

UK Regulators Issue Statements on the Impact of COVID-19 on the Senior Managers and Certification Regime

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On 3 April 2020, the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) (together the “Regulators”) issued statements regarding changes to the Senior Managers and Certification Regime for both **dual** and **solo**-regulated firms with respect to COVID-19. In light of the widespread repercussions of COVID-19 on the UK markets, underpinning the Regulators’ statements is the overarching message that whilst the Regulators acknowledge that flexibility is required in these unprecedented times, firms must continue to keep their governance arrangements under review and ensure a clear, written record of any decisions made. Most notably, the FCA has announced that, with respect to solo-regulated firms, it will permit unapproved individuals to step in and ‘act up’ as Senior Managers for up to 36 weeks (the position with regard to dual-regulated firms remains unchanged). We highlight below the key expectations for dual and solo-regulated firms in light of the Regulators’ statements.

- **Extension of the 12-week rule for solo-regulated firms for up to 36 weeks:** Where temporary arrangements last longer than 12 weeks due to the pandemic, solo-regulated firms may notify the FCA that they consent to a modification of the 12-week rule and the temporary arrangements may be extended up to 36 weeks. Firms are required to clearly document Senior Management Functions (SMF or “Senior Manager”) responsibilities, including through Statements of Responsibilities (SoRs) and responsibilities maps (where appropriate). Firms are not expected to submit to the FCA the updated SoRs of the absent Senior Manager or the Senior Managing taking on the responsibilities. The 12-week rule remains unchanged for dual-regulated firms; the Regulators are gathering evidence to determine if the rule should be extended for dual-regulated firms but, as yet, no further decision has been taken.
- **Scope to temporarily reallocate responsibilities, including to unapproved individuals “acting up” under the 12-week rule:** The Regulators’ preferred approach for dual and solo-regulated firms is to reallocate a temporarily vacant SMF’s prescribed responsibilities among the remaining approved SMFs until a permanent replacement is identified and approved. But, where this is not possible due to COVID-19, firms are permitted to temporarily allocate the responsibilities to

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an individual “acting up” as an interim SMF under the 12-week rule, even if the individual has not been approved as an SMF at the time. The unapproved individual will only need an SoR in place if the firm subsequently applies for them to be permanently approved as an SMF. Firms are reminded of the need to keep clear records for any such temporarily allocations.

- **Flexibility in the notification requirements for significant changes to SMFs:** Solo-regulated firms will not be required to submit updated SoRs where a temporary change to a SMF is made to cover multiple sicknesses or other impermanent changes in direct response to COVID-19. Firms must nevertheless keep a “running commentary” of allocations made in this period, including ensuring all SoRs, role profiles and responsibilities maps are up to date. Firms do not need to notify the FCA of these temporary arrangements. Dual-regulated firms are still required to submit revised SoRs, although the Regulators have acknowledged that this may take longer than normal. There is no fixed statutory deadline but firms are expected to submit such statements “as soon as reasonably practicable.”
- **Responsibility for coordinating a firm's response to COVID-19:** While the Regulators do not require or expect firms to designate a single SMF to be responsible for all aspects of the firm’s response to COVID-19 (other than the responsibility to identify “key workers,” which ought to be allocated to the CEO), firms must have clear frameworks for allocating responsibilities to various SMFs for different aspects of their response. Firms should also consider in advance how they might respond to unexpected changes to contingency plans.
- **Furloughing mandatory and non-mandatory SMFs:** Individuals performing mandatory functions in solo-regulated firms, such as the Money Laundering Reporting Officer and Compliance Oversight, should only be furloughed “as a last resort.” Where an individual performing these mandatory functions (note that there are additional requirements for dual-regulated firms) becomes absent, firms are required to appoint individuals to continue performing these SMFs, and temporary replacements may occur using the 12-week rule. Firms have greater flexibility in furloughing individuals performing non-mandatory functions, though potential risks in doing so, particularly in relation to business continuity, should not be forgotten. Only where a furloughed Senior Manager permanently leaves their post will they require re-approval upon return. Firms are reminded of the need to update their PRA/FCA supervisors (where appropriate) of the furloughing of any SMFs by email or telephone, and are encouraged to keep written records regarding any reallocation of responsibilities.
- **Adjustments to annual certifications:** Dual-regulated firms may have to adjust standard certificate processes and policies where employees’ annual certifications are due to expire during the pandemic. Certified staff who are not fit and proper should not be re-certified, regardless of present circumstances. This guidance will likely be equally applicable to solo-regulated firms.

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