

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><tr><th>Type of firm</th><th>Parts of SYSC TP 7 that apply</th></tr><tr><td>An <i>SMCR insurance firm</i> except one in the following row</td><td>All applies except SYSC TP 7.7</td></tr><tr><td>An <i>SMCR insurance firm</i> 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). (4) SYSC TP 7.7 does not apply.</td></tr><tr><td>A <i>core SMCR firm</i>, an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> other than a <i>pure benchmark SMCR firm</i></td><td>All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).</td></tr><tr><td>A <i>pure benchmark SMCR firm</i></td><td>All applies, except that SYSC TP 7.2 (except as explained in the following paragraph), SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.3G to SYSC TP 7.7.6G do not apply. The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled “SYSC 22” about providing references applies to an <i>SMCR firm</i>. The material about obtaining references does not apply as the certification regime does not apply to a <i>pure benchmark SMCR firm</i>.</td></tr><tr><td>All other <i>firms</i></td><td>Does not apply, except as follows. The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled “SYSC 22” about providing references applies to an <i>SMCR firm</i>. SYSC TP 7.6 applies.</td></tr></table>	Type of firm	Parts of SYSC TP 7 that apply	An <i>SMCR insurance firm</i> except one in the following row	All applies except SYSC TP 7.7	An <i>SMCR insurance firm</i> 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). (4) SYSC TP 7.7 does not apply.	A <i>core SMCR firm</i> , an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> other than a <i>pure benchmark SMCR firm</i>	All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).	A <i>pure benchmark SMCR firm</i>	All applies, except that SYSC TP 7.2 (except as explained in the following paragraph), SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.3G to SYSC TP 7.7.6G do not apply. The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled “SYSC 22” about providing references applies to an <i>SMCR firm</i> . The material about obtaining references does not apply as the certification regime does not apply to a <i>pure benchmark SMCR firm</i> .	All other <i>firms</i>	Does not apply, except as follows. The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled “SYSC 22” about providing references applies to an <i>SMCR firm</i> . SYSC TP 7.6 applies.
Type of firm	Parts of SYSC TP 7 that apply													
An <i>SMCR insurance firm</i> except one in the following row	All applies except SYSC TP 7.7													
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A <i>core SMCR firm</i> , an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> other than a <i>pure benchmark SMCR firm</i>	All applies, subject to the adjustments in SYSC TP 8 (Bank of England and Financial Services Act 2016: Application to claims management companies).													
A <i>pure benchmark SMCR firm</i>	All applies, except that SYSC TP 7.2 (except as explained in the following paragraph), SYSC TP 7.3, SYSC TP 7.4.1R and SYSC TP 7.7.3G to SYSC TP 7.7.6G do not apply. The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled “SYSC 22” about providing references applies to an <i>SMCR firm</i> . The material about obtaining references does not apply as the certification regime does not apply to a <i>pure benchmark SMCR firm</i> .													
All other <i>firms</i>	Does not apply, except as follows. The material in the row of SYSC TP 7.2.4G (Table: How the certification regime applies in the certification transitional period) whose first column is labelled “SYSC 22” about providing references applies to an <i>SMCR firm</i> . SYSC TP 7.6 applies.													

7.1 Application, purpose and definitions

SYSC TP 7.5 applies to the firms specified in SYSC TP 7.5.

7.1.3 G SYSC TP 7:

- (1) explains how the certification regime described in SYSC 27 applies during the **certification transitional periods** described in SYSC TP 7.2.1G;
- (2) has certain transitional provisions dealing with SYSC 22 (Regulatory references) and with benchmark activities;
- (3) has certain other transitional provisions relating to the amendments made to the *FCA Handbook* by the Individual Accountability (Dual-Regulated Firms) Instrument 2018, the Individual Accountability (FCA-Authorised Firms) Instrument 2019 and the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020;
- (4) is adjusted and supplemented by SYSC TP 8 in relation to certain claims management *firms*; and
- (5) does not apply to a *firm* that becomes an *SMCR firm* after 31 March 2021 except that:
 - (a) it may apply after then in relation to certain claims management *firms* covered by SYSC TP 8; and
 - (b) the parts of SYSC TP 7 that are described in the table in SYSC TP 7.1.2R (Table: Application of SYSC TP 7) as applying to “All other *firms*” might apply although in practice the material about employment references will not normally apply because of the time period in which SYSC TP 7 operates as described in SYSC TP 7.1.4G.

- 7.1.4 G
- (1) The main time period for which SYSC TP 7 operates is 2018 to 2021.
 - (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

**commence-
ment SIs** the **insurance firms commencement SI** and the **solo firms commencement SI**

**insurance
firms com-
mencement
SI** the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018 (SI 2018/990)

**solo firms
commence-
ment SI** The Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2019 (SI 2019/1136) as amended by The Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) (Amendment) Regulations 2020 (SI 2020/929)

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Part Two: Dates

(1)	(2)	(3)	(4)
			Meaning: Benchmark firms

Defined term	Meaning: Insurers	Meaning: Others	
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)	the period beginning on the general commencement date and ending on 31 March 2021 (as referred to in regulation 2(6) of the solo firms commencement SI)	Does not apply
general commencement date	10 December 2018	9 December 2019 (as referred to in regulation 2(4) of the solo firms commencement SI)	7 December 2020 (as referred to in regulation 2(5) of the solo firms commencement SI)
Note (1): Column (2) (Insurers) applies to an <i>SMCR insurance firm</i> (to the extent that SYSC TP 7 applies to such <i>firms</i>).			
Note (2): Column (3) (Others) applies to a <i>core SMCR firm</i> , an <i>enhanced scope SMCR firm</i> and a <i>limited scope SMCR firm</i> but not to a <i>pure benchmark SMCR firm</i> .			
Note (3): Column (4) (Benchmark firms) applies to a <i>pure benchmark SMCR firm</i> .			

7.2 Certification: The certification transitional period

- 7.2.1 G Under the **commencement SIs**, the obligation in section 63E(1) of the *Act* for an *SMCR firm* to take reasonable care to ensure that no *employee* of the *firm* performs an *FCA certification function*, unless the *firm* has issued the *employee* with a valid certificate, does not apply until the end of the **certification transitional period**.
- 7.2.2 G However, other parts of the *FCA Handbook* and the *Act* about *certification employees* apply in the **certification transitional period**.
- 7.2.3 G The table in SYSC TP 7.2.4G explains how the requirements of the *FCA Handbook* and the *Act* about *certification employees* 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

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 27.2 and the parts of the Act on which it gives guidance	Issuing certificates and fitness	<p>Does not apply except as follows.</p> <p>A <i>firm</i> may issue a certificate during the certification transitional period. The reason it may wish to do this is so that when the requirement in the Act to issue certificates comes into force, the <i>firm</i> will have issued all the certificates that it needs to have issued to allow its <i>certification employees</i> to carry on their jobs after the certification transitional period.</p> <p>If it does issue a certificate during the certification transitional period, that certificate is valid after the end of the certification transitional period for the twelve-month period provided for in section 63F of the Act (Issuing of certificates). That twelve-month period runs from the date of issue, even though it was issued during the certification transitional period.</p> <p>This means that a certificate issued before 31 March 2020 will not be effective.</p> <p>All the provisions of the Act and the <i>FCA Handbook</i> about certificates apply to a certificate issued in the certification transitional period.</p>
		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 Act that are in force as described in this table
		SYSC 27.6	Other exclusions	

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 27.7	Specification of functions	
		SYSC 27.8	Definitions of the FCA certification functions	
		SYSC 27.9	Material relating to several FCA certification functions	
		SYSC 22	Regulatory references	<p>Except as explained later in this row about SYSC 22, the obligation to obtain a reference does not apply because the obligation to get a reference is triggered by issuing a certificate.</p> <p>SYSC TP 7.4 has exemptions that apply after the certification transitional period.</p> <p>If a <i>firm</i> wishes to issue a certificate during the certification transitional period as described in the row of this table column 1 of which is titled "SYSC 27.2 and the parts of the Act on which it gives guidance" the obligation on the <i>firm</i> to ask for a reference and the obligation of other <i>firms</i> to give one apply.</p>
		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

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
		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 <i>COCON</i> applies to them; or (b) of the <i>rules</i> that apply to them. <i>COCON</i> 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 <i>COCON</i> are notified <i>Firm</i> should take reasonable steps to ensure that those <i>persons</i> understand how <i>COCON</i> applies to them.	Applies to everyone who would need a certificate to perform their job if the obligation to issue certificates was in force
		The parts of SUP 15.3 that deal with <i>COCON</i> breaches	Notifying a significant breach of <i>COCON</i> to the <i>FCA</i>	
		Section 64C of the Act and SUP 15.11	Notifying the <i>FCA</i> of disciplinary action	

7.3 General material about certification

- 7.3.1 G (1) SYSC 27.5.1R (Emergency appointments) allows a *firm* to appoint someone (P) to perform a function which would normally be an *FCA certification function* without P becoming a *certification employee*. There is a maximum period for which the appointment can last.
- (2) When calculating the maximum time period in (1), the *firm* need not take into account any time spent by P before the **general commencement date** performing what will become the *FCA certification function* in (1).
- (3) When a *firm*, after the end of the **certification transitional period**, is calculating the maximum time period in (1), the *firm* should take into account any time spent by P during the **certification transitional period** performing the *FCA certification function* in (1).
- 7.3.2 G (1) SYSC 27.5.1R only applies where P (as referred to in SYSC TP 7.3.1G) is providing cover for a *certification employee* whose absence is reasonably unforeseen.
- (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**.
- 7.3.3 G (1) Some *FCA certification functions* only apply where the place of performance of the function has a connection with the *United Kingdom* (for example, it is carried on there).

- (2) SYSC 27.5.3R (Temporary UK role (the 30-day rule)) allows a *person* (P) to carry on a function for a *firm* that would normally be an *FCA certification function* because of its connection with the *United Kingdom* without P becoming a *certification employee*. There is a time limit on how long the *firm* can allow P to do this.
- (3) When calculating the time limit in (2), the *firm* need not take into account any time spent by P before the **general commencement date** performing functions with a *United Kingdom* connection.
- (4) When a *firm*, after the end of the **certification transitional period**, is calculating the maximum time period in (1), the *firm* should take into account any time spent by P during the **certification transitional period** performing functions with a *United Kingdom* connection.

7.4 Transitional provisions about regulatory references

- 7.4.1 R
 - (1) If on the **general commencement date** an *employee* (P) is already performing an *FCA certification function* for an *SMCR firm* (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 *FCA certification function* does not apply during, at the end of or after the end of the **certification transitional period**.
 - (2) If there has been a significant change in P's responsibilities forming part of that *FCA certification function* as compared to the position on the **general commencement date**, paragraph (1) ceases to apply from that time.
- 7.4.2 R SYSC 22.2.1R (Obligation to obtain a regulatory reference) does not apply to an application for approval as an *approved person* that:
 - (1) is made before the **general commencement date** and is continued in force by SUP TP 11.7 or SUP TP 11A.7 (In-flight applications: Conversion); or
 - (2) is made under SUP TP 11.15 or SUP TP 11A.15 (Applications of approved persons to take effect from the commencement date).
- 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 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:
 - (1) the disciplinary action referred to in that item took place before the **general commencement date**; and
 - (2) the *firm's* 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:
 - (1) a *firm* (A) asks another *firm* (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.
- 7.4.8 R [deleted]

7.5 Transitional provisions about benchmarks and the certification regime

- 7.5.1 G SYSC 27.6.4R excludes *benchmark activities* 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 *person with permission* to carry on the *regulated activity* of *administering a specified benchmark* acting as such.
- 7.5.3 G As a consequence of the *benchmarks regulation*, the *regulated activities* 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 *firms* which still have *permission* to carry on the *regulated activity* 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 *FCA Handbook* cross-references accordingly.
- 7.6.2 G The requirements of chapters SYSC 24 to SYSC 27 no longer form part of the *common platform organisational requirements* and a reference to anything in SYSC 4 or SYSC 5 does not include any material referred to in SYSC TP 7.6.1G.

7.7 Qualification conditions for FCA-authorised firms

Firm classification: Effect of pre-commencement events

- 7.7.1 R If a *firm* is treated as a *core SMCR firm*, an *enhanced scope SMCR firm* or a *limited scope SMCR firm* immediately before the **general commencement date** for the purposes of SUP TP 11A (Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms) it retains that status after the **general commencement date** unless and until it changes under SYSC 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms).
- 7.7.2 G For example if before the **general commencement date** a *firm* has opted up to be an *enhanced scope SMCR firm* it remains an *enhanced scope SMCR firm* after the **general commencement date**. It may then elect to cease being an *enhanced scope SMCR firm* using a Form O under the procedure in SYSC 23 Annex 1 unless it also meets one of the other qualifications for being an *enhanced scope SMCR firm*.
- 7.7.3 G A calculation period, an averaging period or a reporting period as referred to in Part Eight of SYSC 23 Annex 1 (Part Eight: Financial qualification condition for being an *enhanced scope SMCR firm*) may begin or end before the **general commencement date**.

Financial qualification conditions for enhanced scope SMCR firms

- 7.7.4 R (1) This *rule* applies to a *firm* that:
- (a) does not meet one of the qualification conditions for being an *enhanced scope SMCR firm* in Part 8 of SYSC 23 Annex 1 (Financial qualification condition for being an *enhanced scope SMCR firm*) at the date in SUP TP 11A.23.3R(2) (Deciding which category a firm is in); but
- (b) meets it between that date and the **general commencement date**.

- (2) The one-year period referred to in Part 10 of SYSC 23 Annex 1 (When a firm becomes an enhanced scope SMCR firm) begins on the date the *firm* met that qualification condition, even though that date is before the **general commencement date**.

7.7.5 G The situation in SYSC TP 7.7.4R may apply to a *firm* because, for example, its accounting reference date falls between the date in SUP TP 11A.23.3R(2) and the **general commencement date**.

Consumer credit reporting

- 7.7.6 G
- (1) SYSC 23 Annex 1 8.15R deals with cases in which the period in relation to which the financial calculations are made to test whether a *firm* meets one of the financial qualification conditions for being an *enhanced scope SMCR firm* is adjusted because the relevant reporting requirements did not apply for the whole period. SYSC 23 Annex 1 8.16G gives examples of why this may happen.
- (2) One example in SYSC 23 Annex 1 8.16G is that the relevant reporting requirements have not existed for the whole of the period. A particular example of this is consumer credit reporting requirements. At the time the financial qualification conditions for being an *enhanced scope SMCR firm* first came into force in 2019, the relevant reporting requirements had not existed for a full three years.

