

SENIOR MANAGERS AND CERTIFICATION REGIME (SMCR)

CHECKLIST: EMPLOYMENT CONTRACT IMPACTS

NOTES TO CHECKLIST

- 1 This checklist sets out a suggested list of some of the key changes required to employment contracts as part of SMCR implementation. It is non-exhaustive, and employment contracts will need to be reviewed and tailored as appropriate.
- 2 While it is likely that new employment contract templates will need to be prepared, and existing templates reviewed and updated at the implementation stage of the SMCR, they will also need to be reviewed and updated periodically as part of a firm's ongoing compliance with the SMCR.
- 3 Firms should assess whether any overseas employment contracts also require updating. For example, in respect of the application of the Certification Regime to overseas employees, or in respect of any Senior Managers located overseas.

Section of Contract	Contract Amendments	Drafting Considerations
Senior Managers		
Conditions of Employment	<p>Update such that the individual's employment [in the Senior Manager (SM) role] is conditional upon:</p> <ul style="list-style-type: none"> • FCA approval for carrying out the relevant Senior Management Function(s) (SMF(s)); • The satisfactory clearance of the criminal records check; • The firm obtaining satisfactory regulatory reference(s) in respect of the individual's previous employment; • Compliance with any SMCR-related induction obligations; and • Passing of the firm's fitness & propriety (F&P) assessment, both at the outset and annually. 	<p><i>Consideration should be given to whether the whole of the SM's employment with the firm is made conditional upon compliance with these requirements or just their ability to carry out the SMF.</i></p> <p><i>Firm to consider the extent to which it will mandate requirements for specific induction and/or training requirements.</i></p>
Duties and Obligations	<p>Include contractual obligations on the individual to:</p> <ul style="list-style-type: none"> • Comply with annual F&P assessment process; • Comply with the content of his or her Statement of Responsibilities (SoR), any assigned Prescribed Responsibilities (PRs), and any other assigned responsibilities (as updated and amended from time to time [any such amendment in agreement with the employee]); • Attend all training and carry out any related assessments relating to the individual's PRs, F&P, the Conduct Rules, or other regulatory requirements; • Read, understand and comply with the Conduct Rules; and • Notify the firm of any actual, suspected or impending breaches of the Conduct Rules, or any other matter bringing F&P into question. 	<p><i>Append SoR to employment contract.</i></p> <p><i>Firm to consider whether existing employee notification obligations are satisfactory, or if specific obligations should be included.</i></p> <p><i>Firm to consider whether "12-week rule" should be addressed in the employment contract (i.e. in circumstances where an SMF holder is not capable, willing or permitted to carry on the function, a temporary appointee can take on the obligations).</i></p>

Section of Contract	Contract Amendments	Drafting Considerations
Termination Provisions	<p>Update summary dismissal provisions to include an ability to terminate (without notice) for:</p> <ul style="list-style-type: none"> • Material negligence or wilful default in performance of SMFs/PRs; • Material breach of the Conduct Rules; • An updated regulatory reference being provided by a previous employer that calls into question individual's F&P assessment, or suitability to perform the relevant SMFs; and • Any failure to pass the firm's annual F&P assessment, or the individual otherwise deemed to be no longer fit and proper at any time. 	<p><i>Firm to consider whether current drafting is adequate to give it the ability to terminate for specific SMCR-related failings by the employee.</i></p>
Post-Termination Provisions	<p>Include a contractual obligation on the individual to:</p> <ul style="list-style-type: none"> • Provide satisfactory handover notes (even though only required by Enhanced firms under the SMCR, any firm may opt to include an obligation to provide handover notes); and • Co-operate with the firm [for up to 6 years post-termination] in respect of any investigations that could arise relating to the employee's F&P. <p>Update any requirements dealing with arrangements for the cooperation of the firm and former employee in matters relating to the former employee's new employment as an SM or Certified Person.</p>	<p><i>Firm to consider the appropriate standard to apply, i.e. "satisfactory" or "adequate" handover notes.</i></p> <p><i>Firm to consider the extent to which it will agree, under the contract of employment, to cooperate and assist (if at all) a former employee who requires access to information or documentation held by the firm for the purposes of their new employment as an SM or Certified Person.</i></p>
Certification Regime Staff		
Conditions of Employment	<p>Employment [as Certified Person] conditional upon:</p> <ul style="list-style-type: none"> • Employee passing the firm's F&P assessment (as a pre-condition to employment for new hires, and thereafter as an ongoing requirement); • The firm obtaining satisfactory regulatory references in respect of the employee's previous employment; • Compliance with any SMCR-related induction obligations; and • The firm issuing the employee with a certificate. 	<p><i>Firm to consider the extent to which it will mandate requirements for specific induction and/or training requirements.</i></p>
Duties and Obligations	<p>Include contractual obligations on the employee to:</p> <ul style="list-style-type: none"> • Comply with the firm's annual F&P assessment process; • Attend all training required by the firm in respect of his or her role as a Certified Person, and in respect of the Conduct Rules; • Read, understand and comply with the Conduct Rules; and • Notify the firm of any actual, suspected or impending breaches of the Conduct Rules, or any other matter that might cause the employee's F&P to be called into question. 	<p><i>Firm to consider whether any existing employee notification obligations are satisfactory, or if specific obligations should be included.</i></p>

Section of Contract	Contract Amendments	Drafting Considerations
Termination Provisions	<p>Update summary dismissal provisions to include ability to terminate (without notice) for:</p> <ul style="list-style-type: none"> • Material breach of the Conduct Rules; • An updated regulatory reference being provided by a previous employer that calls into question the employee's F&P assessment, or suitability to perform the certification function; and • Any failure to pass the firm's annual F&P assessment, or the employee otherwise deemed to be no longer fit and proper at any time, resulting in the withdrawal of the employee's certificate. 	<p><i>Firm to consider whether current drafting is adequate to give it the ability to terminate for specific SMCR-related failings by the employee.</i></p>
Post-Termination Provisions	<p>Include a contractual obligation on the employee to co-operate with the firm [for up to 6 years post-termination] in respect of any investigations that could arise relating to the employee's F&P.</p> <p>Update any requirements dealing with arrangements for the cooperation of the employer and former employee in matters relating to the former employee's new employment as a SMF or certificate holder.</p>	<p><i>Firm to consider the extent to which it will agree, under the contract of employment, to cooperate and assist (if at all) a former employee who requires access to information or documentation held by the firm for the purposes of their new employment as an SM or Certified Person.</i></p>
Conduct Rules Staff		
Duties and Obligations	<p>Include contractual obligation on the employee to:</p> <ul style="list-style-type: none"> • Read, understand and comply with the Conduct Rules; and • Attend all training in respect of the Conduct Rules. 	<p><i>Firm to consider whether employees should also be required to pass an assessment component of the training.</i></p>

CHECKLIST: SETTLEMENT AGREEMENT IMPACTS

Section of Contract	Contract Amendments	Drafting Considerations
Duties and Obligations	<ul style="list-style-type: none"> • Include contractual obligation on employee to provide a handover note (SMF holders); • Update terms relating to any reference that the firm will provide to comply with the regulatory reference rules; and • Include provisions relating to the degree to which the firm will assist an SM in the event of any investigation into his conduct as an SM (and vice versa). 	