



COVID-19: PRESSURE POINTS: FCA AND PRA PUBLISH STATEMENTS ON THEIR EXPECTATIONS FOR REGULATED FIRMS UNDER SMCR (UK)

07 April 2020 | London
Legal Briefings

The PRA and FCA have published two statements setting out their expectations on UK-regulated firms under the Senior Managers and Certification Regime (**SMCR**).

A [joint statement](#) from the PRA and FCA has been published for dual-regulated firms (the **Joint Statement**), while the FCA have separately published [a statement](#) for solo-regulated firms (the **FCA Statement**).

There are also some differences in expectations as between solo and dual-regulated firms to be aware of, which we highlight below in *Key expectations*.

NEXT STEPS

In line with the expectations set out in the statements, firms should:

- Ensure responsibility for the response to COVID-19 disruption is clearly allocated to an appropriate Senior Manager(s) (**SM**).
- Document internally all decisions relating to interim re-allocation of Senior Management Functions (**SMFs**) and Prescribed Responsibilities (**PRs**) as a result of temporary

absences during this period. Firms should be prepared to share these internal documents with the regulators on request.

- Communicate material temporary changes to the appropriate regulator promptly (this may not need to be by way of usual SMCR notification forms).
- Keep contingency plans under review to ensure they remain up-to-date.
- Take reasonable steps to complete any annual certifications that are due to expire while restrictions are in place.

KEY EXPECTATIONS

ALLOCATING RESPONSIBILITY FOR COVID-19 RESPONSE

- Firms are not required to allocate a single SM to be responsible for response to the disruption caused by COVID-19. No “one size fits all” approach is being mandated (with the exception of requiring the responsibility of identifying key workers to be allocated to SMF1 (Chief Executive Officer) – see the [FCA](#) and [PRA](#) statements for more information).
- In the Joint Statement, the PRA also recommends that dual-regulated firms consider how they respond to unexpected changes to contingency plans, given the possibility of SMs becoming temporarily absent. Solo-regulated firms should consider doing the same.

TEMPORARY ARRANGEMENTS FOR SMFS AND PRS

SMFs

- Where an SM is unexpectedly absent due to illness (or other COVID-19 related circumstances) firms may choose to allocate SMFs to existing SMs. In addition, under the existing ‘12-week rule’, firms may permit an unapproved individual to perform an SMF role where such arrangements are temporary.
- For solo regulated firms, the FCA intends to issue a Modification by Consent to the 12-week rule to support firms using temporary arrangements for up to **up to 36 weeks**. **This extended period is not currently available for dual-regulated firms** (although this position remains under review).

PRs

- The FCA and PRA expect PRs (for both solo and dual-regulated firms) to be **allocated to existing approved** SMs wherever possible. Where this is not possible (for example due to other SM absences), the PR can be allocated to an unapproved individual performing an SMF's role on an interim basis.
- **All temporary changes to SMFs or PRs throughout this period should be clearly documented on internal records**, including in Statements of Responsibilities (**SoRs**) and Responsibilities Maps (where appropriate). These records will need to be available to the FCA and/or PRA on request.

FURLOUGHING STAFF

- Both statements confirm that furloughed SMs will retain their approved status during their temporary absence and will not need to seek re-approval.
- Certain 'required' functions (such as Compliance Oversight and MLRO) and/or 'mandatory' functions (such as the CEO, CFO and Chair of the Governing Body for CRR and SII firms) should only be furloughed "*as a last resort*". Firms must arrange cover for those SMFs during the individual's absence.
- Firms have greater flexibility in furloughing SMs whose function are not mandatory. However, in the Joint Statement, **dual regulated firms are cautioned to think carefully about the implications of furloughing non-mandatory SMFs** (such as SMFs responsible for business continuity). Solo-regulated firms should also consider the implications of furloughing key senior staff.

NOTIFICATION REQUIREMENTS DURING THIS PERIOD

All firms

- All firms should update the FCA (and, where relevant, the PRA) by email or by telephone where:

- unapproved individuals are acting as SMFs under the '12-week rule'; and/or
- SMs have been furloughed.

Firms are not required to submit Forms C, D or J in connection with these temporary absences.

Solo-regulated firms

- Solo-regulated firms will **not** be required to submit an updated SoR for approved SMs if a temporary change is made to their responsibilities. However, **solo-regulated firms will still need to notify the FCA of the detail of any changes** (by email or by telephone) that would normally be included in updated SoRs.

Dual-regulated firms

- **Dual-regulated firms are still required to update and submit SoRs if there are significant changes** "*as soon as reasonably practical*". It is acknowledged in that this may take longer than usual due to current operational challenges.

NO CHANGE TO THE OBLIGATION TO CERTIFY STAFF AS FIT AND PROPER

- Dual-regulated firms should take **reasonable steps** to complete annual certifications due to expire during this period. What might constitute reasonable steps may be altered given the current situation, and certification policies and procedures may need to be adapted.
- While not specifically addressed in the FCA Statement, in the absence of any new regulatory guidance, the FCA's expectation appears to be that solo-regulated firms

should also take reasonable steps to continue with annual certifications during this period.

Our article on the PRA and FCA's guidance on key workers in financial services is available [here](#), and our general briefing on COVID-19 - Key Issues for Employers is available [here](#).

[More on COVID-19](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**CLIVE
CUNNINGHAM**
PARTNER, LONDON

+44 20 7466 2278
Clive.Cunningham@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2022