

Reforming the Senior Managers & Certification Regime

Consultation

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Introduction

1. The government is committed to ensuring the future success of the financial services sector, recognising its pivotal role in a prosperous future for the UK. The Financial Services Growth and Competitiveness Strategy, which this consultation is published alongside, recognises the critical role of a competitive regulatory environment in delivering this goal. It highlights the strength that the UK industry draws from its internationally respected regulatory system, both domestically and in its role within the global financial system. However, in an environment that is both highly competitive and constantly evolving, it is important to address those issues which might detract from the UK's world-class reputation in financial services regulation. This includes looking critically at areas where the approach may not be proportionate. One such area is the Senior Managers and Certification Regime (SM&CR).
2. In her previous Mansion House speech, on 14 November 2024, the Chancellor set out the government's view that the SM&CR has played a key role in improving standards and accountability across the financial services sector. But that speech also acknowledged the administrative cost and frictions that the regime places on firms.
3. These insights reflected feedback from the Call for Evidence on the SM&CR, published on 30 March 2023¹ under the previous government and accompanied by a Discussion Paper published jointly by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA)². A full summary of feedback received by government in response to this Call for Evidence is provided in the Annex to this document.
4. The government is committed to reducing unnecessary regulatory burdens for business and driving growth. HM Treasury has therefore worked with regulators to identify opportunities to address this feedback and reduce the burden imposed by SM&CR, without undermining its overall effect to maintain high standards in the financial services sector.
5. An important step that has already been taken by regulators is to improve the timeliness with which they make a determination in response to an application under the Senior Managers Regime.

¹ Senior Managers & Certification Regime: a Call for Evidence, HM Treasury, March 2023, <https://www.gov.uk/government/calls-for-evidence/senior-managers-certification-regime-a-call-for-evidence>

² DPI/23: Review of the Senior Managers and Certification Regime (SM&CR), Prudential Regulation Authority, March 2023, <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/march/review-of-the-senior-managers-and-certification-regime>

In response to HMT's Call for Evidence, firms reflected that backlogs were causing significant issues for firms. These backlogs have now been addressed and almost 100% of applications are processed within the statutory standard of three months from receipt. This improvement means that they are well-placed to go further to improve timeliness, in order to meet the new two-month deadline announced at this Mansion House.

6. Building on this, the FCA³ and PRA⁴ have today separately published consultations, that reflect and seek to address comments made in response to their Discussion Paper. These proposals are a welcome further step in improving the SM&CR, but they are limited by their need to comply with the framework set out in primary legislation.

The Certification Regime

7. This consultation proposes to make changes to that framework in order to enable more fundamental and far-reaching changes to the SM&CR. It delivers on the Chancellor's commitment, as part of last year's Mansion House speech, to consult on removing the Certification Regime from legislation entirely. Several features of the regime that drive cost with limited benefits, such as the requirement for annual recertification and the broad scope of functions to which the regime applies, derive from the requirements set out in primary legislation. The government intends to remove these requirements when Parliamentary time allows. This will leave space for the FCA and PRA to use their rule-making powers to develop a more flexible and proportionate regime and address a major theme of the feedback received in response to the 2023 Call for Evidence.

The Senior Managers Regime

8. In addition, this consultation proposes major changes to the legislation that sets the framework for the Senior Managers Regime, with a similar objective to increase flexibility and proportionality. Feedback from the Call for Evidence recognised the role of high standards and direct accountability for senior managers, as part of a world-leading regulatory approach. But it also highlighted a number of areas where the application of the regime drove unnecessary costs.
9. Core to these concerns around unnecessary burdens is the friction and the administrative cost imposed by the large

³ Review of the Senior Managers and Certification Regime: Consultation Paper, Financial Conduct Authority, July 2025, <https://www.fca.org.uk/publications/consultation-papers/cp25-21-senior-managers-certification-regime-review>

⁴ Review of the Senior Managers and Certification Regime: Consultation Paper, Prudential Regulation Authority, July 2025, www.bankofengland.co.uk/prudential-regulation/publication/2025/july/review-of-the-senior-managers-and-certification-regime-consultation-paper

number of senior manager roles for which pre-approval by the regulators is required before an appointment. For the 2024-25 financial year, the PRA approved 1,130 applications while the FCA approved 5,264. There is scope for reform to significantly reduce the number of pre-approvals that need to be sought from the regulators, without undermining the policy objectives of the SM&CR, and the government proposes two key changes to the legislative framework to support this. The first is to make changes to the legislation to provide regulators with greater flexibility in how they define Senior Management Functions. The second is to make it possible for regulators to focus pre-approval on some senior manager roles, while for others, firms could conduct checks themselves and notify regulators of new appointments.

10. This consultation draws on feedback from the Call for Evidence to explore other areas where legislative changes could support greater proportionality, for example around how firms report the assignment of senior manager responsibilities to the regulators.

The Consultation

11. This package of measures will enable regulators to radically streamline the SM&CR, while maintaining its role in supporting high standards in financial services firms. It will make a significant contribution to meeting the overall ambition – shared by government and regulators – to reduce the regulatory burdens of the SM&CR by 50%.
12. The proposals and associated questions are set out in further detail in this consultation:
 - Chapter 1 provides further background and context to the regime.
 - Chapter 2 asks for views on proposals to remove the Certification Regime from legislation.
 - Chapter 3 considers proposals to amend legislation to reform the approach to regulator pre-approval under the Senior Managers Regime.
 - Chapter 4 asks for views on further measures to ease the regulatory burden of the SM&CR.
 - Chapter 5 provides a summary of all consultation questions.
 - Chapter 6 sets out how HM Treasury will process personal data received as part of this consultation.
 - The annex provides a full summary of responses to the 2023 Call for Evidence.
13. The government welcomes responses to the SM&CR reform proposals set out in this paper. To support evidence-based policy

making, respondents are asked to include qualitative and quantitative evidence. Evidence on the costs and benefits of specific reforms is particularly welcome.

14. This consultation begins with this document's publication on 15 July and ends in 12 weeks at midnight on 7 October 2025. Responses should be submitted to SMCR@hmtreasury.gov.uk. Responses submitted in any other way may not be considered.

Chapter 1

Background

- The SM&CR has its origins in the aftermath of the Global Financial Crisis 2007-08 and the LIBOR scandal of 2012. The Parliamentary Commission on Banking Standards (PCBS) was appointed in July 2012 to look at professional standards and culture of the UK banking sector. The PCBS published a final report in 2013⁵, which included several recommendations to improve individual conduct and standards in banking. The government broadly accepted the PCBS's recommendations and implemented these through the Financial Services (Banking Reform) Act 2013 and the SM&CR came into operation in 2016. HM Treasury is responsible for the regime's legislative framework, and FCA and PRA are responsible for operating the regime.
- The primary objectives of the SM&CR are to reduce harm to consumers and strengthen market integrity, and to improve the safety and soundness of the financial services sector. As an individual accountability regime, the SM&CR allows firms and the FCA and PRA to hold individuals to account for their actions, to ensure that individuals' responsibilities are clearly defined, and to set a clear expected standard of conduct.
- There are three parts to the SM&CR:
 - **The Senior Managers Regime** - requires firms to seek regulatory approval to appoint individuals into senior manager roles (those performing so-called 'Senior Management Functions'), based on an assessment of whether the individual is 'fit and proper'. A Statement of Responsibilities is a legal requirement for each role and the individuals are subject to enhanced conduct standards in relation to the Senior Management Functions they perform.
 - **The Certification Regime** - requires that firms annually assess that those employees in roles that hold 'significant-harm functions' (below senior manager level) are 'fit and proper'.
 - **The Conduct Rules** - set a basic standard of conduct that applies to individuals working in financial services firms

⁵ Changing Banking for Good: Report of the Parliamentary Commission on Banking Standards, House of Commons, June 2013, <https://www.parliament.uk/globalassets/documents/banking-commission/Banking-final-report-volume-i.pdf>

covered by the SM&CR. The PRA⁶ and FCA⁷ rules have slightly different scopes.

- Legislative changes made since the regime's introduction in 2016 have expanded its scope from banking to insurance and later to most FCA solo-regulated firms.
- The SM&CR has delivered significant benefits in driving up standards in the UK financial services sector. This is reflected in feedback to the government's Call for Evidence and in the fact that many other jurisdictions have similarly sought to implement a regime that promotes individual accountability within financial services firms. However, the regime is more extensive than those implemented in most other jurisdictions, and there is a range of areas where both firms and regulators – drawing on lessons learnt since the regime was introduced – recognise that elements of the regime can be more burdensome than is necessary. This consultation therefore seeks views on how the legislation establishing the SM&CR can be changed to retain the regime's strengths while addressing these issues around its practical operation and easing the regulatory burdens it imposes on firms.
- In December 2022, the government announced that HMT, the FCA and the PRA would work together to undertake a review of the SM&CR. This reflects the need for a comprehensive review of the regime to consider both the legislative framework for the regime as well as its implementation by regulators. On 30 March 2023, HM Treasury published a Call for Evidence on the legislative framework of the SM&CR. This publication was accompanied by a joint Discussion Paper by the FCA and the PRA.

Feedback received through the March 2023 Call for Evidence

- The broad consensus of the feedback received through the government's Call for Evidence was that the accountability framework introduced by SM&CR was positive and enhanced the UK's position as a leading financial centre. Within that, however, there was also a clear message that the regime could be improved to reduce the burden it imposed on firms, without undermining its primary objectives. The main themes for improvement that emerged, and which have informed the measures on which the government is now consulting, are set out in further detail below.

Certification Regime

- The UK SM&CR goes further than most comparator jurisdictions in its approach to certification. While a few jurisdictions do have

⁶ Conduct Rules, Prudential Regulation Authority Rulebook, Prudential Regulation Authority, <https://www.prarulebook.co.uk/prarules/conduct-rules/23-06-2025>

⁷ Conduct Rules, Senior Managers and Certification Regime, Financial Conduct Authority, <https://www.fca.org.uk/firms/senior-managers-and-certification-regime/conduct-rules>

provisions to ensure that individuals below senior manager level are fit and proper, their scope is not as broad as in the UK.

- The legislative requirements of the Certification Regime have led to significant administrative burdens and high regulatory costs for firms, particularly in relation to the annual assessment of fitness & propriety, and the additional burden to produce a certificate.
- Many respondents considered that some roles included in the scope of the regime – such as junior trading roles and algorithmic trading roles – do not pose a material risk to the firm and should therefore not be in scope.

Senior Managers Regime

- The administrative burden of the Senior Managers Regime, including in comparison to other jurisdictions, was highlighted by many respondents.
- The broad scope of Senior Management Functions was widely questioned, with a number of respondents identifying some functions which might be considered lower risk, and the approach to determinations be amended accordingly, and others suggesting functions which might be removed entirely or for some sectors.
- Reflecting the considerable backlog and delays in senior manager determinations in 2023, timeliness in regulator approvals was viewed as among the biggest issues, reducing the UK's international competitiveness by introducing uncertainty for firms and individuals when filling senior roles. While this is an area where regulators have made significant improvements, the potential issue of delay and friction in senior appointments remains relevant.
- Across the SM&CR as a whole, a number of responses also highlighted the overlap with other regulatory requirements, such as Solvency II. This included a reflection that the SM&CR had contributed to a significant increase in the cumulative compliance burden of UK financial services regulation since the recommendations of the PCBS more than a decade ago.
- The introduction of the FCA's consumer duty in July 2023 will have brought further changes to the regulatory expectations of firms since the Call for Evidence closed.
- The annex to this document sets out a more comprehensive summary of the views received in response to that Call for Evidence.
- In parallel to this government consultation, and drawing on feedback from their joint Discussion Paper, the FCA and the PRA have published consultation documents setting out Phase 1 of their review, with a proposed set of reforms that can be delivered without legislative change. These proposals aim to make the regime more flexible and less burdensome, for example by increasing flexibility

under the 12-week rule, which allows firms to make interim appointments of senior managers. However, the legislation establishing the SM&CR contains a number of details about the regime, which limit the regulators' ability to introduce a more flexible approach. This consultation therefore considers further legislative proposals which could support more far-reaching SM&CR reform.

Financial Market Infrastructure (FMI) firms

- Under the previous government, Parliament legislated in the Financial Services and Markets Act 2023 (FSMA 2023) for an SM&CR which can be applied to Central Counterparties (CCPs), Recognised Investment Exchanges (RIEs), and Central Securities Depositories (CSDs). The legislation also allows for the option to extend the SM&CR to Credit Ratings Agencies (CRAs).
- This government does not plan to take forward secondary legislation to apply SM&CR to these firms at this point in time. The government will take into account the results of this consultation before further considering the application of the SM&CR to these firms.

Chapter 2

Removal of the Certification Regime

- The Certification Regime applies to staff in roles extending below senior manager level which involve, or could involve, a risk of significant harm to the firm or its customers. These are known as Certification Functions and the legislation requires that individuals performing these roles are assessed and certified as ‘fit and proper’ by the firm they work for before they commence their post, followed by annual re-certification. As of June 2025, there are currently c.262,000 functions held by c.139,000 individuals with certificates.
- The Certification Regime is based on legislative requirements set out in the Financial Services and Markets Act 2000 (FSMA) including a power to enable the FCA and PRA to specify the roles that fall within the regime and duties to regulators on how to approach this.
- In her November 2024 Mansion House speech, the Chancellor committed to consult on removing the current Certification Regime from legislation to be replaced by more proportionate arrangements. This consultation delivers on that commitment and invites views on this proposal, and how it may be best achieved.
- The Certification Regime is established in primary legislation in sections 63E⁸ and 63F⁹ of FSMA. The Government proposes to repeal these sections, which will allow the regulators to use their rule making powers, specifically those set out in sections 137A (FCA) and 137G (PRA) of FSMA, to set up a replacement regime in rules.
- These changes would remove from FSMA:
 - The duty for firms to take reasonable care that no employee performs a Certification Function unless certified by the firm as “fit and proper” to do so.
 - The PRA and FCA’s function of deciding which roles should be specified as Certification Functions, according to whether the function involves, or might involve, a risk of significant harm to the employing firm or any of its customers.

⁸ Financial Services and Markets Act 2000, section 63E, [legislation.gov.uk, https://www.legislation.gov.uk/ukpga/2000/8/section/63E](https://www.legislation.gov.uk/ukpga/2000/8/section/63E)

⁹ Financial Services and Markets Act 2000, section 63F, [legislation.gov.uk, https://www.legislation.gov.uk/ukpga/2000/8/section/63F](https://www.legislation.gov.uk/ukpga/2000/8/section/63F)

- The requirement for the FCA and PRA to keep the exercise of that function under review, and to exercise it in a way which minimises the risk of employees performing Certification Functions that they are not fit and proper to perform.
- The requirement for firms, when considering whether to issue a certificate, to have regard to PRA and FCA rules as to the circumstances in which an employee is “fit and proper” to perform a role.
- The requirement for certificates to be issued annually, stating that the firm is satisfied the person is fit and proper to perform the function to which the certificate relates and setting out the aspects of the affairs of the firm that the employee will be involved in.
- The requirement for the firm to keep a record of every employee who has a valid certificate.
- The requirement for the firm, in a case where it decides not to issue a certificate to a particular person, to give the person notice of the steps that the firm proposes to take in relation to that person, and the reasons for proposing those steps.
- While some of these, or similar, requirements might feature in any new regime established by the regulators, a rule-based regime would allow the FCA and PRA more flexibility to adapt the regime so that it better reflected the risks posed by different roles and different firms. They would also be able to adjust the rules more easily over time, responding to changes in the sector. This would reduce regulatory burdens for firms while still ensuring that people in the most significant roles are fit and proper.

Consultation questions

1. Do you agree that the Certification Regime should be removed from FSMA 2000?
2. Do you agree that the Regulators should consider developing a more proportionate approach, that would replace the existing Certification Regime?
3. Do you believe there are risks or unintended consequences if the Certification Regime is removed from FSMA 2000, and replaced with regulator rules? For example, how would it impact consumer protection, market integrity, safety and soundness, and policyholder protection?
4. Are there alternative approaches that will still deliver the desired benefits, but may not involve removing the regime from legislation entirely?
5. What are the critical elements for any replacement regime to achieve the government objectives of a lower cost, more proportionate and competitive regime?

6. Do the regulators currently have the necessary powers and tools to deliver a replacement regime or are further powers required?
7. Do you have any comments on the likely costs and benefits of removing the Certification Regime from legislation and replacing it with a more proportionate regime, at this stage?

Chapter 3

Reforming the approach to regulator pre-approval under the Senior Managers Regime

- The Senior Managers Regime is set out in FSMA and in regulator rules. The FCA and PRA regulate the regime by specifying which roles (within the legislative definition) are treated as a Senior Management Function, considering applications from firms for individuals to perform these roles and supervising the conduct of those individuals approved. Senior Managers are subject to an enhanced standard of accountability, in addition to individual conduct rules.
- The government is proposing some significant changes to the regime's framework, as provided for in FSMA, which would enable regulators to apply the regime in a more flexible and proportionate way, to reduce costs and improve competitiveness. In future the regulator would have greater flexibility through rulemaking powers both to reduce the number of roles which fall within the regime, and to reduce the number of roles within the regime for which pre-approval by the regulator is required before an individual can be appointed.

Reducing the number of senior manager roles

- The first proposal aims to help reduce the overall number of senior managers within the regime, by providing greater flexibility for the regulators in specifying the list of Senior Management Functions, which require regulatory pre-approval.
- Sections 59ZA and 59 of FSMA respectively provide for the definition of a Senior Management Function and the requirement for approval by the regulators of any individual performing such a role. The definition of "Senior Management Function" in s.59ZA refers to any functions that might involve a risk of serious consequences for either the firm or wider UK interests. For some large and complex firms, a wide range of these roles may be appropriate; smaller and simpler firms typically only apply for a very limited number of roles.

- The objective of changes to these legislative provisions would be to provide greater flexibility to regulators in how they define functions, allowing for them to be more focused and facilitating an overall reduction in roles that fall within the regime.

Removing requirement for pre-approval for some roles

- The second proposal aims to allow firms to appoint certain senior managers without pre-approval by the regulators. It would modify the statutory requirement in FSMA that currently requires firms to ensure that all senior managers are subject to prior approval by a regulator. Changes could be made to enable the regulators, via rules, to develop different mechanisms to manage senior manager appointments.
- Some senior managers would continue to require the pre-approval of regulators, as is currently the case. But there would also be the ability for regulators to specify certain senior manager roles for which pre-approval is no longer required. For these senior manager roles, firms would be required to ensure that individuals meet fitness and propriety standards and would then be required to notify the relevant regulator of such appointments, thereby enabling the regulator to maintain oversight. In addition, the regulators would be able to introduce proportionate systems and controls to vary the process if necessary and monitor firms' processes and compliance.
- Both categories would continue to be senior managers under the regime, and regulators would continue to have the existing powers in respect of those managers.
- This change is expected to reduce friction and administrative burdens for firms, allowing them to appoint senior managers more efficiently while maintaining high standards and clear accountability.

Consultation questions

8. Do you agree with the proposal to give the regulators more flexibility to reduce the overall number of senior manager roles?
9. In addition, do you agree with the proposal to give the regulators flexibility to reduce the number of roles within the regime for which pre-approval is required?
10. Do you have any comments on the likely costs and benefits of making such changes to the Senior Manager Regime?
11. Are there any alternative approaches that government should consider to reform the approach to regulator pre-approval, which would still deliver the desired benefits?
12. Do you have any other comments or suggestions regarding these proposed changes?

Chapter 4

Further proposals to ease the burden of the Senior Managers and Certification Regime

Statement of Responsibilities

- The introduction of a Statement of Responsibilities for each Senior Management Function has been an integral part of SM&CR, ensuring that there is clarity about senior responsibilities and accountabilities. However, FSMA includes a number of prescriptive requirements around how these are provided, maintained and updated. It also requires that any 'significant' change in allocation of these responsibilities must be reflected in an updated Statement and provided to the regulator.
- While the principle of clearly articulated responsibilities is important, some specific requirements of the legislation place burdens on firms which often add limited value. Regulators have already taken steps, within the current legislative framework, and are proposing within their concurrent consultations to amend submission requirements, such as extending updates to the Statement of Responsibilities to 6 months. However, the legislation provides limited flexibility for regulator rules. The government is therefore intending to make changes to these requirements that would support regulators in taking a more flexible approach, beyond what is currently possible.

Consultation Questions

13. Do you agree with the proposal to remove prescriptive legislative requirements relating to provision, maintenance and updating of Statement of Responsibilities, with the aim of allowing regulators to adopt a more proportionate approach?
14. What are the types of change for which an update to the Statement of Responsibilities is currently required, that you consider to be disproportionate?

Conduct rules

- FSMA enables the regulators to make Conduct Rules which set out minimum standards of conduct for individuals. FSMA also includes

prescriptive requirements which cover, for example, training about the Conduct Rules, and where breaches of the rules must be reported to the regulators. If these requirements create a disproportionate burden, we could propose to remove them from legislation.

Consultation Question

15. Are there requirements in the legislation for the Conduct Rules which you consider create a disproportionate burden? What are these elements?

Other potential legislative changes

- There may be other areas of the SM&CR, not explicitly considered in this consultation, where there is an opportunity to make legislative changes that would support a more proportionate regulatory approach, while maintaining the regime's primary objectives to reduce consumer harm, strengthen market integrity and improve the safety and soundness of the financial service sector.
- We want to explore whether there may be benefits in exploring any further changes to any of the prescriptive processes set out in primary legislation. Examples include:
 - the requirement for the Statement of Responsibilities to be included in an application for approval of a designated Senior Management Function (section 60(2A) of FSMA).
 - timelines for approvals of senior managers where applications form part of a wider application under Part 4A of FSMA (section 61(3A) FSMA).
 - the requirement for firms to consider annually whether there are grounds on which a regulator could withdraw a senior manager's approval and notify the regulator (section 63(2A) FSMA).

Consultation Question

16. Are there any further elements of the SM&CR legislation that create unnecessary regulatory burdens on firms, the removal of which would not impact on the primary objectives of the regime?

International talent

- The government is committed to enabling financial services firms to recruit and move international talent to support the competitiveness of the sector. Feedback to the 2023 Call for Evidence identified concerns around the challenges of recruiting individuals from other jurisdictions to senior manager roles in the UK.
- Many of the challenges identified will be addressed by proposals in this consultation, or by regulator proposals, such as those to amend the 12-week rule. Other points raised are more specific to the recruitment of international talent, such as the challenges of

obtaining criminal records checks or regulatory references from authorities in other jurisdictions.

- Feedback on the Call for Evidence and wider engagement with industry has included suggestions around regulatory recognition of other jurisdictions with comparable regimes. Regimes in different jurisdictions can take very different approaches, while still sharing key features of the UK regime, such as aiming to hold individuals in senior positions accountable through an individual responsibility approach (including Hong Kong, Australia and Ireland). Others do not currently share some of the UK regime's features and may, for example, take an approach based on collective responsibility. Similarly, whilst many comparable regimes operate a 'fit and proper' test (including Singapore, New York and Ireland), some do not (such as California or Illinois).
- The government is therefore considering whether additional specific measures are needed to support the movement of international talent into senior manager roles in the UK.

Consultation Questions

17. Do you face, or have you faced, any specific obstacles in trying to recruit internationally for senior manager roles?
18. If so, which are the key obstacles that would not be addressed by the reforms proposed in either this consultation or by the consultations the regulators have published in parallel?

Chapter 5

Summary of questions for respondents

1. Do you agree that the Certification Regime should be removed from FSMA 2000?
2. Do you agree that the Regulators should consider developing a more proportionate approach, that would replace the existing Certification Regime?
3. Do you believe there are risks or unintended consequences if the Certification Regime is removed from FSMA 2000, and replaced with regulator rules? For example, how would it impact consumer protection, market integrity, safety and soundness, and policyholder protection?
4. Are there alternative approaches that will still deliver the desired benefits, but may not involve removing the regime from legislation entirely?
5. What are the critical elements for any replacement regime to achieve the government objectives of a lower cost, more proportionate and competitive regime?
6. Do the regulators currently have the necessary powers and tools to deliver a replacement regime or are further powers required?
7. Do you have any comments on the likely costs and benefits of removing the Certification Regime from legislation and replacing it with a more proportionate regime, at this stage?
8. Do you agree with the proposal to give the regulators more flexibility to reduce the overall number of senior manager roles?
9. In addition, do you agree with the proposal to give the regulators flexibility to reduce the number of roles within the regime for which pre-approval is required?
10. Do you have any comments on the likely costs and benefits of making such changes to the Senior Manager Regime?
11. Are there any alternative approaches that government should consider to reform the approach to regulator pre-approval, which would still deliver the desired benefits?
12. Do you have any other comments or suggestions regarding these proposed changes?

13. Do you agree with the proposal to remove prescriptive legislative requirements relating to provision, maintenance and updating of Statement of Responsibilities, with the aim of allowing regulators to adopt a more proportionate approach?
14. What are the types of change for which an update to the Statement of Responsibilities is currently required, that you consider to be disproportionate?
15. Are there requirements in the legislation for the Conduct Rules which you consider create a disproportionate burden? What are these elements?
16. Are there any further elements of the SM&CR legislation within which create unnecessary regulatory burdens on firms, the removal of which would not impact on the primary objectives of the regime?
17. Do you face, or have you faced, any specific obstacles in trying to recruit internationally for senior manager roles?
18. If so, which are the key obstacles that would not be addressed by the reforms proposed in either this consultation or by the consultations the regulators have published in parallel?

Chapter 6

Processing of personal data

- This section sets out how we will use your personal data and explains your relevant rights under the UK General Data Protection Regulation (UK GDPR). For the purposes of the UK GDPR, HM Treasury is the data controller for any personal data you provide in response to this consultation.

Data subjects

- The personal data we will collect relates to individuals responding to this consultation. These responses will come from a wide group of stakeholders with knowledge of a particular issue.

The personal data we collect

- The personal data will be collected through email submissions and are likely to include respondents' names, email addresses, their job titles, and opinions.

How we will use the personal data

- This personal data will only be processed for the purpose of obtaining opinions about government policies, proposals, or an issue of public interest.
- Processing of this personal data is necessary to help us understand who has responded to this consultation and, in some cases, contact respondents to discuss their response.
- HM Treasury will not include any personal data when publishing its response to this consultation.

Lawful basis for processing the personal data

- Article 6(1)(e) of the UK GDPR; the processing is necessary for the performance of a task we are carrying out in the public interest. This task is consulting on the development of departmental policies or proposals to help us to develop effective government policies.

Who will have access to the personal data

- The personal data will only be made available to those with a legitimate business need to see it as part of consultation process.
- This policy is being progressed together with the PRA and FCA. Consultation responses, including personal identifiers, will therefore be shared with the PRA and FCA where necessary. Responses,

including personal identifiers, may also be shared with other public bodies such as government departments or public authorities, where relevant for the purposes of this policy development. Information relating to legal entities, such as the names of organisations responding, is not considered personal data under UK GDPR and may be shared or published.

- We may publish a list of organisations that have responded to this consultation. If you are responding on behalf of an organisation and do not wish your organisation's name to be published, please indicate this in your submission. HM Treasury will not include personal data such as names of individuals when publishing its response to this consultation.
- As the personal data is stored on our IT infrastructure, it will be accessible to our IT service providers. They will only process this personal data for our purposes and in fulfilment with the contractual obligations they have with us.
- This notice applies only to personal data as defined under UK GDPR. It does not cover business information that may be commercially sensitive or subject to separate confidentiality requests.

How long we hold the personal data for

- We will retain the personal data for as long as it's necessary to inform this consultation and future policy decisions related to SM&CR policy.

Your data protection rights

- Relevant rights, in relation to this activity are to:
 - request information about how we process your personal data and request a copy of it
 - object to the processing of your personal data
 - request that any inaccuracies in your personal data are rectified without delay
 - request that your personal data are erased if there is no longer a justification for them to be processed
 - complain to the Information Commissioner's Office if you are unhappy with the way in which we have processed your personal data

How to submit a data subject access request (DSAR)

- To request access to your personal data that HM Treasury holds, please email: dsar@hmtreasury.gov.uk.

Complaints

- If you have concerns about Treasury's use of your personal data, please contact our Data Protection Officer (DPO) in the first instance at: privacy@hmtreasury.gov.uk.

- If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner at casework@ico.org.uk or via this website: <https://ico.org.uk/make-a-complaint>.

Annex

Summary of responses to Call for Evidence

A.1 HM Treasury's Call for Evidence published in March 2023 asked respondents to provide views on the legislative framework and functioning of the SM&CR. This covered 11 questions across the following 4 themes:

- The overall objectives of the regime (4 questions).
- The impact of the regime on international competitiveness (3 questions).
- Specific aspects of the regime (1 question).
- The scope of the regime (3 questions).

HM Treasury received 83 responses to its Call for Evidence and a full list of those organisations that responded is included at the end of this annex. Respondents included:

- Retail banks
- Credit unions
- International financial services firms, including investment banks and asset management firms
- Wealth management firms
- Insurance firms
- Fintech firms
- Industry trade bodies
- Civil society, including members of the public and academics
- Other organisations, including legal and compliance firms

Chapter 2 - Is the regime delivering against its original aims?

A.2 HM Treasury sought respondents' views on whether the SM&CR has effectively delivered against its objectives, whether those remain the right objectives, and how the regime could deliver these more effectively and efficiently.

Question 1: Has the SM&CR effectively delivered against its core objectives?

A.2.1 Over two thirds of respondents stated that the SM&CR has effectively delivered its original objectives to reduce harm to consumers

and strengthen market integrity, and to improve the safety and soundness of the financial services sector.

A.2.2 All of these respondents noted that the SM&CR has helped firms to improve governance, strengthen the accountability of senior leaders and clarify their responsibilities. Respondents noted that mechanisms introduced by the SM&CR, including for example the requirement for formal and structured handover procedures, Statement of Responsibilities, and Management Responsibility Maps, have collectively improved standards of conduct, by encouraging individuals to take more responsibility in their roles.

A.2.3 Several respondents noted that the FCA and PRA have taken very few enforcement actions against individuals under the SM&CR, including in relation to conduct breaches, since the SM&CR was introduced. These respondents expressed a concern that the small number of enforcement actions risked undermining the deterrent effect of the SM&CR, by leading some senior managers to believe that any breaches of the regime would not result in enforcement action.

A.2.4 Some respondents also raised:

- The administrative burdens of the SM&CR, which can risk delays to senior manager roles being filled. This can reduce a firm's ability to respond to emerging risks.
- A perception that the FCA and PRA have prioritised process over effective outcomes, encouraging firms to treat the regime as a regulatory overhead rather than engaging in its intended outcomes.
- Operating within the SM&CR can be opaque for firms, due in part to a lack of data that can impair firms' ability to assess how efficiently or effectively the regime is delivering its objectives. This can impede their ability to plan around processes such as approving senior managers.
- The guidance provided by the FCA and PRA can be unclear and thereby undermine firms' ability to comply in a proportionate way, potentially leading to over-compliance.

Question 2: Do these core objectives remain the right aims for the UK?

A.2.5 Over two thirds of respondents agreed that the regime's objectives remain right for the UK's financial services sector. These respondents felt that the objectives of the SM&CR had improved governance and accountability, and that it is important that firms continue to champion these principles. Several respondents credited the SM&CR as contributing to HM Treasury's success in managing

market instability during the collapse of Silicon Valley Bank in March 2024.

A.2.6 Several respondents noted that the SM&CR has been replicated, in whole or in part, by other financial services regulatory regimes internationally.

A.2.7 Many respondents stated that the SM&CR could be streamlined to improve its functionality while continuing to achieve its objectives. Suggestions included:

- Reviewing the number and coverage of Senior Management Functions and certification functions.
- Improving the operational efficiency of the SM&CR.
- Reviewing the existing Senior Management Functions to capture areas such as investment strategy, artificial intelligence (AI) and data, and customer functions.

Question 3: Has the regime remained true to its original objectives or has the scope or use of the regime shifted over time?

A.2.8 Just over a third of respondents agreed that the regime has remained true to its original objectives. Most other respondents didn't explicitly answer this question, but around a fifth of total respondents raised some concerns about the regime's scope in response to this question. The most prominent criticism was on perceived expansion of the SM&CR regime over time, which they described as 'scope creep'.

A.2.9 Most of these respondents considered this in the context of the SM&CR covering additional functions. These respondents stated that the number of activities captured under the SM&CR has expanded since its introduction in 2016. These respondents shared examples of what they saw as changes in the scope or use of the regime, including:

- The perceived use of the SM&CR to supervise how firms and senior managers seek to improve diversity and inclusion in the financial services sector. These respondents consider that this is important, but questioned whether the SM&CR was the best tool to improve this across the sector.
- The introduction of new responsibilities by the FCA and PRA without formal consultation e.g., through direct communication from the FCA and PRA to CEOs of supervised firms, (often called 'Dear CEO' letters).
- The perceived lack of clarity in the use of the SM&CR to address non-financial misconduct, which respondents state is not set out clearly in the FCA's or the PRA's rulebooks nor their guidance.

A.2.10 Some respondents said the scope of the Certification Regime was too wide, providing examples of its application to staff based overseas, including non-retail facing client staff and algorithmic traders.

A.2.11 A couple of respondents shared their concerns about the SM&CR being extended to Central Counterparties (CCPs), as the government committed to in June 2022. These respondents suggested that this would be inappropriate as these firms are already subject to sufficient regulation. They also emphasised that any extension should be done in a manner that is tailored to their position in the market and business model.

Question 4: HM Treasury would be interested in respondents' reflections on their experience of the SM&CR, now that it has been in place for some years.

A.2.12 A third of respondents noted that parts of SM&CR can be administratively burdensome to comply with, whilst also noting that the higher standard of regulation has benefited the competitiveness of the UK's financial services sector.

A.2.13 In line with the feedback on the scope of the SM&CR, these respondents emphasised that the cumulative compliance burden of UK financial services regulation (including the SM&CR) has increased – with some remarking that it is considerably higher than when the SM&CR was initially introduced in 2016.

A.2.14 One example of a regulatory burden provided by respondents was that the FCA and PRA SM&CR rules require firms to provide regulatory references for all staff upon request, and these respondents shared their experience that they are required to provide references rapidly with little to no notice.

A.2.15 Other issues raised by respondents included:

- The requirement to annually re-certify staff performing certification functions.
- The challenge of navigating the FCA's and PRA's portals for submitting information and applications for the SM&CR.
- Disruption caused by delays in authorising senior managers, which can delay implementing business strategy.
- Insufficient guidance on how firms should address non-financial misconduct through the SM&CR.
- The lack of flexibility within the SM&CR.
- Duplication between the SM&CR and other regulatory regimes., for example between material risk takers under the remuneration regime and key function holders under Solvency II.

A.2.16 A number of respondents acknowledged the work of the FCA and PRA to address challenges to the functioning of the regime. In particular, the recent improvements in the FCA's¹⁰ and PRA's¹¹ speed of authorising senior managers were acknowledged.

A.2.17 Two-fifths of respondents to this question stated that they had a positive experience operating within the SM&CR and that the regime has helped to improve conduct and governance standards across the sector.

Summary

A.2.18 Overall, the responses demonstrate a wide range of views on the objectives of the SM&CR and experience operating under the regime. While some shared that the regime has delivered its objectives and that these objectives remain appropriate for the UK's financial services sector, others raised concerns about the compliance burden and either unclear or absent guidance in some areas.

A.2.19 Another salient view was that some processes have become overly costly and administratively burdensome, and that the SM&CR could be made more efficient without losing the benefits that the regime provides.

Chapter 3 - The impact of the regime on International Competitiveness

A.3 The Call for Evidence sought respondents' views on whether the SM&CR impacts the UK financial services sector's international competitiveness, and whether the regime could deliver its objectives more effectively and efficiently.

Question 5: What impact does the SM&CR have on the UK's international competitiveness? Are there options for reform that could improve the UK's competitiveness?

A.3.1 Just under a third of respondents stated that in their view the SM&CR did not negatively impact the UK's international competitiveness. Of these respondents, many highlighted that the regime has enhanced the UK's regulatory standards, which has increased the country's attractiveness and competitiveness as a global financial services centre.

¹⁰ FCA Authorisation data Q2 2023/24, November 2023: <https://www.fca.org.uk/publication/data/authorisations-operating-service-metric-2023-24-q2.pdf>

¹¹ PRA Authorisation data Q3 2023/24, December 2023: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/publication/2023/authorisations-performance-report-q3-23-24.pdf>

A.3.2 However, over half of respondents collectively identified a range of ways in which they consider that the SM&CR, and its operation, might negatively impact the UK's international competitiveness. Overall, these respondents presented a balanced assessment that the SM&CR has benefited the UK's financial services sector, but they noted the heavier compliance burden relative to other jurisdictions. These responses were clear that these challenges are largely operational in nature.

A.3.3 A third of respondents stated that delays in approvals under the Senior Managers Regime reduced the UK's international competitiveness by introducing costly uncertainty for firms and individuals when filling senior roles.

A.3.4 Several respondents made suggestions as to how to address these operational issues. They suggested:

- Increasing the flexibility of the 12-week rule to better enable temporary appointments, and increasing its duration to 24 or 36 weeks.
- Enabling a senior manager who has already been approved by the FCA and the PRA to move into another role without being subject to re-approval.
- Reducing the overall number of Senior Management Functions that require approval and focusing these on critical governance roles e.g., Chief Executive Officer, Chief Financial Officer, and Chief Risk Officer.
- Taking greater account of an international candidate's authorisation or approval by regulators in other jurisdictions, potentially through a form of regulatory recognition of comparable regimes.

A.3.5 Roughly one in ten respondents stated that the SM&CR could be challenging for firms to comply with, and that it is more resource-intensive than international comparators. Several respondents specifically highlighted how the Certification Regime contributes to the higher compliance burden compared to other jurisdictions. Respondents highlighted the following compliance challenges:

- The requirement to certify staff annually, which firms consider to be duplicative of their existing internal due diligence. This was stated to be challenging for smaller firms without dedicated compliance functions, and a significant undertaking for firms with many certified employees.
- The resource and time commitment to meet all obligations under the SM&CR, for example the process of applying for approval of senior managers.

- Retaining a record on all staff as part of regulatory references and being required to provide these on demand.

Respondents suggested solutions to ease these challenges, including:

- Reducing the number of functions covered by the certification regime.
- Increasing the statutory validity of each certificate from 1 year to 3 years.
- Reducing the total number of staff covered under the FCA's Directory of certified and assessed persons so that it only applies to firms' retail divisions who are client-facing.

A.3.6 Finally, several respondents stated that they experienced regulatory uncertainty, largely caused by what they considered to be opaque guidance and unclear rules on aspects of the SM&CR such as when firms should report breaches of the Conduct Rules to the FCA and PRA. These respondents stated that the FCA and PRA provide insufficient guidance, which encourages firms to over-comply. These respondents also shared that they experienced a lack of engagement from the FCA and PRA on these questions, which inhibits firms' ability to manage ambiguity.

A.3.7 Respondents suggested updating the existing guidance to make clear how the regime applies in different sectors. They also proposed new guidance on issues not currently covered, for example addressing non-financial misconduct, and consolidating guidance into more easily navigable documents to improve understanding and accessibility. They would welcome increased engagement, responsiveness, and transparency from the regulators, so firms have a clearer understanding of how the regime is operationalised.

Question 6: Are there examples of other regimes that HM Treasury could learn from?

A.3.8 Over a third of total respondents answered this question. Some of these respondents stated that the UK's SM&CR model has been emulated globally, including in countries such as Singapore, Ireland, and Australia.

A.3.9 Just under a third of respondents who answered this question suggested areas where the UK could learn from other regimes. These suggestions included:

- Improvements to the efficiency of the approvals process to authorise senior managers by reducing the functions covered.
- Aligning standards with other regimes such as the US or Australia, potentially through a form of regulatory recognition of other jurisdictions with comparable regimes.

- Streamlining aspects of the regime to reduce the compliance burden for firms and individuals, including by replicating Hong Kong's 'Manager-in-Charge' regime that could reduce the burden of annual re-certification of staff performing certification functions.
- Enhancing engagement and guidance, to improve firms' experience in complying with the SM&CR. This could include the FCA and PRA proactively seeking feedback on guidance, how efficiently they operate the SM&CR, and firms' and individuals' experience of the regime.

Question 7: How does the level of detail, sanctions and time devoted to the UK's SM&CR regime compare with that in other significant financial centres?

A.3.10 Slightly under a third of total respondents answered this question. Of those who responded, over half stated that the SM&CR is more detailed than comparative international regimes, which results in a higher compliance burden compared to those jurisdictions. The Certification Regime and related FCA directory of certified persons were given as examples of where the UK regime was more detailed or went further.

Summary

A.3.11 Overall, the responses provide a mixed appraisal of the SM&CR's impact on the UK's international competitiveness. While some respondents noted the merits of the SM&CR, particularly the Senior Managers Regime and Conduct Rules, others acknowledged that some requirements of the SM&CR are more costly for firms and individuals than in comparator regimes. Therefore, while some respondents stated they consider the opportunity cost of maintaining high regulatory standards to be ultimately worthwhile, the majority view was that the SM&CR's increased scope and compliance burden impinged on UK competitiveness and would benefit from rebalancing.

A.3.12 Two main issues were raised as impacting on UK competitiveness: first, delays from approving senior managers, which can impact on business planning and attracting international talent; and second, the perception that the SM&CR is more challenging to comply with than international comparator regimes.

A.3.13 On the latter point, almost a quarter of respondents referred to the compliance burden of the Certification Regime in particular, which a number of respondents noted is higher compared to similar requirements in other jurisdictions for those operating below the senior management level. The legislative requirement for firms to issue a certificate and the one-year validity of that certificate were the most

common examples given of the disproportionate compliance burden of the Certification Regime.

Chapter 4 - Specific aspects of the Senior Managers and Certification Regime

A.4 HM Treasury sought respondents' views on specific aspects of the SM&CR that cause issues for firms engaging with the regime. This open question elicited responses across a wide range of issues.

Question 8: Are there specific areas of the SM&CR that respondents have concerns about or which they believe are perceived as a deterrent to firms or individuals locating in the UK? If so, what potential solutions should be considered to address these?

Overall SM&CR

A.4.1 Nearly half of total respondents raised concerns about specific aspects of the SM&CR, including the FCA's and PRA's overall approach to supervising firms through the regime. While some respondents noted that aspects of the FCA's and PRA's approach do not deter firms or individuals from locating to the UK, they noted that some of the regime's requirements do contribute to a general perception that the SM&CR is more resource-intensive and challenging to comply with relative to comparative international regimes.

A.4.2 Several respondents proposed that the FCA and PRA should be required to prioritise outcomes over processes, suggesting that doing so would help to improve the efficiency of applications.

A.4.3 A number of respondents suggested that the FCA and PRA should operationalise the SM&CR in a proportionate manner, sharing their perception that the regime is currently applied in a manner that disproportionately places a higher burden on smaller and more complex firms. Specific suggestions included the FCA increasing the Asset under Management threshold for FCA 'Enhanced' firms so that it captures fewer firms, or exempting firms below a certain size from being required to submit certain products (e.g. Management Responsibility Maps).

A.4.4 Several respondents proposed that the FCA and PRA eliminate the overlap between the SM&CR and other regimes, as doing so would help to minimise duplicative compliance requirements. Respondents identified other regulatory regimes with which the SM&CR overlaps, such as the material risk takers (under the remuneration regime), and key functions holders (under Solvency II).

A.4.5 A few respondents suggested that the FCA and PRA should increase the number of enforcement actions that they take against

senior managers under the SM&CR, to address the perceived lack of the deterrent effect of the regime.

Senior Managers Regime

A.4.6 Over half of total respondents commented specifically on the Senior Managers Regime in response to this question.

A.4.7 Several respondents shared their view that the time taken to assess Senior Management Functions applications was the biggest issue with the Senior Managers Regime.

A.4.8 The most common suggested resolution by respondents was to increase the flexibility of when firms could employ the 12-week rule exemption and to increase the maximum period for which an exemption could be used.

Other suggestions were:

- Substituting FCA and PRA approval of Non-Executive Directors (NEDs) with notification to the regulators instead, where the individual is being appointed to a new firm to hold Senior Management Functions that are substantively similar to their previous role(s).
- Fast-tracking applications where a firm already has the individual's fitness and propriety information on file.
- Removing the requirement to pre-approve individuals moving within the same firm to take up substantively similar roles.
- Reducing the time that the FCA and PRA spend on applications through greater reliance on firms' internal due diligence and taking greater heed of approval from comparative international regimes.
- Enabling individuals being authorised to receive regulatory approval automatically should their application exceed the statutory limit of 3 months.

A.4.9 Several respondents shared their concerns that there are too many Senior Management Functions under the Senior Managers Regime.

A.4.10 Some respondents suggested that the FCA and PRA should introduce a distinction between higher risk and lower risk functions, in which 'higher-risk functions' would require pre-approval to hold, whereas 'lower-risk' functions could be held without pre-approval. These respondents suggested that:

- 'Higher-risk' Senior Management Functions are those which are tied to specific positions, such as CEO, CRO, or key required functions, such as anti-money laundering.

- ‘Lower-risk’ Senior Management Functions would have broader coverage, intended to capture gaps in the governance structure, such as Senior Management Functions 7 (Group Entity) or Senior Management Functions 18 (Other overall responsibility function).

Other suggestions to reduce the number of Senior Management Functions included:

- Exempting certain sectors from needing to hold all 27 Senior Management Functions, for example exempting Credit Unions from being required to hold Senior Management Functions 7 (Group Entity) or Senior Management Functions 18 (Other overall responsibility function).
- Removing the requirement for senior managers in a subsidiary firm of a larger group to be authorised to hold Senior Management Functions.
- Removing Senior Management Functions 7, 18, or 27 (Partner function) entirely.

A.4.11 Conversely, some respondents felt that there should be an increase in the number of Senior Management Functions to cover additional functions, such as Diversity and Inclusion and all NEDs.

A.4.12 Respondents made a number of other suggestions in relation to the operation of the Senior Managers Regime, which largely duplicated feedback on earlier questions, including:

- Improving and expanding the guidance for firms, and increasing the FCA’s and PRA’s collaborative engagement with industry.
- Improving the general experience for firms through the FCA and PRA amending their approach to managing clients, including updating web portals, preparing case workers comprehensively when transferring live cases, and making the FCA’s and PRA’s customer service more accessible.
- Reducing the overlap between the SM&CR and other regulatory regimes.

Certification regime

A.4.13 Just over a quarter of total respondents raised issues relating to the Certification Regime in response to this question, with other respondents commenting on the regime via answers to other questions (primarily questions 5 and 7).

A.4.14 Several respondents stated that the requirement to re-certify relevant staff annually placed a higher cost of compliance on firms when compared with other jurisdictions.

A.4.15 Suggestions to reduce the cost of compliance on firms included increasing the statutory validity of certificates, restricting the requirement to re-certify to only apply when there is a material change

in an individual's role or when they change role, and removing the requirement to re-certify up the management chain when there is a change in staff.

A.4.16 Several respondents stated that the Certification Regime covers roles that in their view do not pose a material risk to firms. Examples given were junior trading roles, competency overseer roles, and algorithmic trading roles.

A.4.17 These respondents suggested updating the definition of certified functions to capture a smaller proportion of staff, or empowering firms to determine where risk sits within their business and certifying staff as required.

A.4.18 A number of respondents raised issues relating to the territorial scope of the Certification Regime. They suggested restricting it to prevent staff based overseas from being captured where they only minimally engage with the UK market. These respondents felt that this could reduce potential conflict with other international regimes.

A.4.19 These respondents also suggested that the FCA and PRA should create an additional category of certified function specifically for non-UK based certified staff who minimally interact with UK markets, to ease the burden of registering these staff.

A.4.20 Finally, some respondents suggested that the allowance for individuals based outside the UK to work in the country temporarily should be increased from 30 days to 90 days, which would reduce the number of non-UK staff required to be certified.

The FCA's Directory of authorised and certified persons

A.4.21 Several respondents suggested that the requirements in relation to the FCA's Directory of certified persons are burdensome for firms to comply with.

A.4.22 These respondents suggested changes including:

- Streamlining the coverage of staff under FCA's Directory to focus on retail client-facing staff e.g., investment advisers.
- Extending the period firms need to update the Directory from 7 days to 30 days.

Regulatory references

A.4.23 Several respondents shared that they think that the SM&CR's requirements on regulatory references are burdensome and inconsistently applied across the sector. These respondents took issue with:

- The requirements for firms to retain records on employees for 6 years and provide them to regulators upon request.

- A lack of consistency in the quality of references provided by firms across the financial services sector as well as from firms outside the sector.
- The lack of guidance available for firms on how to provide a high-quality reference.

A.4.24 A few respondents suggested several changes including:

- Abolishing regulatory references entirely for firms not regulated by the FCA and PRA, as these firms are less equipped to provide a reference.
- Streamlining templates and aligning regulatory references with employment law.
- Reducing the period of the regulatory references which firms need for individuals under the Senior Managers regime, from 6 years to 4 years.

Conduct Rules

A.4.25 Just under a fifth of total respondents raised the Conduct Rules in response to this question.

A.4.26 Generally, these respondents shared their concern that the current requirements to report breaches under the Conduct Rules are excessive and potentially punitive for more junior staff.

A.4.27 Respondents made the following suggestions to address the issues they raised with the Conduct Rules:

- Improving the guidance available to firms and individuals to eliminate ambiguity around definitions, for example FCA Conduct Rule 4 ('You must pay due regard to the interests of customers and treat them fairly') and FCA Conduct Rule 6 ('You must act to deliver good outcomes for retail customers').
- Providing clarity to firms and individuals to better address misconduct in the workplace, including clarifying whether firms should address non-financial misconduct through the SM&CR and how they should report breaches of conduct.
- Removing the requirement on firms to report all breaches of conduct and setting a clear standard which firms need to comply with when reporting, for example prioritising repeat breaches or where disciplinary action has been taken by the firm.

Summary

A.4.28 Overall, the responses raised a number of issues that respondents would like to see addressed to improve the efficiency and proportionality of the SM&CR, without compromising its effectiveness.

A.4.29 The majority of these issues are operational in nature, and therefore for the FCA and the PRA to consider. However, the requirements for firms to issue a certificate, including the validity period of 12 months, is set out in primary legislation. There are also prescriptive requirements in FSMA for firms to notify the regulators of disciplinary action.

Chapter 5 - Scope of the Regime

A.5 HM Treasury sought respondents' views on the current scope of the SM&CR, as well as respondents' reflections and considerations of potential changes to the scope. This chapter summarises the key points raised by respondents on these issues.

Question 9: Is the current scope of the SM&CR correct to achieve the aims of the regime? Are there opportunities to remove certain low risk activities or firms from its scope?

A.5.1 Several respondents stated that they consider that the SM&CR is correctly scoped to achieve its core objectives. These respondents pointed to what they considered to be HM Treasury's successful handling of the challenges posed by Silicon Valley Bank and Credit Suisse in March 2023.

A.5.2 A number of respondents proposed that the firms in scope of the SM&CR should be expanded to cover the whole financial services sector, including the following sectors:

- Buy-Now-Pay-Later firms
- Financial Market Infrastructure (including e-payment firms)
- Cryptoasset firms and exchanges
- Relevant holding companies
- Firms supervised under the Appointed Representatives regime

A.5.3 A few respondents proposed that the activities in scope of the SM&CR should be expanded to cover:

- Diversity and Inclusion
- Work culture and HR
- Cyber and AI

- Chief Investment Officer
- Customer functions

A.5.4 Several respondents felt that the SM&CR should be made more proportionate and responsive to changes in firm size over time, to better reflect how the type and size of firm pose differing levels of risk to the stability of the UK's financial services sector. Suggestions on how to achieve this included:

- Amending the number of firms that are required to fulfil some requirements under the SM&CR, either by exempting smaller firms from applying the requirement to update key documents such as Management Responsibility Maps (although for solo regulated firms, only 'Enhanced' firms have to complete these) and Statement of Responsibilities, or exempting subsidiaries within groups from the SM&CR.
- Matching the FCA's and PRA's level of supervision of firms to the risk they pose to the integrity of the market, for example the FCA and PRA could apply less scrutiny to applications to approve senior managers for the smallest firms.
- Amending the thresholds defining 'Enhanced' firms, for example increasing their threshold from the current £50bn Assets under Management to capture fewer firms.
- Differentiating between the different structures of firms (e.g., distinguishing between publicly traded firms and Limited Liability Partnerships).

A.5.5 Approximately a third of respondents perceived that the SM&CR has experienced 'scope creep', and suggested that its scope could be reduced without reducing its effectiveness, including by:

- Reducing the total number of senior manager and certified functions.
- Restricting the coverage of cross-cutting products, such as the FCA's Directory and reducing the requirement to report breaches.
- Consolidating application processes that firms need to go through.

Question 10: Are there “lessons learned” that HM Treasury should consider as part of any future decisions on potential changes to the scope of the regime to ensure a smooth rollout to firms or parts of the financial services sector?

A.5.6 Respondents to this question identified two lessons HM Treasury could learn in the context of potentially changing the scope of the SM&CR.

A.5.7 First, several respondents shared that they felt the FCA and PRA could improve the way they implement changes to the SM&CR, with a number of respondents citing issues with previous rollouts of changes. Some respondents suggested that changes have sometimes been implemented in a piecemeal way, which makes it harder and more expensive for firms to adapt. They were also concerned that rule changes could be applied retrospectively.

A.5.8 Suggestions included:

- Ensuring that clear guidance is provided ahead of a change to, or extension of, the SM&CR to ensure firms are fully informed and prepared.
- Considering the best form of engagement for all firms across the sector ahead of implementation.
- Requiring that the FCA and PRA monitor the impact of their changes to the SM&CR on affected firms, either through monitoring or a post-implementation review.
- Requiring the FCA and PRA to put in place clear resource plans to handle the increase in engagement from firms during a transition, e.g. ensuring staff are present to address the immediate backlog that will build up.
- Testing the capacity of online services prior to a transition, to prevent temporary collapses in service provision.

A.5.9 A number of respondents felt that the FCA and PRA adopt a ‘one size fits all’ approach, which is perceived by firms as limiting the regulators’ ability to assess the full cost implication to firms of a change to, or extension of, the SM&CR.

A.5.10 Suggestions to address this included:

- Ensuring any changes to the SM&CR are compliance neutral i.e., do not increase the net compliance burden on firms.
- Improvements to the way that the FCA and PRA assess the cost to firms, to better capture the real cost of implementing changes.

Question 11: Are there any other comments HM Treasury or regulators would benefit from receiving?

A.5.11 Almost all responses to this question covered ground already set out in previous answers, but some provided more detail that emphasised aspects that they felt were of particular significance.

A.5.12 FSMA 2023 gives HM Treasury powers to apply the SM&CR to CCPs, CSDs, CRAs and RIEs through secondary legislation.

A.5.13 A small number of respondents raised concerns regarding the extension of SM&CR to CCPs, given the risk management function they perform, as well as the competitiveness risk of further adding to existing levels of regulation. The previous government consulted on extending the regime to CCPs, CSDs, and other Bank of England regulated Financial Market Infrastructures, in which similar concerns were raised.

A.5.14 Similarly, a small number of respondents raised concerns about a potential extension of SM&CR to RIEs.

A.5.15 The government does not plan to take forward secondary legislation at this point in time to apply SM&CR to CCPs, CSDs, RIEs, and CRAs.

A.5.16 Several respondents shared that they think the FCA and PRA should implement processes to ensure that they consider the full range of impacts of implementing changes to the SM&CR on both firms and individuals. These respondents emphasised that the FCA and PRA should consider how to assess the impact of the SM&CR on diversity in hiring senior managers.

A.5.17 A few respondents shared concerns about the 'scope creep' of the SM&CR, which they think has expanded to cover functions and / or firms that were not the original intention, or that requirements extend unreasonably beyond the UK.

A.5.18 Several respondents emphasised the importance of engagement and transparency from the FCA and PRA.

A.5.19 A small number of respondents raised their perception of a lack of consistency between SM&CR and other regimes, such as the Consumer Duty, remuneration and Client Asset Sourcebook, and called for more alignment.

Summary

A.5.20 Overall, most respondents considered that the scope of the SM&CR broadly remains correct, but there were differing calls for activities within scope of the regime to be cut or expanded.

List of organisations who responded to the 2023 Call for Evidence

- Affinity
- AFS Compliance Ltd
- Aldermore Bank PLC
- Alternative Investment Management Association
- AM Best
- Association for Financial Markets in Europe
- Association of British Insurers
- Association of Foreign Banks
- Association of Mortgage Intermediaries
- Aviva PLC
- Baillie Gifford & Co
- Barclays
- British Insurance Brokers' Association
- British Private Equity & Venture Capital Association
- Building Societies Association
- Capita PLC
- Capital Group
- CFA Society of the United Kingdom
- Charities Aid Foundation (CAF) Bank
- City HR
- Clifford Chance LLP
- Electronic Money Association
- European Venues & Intermediaries Association
- FCA Smaller Business Practitioner Panel
- FCA Practitioners Panel
- FIA European Principals Traders Association
- Fidelity International
- Finance & Leasing Association
- Financial Services Consumer Panel
- Freetrade
- HSBC
- ICAEW
- ICE Clear Europe

- Innovate Finance
- International Underwriting Association
- Invesco
- Irish League of Credit Unions
- Japanese Bankers' Association
- Law-7 Ltd
- Leek Building Society
- Legal & General
- Linklaters LLP
- Lloyd's of London
- Lloyds Banking Group
- Lloyd's Market Association
- London & International Insurance Brokers' Association
- London Metal Exchange
- LPR Consulting
- Monzo
- Nationwide
- NatWest
- NewDay
- Northern Trust
- Personal Investment Management and Financial Advice Association (PIMFA)
- Phoenix Group
- QBE Insurance
- Rothesay
- Royal Bank of Canada
- RSA Insurance Group
- Schroders
- Shell
- Simmons & Simmons LLP
- Spotlight on Corruption
- Standard Chartered Bank
- The Association of Financial Mutuals
- The City of London Law Society
- The City UK

- The Investing and Saving Alliance
- The Investment Association
- Transparency Task Force
- UBS
- Willis Towers Watson
- Worksmart Ltd
- UK Finance
- Zurich UK

HM Treasury contacts

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