



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Review of the Minimum Competency Code 2011 – CP106

Questions and Answers

EXECUTIVE SUMMARY

The Central Bank of Ireland (Central Bank) published the “Review of the Minimum Competency Code 2011 (CP106¹)” (the Consultation Paper) on 26 November 2016 to seek feedback on the implications of recent EU developments in the area of professional knowledge and competence requirements. The Consultation Paper included a draft revised Minimum Competency Code and draft Minimum Competency Regulations.

The Minimum Competency Requirements (Requirements) were first introduced on 1 January 2007 and established minimum professional standards for staff of financial service providers with particular emphasis on staff dealing with consumers in relation to retail financial products. Following a review of the Requirements in 2011, they were replaced by the MCC, which came into effect on 1 December 2011.

A further review of the Minimum Competency Code has been undertaken to consider the implications of the following recent EU developments:

- Mortgage Credit Directive which has been transposed into Irish law by the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (Mortgage Credit Regulations);
- Markets in Financial Instruments Directive II (MiFID II) and associated European Securities and Markets Authority Guidelines for the assessment of knowledge and competence (ESMA Guidelines); and
- Insurance Distribution Directive (IDD), due to be transposed on 23 February 2018.

The Central Bank received twenty-six submissions² to CP106 and wishes to acknowledge the contribution of respondents. The views expressed have been carefully considered and have been useful in finalising the Minimum Competency Code 2017 (MCC 2017) and the Central Bank

¹ <https://centralbank.ie/docs/default-source/publications/Consultation-Papers/cp106/cp106-review-of-the-minimum-competency-code-2011.pdf?sfvrsn=4>

² All submissions are available at <https://centralbank.ie/publication/consultation-papers/consultation-paper-detail/cp106---review-of-the-minimum-competency-code-2011>

(Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017 (Minimum Competency Regulations 2017).

In order to provide additional explanation in a number of areas where concerns or uncertainty were evident in the submissions to CP106, this Q&A document has been developed and is divided into the following two sections and corresponding headings:

Section 1. General feedback

- Review
- Scope
- Qualifications
- Experience
- Grandfathering
- Product design
- Insurance undertakings, reinsurance undertakings and insurance intermediaries
- Annual review
- Competencies
- Miscellaneous

Section 2. Feedback relating to the credit union sector (to be read in conjunction with Section 1)

- Scope
- Experience
- Recognised qualifications

SECTION 1: GENERAL FEEDBACK

Review

Q1. Why has a review of the Minimum Competency Code 2011 (MCC 2011) been completed?

The Central Bank has undertaken a review of the MCC 2011 due to recent EU developments in the area of professional knowledge and competence requirements contained in the Mortgage Credit Regulations, the MiFID II and the IDD.

A consultation paper on the Review of the MCC 2011 (CP 106), which included a draft revised MCC and draft Minimum Competency Regulations, was published in November 2016, which sought stakeholder feedback on proposed changes.

Following a review of the submissions received, the MCC 2017 and the Minimum Competency Regulations 2017 have been published.

Q2. How has the format changed?

The MCC 2011 has been replaced with the following:

1. The MCC 2017³, issued under Section 50 of the Central Bank Reform Act 2010, is divided into three parts:
 - Part 1 sets out minimum competency standards which persons falling within its scope must comply with when performing certain controlled functions, i.e., providing advice or information to consumers on retail financial products, arranging or offering to arrange retail financial products for consumers (including any amendments to insurance cover and the restructuring or rescheduling of loans) or the exercise of certain specified functions⁴. This

³ Replaces Part 1 (Standards), 3 (Qualifications) and appendices 1-4 of the MCC 2011.

⁴ Assisting consumers in the making of a claim/determining the outcome of claims by consumers under contracts of insurance, adjudicating on any complaint which relates to advice or information about a retail financial product or arranging or offering to arrange a retail financial product for a consumer, direct management or supervision of accredited persons, providing debt management services and

Part, in effect, replaces the minimum competency standards on persons in Part 1 of the MCC 2011.

- Part 2 sets out standards for certain additional functions, i.e., certain MiFID services or activities, product design and certain functions relating to mortgage credit, reinsurance and insurance. These requirements have been allocated a specific Part as they are mainly non-consumer activities.
- Part 3 sets out details on the recognition of qualifications in respect of retail financial products for the purposes of the MCC 2017.

2. The Minimum Competency Regulations 2017, which impose certain obligations on regulated firms under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013, replace Part 2 of the MCC 2011. Under the Minimum Competency Regulations 2017, a regulated firm must ensure that persons performing relevant functions on its behalf comply with the standards set out in the MCC 2017.

Q3. When do these changes take effect?

The MCC 2017 and the Minimum Competency Regulations 2017 will together replace the MCC 2011 from 3 January 2018.

Scope

Q4. Are individuals or firms within scope of the MCC 2017 and the Minimum Competency Regulations 2017 subject to the Consumer Protection Code (CPC)?

In most cases, where persons are dealing with consumers, the MCC 2017, the Minimum Competency Regulations 2017 and the CPC apply. However, there are some situations where the MCC 2017 and the Minimum Competency Regulations 2017 will apply but the CPC will not, e.g., the application of MiFID II. Please consult the CPC separately to determine whether it is applicable.

being directly involved in the activity of reinsurance distribution on behalf of a reinsurance intermediary.

Q5. Why is there a distinction between elective professional clients and per se professional clients?

The ESMA Guidelines for the assessment of knowledge and competence⁵ have been implemented through the MCC 2017 and the Minimum Competency Regulations 2017. In order to align more closely with MiFID terminology, the MCC 2017 and the Minimum Competency Regulations 2017 now refer to retail or professional clients rather than consumers in connection with MiFID services or activities. However, as far as possible, the scope of the existing MCC 2011 has been retained in Part 1 of the MCC 2017. Therefore, Part 1 of the MCC 2017 applies to the provision of certain MiFID services or activities to retail clients and to those retail clients that elect to be treated as professional clients.

Part 2 of the MCC 2017 mainly deals with the provision of services to persons that do not fall within the definition of 'consumer' and that would not have fallen within the scope of the MCC 2011. The provision of MiFID services or activities to per se professional clients, therefore, is included in this Part.

Q6. Why has the definition of advice changed? Why has a new definition of information been introduced?

The definition of advice has been amended to take account of the definitions contained in MiFID II, the Mortgage Credit Regulations and the IDD. This definition is narrower than the existing definition. In addition, the ESMA Guidelines apply in respect of the provision of information to clients about the investment products and services falling within the scope of MiFID II. Therefore, new definitions of advice and information have been included to align with the ESMA Guidelines and to ensure that the existing definition of advice is captured in full.

Qualifications

Q7. Have additional qualifications been recognised?

Under this review, no additional qualifications have been recognised.

⁵ https://www.esma.europa.eu/sites/default/files/library/esma71-1154262120-153_guidelines_for_the_assessment_of_knowledge_and_competence_corrigenum.pdf

New qualifications may be developed by professional educational bodies or existing qualifications may be modified to ensure they meet the specified competencies. Such qualifications will be considered as part of the ongoing assessment of the MCC 2017. However, they must be formally approved as a recognised qualification by the Central Bank.

In order to obtain recognition for the purposes of the MCC 2017, any additional qualifications should:

- have broad support within the relevant industry;
- include the competencies set out in Appendix 3 of the MCC 2017;
- provide a standard of knowledge at least equivalent to that provided by the existing qualifications;
- have their underlying academic qualifications included in the National Framework of Qualifications at Level 7 or higher; and
- include ongoing CPD requirements, which must not differ in a material way from the CPD requirements set out in the MCC 2017 and which must incorporate a module, of at least one hour in duration, in relation to ethics.

The most up to date list of qualifications is available on the Central Bank website at <https://www.centralbank.ie/regulation/how-we-regulate/authorisation/minimum-competency/qualifications>.

In the submissions to CP106, a number of additional qualifications were recommended to be added as recognised qualifications. They have not been included as they do not meet the criteria as outlined above, e.g., either they did not include all the required competencies, were not on the National Framework of Qualifications (or an equivalent national framework) at Level 7 or higher or did not involve an ongoing CPD requirement.

Experience

Q8. What experience do I need to carry out a relevant function in respect of MiFID services or activities?

The ESMA Guidelines require employees of MiFID II firms to obtain a

qualification and a minimum six months' experience, on a full time equivalent basis, relevant to the function to be exercised by 3 January 2018. This requirement is reflected in the MCC 2017 and the Minimum Competency Regulations 2017.

Q9. What is a Certificate of Experience? Do I need to complete it?

The Central Bank has developed a Certificate of Experience template (Appendix 5 of the MCC 2017) for written records to be retained in a consistent format to demonstrate that the minimum experience requirement has been met. This Certificate must be completed for new entrants carrying out MiFID services or activities only and signed on behalf of the regulated firm.

Q10. Do I need experience to carry out a relevant function in respect of any other retail financial products (non-MiFID services or activities) that fall within the scope of the MCC 2017?

A specific obligation has been placed on regulated firms in the Minimum Competency Regulations 2017 (Regulation 4) to ensure a person performing a relevant function on its behalf has obtained the competence and skills appropriate to the relevant function, through experience or training gained in an employment context.

This new Regulation is in line with the current requirement on individuals under the Fitness and Probity Standards⁶, which require persons to be competent and capable (including having the appropriate experience relating to the relevant function).

The Central Bank's Fitness and Probity Standards currently require a person to be able to demonstrate that he or she has obtained the competence and skills appropriate to the relevant function, whether through training or experience gained in an employment context.

⁶ <https://www.centralbank.ie/docs/default-source/Regulation/authorisation/fitness-probity/regulated-financial-service-providers/fitness-and-probity-standards.pdf?sfvrsn=0>

Grandfathering

Q11. If I am a grandfathered individual in respect of MiFID II investment products, do I need to obtain a recognised qualification and six months' experience by 3 January 2018?

Yes. In accordance with the ESMA Guidelines, a person carrying out a relevant function in respect of MiFID services or activities (related to financial instruments or structured deposits as set out in MiFID II) must have a recognised qualification relevant to the function to be exercised and at least six months' experience by 3 January 2018.

This requirement will also apply to those currently grandfathered in respect of MiFID II investment products, who will be required to complete a relevant recognised qualification by this date. If individuals have not obtained a qualification by this date, they can act as a new entrant under supervision while working towards obtaining a recognised qualification.

Q12. If I am a grandfathered individual in respect of mortgage credit agreements (as defined in the Mortgage Credit Regulations), do I need to obtain a recognised qualification and six months' experience by 21 March 2019?

In accordance with the Mortgage Credit Regulations, from 21 March 2019, the determination of the appropriate level of knowledge and competence shall not be based solely on professional experience.

From this date, staff of mortgage creditors and mortgage credit intermediaries carrying out relevant functions in respect of mortgage credit agreements (as defined in the Mortgage Credit Regulations), including those who are currently grandfathered in respect of mortgage credit agreements, must obtain a recognised qualification by 21 March 2019.

If individuals have not obtained a qualification by this date, they can act as a new entrant under supervision while working towards obtaining a recognised qualification.

While six months' experience is not required by 21 March 2019, the Central Bank's Fitness and Probity Standards currently require a person

to be able to demonstrate that he or she has obtained the competence and skills appropriate to the relevant function, whether through training or experience gained in an employment context.

Q13. What impact does this review have on grandfathered persons acting on behalf of regulated firms authorised under the Investment Intermediaries Act 1995?

Prior to this review, regulated firms authorised under the Investment Intermediaries Act 1995 have been subject to the MCC 2011. In respect of relevant activities that fall within the scope of the firm’s authorised under the Investment Intermediaries Act 1995, a grandfathered person can continue to avail of grandfathering arrangements under the MCC 2017 and the Minimum Competency Regulations 2017.

Product design

Q14. Does a person involved in the final decision regarding product design need to obtain an MCC 2017 qualification?

Under the Mortgage Credit Regulations, staff of creditors and mortgage credit intermediaries (including credit unions) are required to possess and keep up to date an appropriate level of knowledge and competence in relation to devising or otherwise creating credit products. In addition, the European Insurance and Occupational Pensions Authority (EIOPA) and the European Banking Authority (EBA) have published Guidelines⁷ relating to product oversight and governance, which include requirements in relation to the competence of manufacturers of products. Schedule 4 of the European Union (Markets in Financial Instruments) Regulations 2017 on product governance obligations also states that investment firms must ensure that relevant staff involved in the manufacturing of financial instruments possess the necessary expertise to understand the characteristics and risks of the financial instruments they intend to manufacture.

In order to take account of these competence requirements, a new specified function for those directly involved in the design of retail financial products has been included in the MCC 2017 requiring at least

⁷ [EIOPA Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors](#)
[EBA Guidelines on product oversight and governance arrangements for retail banking products](#)

one person with material influence on the final decision regarding product design to meet the standards of the MCC 2017 for that product.

Q15. Who is a person deemed to have material influence?

The relevant person with material influence, excluding new entrants, will be at the discretion of the firm. It is expected that this relevant person will have influence among the decision making group and will hold consumers interests at the forefront of the final decision regarding product design.

A separate list of appropriate qualifications has not been developed. It is expected that such person will hold a recognised qualification for the product being devised or created.

Insurance undertakings, reinsurance undertakings and insurance intermediaries

Q16. What is required for insurance undertakings and their staff involved in insurance distribution activities when dealing with customers who do not fall within the definition of consumer?

In order to comply with the IDD, staff of insurance undertakings will be required to complete fifteen hours of CPD in relation to insurance each year. In addition, there is a continuing obligation on regulated firms under Section 21 of the Central Bank Reform Act 2010 to ensure that persons carrying out controlled functions on their behalf meet the Fitness and Probity Standards, including the requirement to ensure that persons acting on their behalf are fit and proper and have the qualifications, experience, competence and capacity appropriate to the relevant function.

Q17. What is required for reinsurance undertakings and their staff involved in reinsurance distribution activities?

In order to comply with the IDD, staff of reinsurance undertakings will be required to complete fifteen hours of CPD in relation to reinsurance or insurance each year. In addition, there is a continuing obligation on

regulated firms under Section 21 of the Central Bank Reform Act 2010 to ensure that persons carrying out controlled functions on their behalf meet the Fitness and Probity Standards, including the requirement to ensure that persons acting on their behalf are fit and proper and have the qualifications, experience, competence and capacity appropriate to the relevant function.

Q18. What is required for insurance intermediaries and their staff involved in insurance distribution activities when dealing with customers who do not fall within the definition of 'consumer'?

In order to comply with the IDD, staff of insurance intermediaries will be required to complete fifteen hours of CPD each year in accordance with Section 1.7 of the MCC 2017 in relation to the knowledge and competence requirements set out in Annex 1 to the IDD. In addition, there is a continuing obligation on regulated firms under Section 21 of the Central Bank Reform Act 2010 to ensure that persons carrying out controlled functions on their behalf meet the Fitness and Probity Standards, including the requirement to ensure that persons acting on their behalf are fit and proper and have the qualifications, experience, competence and capacity appropriate to the relevant function.

Annual review

Q19. What is the annual review?

An annual review of an employee's qualifications and development and experience needs has been introduced in the Minimum Competency Regulations 2017 as a new requirement for regulated firms. The aim is to take account of the personal development and experience needs of staff members, qualifications, regulatory developments and new retail financial products offered by the firm.

It is at the discretion of the regulated firm as to whether this requirement is incorporated into an employee's annual training.

Q20. Where does this information need to be recorded? Is it required to be included on the MCC 2017 register?

No, this information does not need to be included on the MCC 2017 register. However, the information on the register may need to be amended following the annual review.

Competencies

Q21. The annual CPD hours are restricted to a narrow range of topics; can they be adapted to allow recognition of critical areas of risk, e.g., business development, strategic planning and financial management?

The content of the CPD hours must be directly relevant to the functions of the qualified person or grandfathered person. The CPD material for these persons must therefore be related to the competencies set out in Appendix 3 of the MCC 2017. These competencies relate specifically to the retail financial product and do not include topics relating to the general operation of the firm's business.

Q22. Why are the risks associated with IT and cybersecurity not included as a new competency under the "Legislation, regulation and compliance" subject matter in Appendix 3 of the MCC 2017?

Appendix 3 of the MCC 2017 contains competencies for each specific category of retail financial product. As this risk is an operational issue for regulated firms, this has not been included as a new competency as it does not specifically relate to a retail financial product.

Q23. Why has the term 'formal' CPD hours been removed?

As informal hours are no longer required under the MCC 2017, we have removed the term 'formal' from CPD hours as it is unnecessary. This has no implication for CPD hours.

Q24. What competency requirements do members of the board of a mortgage credit intermediary require?

In order for members of boards or equivalent⁸ to demonstrate they meet the requirements of the Mortgage Credit Regulations they will be

⁸ A natural person established as a mortgage credit intermediary, the members of the board of a mortgage credit intermediary established as a legal person and natural persons performing equivalent tasks within a mortgage credit intermediary which is a legal person but does not have a board

required to complete six hours of CPD each year, which focuses on the competencies set out in Schedule 1 of the Mortgage Credit Regulations. This requirement only applies to mortgage credit intermediaries that are within the scope of the Mortgage Credit Regulations.

Where the members of the board or equivalent are in a consumer-facing role, they are already subject to the MCC 2017, which includes an ongoing CPD requirement of at least 15 CPD hours each year. For such persons carrying out a dual role, the CPD requirement will be 15 hours in total, i.e., the six-hour requirement can be included in the 15-hour requirement provided that the content of the CPD includes the competencies set out in Schedule 1 of the Mortgage Credit Regulations.

Miscellaneous

Q25. Why have the transitional arrangements for debt management services been removed?

Under the MCC 2011, a four-year transitional period was in place for debt management services.

These provisions have been removed as this transition period expired on 1 August 2017.

SECTION 2: FEEDBACK RELATING TO THE CREDIT UNION SECTOR

Scope

Q26. Does the MCC 2017 or the Minimum Competency Regulations 2017 apply to credit unions?

The MCC 2011 currently applies to credit unions when acting as retail intermediaries. The MCC 2017 and the Minimum Competency Regulations 2017 will continue to apply to credit unions when providing these activities. The MCC 2017 and the Minimum Competency Regulations 2017 will also apply to credit unions when providing mortgage credit agreements in line with the knowledge and competence requirements of the Mortgage Credit Regulations, which apply to credit unions. The minimum competency standards of the MCC 2017 and the Minimum Competency Regulations 2017 will be applied to credit unions and credit union staff when devising or creating mortgage credit products, advising on or arranging or offering to arrange mortgage credit products or carrying out a specified function in respect of such products.

In CP106, it was proposed to potentially extend the MCC to apply to all credit union activities within the scope of the MCC (i.e., extending the MCC to the lending activities and term deposit activities of credit unions) in order to ensure the same level of protection for consumers regardless of the type of entity they are dealing with.

The Central Bank proposes to undertake further work (seeking information from the credit union sector about the level of qualifications already held by staff) to gain a better understanding of the impact of these proposed changes on the sector while taking account of comments made in CP106 submissions to determine an appropriate implementation approach. A number of issues were raised in these submissions including grandfathering, recognition of existing qualifications, term deposits and CPD hours, which will be considered

further in the course of our further work in this area.

In light of this, no changes arising from this proposal have been reflected in the MCC 2017 or the Minimum Competency Regulations 2017 at this time and pending the outcome of our further work in relation to this sector, the MCC 2017 and the Minimum Competency Regulations 2017 will only apply to credit unions when acting as retail intermediaries or when providing mortgage credit agreements as outlined above.

Experience

Q27. Is previous experience in the provision of mortgage credit, in a credit union context, recognised in relation to the Mortgage Credit Regulations?

In accordance with the Mortgage Credit Regulations, from 21 March 2019 the determination of the appropriate level of knowledge and competence shall not be based solely on professional experience.

From this date, staff of mortgage creditors and mortgage credit intermediaries, including credit unions, carrying out relevant functions in respect of mortgage credit agreements (as defined in the Mortgage Credit Regulations), including those who are currently grandfathered in respect of mortgage credit agreements, must obtain a recognised qualification by 21 March 2019.

If individuals have not obtained a qualification by this date, they can act as a new entrant under supervision while working towards obtaining a recognised qualification.

Recognised qualifications

Q28. Are the Advanced Certificate in Credit Union Practice (ACCUP) and the Pathways Diploma in Credit Union Operations recognised qualifications under the MCC 2017 in relation to meeting the knowledge and competence requirements of the

Mortgage Credit Regulations?

No. These qualifications do not meet the competencies set out in Appendix 3 of the MCC 2017 in respect of retail financial product category 7 (Mortgage Credit Agreements, Housing Loans, Home Reversion Agreements and Associated Insurances). An alternative qualification must be completed, e.g., APA Loans or APP Loans.