



HM Treasury

Transposition of the Insurance Distribution Directive: response to the consultation

January 2018

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Chapter 1

Introduction

- 1.1 The Insurance Distribution Directive (IDD) sets the regulatory framework for the sale of insurance in the EU, updating and replacing the 2002 Insurance Mediation Directive (IMD). The IDD extends the minimum standards of the IMD to the direct sale of insurance products by insurers, as well as seeking to improve consumer protection.
- 1.2 In this consultation, the government sought answers to 15 questions regarding the implementation of the IDD. The consultation ran 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.
- 1.3 The government is grateful for all of the comments provided by respondents to the consultation. The government has maintained its core position on all of the covered policy areas.

Next Steps

- 1.4 The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 will be laid in Parliament in due course.
- 1.5 At the time of publication, the European Commission had announced a proposal to push back the implementation deadline by seven months to 1 October 2018. The European Parliament and Council will need to agree and confirm the new application date in an accelerated legislative procedure before these can be applied in UK law.

EU referendum

- 1.6 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Chapter 2

Summary of responses

Which insurance contracts will be in scope of regulation? (Chapter 2)

Q1. Do you agree with continuing to regulate life and liability products sold as an add-on to a non-insurance product? If not, which such products do you believe should not be regulated?

- 2.1 13 out of 15 respondents to this question agreed life and liability products should continue to be regulated and should not be sold under the add-on exemption. Overall, stakeholders considered that these products tend to be more complex, giving rise to the possibility of consumer detriment.
- 2.2 Two respondents suggested that the distribution of some simple liability products could be exempted from regulation with little risk of consumer detriment. One example given was of mobile phone insurance - which is often sold as an add-on. These stakeholders suggested that such products are designed specifically to avoid regulation, so the requirement that there must be no liability cover to rely on this exemption means many policies simply exclude this benefit. The government does not think that this is a compelling argument, or that the distribution of mobile phone liability cover being kept in scope of regulation, and thus excluded from some policies which are sold as an add on, poses a substantial risk to consumers.
- 2.3 The FCA have conducted two thematic reviews into mobile phone insurance and their findings indicate that claims for liabilities to mobile service providers (for example, when a stolen phone is subsequently used to run up a large bill) make up a very small proportion of claims made on such policies. The government was not presented with evidence that would justify a specific exclusion from regulation of the distribution of mobile phone liability insurance.
- 2.4 Regarding life insurance, no stakeholders presented specific examples of products which include bundled life insurance that should benefit from this exemption.
- 2.5 Therefore, the government has decided that it is appropriate to keep the distribution of life and liability products sold as an add-on in the scope of regulation.

Q2. Do you agree to extend the existing exemption for insurance products sold as an add-on to cover 'non-use of services' products? If not, do you have evidence of consumer detriment which would warrant their regulation?

- 2.6 All respondents to this question agreed with the government proposal to extend the existing add-on exemption to 'non-use of service' products. Generally, these products were considered simple, low-risk and their proportionate cost to the service itself was seen as low.
- 2.7 One stakeholder cited concerns about extending the exemption to complex covers such as business interruption. However, they noted that such products would typically cost more than the proposed €600 annual premium limit, and would therefore still be in the scope of regulation.
- 2.8 On balance, the government agrees that exempting 'non-use of services' products poses minimal potential for consumer detriment and therefore intends to proceed with its preferred option.

Q3. Are there complex insurance products provided as an add-on to a good or service (except those in relation to travel) that should be brought into scope of regulation? What potential is there for consumer detriment in relation to these products?

- 2.9 This question produced a mixed response. It sought evidence on whether an existing requirement – that products must require no more than knowledge of the policy coverage in order to be sold under the add-on exemption – should be removed from legislation.
- 2.10 Most respondents did not provide any further examples of complex add-on insurance products which should be kept within the scope of regulation. Overall, respondents considered that the remaining criteria that products must fulfil in order to benefit from the connected contracts exemption mean that, by definition, they are low-risk and easy for consumers to understand (with the exception of travel insurance, which is covered in Q6).
- 2.11 The government therefore intends to remove this requirement from legislation.
- 2.12 Three respondents called for the regulation of the distribution of mobile phone insurance and two respondents called for the regulation of the distribution of white good and furniture insurance. However, the government has not been presented with evidence that these products are complex or are linked to significant detriment that would justify their removal from the add-on exemption.

Q4. Do you agree with removing the caveat that products must have a term of less than 5 years to qualify for the connected contracts exemption? If not, which such products introduce a significant risk of consumer detriment?

- 2.13 Ten out of fifteen respondents to this question agreed with removing the requirement that products must have a term of less than 5 years to qualify for the connected contracts exemption. They noted that the term of the policy is not an indicator of the product's complexity. Likewise, they were unable to identify any unique risks to add-on products with a term of more than 5 years.

- 2.14 Some stakeholders were concerned that removing this requirement would enable the sale of insurance products with indefinite lock-in periods. The government does not believe that there is a risk of customers being 'locked in' for long periods as the customer could cancel the insurance contract if they wished to. The government's understanding is that the types of insurance products to which the connected contracts exclusion applies are sold either as annual or rolling monthly contracts.
- 2.15 On balance, the government has not been presented with any evidence that removing this requirement will lead to significant consumer detriment. Therefore, the government has decided that this requirement will be removed.

Q5. Do you agree with increasing the threshold for premiums below which products are eligible for the connected contracts exemption?

- 2.16 Thirteen out of sixteen stakeholders agreed with increasing this threshold from €500 to €600 as it allows more substantive cover to consumers under an exemption and is, on balance, an appropriate threshold.
- 2.17 A small minority disagreed with this proposal, with these stakeholders stating that the threshold should be significantly lower because the distribution of low-cost products would fall out of scope and these may also be miss-sold and be detrimental to consumers.
- 2.18 Overall, the government agrees that a premium threshold is necessary as it allows relatively low value contracts to benefit from an exemption while ensuring that the distribution of more expensive insurance contracts are subject to FCA rules. The government believes that €600 is a reasonable threshold which strikes a proportionate balance.

Q6. Do you agree insurance products sold as an add-on to travel products/services should continue to be regulated?

- 2.19 All but one of the respondents to this question agreed that the distribution of travel insurance products where they are sold as an add-on should continue to be regulated. Overall, stakeholders considered travel insurance to be complex and emphasised the need for customers to get the right information. In practice, travel insurance is a bundle of several insurance policies, such as health insurance, lost baggage cover, and insurance against travel disruption. It can also include other aspects such as coverage for winter sports.
- 2.20 Each of these aspects can carry different excesses and requirements to claim, making clear disclosures particularly important. Claims costs can also be considerable, particularly for medical and repatriation expenses.
- 2.21 One stakeholder representing travel agents was strongly opposed to the continued regulation of travel insurance as an add-on, arguing that the regulation of this product has led to fewer consumers purchasing travel insurance.
- 2.22 The government accepts that travel agents may be less likely to provide travel insurance as a result of regulation but considers that this is outweighed by

the potential risks posed by de-regulating travel insurance. The combination of very high potential costs and policies that can be difficult to understand means that the government's view is the distribution of travel insurance as an add-on should continue to be regulated.

Q7. Do you agree that all motor warranties which are contracts of insurance should remain subject to regulation by the FCA?

- 2.23 All but one stakeholder agreed that the FCA should continue to regulate the distribution of motor warranties which are contracts of insurance.
- 2.24 A stakeholder representing businesses who sell Guaranteed Asset Protection (GAP) products suggested that the continued regulation of these products is not necessary as they do not pose high risk to consumers. The FCA reviewed GAP insurance products in 2015 and found that 'markets for these products are broadly not working for consumers' and there is 'often insufficient information available about the quality and prices' of products. Most of over one million GAP insurance policies in force were sold as an add-on during the motor vehicle sales process.
- 2.25 Therefore, the government is in favour of continuing to regulate the distribution of all motor warranties which are products of insurance, including GAP products, as this provides greater consumer protection during the add-on sales process.

Which activities will be regulated? (Chapter 3)

Q8. Do you agree that firms who merely provide information in relation to insurance products or potential policyholders should no longer be regulated? If not, what risks of consumer detriment arise from these activities?

- 2.26 This question provided mixed responses. The majority of stakeholders agreed with exempting firms from regulation who merely provide information in relation to insurance products or potential policy holders. They noted that consumers will still be getting a high level of protection and de-regulating providers of information will give certain providers more flexibility.
- 2.27 One example given was that of medical charities. A stakeholder claimed that medical charities had been reluctant to publish information on insurance products in case this brought them within the scope of regulation. Removing firms that merely provide information about insurance products may enable medical charities the flexibility to inform customers about insurance products.
- 2.28 Several stakeholders mentioned that there is potential for the distinction between 'provision of information' and 'persuasion' to be unclear. Some stakeholders were concerned that conflicts of interest between the provider and insurer would not be fully disclosed to consumers. Likewise, one stakeholder flagged a data protection concern about consumer information being shared between regulated and non-regulated firms and regulatory responsibility not being clear.
- 2.29 The FCA has published its proposals for revision of the Perimeter Guidance manual (PERG) as part of its consultation paper CP17/33. It will issue its

finalised guidance as part of a Policy Statement which is expected to be published in early 2018. Firms may wish to review this consultation guidance (and the finalised version in due course) when considering whether their activities are in the scope of regulation.

- 2.30 Two stakeholders requested the exemption for 'providers of information' about insurance products be extended to credit broking products. The government has no plans to change the rules on credit broking introducers at this stage.

Q9. Do you agree that where firms do more than just provide information in order to conclude an insurance contract, e.g. attempting to persuade a customer, these activities should remain in scope of regulation?

- 2.31 Respondents to this question largely agreed with keeping firms who attempt to persuade a customer within the scope of regulation, but reiterated the importance of clarifying the distinction between 'provision of information' and 'persuasion'.

- 2.32 As above, the FCA has published its proposals for revision of PERG as part of its consultation paper CP17/33. Firms may wish to review the finalised guidance (due to be published in early 2018) when considering whether their activities are in the scope of regulation.

Questions 10-15 relate to the draft statutory instrument in Annex B and are considered together.

- 2.33 The questions are set out below:

- Q10. Do you have any comments on the draft statutory instrument in Annex B which set out the requirements of the appropriate UK regulator with respect to the determination of applications and in the event of it taking supervisory action?
- Q11. Do you have any comments on the draft statutory instrument in Annex B setting out amendments, required by IDD, to the processes for UK firms intending to exercise passporting rights in the EEA?
- Q12. Do you have any comments on the draft statutory instrument in Annex B setting out the UK regulator's powers to intervene with respect to an EEA firm, operating under the freedom to provide services, contravening the Directive?
- Q13. Do you have any comments on the draft statutory instrument in Annex B setting out the UK regulator's powers to intervene with respect to an EEA firm, operating in the UK under the freedom of establishment, contravening the Directive?
- Q14. Do you have any comments on the draft statutory instrument in Annex B giving the appropriate UK regulator powers to enter into Article 7 agreements with regulators in EEA member states?
- Q15. Do you have any comments on the draft statutory instrument in Annex B that set out the circumstances in which the appropriate UK

regulator is required to publish details of any Article 7 agreements it enters into?

- 2.34 The majority of stakeholders agreed with the proposed amendments in the statutory instrument. In regards to the requirements of the UK regulator with respect to the determination of applications, the reduction in time required to determine applications for authorisation to carry out insurance distribution activities was seen as positive as it gives firms more certainty in a shorter amount of time.
- 2.35 Some legal firms commented that there are two slightly differing formulations for the definition of 'insurance distribution activity' in the RAO and in FSMA. The draft statutory instrument, at article 11, referenced the definition used in FSMA (paragraph 2B(5) of Schedule 6). The legal firms flagged in their response that this definition is less clear than the definition in the RAO (Article 92). The government agrees that for the amendment to s.55V FSMA made by article 11 of the Order, the definition in article 92 RAO is more appropriate and has made that change to the statutory instrument.
- 2.36 One legal firm flagged concern that both IMD and IDD do not require the 'ancillary insurance intermediary' to be the same person as the provider of the good or product. They are concerned that the wording of Article 72B(2) of RAO implies that the exemption is only available where the regulated activity is carried out by the provider. As a result, their concern is that the definition of 'provider/supplier' is unclear and suggests that the exemption would not apply to the manufacturer of the product. Therefore, they suggest that the wording of Article 72B(2) of RAO be amended. The government has considered this response and intends to keep the wording of Article 72B(2) the same. It is the government's view that in IMD the ancillary insurance intermediary and provider must be the same person and we are following the same approach for IDD.
- 2.37 Post-consultation, it was raised to the government that the wording used in Article 33B of the draft statutory instrument (which implements Article 2.2 (c) and (d) of IDD) went beyond the scope of IDD. This is because it referenced Article 89 of RAO which meant that Article 33B excluded the provision of information about investments in an existing contract from regulation. IDD does not exempt the provision of this information from regulation and we had not consulted on this as a policy intent. Therefore, to ensure that the government is correctly implementing IDD as intended, the reference to Article 89 of RAO has been removed from Article 33B of the statutory instrument.
- 2.38 In regards to UK firms intending to exercise passporting rights in the EEA, some respondents asked how this amendment would change post-Brexit. The government recognises the issues the UK's departure from the EU creates for the financial sector as a whole, particularly for those firms that rely on existing passport rights. The government will continue our close dialogue with these and other firms across industry, and will provide as much information as appropriate to help firms deal with the challenges and opportunities as we move to our future partnership with the EU. One stakeholder welcomed the amendments setting out the UK regulator's power to intervene with respect to an EEA firm operating under the freedom

to provide services, as they add specific powers for the UK regulator to intervene in relation to firms exercising passport rights under the IDD.

- 2.39 Respondents made some minor comments of a technical nature on the wording of the statutory instrument and these have been taken on board where appropriate. Likewise, the government has made minor amendments to the wording to ensure that IDD is comprehensively transposed. These do not affect the overall scope and policy intent of the implementation of IDD.
- 2.40 Overall, aside from the stakeholder comments regarding the definition of 'insurance distribution activity' and the comments on the wording of Article 33B, which the government has taken on board and will action, the proposed amendments in the statutory instrument were seen as fit for purpose and will remain as is.

Regulatory Impact Assessment (Annex C)

Q16. The government would welcome views on this Regulatory Impact Assessment. It would be helpful to receive views on both the costs and benefits to businesses and consumers of the proposed amendments to legislation. The government would also be grateful if respondents were able to monetise, wherever possible, these costs and benefits. Finally, we would particularly like to receive views on the likely impact of these amendments on small firms.

- 2.41 Regarding the impact assessment, numerous stakeholders raised concerns about the timescale of implementing the Level 2 Delegated Acts of IDD. Concerns were raised about the cost of having to implement the 15 hour CPD and Insurance Product Information Document (IPID) in time for the transposition deadline. One stakeholder stated that it would typically take 12 months to implement the changes required and another large insurer stated their initial budget for implementing the changes is £4 million.
- 2.42 At the time of publication, the European Commission had announced a proposal to push back the implementation deadline by seven months to 1 October 2018. The European Parliament and the Council will need to agree and confirm the new application date in an accelerated legislative procedure before these can be applied in UK law.
- 2.43 One stakeholder highlighted that the reduction in the timeframe within which the FCA will process applications will have a positive impact on small, regional start-up firms, as there will be more certainty in a shorter amount of time. The benefit was predicted to be equivalent to 3 months' worth of turnover per firm.

Other Issues

Distribution of rental car vehicle insurance

- 2.44 One stakeholder requested clarification on the government's position on the distribution of rental car vehicle insurance. Under current regulation, in order to qualify for an exemption, risks that can be covered by these add-on products must be limited to either the risk of breakdown, loss of, or damage to, the good or non-use of service supplied by that provider; or damage to, or loss of, baggage and other risks linked to travel booked with that

provider. This stakeholder noted that this travel exemption is strictly defined and would only be available to organisations that meet and satisfy the strict conditions of this exemption.

- 2.45 Personal Accident Insurance Products, and products provided under waiver agreements, are currently exempt from FCA authorisation and regulation. The government's view is that, as long as the conditions of this exemption are satisfied, these products will remain exempt. To date, the government has not seen evidence of significant consumer detriment arising from insurance sales by car hire firms.

Designated Professional Bodies (DPBs)

- 2.46 One stakeholder highlighted that the consultation and impact assessment did not make reference to the impact that IDD will have on Designated Professional Bodies (DBPs), who are responsible for applying IDD standards to certain firms exempt from FCA regulation. The Impact Assessment will be updated accordingly.

HM Treasury contacts

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If you require this information in an alternative
format or have general enquiries about
HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

E-mail: public.enquiries@hm-treasury.gov.uk