TheCityUK

TheCityUK response to the HM Treasury, Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) consultations on the Senior Manager and Certification Regime (SM&CR)

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TheCityUK is the industry-led body representing UK-based financial and related professional services. We champion and support the success of the ecosystem, and thereby our members, promoting policies in the UK and internationally that drive competitiveness, support job creation and enable long-term economic growth. The industry contributes over 12% of the UK's total economic output and employs almost 2.5 million people – with two-thirds of these jobs outside London across the country's regions and nations. It pays more corporation tax than any other sector and is the largest net exporting industry. The industry plays a vital role in enabling the transition to net zero and driving economic growth across the wider economy through its provision of capital, investment, professional advice and insurance. It also makes a real difference to people in their daily lives, helping them save for the future, buy a home, invest in a business and manage risk.

Key Messages

We support the government's aim to reduce the regulatory burdens of the SM&CR by 50%, without undermining its overall effect to support high standards in the financial services sector. However, stakeholders across the industry do not believe there is sufficient ambition in the proposals to achieve that level of cost reduction. For example, the FCA's proposal to remove duplication of certifications will not remove 15% of total certification costs.

There is a need for further assessment of the proportionality of the regime, one of the key factors which drives the overall competitiveness of the regime. We believe it is possible to undertake this assessment ahead of any possible legislation and would welcome the opportunity to work collaboratively with HM Treasury, the FCA and PRA on this. There are examples of differentiated prudential regulation e.g. the PRA's 'strong and simple' prudential framework for non-systemic banks and building societies. There should therefore be scope for a differentiated approach in the context of this area of conduct regulation. More broadly, we recommend that:

- HM Treasury works in partnership with the FCA, PRA and industry to ensure an holistic approach to Phase 1 and Phase 2 of the proposals, ensuring there are no unintended consequences arising from changes made in Phase 1 that impact the potential for the more significant reform envisaged in Phase 2.
- The FCA and PRA expedite their work on rules-based application of elements of the regime where legislation may be repealed or amended. We recognise that legislation can take time, but suggest this work should not be undertaken sequentially.
- The overall competitiveness of the regime is based on the following:
    - The clarity of expectations and enforcement.
    - The proportionality of its application based on both the risks individuals, responsibilities and firms present and the need to contribute to the regulators' secondary competitiveness and growth objectives.
    - The predictability of amendments to responsibilities.
    - The operational efficiency and effectiveness of regulators in processing applications.

Introduction

The proposed reforms set out by HM Treasury, the FCA and the PRA represent a key opportunity to deliver three key benefits:

- A clearer and more proportionate framework for accountability, including certainty on the operation of the certification regime.
- Reduce the administrative burden and cost for firms.
- Improve how the SM&CR regime is applied to overseas talent, thereby enhancing the competitiveness and the perception of the UK as an international financial centre.

The main substance of the reforms is contained in the HM Treasury consultation (Phase 2), which sets out the need for legislation to achieve the government's aims, including by enabling the FCA and PRA to make further significant reforms in addition to their proposed reform efforts (Phase 1).

This means it will take some time for the reforms to progress. We therefore urge HM Treasury to work collaboratively with the FCA, PRA and the industry to progress changes to the regulators' rulebook, which will both demonstrate positive action in Phase 1 and help prepare for further, more substantive reforms following the legislation to enable Phase 2. We would welcome confirmation that the government will use the Financial Services Bill, expected to be introduced to Parliament in 2026, to implement the measures set out in HM Treasury's consultation.

We set out below our views on the key elements of the consultations. This is based on our member engagement across the financial and professional services industry. We would be pleased to convene members to discuss these in further detail to ensure the outcome of the consultations delivers the three key benefits outlined above.

Certification regime and Financial Services Register (directory) listing

We welcome the HM Treasury proposal to repeal the legislation establishing the certification regime. At this stage, it is unclear whether the certification regime will be removed from legislation entirely, or in part and replaced entirely, or in part, by a rules-based certification regime. There is also a lack of certainty about the way in which the regulators would potentially develop rules to replace it. We therefore recommend that HM Treasury, the FCA and PRA prepare a clear roadmap for the possible removal of the certification regime from legislation and its potential rules-based replacement.

This must include early engagement with industry practitioners to discuss the key elements of a potential new rules-based regime. We urge the government and regulators to take action well before legislation is put forward to minimise the risks of any unintended consequences from any possible new regime and the need for subsequent amendments. We highlight several considerations below:

- The regime could be more effective if applied more narrowly and specifically (including by removing the need for some certifications), and conferred an explicit responsibility on holders of certification functions, in addition to the firm.
- Annual certification is widely regarded as a burden that does not deliver benefits. When considering a possible new certification regime, one area to consider could be to implement a requirement to re-certify only if a material change occurs. This reflects the fact

that firms respond to any possible issues on an ongoing basis, rather than using the certification process as a driver or trigger to take action.

- It is recognised that there are overlaps between certified individuals, where the same individual is certified for more than one certification function. However, firms report there is little or no increase in costs incurred for firms to certify an individual for e.g. three functions as compared to one function. This explains why the FCA's proposal to remove duplication of certifications will not remove 15% of total certification costs.
- Assessing the potential benefits of implementing an attestation model whereby a Senior Manager attests to a firm's robustness of internal processes/conduct dashboards for fitness and propriety. This could be an alternative method of reducing burdens while maintaining firms' focus on risk management.

More broadly, making changes to the certification regime at this stage (Phase 1) would incur system change costs ahead of potential further change following the legislation enabling a possible rules-based certification regime. We therefore recommend that the FCA and PRA do not proceed with any certification-related changes until there is clarity on the operation of the new certification regime.

For wholesale firms, there is a cost associated with updating the Financial Services Register (the directory of certified and assessed persons) and in common with the annual certification requirement, this does not add value. In practice, equities traders, for example, do not use the Register as they undertake business on the basis that individuals have been assessed by an authorised firm that is regulated for certain activities. There is felt to be no added value in listing these individuals on the Register.

While the removal of the annual certification regime requires legislation, reforming the scope of the individuals that firms must display on the Register does not require legislation. We recommend that Register-related reform be undertaken ahead of phase 2 of the reforms, and include consideration of whether there is a need for certified staff who are not performing Senior Manager Functions (SMFs) to be included in the Register.

SMF7 (Group Entity Senior Manager) role

There are widespread concerns about the proposals relating to the SMF7 role. In particular, it is unclear why there is a divergent approach between the FCA and PRA, with the FCA seeking to more narrowly define SMF7 roles while the PRA is taking a more expansive approach.

The PRA guidance and draft supervisory statement lack clarity and have raised concerns internationally due to the proposal that the PRA can unilaterally determine that an individual is performing a role within the scope of the SM7 and then require firms to apply for their approval without delay.

The proposal outlined in the PRA's consultation paper has had a significant negative impact on how the government and regulators' wider streamlining and burden reduction efforts have been received by the headquarters of international firms operating in the UK. There is a lack of recognition of appropriate delegation of risks/material business activity to, for example, a local CEO or CRO.

Several international banks report that this proposal would be a factor in how the headquarter entity's board and executives determine what business is undertaken in the UK. It is counterproductive to the government and regulators' efforts to bolster the UK's competitiveness and growth.

We recommend that the PRA remove this reference from its final published supervisory statement and work with the industry to refine its guidance, including the examples given of who is in the scope of the SMF7 role, to ensure consistent understanding and operation within the context of the PRA's aim to reduce burdens and streamline the regime as a whole.

This exercise would also help address the lack of consistency between:

- The PRA consultation paper, which states that '*Group executives with responsibilities for **setting** the strategy in areas that are key to the business model of the PRA-authorised entity*' are likely to be identified as meeting the SMF7 criteria and;
- The PRA's supervisory statement SS28/15, which states '*the PRA's focus is on those individuals who, irrespective of their location, are directly responsible for **implementing** the group's strategy at UK firms*'.

In practice, a UK-based executive will have responsibility for implementing the group's strategy at UK firms.

12-week rule

The operation of the 12-week rule does not reflect the reality of how recruitment processes operate. The majority of senior individuals have a minimum of a three-month notice period, with many having longer notice periods of six months.

Once a senior departure has been confirmed, an individual may be placed on 'gardening leave' within days or weeks. A process of assessment around whether and how to recruit a successor takes place, and, if agreed by the firm, a recruitment process would be initiated.

Subject to whether external recruitment is considered, this process could itself take several weeks or months, with multi-stage processes and discussions involved in assessing candidates. Most firms report that in practice, such processes take six months to complete.

We therefore recommend that the regulators adapt the 12-week rule and extend it to allow for a period of up to 24 weeks where an individual can undertake an SMF without having to seek approval. Following the appointment of a permanent successor an application can then be submitted.

Prescribed Responsibilities (PRs)

Members have consistently expressed concerns around the proliferation of expectations (in effect, additional, quasi-PRs) that have been added via supervisory statements or letters (the latter without rule-making consultation) over the years. This includes through Periodic Summary Meeting (PSM) letters, where there is a practice of requiring a Senior Manager to be given responsibility for each PSM action. This creates uncertainty and a compliance burden for firms.

For example, the latest PRA inventory of senior manager responsibilities[1] includes 29 rows of 'expectations' in addition to the 'requirements' outlined in the PRA rulebook, which outline the allocation of responsibilities in certain kinds of firms.

PRs should be limited to those set out in the rulebook and the practice of creating quasi-PRs i.e. those created by expectations, should be stopped. Where regulators are considering adding new PRs, these should be formally consulted on so stakeholders can provide input.

Assessing and potentially rationalising PRs does not require legislative change and should be a key area of focus, including ensuring there is a single reference list (that does not require cross-referencing with the rulebook) of PRs. Some members have suggested firms would benefit from the clarity of such a reference list, even if the PRs are not rationalised or added to by formalising some of the quasi-PRs created by expectation.

Statements of Responsibilities (SoRs)

We agree with HM Treasury's proposal to provide regulators with more flexibility in setting requirements for SoRs, allowing them to use their rules to adjust how they are provided, maintained, updated and when and how changes are notified to the regulators. As noted above in relation to a possible rules-based replacement for the certification regime, we urge the regulators to work with industry practitioners on this aspect as soon as possible and not wait for legislation to be laid, as this will lead to the process taking place sequentially and result in changes being unnecessarily delayed.

We support the FCA and PRA's proposal to extend the period for submitting updated SoRs and Management Responsibility Maps (MRMs), from the current requirement for immediate submission to up to six months. This is another area where proportionality can be achieved by narrowing the management coverage of the maps and reducing the frequency of updates by limiting them to material changes, as updating MRMs is highlighted by firms as a significant burden. The regulators should provide a way for firms to submit updates via a system like FCA Connect. This would further reduce the administrative burden of processing updates.

Conduct rule breach reporting

There is a need for guidance to aid greater consistency in how firms report breaches. We agree with the FCA's consultation, which includes a suggestion that there can be reportable and non-reportable conduct rule breaches, that is, breaches that result in disciplinary action and those that do not. However, it should be noted that firms are only usually able to determine that there has been a breach following a fair disciplinary process during which the employee can make representations.

We agree it is sensible to remove 'suspension', where the reason for a suspension is to remove someone from work before an investigation into a potential conduct rule breach has concluded, from the reportable conduct breaches. We also welcome recognition that firms may adjust remuneration for a range of reasons and suggest further clarification on reporting, which we believe should focus on major issues, including malus and clawback.

[1] Strengthening accountability | Bank of England

Defining SMF roles and amending pre-approval requirements

We support HM Treasury's proposal to reduce prescriptive legislation governing SMF roles (to facilitate an overall reduction in the roles that fall within the regime) and pre-approvals. This is a key area where there is a need for a more proportionate approach, as outlined earlier.

A reduction in the number of roles that fall within the regime should include consideration of which roles, or types of roles, would be removed. This includes consideration of how firms can reflect their organisational structure if some roles are removed.

Furthermore, we welcome the proposal to reduce the number of roles which require pre-approval, particularly if this involves amending the FCA and PRA's approach to, and/or timescales for, authorisation of candidates who have previously been approved by the FCA and/or PRA to hold a senior manager function.

How SMF roles are defined and how pre-approval requirements are set could be enhanced by adopting a more nuanced risk-based approach focused on a proportionate application based on the risks individuals, firms and responsibilities present. For example, the SMF categories subject to pre-approval could be narrowed to focus on key officers (e.g. CEO, CFO, CRO), or specific SMFs (e.g. SMF1-9 and 16&17), with the potential for sector-specific flexibility where needed, supported by a notification model for other SMFs. In addition to reducing the burden on firms, this would also help regulators to better manage limited resources.

More broadly, we support the FCA's proposal to remove the requirement for firms to undertake criminal records checks where an existing SMF holder is applying for an SMF in the same firm or group. This will help streamline intra-group appointments from within the UK and reduce administrative burdens, particularly within complex firms.

Applying the SM&CR to overseas talent

The HM Treasury consultation seeks feedback on obstacles that firms face when trying to recruit internationally for senior manager roles. We engaged with international firms seeking to bring in global talent to SMF roles and they noted that:

- The authorisations process is often lengthy, lacks focus on the commercial context in which firms operate, and involves significant preparation for FCA/PRA processes and interviews, including the use of external consultants.
- There is a lack of streamlined communication within and between the FCA and PRA, leading to repetitive requests and inefficiencies.
- The authorisation process does not adequately distinguish between intra-group appointments and those from outside a firm/group, and there is insufficient consideration of information from other jurisdictions.

These factors all increase costs for international firms operating in the UK and can negatively affect the perception of the UK amongst the senior leadership of these firms. We set out several proposed solutions below.

Streamline the process for intra-group appointments

- The SMF authorisation process should distinguish between intra-firm/group appointments and those from outside a firm/group, recognising the due diligence undertaken by the firm in employing the person in another jurisdiction and relocating them to the UK (this will often involve board-level approval).
- Rather than pre-approval, allow firms appointing an existing employee from another jurisdiction to an SMF to self-assure/certify by providing a package of evidence of due diligence, checks, and internal processes to satisfy regulators, pending formal FCA/PRA approval.
- Allow the UK-based CEO to take responsibility and accountability for such a provisional approval process. This would reduce administrative burdens and delays while a firm is awaiting approval.

Focus on firm context

- In the case of fixed supervisory firms, regulators' supervisory teams' understanding of a firm's business model/due diligence processes should be harnessed to provide proactive and reactive support during the application process.
- Shift the focus of FCA/PRA processes and interviews to how candidates sit within the broader context of the UK business, including support provided by other SMFs and specific compliance training to address UK-specific knowledge gaps.
- Enhance communication between the FCA and PRA to reduce repetitive requests and improve efficiency.

Utilise information from other jurisdictions

- Consider how information from other jurisdictions (and/or information used by firms to implement consistent global policy approaches within international groups) can be used to inform and streamline applications, such as fitness & propriety checks, qualifications, licensing information and previous investigations into conduct.
- Explore how mutual recognition agreements or memoranda of understanding can facilitate this information exchange with regulators from jurisdictions where UK-based firms commonly hire senior managers from e.g. Japan and the US.
- While ambitious, explore ways in which the UK can benefit from European authorities' sharing of information relevant to the assessment of fitness and propriety.