



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Policy Statement | PRA PS5/16
| FCA PS16/5

Strengthening accountability in banking and insurance: Implementation of SM&CR and SIMR; and PRA requirements on regulatory references

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February 2016

This policy statement contains:

- PRA rules to implement the first set of proposals on regulatory references following PRA CP36/15, which will be supplemented with the PRA's full policy at a later date;
- the PRA and FCA final rules to implement the proposals for the application of the Senior Insurance Managers Regime (SIMR) to Swiss general insurers; and
- final PRA rules to implement the remaining proposals made in Chapter 4 of PRA CP36/15, and in PRA CP41/15.

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1 Overview

1.1 In October 2015, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) ('the regulators') consulted on a set of proposals for the provision of regulatory references, by current or former employers¹, in respect of individuals applying for certain roles at deposit-takers, insurers, and PRA designated investment firms. The proposals were set out in a joint publication (PRA CP36/15 and FCA CP15/31)².

1.2 Chapter 4 of the same publication (PRA CP36/15) also set out, in relation to the Senior Insurance Managers Regime (SIMR), the PRA's proposals on scope of responsibilities (SoR) documents, and the associated governance map, for all key function holders (KFHs³) at Solvency II insurers and large non-Directive firms (NDFs⁴) (collectively referred to as 'insurers').

1.3 In November 2015, the regulators consulted in a joint publication (PRA CP41/15 and FCA CP15/37)⁵ on a set of proposals for the application of the SIMR to Swiss general insurers⁶.

1.4 Chapter 4 of the same publication (PRA CP41/15) also set out the PRA's proposals for some further clarificatory rule changes in relation to KFH notifications by insurers; as well as proposals for consequential and minor amendments to the PRA Rulebook (and PRA Handbook) as a result of the introduction of the Senior Managers & Certification Regime (SM&CR) and the SIMR.

1.5 This policy statement (PS) provides feedback to the above consultations, and includes the corresponding rules that have been made by the PRA. It also includes the rules made by the FCA in respect of Swiss general insurers.

1.6 The following table outlines the contents of each chapter of this PS, shows the firms to which it is relevant, the Appendix where the new rules can be found, and the effective commencement date for these rules.

1 The reference to employers here should be read to include organisations engaging the services of the individual.

2 PRA CP36/15 and FCA CP 15/31 'Strengthening accountability in banking and insurance: regulatory references', October 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp3615.aspx.

3 The definition of a KFH can be found at www.prarulebook.co.uk/rulebook/Glossary/Rulebook/302806/02-02-2016/K.

4 The definition of an NDF can be found at www.prarulebook.co.uk/rulebook/Glossary/Rulebook/302806/02-02-2016/N.

5 PRA CP41/15 and FCA CP 15/37 'Occasional consultation Paper', November 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp4115.aspx.

6 The definition of a 'Swiss general insurer' can be found at www.prarulebook.co.uk/rulebook/Glossary/Rulebook/302806/02-02-2016/S.

Chapter	Relevant to:	Proposals responded to:	Rules available in:	Effective date for new rules:
2	All PRA-regulated firms	CP36/15 (other than Chapter 4) in relation to the provision of regulatory references by deposit-takers, insurers, and PRA investment firms	Appendix 1 sets out the PRA's rules. See also FCA PS16/3 for the FCA's rules.	7 March 2016
3	Swiss general insurers	Section 3, Chapter 4 of CP41/15 and FCA CP15/37, in relation to the application of the SIMR to Swiss general insurers	Appendices 2-3 set out the PRA's rules. Appendix 8 sets out the FCA's rules.	7 March 2016 Note: 15 February 2016 for rules in Annex C of Appendix 3, and Part 1 of Annex C of Appendix 8; in relation to the grandfathering provisions for current approved persons
4	Solvency II insurers (and large NDFs)	Chapter 4 of CP36/15, and Chapter 4 (other than section 3) of CP41/15 in relation to the SIMR	Appendices 4-7 set out the PRA's rules.	15 February 2016 for rules in Appendix 4 7 March 2016 for rules in Appendices 5-7
4	All banks, building societies, credit unions, and PRA-designated investment firms	Section 4, Chapter 4 of CP41/15 in relation to the SM&CR	Appendices 6-7 set out the PRA's rules.	7 March 2016

2 PRA rules in respect of the provision of regulatory references by firms under the SM&CR and SIMR

2.1 On 7 October 2015, the PRA and FCA jointly published consultation paper PRA CP36/15 and FCA CP15/31 '*Strengthening accountability in banking and insurance: regulatory references*', which proposed requirements relating to the content and format of employment references for individuals subject to the SM&CR or to the SIMR, KFHS, and notified non-executive directors ('NEDs') (collectively 'in-scope individuals').

2.2 The proposals in PRA CP36/15 and FCA CP15/31 applied to banks, building societies, credit unions, PRA-designated investment firms (collectively 'relevant authorised persons'); Solvency II insurers and large NDFs (collectively 'insurers').

2.3 PRA CP36/15 and FCA CP 15/31 closed on 7 December 2015. The PRA and FCA received 30 responses, most of which supported the CP's underlying objective of ensuring that employment references that pass between firms when individuals move roles ('regulatory references') are an effective tool for employers to assure themselves that they are hiring the right people.

2.4 However, respondents raised several issues which the PRA and FCA wish to consider further before finalising specific rules, including:

- how best to update regulatory references;
- how to obtain regulatory references from certain overseas employers; and

- the timeline for implementation of the full regime.

2.5 The PRA and FCA are fully committed to ensuring that the rules are effective and sound, and that there are no gaps in what is a very important area of the new regime.

2.6 Consequently, the PRA has decided to:

- Issue a first tranche of rules in mid-February 2016, which, together with rules already made, will apply from 7 March 2016. The rules that have already been made as part of the SM&CR/SIMR project were made last year, and the new rules included in this Policy Statement are broadly a continuation of existing requirements under the Approved Persons Regime. Consequently, firms should have had an appropriate amount of time to prepare for their implementation.
- Issue as soon as possible a second tranche of rules which will cover areas where consultation feedback is still under consideration. The second tranche will apply from a later date. The PRA will consider whether a transitional period is necessary before the second tranche of rules takes effect and, if so, what its length should be.

2.7 The PRA's first tranche of rules, as set out in Appendix 1 of this PS, along with the rules already made in its PS16/15¹ and PS22/15², combine some of the current rules on the provision of regulatory references in SUP10B of the current PRA Handbook, and transfer these to the new PRA Rulebook, along with some of the new requirements which the PRA consulted on during the development of the SM&CR and SIMR.

2.8 Consequently, from 7 March 2016, when considering the appointment of an in-scope individual, PRA-regulated firms will be required to:

- Provide a reference to another regulated firm 'as soon as reasonably practicable' upon request containing 'all relevant information' of which it is aware. This requirement already exists under SUP10B of the current PRA Handbook but only applies in respect of Approved Persons. The PRA's first tranche of rules will ensure that it continues to apply to certain functions that will cease to be subject to regulatory pre-approval from 7 March 2016, such as notified NEDs, as well as encompassing all KFHs at insurers, and employees subject to certification under the PRA's Certification rules (ie. a subset of material risk takers ('MRTs')).³
- Take reasonable steps to obtain appropriate references covering at least the past 5 years of service from that person's current and previous employers, and from organisations at which that person served as, or is currently, a NED. This is a new requirement which reflects a longstanding supervisory expectation that firms should undertake appropriate due diligence on candidates.

2.9 Pending further consideration of the issues raised by respondents, the PRA's first tranche of rules in this PS does not at present include a requirement for regulatory references to be provided in a standard template; nor for these references to be updated if subsequent

1 'Strengthening individual accountability in banking: responses to CP14/14, CP28/14 and CP7/15', July 2015; www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps1615.aspx.

2 'Strengthening individual accountability in insurance: responses to CP26/14, CP7/15 and CP13/15', August 2015; www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps2215.aspx.

3 Many MRTs are currently approved by the PRA or FCA as Systems and Controls (CF28), Significant Influence (CF29) and/or Customer (CF30) functions but will cease to be so after 7 March 2016.

information about the individual's conduct or fitness and propriety subsequently comes to light.

2.10 As under current PRA Handbook provisions, it is intended that a regulatory reference should also be provided where a firm has outsourced the collection of that information to another (unregulated) third party, where the recipient firm has been made aware that the unregulated third party is acting on behalf of the firm providing the reference.

2.11 Firms will continue to owe a duty to their former employees and to the recipient firm to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The firm may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

2.12 As under the current PRA Handbook provisions, it is intended that the obligations to supply information in a regulatory reference should apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other arrangements entered into by a firm and an employee upon termination of the employee's employment. A firm is expected not to enter into any such arrangements or agreements that could conflict with its obligations in respect of the provision of regulatory references.

2.13 The PRA is required by the Financial Services and Markets Act 2000 (FSMA) to have regard to any representations made to the proposals in a consultation, to publish an account, in general terms, of those representations and its response to them, and to publish details of any significant differences in the rules as made. The key issues raised in consultation responses did not relate to the requirements included in the first tranche of rules¹, but rather to the requirements intended to be covered by the second tranche of rules. The PRA will have regard to and publish details of the responses received to PRA CP36/15, when formulating and publishing the second tranche of rules.

2.14 The PRA is required by the FSMA to publish a statement on the impact of rules on mutuals where the final rule differs from the draft of the proposed rule. In the opinion of the PRA, the impact of the first tranche of rules on mutuals is not significantly different from the impact of these rules on other firms.

2.15 Prior to consultation of PRA CP36/15, the PRA considered the way in which the proposed rules advance its objectives, impact mutuals, are consistent with the Regulatory Principles, and impact on equality and diversity. The findings of the PRA on these issues, in relation to the first tranche of rules, are unchanged following consultation. The rules are neutral with respect to competition in the relevant markets.

2.16 The costs and benefits of the proposed policy were also considered in PRA CP36/15 and earlier consultations, and a number of comments were received on this analysis from respondents and will be considered further. However, the PRA believes that this first tranche of rules should not give rise to any significant increase in costs for firms, and will have the benefit that firms will still be able to obtain some relevant baseline information to assist them in their assessment of the fitness and propriety of 'in-scope individuals'.

¹ This first tranche of rules covers the matters described at paragraphs 2.7 and the first indent of paragraph 2.8 above.

2.17 The PRA's rules in Appendix 1 of this PS need to be read and applied in conjunction with the FCA's equivalent requirements as set out in FCA PS16/3¹. It is intended that the regulators' combined rules should provide an appropriate regime for regulatory references which will be supplemented where necessary in order to deal with any potential gaps.

2.18 The PRA and FCA are committed to implementing a comprehensive framework for regulatory references as soon as possible. The PRA will consider whether there would be merit in consulting further on the specific issues raised by respondents, but would only expect to do so in the event of a major change.

3 Application of the SIMR to Swiss general insurers

3.1 In November 2015, the regulators jointly consulted² on amendments to the SIMR for its application to 'Swiss general insurers'³. No consultation responses were received and, therefore, there have been no material changes to these proposals.

3.2 Prior to consultation, the regulators considered the way in which the proposed rules advance its objectives, impact mutuals, are consistent with the Regulatory Principles, and impact on equality and diversity. The costs and benefits of the proposed policy were also considered. The findings on these issues are unchanged following consultation. The rules are neutral with respect to competition in the relevant markets.

3.3 Final PRA rules are set out in Appendices 2 and 3. The rules have been made by the PRA Board and will come into force on 7 March 2016, other than the rules at Annex C of Appendix 3 in relation to the grandfathering provisions for current approved persons that will come into force on 15 February 2016.

3.4 Final FCA rules are set out in Appendix 8. The rules have been made by the FCA Board and will come into force on 7 March 2016, other than the rules at Part 1 of Annex C of Appendix 8 in relation to the grandfathering provisions for current approved persons that will come into force on 15 February 2016.

4 Miscellaneous amendments to the PRA rules for the SIMR and SM&CR

4.1 This chapter provides feedback to responses to the PRA proposals in Chapter 4 (PRA proposals on Scope of Responsibility (SoR) documents and governance maps) of PRA CP36/15, and in Section 2 (SIMR - Key function holder notification form) of Chapter 4 (Consequential amendments to the Senior Insurance Managers Regime (SIMR)) of PRA CP41/15. This is relevant to UK insurance firms that are subject to the Solvency II Directive, third country branch undertakings, the Society of Lloyd's and managing agents ('Solvency II firms'), and also to certain UK insurance firms that are out of scope of the Solvency II Directive that are termed 'large NDFs'⁴.

4.2 This chapter also provides feedback to responses to the PRA proposals in Section 4 of Chapter 4 (Consequential amendments to the Senior Managers & Certification Regime

1 See www.fca.org.uk/news/ps16-03-strengthening-banking-accountability.

2 PRA CP 41/15 and FCA CP 15/37 'Occasional consultation Paper', November 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp4115.aspx.

3 The definition of a 'Swiss general insurer' can be found at www.prarulebook.co.uk/rulebook/Glossary/Rulebook/302806/02-02-2016/S.

4 The definition of an NDF can be found at www.prarulebook.co.uk/rulebook/Glossary/Rulebook/302806/02-02-2016/N.

(SM&CR) and the Senior Insurance Managers Regime (SIMR)) of PRA CP41/15, which is relevant to all firms supervised by the PRA.

4.3 The PRA is required by FSMA to have regard to any representations made to the proposals in a consultation, to publish an account, in general terms, of those representations and its response to them, and to publish details of any significant differences in the rules as made. No consultation responses were received in respect of any of the above proposals and, therefore, there have been no material changes to these proposals.

4.4 The PRA is required by FSMA to publish a statement on the impact of rules on mutuals where the final rule differs from the draft of the proposed rule. In the opinion of the PRA, the impact of the final rules is not significantly different from the impact of the rules proposed in the two CPs, as no material amendments have been made.

4.5 Prior to consultation of PRA CP36/15 and CP41/15, the PRA considered the way in which the proposed rules advance its objectives, impact mutuals, are consistent with the Regulatory Principles, and impact on equality and diversity. The costs and benefits of the proposed policy were also considered. The findings of the PRA on these issues are unchanged following consultation. The rules are neutral with respect to competition in the relevant markets.

4.6 Final PRA rules are set out in Appendices 4-7. The rules have been made by the PRA Board and will come into force on the 15 February 2016 for the rules in Appendix 4, and on the 7 March 2016 for the remaining rules.

Appendices

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- 1 **PRA RULEBOOK: CRR FIRMS, NON-CRR FIRMS, SOLVENCY II FIRMS, NON-SOLVENCY II FIRMS: REGULATORY REFERENCE Instrument 2016** available at www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps516.aspx

 - 2 **PRA RULEBOOK: NON-SOLVENCY II FIRMS: LARGE NON-SOLVENCY II FIRMS - SENIOR INSURANCE MANAGERS REGIME (NO. 2) Instrument 2016** available at www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps516.aspx

 - 3 **PRA RULEBOOK: NON-SOLVENCY II FIRMS: LARGE NON-SOLVENCY II FIRMS – SENIOR INSURANCE MANAGERS REGIME – TECHNICAL RULES (NO. 2) Instrument 2016** available at www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps516.aspx

 - 4 **PRA RULEBOOK: SOLVENCY II FIRMS: SENIOR INSURANCE MANAGERS REGIME – TECHNICAL RULES (NO. 2) Instrument 2016** available at www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps516.aspx

 - 5 **PRA RULEBOOK: SOLVENCY II FIRMS: NON-SOLVENCY II FIRMS: FITNESS AND PROPRIETY AMENDMENT Instrument 2016** available at www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps516.aspx

 - 6 **PRA RULEBOOK: CRR FIRMS, NON-CRR FIRMS, SOLVENCY II FIRMS, NON-SOLVENCY II FIRMS: SENIOR MANAGERS REGIME AND SENIOR INSURANCE MANAGERS REGIME AND INDIVIDUAL ACCOUNTABILITY (CONSEQUENTIALS) Instrument 2016** available at www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps516.aspx

 - 7 **PRA HANDBOOK (RULEBOOK CONSEQUENTIALS) Instrument 2016** available at www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps516.aspx

 - 8 **FCA INDIVIDUAL ACCOUNTABILITY (SWISS GENERAL INSURERS) Instrument 2016** available at https://www.handbook.fca.org.uk/instrument/2016/FCA_2016_3.pdf

 - 9 **Form M** available at <http://www.bankofengland.co.uk/pr/Pages/authorisations/simr/default.aspx>

 - 10 **Forms for Large NDFs and Swiss General Insurers** available at <http://www.bankofengland.co.uk/pr/Pages/authorisations/simr/default.aspx>