
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. 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) amends the application date for national measures implementing the Directive, and the date on which [Directive 2002/92/EC](#) is repealed, from 23rd February 2018 to 1st October 2018, and applies with retroactive effect from 23rd February 2018.

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.