



Application of the Senior Managers and Certification Regime to firms in the temporary permissions regime: clarification of the PRA's and FCA's proposals

This note clarifies the interaction between the:

- Prudential Regulation Authority's (PRA's) proposals for applying the Senior Managers and Certification Regime (SM&CR) to firms in the temporary permissions regime (TPR) as set out in paragraphs 7.8 to 7.12 of [Consultation Paper \(CP\) 26/18 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards'](#) and summarised on the [Bank of England's dedicated webpage for the TPR](#); and
- Financial Conduct Authority's (FCA) equivalent proposals in paragraphs 4.92 to 4.97 of [FCA CP 18/29 'Temporary permissions regime for inbound firms and funds'](#).

In particular, this note includes a set of Frequently Asked Questions (FAQs) on how the two sets of proposals would apply to dual-regulated, EEA firms currently operating in the UK via an establishment passport through a branch ('EEA branches').

The points in this note relating to the FCA's and PRA's proposals for applying the SM&CR to firms in the TPR which currently operate as an EEA branch, are subject to the outcome of the PRA's and FCA's consultations.

Update 8 January 2019: The version of this note published on Monday 7 January 2019 was updated to include an additional sentence to the table on third-country branches on page 3.

Summary

Current SM&CR requirements (EEA branches)		Current SM&CR requirements (third-country branches)	Proposed SM&CR requirements (TPR firms) ¹
PRA	No requirements	<p><i>Head of Overseas Branch</i> (SMF19) required in all branches</p> <p>Individuals performing these SMFs also require approval:</p> <ul style="list-style-type: none"> • <i>Chief Finance</i> (SMF2); • <i>Executive Director</i> (SMF3); • <i>Chief Risk</i> (SMF4); • <i>Head of Internal Audit</i> (SMF5) • <i>Group Entity Senior Manager</i> (SMF7); • <i>Compliance Oversight</i> (SMF16); • <i>Money Laundering Reporting</i> (SMF17); and • <i>Other Local Responsibility</i> (SMF22). • <i>Chief Operations</i> (SMF24) 	<p><i>Head of Overseas Branch</i> (SMF19) [with deemed approval] required in all branches</p> <p>Individuals performing these PRA SMFs require [deemed] approval:</p> <ul style="list-style-type: none"> • <i>Chief Finance</i> (SMF2); • <i>Chief Risk</i> (SMF4); • <i>Head of Internal Audit</i> (SMF5); • <i>Group Entity Senior Manager</i> (SMF7); • <i>Chief Operations</i> (SMF24) <p>Must allocate branch <i>Prescribed Responsibilities</i> and submit a SoR for each SMF</p> <p>Must maintain a Responsibilities Map</p> <p>Certification Regime/ Conduct Rules apply</p>
FCA	<p><i>Money Laundering Reporting Officer</i> (SMF17) and <i>EEA branch senior manager</i> (SMF21) required in all branches</p> <p>Must maintain a Responsibilities Map</p> <p>Certification Regime/ Conduct Rules apply to UK employees</p>	<p>Must allocate branch <i>Prescribed Responsibilities</i> to SMFs/ submit a Statement of Responsibilities (SoR) for each SMF</p> <p>Must maintain a Responsibilities Map</p> <p>Certification Regime/ Conduct Rules apply</p>	<p><i>Money Laundering Reporting Officer</i> (SMF17); and <i>EEA branch senior manager function</i> (SMF21) required in all branches.</p> <p>Must maintain a Responsibilities Map (can be same document as per PRA proposals)</p> <p>Certification Regime/ Conduct Rules apply</p>

¹ Final requirements may change subject to feedback to PRA CP26/18 and FCA CP 18/29

Frequently Asked Questions (FAQs)

1) How does the SM&CR currently apply to EEA and third-country branches respectively?

EEA branches

SM&CR applied solely by the FCA.

Two Senior Management Functions (SMFs) subject to FCA approval:

- *Money Laundering Reporting Officer* (SMF17); and
- *EEA branch senior manager function* (SMF21).

[SMF21](#) applies to individuals with “*significant responsibility for one or more significant business units of the branch*” and covers several roles.

No requirements on the allocation of responsibilities to SMFs in EEA branches. However, EEA branches must maintain a Responsibilities Map ([SYSC 25.6](#)) et al in the FCA Handbook).

[Certification Regime](#) and [Conduct Rules](#) apply pursuant to FCA rules.

Third-country branches

SM&CR applied by both by the PRA & FCA

Every third-country branch must have one *Head of Overseas Branch* (SMF19) approved by the PRA, with FCA consent.

The SMF19 is equivalent to a branch CEO and the person who effectively directs its business.

If there are individuals performing the following PRA SMFs at, or in relation to, a third-country branch, they also have to be approved by the PRA with FCA consent:

- *Chief Finance* (SMF2);
- *Chief Risk* (SMF4);
- *Head of Internal Audit* (SMF5);
- *Group Entity Senior Manager* (SMF7); and
- *Chief Operations* (SMF24).

These individuals will, in most cases, be based at UK branches, in particular larger ones but, in some instances (ie certain SMF7s), may be based elsewhere.

If there are individuals performing the following FCA SMFs at the branch, they also have to be approved by the FCA only:

- *Executive Director* (SMF3);
- *Compliance Oversight* (SMF16);
- *Money Laundering Reporting* (SMF17); and
- *Other Local Responsibility* (SMF22).

Third-country branches must allocate a list of tailored *Prescribed Responsibilities* among their SMFs in the [PRA Rulebook](#) and [FCA Handbook](#).

The PRA's rules for the [Certification Regime](#) and [Conduct Rules](#) apply in addition to the FCA's.

2) How do the PRA and FCA propose to apply the SM&CR to EEA branches which enter into the TPR?

Before considering the PRA's and FCA's respective proposals for applying the SM&CR to firms in the TPR, it is worth noting the purpose of the TPR and the circumstances in which it may apply:

As explained on the dedicated TPR webpage and CP26/18:

- The TPR will allow EEA firms using a passport to operate for a limited period while they seek authorisation from the PRA if the passporting regime falls away on 29 March 2019.
- In particular, the TPR will enable EEA firms currently performing PRA or FCA regulated activities in the UK either through a Freedom of Establishment (FOE) or Freedom of Services (FOS) passport to 'obtain a deemed Part 4A permission to carry on those activities for a maximum of three years (subject to HM Treasury's power to extend the duration of the regime by increments of 12 months)'.

Consequently, the TPR and all the proposals relating to it, including those on the SM&CR, will only apply if there is no transition or implementation period following the UK's departure from the EU.

If a transition or implementation period is agreed, ratified and takes effect, passporting rights would be expected to continue, in which case it is envisaged that the current SM&CR requirements for EEA and non-EEA branches respectively would remain until the end of such a period.

Subject to the outcome of the PRA's and FCA's consultations, if and when the TPR becomes effective, the FCA's and PRA's proposals for applying the SM&CR to firms in the TPR which currently operate as an EEA branch would be as follows:

PRA proposals

The PRA proposes to apply its SM&CR requirements for third-country branches to EEA branches that enter into the TPR.

Therefore, all firms in the TPR will be required to, at least, have one individual who will be treated as if (s)he was approved to perform the *Head of Overseas Branch function* (SMF19) function, which is mandatory for all third-country branches, while the firm is in TPR (known as a 'deemed TPR approval').

In addition, where the PRA Rulebook requires third-country branches to have other SMFs (e.g. *Chief Risk* (SMF4) or *Chief Operations* (SMF24) functions and an EEA branch currently has individuals performing these roles, they will require a deemed TPR approval.

Individuals who will be performing a PRA SMF under a deemed TPR approval while their firm is in the TPR, in particular SMF19s, should in many cases, already be already approved by the FCA as SMF21s. Where this is the case, obtaining an additional deemed TPR approval as a PRA SMF, including SMF19, should not lead to any ambiguity, confusion or duplication in the individual's responsibilities.

Given its provisional nature, the PRA has developed a bespoke, streamlined process for obtaining deemed TPR approval for PRA SMFs.

As with the FCA's proposals, the process of converting a deemed TPR approval into a permanent one would take place if and when that branch applies for permanent authorisation as a third-country branch.

FCA proposals

The FCA proposes to maintain its current SM&CR requirements for EEA branches to any such branches that enter into the TPR.

Therefore, individuals currently approved as SMF17s and SMF21s in EEA branches would remain approved as such as long as these branches remains in the TPR.

Individuals in EEA branches which enter into the TPR would only need to obtain FCA approval for any FCA-designated SMFs that apply to third-country branches (e.g. *Compliance Oversight* (SMF16)) if and when that branch applies successfully for permanent authorisation as a third-country branch. At that point, the SMF21 would automatically cease to exist as the function can only legally apply to an EEA branch.

EEA branches of insurance firms which enter into the TPR will be subject to the FCA's SM&CR's requirements that came into force on 10 December 2018.

3) What will be the process for obtaining deemed TPR approval for PRA SMFs?

In order to obtain deemed TPR approval for individuals who will be performing PRA SMFs while their firms are in the TPR, firms will be able to submit, for all relevant individual, either a:

- Part 4A application accompanied by full SMF application(s) before the UK's exit date (Route 1); or
- streamlined 'TPR SMF application' (to be published shortly) within 12 weeks of entering into the TPR (Route 2).

Route 1 – Full SMF application submitted before entering into TPR

Where firms have submitted a Part 4A application accompanied by full SMF application(s) in advance of entry into the TPR (Route 1), the PRA can decide to treat any SMFs in respect of whom these applications have been made as deemed TPR approved with effect from the date of the firm's entry into the TPR.

These individuals would not be required to undergo the standard fitness and propriety assessment to be eligible for deemed TPR approval. This assessment would be deferred until the firm's Part 4A application is considered.

Moreover, provided that the SMF applications are complete, firms would not be required to send any additional documentation (provided that there are no changes to the individual's circumstances or responsibilities in the period between the firm entering into the TPR and it applying for permanent Part 4A authorisation).

Route 2: Full SMF application not submitted before entering into TPR

Firms that have not submitted full SMF applications prior to entry into TPR would need to complete the TPR SMF Application containing key information on the individual(s) they propose to perform PRA SMFs while they remain in the TPR.

The TPR SMF Application, which will be published in Q1 2019, will be based on the current [Short Form A](#) and include a short Statement of Responsibilities.

After receiving the TPR SMF Application, the PRA can decide to give the relevant individual a deemed TPR approval.

As with Route 1 Individuals will not be required to undergo the standard PRA fitness and propriety assessment to be eligible for deemed TPR approval.

The PRA has proposed in CP26/18 to provide firms in the TPR with a period of up to 12 weeks from exit day in which to obtain deemed (or full) approval for individuals who require it.

A firm that chooses Route 2 for obtaining deemed TPR approval for its SMFs would, at the point of applying for full authorisation as a third-country branch, need to send the additional information required in standard SMF application forms to enable the PRA to complete the assessment of the individual's fitness and propriety on a permanent basis.

Routes 1 and 2 would not be mutually exclusive, i.e. firms might be able to submit a full SMF application on behalf of one individual (e.g. the proposed SMF19) and a TPR SMF application on behalf of a different individual (e.g. the proposed deemed SMF4).

Example, a firm could submit:

- a Part 4 A application including a full SMF application for its proposed *Head of Overseas Branch* (SMF19) in advance of entering into the TPR; and
- a TPR SMF application for any other PRA SMFs it needs to obtain deemed TPR approval, for example its *Chief Risk* (SMF4) or *Chief Operations* functions.

4) Why do the PRA and FCA have different proposals for applying the SM&CR to firms in the TPR?

The PRA's and FCA's proposals for applying the SM&CR to firms in the TPR seek identical objectives, namely to:

- ensure an effective but proportionate level of accountability; and
- incentivise those firms that plan to seek approval as third-country branches to develop their local senior management and internal control framework whilst in the TPR, so that they can meet the PRA's SM&CR requirements for third-country branches in due course.

The differences stem from the fact that the FCA already has tailored SM&CR requirements for EEA branches but the PRA currently does not. Consequently, in order to ensure an appropriate level of accountability to both regulators and facilitate the transition to third-country branch approval, the PRA proposes to apply its SM&CR requirements and expectations to firms in the TPR

The PRAs' proposals for the SM&CR are consistent with its overall approach to the TPR as outlined in CP26/18, which notes that 'EEA firms operating in the UK under the FOE or FOS passport that enter TPR will become, and be treated as, third-country firms. For firms in TPR with a branch in the UK, the PRA expects these firms to comply with the same rules that apply to other third-country branches'.

The PRA's and FCA's proposals for the TPR, including those relating to the application of the SM&CR may be subject to change in response to consultation feedback.

5) How will the PRA's and FCA's proposals for applying the SM&CR to firms in the TPR interact in practice? In particular, where an individual holds concurrent, temporary approvals as a PRA SMF21 and a PRA SMF19?

The interaction between the PRA's and FCA's proposals for applying the SM&CR to firms in the TPR may result in a situation where an individual is, for a period of time, simultaneously:

- approved by the FCA as a SMF21; and
- deemed TPR approved by the PRA as a SMF19 or another PRA SMF.

Although this is likely to be an unprecedented situation for existing SMF21s, it is not uncommon for SMFs in third-country branches and UK firms to hold concurrent, simultaneous approvals for PRA-designated and FCA-designated SMFs or to perform responsibilities which might fall within both regimes.

The accountability of an individual who currently holds an SMF21 is unlikely to change materially when that individual firm's enters into the TPR and (s)he receives deemed TPR approval for an additional PRA SMF on a basis. The relevant individual's responsibilities would, however need to be documented more clearly and granularly in a Statements of Responsibilities. They may also evolve naturally while the firm is in TPR if it chooses to enhance or reconfigure its senior management and internal control framework ahead of applying for Part 4A authorisation as a third-country branch.

At the point at which a firm in TPR obtains approval as a third-country branch and the relevant individual is permanently approved as their proposed PRA or FCA SMFs, the SMF21 would automatically fall away as the SMF21 can, by definition, only apply to an EEA branch.

6) Would an EEA London branch have to maintain two sets of Management Responsibilities Maps and Terms of Reference (one for the EEA branch and another set for the third-country branch) will there be parallel governance committees as a result?

EEA branches are currently required to produce a Responsibilities Maps but benefit from certain exemptions as to its content listed in the FCA Handbook SYSC 25.6.4G to SYSC 25.6.10G.

After entering into the TPR, EEA branches may need to update and, in some areas, expand their existing Responsibilities Map to meet the obligations set as a third-country branch but will not be required to produce two sets of these documents. When reviewing firms' Responsibilities Maps during TPR, the PRA will take into account that they may change frequently and considerably in line with any changes the firm might make to its governance, senior management and internal controls.

Terms of Reference are internal documents. Entry into the TPR should not, in itself, require changes to these documents although such changes may be necessary or desirable in practice ahead of a firm applying for permanent authorisation as a third-country branch.

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