

10 things financial advisers need to know about the Senior Managers and Certification Regime (SM&CR)

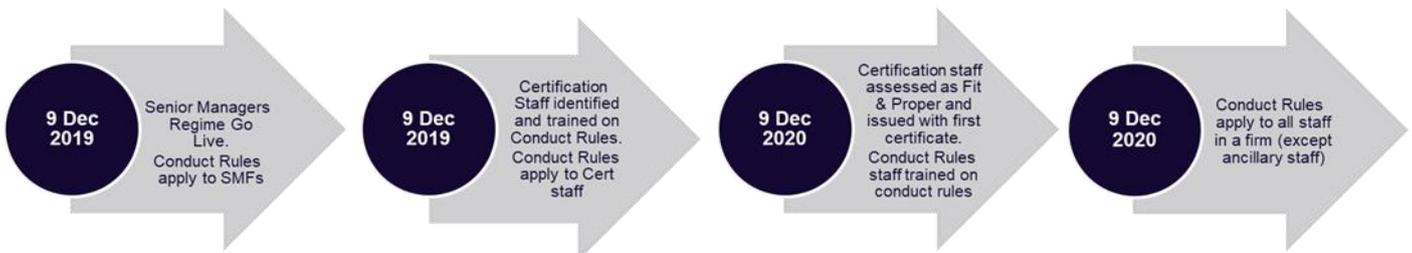
The implementation date for firms authorised solely by the FCA is fast approaching. All firms need to understand how the regime will impact them and need to prepare themselves to comply. There are multiple layers to the regime along with staggered implementation dates. The SM&CR is focused on transparent accountability and responsibility and creates a step-change in standards for firms authorised by the FCA. We take a look at the need to know elements within the regulation that firms need to get started with straight away.



1. What is it all about?

- Only the most senior managers will be approved by the FCA
- Some staff previously approved will need to be assessed annually as fit & proper and competent by the firm itself, e.g. CF30 advisers before they can start and continue to provide advice
- The most senior people need to know what they are responsible for
- There is a focus on skills, capability and conduct within the firm – and a commitment to ensuring staff are fit and proper to carry out their roles
- The conduct rules set a foundation for how individuals behave
- There is a sense of accountability throughout the firm – individuals speak out when they see harm or potential harm
- Improved systems and controls mean that the FCA can easily assess the suitability of senior management
- The FCA is able to hold individuals to account

2. When does it start to apply?



3. A regime made proportionate to your firm type and complexity

1. Enhanced Firms – larger more complex firms
2. Core Firms
3. Limited Scope Firms - limited application of the Approved Persons Regime

The three main elements of the SM&CR will apply to every firm proportionally: Senior Managers Regime, Certification Regime and Conduct Rules. The FCA regime uses the core firm features and requirements as a baseline for all firms to either add increased or reduced requirements.

Advice firms who are Appointed Representatives will not be included in the regime and remain in the FCA's approved persons regime (APER) for the time being. However, ARs are likely to see more SM&CR related oversight from their principal organisations, this could include governance and fit and proper evidence etc.

4. What is an enhanced firm?

- Firms that are 'significant investment' IFPRU firms
- Firms that are 'CASS' Large firms
- Firms with Assets Under Management of £50 billion or more
- Firms with total intermediary regulated business revenue of £35 million or more per annum (*FCA currently consulting on extending categorisation*)
- Firms with annual regulated revenue generated by consumer credit lending of £100 million or more per annum
- Mortgage lenders (that are not banks) with 10,000 or more regulated mortgages outstanding

5. What is a limited scope firm?

Covers all firms that currently have a limited application of the Approved Persons Regime, including:

- Limited permission consumer credit firms
- Sole traders
- Authorised professional firms whose only regulated activities are non-mainstream regulated activities
- Oil and energy market participants
- Service companies
- Subsidiaries of local authorities or registered social landlords
- 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
- Internally managed Alternative Investment Firms (AIF's)

6. What is a Core Firm?

A core firm is by exception a firm which does not meet the criteria for enhanced or limited scope.

7. How do I establish my firm type?

The FCA have a firm checker tool on their website - <https://www.fca.org.uk/decision-tree/firm-checker-tool>

The screenshot shows the FCA website's 'Firm checker tool' page. At the top left is the FCA logo (Financial Conduct Authority). To the right is a search bar. Below the logo are navigation tabs: 'About us', 'Firms', 'Markets', 'Consumers', 'News', and 'Publications'. A breadcrumb trail reads 'Home / Firm checker tool'. The main heading is 'Firm checker tool'. Below this, it states 'First published: 04/07/2018 | Last updated: 04/07/2018'. There are icons for 'Print page' and 'Share page'. The main content area begins with the question 'Q1: Is your firm currently exempt from the Approved Persons Regime?' and two buttons: 'Yes' and 'No'.

8. SM&CR in practice

There are three elements of which the application and extent depend on your firm type.

- I. **SMR - The most senior people in firms. Anyone who performs a Senior Management Function needs to be approved by the FCA.**

Includes: Senior manager functions, statements of responsibility, prescribed responsibilities, overall responsibility, shared/divided responsibility, management responsibilities map, duty of responsibility (reasonable steps), fitness & propriety, criminal records checks, senior manager conduct rules, handover procedures, 12- week rule (temporary cover arrangements)

- II. Certification - People whose job can cause significant harm to the firm or its customers. These people are not approved by the FCA. This would include Senior Managers performing a Certification Function that is very different to what they are doing as a Senior Manager e.g. practicing as an adviser.**

Includes: significant harm functions, e.g. client dealing function, fitness & propriety, annual re-certification, conduct rules, 4-week rule (temporary cover arrangements)

- III. Conduct rules – Apply to all staff who perform financial services roles. This does not include ancillary staff e.g. caterers, cleaners and security staff. There are two tiers of conduct rules. Senior managers have additional rules that largely relate to the reasonable steps they are expected to take in the management and governance of their firm.**

Includes: Conduct rules staff and certified staff Tier 1 conduct rules, senior managers with Tier 1 & 2 conduct rules, conduct rules for standard NED's, conduct rules training, breach reporting to FCA where disciplinary action has been taken, attestation to adherence to conduct rules

9. Some of the key challenges facing firms

Senior Managers Regime

- Identifying and agreeing what your senior managers are specifically responsible and accountable for
- Ability to version control and manage change of senior managers and their responsibilities
- Ability to record and manage statutory duty of responsibility (reasonable steps) of your senior managers
- Managing and accessing the fitness and propriety of your senior managers initially then annually
- Proving attention to good conduct and culture throughout the organisation

Certification Regime

- Identifying and agreeing who your certified staff are and why, i.e. significant harm functions
- Ability to version control and manage change to your certification structure
- Manage the fitness and propriety of your certified staff initially then annually
- Managing the construction, issuance and renewal of certificates initially and thereafter annually
- Proving attention to good conduct and culture through the certified population

Conduct Rules

- Identification of all your staff subject to conduct rules
- Enabling training and attestation initially and then on a regular basis
- Configuration and management of conduct breach recording
- Facilitating regulatory reporting of any conduct breaches (senior managers and all other staff)
- Creating a robust regulatory footprint around all your conduct related processes and data

10. How does your firm transition from APER to SM&CR?

The regulator wants to make transition as easy as possible for all firms. In many cases there will be nothing to do. In the more complex firms who meet the criteria for the enhanced regime there will be some paperwork required. This is all clearly set out in the FCA Guide published last July. See link below.

The FCA will be in contact with firms prior to December to provide your firm with their assessment of status based on the information that they hold. This is to help you identify which level of the regime applies to you, i.e. enhanced, core or limited scope. However, this is indicative. Firms are still responsible for assessing which tier they fall into based on the rules.

Individuals at core and limited scope firms will be automatically converted wherever possible, with no action required by firms. Firms must consider whether any changes to their approvals are required ahead of commencement.

Time to act now!

- Don't underestimate the time, effort and resources required to get in a position to comply
- Anticipation, preparation and planning are crucial
- Sound advice and software solutions can help reduce the effort, administration and cost of implementation
 - Automated outputs, automated process, audit and document management, transparency, efficiency and cost effectiveness
- Preparation for compliance must be owned and led by the business not delegated to, e.g. administration, compliance etc
- Create a communication plan to make sure that everybody understands what is happening, what's asked of them and the job they're expected to do
- All the feedback suggests that it is the day to day management of change and regular processes that are difficult - it doesn't stop on go-live day!

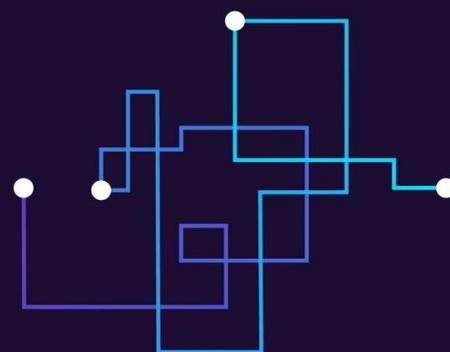
This is what some banking and insurance clients who implemented manual and paper-based processes have said:

Management responsibilities maps - *"Lost control of versioning"*

Reasonable steps - *"What should we record?", "Managing delegation and the ongoing change has turned into a nightmare", "What is the right process?"*

Fit and proper assessments - *"Managing internal process and follow up is my No1 problem", "I can't see where I am in the process", "I am going to multiple places to manage a single F&P".*

Further reading and guidance



FCA Firm checker tool:

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

Further reading:

The Senior Managers and Certification Regime, Guide for FCA solo-regulated firms, July 2018.

<https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>

Further information:

www.intelliflo.com/SMCR

(Source: Extracts taken from FCA publications)