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Improving access to international talent: policy options for the UK Senior Manager and Certification Regime (SMCR)



Section 1: Executive Summary

The ability of the UK financial sector to attract top international talent is crucial for maintaining its position as a global leader. Whilst there is a consensus view that the Senior Managers and Certification Regime (SMCR) is a valuable mechanism in promoting strong governance and accountability, the regime does pose several challenges which hinder the attraction of international talent, especially for senior roles.

The industry recognises the value and importance of the SMCR and therefore we do not propose to dilute its core concepts through these proposals. However, in order to ensure the regime continues to be fit for purpose following its introduction in 2016, we present a range of policy options to address challenges associated with international perceptions, and to enhance the transparency, consistency and proportionality of the regime. These are intended to help inform the regulators as part of their ongoing consultation on SMCR.

Firstly, addressing negative perceptions of the SMCR internationally is crucial. Extending the 12-week rule and enhancing the approval process experience through a more transparent and user-friendly digital platform can significantly improve the initial experiences of international candidates of temporary and longer-term roles.

Secondly, the increasing number of individual accountability regimes globally necessitates a more coordinated approach. Establishing unilateral or mutual recognition arrangements with jurisdictions that have equivalent regulatory standards can facilitate a more efficient approval process for overseas candidates. This not only reduces the administrative burden on firms, candidates and regulators but also enhances the UK's attractiveness as a destination for top-tier talent, whilst maintaining the high standards of the UK regulatory regime.

Lastly, limiting the scope of the Certification Regime to roles with direct or indirect impact on retail customers and removing the need for annual fitness and propriety assessments can significantly reduce the administration burden and compliance costs of the regime, and reduce the number of overseas candidates subject to unfamiliar and potentially unattractive requirements.

The proposals in this paper dovetail with the commitment by the UK regulators to support economic growth and reduce unnecessary burdens on firms, and if implemented, would enhance the SMCR to help make the UK a more competitive destination for international professionals.

Addressing negative perceptions of the regime internationally

- Extending the 12-week rule to allow overseas candidates to fill temporary SMF roles without prior approval, aligning with visa timelines and hiring cycles.
- Enhancing the approval process experience by improving the digital platform, providing more clarity and communication on the status of applications, and progressing applications pending outstanding information.

Responding to increasing numbers of individual accountability regimes internationally

- Establishing unilateral or mutual recognition arrangements with jurisdictions that have equivalent individual accountability regimes, to facilitate a more streamlined approval process and foster international regulatory cooperation.

Addressing the administrative burden of the Certification Regime

- Limiting the scope of the Certification Regime to roles with direct or indirect impact on retail customers or investors, to reduce unnecessary regulatory burdens.
 - Removing the requirement for annual fitness and propriety assessments for certified staff, to avoid duplication and simplify the process.
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Section 2: Introduction

The financial services industry in the UK has long been a magnet for highly skilled professionals from around the world, contributing significantly to the country's economic growth and innovation. The presence of international talent brings diverse perspectives, expertise and experience, which are essential for fostering a competitive and dynamic financial market. However, the regulatory environment, including the SMCR, plays a pivotal role in shaping the attractiveness of the UK as a destination for top-tier financial professionals.

The SMCR is a key pillar of the UK's regulatory framework for the financial services sector. By enhancing accountability in the financial sector, the regime has helped to enhance consumer trust and confidence in the financial system, which is vital for the stability and growth of the market. The importance of an individual accountability regime has been recognised domestically through use of the SMCR in supervisory action and regulatory publications, as well as internationally with increasing numbers of individual accountability regimes. In summary, the SMCR has been widely recognised as a positive step towards enhancing trust and confidence in the UK's financial services sector, and therefore we do not advocate to dilute the concepts of individual accountability in the UK regulatory system. However, nine years following the introduction of the regime, it is crucial that challenges related to the attraction and retention of international talent are addressed. The UK's exit from the EU and the global competition for talent in the post-pandemic recovery have further highlighted the need to ensure that the UK remains an attractive and competitive destination for high-quality and diverse talent globally.

Our research and a roundtable discussion with industry participants revealed significant challenges created by the operationalisation of the SMCR, which are impacting the UK's access to international talent:

1. Negative perceptions of the SMCR amongst potential international candidates, including its unfamiliarity and complexity. These perceptions are influenced by a lack of transparency and delays during the application and approval process for Senior Manager roles. This is exacerbated by the misalignment of timelines for visa approval and SMCR approval, as the 12-week rule does not provide a sufficiently long exemption period for overseas talent filling temporary positions, resulting in uncertainty for candidates making the move to the UK.
2. A lack of coordination across jurisdictions with similar individual accountability regimes. This results in a lengthy and rigorous approval process for Senior Managers who are already subject to an individual accountability regime of similar standards, which may deter international talent from choosing UK as a career destination. The UK could take leadership in coordinating the approach across jurisdictions.
3. Disproportionate burdens of the Certification Regime, which covers a large and diverse population of staff, including many who may not have a direct or significant impact on customers or markets. This can be disproportionately costly due to the administrative burdens and compliance costs, and could act as an additional disincentive for overseas candidates likely to be subject to the regime.

Recent commitments by the Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA) to support the UK government's growth mission have been well-received by the industry, and we believe that the proposals in this paper would support these efforts and have a significant impact on the UK's access to international talent. The regulators have committed to reducing the burden on firms, removing unnecessary regulation, and making some regimes, including the SMCR, more flexible. This paper provides further insight on the challenges experienced by the industry and policy options to reduce the likelihood of the regime impeding on the international competitiveness of the UK. We welcome further discussion on the proposals outlined in this paper, which should dovetail effectively with the regulatory direction of travel towards bolder ideas and action to reduce avoidable burdens.

Section 3: Policy proposals

The SMCR was introduced in the UK financial services sector to enhance individual accountability, and there is widespread recognition of the regime's effectiveness in enhancing governance and strengthening market integrity. However, the regime has presented several challenges that hinder the attraction of international talent, particularly for senior roles. Many of these challenges are operational, and whilst we recognise the significant progress made by the regulators in relation to application processing time and additional guidance published, there remain some significant areas to address to ensure that access to high quality international talent is not hindered by the regime.

Whilst we do not recommend diluting the fundamental concepts of the SMCR given the regime's essential role in maintaining high standards of accountability in the UK financial sector, we present the following policy options to address the existing disincentives and enhance the transparency and consistency of the regime, whilst ensuring appropriate UK safeguards are built into any scheme of recognition or reciprocity.

1. Addressing negative perceptions of the regime internationally

Early perceptions of the UK as a destination to work are shaped by experiences with the approval process required by the Senior Managers Regime. Negative experiences with this process at such an early stage of an international move can disincentivise overseas talent from taking senior posts within the UK financial services sector, ultimately affecting the country's ability to attract and retain top-tier professionals.

One of the main challenges is that the SMCR is unfamiliar to individuals from other jurisdictions, particularly the US which hosts a significant portion of the financial services talent but where similar concepts are not prevalent. This unfamiliarity with the regime coupled with the operational challenges associated with the approval process create a disincentive for international talent looking to work in financial services in the UK. Challenges are encountered by international employees providing temporary cover for SMF positions in the UK, and by overseas candidates applying for a longer-term SMF role, creating a negative perception of the regime internationally.

Extending the 12-week rule

One example of where the regulators' 12-week rule (SUP 10C.3.13) is currently used is where an overseas employee has been identified as the most appropriate candidate to provide temporary cover for an SMF role in the UK. The rule allows firms to appoint individuals to Senior Manager roles for less than 12 weeks without prior approval, where this cover is for an SMF whose absence is temporary or reasonably unforeseen. We propose that an extension of the 12-week rule would address several issues simultaneously, including addressing inconsistencies in the application of the rule, aligning hiring cycles and accommodating international talent by harmonising the duration of the rule with short-term visa maximum periods.

Currently, there are inconsistencies in interpretation and application of aspects of the 12-week rule against the original rules and guidance, and between different supervisory teams at the FCA and the PRA. This can clearly impact the ability of international candidates to undertake roles on an interim

basis, pending regulatory approval. Inconsistent application of the rules can lead to confusion and a lack of confidence in the regulatory framework, and firms may also face increased compliance costs and operational disruptions as they attempt to navigate these inconsistencies. Therefore, it is imperative that the regulators reconsider the effectiveness of the 12-week rule, and clarify how it can be used.

Most significantly for international talent, approval timelines for SMF roles are not aligned with the timelines for visa approval. The Super Priority Service offers an expedited visa process which allows for returns in as fast as 48 hours, whereas SMCR approval takes up to 12 weeks. This misalignment causes overseas employees to be held in a period of uncertainty as to whether their SMF application will be approved, often requiring them to move away from their home jurisdiction without clarity on their SMF approval status. The sense of uncertainty created by this timeline misalignment is contributing to the negative perception of the regime internationally.

Given the obvious challenges with reducing the SMF approval timeline to 48 hours to grant SMCR approval simultaneously with an expedited visa, the regulators may consider extending the 12-week rule to allow for international talent to fulfil a short-term placement without requiring approval. The extension of the rule may be most effective if it aligns with those short-term visas that allow individuals to carry out permitted short-term business activity for a temporary period of up to six months. Extending this timeline from 12 weeks to six months would also provide better alignment with hiring processes, given it can often take firms a significant amount of time to complete the processes associated with recruiting a high quality candidate. This would provide a more practical and efficient solution, aligning SMCR approvals with hiring processes, visa timelines and ensuring that international talent can commence their role and contribute effectively without unnecessary delays. Alternatively, the regulators could consider an expedited service, such as a concierge service for an additional fee.

Although SMCR approvals are distinct to the visa application process, they play a shared role in shaping the user experience when moving to the UK. As such, it is important that the regulators take into account the holistic user experience and, where possible, try to deduplicate processes. Considering the experience through this lens further supports the merit in considering what a concierge service might entail.

Enhancing the approval process experience

A significant contributor to the negative perceptions of the UK's SMCR internationally is the experience of candidates and firms throughout the approval process. This can be cumbersome and challenging to navigate, with reports of delays, lack of transparency, and inconsistencies in approach. We recognise the FCA's recently published guidance provides more transparent insight into the assessment approach, intending to help strengthen applications and speed up the approval process without impacting the high standards of the regime. However, negative perceptions remain and the FCA could go further by enhancing transparency through the digital portal, to make the approval process more transparent and accessible for applicants.

The existing application process involves significant paperwork and manual submissions, and the time taken for SMR applications varies significantly, ranging from 10 to 90 days, often without a

clear reason for certain applications taking longer than others. This uncertainty is exacerbated by the difficulties with the FCA's Connect system, which provides little transparency and communication on the status and progress of the applications. The system only shows basic indicators such as 'application received' and 'case manager assigned', which do not reflect the complexity and variability of the assessment process. Particularly for firms without dedicated supervisors, this can lead to a sense of uncertainty on the process, without a means of knowing how long the application may take, who to contact for queries or escalations, or how to flag any urgent or exceptional circumstances. This uncertainty is frustrating, both for overseas candidates who may be less familiar with the UK regulatory regime, and for firms with a higher turnover of Senior Managers coming to the UK from other jurisdictions.

For international candidates, the lack of clarity and prolonged timelines can be a major deterrent, as they may prefer jurisdictions with more streamlined and predictable regulatory processes. When compared with other best practice jurisdictions, the FCA Connect digital platform does not meet the same standards. For example, Singapore, Hong Kong, Australia and Canada use digital platforms for submitting and tracking applications, with clear timelines and communication about the status of applications, facilitating a more predictable and efficient approval process compared with the UK.

In order to support transparency and help applicants and firms plan and manage their expectations more effectively, we propose enhancing Connect, the FCA's online system for submitting and tracking applications, to make it more user friendly and informative. There is an opportunity for the Connect system to provide more transparency on the progress of SMF applications, which would be particularly valuable for those who are less familiar with the UK regulatory system and who may be more concerned about delays or lack of information.

Connect could clearly display a timeline including a set of defined process stages with sufficient detail on what each stage entails, which can be used to indicate the status of the application, the expected timeline, and any outstanding issues or queries. This visual representation of the status and progress of the application would be similar to commonly used delivery services, which provide more accessible user interfaces by displaying the user's position in the overall process. The ability to send messages on the platform, for example to note that an application is particularly urgent or to ask a query, would also be a helpful means of enhancing communication channels. It would be beneficial for the digital platform to provide FAQs or an AI-enabled chatbot to help triage the queries in an accessible way, and provide a pre-defined set of queries or supplementary notes which indicate which questions are appropriate for the messaging channel.

Enhancing the digital platform for submitting and tracking applications in line with platforms used in best practice jurisdictions, such as Singapore, Hong Kong, Canada and Australia, will improve the user experience and the transparency of the process. A more efficient and transparent digital platform will not only help with improving access to top international talent but also demonstrate the UK's commitment to innovation and best practices in regulatory processes.

The regulators should also consider enhancing their operational approach by committing to progressing applications pending further information where there are unforeseen delays. In particular, given that criminal record checks can take some time to obtain, particularly for international candidates, it may be more efficient for the regulators to progress the application without the

submission of the criminal record check, with the condition that final approval is subject to the receipt and approval of a clean check. This would help to reduce the burdens on high quality overseas candidates and facilitate a quicker process for the candidate to commence the role.

2. Ultimately, the process remains one that stakeholders find difficult to navigate. We would welcome greater transparency on data regarding how regulators measure their impact and value in this regard. While significant effort has yielded improvement to the percentage of decisions within the statutory timeline of 90 days, it might be at the expense of the end user.

Responding to increasing numbers of individual accountability regimes internationally

When the SMCR was enacted, it was the first regime of its kind. Since then, multiple regimes have been established internationally. The regulators must take this development into consideration when considering ways to improve the regime, particularly in ensuring that the UK financial services sector remains a competitive destination for top overseas talent. Currently, the same stringent requirements apply to all Senior Manager applications, regardless of the individual's previous regulatory environment. Whilst this may have been reasonable when the SMCR was enacted, the regulators may wish to consider establishing unilateral or mutual recognition arrangements with other jurisdictions operating similar regimes, to remove unnecessary barriers for candidates subject to equivalent standards.

Unilateral or Mutual Recognition Arrangements

One solution is the recognition of equivalent individual accountability regimes from other jurisdictions with equivalent regulatory standards, such as Singapore, Hong Kong, or Australia. Establishing unilateral or mutual recognition arrangements would facilitate a more streamlined approval process for applications where these arrangements are in place.

Even where international candidates are subject to similar standards within another jurisdiction, candidates still have to undergo a lengthy and rigorous approval process in order to undertake an SMF role in the UK. The time and effort required to navigate this process can be a significant deterrent for top overseas talent. It is also timely and costly for the UK regulators responsible for assessing these applications, which may be unnecessary where a candidate is subject to the oversight of a regime of equivalent standards.

Unilateral or mutual recognition arrangements could facilitate a streamlined approval process that takes into account the oversight and approval of other regulators; for example, allowing firms to use existing fit and proper assessments from equivalent regulatory regimes in other countries, provided they meet UK standards and, in the case of mutual recognition arrangements, incorporate information sharing. This would reduce the duplication of effort and costs for firms and individuals, leading to efficiency gains by reducing administrative burdens and improving approval timelines. Industry stakeholders regularly raise this option as a way to improve the attractiveness of the UK market for talent from these jurisdictions.

By streamlining the approval process, the UK can position itself as a more competitive and appealing destination for top international talent, thereby enhancing its global standing and facilitating economic growth. Enhanced mobility through mutual recognition arrangements will facilitate

smoother cross-border mobility, allowing the UK to benefit from a more diverse and skilled workforce. We have separately published research on the increasingly competitive landscape for global talent in a hyper mobile world¹. This approach would also foster stronger international regulatory cooperation and trust, which is crucial in a globalised financial market.

The sections of the Financial Services and Markets Act 2000 (FSMA) that currently govern the application and approval process, specifically sections 60 and 61, are reasonably permissive and are broad enough in scope to accommodate the establishment of an equivalence arrangement.

Sub-section 60(2) FSMA requires firms to make applications “*in such a manner as the appropriate regulator may direct and contain, or be accompanied by, such information as the appropriate regulator may reasonably require*”. It appears to us that this is broad enough to permit the FCA to make a rule specifying that details of authorisation in an equivalent overseas regime be included in the application.

The FCA’s determination of applications is governed by s.61 FSMA, which is also generally permissive. Sub-section 61(2) lists the matters which the regulator may have regard to in making its determination. This list is permissive and non-exhaustive, and whilst these factors do not include reference to equivalent overseas regimes, this is unlikely to be a deliberate omission given there were no equivalent overseas regimes in existence when the SMCR was enacted. The powers conferred on the FCA in s.61 are broad enough to enable it to establish a system whereby applications are fast-tracked or subject to a lighter approval process if an individual has been approved by an equivalent overseas regime.

We acknowledge the obligation on firms to assess candidates before submitting an application to the regulator (derived from s.60A FSMA). We do not suggest that the existing obligation on firms be amended. In our experience, this is a matter considered by firms at the point of selecting suitable candidates for relevant roles and does not contribute significantly to the issues this paper seeks to address.

Establishing an equivalence arrangement through unilateral or mutual recognition has the potential to significantly reduce the burden on applicants from other jurisdictions with equivalent or higher regulatory standards and make the UK a more attractive destination.

¹ <https://www.theglobalcity.uk/PositiveWebsite/media/Research-reports/International-talent.pdf>

3. Addressing the administrative burden of the Certification Regime

Compliance with the Certification Regime imposes a significant administrative burden which may not be proportionate or aligned to the intended benefits of the SMCR. In particular, the requirement to keep an internal register of certified persons and conducting annual assessments of fitness and propriety can result in a significant burden, particularly for large firms which may have several thousands of certified persons.

The onerous administrative burden on firms seems disproportionate to the benefits, given this part of the regime does not directly contribute to the concept of individual accountability. Rather, it shifts the responsibility of certifying individuals from the regulators to the firms, without providing clear guidance or standards on how to do so. This may divert valuable resources and attention from other important aspects of the SMCR.

The significant time and resources required to comply with these administrative tasks can be a deterrent for international firms considering entering the UK market. It can also impact the overall efficiency and competitiveness of firms operating within the UK, as they may need to allocate substantial resources to meet these regulatory requirements. Finally, it has the potential to subject large numbers of overseas professionals to unnecessary vetting checks through the continuing requirement to assess the fitness and propriety of the certified population.

Limiting the scope of the Certification Regime

In light of the FCA's recent commitment to rebalancing its approach to risk, we recommend that the FCA reassesses the roles requiring certification under the regime, with a clearer focus on capturing roles where activity carried out has the potential to cause significant harm or where significant risks are taken. For example, the certification of 'Managers of Certified Persons' captures a wide range of employees, including those based overseas, where their activity may not entail the potential for significant harm. The FCA should also consider whether the requirement for the 'Significant Management' certified function can be removed, in light of feedback that the purpose of this function is unclear and could be sufficiently covered by the 'Material Risk Taker' certified function.

The original intention behind the legislation was to monitor individuals who had the potential to cause significant harm of the type experienced during the global financial crisis. Whilst many of the roles requiring certification clearly have the potential to cause significant harm to firms, its reputation or its customers, the certification of 'Managers of Certified Persons' or 'Significant Management' are not necessarily fulfilling the aims of the regime. Furthermore, the legislation underpinning the certification regime is permissive. The FCA or PRA may specify the functions for which employees require certification from their employer, provided those functions fall within the definition of "significant harm function" set out in s.63E(5) FSMA². Section 63E FSMA does not prescribe specific roles and does not prevent the FCA from amending the list of specified functions. Therefore, removing the certification requirement for certain roles would not require legislative intervention.

² Section 63E(3) FSMA.

By refining the scope of the CR, the UK can reduce unnecessary regulatory burdens and make it easier for international talent to integrate into the UK financial sector, thereby enhancing its global competitiveness.

The FCA may also revisit the FCA's Directory to assess whether it is sufficiently beneficial to include all certified staff (including those without any retail role), given the administrative burden of this. For example, the FCA could consider limiting the scope of the Directory to only include certified employees who perform roles with direct or indirect impact on retail customers or investors. Section 347 FSMA requires the regulators to maintain a public record of certain categories of persons. It is not required to include certification employees in this record but has a discretion to do so³. The FCA has defined the persons to be included in this record as "Directory persons" and includes in this definition certification employees. The FCA retains a statutory discretion to amend this definition. Removal of the requirement for certification employees to be included in the Directory would not require legislative intervention, yet would reduce a significant administrative burden on firms.

Removing the requirement for annual fitness and propriety assessments

We also propose removing the requirement for annual assessments of fitness and propriety for certified staff, as most issues tend to be identified and addressed outside of those annual assessments, and the Conduct Rules already provide a framework for ongoing monitoring and reporting of misconduct.

This change requires legislative intervention. Section 63F FSMA creates a statutory requirement for annual fitness and propriety assessments, as the certificate, which can only be issued where firms are satisfied that the candidate is fit and proper, is only valid for 12 months. However, removing this requirement would reduce a significant administrative burden on both firms and individuals across large populations, allowing them to focus on their core responsibilities and contribute more effectively to the UK economy, without negatively impacting the standards of the UK regulatory system.

³ s.347(1)(i) FSMA

Section 4: Conclusion

The SMCR, while highly effective in enhancing accountability and governance, poses several challenges that hinder the attraction of international talent, especially for key senior roles where high quality overseas talent has the potential to add value to the UK economy. These challenges include negative perceptions of the regime, a lack of coordination of equivalent international regimes, and disproportionate burdens of the Certification Regime.

In order to address these challenges and enhance the transparency and consistency of the regime, we propose a range of policy options that aim to make the UK a more attractive and competitive destination for top-tier professionals, without diluting the core concepts of the SMCR. In summary, these policy options are:

1. Addressing negative perceptions of the regime internationally:

- Extending the 12-week rule to allow overseas candidates to fill temporary SMF roles without prior approval, aligning with visa timelines and hiring cycles.
- Enhancing the approval process experience by improving the digital platform, providing more clarity and communication on the status of applications, and progressing applications pending outstanding information.

2. Responding to increasing numbers of individual accountability regimes internationally

- Establishing unilateral or mutual recognition arrangements with jurisdictions that have equivalent individual accountability regimes, to facilitate a more streamlined approval process and foster international regulatory cooperation.

3. Addressing the administrative burden of the Certification Regime

- Limiting the scope of the Certification Regime to roles with direct or indirect impact on retail customers or investors, to reduce unnecessary regulatory burdens.
- Removing the requirement for annual fitness and propriety assessments for certified staff, to avoid duplication and simplify the process.

These policy options aim to enhance the transparency, consistency, and efficiency of the SMCR, thereby making the UK a more attractive destination for international talent. By implementing these changes, the UK can maintain its high standards of accountability while ensuring it remains a competitive and dynamic financial market on the global stage.

Annex: Roundtable participants

A&O Shearman
Association of British Insurers
Large Wholesale Bank
Fragomen LLP
Freshfields
Invesco
Marsh McLellan
Slaughter & May
TheCityUK