

# **AFB RESPONSE TO PRUDENTIAL REGULATION AUTHORITY'S CONSULTATION 18/25 – REVIEW OF THE SENIOR MANAGERS & CERTIFICATION REGIME**

The Association of Foreign Banks (AFB) is a trade body which represents the interests of the foreign banking sector in the UK to industry stakeholders, including the Government, regulatory bodies, and financial services organisations. AFB has around 170 International banking group members, representing around 80% of the UK's foreign banking market, providing financial services through branches, subsidiaries and representative offices in the UK.

AFB member firms include the full spectrum of banking entities, delivering services ranging from retail banks servicing subsections of the community to significant wholesale market participants.

AFB welcomes the opportunity to respond to Prudential Regulation Authority's (PRA) consultation on reforming the Senior Managers & Certification Regime (SM&CR). We set out our comments on the questions and recommendations below. Our responses to this consultation focus on the specific changes proposed for phase 1 of the reform. We have commented generally on the phase 2 proposals in our response to the HMT consultation (attached). We also attach our response to the FCA consultation (CP25/21) for reference.

## **1. 12-week rule**

We welcome the proposed changes to the 12-week rule, which will be particularly helpful in situations involving sudden, unexpected SMF departures. In such cases, it can take time to identify and recruit a suitable replacement, and the added flexibility will help firms manage these transitions more effectively.

However, our members (with a few exceptions) do not support the proposal to make individuals appointed under a revised 12-week rule to cover the vacancy subject to the Senior Manager Conduct Rules. While we recognise the importance of maintaining high standards and accountability, imposing these rules on temporary appointees would discourage qualified individuals from agreeing to provide cover under the revised rule, especially, if needed, at short notice.

As an alternative, we suggest that the PRA considers issuing guidance that firms should ensure individuals appointed under the 12-week rule are made aware of the Senior Manager Conduct Rules and are expected to pay due regard to them, without being formally subject to them. We believe this approach would offer a more proportionate balance between regulatory expectations and operational practicality.

Our members also feel that the requirement for the Prescribed Responsibilities associated with a role being performed under the 12-week rule to be re-allocated to other SMFs (rather than the temporary SMF) may create challenges for firms in terms of capacity, in particular as the default position in situations which require the 12-week rule to be used, is to allocate Prescribed Responsibilities to the CEO/Branch Manager.

We consider that it would be preferable to continue to allow firms the flexibility to assign Prescribed Responsibilities to the best person for the role, with adequate supervision and oversight from other SMFs, as needed.

## **2. Criminal record checks**

We welcome the PRA's proposal to extend the validity period for criminal record checks to six months. This change is likely to be particularly helpful to our members who may be required to conduct criminal record checks in their home jurisdictions which may require additional time. Our members are also supportive of the PRA's clarification that it would consider the SMF candidate's previous professional experience in financial services in a similar role, whether gained within the UK or internationally, as relevant to its determination whether approval should be granted.

## **3. SMF7**

Our members welcome the PRA's proposal to include examples where the PRA would, or would not, expect individuals in certain roles to be approved as an SMF7. However, we note that, unlike the FCA, the PRA's intention is to adopt a broad definition of SMF7, potentially extending the requirement for approval to individuals who are involved in the setting of the strategy for the UK entity (see the suggestion at table D1 of SS28/15 to include within the definition of SMF7 "Group executives with responsibilities for setting the strategy in areas that are key to the business model of the PRA authorised entity), even if they are not involved in the implementation of that strategy. This appears to be a departure from the approach taken to date.

We are of the view that it is not appropriate for those at group level who only set strategy, and do not have any material influence on the day-to-day management or conduct of business of a UK entity, to be captured by SMF7. For a similar reason, we do not think it would be appropriate for Controllers or their representatives to be caught by the regime given their limited input into the running of the UK entity on a daily basis. The proposal, if adopted, risks running contrary to the PRA's secondary statutory objective to make the UK internationally competitive.

In addition, the inclusion of group executives "responsible for material business remotely booked into the PRA-authorised entity" in table D1 should be considered, particularly as existing UK SMFs may have in place appropriate controls and oversight of remote booking so as to be able to take accountability for this activity. Any wording should be aligned further with SS5/21, which refers to SMF7 being potentially required where individuals have "significant influence over the branch's booking arrangements", rather than simply responsible for material business booked into the PRA-authorised entity.

We also consider that the inclusion of Controllers and their representatives within the definition of the SMF7 has the potential to run contrary to the PRA's secondary competitiveness objective, since the prospect of personal regulatory accountability for overseas controllers is likely to be perceived as unattractive by the individuals concerned (who do not currently fall within the scope of the Senior Managers Regime).

## **4. Regulatory references**

We note that the PRA's proposals in respect of regulatory references are not aligned with those from the FCA. By way of overarching comment, we think that the rules should be consistent between the two regulators to avoid duplication.

Our members believe that reducing the window for responding to regulatory references to four weeks would make planning and resourcing more efficient. Firms preparing references should have the relevant information readily available, therefore, they should not be prejudiced by the reduction in the prescribed timeframe.

We would also propose that the requirement to request regulatory references from anyone who has been the candidate's employer in the past six years, be limited to employers which are caught under the SM&CR regime. It is the experience of our members, that employers that are not caught under the SM&CR, such as non-financial services businesses and/or overseas financial services firms, do not respond to regulatory reference requests as they are under no obligation to do so. Awaiting returns from such firms result in delays in recruitment and the administration of the SM&CR.

## **5. SoRs and MRMs**

Our members consider that the proposal to replace the requirement to submit updated SoRs and MRMs following each change with a periodic six-month submission will reduce the compliance burden for firms, but not significantly. Members note that firms are still required to maintain up-to-date SoRs and MRMs internally at all times, so the operational effort involved in keeping these documents current will remain unchanged.

We further recommend that the PRA consider removing the phrase "at all times", for example to reflect that firms may need to follow an appropriate internal process to monitor for any updates and then to reflect these in the MRMs, with appropriate internal review and approval of content updates prior to finalisation.

With regard to keeping the SoRs as distinct and separate from MRMs, for simpler firms this does not offer flexibility, particularly as the template SoR has excess and administrative / explanatory information that does not need to be repeated and cannot be tailored easily in its current form. Core parts of the SoR template include the allocation in section 3.2 of Prescribed Responsibilities, which can be included in the MRM, with any additional information (which should be succinct). Similar comments apply to section 3.3 and 3.4. The template SoR also appears to be aimed in circumstances where a submission is made for applications (Form A) or updates to significant changes (Form J), but updates may not require a submission if not significant and may be recorded in the firm's own inventory of responsibilities allocation, which could be within the MRM for simpler firms.

Overall, while the proposal introduces some administrative relief, its impact on the compliance burden for firms is likely to be limited.

Some members felt that removing the formal submission requirement could offer greater internal flexibility in managing updates. Accordingly, AFB would suggest retaining the option to include documentation with each submission for material changes, thereby retaining flexibility for firms.

## **6. Inventory of senior management responsibilities**

We support the PRA's proposals for materials to be added to the relevant Supervisory Statements and the PRA's website to make the relevant rules, expectations and guidance underpinning the SM&CR regime easier to navigate. Our members agree that the suggested changes will make the existing guidance more accessible and they are likely to reduce the compliance burden on the firms.

**Association of Foreign Banks  
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**Contact:**

**Ethan Moxam, Senior Associate, Policy and Regulatory Affairs**  
**[ethan.moxam@foreignbanks.org.uk](mailto:ethan.moxam@foreignbanks.org.uk)**

**Andrew Brooke, Director, Policy and Regulatory Affairs**  
**[andrew.brooke@foreignbanks.org.uk](mailto:andrew.brooke@foreignbanks.org.uk)**