

Bank of England and Financial Services Act 2016: Certification and regulatory references

SYSC TP 7

Bank of England and Financial Services Act 2016: Certification and regulatory references

7.1		Application, purpose and definitions								
7.1.1	R	SYSC TP 7 applies as set out in the table in SYSC TP 7.1.2R.								
7.1.2	R	Table: Application of SYSC TP 7								
		<table border="1"> <thead> <tr> <th>Type of firm</th> <th>Parts of SYSC TP 7 that apply</th> </tr> </thead> <tbody> <tr> <td>An SMCR insurance firm except one in the following row</td> <td>All applies</td> </tr> <tr> <td>An SMCR insurance firm that is a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i>)</td> <td>All applies except as follows: (1) SYSC TP 7.4.2R to SYSC TP 7.4.3G do not apply. (2) Subject to (3), SYSC TP 7.4.4R and SYSC TP 7.4.5G do not apply. (3) SYSC TP 7.4.4R and SYSC TP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification).</td> </tr> <tr> <td>All other <i>firms</i></td> <td>Does not apply, except as follows. SYSC TP 7.4.6R, SYSC TP 7.4.7G and SYSC TP 7.6 apply. SYSC TP 7.5 applies to the firms specified in SYSC TP 7.5.</td> </tr> </tbody> </table>	Type of firm	Parts of SYSC TP 7 that apply	An SMCR insurance firm except one in the following row	All applies	An SMCR insurance firm that is a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i>)	All applies except as follows: (1) SYSC TP 7.4.2R to SYSC TP 7.4.3G do not apply. (2) Subject to (3), SYSC TP 7.4.4R and SYSC TP 7.4.5G do not apply. (3) SYSC TP 7.4.4R and SYSC TP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification).	All other <i>firms</i>	Does not apply, except as follows. SYSC TP 7.4.6R, SYSC TP 7.4.7G and SYSC TP 7.6 apply. SYSC TP 7.5 applies to the firms specified in SYSC TP 7.5.
Type of firm	Parts of SYSC TP 7 that apply									
An SMCR insurance firm except one in the following row	All applies									
An SMCR insurance firm that is a <i>Solvency II firm</i> (including a <i>large non-directive insurer</i>)	All applies except as follows: (1) SYSC TP 7.4.2R to SYSC TP 7.4.3G do not apply. (2) Subject to (3), SYSC TP 7.4.4R and SYSC TP 7.4.5G do not apply. (3) SYSC TP 7.4.4R and SYSC TP 7.4.5G apply where the requirement to obtain a reference arises under SYSC 22.2.1R(1)(b) (certification).									
All other <i>firms</i>	Does not apply, except as follows. SYSC TP 7.4.6R, SYSC TP 7.4.7G and SYSC TP 7.6 apply. SYSC TP 7.5 applies to the firms specified in SYSC TP 7.5.									
7.1.3	G	<p>SYSC TP 7:</p> <ol style="list-style-type: none"> (1) explains how the certification regime described in SYSC 27 applies during the certification transitional period described in SYSC TP 7.2.1G; (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references) and with benchmark activities; and (3) has certain other transitional provisions relating to the amendments made to the <i>FCA Handbook</i> by the Individual Accountability (Dual-Regulated Firms) Instrument 2018. 								
7.1.4	G	<ol style="list-style-type: none"> (1) The main time period for which SYSC TP 7 operates is 2018 to 2019. (2) There are transitional provisions that can apply beyond that period. They are based on events occurring during that period. 								
7.1.5	R	The terms in the first column of the table in SYSC TP 7.1.6R, where they appear in bold in SYSC TP 7, have the meaning in the corresponding row of column 2 for the purposes of SYSC TP 7.								
7.1.6	R	Table: glossary of bespoke terms used in SYSC TP 7								

Part One: General

Defined term	Meaning	
SMCR insurance firm	has the meaning set out in the amendments to the <i>Glossary</i> to be made by the Individual Accountability (Dual-Regulated Firms) Instrument 2018).	
Part Two: Dates		
Defined term	Meaning	
certification transitional period	the one year period beginning on 10 December 2018 and ending on 10 December 2019 referred to in regulation 2 of the insurance firms commencement SI (Appointed days for the coming into force of section 21 and Schedule 4 for insurers)	
general commencement date	10 December 2018	
insurance firms commencement SI	the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018 (SI 2018/990)	
7.2	Certification: The certification transitional period	
7.2.1	G Under the insurance firms commencement SI , the obligation in section 63E(1) of the <i>Act</i> for an <i>SMCR firm</i> to take reasonable care to ensure that no <i>employee</i> of the <i>firm</i> performs an <i>FCA certification function</i> , unless the <i>firm</i> has issued the <i>employee</i> with a valid certificate, does not apply until the end of the certification transitional period .	
7.2.2	G However, other parts of the <i>FCA Handbook</i> and the <i>Act</i> about <i>certification employees</i> apply in the certification transitional period .	
7.2.3	G The table in SYSC TP 7.2.4G explains how the requirements of the <i>FCA Handbook</i> and the <i>Act</i> about <i>certification employees</i> apply in the certification transitional period .	
7.2.4	G Table: How the certification regime applies in the certification transitional period	
Provision in the Act or the Handbook	What that provision is about	How it applies in the certification transitional period
<i>Glossary</i> definition of <i>certification employee</i>		During the certification transitional period , the <i>Glossary</i> definition of <i>certification employee</i> covers everyone who would need a certificate to perform their job if the obligation to issue certificates were in force
SYSC 27.2 and the parts of the <i>Act</i> on which it gives <i>guidance</i>	Issuing certificates and fitness	Does not apply
SYSC 27.3	Territorial scope of the certification regime	
SYSC 27.4	General material about the scope of the certification regime	
SYSC 27.5	Exclusions for emergency and temporary appointments	Applies for the purpose of those parts of the <i>FCA Handbook</i> and the <i>Act</i> that are in force as described in this table
SYSC 27.6	Other exclusions	
SYSC 27.7	Specification of functions	
SYSC 27.8	Definitions of the <i>FCA</i> certification functions	

7.2.4	G	Table: How the certification regime applies in the certification transitional period		
		Provision in the Act or the Handbook	What that provision is about	How it applies in the certification transitional period
		SYSC 22	Regulatory references	Obligation to obtain a reference does not apply because the obligation to get a reference is triggered by issuing a certificate. SYSC TP 7.4 has exemptions that apply after the certification transitional period .
		SYSC 25	SYSC 25 says that the <i>management responsibilities map</i> should say whether <i>persons</i> described or identified in the <i>management responsibilities map</i> are <i>certification employees</i>	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force
		COCON		Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force. This applies even if they have not been notified: (a) that COCON applies to them; or (b) of the <i>rules</i> that apply to them. COCON also applies to those who would have been excluded from the certification regime by SYSC 27.5.1R (Emergency appointments) or SYSC 27.5.3R (Temporary UK role).
		Section 64B of the Act	<i>Firm</i> should ensure that all <i>persons</i> subject to COCON are notified <i>Firm</i> should take reasonable steps to ensure that those <i>persons</i> understand how COCON applies to them.	
		The parts of SUP 15.3 that deal with COCON breaches	Notifying a significant breach of COCON to the FCA	
		Section 64C of the Act and SUP 15.11	Notifying the FCA of disciplinary action	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force

7.3 General material about certification

7.3.1	G	<p>(1) SYSC 27.5.1R (Emergency appointments) allows a <i>firm</i> to appoint someone (P) to perform a function which would normally be an <i>FCA certification function</i> without P becoming a <i>certification employee</i>. There is a maximum period for which the appointment can last.</p> <p>(2) When calculating the maximum time period in (1), the <i>firm</i> need not take into account any time spent by P before the general commencement date performing what will become the <i>FCA certification function</i> in (1).</p> <p>(3) When a <i>firm</i>, after the end of the certification transitional period, is calculating the maximum time period in (1), the <i>firm</i> should take into account any time spent by P during the certification transitional period performing the <i>FCA certification function</i> in (1).</p>
7.3.2	G	<p>(1) SYSC 27.5.1R only applies where P (as referred to in SYSC TP 7.3.1G) is providing cover for a <i>certification employee</i> whose absence is reasonably unforeseen.</p> <p>(2) SYSC 27.5.1R may still apply if the absence referred to in (1) began before the general commencement date or during the certification transitional period.</p>
7.3.3	G	<p>(1) Some <i>FCA certification functions</i> only apply where the place of performance of the function has a connection with the <i>United Kingdom</i> (for example, it is carried on there).</p> <p>(2) SYSC 27.5.3R (Temporary UK role (the 30-day rule)) allows a <i>person</i> (P) to carry on a function for a <i>firm</i> that would normally be an <i>FCA certification function</i> because of its connection with the <i>United Kingdom</i> without P becoming a <i>certification employee</i>. There is a time limit on how long the <i>firm</i> can allow P to do this.</p> <p>(3) When calculating the time limit in (2), the <i>firm</i> need not take into account any time spent by P before the general commencement date performing functions with a <i>United Kingdom</i> connection.</p> <p>(4) When a <i>firm</i>, after the end of the certification transitional period, is calculating the maximum time period in (1), the <i>firm</i> should take into account any time spent by P during the certification transitional period performing functions with a <i>United Kingdom</i> connection.</p>
7.4		Transitional provisions about regulatory references
7.4.1	R	<p>(1) If on the general commencement date an <i>employee</i> (P) is already performing an <i>FCA certification function</i> for an <i>SMCR firm</i> (A), the obligation under SYSC 22 (Regulatory references) for A to obtain a reference when issuing a certificate (including reissuing a certificate) for P for that <i>FCA certification function</i> does not apply either on or after the end of the certification transitional period.</p> <p>(2) If there has been a significant change in P's responsibilities forming part of that <i>FCA certification function</i> as compared to the position on the general commencement date, paragraph (1) ceases to apply from that time.</p>
7.4.2	R	<p>SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an <i>approved person</i> that:</p> <p>(1) is made before the general commencement date and is continued in force by SUP TP 11.7 (In-flight applications: Conversion); or</p> <p>(2) is made under SUP TP 11.15 (Applications of approved persons to take effect from the commencement date).</p>
7.4.3	G	SYSC 22.2.4R (Obligation to revise references) does not apply to references given before the general commencement date .
7.4.4	R	<p>Question (F) (disciplinary action) in Part One of SYSC 22 Annex 1R (Template for regulatory references given by SMCR firms and disclosure requirements) does not require disclosure of breaches of individual conduct requirements referred to in question (F) if:</p> <p>(1) the disciplinary action referred to in that item took place before the general commencement date; and</p>

		(2) the <i>firm's</i> records do not show whether the conduct that was subject to disciplinary action amounted to a breach of those individual conduct requirements.
7.4.5	G	The term individual conduct requirements in SYSC TP 7.4.4R is defined in Section One of Part Two of SYSC 22 Annex 1R.
7.4.6	R	If: <ol style="list-style-type: none"> (1) a <i>firm</i> (A) asks another <i>firm</i> (B) for a reference before the general commencement date; but (2) B gives the reference after that date; SYSC 22 (Regulatory references) in the form it is in at the time in (2) applies to B.
7.4.7	G	SYSC 22 in the form it is in after the general commencement date applies to a reference requested or given after the general commencement date even if the matters covered by the reference occurred before then.
7.5		Transitional provisions about benchmarks and the certification regime
7.5.1	G	SYSC 27.6.4R excludes <i>benchmark activities</i> from the certification regime. SYSC TP 7.5 brings certain activities in relation to benchmarks back into the certification regime.
7.5.2	R	SYSC 27 (Senior managers and certification regime: Certification regime) applies to a <i>person with permission</i> to carry on the <i>regulated activity</i> of <i>administering a specified benchmark</i> acting as such.
7.5.3	G	As a consequence of the <i>benchmarks regulation</i> , the <i>regulated activities</i> referred to in SYSC TP 7.5.2R will cease to apply in certain circumstances (see SUP TP 10 for an explanation of those circumstances).
7.5.4	G	The effect of SYSC TP 7.5.2R is that SYSC 27 continues to apply to <i>firms</i> which still have <i>permission</i> to carry on the <i>regulated activity</i> in SYSC TP 7.5.2R when carrying on that activity.
7.6		Miscellaneous
		Common platform requirements
7.6.1	G	The Individual Accountability (Dual-Regulated Firms) Instrument 2018 renumbered material that used to be in SYSC 4 and SYSC 5 so that it now appears in SYSC 24 to SYSC 27. That instrument updated <i>FCA Handbook</i> cross-references accordingly.
7.6.2	G	The requirements of chapters SYSC 24 to SYSC 27 no longer form part of the <i>common platform organisational requirements</i> and a reference to anything in SYSC 4 or SYSC 5 does not include any material referred to in SYSC TP 7.6.1G.

