

**TRAINING AND COMPETENCE SOURCEBOOK
(EXAMINATIONS AND MISCELLANEOUS AMENDMENTS) INSTRUMENT 2004**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 150(2) (Actions for damages);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The provisions of the Act relevant to rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on:
- (1) 1 May 2004 for TC 2.5.7G, TC 2.7.4G and TC 2.8.1 R (2) (miscellaneous provisions in Annex A);
 - (2) 31 October 2004 for:
 - (a) the amendments to TC 2.1.4R (relating to the activities to which TC 2 applies); and
 - (b) row 1(p) - (q) and the provision 2(g) in the table in TC 2.5.1AR (relating to the time limits for examinations in respect of mortgage business);
 - (3) 14 January 2005 for:
 - (a) row 1(r) in the table in TC 2.5.1AR (relating to the time limits for examinations in respect of insurance mediation business); and
 - (b) the words in square brackets, in both places where they occur, in TC 2.5.5R(1) which then replace “TC 2.4.5R(2)”; and
 - (4) 1 July 2004 for all other provisions (relating to examinations).

Amendments to the Training and Competence sourcebook (TC)

D. TC is amended in accordance with Annex A to this instrument.

Amendments to the Supervision manual (SUP)

E. SUP is amended in accordance with Annex B to this instrument.

Amendments to the Glossary

F. The Glossary is amended in accordance with Annex C to this instrument.

Citation

G. This instrument may be cited as the Training and Competence Sourcebook (Examinations and Miscellaneous Amendments) Instrument 2004.

By order of the Board
18 March 2004

Annex A

Amendments to the Training and Competence sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text (unless it is in square brackets as explained in the footnotes to TC 2.4.2R and TC 2.4.5R). Where entire annexes are being deleted, they are indicated but are not reproduced.

1 Table Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
4	<i>TC 2.5.1 R</i> (1) and (2)	R	(1) A <i>firm</i> which, immediately before <i>commencement</i> , was required to comply with specific training and competence requirements imposed by its <i>previous regulator</i> , may, in respect of the individuals employed before <i>commencement</i> , comply with the requirements of <i>TC 2.5.1 R</i> (1) and (2) by ensuring that those individuals pass the <u>relevant approved examinations appropriate examinations</u> within the time limits imposed by its <i>previous regulator</i> .	From <i>commencement</i>	<i>Commencement</i>
...					

...

2.1.4R Table: Activities to which TC2 applies

...

	Activity	Extent of Application
1. <i>Employees</i> engaging in:	Advising (without dealing) ... (p) <i>advising a customer on a:</i> (i) <i>regulated mortgage contract (including a <u>other than a regulated lifetime mortgage contract</u> or a regulated mortgage contract that is for a business purpose; and</i> (ii) <i>a regulated lifetime mortgage contract.</i> ¹ ...	

2.2.2 G The *firm* should take reasonable steps to obtain information about the knowledge and skills of the individual in *TC 2.2.1R*, including any appropriate examination ~~approved examination~~ passes, from a suitable source within a reasonable time.

...

2.4.2 R [(1)]² A *firm* which permits an *employee* to engage in an activity with or for a *private customer* under supervision must ensure that:

(1)[(1)(a)] the *employee* has first passed the relevant regulatory module of an appropriate examination ~~approved examination~~; and

¹ 1(p) was inserted by the Mortgages: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) Instrument 2003 (FSA 2003/72) to come into force on 31 October 2004. This wording shows the changes to the wording in that instrument.

² The amendments in this rule and in *TC 2.4.5R* indicated by [] are the amendments contained in Annex E of the Insurance: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) Instrument 2004 (FSA 2004/08) which was made on 15 January 2004 and which will come into force on 14 January 2005.

(2)[~~(2)~~(b)] the *firm* has satisfied itself that the *employee* has an adequate level of knowledge and skills to act with or for *private customers* while under supervision.

[(2) (1)(a) does not apply when this activity is an *insurance mediation activity* in relation to a *non-investment insurance contract*.]

...

2.4.4 R If a *firm* permits an *employee* under supervision to engage in:

(1) *advising on investments* which are, and *dealing with* ~~or~~ or for *clients* in, *securities* (other than *stakeholder pension schemes* or *broker funds*), *derivatives* or both such *securities* and *derivatives*; or

...

the *firm* must ensure that the *employee* has first passed ~~the~~ an appropriate examination ~~approved examination~~ before permitting the *employee* to engage in the relevant activity.

Assessing competence

2.4.5 R [(1)]³ A *firm* must not assess an *employee* as competent to engage in or oversee an activity unless the *employee*:

(1)[~~(1)~~(a)] has been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the activity without supervision; and

(2)[~~(2)~~(b)] has passed each module of ~~the~~ an appropriate ~~approved examination~~ examination ~~specified in the annexes to TC 2.~~

[(2) (1)(b) does not apply when this activity is an *insurance mediation activity* in relation to a *non-investment insurance contract*.]

...

2.5 ~~Approved examinations~~ Appropriate examinations

Time limits

2.5.1 R (1) A *firm* must ensure that an *employee* under supervision passes ~~the~~ an appropriate examination ~~approved examination~~ within the time specified in ~~the annexes to TC2~~ TC 2.5.1AR, and, for this purpose, a *firm* must record the date on which the *employee* began engaging in or overseeing the relevant activity.

³ See the footnote to TC 2.4.2R.

- (2) For the purposes of calculating the time spent by an *employee* under supervision, a *firm* must:
- (a) aggregate periods of time spent engaging in or overseeing the activity during different periods of employment; and
 - ...
- (3) A *firm* must ensure that any *employee* who does not pass an appropriate examination ~~the approved examination~~ within the specified time:
- (a) ceases to engage in or oversee the activity; and
 - (b) does not resume the activity or oversee the activity without first passing an appropriate examination ~~the approved examination~~.

2.5.1A R The time limits to which TC 2.5.1R applies

Activity in TC 2.1.4 R	Examination must be passed:
1. (a) – (c)	<u>before starting the activity</u>
(d) – (e)	<u>within 30 months of starting the activity</u>
(f) – (g)	<u>within two years of starting the activity</u>
(h)	<u>(no examination requirement)</u>
(i) – (l)	<u>within two years of starting the activity</u>
(m) – (o)	<u>before starting the activity</u>
(p) – (q)	<u>within two years of starting the activity</u>
(r)	<u>(no examination requirement)</u>
2. (a) – (g)	<u>within two years of starting the activity</u>

- 2.5.2 G A *firm* should, for the purposes of TC 2.8.1R (Record keeping), make and retain records of the time limits within which the appropriate examination-~~approved examination~~ has been passed.

Advising and dealing: restarting the activity

- 2.5.3 R A *firm* must ensure that an *employee* does not recommence engaging in the activity of *advising on investments* which are, and *dealing* with or for *clients* in, *securities* (other than *stakeholder pension schemes* or *broker funds*), *derivatives* or both such *securities* and *derivatives* if:

- (1) the *employee* has not engaged in that activity for 12 ~~months~~ months; and

- (2) two years have elapsed since the *employee* passed an appropriate examination ~~approved examination~~ for that activity;

unless the *firm* can demonstrate that the *employee* has sufficient experience and has kept his technical and regulatory knowledge up to date. If the *firm* cannot do so it must require the *employee* to pass an appropriate examination ~~the appropriate approved examination~~.

...

Exemption from an appropriate examination ~~the approved examination~~

- 2.5.5 R (1) Except as described in (2) and (3), if a *firm* is satisfied that an *employee*:
- (a) has at least three years' up-to-date relevant experience in the activity in question obtained while employed outside the *United Kingdom*;
 - (b) had not previously been required to comply fully with the relevant examination requirements as stipulated in *TC* 2.4.5R(2) [*TC* 2.4.5R(1)(b)]⁴; and
 - (c) has passed the relevant regulatory module of an appropriate examination ~~approved examination~~;

then the requirement to have passed each module of an ~~the~~ appropriate examination ~~approved examination~~ in *TC* 2.4.5R(2) [*TC* 2.4.5R(1)(b)]⁴ does not apply for that *employee*.

...

~~European and other overseas examinations~~

- 2.5.7 G ~~The annexes to *TC* 2 give details of the extent to which European and other overseas based examinations are appropriate for an activity. In addition, the definition of *approved examination* includes an examination which is equivalent in accordance with the *Diploma Directives*. [deleted]~~

Appropriate examinations

- 2.5.8 E (1) This rule applies for the purposes of *TC* 2.4.2R, *TC* 2.4.4R, *TC* 2.4.5R, *TC* 2.5.1R, *TC* 2.5.3R, *TC* 2.5.5R and *TC* 2.7.5R.
- (2) In ensuring that an examination is appropriate, a *firm* should select an appropriate examination from the list of examinations maintained by The Financial Services Skills Council as amended from time to time.

⁴ See Commencement provisions C(3)(b) on page 1 of this instrument.

(3) Compliance with (2) may be relied on as tending to establish compliance with the *rules* referred to in (1).

...

2.7.4 G Appropriate supervision will vary according to the competence of the *employee* and is likely to be less intense once competence has been attained. If the *employee* is, for example, a *sole trader*, or the only *director* or *partner* engaging in the activity, the *firm* should make whatever arrangements are appropriate in the circumstances, bearing in mind that it can become difficult to be objective about one's own performance.

Supervisors of employees advising private customers on packaged products

2.7.5 R If an *employee* is engaging in the activity of giving advice on *investments* which are *packaged products* to *private customers*, the *firm* must ensure that the individual supervising that *employee*:

(1) has passed an appropriate examination~~approved examination~~; and

....

...

2.8.1 R (1) A *firm* must make appropriate records to demonstrate compliance with the *rules* in this chapter.

(2) The records in (1) must be retained by the *firm* for at least three years after ~~cessation of an *employee's* ceases to engage in or oversee an~~ activity appointment with the *firm*, except for the records of *pension transfer specialists*, which must be retained indefinitely.

Annexes 1-10 [deleted]⁵

Schedule 1

Record keeping requirements

...

Table: Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
TC 2.4.9G	Attaining Competence	Data on competence	On a continuing basis	<u>For 3 years only after an <i>employee</i> ceases to engage in or oversee an activity or</u> Employment plus 3 years or for

⁵ Annex D of the Mortgages: Conduct of Business Sourcebook (Consequential Amendments to the Handbook) Instrument 2003 (FSA 2003/72) made on 15 October 2003 introduced Table 4 to TC 2 Ann 1R with effect from 31 October 2004. The effect of this deletion is that Table 4 will not come into effect.

				PTS indefinite
TC 2.5.1 R	<u>Appropriate examinations</u> <i>Approved examinations</i>	Examination time limits	When <i>employee</i> begins in the activity	<u>For 3 years only after an <i>employee</i> ceases to engage in or oversee an activity or Employment plus 3 years</u> or for PTS indefinite
TC 2.5.2 G	<u>Appropriate examinations</u> <i>Approved examinations</i>	Examination passes and dates and other relevant data such as periods of absence	Duration of time limits for that activity	<u>For 3 years only after an <i>employee</i> ceases to engage in or oversee an activity or Employment plus 3 years</u> or for PTS indefinite
TC 2.5.6 G	<u>Appropriate examinations</u> <i>Approved examinations</i> - regulatory module only	Criteria for application of TC 2.5.5 R to the <i>employee</i>	At the time of the application of the <i>rule</i>	<u>For 3 years only after an <i>employee</i> ceases to engage in or oversee an activity or Employment plus 3 years</u> or for PTS indefinite
TC 2.6.4G	Maintaining Competence	Criteria for and application of assessment	On a continuing basis after competence	<u>For 3 years only after an <i>employee</i> ceases to engage in or oversee an activity or Employment plus 3 years</u> or for PTS indefinite
TC 2.7.6G	Supervising and monitoring	Criteria in deciding level of supervision and how it is carried out	When the <i>employee</i> begins in the activity and on an ongoing basis	<u>For 3 years only after an <i>employee</i> ceases to engage in or oversee an activity or Employment plus 3 years</u> or for PTS indefinite
TC 2.8.1 R (1)	Compliance with sourcebook	Data on competence, relevant to compliance with the sourcebook	When the <i>employee</i> begins in the activity and on a continuing basis	<u>For 3 years only after an <i>employee</i> ceases to engage in or oversee an activity or Employment plus 3 years</u> or for PTS indefinite

Annex B

Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

10.10.9 G When considering an application for *approval* in relation to this *controlled function*, the *FSA* may ask for evidence of the individual's competence. *TC 2.4.1R* provides that a *firm* must ensure that an *employee* is not allowed to engage in an activity unless the *employee* has been assessed as competent in that activity, in accordance with *TC 2.4.5R*, or is appropriately supervised. *TC 2.4.5R* provides that a *firm* must, before an *employee* can be assessed as competent, ensure that the *employee* has been assessed as able to apply the knowledge and skills necessary to engage without supervision in the relevant activity and has passed an ~~the~~ appropriate examination ~~approved examination~~.

10.10.10 G The *FSA* would expect an individual from overseas to be accompanied on a visit to a *customer*. *TC 2.5.5R(1)* provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of *TC 2.5.5R (1)* are disapplied in these circumstances (except for an individual who gives advice to *private customers* on *packaged products* or is a *broker fund adviser*). The effect of this is that the individual who may have previously been required to comply fully with the *United Kingdom* examination requirements, now need not pass the relevant regulatory module of an appropriate examination ~~approved examination~~ (see *TC 2.5.5R(3)* and (4)).

...

10.10.13A G The *FSA* would expect an individual from overseas to be accompanied on a visit to a *customer*. *TC 2.5.5R(1)* provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of *TC 2.5.5R(1)* are disapplied in these circumstances. The effect of this is that the individual, who may previously have been required to comply fully with the *United Kingdom* examination requirements, now need not pass the relevant regulatory module of an appropriate examination ~~approved examination~~ (see *TC 2.5.5R(3)* and (4)).

...

10.10.22 G The *FSA* would expect an individual from overseas to be accompanied on a visit to a *customer*. *TC 2.5.5R(1)* provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of *TC 2.5.5R(1)* are disapplied in these circumstances. The effect of this is that the individual, who may previously have been required to comply fully with the *United Kingdom* examination requirements, now need

not pass the relevant regulatory module of an appropriate examination
~~approved examination~~ (see *TC 2.5.5R(3)* and (4)).

...

SUP 10 Annex 4

Approved person regime forms

Form A

Application to perform controlled functions under the approved persons regime

3.07 If the answer to 3.06 is “YES”, indicate which of the following formed part of the assessment (only tick one box):

Passing the relevant module(s) of an ~~the~~ appropriate examination ~~as specified in the annexes to TC2~~ as required by TC 2.4.5 R

OR

Complying with *TC 2.5.5R* (~~Approved examinations~~ Appropriate examinations)

OR

Complying with *TC* Transitional Provisions

Annex C

Amendments to the Glossary

In this Annex, striking through indicates deleted text.

approved examination ~~an examination listed in the annexes to TC2, or an examination which is equivalent in accordance with the *Diploma Directives*.~~