



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP20/18

Strengthening accountability: implementing the extension of the SM&CR to insurers (Part 2)

September 2018



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The response will be assessed to inform our work as a regulator and central bank, both in the public interest and in the exercise of our official authority. We may use your details to contact you to clarify any aspects of your response.

The consultation paper will explain if responses will be shared with other organisations (for example, the Financial Conduct Authority). If this is the case, the other organisation will also review the responses and may also contact you to clarify aspects of your response. We will retain all responses for the period that is relevant to supporting ongoing regulatory policy developments and reviews. However, all personal data will be redacted from the responses within five years of receipt. To find out more about how we deal with your personal data, your rights or to get in touch please visit bankofengland.co.uk/privacy.

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Responses are requested by Wednesday 17 October 2018.

Please address any comments or enquiries to:

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1 Overview

1.1 In this consultation paper (CP), the Prudential Regulation Authority (PRA) sets out its proposed rules for some consequential changes, and minor administrative amendments, related to the extension of the Senior Managers and Certification Regime (SM&CR or ‘the regime’) to insurers (see Appendix).

1.2 The CP should be read in conjunction with PRA Policy Statement (PS) 15/18 ‘Strengthening individual accountability in insurance: Extension of the SM&CR to insurers’,¹ and Financial Conduct Authority (FCA) PS18/15 ‘Extending the Senior Managers and Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near final rules’,² along with the proposals in PRA CP18/18 ‘Strengthening accountability: implementing the extension of the SM&CR to insurers’.³

1.3 This CP is relevant to Solvency II insurers (ie UK Solvency II firms, the Society of Lloyd’s and Lloyd’s managing agents, and third country (re)insurance branches), insurance special purpose vehicles (ISPVs), large non-Directive firms (NDFs), small NDFs and Swiss general insurers.

Background

1.4 In PS15/18 the PRA published final rules and policy for the extension of SM&CR to insurers. In CP18/18 the PRA set out its proposals for some technical changes to its rules for the implementation of this extension.

1.5 The extension of the regime to insurers is being introduced by amendments to the Financial Services and Markets Act 2000 (FSMA) through the Bank of England and Financial Services Act 2016 (‘the 2016 Act’). The extended SM&CR for insurers will come into effect through the application of the Commencement regulations that have been published by HM Treasury for the relevant amendments to FSMA in the 2016 Act.⁴

1.6 In CP18/18, the PRA set out that once these commencement regulations had been made, it would publish a further CP with the text of the proposed rules for the implementation of the transitional arrangements included in these regulations. The PRA has now reviewed the rules in its Rulebook for the implementation of these transitional arrangements, and does not consider that any further rule changes are required in order to implement its final policy on these arrangements as was set out in PS15/18. The PRA has subsequently decided to consult on some technical changes and minor administrative amendments for the implementation of SM&CR.

Summary of proposals

1.7 This CP includes proposals for some technical consequential changes to the rules in the PRA Rulebook for the implementation of the SM&CR, relating to the ‘current approved person approval’ status of those individuals who will be in a ‘designated senior management function’ following the commencement of the extension of the SM&CR to insurers. In addition, the CP includes some minor administrative amendments.

1 July 2018: www.bankofengland.co.uk/prudential-regulation/publication/2018/strengthening-individual-accountability-in-insurance-extension-of-the-smcr-to-insurers.

2 July 2018: www.fca.org.uk/publications/policy-statements/ps18-15-extending-senior-managers-certification-regime-to-insurers.

3 July 2018: www.bankofengland.co.uk/prudential-regulation/publication/2018/strengthening-accountability-implementing-the-extension-of-the-smcr-to-insurers.

4 <http://www.legislation.gov.uk/uk/si/2018/990/made>.

Implementation

1.8 The extended SM&CR for insurers will come into effect from Monday 10 December 2018. The PRA proposes that the rule changes in this CP will therefore apply from the same date (other than one minor administrative change in Annex H of the Appendix that will apply from Tuesday 1 January 2019).

Responses and next steps

1.9 This consultation closes on Wednesday 17 October 2018 so that final rules can be made in advance of implementation so as to give firms and industry participants certainty on the technical details of the regime prior to commencement on Monday 10 December 2018. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP20_18@bankofengland.co.uk.

2 Proposals

Technical consequential amendment to PRA Rulebook

2.1 The PRA proposes to make a consequential amendment to the Insurance –Senior Managers Regime – Applications & Notification Part of the PRA Rulebook for Solvency II firms, and to the corresponding Parts of the Rulebook for large NDFs and small NDFs respectively. This proposed amendment is intended to ensure that when insurers are considering which form(s) should be completed in respect of an individual seeking approval for a PRA senior management function (a ‘senior manager’), an individual who had previously been approved, or deemed to be approved, by the FCA for a ‘designated senior management function’ would have the same status as an individual who was previously approved by the FCA for a ‘significant influence function’.

2.2 The term ‘equivalent process contained in the rules of the FCA Handbook’ that can be found in the above Parts of the PRA Rulebook encompasses any deemed approval given by the FCA on:

(a) 7 March 2016 following a ‘conversion notification’ that was made (on Form K) to the FCA when the Senior Insurance Managers Regime (SIMR) was implemented by the PRA; or

(b) the commencement of the extension of the SM&CR to insurers following the submission of a ‘conversion notification’ to the FCA (or automatically, in the case of small NDFs, small run-off firms and ISPVs) for the purpose of this extension.

Other minor amendments

2.3 There are some other minor administrative amendments that have been included in the draft rule instrument appended to this CP. The amendments are the deletion of some references to the Senior Insurance Managers Regime, insertion of the definition of ‘certification regime’ in the Glossary and deletion from the Glossary of duplicate definitions of some Senior Management Functions

3 The PRA’s statutory obligations

3.1 In carrying out its policy making and rule making functions, the PRA is required to comply with several legal obligations.

3.2 Before making any rules, FSMA¹ requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis;²
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,³ insurance objective⁴ (if applicable), and secondary competition objective;⁵
- an explanation of the PRA's reasons for believing that making the proposed rules are compatible with its duty to have regard to the regulatory principles;⁶ and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.⁷

3.3 The Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy recommended by HM Treasury.⁸

3.4 The PRA is also required by the Equality Act 2010⁹ to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

Cost benefit analysis

3.5 CP14/17¹⁰ included the cost benefit analysis on the principle of the extension of the SM&CR to insurers. This CP does not propose any changes to the regime itself. Instead, it includes some technical consequential changes and minor administrative changes. The additional costs related to the proposed changes set out in this CP will be minimal.

Compatibility with the PRA's objectives

3.6 The PRA considers that the regime as a whole will advance the PRA's primary and secondary objectives, as was explained in more detail in CP14/17, and that the technical proposals in this CP will further facilitate the advancement of these objectives.

Regulatory principles

3.7 In developing the proposals in this CP, the PRA has had regard to the regulatory principles. Three of the principles are of particular relevance.

- (i) The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction. The PRA

1 Section 138J of FSMA.

2 Section 138J (2) (a) of FSMA.

3 Section 2B of FSMA.

4 Section 2C of FSMA.

5 Section 2H(1) of FSMA.

6 Sections 2H(2) and 3B of FSMA.

7 Section 138K of FSMA.

8 Section 30B of the Bank of England Act 1998.

9 Section 149 Equality Act 2010.

10 'Strengthening individual accountability in insurance: extension of the Senior Managers and Certification Regime to insurers', July 2017, www.bankofengland.co.uk/prudential-regulation/publication/2017/strengthening-individual-accountability-in-insurance-extension-of-the-sm-cr-to-insurers.

considers that the proposals in this CP will clarify how the regime will be operated, and should not impose any additional burden on firms.

- (ii) The principle that the regulators should exercise their functions as transparently as possible. The consequential rule changes and administrative amendments should improve the clarity of the PRA Rulebook, as well as providing the relevant links to the FCA Handbook.
- (iii) The principle that a firm's senior management is responsible for the activities of the firm and for ensuring compliance with regulatory requirements. The proposals in this CP complement the final policy in PS15/18 which is designed to strengthen the accountability of key individuals in a firm.

Impact on mutuals

3.8 In the PRA's opinion, the impact of the proposed rule changes on mutuals is expected to be no different from the impact on other firms.

HM Treasury recommendation letter

3.9 HM Treasury has made recommendations to the PRC about aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles.¹ The PRA has considered the implications of the proposals in this CP on each of the recommendations and assessed that the implications are limited due to the technical nature of this CP.

Equality and diversity

3.10 The PRA carried out an equality impact assessment as part of the development and implementation of the SM&CR and SIMR. The proposals in this paper do not give rise to additional equality and diversity implications.

¹ Information about the Prudential Regulation Committee and the recommendations from HM Treasury are available on the Bank's website at www.bankofengland.co.uk/about/people/prudential-regulation-committee.

Appendix: Draft Rulebook instrument

PRA RULEBOOK: SOLVENCY II FIRMS AND NON SOLVENCY II FIRMS: SENIOR INSURANCE MANAGERS REGIME (AMENDMENT) (NO 3) INSTRUMENT 2018

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 60 (Applications for approval)
 - (2) section 137G (The PRA’s general rules); and
 - (3) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: Solvency II Firms and Non Solvency II Firms: Senior Insurance Managers Regime (Amendment) (No 3) Instrument 2018

- D. The PRA makes the rules in the Annexes to this instrument.

| Part | Annex |
|--|-------|
| Insurance – Fitness and Propriety | A |
| Insurance – Senior Managers Regime – Applications and Notifications | B |
| Large Non-Solvency II Firms – Fitness and Propriety | C |
| Large Non-Solvency II Firms – Senior Managers Regime – Applications and Notifications Part | D |
| Non-Solvency II Firms – Fitness and Propriety | E |
| Non-Solvency II Firms – Senior Managers Regime – Applications and Notifications | F |
| Glossary | G |
| Glossary | H |

Commencement

- E. Annex H comes into force on 1 January 2019.
- F. All other Annexes come into force on 10 December 2018, immediately after the PRA Rulebook: CRR Firms, Non-CRR Firms, Solvency II Firms and Non Solvency II Firms: Senior Managers Regime and Senior Insurance Managers Regime (Amendment) (No 1) Instrument 2018 comes into force.

Citation

- G. This instrument may be cited as the PRA Rulebook: Solvency II Firms and Non Solvency II Firms: Senior Insurance Managers Regime (Amendment) (No 3) Instrument 2018.

By order of the Prudential Regulation Committee

[DATE]

Annex A

Amendments to the Insurance – Fitness and Propriety Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

continued approval

has the meaning given in Insurance - Senior Insurance-~~Managers~~ Regime – Transitional Provisions.

...

Annex B

Amendments to the Insurance - Senior Managers Regime – Applications and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

commencement date

has the meaning given in Insurance - Senior Managers Regime – Transitional Provisions.

current approved person approval

means

- (1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):
 - (a) by the *PRA* for the performance of a *PRA senior management function*; or
 - (b) by the *FCA* for the performance of an *FCA-designated senior management function* or a *significant influence function*;

...

2 APPLICATION TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION

...

2.3 The *PRA* directs that, subject to 2.4 and 2.5, a *firm* must use Form E for a *PRA senior management approval application* if it is being made in respect of a *person* who has a *current approved person approval* and is either:

- (1) ceasing to perform a *PRA senior management function* and taking up a new *PRA senior management function* for the same *firm* or another member of its *group*; or
- (2) ceasing to perform an *FCA-designated senior management function* or a *significant influence function* and taking up a *PRA senior management function* for the *firm* or another member of its *group*.

...

2.5 The *PRA* directs that a *firm* must not use Form E if the *person* to whom the *PRA senior management approval application* relates:

- (1) has never before been approved:
 - (a) by the *PRA* to perform a *controlled function*; or

- (b) by the *FCA* to perform an *FCA-designated senior management function* or a *significant influence function* for any *firm*; or

....

Annex C

Amendments to the Large Non-Solvency II Firms – Fitness and Propriety Part

In this Annex deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

continued approval

has the meaning given in Large Non-Solvency II Firms - Senior Insurance-
Managers Regime – Transitional Provisions.

...

Annex D

Amendments to the Large Non-Solvency II Firms – Senior Managers Regime – Applications and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

commencement date

has the meaning given in Large Non-Solvency II Firms - Senior ~~Insurance~~ Managers Regime – Transitional Provisions.

current approved person approval

means

(1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):

(a) by the *PRA* for the performance of a *PRA senior management function*; or

(b) by the *FCA* for the performance of an *FCA-designated senior management function* or a *significant influence function*;

...

2 APPLICATION TO PERFORM A SENIOR MANAGEMENT FUNCTION

...

2.3 The *PRA* directs that, subject to 2.4 and 2.5, a *firm* must use Form E for a *PRA senior management approval application* if it is being made in respect of a *person* who has a *current approved person approval* and is either:

...

(2) ceasing to perform an *FCA-designated senior management function* or a *significant influence function* and taking up a *PRA senior management function* for the *firm* or another member of its *group*.

...

2.5 The *PRA* directs that a *firm* must not use Form E if the *person* to whom the *PRA senior management approval application* relates:

(1) has never before been approved:

(a) by the *PRA* to perform a *controlled function*; or

(b) by the *FCA* to perform an *FCA-designated senior management function* or a *significant influence function* for any *firm*;

or

....

Annex E

Amendments to the Non-Solvency II Firms – Fitness and Propriety Part

In this Annex deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definition shall apply:

continued approval

has the meaning given in Non-Solvency II Firms - Senior Insurance-Managers Regime – Transitional Provisions.

...

Annex F

Amendments to the Non-Solvency II Firms –Senior Managers Regime – Applications and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

commencement date

has the meaning given in Non-Solvency II Firms - Senior ~~Insurance~~Managers Regime – Transitional Provisions

current approved person approval

means

(1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):

(a) by the *PRA* for the performance of a *PRA senior management function*; or

(b) by the *FCA* for the performance of an *FCA-designated senior management function* or a *significant influence function*;

...

2 APPLICATION TO PERFORM A SENIOR MANAGEMENT FUNCTION

...

2.3 The *PRA* directs that, subject to 2.4 and 2.5, a *firm* must use Form E for a *PRA senior management approval application* if it is being made in respect of a *person* who has a *current approved person approval* and is either:

(1) ceasing to perform a *PRA senior management function* and taking up a new *PRA senior management function* for the same *firm* or another member of its *group*; or

(2) ceasing to perform an *FCA-designated senior management function* or a *significant influence function* and taking up a *PRA senior management function* for the *firm* or another member of its *group*.

...

2.5 The *PRA* directs that a *firm* must not use Form E if the *person* to whom the *PRA senior management approval application* relates:

(1) has never before been approved:

(a) by the *PRA* to perform a *controlled function*; or

(b) by the *FCA* to perform an *FCA-designated senior management function* or a *significant influence function* for any *firm*; or

....

Annex G

Amendments to the Glossary

In the Glossary Part of the PRA Rulebook insert the following new definition:

certification regime

means the requirements of the *regulatory system* which apply to *authorised persons* insofar as they relate to *persons* performing *certification functions* including those set out in Certification, Fitness and Propriety, Insurance – Certification, Insurance – Fitness and Propriety, Large Non-Solvency II Firms – Certification, Large Non-Solvency II Firms – Fitness and Propriety, Non-Solvency II Firms – Certification and Non-Solvency II Firms – Fitness and Propriety and the corresponding *FCA* requirements in SYSC 27 and FIT of the *FCA Handbook*.

Annex H

Amendments to the Glossary

In this Annex deleted text is struck through.

~~Chair of Audit Committee function~~

~~has the meaning given in Senior Management Functions 4.4.~~

~~Chair of Remuneration Committee function~~

~~has the meaning given in Senior Management Functions 4.5.~~

~~Chair of Risk Committee function~~

~~has the meaning given in Senior Management Functions 4.3~~

~~Chair of the Governing Body function~~

~~has the meaning given in Senior Management Functions 4.2.~~