

FSA regulation is undergoing significant change. Driven by the FSA's Better Regulation Initiative and the implementation of EU directives (including the Markets in Financial Instruments Directive), FSA regulation is becoming more principles-based.

From 1 November 2007, the FSA Handbook (which provides rules and guidance for firms carrying out regulated activities in the financial services sector) will become less detailed and prescriptive, providing senior management (including senior HR professionals) with a greater role and flexibility in determining how a firm should comply with the FSA's rules in the particular context of their business.

Changes are being introduced, amongst other things, to the approved persons regime, the training and competence regime, and senior management responsibilities. These changes will have an impact on a firm's employment practices.

The approved persons regime

Persons approved by the FSA to carry out a controlled function remain subject to the FSA's fit and proper person test and the statements of principle that apply to approved persons.

However, from 1 November, the number of controlled functions will be reduced from 27 to 16 with the roles in each of the systems and controls, significant management and customer functions being merged into three new controlled functions: the systems and controls function (CF28); the significant management function (CF29); and the customer function (CF30).

As a consequence, when someone is transferring internally to a new role within each of these new categories, firms will no longer need to notify the FSA. Therefore, internal transfers within a firm should now be easier.

However, further checks may need to be carried out at the recruitment stage. The FSA has stated that in the future it will carry out random criminal record checks on approved persons. So, when recruiting an approved person, firms should check for any court judgments and criminal records, alongside their usual checks to verify qualifications, previous employment and financial soundness.

Training and competence regime

The Training and Competence Sourcebook has been re-written and, from 1 November, will only be applicable to those carrying out retail business.

Firms will have the freedom to design a training programme that best suits their business. However, the onus will be on firms' senior managers (including senior HR professionals) to ensure that their employees maintain the appropriate level of competence. That level of competence is set out in a new 'competent employees rule', which is applicable to all FSA regulated firms, and requires firms to 'employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them'.

Senior management responsibilities

From 1 November, more detailed rules regarding senior management arrangements, systems and controls will apply to "common platform firms" (such as banks, building societies and investment firms).

The rules do not differ tremendously from the existing rules. However, they do contain greater detail, so "common platform firms" should review their existing systems and controls to ensure that they comply with the new rules. The rules require, amongst other things: a clear organisational structure and effective process to identify and report risks; policies to maintain compliance; and that the senior management of a firm be undertaken by at least two persons of the requisite ability and experience.

Personal transactions and inducements

The rules regulating personal transactions and inducements contained in the FSA's Conduct of Business Sourcebook will be replaced by new rules with effect from 1 November. Firms must take reasonable steps to ensure that the personal transactions of its employees do not conflict with its duties to its customers. Whilst firms will no longer be required to have a written policy on personal account dealing they should continue to maintain such a policy and draw their employees attention to it. Firms will also be subject to a higher level conflict of interest test and disclosure requirements in respect of any gifts, benefits or inducements.

Action points

There are a number of issues to consider when addressing FSA regulation in the workplace, which are only touched on in this article. To operate in an FSA regulated environment, organisations must have an appreciation of the key requirements. Although the scope of regulation might at first appear complex and confusing, getting to grips with the new principles will enable both senior management and HR professionals to comply successfully

with FSA rules within the context of their business.

Immediate steps should therefore be taken to:

- review recruitment practices to ensure that all necessary checks are being undertaken (including criminal records checks)
- develop training and competence programmes to ensure that employees maintain the appropriate level of competence
- clearly define senior management structures and responsibilities
- ensure that proper, effective and proportionate systems and controls are in place throughout the firm

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