

2018 No. xx

FINANCIAL SERVICES AND MARKETS

**The Insurance Distribution (Regulated Activities and
Miscellaneous Amendments) Order 2018**

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with article 1(2)

The Treasury are designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury make this Order in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972 and sections 1A(6)(d), 1L(2)(b), 22(1) and (5), 39(4)(b), 66A(4)(b), 168(4)(k), 204A(2) and (4), 380(6)(a), 382(9)(a), 384(7) and (10), 409(1), 426 and 428(3) of, and paragraph 23(2) of Schedule 1ZA to, and paragraph 25 of Schedule 2 to, and paragraphs 13(1)(b), 14(1)(b) and 17(b) of Schedule 3 to, the Financial Service and Markets Act 2000(c).

PART 1

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018.

(2) This Order comes into force—

(a) on 22nd day after laying to enable rules to be made under section 137R (financial promotion rules) of the Act as amended by article 11; and

(b) on 23rd February 2018 for all other purposes.

(3) In this Order—

(a) S.I. 2012/1759.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and the European Union (Amendment) Act 2008 (c.7), Schedule Part 1.

(c) 2000 c.8. Sections 1A and 1L were inserted by section 6 of the Financial Services Act 2012 (c.21) ('the FS Act 2012'). Section 39(4) was substituted by paragraph 5 of Schedule 18 to the FS Act 2012. Section 66A was inserted by section 32 of the Financial Services (Banking Reform) Act 2013 (c.33). Section 168(4)(k) was substituted by paragraph 8 of Schedule 12 to the FS Act 2012. Section 204A was inserted by paragraph 10 of Schedule 9 to the FS Act 2012. Section 380(6)(a) was amended by paragraph 19 of Schedule 9 to the FS Act 2012. Section 382(9)(a) was amended by paragraph 21 of Schedule 19 to the FS Act 2012 and by S.I. 2013/1773. Section 384(7) was amended by S.I. 2007/126 and paragraph 23 of Schedule 9 to the FS Act 2012. Section 409(1) was amended by S.I. 2011/1613. Schedule 1ZA was inserted by Schedule 3 to the FS Act 2012. Paragraph 25 of Schedule 2 was amended by section 8 of the FS Act 2012.

“the Act” means the Financial Services and Markets Act 2000;

“the principal Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a).

PART 2

Amendments to the principal Order

Amendments to the principal Order

2. This Part amends the principal Order.

Specified activities: general

3. In article 4 (specified activities: general)—

(a) for paragraph (4A)(b) substitute—

“(4A) Where a person, other than an ancillary insurance intermediary carrying out insurance distribution activities falling within Article 1.3 of the insurance distribution directive (the text of which is set out in Part 1 of Schedule 4)—

(a) for remuneration, takes up or pursues insurance distribution, or reinsurance distribution, in relation to a risk or commitment located in an EEA State, and

(b) in doing so would be treated as carrying on an activity of a specified kind by a provision of this Part but for an exclusion in any of articles 30, 66, 67 and 72AA,

that exclusion is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question).”, and

(b) for paragraph (5)(c) substitute—

“(5) In this article—

“ancillary insurance intermediary” has the meaning given by Article 2.1(4) of the insurance distribution directive, the text of which is set out in Part 4 of Schedule 4;

“insurance distribution” has the meaning given by Articles 2.1(1) and 2.2 of the insurance distribution directive, the text of which is set out in Parts 2 and 5 of Schedule 4, respectively; and

“reinsurance distribution” has the meaning given by Articles 2.1(2) and 2.2 of the insurance distribution directive, the text of which is set out in Parts 3 and 5 of Schedule 4, respectively.”.

Activities: arranging deals in investments – exclusions

4. In article 33 (introducing), for paragraph (d)(d), substitute—

“(d) The arrangements—

(i) are made with a view to a person entering into a transaction which does not relate to a contract of insurance, or

(ii) are of the type specified in article 33B (provision of information – contracts of insurance).”.

5. After article 33A (introducing to authorised persons etc.)(e) insert—

(a) S.I. 2001/544.

(b) Paragraph (4A) was inserted by S.I. 2003/1476 and amended by S.I. 2014/1292.

(c) Paragraph (5) was amended by S.I. 2003/1476 and S.I. 2006/3384.

(d) Paragraph (d) was inserted by S.I. 2003/1476.

(e) Article 33A was inserted by S.I. 2003/1475.

“Provision of information – contracts of insurance

33B.—(1) There is excluded from article 25(1) and (2) (arranging deals in investments) the making of arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance, where that activity meets the conditions specified in paragraphs (2) and (3).

(2) The conditions specified in this paragraph are that the activity—

- (a) consists of the provision of information about a potential policyholder to a relevant insurer or an insurance or reinsurance intermediary, or
- (b) consists of the provision of information to a potential policyholder about—
 - (i) a contract of insurance, or
 - (ii) a relevant insurer or insurance or reinsurance intermediary.

(3) The condition specified in this paragraph is that the provider of the information does not take any step other than the provision of information to assist in the conclusion of a contract of insurance.

(4) In this article—

“insurance intermediary” has the meaning given in Article 2.1(3) of the insurance distribution directive;

“reinsurance intermediary” has the meaning given in Article 2.1(5) of the insurance distribution directive;

“relevant insurer” has the meaning given in article 39B(2) (claims management on behalf of an insurer etc.).”.

Activities carried on by a provider of relevant goods or services – exclusions

6. In article 72B(1) (activities carried on by a provider of relevant goods or services)(a)—

- (a) in the definition of “connected contract of insurance”—
 - (i) omit paragraph (b);
 - (ii) for paragraph (c), substitute—

“(c) has a premium of—

 - (i) 600 euro or less (calculated on a pro rata annual basis), or
 - (ii) where the insurance is complementary to a service being provided by the provider and the duration of that service is equal to or less than three months, 200 euro or less,

or equivalent amounts of sterling or another currency;”;
 - (iii) at the end of paragraph (d)(i), omit “or”;
 - (iv) after paragraph (d)(i), insert—

“(ia) the non-use of services supplied by the provider; or”;
 - (v) at the end of paragraph (e), add “and”;
 - (vi) omit paragraph (g) and the “and” immediately preceding it; and
- (b) in the definition of “provider”, for “non-motor goods”, substitute “non-motor goods or services”.

(a) Article 72B was inserted by S.I. 2003/1476. Paragraph (1) was amended by S.I. 2007/3510, S.I. 2011/1265 and S.I. 2013/1881.

Unauthorised persons carrying on insurance distribution activities

7.—(1) Part 5 (unauthorised persons carrying on insurance mediation activities)(a) is amended as follows.

(2) In the heading, for “MEDIATION”, substitute “DISTRIBUTION”.

(3) In article 92 (interpretation), in the definition of “insurance mediation activity”, for “mediation”, substitute “distribution”.

(4) In article 93 (duty to maintain a record of persons carrying on insurance mediation activities)—

(a) for “mediation”, in each place it occurs (including in the heading), substitute “distribution”; and

(b) after paragraph (3), insert—

“(3A) An application for inclusion in the record made by a person who falls within paragraph (2) or (3) must be determined by the FCA before the end of the period of 3 months beginning with the date on which it received the completed application.

“(3B) A notification by a designated professional body in accordance with article 94 is to be treated as an application for inclusion in the record for the purposes of paragraph (3A).”.

(5) In article 94 (members of designated professional bodies) for “mediation”, in each place it occurs, substitute “distribution”.

(6) In article 95 (exclusion from record where not fit and proper to carry on insurance mediation activities)—

(a) in the heading, and in paragraph (1), for “mediation”, substitute “distribution”; and

(b) after paragraph (1) insert—

“(1A) In making a determination as to whether a person is a fit and proper person for the purposes of paragraph (1), the FCA must consider whether the relevant registration conditions under Article 3 of the insurance distribution directive are met.”.

(7) In article 96 (exclusion from the record where FCA has exercised its powers under Part 20 of the Act), in paragraphs (2) and (3), for “mediation”, substitute “distribution”.

Relevant text of the insurance distribution directive

8. For Schedule 4(b), substitute—

“SCHEDULE 4

Article 4

Relevant Text of the Insurance Distribution Directive

PART 1

Article 1.3

“This Directive shall not apply to ancillary insurance intermediaries carrying out insurance distribution activities where all the following conditions are met—

(a) the insurance is complementary to the good or service supplied by a provider, where such insurance covers—

(a) Part 5 was inserted by S.I. 2003/1476 and amended by S.I. 2013/472.

(b) Schedule 4 was inserted by S.I. 2003/1476.

- (i) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or
- (ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider;
- (b) the amount of the premium paid for the insurance product does not exceed EUR 600 calculated on a *pro rata* annual basis;
- (c) by way of derogation from point (b), where the insurance is complementary to a service referred to in point (a) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.”

PART 2

Article 2.1(1)

“For the purposes of this Directive “insurance distribution” means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.”

PART 3

Article 2.1(2)

“For the purposes of this Directive “reinsurance distribution” means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary.”

PART 4

Article 2.1(4)

““ancillary insurance intermediary” means any natural or legal person, other than a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met—

- (a) the principal professional activity of that natural or legal person is other than insurance distribution;
- (b) the natural or legal person only distributes certain insurance products that are complementary to a good or service;
- (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity.”

PART 5

Article 2.2

“For the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution—

- (a) the provision of information on an incidental basis in the context of another professional activity where—
 - (i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;
 - (ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- (b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;
- (c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
- (d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.”

PART 3

Amendments to the Act

Amendments to the Act

9. This Part amends the Act.

Applications under Part 4A

10.—(1) In section 55R (persons connected with an applicant)(a), in subsection (2)(a)(b), after “insurance”, insert “, ancillary insurance”.

(2) In section 55V (determination of applications), after subsection (8)(c), insert—

“(9) In the case of an application which—

- (a) is for a Part 4A permission or a variation of a Part 4A permission, and
- (b) relates only to the undertaking of insurance distribution activity,

subsection (1) has effect as if the reference to “6 months” were to “3 months”.

(10) In this section, “insurance distribution activity” has the meaning given in article 92 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.

(a) Part 4A (sections 55A to 55Z4) was inserted by section 11 of the Financial Services Act 2012.

(b) Subsection (2)(a) was amended by S.I. 2017/701.

(c) Subsection (8) was inserted by S.I. 2013/1773 and amended by S.I. 2013/1797.

Financial promotion rules

11. In section 137R (financial promotion rules)(a), in subsection (5)(b)(b)—

- (a) at the end of sub-paragraph (iii), omit “or”; and
- (b) after sub-paragraph (iv)(c) insert—

“or

- (v) Article 17 of the insurance distribution directive.”.

Incoming firms: appropriate regulator primarily responsible for securing compliance

12. After section 194C (contravention by relevant EEA firm with UK branch of requirement in mortgages directive: appropriate regulator primarily responsible for securing compliance)(d), insert—

“Contravention by relevant EEA firm of requirement in insurance distribution directive: appropriate regulator primarily responsible for securing compliance

194D.—(1) This section applies if—

- (a) a relevant EEA firm has a branch in the United Kingdom; and
- (b) the appropriate regulator ascertains that the firm has contravened, or is contravening, a requirement to which Article 8.1 of the insurance distribution directive applies.

(2) The appropriate regulator may exercise its powers of intervention in respect of the relevant EEA firm.

(3) Subsection (2) applies whether or not the appropriate regulator’s power of intervention is also exercisable as a result of section 194, 195 or 195C.

(4) If the appropriate regulator exercises its power in respect of the relevant EEA firm by virtue of subsection (2), it must notify the home state regulator, the Commission and EIOPA without undue delay of—

- (a) the fact that the appropriate regulator has exercised that power in respect of that firm;
- (b) any requirements it has imposed on the firm in exercise of the power; and
- (c) the reasons for the exercise of that power.

(5) In this section—

“appropriate regulator” means—

- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA;

“relevant EEA firm” means an EEA firm falling within paragraph 5(e) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the insurance distribution directive.”.

Division of competence between home and host state regulators

13. After section 195B (contravention by relevant EEA firm of requirement in mortgages directive: home state regulator primarily responsible for securing compliance)(e), insert—

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- (a) Section 137R was inserted by section 24 of the Financial Services Act 2012.
 - (b) Subsection (5) was amended by S.I. 2015/910.
 - (c) Sub-paragraph (iv) was inserted by S.I. 2015/910.
 - (d) Section 194C was inserted by S.I. 2015/910.
 - (e) Section 195B was inserted by S.I. 2015/910.

“Contravention by relevant EEA firm of requirement in insurance distribution directive: home state regulator primarily responsible for securing compliance

195C.—(1) This section applies if the appropriate regulator has reason to believe that a relevant EEA firm has contravened, or is contravening, a requirement to which Article 5.1 or 8.2 of the insurance distribution directive applies, unless that firm is the subject of an agreement under section 203A (in which case, the provisions in that agreement apply).

(2) The appropriate regulator must notify the relevant EEA firm’s home state regulator of the situation mentioned in subsection (1).

(3) The notice under subsection (2) must—

- (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the relevant EEA firm puts an end to the contravention;
- (b) state that the appropriate regulator’s power of intervention is likely to become exercisable in relation to the relevant EEA firm if it continues the contravention; and
- (c) indicate any requirements that the appropriate regulator proposes to impose on the relevant EEA firm in exercise of its power of intervention in the event of the power becoming exercisable.

(4) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—

- (a) a reasonable period of time has elapsed since the giving of the notice under subsection (2), and
- (b) conditions A to C are satisfied.

(5) Condition A is that—

- (i) the home state regulator of the relevant EEA firm has failed or refused to take measures for the purpose mentioned in subsection (3)(a), or
- (ii) any measures taken by the home state regulator have proved inadequate for that purpose.

(6) Condition B is that the relevant EEA firm is acting in a manner which is clearly prejudicial to the interests of consumers in the United Kingdom or to the orderly functioning of the markets.

(7) Condition C is that the appropriate regulator has informed the home state regulator of the relevant EEA firm of its intention to exercise its powers of intervention in respect of the firm.

(8) The appropriate regulator may exercise its powers of intervention in respect of a relevant EEA firm without complying with subsections (2) and (4)—

- (a) in a case where the relevant EEA firm has a branch in the United Kingdom, where it decides that immediate action is necessary to protect the interests of consumers, and where measures of the home state regulator are inadequate or lacking; and
- (b) in any other case, where it decides that immediate action is necessary to protect the interests of consumers.

(9) Subsections (4) and (8) apply whether or not the appropriate regulator’s power of intervention is also exercisable as a result of section 194, 194D or 195.

(10) If circumstances exist which enable the appropriate regulator to exercise its power of intervention under subsection (4), the appropriate regulator may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)(a).

(a) O.J. 15.12.2010 L 331/48.

(11) If the appropriate regulator exercises its power of intervention in respect of the relevant EEA firm by virtue of subsection (4) or (8), it must notify the home state regulator, the Commission and EIOPA, without undue delay of—

- (a) the fact that the appropriate regulator has exercised that power in respect of that firm;
- (b) any requirements it has imposed on the firm in exercise of the power; and
- (c) the reasons for the exercise of that power.

(12) Subsection (2) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the situation mentioned in subsection (1) in a case where the PRA is satisfied that the FCA is required to act, and is acting, or has acted, under subsection (2) in relation to that situation.

(13) In this section—

“appropriate regulator” means—

- (a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (12), the PRA;
- (b) in any other case, the FCA;

“relevant EEA firm” means an EEA firm falling within paragraph 5(e) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the insurance distribution directive.”.

Agreements between regulators to exercise enhanced supervision

14. After Part 13 (incoming firms: intervention by FCA or PRA)(a) insert—

“PART 13A

Enhanced supervision of firms exercising rights under the Insurance Distribution Directive

Insurance distribution directive: enhanced supervision of EEA firms by UK regulators

203A.—(1) The appropriate regulator may agree with a relevant EEA firm’s home state regulator that the appropriate regulator may exercise relevant functions in relation to the firm.

(2) The appropriate regulator must notify the firm and EIOPA of the agreement without delay.

(3) Subsection (2) does not require the PRA to notify the firm and EIOPA where the PRA is satisfied that the FCA is required to do so, or has done so, or will do so.

(4) An agreement under subsection (1)—

- (a) must specify which relevant functions the appropriate regulator may exercise in relation to the firm;
- (b) may specify which relevant functions may be exercised by the appropriate regulator in collaboration with the home state regulator.

(5) The appropriate regulator may exercise relevant functions in relation to the firm in accordance with the agreement, as if the firm were a UK firm.

(6) In this section—

“appropriate regulator” means—

(a) The heading to Part 13 was amended by paragraph 30 of Schedule 4 to the Financial Services Act 2012.

(a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (3), the PRA;

(b) in any other case, the FCA;

“relevant functions” means any functions that may be exercised by the appropriate regulator in relation to a UK firm, that exist to implement, or enable to be implemented, obligations in Chapters IV to VII of the insurance distribution directive (or any functions that exist to deal with matters arising out of, or related to, any such obligations);

“primary place of business”, in relation to a firm, means the location from where the main business of the firm is managed;

“relevant EEA firm” means an EEA firm falling within paragraph 5(e) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the insurance distribution directive and whose primary place of business is the United Kingdom; and

“UK firm” has the meaning given in paragraph 10 of Schedule 3.

Insurance distribution directive: enhanced supervision of UK firms by an EEA regulator

203B.—(1) This section applies where—

(a) a UK firm is exercising a right derived from the insurance distribution directive in an EEA State other than the United Kingdom, and

(b) that EEA State is the firm’s primary place of business.

(2) The appropriate regulator may agree with the host state regulator for that EEA State that the host state regulator may exercise relevant functions in relation to the UK firm.

(3) In this section—

“appropriate regulator” means—

(a) where the relevant UK firm is a PRA-authorized person, the FCA or the PRA;

(b) in any other case, the FCA;

“relevant functions” means any functions that may be exercised by the host state regulator in relation to a firm for whom that regulator is its home state regulator, that exist to implement, or enable to be implemented, obligations in Chapters IV to VII of the insurance distribution directive (or any functions that exist to deal with matters arising out of, or related to, any such obligations);

“host state regulator” has the meaning given in paragraph 11 of Schedule 3;

“primary place of business”, in relation to a firm, means the location from where the main business of the firm is managed;

“UK firm” has the meaning given in paragraph 10 of Schedule 3.

Modification or waiver of rules where firm subject to enhanced supervision

203C.—(1) Where a firm is subject to an agreement under section 203A or 203B, the appropriate regulator may direct that all or any of its rules—

(a) do not apply to that firm, or

(b) apply to that firm with such modifications as may be specified in the direction.

(2) The appropriate regulator may not give or vary a direction unless it is satisfied that—

(a) compliance by the firm with the rules, or with the rules as unmodified, would not give effect to the agreement under section 203A or 203B (as the case may be), and

(b) the direction would not adversely affect the advancement of any of the appropriate regulator’s objectives.

(3) In subsection (2)(b) “objectives”, in relation to the FCA, means operational objectives.

(4) The appropriate regulator may—

- (a) revoke a direction, or
- (b) vary it on its own initiative or on the application of the firm to which it relates.

(5) In this section, “appropriate regulator” means—

- (a) where the firm is a PRA-authorised person, the FCA or the PRA;
- (b) in any other case, the FCA.

Publication of directions under section 203C

203D.—(1) Subject to subsection (2), a direction under section 203C must be published by the appropriate regulator in the way appearing to the appropriate regulator to be the best calculated for bringing it to the attention of—

- (a) persons likely to be affected, and
- (b) persons who are, in the opinion of the appropriate regulator, likely to be subject to a similar direction.

(2) Subsection (1) does not apply if the appropriate regulator is satisfied that it is inappropriate or unnecessary to publish the direction.

(3) In deciding whether to publish the direction, the appropriate regulator must consider whether publication—

- (a) would be detrimental to the stability of the financial system of the United Kingdom,
- (b) would prejudice, to an unreasonable degree, the commercial interests of the person concerned, or
- (c) would be contrary to an international obligation of the United Kingdom.

(4) In this section “appropriate regulator” means—

- (a) where the firm is a PRA-authorised person, the FCA or the PRA;
- (b) in any other case, the FCA.”.

Information under the Insurance Distribution Directive

15. After section 354G (information under the UCITS Directive)(a) insert—

“Information under the Insurance Distribution Directive

354H.—(1) The FCA and the PRA must give the Commission information about any general difficulties which UK insurance distributors encounter—

- (a) in establishing themselves, or
- (b) in carrying out insurance distribution or reinsurance distribution,

in any territory or country other than an EEA State.

(2) In this section—

“UK insurance distributor” is an insurance distributor, reinsurance intermediary or reinsurance undertaking (within the meanings in Article 2.1(5), (7) and (8) of the insurance distribution directive) whose home member state (within the meaning of Article 2.1(10) of the insurance distribution directive) is the United Kingdom;

(a) Section 354G was inserted by S.I. 2016/1095.

“insurance distribution” has the meaning given in Article 2.1(1) of the insurance distribution directive; and

“reinsurance distribution” has the meaning given in Article 2.1(2) of the insurance distribution directive.”.

Publication

16. After section 391D (publication: special provisions relating to the markets in financial instruments directive)(a), insert—

“Publication: special provisions relating to the insurance distribution directive

391E.—(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 32 of the insurance distribution directive applies.

(2) Where a regulator publishes information under section 391(4) or (5) about a matter to which a decision notice or supervisory notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsection (4), where the regulator gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) The regulator may publish the information anonymously, defer publication of the information or withhold some, or all, of the information where—

- (a) following an obligatory prior assessment, the regulator considers that publication of the identity of the person, or any personal data, would be disproportionate; or
- (b) the regulator considers that publication would jeopardise the stability of financial markets or an ongoing investigation.

(5) The regulator must—

- (a) inform EIOPA of all sanctions or measures imposed to which Article 32 of the insurance distribution directive applies (whether or not information about such matters is published) and all appeals against such a sanction or measure and the outcome of any appeals, without delay; and
- (b) provide EIOPA annually with aggregate information about all such sanctions or measures imposed.

(6) In this section “supervisory notice” has the same meaning as in section 395.”.

EEA Passport Rights

17.—(1) Schedule 3 (EEA passport rights) is amended as follows.

(2) In paragraph 1(e) (the single market directives)(b), for “the insurance mediation directive” substitute “the insurance distribution directive”.

(3) For paragraph 4A (the insurance mediation directive)(c) and the heading before it, substitute—

“The insurance distribution directive

4A. “The insurance distribution directive” means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)(d).”.

(a) Section 391D was inserted by S.I. 2017/701.

(b) Paragraph 1(e) was inserted by S.I. 2003/1473.

(c) Paragraph 4A was inserted by S.I. 2003/1473.

(d) O.J. 2.2.2016 L 26/19.

- (4) In paragraph 5 (EEA firm), for sub-paragraph (e)(a), substitute—
- “(e) an insurance intermediary (as defined in Article 2.1(3) of the insurance distribution directive), an ancillary insurance intermediary (as defined in Article 2.1(4) of that directive) or a reinsurance intermediary (as defined in Article 2.1(5) of that directive), which is registered with its home state regulator under Article 3 of that directive;”.
- (5) In paragraph 6(a) (EEA authorisation)(b), for “insurance mediation directive” substitute “insurance distribution directive”.
- (6) In paragraph 7A(a) (EEA right)(c), for “insurance mediation directive” substitute “insurance distribution directive”.
- (7) In paragraph 10A(a) (UK firm)(d), for “insurance mediation directive” substitute “insurance distribution directive”.
- (8) In paragraph 13 (establishment)—
- (a) in sub-paragraph (1)(e), in the words before sub-paragraph (a), after “(d)” insert “, (e)”;
- (b) after sub-paragraph (1)(c) insert—
- “(ca) in the case of a firm falling within paragraph 5(e), the firm has been informed of the applicable provisions or one month has elapsed beginning with the date on which the appropriate UK regulator received the consent notice”;
- (c) omit sub-paragraph (1A)(f);
- (d) in sub-paragraph (2)(b)(g), after “5(a)” insert “, (e)”.
- (e) after sub-paragraph (3B)(h) insert—
- “(3C) If the appropriate UK regulator has received a consent notice in respect of a firm that falls within paragraph 5(e), it must—
- (a) acknowledge receipt, and
- (b) notify the firm’s home state regulator of the applicable provisions (if any),
- before the end of one month beginning with the day on which the appropriate UK regulator received the consent notice.”.
- (9) In paragraph 14 (services)—
- (a) in sub-paragraph (1)(d)(i), for “5(e) or (i)” substitute “5(i)”; and
- (b) after sub-paragraph (3), insert—
- “(3AZA) If the appropriate UK regulator has received a relevant notice in respect of a firm that falls within paragraph 5(e), it must—
- (a) acknowledge receipt, and
- (b) notify the firm’s home state regulator of the applicable provisions (if any).”.
- (10) In paragraph 19 (establishment)—
- (a) in sub-paragraph (5)(a)(j), omit “the insurance mediation directive or”;
- (b) after sub-paragraph (5)(a), insert—
- “(aa) if the EEA right in question derives from the insurance distribution directive, that either—

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- (a) Sub-paragraph (e) was inserted by S.I. 2003/1473.
- (b) Paragraph 6 was substituted by S.I. 2003/1473 and amended by S.I. 2012/1906.
- (c) Paragraph 7A was inserted by S.I. 2003/1473. There are amendments but none are relevant.
- (d) Paragraph 10A was inserted by S.I. 2003/1473. There are amendments but none are relevant.
- (e) Sub-paragraph (1) was amended by S.I. 2003/1473, S.I. 2003/2066, S.I. 2013/1773, and S.I. 2015/910.
- (f) Sub-paragraph (1A) was inserted by S.I. 2013/1472.
- (g) Sub-paragraph (2)(b) was amended by S.I. 2007/126 and S.I. 2015/910.
- (h) Sub-paragraph (3B) was inserted by S.I. 2015/910.
- (i) Sub-paragraph (1)(d) was inserted by S.I. 2003/1473 and amended by S.I. 2015/910 and paragraph 3 of Schedule 4 to the Financial Services Act 2012.
- (j) Sub-paragraph (5) was substituted by S.I. 2003/1472 and amended by S.I. 2015/910.

- (i) the host state regulator has notified the appropriate UK regulator of the applicable provisions; or
 - (ii) one month has elapsed beginning with the date on which the appropriate UK regulator gave the consent notice;”;
- (c) omit sub-paragraph (5A)(a);
- (d) in sub-paragraph (7A)(b)—
- (i) in paragraph (a), for “insurance mediation directive”, substitute “insurance distribution directive”;
 - (ii) in the wording after paragraph (c), after “consent notice” insert “unless it has reason to doubt the adequacy of the firm’s resources or its administrative structure”; and
- (e) in sub-paragraph (9)(c), after “Solvency 2 Directive”, insert “, or the insurance distribution directive.”;
- (f) in sub-paragraph (11), at the beginning insert “Except where paragraph (11ZA) applies.”;
- (g) after sub-paragraph (11) insert—
- “(11ZA) If the firm’s EEA right derives from the insurance distribution directive, where the appropriate UK regulator has given a consent notice and the host state regulator has acknowledged receipt of that notice, the appropriate UK regulator must give written notice to the firm concerned that the host state regulator has received the consent notice.”;
- (h) in sub-paragraph (12A)(d), after paragraph (a) insert—
- “(aa) if the firm’s EEA right derives from the insurance distribution directive, one month beginning with the date on which the appropriate UK regulator received the notice of intention;”.
- (11) In paragraph 20(3B) (services)(e)—
- (a) in the words before paragraph (a), for the words from “insurance” to “territory” substitute “insurance distribution directive”;
 - (b) at the end of sub-paragraph (a), insert “and”;
 - (c) for paragraph (b), substitute—
- “(b) when the host state regulator has acknowledged receipt of that copy, the appropriate UK regulator must—
- (i) give written notice to the firm concerned that the host state regulator has received the notice of intention, and that the firm may begin providing the services to which the notice of intention relates, and
 - (ii) notify the firm concerned of the applicable provisions (if any).”;
- (d) omit sub-paragraph (c) and the “and” immediately preceding it.
- (12) After paragraph 20(4I)(b) (services)(f), insert—
- (c) “applicable provisions” means the host state rules with which the firm is required to comply when providing services in the EEA State concerned;
 - (d) “host state rules” means rules—
- (i) made in accordance with the insurance distribution directive; and

(a) Sub-paragraph (5A) was inserted by S.I. 2003/1473.

(b) Sub-paragraph (7A) was inserted by S.I. 2003/1473 and amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012.

(c) Sub-paragraph (9) was amended by S.I. 2015/575.

(d) Sub-paragraph (12A) was inserted by S.I. 2003/2066 and amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012.

(e) Sub-paragraph (3B) was inserted by S.I. 2003/1473 and amended by paragraph 11 of Schedule 4 to the Financial Services Act 2012.

(f) Sub-paragraph (4I) was inserted by S.I. 2015/575.

- (ii) which are the responsibility of the EEA State concerned (both as to implementation and as to supervision and compliance) in accordance with that directive.”.

(13) In paragraph 25 (information to be included in the public record)(a), for “insurance mediation directive” substitute “insurance distribution directive”.

Miscellaneous

18.—(1) In section 328 (directions in relation to the general prohibition), in subsection (6)(b)(b), for “insurance mediation directive”, substitute “insurance distribution directive”.

(2) In section 417(1) (definitions) after the definition of “EBA”(c) insert—

““EIOPA” means the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority);”.

(3) In section 425 (expressions relating to authorisation elsewhere in the single market), in subsection (1)(a)(d), for “insurance mediation directive”, substitute “insurance distribution directive”.

(4) In paragraph 2B of Schedule 6 (threshold conditions: location of offices)(e), in subparagraphs (4) and (5) for “mediation” substitute “distribution”.

PART 4

Amendments to instruments made under the Act

Amendment to the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001

19. In the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(f), in article 3 (investment business), in paragraphs (4) and (5)(g) for “mediation” substitute “distribution”.

Amendment to the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001

20. In the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001(h), in regulation 1(2) (interpretation), for the definition of “insurance intermediary”(i), substitute—

““insurance intermediary” means an insurance intermediary (as defined in Article 2.1(3) of the insurance distribution directive), an ancillary insurance intermediary (as defined in Article 2.1(4) of the insurance distribution directive) or a reinsurance intermediary (as defined in Article 2.1(5) of the insurance distribution directive);”.

(a) Paragraph 25 was inserted by S.I. 2003/1473 and amended by paragraph 18 of Schedule 4 to the Financial Services Act 2012 and S.I. 2015/910.

(b) Subsection (6) was substituted by S.I. 2003/1473 and amended by S.I. 2011/1053, paragraph 2 of Schedule 16 to the Financial Services Act 2012 and S.I. 2013/1883.

(c) The definition of “EBA” was inserted by S.I. 2012/916.

(d) Subsection (1)(a) was amended by S.I. 2003/2066, S.I. 2004/3379, S.I. 2006/2975, S.I. 2007/126, S.I. 2007/3253, S.I. 2012/1906, S.I. 2013/1773, S.I. 2013/3115, S.I. 2015/575 and S.I. 2015/910.

(e) Paragraph 2B was inserted by S.I. 2013/555.

(f) S.I. 2001/1177.

(g) Paragraphs (4) and (5) were inserted by S.I. 2003/1476.

(h) S.I. 2001/1783.

(i) The definition of “insurance intermediary” was inserted by S.I. 2003/1476.

Amendment to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

21. In the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(a), in regulation 2 (interpretation), in the definition of “single market restrictions”(b), for “article 9 of the insurance mediation directive”, substitute “article 13 of the insurance distribution directive”.

Amendment to the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001

22.—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(c) are amended as follows.

(2) In regulation 2 (establishment of a branch: contents of consent notice), after paragraph (8)(d), insert—

“(9) In the case of an insurance intermediary, the prescribed information is—

- (a) a statement that the firm is an insurance intermediary;
- (b) the requisite details of the branch, including the name, address, and where applicable, the registration number of the firm;
- (c) the category of intermediary and if applicable, the name of any insurance or reinsurance undertaking represented; and
- (d) if applicable, the relevant classes of insurance.”.

(3) In regulation 3 (provision of services: contents of regulator’s notice), for paragraph (4)(e) substitute—

“(4) In the case of an insurance intermediary, the prescribed information is—

- (a) a statement that the firm is an insurance intermediary;
- (b) the firm’s name, address and where applicable, its registration number;
- (c) the category of intermediary and if applicable, the name of any insurance or reinsurance undertaking represented;
- (d) the Member State or Member States in which the intermediary intends to operate; and
- (e) particulars of the services to be carried on including, if applicable, the relevant classes of insurance.”.

(4) After regulation 7B (EEA mortgage intermediary: changes to branch details or services)(f), insert—

“Insurance intermediary: changes to branch details or services

7C.—(1) An EEA firm which is exercising an EEA right in the United Kingdom deriving from the insurance distribution directive must not make a material change to any of the matters referred to in regulation 2(9) or regulation 3(4) as the case may be unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the insurance intermediary’s permission is to be treated as varied accordingly.

(a) S.I. 2001/2188

(b) The definition of “single market restrictions” was inserted by S.I. 2012/916 and amended by S.I. 2013/504, S.I. 2013/1773, S.I. 2013/3115, S.I. 2014/3348, S.I. 2015/575, S.I. 2015/910, S.I. 2016/225, S.I. 2016/680 and S.I. 2016/715.

(c) S.I. 2001/2511.

(d) Paragraph (8) was inserted by S.I. 2015/910.

(e) Paragraph (4) was inserted by S.I. 2013/1473.

(f) Regulation 7B was inserted by S.I. 2015/910.

(3) For the purposes of this regulation, the “relevant requirements” are those in paragraph (4).

(4) The requirements of this paragraph are that—

- (a) the firm has given a notice to its home state regulator stating the details of the proposed change; and
- (b) the period of one month beginning with the day on which the firm gave notice has elapsed.”.

(5) After regulation 17B (UK firm exercising an EEA right under the mortgages directive: changes to branch details or services)(a), insert—

“UK firm exercising an EEA right under the insurance distribution directive: changes to branch details or services

17C.—(1) A UK firm which has exercised an EEA right deriving from the insurance distribution directive to establish a branch or provide services must not make any material change to the relevant details (as defined in regulation 17D) unless the requirements of paragraph (2) have been complied with.

(2) The requirements are that—

- (a) the UK firm has given a notice to the appropriate UK regulator stating the details of the proposed change, and
- (b) the period of one month beginning with the day on which the UK firm gave the notice has elapsed.

(3) The appropriate UK regulator must, as soon as reasonably practicable, and in any event within a period of one month beginning with the day on which the notice under paragraph (2)(a) was received, inform the host state regulator of the proposed change.

Relevant details for the purpose of regulation 17C

17D. The relevant details for the purposes of regulation 17C are—

- (a) the name, address and, where applicable the registration number of the intermediary;
- (b) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;
- (c) the relevant classes of insurance, if applicable; and
- (d) where the intermediary has established a branch or permanent presence—
 - (i) the address in the host Member State from which documents may be obtained; and
 - (ii) the name of any person responsible for the management of the branch or permanent presence.”.

(6) In regulation 18 (offences relating to failure to notify changes)(b), in paragraph (1), for “or 16(1)” substitute “16(1) or 17C(1)”.

Amendment to the Financial Services and Markets Act 2000 (Gibraltar) Order 2001

23. In the Financial Services and Markets Act 2000 (Gibraltar) Order 2001(c), in article 2(3A)(d), for “mediation” substitute “distribution”.

(a) Regulation 17B was inserted by S.I. 2015/910.
(b) Regulation 18(1) was amended by S.I. 2006/3385.
(c) S.I. 2001/3084.
(d) Article 2(3A) was inserted by S.I. 2005/1.

Amendment to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

24.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(a) is amended as follows.

- (2) In article 2(2) (qualifying EU provisions: general), after sub-paragraph (k) insert—
“(l) any directly applicable regulation made under the insurance distribution directive.”
- (3) In article 3 (qualifying EU provisions: disciplinary measures)—
(a) after paragraph (2)(m) insert—
“(n) any directly applicable regulation made under the insurance distribution directive.”
;
(b) after paragraph (3)(k) insert—
“(l) in relation to a contravention of a requirement imposed by any directly applicable regulation made under the insurance distribution directive, the FCA.”
- (4) In article 5 (qualifying EU provisions: injunctions and restitution)—
(a) after paragraph (2)(m) insert—
“(n) any directly applicable regulation made under the insurance distribution directive.”
;
(b) after paragraph (5)(l) insert—
“(m) in relation to a contravention of a requirement imposed by any directly applicable regulation made under the insurance distribution directive, the FCA.”
- (5) In article 6(2) (qualifying EU provisions: fees), after sub-paragraph (o) insert—
“(p) any directly applicable regulation made under the insurance distribution directive.”

PART 5

Amendments to other Acts

Amendments to the Terrorism Act 2000

25. In Schedule 3A (regulated sector and supervisory authorities) of the Terrorism Act 2000(b)—

- (a) in paragraph 1(1)(f) (business in the regulated sector), for “Article 2(5) of the Insurance Mediation Directive, other than a tied insurance intermediary as mentioned in Article 2(7) of that Directive” substitute “Article 2.1(3), and an ancillary insurance intermediary as defined in Article 2.1(4), of the Insurance Distribution Directive”; and
- (b) in paragraph 3(1) (interpretation)—
(i) omit the definition of “the Insurance Mediation Directive”; and
(ii) after the definition of “the Emission Allowance Auctioning Regulation”(c) insert—
““the Insurance Distribution Directive” means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast);”

(a) S.I. 2013/419, amended by S.I. 2013/1773, 2014/2879 and 3348, S.I. 2015/1882. S.I. 2016/680, 715 and 936 and S.I. 2017/1127.

(b) 2000 c.11. Schedule 3A was inserted by paragraph 5 of Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) and substituted by S.I. 2007/3288.

(c) The definition of “Emission Allowance Auctioning Regulation” was inserted by S.I. 2011/2701.

Amendments to the Proceeds of Crime Act 2002

26. In Schedule 9 (regulated sector and supervisory authorities) of the Proceeds of Crime Act 2002(a)—

- (a) in paragraph 1(1)(f) (business in the regulated sector) for “Article 2(5) of the Insurance Mediation Directive, other than a tied insurance intermediary as mentioned in Article 2(7) of that Directive” substitute “Article 2.1(3), and an ancillary insurance intermediary as defined in Article 2.1(4), of the Insurance Distribution Directive”; and
- (b) in paragraph 3(1) (interpretation)—
 - (i) omit the definition of “the Insurance Mediation Directive”; and
 - (ii) after the definition of “the Emission Allowance Auctioning Regulation”(b) insert—
““the Insurance Distribution Directive” means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast);”.

PART 6

Miscellaneous

Review

27.—(1) The Treasury must from time to time—

- (a) carry out a review of this Order;
- (b) set out the conclusion of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the insurance distribution directive is implemented in other EEA States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision made by this Order,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this article must be published before 23rd February 2023.

(5) Reports under this article are afterwards to be published at intervals not exceeding five years.

(6) In this article, “insurance distribution directive” means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).

Date

Name
Two Lords Commissioners of Her Majesty’s Treasury

(a) 2002 c.29. Schedule 9 was substituted by S.I. 2007/3288.

(b) The definition of “Emission Allowance Auctioning Regulation” was inserted by S.I. 2011/2701.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements parts of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L26 2.2.2016 p.19) (“the Directive”). The Directive replaces Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

Part 2 of the Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”) to substitute the definition of “insurance distribution” for “insurance mediation”, to exclude from insurance distribution activity regulated under the Financial Services and Markets Act 2000 (c.8) (“the Act”) the provision of specified information where no other steps are taken by the insurance intermediary to conclude the contract, and to amend the criteria for the ‘connected contracts exemption’ in article 72B of the Regulated Activities Order.

Part 3 of the Order amends the Act. Article 10 amends the deadline for applications under Part 4A of the Act. Article 11 amends section 137R of the Act allowing the Financial Conduct Authority (“the FCA”) to make financial promotion rules in accordance with Article 17 of the Directive. Articles 12 and 13 make provision for the appropriate regulator to exercise its powers of intervention in relation to an EEA firm exercising its right to carry out insurance distribution activity in the UK (known as a “passporting right”) in certain circumstances. Article 14 inserts new Part 13A into the Act to allow for enhanced supervision by the appropriate regulator of EEA firms carrying out insurance distribution activity in the UK with the agreement of the firm’s home state regulator, and for enhanced supervision of UK firms carrying out insurance distribution activity in another EEA State, by that state’s regulator, with the agreement of the appropriate regulator. Article 16 makes provision about the publication of information in relation to sanctions imposed in accordance with the Directive. Article 17 amends Schedule 3 to the Act which governs the exercise of passporting rights of UK and EEA firms.

Part 4 makes amendments to the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (S.I. 2001/2511) to make further provision about passporting rights under the Directive, and makes consequential amendments to other instruments made under the Act. Part 5 makes consequential amendments to other primary legislation. Part 6 imposes a requirement on the Treasury to review this Order within five years.

A transposition note setting out how the main elements of the Directive will be transposed into UK law and a full impact assessment of the effect this Order will have on the costs of business and the voluntary sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or www.gov.uk and is published alongside this Order on www.legislation.gov.uk.