than Core firms. This covers all firms that currently have a limited application of the Approved Persons Regime, for example:

- Limited permission consumer credit firms
- All sole traders
- Insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts.

This document is only going to focus on firms that have a categorisation of 'Limited Scope' that do not have any employees or any other directors (where a 'limited' company). Where you have members of your family or other people in the firm then you must ensure that you review the FCA regime rules to determine whether additional rules will now apply.

Firms should use this as a guide to support their understanding of the FCA SM&CR, but be aware that rules and references can change, all information and links in this document were correct at the time of publication. Firms should, where appropriate, adjust their timeline view of the FCA Handbook to reflect the date that the new FCA requirements are due to be in force i.e. after 9<sup>th</sup> December 2019, this will then show the rules and guidance that applies.

## Senior Managers Regime

1. The regime sets out various Senior Management Functions that are applicable to the firm. There are a set of Senior Management Functions which only apply to Limited scope firms;

### Senior Management Functions – Limited Scope firm (only)

Function Name	Relevant to Limited Scope Firms
<b>Required Functions*</b>	
SMF29 – Limited Scope Function	Y
SMF16 – Compliance Oversight	Y
SMF17 – Money Laundering Reporting Officer	Y

FCA Handbook – SUP 10C.4.3R Annex 1

<https://www.handbook.fca.org.uk/handbook/SUP/10C/4.html> the list above only apply to 'Limited Scope' firms. It is possible that most Limited Scope firms will only hold SMF29- Limited Scope Function.

*\*Required functions are those which apply to firms because of specific FCA Handbook rules. The introduction of SM&CR does not change the existing application of the FCA rules and firms are not required to allocate a Senior Management Function or appoint an individual to the role if the FCA Handbook does not require them to be appointed.*

2. There is no requirement for existing Approved Persons to apply for FCA approval, the FCA will, where possible, automatically transfer existing Approved Persons across to a new Senior Management Function. The firm through their 'FCA Connect' portal will need to review the SMF allocations and make any amendments by mid-November 2019.
3. The person allocated a Senior Management Function is the decision maker and the firm must allocate the appropriate responsibilities to this key decision maker. A key change in the SM&CR is the introduction of a prescribed document that states what the senior manager is responsible for, 'Statement of Responsibilities' and a 'Duty of Responsibility'. This duty means that if something goes wrong that they are responsible for, the FCA will consider whether the individual took 'reasonable steps' to prevent or stop this breach from happening.
4. An existing Limited scope firm must have a Statement of Responsibility in place before the commencement of the SM&CR on 9<sup>th</sup> December 2019, whilst the FCA does not require the individual Statement of Responsibility to be submitted as part of the transition to the new regime, the FCA will expect it to be provided if you are requested to do so.

**ACTION:** Draft your Statements of Responsibilities (SoR's) for the Senior Management Function(s) before the end of November 2019. SUP 10C.11

<https://www.handbook.fca.org.uk/handbook/SUP/10C/11.html> The SoR is a self-contained document and must clearly set out what the senior manager is responsible for.

The FCA has published FG19/2 SM&CR: Guidance on statements of responsibilities and responsibilities maps for FCA firms <https://www.fca.org.uk/publication/finalised-guidance/fg19-02.pdf>

**NB: Limited Scope firms are not required to have responsibility maps**

### **Prescribed Responsibilities**

5. Prescribed Responsibilities **do not apply to Limited Scope firms**, therefore there is no requirement for a Limited Scope firm to allocate them.

### **Fit and Proper**

6. SM&CR extends the 'FIT' requirement to cover certification staff and senior managers but not to non-approved board directors (executive or non-executive) in Limited Scope firms.
7. A sole trader is not required to conduct a criminal record check or gain regulatory references for themselves, even where they also hold a Senior Management Function (SMF)
8. A sole trader with employees will have further responsibilities and as previously stated you should ensure that you consider whether any individuals meet the definition of an employee, Senior Manager or perform one of the Certification Functions, if they do then you need to review the FCA regime further.

This document describes the requirements for **Limited Scope firms with no employees**.

9. The FCA has summarised its requirements in Section 10 FCA: The Senior Managers and Certification Regime: Guide for FCA solo-regulated firms.  
<https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>

FCA FIT Sourcebook applies to sole traders and sets out the detailed guidance about what things the FCA will consider as part of your fitness and propriety. This includes:

- Honesty, integrity and reputation
- Competence and capability, including whether the individual satisfies any relevant FCA training and competence requirements
- Financial soundness

**ACTION:** Review and consider the requirements in the FCA FIT Sourcebook to ensure that as an individual you understand how they apply to your conduct. If the firm structure is expected to change then make yourself aware of the SM&CR requirements as they will not be the same if there are other 'employees' within the Limited Scope firm.

### **Regulatory References (applies only if the firm had staff previously)**

10. The SM&CR introduces a new set of rules on regulatory referencing, these are detailed in the FCA Handbook SYSC 22 and include a standard template for the information sharing between firms.

11. You must obtain a reference when considering an application or appointing someone to a controlled function or issuing a certificate under the certification regime. The reference must cover the potential employee's last six month's employment history (minimum).
12. Firms must provide a reference. FCA would normally expect a response to be provided within six weeks of receiving such a request and a SM&CR firm must additionally provide specific data after referring to the factors it should take into account in SYSC 22 Annex 2R. A firm need not include details of the criminal record checks it has undertaken as it is for the new firm/employer to undertake their own checks as appropriate.
13. Firms have an obligation to ensure that any reference that is provided is accurate and fair, the firm should exercise due skill and care when drafting the reference. Where a firm's records are incomplete or do not cover the period expected it must state that in its response. There is also guidance on factors to consider when deciding if a previous misconduct is 'sufficiently serious' to be disclosed.
14. There is also an obligation to revise a reference that has been provided and firms must familiarise themselves with the requirements ensuring that, where appropriate, the firm's policies and procedures are updated to ensure that the obligations are met. These rules also include a rule that requires the firm to find out who the current employer is and a requirement to respond within a reasonable timeframe.
15. Firms must note that they should not enter into any agreements not to disclose information, often referred to as compromise agreements, that would restrict their ability to disclose information as noted in SYSC 22. All obligations to comply with SYSC disclosure apply regardless of the terms of the agreement entered into.
16. SYSC provides further guidance on giving and updating references, this includes omitting or supplementing mandatory disclosures, requirement to consider whether there has been a conduct breach and its disclosure

#### **Evidence Requirements (if the firm had staff previously)**

17. There is a general requirement to ensure that records are kept to evidence that the requirements of the firms obligations can be evidenced; SYSC sourcebook has specific requirements in SYSC Annex 1R ( E ) Fit and Proper (F) disciplinary action and firms should ensure these are met and also consider other information time limits/relevance of data.

FCA guidance is clear that information and records before the firm became an SM&CR firm must also be retained, where they exist, in order to meet the firm's obligation with SYSC 22.9.1R.

18. Firms must retain records of disciplinary and Fit & Proper findings for employees going back six years.
19. Similar to the previous Approved Persons Regime, the FCA expects firms to keep all their information accurate and up to date using the FCA Connect system.

## 12-week Rule

20. The FCA recognises that where a temporary absence or unforeseen situation arises an individual would need to step into a Senior Management Function to ensure that the firm maintain compliance with its regulatory obligations. The FCA do not require this individual to be approved as long as the appointment is for less than 12 consecutive weeks. However, the firm should regularly review the situation to determine whether it is temporary or a permanent change is required. If a change is needed that the firm must notify the FCA and the individual will need to have been assessed by the firm before they submitted an application for the appointment of a new Senior Manager.

The firm is covered by the Conduct Rules so should also consider disclosing any information to the FCA, that the FCA may reasonably be expected to be made aware of.

## Certification Regime

21. As a **sole trader** that has no employees, then the FCA have stated in their guide for solo-regulated firms, that the **Certification Regime does not apply**.

## Conduct Rules

The FCA has new powers to create conduct rules and apply them to all employees within a firm – not just approved individuals. These are new enforceable rules that set basic standards and good personal conduct, which the FCA will hold people to account. You should refer to the FCA COCON Sourcebook for further guidance.

22. The conduct rules are intended to improve standards of individual behaviour in financial services from the top down and the bottom up in all firms. The rules represent a meaningful change in the standards of conduct that the FCA expects from those working in the financial services industry.
23. There are two tiers of conduct rules that apply to sole traders (Limited Scope – no employees) general individual rules and senior manager rules, these are shown in the tables below

FCA Handbook	Individual Conduct Rules (apply to most employees and directors)
COCON 2.1.1	Rule 1: You must act with integrity.
COCON 2.1.2	Rule 2: You must act with due skill, care and diligence.
COCON 2.1.3	Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.
COCON 2.1.4	Rule 4: You must pay due regard to the interests of customers and treat them fairly.
COCON 2.1.5	Rule 5: You must observe proper standards of market conduct.

FCA Handbook	Senior Manager Conduct Rules
COCON 2.2.1	SC1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
COCON 2.2.2	SC 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.
COCON 2.2.3	SC3: 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.
COCON 2.2.4	SC 4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

24. The FCA has been clear that the conduct rules apply to a firm's regulated and un-regulated financial services activities (including any related ancillary activities i.e. an activity carried on in connection with a regulated activity).
25. The FCA expects you to ensure that as someone subject to COCON – Code of Conduct that you take all reasonable steps to ensure that you understand how the rules apply to you day to day activity.
26. The FCA specific guidance on each of the individual conduct rules is contained within COCON. The guidance provides good and poor practice to help individuals and firms understand the behaviour expected of them.

### Transition Arrangements

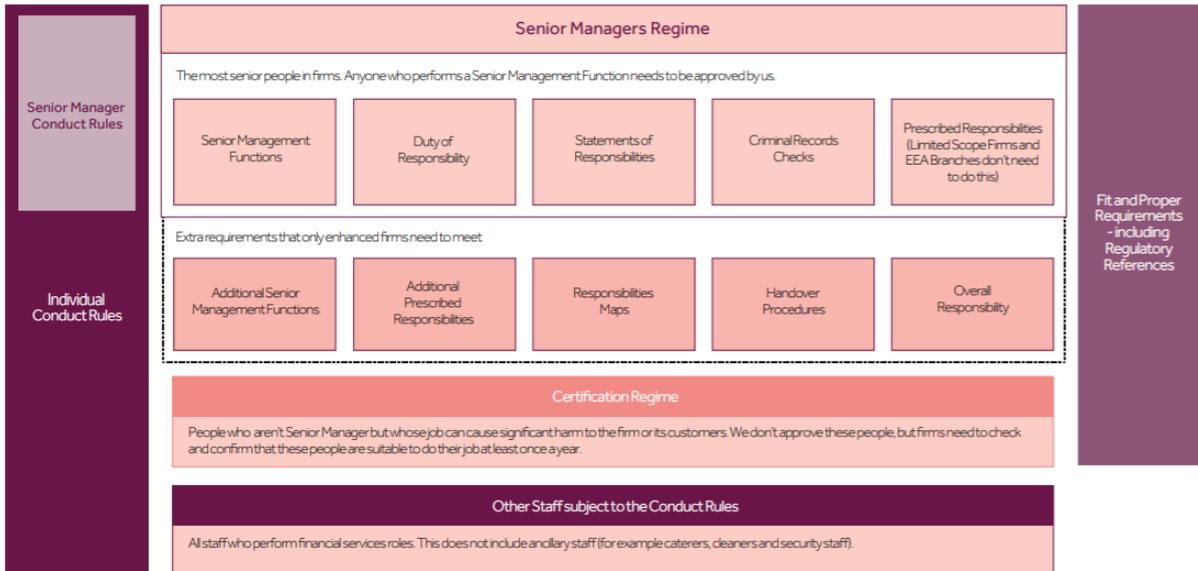
27. Converting existing FCA approvals  
Refer to the Senior Managers and Certification Regime guide where the FCA sets out how existing control functions approvals will be mapped into the new regime and those that will not be mapped and maybe changing to a 'Certification Regime role'. The guide also sets out actions firms should consider and take in good time ahead of the commencement of the new regime and clear guidance on the FCA Form(s) that a firm should use in the FCA Connect system.

Below is a link to the FCA SM&CR guide for solo-regulated firms to refer  
<https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>

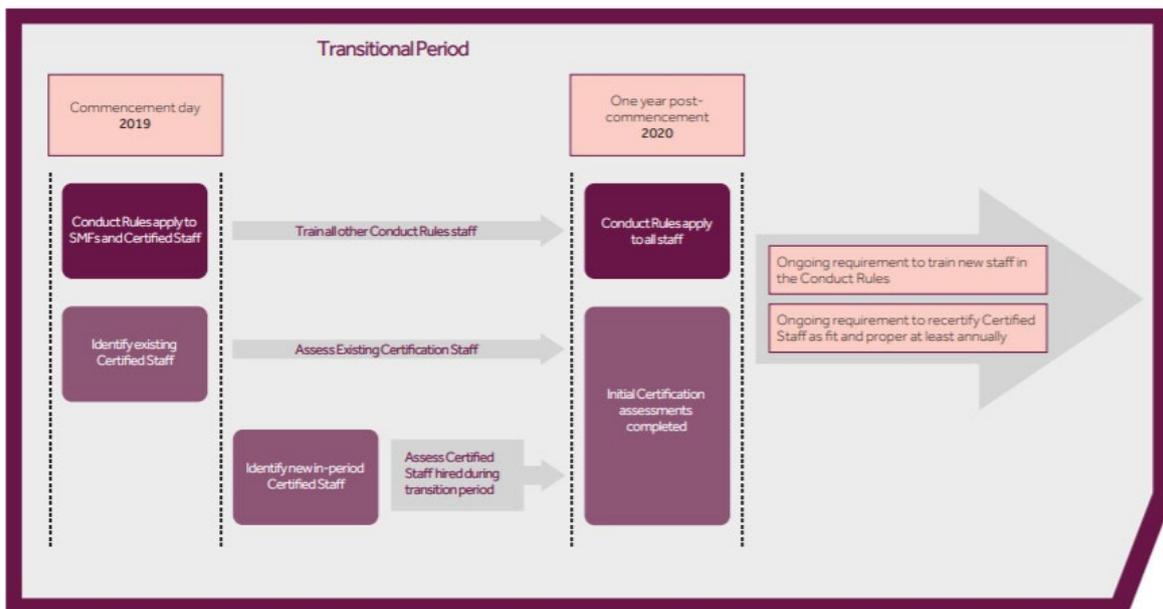
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# How the SM&CR applies to different types of firms

## Regime Breakdown



## Timelines for moving to the SM&CR



## OVERVIEW OF THE SM&CR (PUBLISHED BY THE FCA)

Summary of SM&CR Tools					
Tool	Limited Scope	Core	Enhanced	EEA Branches	Third Country Branches
SMFs	<ul style="list-style-type: none"> <li>• SMF29 – Limited Scope Function</li> <li>• SMF16 – Compliance Oversight</li> <li>• SMF17 – MLRO</li> </ul>	<ul style="list-style-type: none"> <li>• SMF1 – CEO</li> <li>• SMF3 – Executive Director</li> <li>• SMF9 – Chair</li> <li>• SMF27 – Partner</li> <li>• SMF16 – Compliance Oversight</li> <li>• SMF17 – MLRO</li> </ul>	<ul style="list-style-type: none"> <li>• SMF1 – CEO</li> <li>• SMF2 – CFO</li> <li>• SMF3 – Executive Director</li> <li>• SMF27 – Partner</li> <li>• SMF4 – CRO</li> <li>• SMF5 – Head of Internal Audit</li> <li>• SMF9 – Chair</li> <li>• SMF10 – Chair of the Risk Co</li> <li>• SMF11 – Chair of the Audit Co</li> <li>• SMF12 – Chair of the Remuneration Co</li> <li>• SMF13 – Chair of the Nominations Co</li> <li>• SMF14 – Senior Independent Director</li> <li>• SMF16 – Compliance Oversight</li> <li>• SMF17 – MLRO</li> <li>• SMF18 – Other Overall Responsibility</li> <li>• SMF24 – COO</li> </ul>	<ul style="list-style-type: none"> <li>• SMF21 – EEA Branch Manager Function</li> <li>• SMF17 – MLRO</li> </ul>	<ul style="list-style-type: none"> <li>• SMF19 – Head of Third Country Branch</li> <li>• SMF3 – Executive Director</li> <li>• SMF16 – Compliance Oversight</li> <li>• SMF17 – MLRO</li> </ul>
PRs	None apply	5 (+1 for AFMs) apply	12 (+1 for AFMs) apply	None apply	8 (+1 for AFMs) apply
Duty of Responsibility	Applies to all firms				
Statements of Responsibilities	Applies to all firms				
Responsibilities Maps	X	X	✓	X	X
Handover Procedures	X	X	✓	X	X
Overall Responsibility	X	X	✓	X	X
Certification Regime	Applies to all firms				
Fit and Proper	Applies to all firms				
Conduct Rules	Applies to all firms				