

EXPLANATORY MEMORANDUM TO
THE INSURANCE DISTRIBUTION (REGULATED ACTIVITIES AND
MISCELLANEOUS AMENDMENTS) ORDER 2018

2018 No. 546

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order transposes 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 Insurance Distribution Directive or ‘IDD’) as amended by Directive (EU) 2018/411 of the European Parliament and of the Council of 14 March 2018 amending Directive (EU) 2016/97 as regards the date of application of Member States’ transposition measures (OJ L76 19.3.2018 p.28).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The IDD updates and replaces Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation. The IDD was amended by Directive (EU) 2018/411 of the European Parliament and of the Council of 14 March 2018 to change the application date for national measures implementing the IDD from 23rd February 2018 to 1st October 2018, and applies with retroactive effect from 23rd February 2018. The UK is required to put into place national measures to implement the IDD by 1st July 2018.
- 4.2 This Order implements parts of the IDD. Other parts of IDD are being implemented by the Financial Conduct Authority (‘the FCA’) through changes to their rules. The Order amends the relevant provisions of the Financial Services and Markets Act 2000 (c.8) (‘FSMA 2000’), the FSMA 2000 (Regulated Activities Order) 2001 (‘RAO’) (S.I. 2001/544), and other regulations made under FSMA 2000.
- 4.3 The definition of “insurance distribution” is substituted for “insurance mediation” throughout UK legislation. Other key changes include:
- 4.4 The introduction of a new exclusion from regulated activity in the RAO for the provision of specified information where no other steps are taken by the insurance intermediary to conclude the contract;

- 4.5 Amendments to the criteria for the ‘connected contracts exemption’ in article 72B of the RAO;
- 4.6 Section 137R of FSMA is amended to allow the FCA to make financial promotion rules in accordance with Article 17 of the IDD;
- 4.7 Part 13 of FSMA is amended, and a new Part 13A inserted, to allow 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, and to allow for ‘enhanced supervision’ in accordance with Article 7 of IDD;
- 4.8 Part 26 of FSMA is amended to require the publication of information in relation to sanctions imposed in accordance with the IDD;
- 4.9 Amendments to Schedule 3 of FSMA and the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (S.I. 2001/2511) make provision governing the exercise of passporting rights of UK and EEA firms.
- 4.10 A transposition note setting out how the main elements of the IDD are transposed is published on legislation.gov.uk.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The IDD aims to improve consumer protection and create a level playing field among insurance distributors across the EU. It updates and replaces the Insurance Mediation Directive (‘IMD’), which came into force in 2005.
- 7.2 If a business falls within the scope of the IDD, as transposed via the RAO, it will be authorised by the FCA. This means that it will have to register with the FCA and meet the governance and consumer protection requirements set out in the FCA rulebook, with associated compliance costs. As well as FCA oversight, regulation gives consumers recourse to the Financial Ombudsman Service (FOS).
- 7.3 The IDD applies to almost all persons or institutions that distribute insurance products, including insurers and intermediaries such as brokers, and covers: Professional and organisational requirements, prudential requirements for intermediaries; Conduct of business general principles including acting in customers’ best interest; Product oversight and governance requirements; Remuneration disclosure requirements; Conflicts of interest disclosure; Pre-contract disclosures;

Customer demands and needs requirements; Complaints handling and out of court redress.

- 7.4 The government's approach to transposing the IDD has employed word for word transposition (known as copy-out) wherever possible. This approach has been tailored to the UK market where necessary by maintaining existing standards in areas where copy-out would adversely affect UK interests (such as by reducing existing levels of consumer protection).
- 7.5 The UK's consumer protections already exceeded many of the minimum requirements under the IMD so the introduction of the IDD has a relatively limited impact on the UK's legislative and regulatory regime. The most significant of the required changes related to the decision to expand an existing exemption from regulation for some businesses that sell insurance products as an add-on to the principal good or service that they provide by:
- Removing the requirement that to qualify for this exemption add-on products must have a term of less than 5 years; increasing the annual premium threshold above which add-on products would no longer qualify for the exemption from €500 to €600;
 - Extending the exemption to cover businesses that sell 'non-use of services' products as an add-on. Such products might include cancellation cover for tickets (e.g. for a music festival, theatre performance or train travel) and are usually simple, low cost, and often provided by firms that are out of scope of financial services regulation; and
 - Continuing to require life, liability, motor, and travel insurance products sold as an add-on to be subject to FCA regulation.

Consolidation

There are no current plans to consolidate the legislation amended by this instrument.

8. Consultation outcome

- 8.1 The government ran a public consultation over a period of 12 weeks, from 27 February 2017 to 22 May 2017. The government received 24 responses from a range of stakeholders, including individuals, representatives from the insurance industry, consumer groups and legal representatives. Overall, respondents agreed with the government's approach.
- 8.2 The formal outcome of the consultation is available here - <https://www.gov.uk/government/consultations/transposition-of-the-insurance-distribution-directive>

9. Guidance

- 9.1 The FCA will publish Rules and guidance for businesses affected by this instrument.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is judged to be minor. Evidence received through the consultation process indicates that ongoing costs to businesses to be negligible and the key costs will be one-off familiarisation costs.
- 10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. For proportionality reasons a de-minimis assessment has been completed and been published on legislation.gov.uk.

10.4 The FCA is responsible for implementing the majority of IDD through its rules, and has consulted and produced a separate cost benefit analysis in line with its statutory obligations.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses. Small businesses formed part of the consultation.

11.2 No specific action is proposed to minimise the regulatory burden on small business.

12. Monitoring & review

12.1 This instrument contains a requirement for the Treasury to review the legislation every five years, and to set out the conclusions of each review in a published report. The first review needs to be conducted and the report published by 1st October 2023.

13. Contact

13.1 Ben Woodham at HM Treasury (Telephone: 020 270 4843 or email: ben.woodham@hmtreasury.gov.uk) can answer any queries regarding the instrument.