

Handbook Notice No 88

May 2021

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1 Overview

Legislative changes

- 1.1 On 27 May 2021, the Board of the Financial Conduct Authority (FCA) made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
CP20/23	Individual Accountability (Miscellaneous Amendments) Instrument 2021	2021/18	02/06/2021

Summary of changes

- 1.2 The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

- 1.3 Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

FCA Board dates for 2021

- 1.4 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

FCA board meetings		
June	24	2021
July	22	2021
September	30	2021
October	21	2021
November	25	2021
December	16	2021

2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the FCA Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 27 May 2021. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see www.bankofengland.co.uk/pru/Pages/publications/default.aspx.

Individual Accountability (Miscellaneous Amendments) Instrument 2021

- 2.2 Following consultation in [CP20/23](#), the FCA Board has made changes to the Handbook sections listed below:

SYSC 25.4
FIT 1.3
**SUP 10A.14, 10C.9, 10C.10, 10C.11, 10C.14, 10C Annex
2G and 10C Annex 6R Form D**

- 2.3 In summary, this instrument makes changes to the Handbook to reflect our expectations for firms to notify us of when an Approved Person at an Appointed Representative firm (AR) or a Senior Manager takes temporary leave for longer than 12 weeks (long-term leave). These changes include adding an additional field to Form D (Changes to personal information/application details and conduct breaches/disciplinary action related to conduct) to enable firms to notify us that the relevant individual is taking leave or returning from that leave.
- 2.4 We received 7 responses to our proposals in Chapter 2 of CP20/23. Respondents were supportive of our proposal to provide clarity on our expectations for firms to notify us of when an Approved Person at an AR or a Senior Manager takes long-term leave. Some respondents requested clarity on how these proposals interact with other FCA rules. We therefore included additional Handbook Guidance and proceeded with our proposals as set out in Chapter 2 of CP20/23.
- 2.5 This instrument comes into force on 2 June 2021. Feedback has been published in in Chapter 3 of this Handbook Notice.

3 Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate policy statement published by the FCA.

CP20/23: Chapter 2 – Individual Accountability (Miscellaneous Amendments) Instrument 2021

Background

- 3.2 We received feedback and requests for clarity on how long-term leave may impact a Senior Manager's ability to retain their regulatory approval and whether a firm can hold open approved roles for an individual on long-term leave.
- 3.3 To ensure that a consistent approach is taken, we proposed to clarify our expectations for firms notifying us of when an Approved Person at an Appointed Representative firm (AR) or a Senior Manager takes long-term leave through new rules and guidance in the FCA Handbook. The PRA proposed to clarify its expectations through new rules and guidance in its Rulebook and updated supervisory statements.
- 3.4 In Chapter 2 of [CP20/23](#), we clarified that where an individual who performs a controlled function at an AR or a Senior Management Function (SMF) takes temporary, long-term leave, and the firm intends to keep the role open for that individual to return to, the firms would not need to notify us that the individual is no longer performing the role by submitting a Form C. Firms would also not be required to seek re-approval for the individual once they have returned to their role. Firms should still ensure that where the individual taking long-term leave is carrying out an FCA (or PRA) required function, another individual is appointed to perform that required function during the interim period.
- 3.5 We proposed that where an individual, who is performing a controlled function at an AR or a SMF, is temporarily absent from their role, the firm should notify us of the individual being on long-term leave via Form D. We proposed amending Form D to include an additional field for firms to use to notify us that the relevant individual is taking leave or returning from that leave.
- 3.6 This does not affect cases where a firm is aware, or becomes aware, that the individual will not be returning to their role. In these cases, firms should continue to notify the FCA and, where applicable, the PRA, that the individual's approval should be removed using Form C (Notice of ceasing

to perform controlled functions including senior management functions) or Form E (Internal transfer of an approved person) as appropriate.

- 3.7 We did not propose any changes to the requirement for firms to provide the FCA and, where applicable, the PRA, with a revised Statement of Responsibilities where there has been any significant change in the responsibilities of a Senior Manager. Where the individual on long-term leave had been allocated prescribed responsibilities (PRs), firms are expected to follow the existing process for removing PRs from that individual and allocating the PRs to another individual performing a SMF in that firm. This is via Form J (Notification of Significant Changes in Responsibilities of a Person Performing a Senior Management Function).

Feedback

- 3.8 We received 7 responses to the proposals we consulted on in Chapter 2 of CP20/23.
- 3.9 One respondent requested clarity on expectations for evidencing these arrangements on a firm's Responsibilities Map.
- 3.10 The same respondent provided feedback on our proposal to continue to require firms to notify us of any changes to Statements of Responsibilities via Form J. The respondent states that the process is cumbersome, and that Form D (and Form A) should be modified to incorporate some of the functionality of Form J. The respondent also sets out that it would be helpful for the application for approval for the individual providing cover to be 'fast tracked'.
- 3.11 One respondent requested clarity on how to carry out annual fitness and propriety assessments for individuals who are on long-term leave and therefore cannot participate in the assessments, and whether individuals who do not participate in their own assessment can still be considered fit and proper.
- 3.12 One respondent requested clarity on expectations for Certified staff taking long-term leave and whether this would need to be reflected on the Directory.
- 3.13 Two respondents requested clarity on the 12-week rule. In particular, whether any notification is required for when an individual is performing an SMF role under the 12-week rule and at what stage in the 12 weeks a firm should apply for approval for an individual who is providing cover for an absent Senior Manager.
- 3.14 One respondent suggested that the notification requirement should only apply for unplanned absences and that a notification requirement should not be required for individuals taking parental leave due to the burden of submitting multiple notifications, in particular where an individual takes

parental leave in 2 tranches. The same respondent also suggested that certain SMF and controlled function-holders, for example individuals carrying out SMF27 or CF30, should be exempt from the notification requirement.

- 3.15 One respondent queried why ARs are in scope of these proposals and opined that ARs should be moved into the scope of the Senior Managers and Certification Regime (SM&CR).

Our response

- 3.16 Given the feedback received predominantly supported our proposals, we are including additional Handbook Guidance and proceeding in line with our proposals as set out in Chapter 2 of CP20/23. Our response to each area of feedback is set out separately below.

Responsibilities Maps

- 3.17 In response to the feedback received, we are adding a guidance provision at SUP 10C to make clear that Responsibilities Maps, which set out the firm's management and governance arrangements, should continue to be revised to reflect any relevant appointments and changes in responsibilities. This is in line with the existing requirement that a SM&CR firm must maintain a comprehensive and up-to-date document that describes its management and governance arrangements.

Ongoing fit and proper assessments

- 3.18 We recognise that in certain circumstances, an individual may not be practically able to participate in a fitness and propriety assessment while they are on long-term leave. In response to feedback, we have decided to add a guidance provision at SUP 10C to provide comfort that it may not always be appropriate or necessary for an individual to participate in such an assessment while they are on long-term leave in order to comply with the relevant requirement.
- 3.19 Firms would nevertheless remain responsible for assessing the continuing fitness and propriety of their staff, having regard in particular to the guidance in the FIT sourcebook and s.63(2A) of the Financial Services and Markets Act. Firms should also consider whether it may be necessary to refresh any aspects of the assessment upon the individual's return to work.

Certified staff

- 3.20 Where a member of Certified staff no longer holds a relevant role, as with any individual meeting the definition of Directory person, firms need to tell us when the role ended in accordance with the reporting requirements on Directory persons in SUP 16.26. Where the firm is keeping the same role

open for a Directory person while the individual is on long-term leave, the firm would not need to notify us, and the individual would continue to appear as active on the Financial Services Register.

12-week rule

- 3.21 Information and guidance on the 12-week rule can be found in SUP 10C. The amendments to our rules and guidance make clear that firms are required to notify us of when a relevant individual has been absent for more than 12 weeks. The notification can be made before the end of the 12-week period where the firm is aware that the individual's absence will be longer than 12 weeks. Firms should follow the provisions of our Handbook and apply for approval for interim appointments as soon as it becomes apparent that the individual will be performing an FCA-designated SMF for more than 12 weeks.

Application of notification requirement

- 3.22 We have decided to not amend the rules to adjust the application of the notification requirement according to the type of long-term leave being taken or the specific function AR or SMF function being performed. This is to ensure a clear and consistent approach is taken to notifying the FCA and, where relevant, the PRA. We consider that the potential benefits of doing so would be outweighed by the costs of adopting a more complex approach.

Complexity of forms

- 3.23 We acknowledge that where the individual on long-term leave had been allocated PRs, the firm would be expected to submit multiple notifications, i.e. submitting a Form D to notify us of the individual's absence, and a Form J to notify us of any change in responsibilities. We are not currently reviewing the SM&CR forms but agree there would be merit in doing so at a suitable opportunity. We will take this feedback under consideration for any future work in this area.

Approval process

- 3.24 We do not currently have any plans to introduce a process to 'fast track' certain applications for approval. Applications for approval go through a robust process which enables us to evaluate the candidate's fitness and propriety and the firm's systems and controls and, where relevant, request additional information to complete our assessment.

Appointed representatives and the SM&CR

- 3.25 We note the reference to ARs not being in scope of SM&CR. Relevant legislation does not give us the power to extend the SM&CR to ARs. ARs remain subject to the Approved Persons Regime. This means relevant

individuals in ARs also require our approval to hold certain roles. We are therefore introducing equivalent rules and guidance on long-term leave for Approved Persons in ARs and for Senior Managers in SM&CR firms.

Cost benefit analysis and compatibility statement

- 3.26 As we have made no significant alterations to our proposals, the cost benefit analysis and compatibility statement from the CP have not changed.

Equality and diversity issues

- 3.27 In CP20/23, we set out our equality and diversity considerations. We said that our proposals seek to promote equality of opportunity between people who share a protected characteristic under the Equality Act 2010 and those who do not, and better support groups with certain protected characteristics. Our analysis on equality and diversity has not changed as we did not receive feedback on this and we are proceeding with the proposals as set out in Chapter 2 of CP20/23.
- 3.28 The changes made by this instrument are listed in Chapter 2 of this Handbook Notice.

4 Additional information

Making corrections

- 4.1 The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2 This Notice is published on the FCA website and is available in hardcopy.
- 4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at www.handbook.fca.org.uk/instrument. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4 The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5 The consolidated text of the Handbook can be found on the FCA's website at www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.
- 4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

Obligation to publish feedback

- 4.7 This Notice, and the feedback to which paragraph 1.3 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

- 4.8 We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbookproduction@fca.org.uk (or see contact details at the front of this Notice).

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This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 27 May 2021.

It also may contain information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

Ayesha Dayaji

Tel: 020 7066 0575

Email: Ayesha.Dayaji@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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