TISA

# Response by TISA to the HM Treasury consultation Reforming the Senior Managers & Certification Regime

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# About TISA

## Supporting the financial journey through life

The Investing and Saving Alliance (TISA) is committed to improving the financial wellbeing of all UK consumers by working collectively with the financial services industry to deliver solutions and champion innovation, for the benefit of people, our industry, and the nation.

We do this by working with our member firms to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

We care about the entire financial life of consumers: from their first savings account opened to ensuring people can age and retire with dignity. TISA believes that savings and investments play a significant role in the lives of people and small businesses. Consumers benefit when they put aside money for their future. Saving and investing can provide a buffer for emergencies; help people achieve big and small goals throughout their lifetime; and give people quality of life in later years.

TISA is a not-for-profit membership organisation and a trusted partner of key industry stakeholders in helping shape the future of the UK financial services and the environment in which we operate. We have approximately 270 member firms involved in the supply and distribution of savings and investment products and associated services.

## Our work, your influence

Our policy work reflects TISA's broad scope of interests and aims on meeting the needs of UK consumers, members, and our industry. From improving financial education, inclusion and accessibility, right through to savings, investments and retirement planning, the work we do with our members to **influence policy** is crucial in enhancing the industry we operate in and driving positive change.

As part of our commitment to delivering focused and impactful consumer outcomes, TISA's policy working groups have been structured into **four distinct workstreams**:

1. **Consumer Protection -** *Protecting the best interests of UK consumers in their financial journeys.*
2. **Consumer Access -** *Considering issues that could directly impact access to financial products.*
3. **Effective Products -** *Examining key considerations and legislation relating to products across the investing and saving landscape.*
4. **Corporate Responsibility**
   *Exploring issues that directly impact society, the environment, and the economy.*

All groups focus on both strategic and technical elements of policy/regulation. We provide a channel for firms to have their say on the policy we develop and present, contribute to our technical and regulatory interpretation work and, importantly, gain insights from other TISA members, policy makers, government and regulators.

Find out more about TISA here: **www.tisa.uk.com/about-tisa**

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## Introduction

TISA welcomes the opportunity to respond to the HM Treasury's consultation on Reforming the Senior Managers & certification Regime.

We support its aims to identify opportunities to reduce unnecessary regulatory burdens imposed by SM&CR.

The desire of TISA members is to maintain the confidence in the high standards of the UK regulatory system while ensuring that elements that serve limited purpose in protecting investors are removed so that the UK regulatory system is made more efficient.

## Question responses

**1. Do you agree that the Certification Regime should be removed from FSMA 2000?**

TISA members believe that the certification regime has encouraged individuals to acknowledge their responsibilities and firms to be more accountable over the fitness and propriety of individuals working for them. The existing provisions of FSMA (Section 65E) allow the PRA and FCA to define which activities are Significant Harm Functions – rationalisation of these functions would be helpful for the industry and align the UK with other global regulatory regimes. Removal of the requirement under Section 63F for firms to issue certificates and the reference to certificates in Section 63E(1) would help reduce unnecessary administration. The holding of an actual certificate serves no real purpose.

**2. Do you agree that the Regulators should consider developing a more proportionate approach, that would replace the existing Certification Regime?**

While the certification regime has become unwieldy and an administrative challenge to firms, TISA members believe that it continues to serve a purpose and has improved standards of conduct across the industry. There are opportunities to streamline the regime by removing categories of certification, e.g. managers of certificated individuals, by amending Section 63E(2). TISA members would also welcome the removal of the FCA Directory requirement from those individuals who are not dealing directly with retail consumers.

**3. Do you believe there are risks or unintended consequences if the Certification Regime is removed from FSMA 2000, and replaced with regulator rules? For example, how would it impact consumer protection, market integrity, safety and soundness, and policyholder protection?**

As noted, in responses to Q1 and Q2, TISA members recognise the value of the existing Certification Regime and believe that by streamlining the approach this will continue to play a valuable role in ensuring standards of conduct are maintained across the industry.

**4. Are there alternative approaches that will still deliver the desired benefits, but may not involve removing the regime from legislation entirely?**

See above answers.

**5. What are the critical elements for any replacement regime to achieve the government objectives of a lower cost, more proportionate and competitive regime**?

See above answers.

**6. Do the regulators currently have the necessary powers and tools to deliver a replacement regime or are further powers required**?

Yes

**7. Do you have any comments on the likely costs and benefits of removing the Certification Regime from legislation and replacing it with a more proportionate regime, at this stage?**

Any replacement of the existing regime is likely to result in considerable work required by all regulated financial services firms, including systems changes, administration staff and training requirements for all those impacted.

**8. Do you agree with the proposal to give the regulators more flexibility to reduce the overall number of senior manager roles?**

Yes, TISA members are of the view that the SMF regime should be applied proportionately and that there are opportunities to reduce the number of SMF functions and prescribed responsibilities that are allocated to them.

**9. In addition, do you agree with the proposal to give the regulators flexibility to reduce the number of roles within the regime for which pre-approval is required?**

Yes. TISA members are firmly of the view that there are opportunities to streamline the approval process. Many of the individuals holding SMF roles have held previous or existing regulatory roles – requiring pre-approval in every case is not proportionate and leads to delays and challenges to firms and individuals during the period before approval. Firms have an obligation to ensure the fitness of those being put forward for such roles and the lack of rejections of SMF applications by regulators suggests that very little purpose is served by adding layers to the approval process.

**10. Do you have any comments on the likely costs and benefits of making such changes to the Senior Manager Regime?**

A streamlining of the process for SMF roles will reduce administrative costs, while having fewer SMF roles would result in a smaller number of individuals requiring support and training.

**11. Are there any alternative approaches that government should consider to reform the approach to regulator pre-approval, which would still deliver the desired benefits?**

None

**12. Do you have any other comments or suggestions regarding these proposed changes?**

None

**13. Do you agree with the proposal to remove prescriptive legislative requirements relating to provision, maintenance and updating of Statement of Responsibilities, with the aim of allowing regulators to adopt a more proportionate approach?**

TISA members would welcome any measures taken to allow the UK regulators to have flexibility in the application of changes that provide for administrative efficiency and proportionate application of requirements.

**14. What are the types of change for which an update to the Statement of Responsibilities is currently required, that you consider to be disproportionate?**

Current requirements include notifications of material changes to regulators – as such TISA members are of the view that there is sufficient flexibility given to regulators if a proportionate approach to materiality is applied.

**15. Are there requirements in the legislation for the Conduct Rules which you consider create a disproportionate burden? What are these elements?**

TISA members view as disproportionate the ability of the regulators to take action against individuals up to 6 years after the regulator became aware of the misconduct (Section 66(4)). This effectively allows for open-ended powers of individual enforcement, when individuals may have moved roles, retired or long after records have been disposed of under GDPR requirements. In practice, the FCA has taken very few enforcement actions against individuals, so limitation of this power would have limited downside.

**16. Are there any further elements of the SM&CR legislation within which create unnecessary regulatory burdens on firms, the removal of which would not impact on the primary objectives of the regime?**

None

**17. Do you face, or have you faced, any specific obstacles in trying to recruit internationally for senior manager roles?**

TISA members are mostly UK-based groups. Among those with international operations, there have been instances where the taking on of UK regulatory responsibilities by an overseas individual has been challenging for the firms to manage, with challenges over the complexity of the application process for overseas-based individuals, delays in appointment and subsequent impact to the governance of the firm during a protracted process.

**18. If so, which are the key obstacles that would not be addressed by the reforms proposed in either this consultation or by the consultations the regulators have published in parallel?**

None.