

EXPLANATORY MEMORANDUM TO
THE INSURANCE DISTRIBUTION (AMENDMENT) (EU EXIT) REGULATIONS
2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument is being made in order to address deficiencies in retained EU law relating to the Insurance Distribution Directive (EU Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution) arising from the withdrawal of the United Kingdom (UK) from the European Union (EU), ensuring the UK's insurance regulatory regime for the design and sale of insurance products continues to operate effectively at the point at which the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Insurance Distribution Directive (IDD) sets the regulatory framework for the distribution of insurance in the EU updating and replacing the 2002 Insurance Mediation Directive (EU) 2002/97. It is a 'minimum-harmonising' directive that aims to improve consumer protection by introducing a level playing field across insurers and insurance distributors. It covers the initial registration, passporting arrangements, and ongoing regulatory requirements for insurance and reinsurance distributors.
- 2.3 It applies to all participants in the sale of insurance products, i.e., to distributors of insurance products that sell directly to customers, that is, insurers and reinsurers, as well as to agents and brokers.
- 2.4 The IDD covers organisational and conduct of business requirements for insurance and reinsurance undertakings. The IDD also introduces requirements in new areas, including product oversight and governance, and enhanced conduct rules for Insurance-Based Investment Products (IBIPs).

Why is it being changed?

- 2.5 Directly applicable EU legislation made under the IDD will become part of the UK statute book on exit day, under section 3 of the European Union (Withdrawal) Act 2018. Unless amended to address deficiencies that arise as a result of the UK leaving the EU, it will not operate effectively after exit day.

What will it now do?

- 2.6 This instrument fixes deficiencies in two Commission Delegated Regulations made under the Insurance Distribution Directive 2016/97 namely: Commission Delegated Regulation (EU) 2017/2358 and Commission Delegated Regulation (EU) 2017/2359. It also transfers functions contained within the IDD from EU entities to appropriate

UK bodies, replaces cross references to EU legislation with the relevant UK measures which implemented those provisions, and removes other EU references which are no longer appropriate. These deficiencies are outlined in section 7.

- 2.7 Further amendments will be made in a subsequent instrument to clarify the scope of the two Commission Delegated Regulations so that they will include all UK based firms conducting insurance distribution in the UK as well as those intermediaries and insurers operating under the Temporary Permissions Regime after the UK leave the EU.
- 2.8 This instrument transfers to the FCA the power to make technical standards regarding a standardised presentation format of the insurance product information document (IPID) specifying the details of the presentation of information set out in the IDD Commission Implementing Regulation (EU) 2017/1469.
- 2.9 This instrument also transfers legislative functions, such as the Commission's power to adopt delegated acts, to HM Treasury. This includes powers to make regulations about conflicts of interest, regulations about inducements, and regulations on assessments of suitability, appropriateness and reporting to customers. The instrument transfers to HM Treasury the power to specify principles for product oversight and governance through regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is to the whole United Kingdom.
- 4.2 The territorial application of this instrument is to the whole United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Insurance Distribution (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends two Commission Delegated Regulations which are made under the IDD; the Commission Delegated Regulation (EU) 2017/2358 and Commission Delegated Regulation (EU) 2017/2359. The amendments transfer

legislative and non-legislative functions from EU bodies to HM Treasury and the FCA.

7. Policy background

What is being done and why?

- 7.1 The UK will leave the EU on 29 March 2019. The UK and EU negotiating teams have reached agreement on the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. This will provide time to introduce the new arrangements that will underpin the UK-EU future relationship, and provide valuable certainty for businesses and individuals. During the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. This will mean that access to each other's markets will continue on current terms and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020. UK firms will need to comply with any new EU legislation that becomes applicable during the implementation period.
- 7.2 The government is seeking a deep and special future partnership with the EU, which should be greater in scope and ambition than any such agreement before and encompass financial services. Given the highly regulated nature of financial services, the volume of trade between UK and EU markets, and a shared desire to manage financial stability risks, the UK proposes a new economic and regulatory arrangement that will preserve mutually beneficial cross-border business models and economic integration for the benefit of businesses and consumers. Decisions on market access would be autonomous in our proposed model, but would be underpinned by stable institutional processes in a bilateral agreement and continued close regulatory and supervisory cooperation.
- 7.3 While the government has every confidence that there will be a deal and an implementation period in place, it has a duty to plan for all eventualities, including a 'no deal' scenario. The government is clear that this scenario is in neither the UK's nor the EU's interest, and the government does not anticipate it arising. To prepare for this unlikely eventuality, HM Treasury intends to use powers in the European Union (Withdrawal) Act 2018 (EUWA) to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.
- 7.4 The EUWA repeals the European Communities Act 1972 and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through SIs. These contingency preparations for financial services legislation are sometimes referred to as 'onshoring'. These SIs are not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to this situation. The scope of the power is drafted to reflect this purpose and is subject to further restrictions, such as the inability to use the power to impose or increase taxation, or establish a public authority. The power is also time-limited and falls away two years after exit day.

- 7.5 Wherever practicable, the proposed approach is that the same laws and rules that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, if the UK does not enter an implementation period, some changes would be required to reflect the UK's new position outside the EU from 29 March 2019.
- 7.6 In the unlikely scenario that the UK leaves the EU without a deal, the UK would be outside the EU's framework for financial services. The UK's position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.
- 7.7 In light of this, the approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed including to provide for a smooth transition to the new circumstances.
- 7.8 HM Treasury published a document on 27 June 2018, which sets out in more detail HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act. (<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>)
- 7.9 The IDD sets the regulatory framework for the distribution of insurance in the EU. It is a 'minimum-harmonising' directive that aims to improve consumer protection by introducing a level playing field across insurers and insurance distributors. It covers the initial registration, passporting arrangements, and ongoing regulatory requirements for insurance and reinsurance distributors.
- 7.10 It applies to the vast majority of participants in the sale of insurance products, i.e., insurers and reinsurers of insurance products that sell directly to customers, as well as agents and brokers of insurance and reinsurance.
- 7.11 This instrument addresses deficiencies in retained EU law relating to the IDD that arise from the UK leaving the EU. The IDD itself will not form part of retained EU law as it does not have direct effect in the UK; this instrument fixes deficiencies in the directly applicable EU delegated regulations that were made under the IDD.
- 7.12 It transfers functions from EU entities to appropriate UK bodies, replacing cross references to EU legislation with the relevant UK measures which implemented those provisions, and removing other EU references which are no longer appropriate.
- 7.13 Regulation 6 of this instrument transfers to the FCA the power contained within Article 20(9) of IDD to make technical standards regarding a standardised presentation format of the insurance product information document (IPID) as currently set out in the IDD Commission Implementing Regulation (EU) 2017/1469. The IPID is a standardised document that provides pre-contractual information about insurance products to help people compare them and make informed decisions.
- 7.14 The Financial Regulators' Powers (Technical Standards etc) (Amendment etc) (EU Exit) Regulations 2018 (SI 2018/1115) will ensure the requirements for an IPID will be retained by delegating use of the EUWA section 8 fixing power to the FCA, so they can fix deficiencies in the Binding Technical Standards (BTS) in advance of exit

day. These regulations also establish the statutory basis under which the FCA can continue to maintain the IPID after exit.

- 7.15 Regulations 6 and 12 of this instrument also transfer relevant legislative functions of the European Commission contained within Articles 25(2), 28(4), 29(4) and 30(6) of the IDD to HM Treasury. This includes the powers to make regulations about conflicts of interest, regulations about inducements, and regulations on assessments of suitability, appropriateness and reporting to customers, and specifying principles for product oversight and governance.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 HM Treasury has not undertaken a consultation on this instrument, but has engaged with relevant stakeholders on its approach to Financial Services legislation under the European Union (Withdrawal) Act 2018, including this instrument, in order to familiarise them with the legislation ahead of laying.
- 10.2 The instrument was also published in draft, along with an explanatory policy note (<https://www.gov.uk/government/publications/draft-insurance-distribution-amendment-eu-exit-regulations-2019>), on 21 November 2018, in order to maximise transparency ahead of laying.
- 10.3 On November 23, the Financial Conduct Authority published its second consultation paper (<https://www.fca.org.uk/publication/consultation/cp18-36.pdf>) on its proposed changes to its Handbook and Binding Technical Standards to reflect changes made through this instrument.

11. Guidance

- 11.1 No further guidance is being published alongside this instrument.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because in line with Better Regulation guidance, HM Treasury considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de-minimis impact assessment has been carried out.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 As this instrument is not expected to have a significant impact, no action was taken to minimise the impact of the requirements on small businesses.
- 13.3 This instrument will ensure that the insurance distribution regulatory regime within the UK continues to operate as intended when the UK leaves the EU. It is therefore aimed at minimising the impact of these regulatory changes on all firms, including small firms.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Ben Woodham at HM Treasury, telephone: 020 270 4843 or email: ben.woodham@hmtreasury.gov.uk, can answer any queries regarding the instrument.
- 15.2 Becky Morrison and Hannah Malik, Deputy Directors for Insurance and Pensions Markets, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury (John Glen) can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Insurance Distribution (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is because the changes to the law made by this instrument are limited to those that fix deficiencies arising out of EU Exit.

2. Good reasons

- 2.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are because the instrument is necessary to ensure the UK insurance distribution regulatory regime can continue to operate effectively from Exit day.

3. Equalities

- 3.1 The Economic Secretary to the Treasury (John Glen) has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 3.2 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Economic Secretary to the Treasury, John Glen, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

- 5.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view it is appropriate to create a relevant sub-delegated power in the Insurance Distribution (Amendment) (EU Exit) Regulations 2019.”

- 5.2 It is appropriate to delegate the power to make regulatory technical standards for the IPID to the FCA because it will give the FCA the necessary powers to ensure that EU-derived technical regulations for which they are responsible will operate effectively after exit, subject to mechanisms to ensure robust HM Treasury oversight.
- 5.3 This is in line with the approach that the government has set out in which legislative responsibility for Level 2 technical legislation in financial services will be transferred to the financial regulators, while the Treasury will have responsibility for changes to Level 1 legislation which Parliament will approve.