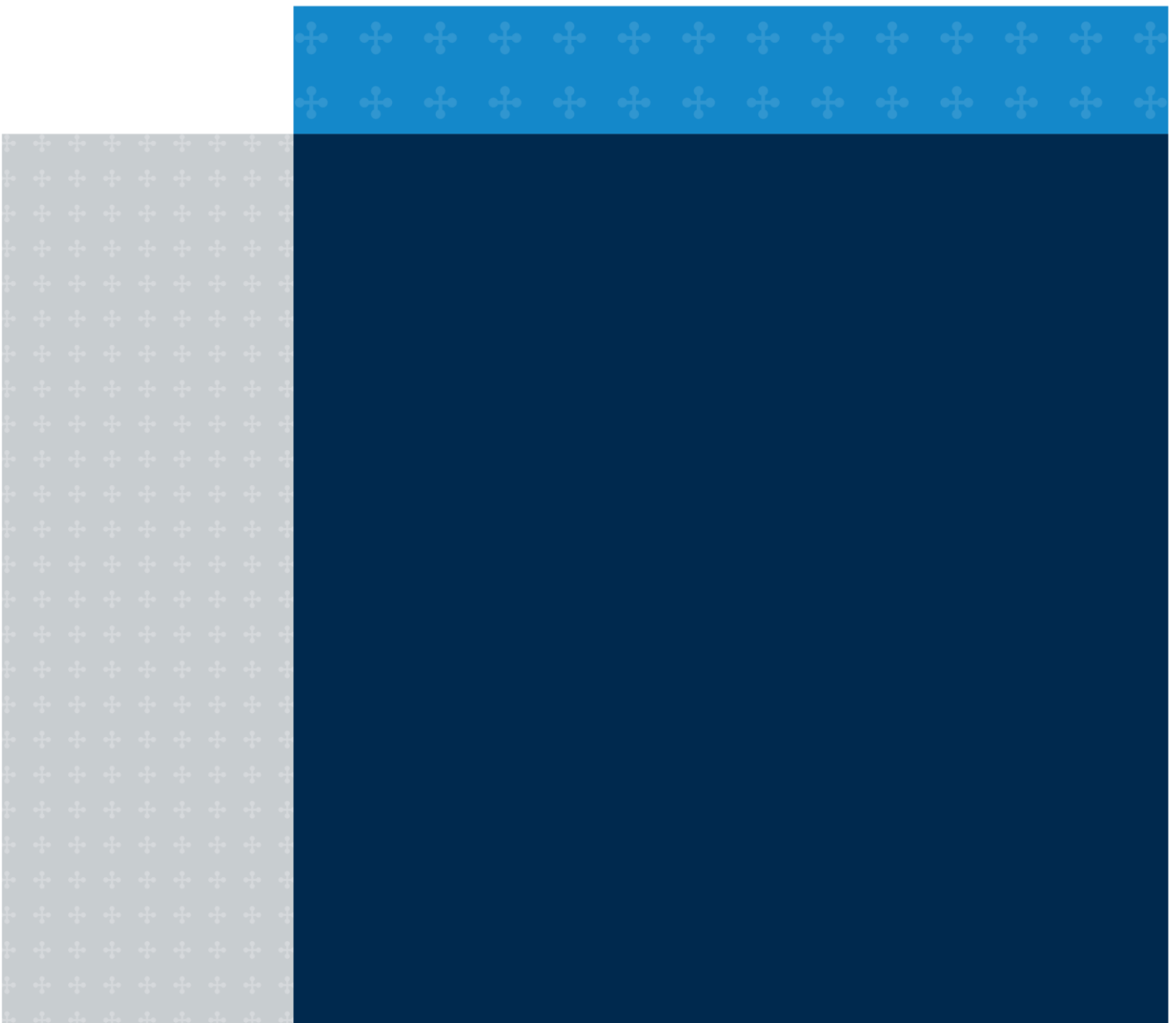




Policy Statement | PS11/21

Strengthening accountability: Temporary, long-term absences

June 2021





BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Policy Statement | PS11/21

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1 Overview

1.1 This Prudential Regulation Authority (PRA) Policy Statement (PS) provides feedback to responses to Chapter 2 of the Financial Conduct Authority's (FCA) Consultation Paper (CP) 20/23 'Quarterly Consultation Paper No. 30'.² Chapter 2 of the CP jointly proposed PRA and FCA expectations regarding temporary, long-term absences for Senior Management Functions (SMF).

1.2 This PS also contains the PRA's final policy, as follows:

- consequential amendments to the following parts of the PRA Rulebook (Appendix 1):
 - Senior Managers Regime – Applications and Notifications Part;
 - Insurance - Senior Managers Regime – Applications and Notifications Part;
 - Large Non-Solvency II Firms - Senior Managers Regime – Applications and Notifications Part; and
 - Non-Solvency II Firms - Senior Managers Regime – Applications and Notifications Part.
- an updated Supervisory Statement (SS) 28/15 'Strengthening individual accountability in banking' (Appendix 2);³
- an updated SS35/15 'Strengthening individual accountability in insurance' (Appendix 3);⁴ and
- an updated 'Form D - Changes to personal information/application details and conduct breaches/disciplinary action related to conduct' (Appendix 4).⁵

1.3 This PS is relevant to all PRA-authorised firms.

Background

1.4 In FCA CP20/23, the PRA and FCA proposed to clarify their expectations for firms notifying the competent authorities of when a Senior Manager takes temporary leave for longer than 12 weeks (long-term leave), for example in cases of parental leave and where the length of absence is not known. The proposals were:

- In cases where an individual who performs a Senior Management Function (SMF) is temporarily absent from their role, and the firm intends to keep the role open for that individual to return to in the future, the firm would not need to notify the PRA (and where applicable the FCA) that the individual's approval should be removed.
- Firms would be expected to ensure that where the individual taking long-term leave is carrying out a PRA (or FCA) required function, another individual is appointed to perform that required function during the interim period.

² December 2020: <https://www.fca.org.uk/publications/consultation-papers/cp20-23-quarterly-consultation-paper-no-30>; and <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/smf-long-term-absences>.

³ <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-banking-ss>.

⁴ <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-insurance-ss>.

⁵ See: <https://www.bankofengland.co.uk/prudential-regulation/authorisations/senior-managers-regime-approvals> for all Senior Managers Regime application forms.

- A minor amendment to 'Form D - Changes to personal information/application details and conduct breaches/disciplinary action related to conduct', to enable firms to notify the PRA or FCA that the relevant individual is taking leave or returning from that leave.

Summary of responses

1.5 The PRA received eight responses to the CP. Respondents generally welcomed the PRA's proposals. Some respondents also made observations and requests for clarification, which are set out in Chapter 2.

Implementation

1.6 All changes outlined in this PS will take effect from Wednesday 2 June 2021.

1.7 The proposals set out in this PS have been designed in the context of the UK having left the European Union and the transition period having come to an end. Unless otherwise stated, any references to EU or EU derived legislation refer to the version of that legislation which forms part of retained EU law.⁶ The PRA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework.

⁶ For further information, please see <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

2 Feedback to responses

2.1 Before making any proposed rules, the PRA is required by the Financial Services and Markets Act 2000 (FSMA) to have regard to any representations made to it, and to publish an account, in general terms, of those representations and its feedback to them.⁷

2.2 The PRA has considered the responses received to the CP. This chapter sets out the PRA's feedback to those responses, and its final decisions.

2.3 The sections below have been grouped by the areas raised by respondents as follows:

- operation of the '12-week rule';
- proportionality and impact of notifications on firms;
- annual fitness and propriety assessments;
- fast tracking of applications to perform a SMF;
- management responsibilities maps; and
- FCA-related issues.

Operation of the '12 week rule'

2.4 The CP proposed to clarify expectations for firms notifying the PRA and FCA of when a Senior Manager takes temporary leave for longer than 12 weeks (long-term leave).

2.5 Two respondents requested further guidance on the PRA's requirements for when an individual can perform a SMF without being approved for a period of 12 weeks, where the absence is either temporary or reasonably unforeseen (commonly referred to as the 12-week rule).⁸

2.6 Having considered the responses, the PRA has decided to maintain the proposals set out in CP20/23. The PRA did not consult on the operation of the 12 week rule. Instead, it set out proposals for when an SMF is absent for more than 12 weeks. To issue further guidance on the 12 week rule would require the PRA and FCA to publish a subsequent consultation specifically on this topic. The PRA is not considering doing so at present, but will keep the matter under review.

Proportionality and impact of notifications on firm resources

2.7 Two respondents commented on the potential impact on firm resources of the proposed approach to how firms should notify the PRA (or FCA) about long term absences, and queried whether the PRA could apply a level of proportionality in certain situations.

2.8 One respondent considered it disproportionate to require firms to notify the regulators in the event of parental leave, since this could feasibly involve two separate tranches of leave of over 12 weeks. The response noted that this could potentially mean there will be four notifications to be made: two to notify that a SMF will be absent for more than 12 weeks; and two to notify that the SMF has returned. The same respondent requested that certain SMF holders who do not hold other

⁷ Sections 138J(3) and 138J(4) of FSMA.

⁸ Rule 2.3 in the Senior Management Functions Part of the PRA Rulebook.

senior management/controlled function roles and/or perform any prescribed responsibilities be exempted from the notification requirement.

2.9 The PRA has considered the comments and has decided not to amend its proposals. The PRA acknowledges that the situation set out by the respondent may require two notifications for each period of leave. However, the PRA considers its proposals actually reduce the burden caused by the previous arrangements. Previously, in the example given by the respondent, a firm would have made four separate submissions: two to withdraw the approval of the SMF; and two to apply for their re-approval. Under the PRA's proposals, an SMF's approval no longer needs to be removed and then re-approved. Instead, firms are able to use Form D to notify the PRA of the SMF's absence. The PRA also considers the proposals help to enhance individual accountability by clarifying which SMFs are on leave or absent and how their function and responsibilities have been allocated within the firm. Moreover, exempting certain SMFs from the notification expectations while on long-term leave would create inconsistency within the Senior Managers & Certification Regime (SMCR) and result in different sets of expectations for some SMFs.

2.10 The PRA also considers that even where an SMF may not hold a Prescribed Responsibility, each SMF holds the inherent responsibilities of their specific role, as set out in the Senior Management Functions Part of the PRA Rulebook. Each SMF may also hold certain 'other responsibilities', which should be set out in their Statement of Responsibilities (SOR). Exempting certain SMFs from the proposals could lead to confusion regarding which SMF is responsible for the duties of the absent SMF and associated responsibilities at a firm.

2.11 One respondent suggested that it would be cumbersome and potentially duplicative to submit a Form J for the outgoing, absentee SMF (when departing and returning), as well as a full application for approval for the replacement SMF.⁹ The respondent thought it would be more efficient to use Form D for the outgoing, absent SMF and Form A for the replacement, and to notify the PRA that all responsibilities would be transferred from the outgoing SMF to the covering SMF.

2.12 The PRA has considered the response and has decided to maintain its proposals. Section 62A(2) of FSMA requires firms to submit a revised SOR if there has been 'any significant change' in a SMF's responsibilities. Section 62A(3) FSMA requires firms to provide information on the changes to a SMF's responsibilities 'in such form as the appropriate regulator may direct'. Form J is the form that firms are directed to use to notify the PRA (and FCA) of those changes in responsibilities. The PRA considers that a SMF going on long-term leave and not performing their role – with responsibilities being allocated to one or more other SMFs – does constitute a 'significant change' in responsibilities. As a result, the PRA considers that not submitting a Form J and an amended SOR for the SMF on long-term leave would not be in line with these requirements.

2.13 The PRA also considers that it is not necessarily the case that all of the absent SMF's responsibilities will transfer to the SMF being approved to cover the absent SMF. Firms may decide to allocate responsibilities to one or more other SMFs. Only using Form A for the covering SMF would not accommodate such a situation. Finally, amending Form D to accommodate the proposals set out by the respondent would require the PRA (alongside the FCA) to undertake a new consultation to review and reformat Form D (and potentially other SMCR-related forms). The PRA does not plan to do this at present, but will keep the matter under review.

⁹ See <https://www.bankofengland.co.uk/prudential-regulation/authorisations/senior-managers-regime-approvals> for all Senior Managers Regime application forms.

Annual fitness and propriety assessments

2.14 One respondent requested information on the approach to take where an individual may be on long-term leave and unable to take part in the annual fitness and propriety assessment.

2.15 Having considered the response, the PRA has decided that additional guidance on this point is not required, and so is not making changes to its approach. The PRA considers that firms should be able to carry out the fit and proper assessment required without the participation of an individual on long-term leave. It is for firms to consider whether it is necessary to amend certain aspects of their internal procedures to enable the assessment. Firms may also wish to consider whether it is necessary to update the fitness and propriety assessment when the individual returns to the firm.

Fast-tracking of applications to perform a SMF

2.16 One respondent requested that the PRA fast-track applications for new or temporary SMFs who are covering a long-term absence.

2.17 The PRA has considered this response and has decided not to amend the proposals or make amendments to its application process for SMF approvals. The PRA does not consider it fair or justified to fast-track applications, even when they involve arranging cover for an SMF on long-term leave. Firms should endeavour to submit applications as soon as practicably possible to allow the PRA enough time to review the application.

Management Responsibilities Maps

2.18 One respondent requested clarification on how firms should reflect arrangements for long-term absences in their Management Responsibilities Map.

2.19 The PRA considers that requirements regarding the contents and updating of Management Responsibilities Maps are sufficiently set out in the PRA Rulebook.¹⁰ There is also extensive guidance in SS28/15 and SS35/15. Therefore having considered the response, the PRA does not plan to issue any further guidance.

FCA-related issues

2.20 One respondent commented on issues relating to whether certified employees should be removed from the FCA directory during long-term absences. One respondent commented on issues relating to appointed representatives.

2.21 The PRA has reviewed the comments but considers that these matters should be addressed by the FCA.

2.22 The FCA has also chosen to issue FCA Handbook notices on some matters included in this PS, and to align with the PRA's position as set out in this PS.¹¹

PRA-driven changes

2.23 The PRA has identified that the extract of Form D that was used in the CP was not the current version of the Form D. The text under the PRA and FCA banners had already been removed following

¹⁰ Chapter 7 of the Allocation of Responsibilities Part of the PRA Rulebook (banking), and Chapter 5 of the Insurance – Allocation of Responsibilities Part of the PRA Rulebook (insurance).

¹¹ <https://www.handbook.fca.org.uk/handbook/SUP/10C/?view=chapter>.

the PS20/20 ‘Responses to Chapters 2 to 7 of CP3/20 ‘Occasional Consultation Paper’’.¹² Form D will appear without this text, and this minor change to what appeared in the consultation does not result in any material change for firms. The only changes to Form D that firms should note are those set out in FCA CP20/23, in sections 2.9, 2.10, and 2.11 of the form.

2.24 The PRA also made several language and typographical changes to the SS to provide clarity and improve readability.

¹² September 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/occasional-consultation-paper-march-2020>.

Appendices

- 1 **PRA RULEBOOK: CRR FIRMS: CRR FIRMS, NON-CRR FIRMS, SOLVENCY II FIRMS, NON-SOLVENCY II FIRMS: SENIOR MANAGERS REGIME APPLICATIONS AND NOTIFICATIONS - TEMPORARY ABSENCE INSTRUMENT 2021**, available at:
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/publication/2021/ps1121app1.pdf>

- 2 **SS28/15 'Strengthening individual accountability in banking'**, available at:
www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-banking-ss

- 3 **SS35/15 'Strengthening individual accountability in insurance'**, available at:
www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-insurance-ss

- 4 **Form D - 'Changes to personal information/application details and conduct breaches/disciplinary action related to conduct' form** available at:
www.bankofengland.co.uk/prudential-regulation/authorisations/senior-managers-regime-approvals