

Transposition Note: Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) as amended by Directive (EU) 2018/411 of the European Parliament and of the Council of 14 March 2018

This note accompanies the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018

Abbreviations

FSMA – The Financial Services and Markets Act 2000

RAO – The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

HMT – Her Majesty’s Treasury

IDD – Insurance Distribution Directive - Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) as amended by Directive (EU) 2018/411 of the European Parliament and of the Council of 14 March 2018

IMD – Insurance Mediation Directive – The European Parliament and Council Directive of 9th December 2002 on insurance mediation (No 2002/92/EC).

This Transposition Note has been prepared by HM Treasury. The table below explains how the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 transpose certain provisions of IDD. Please note that IDD is based upon and expands upon IMD (which it repeals). IMD has been implemented in UK law and the Order contains numerous minor amendments to provisions of UK law that implemented IMD or cross-referred to IMD to ensure they are updated to reflect IDD. The table only sets out where the Order transposes substantially new provisions or obligations under IDD.

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
1.3	<p>This Directive shall not apply to ancillary insurance intermediaries carrying out insurance distribution activities where all the following conditions are met:</p> <ul style="list-style-type: none"> (a) the insurance is complementary to the good or service supplied by a provider, where such insurance covers: <ul style="list-style-type: none"> (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 <i>pro rata</i> 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. 	<p>Article 6 of this Order amends article 72B RAO to implement Article 1.3 IDD.</p>	HMT
2.2	<p>For the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution:</p> <ul style="list-style-type: none"> (a) the provision of information on an incidental basis in the context of another professional activity where: <ul style="list-style-type: none"> (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; 	<p>Article 5 of this Order inserts new article 33B into the RAO to implement Article 2.2(c) and (d) IDD.</p>	HMT

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
	<p>(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;</p> <p>(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.</p>		
3	<p>1. Insurance, reinsurance, and ancillary insurance intermediaries shall be registered with a competent authority in their home Member State.</p> <p>Insurance and reinsurance undertakings and their employees shall not be required to register under this Directive.</p> <p>Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance undertakings and intermediaries and other bodies may cooperate with the competent authorities in registering insurance and reinsurance and ancillary insurance intermediaries and in the application of the requirements laid down in Article 10.</p> <p>In particular, insurance, reinsurance and ancillary insurance intermediaries may be registered by an insurance or reinsurance undertaking, insurance or reinsurance intermediary, or by an association of insurance or reinsurance undertakings, or insurance or reinsurance intermediaries, under the supervision of a competent authority.</p> <p>An insurance or reinsurance intermediary or an ancillary insurance intermediary may act under the responsibility of an insurance or reinsurance undertaking or another intermediary. In such a case, Member States may stipulate that the insurance or reinsurance undertaking or other intermediary shall be responsible for ensuring that the insurance or reinsurance intermediary or ancillary insurance intermediary meets the</p>	Article 7 of this Order amends Part 5 FSMA 2000 to make changes reflecting Article 3 IDD paragraphs 1-5.	HMT

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
	<p>conditions for registration, including the conditions set out in point (c) of the first subparagraph of paragraph 6. Member States may also stipulate that the insurance or reinsurance undertaking or other intermediary which takes responsibility for the insurance or reinsurance intermediary or ancillary insurance intermediary registers that intermediary or ancillary intermediary.</p> <p>Member States need not apply the requirement referred to in the first subparagraph to all the natural persons who work in an insurance or reinsurance intermediary or ancillary insurance intermediary and who pursue the activity of insurance or reinsurance distribution.</p> <p>Member States shall ensure that the registers specify the names of the natural persons within the management of the insurance or reinsurance distributor who are responsible for the insurance or reinsurance distribution.</p> <p>The registers shall further indicate the Member States in which the intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services.</p>		
	<p>2. Member States may establish more than one register for insurance, reinsurance, and ancillary insurance intermediaries provided that they lay down the criteria according to which intermediaries are to be registered.</p>		
	<p>3. In the event that there is more than one register in a Member State, that Member State shall establish a single information point allowing quick and easy access to information from those registers, which shall be compiled electronically and kept updated. The information point shall also provide the identification details of the competent authorities of the home Member State.</p>		
	<p>4. EIOPA shall establish, publish on its website and keep up-to-date a single electronic register containing records of insurance, reinsurance and ancillary insurance intermediaries which have notified their intention to carry on cross-border business in accordance with Chapter III. Member States shall provide relevant information to EIOPA promptly to enable it to do this. The register shall contain links to, and be accessible from, each of the Member States' competent authorities' websites.</p>		

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
	<p>EIOPA shall have the right to access the data stored in the register referred to in the first subparagraph. EIOPA and the competent authorities shall have the right to modify such data. Data subjects whose personal details are stored on the register and exchanged shall have the right to access such stored data and the right to be appropriately informed.</p> <p>EIOPA shall establish a website with hyperlinks to each single information point or, where applicable, register, established by Member States in accordance with paragraph 3.</p> <p>Home Member States shall ensure that registration of insurance, reinsurance and ancillary insurance intermediaries is made subject to the fulfilment of the relevant requirements laid down in Article 10.</p> <p>The validity of the registration shall be subject to a regular review by the competent authority.</p> <p>Home Member States shall ensure that insurance, reinsurance and ancillary insurance intermediaries who cease to fulfil the requirements laid down in Article 10 are removed from the register. Where applicable, the home Member State shall inform the host Member State of such removal.</p>		
4	<p>5. Member States shall ensure that applications by intermediaries for inclusion in the register are dealt with within three months of the submission of a complete application, and that the applicant shall be notified promptly of the decision.</p> <p>1. Any insurance, reinsurance or ancillary insurance intermediary who intends to carry on business within the territory of another Member State for the first time, under the freedom to provide services, shall communicate the following information to the competent authority of its home Member State:</p> <p>(a) the name, address and, where applicable, the registration number of the intermediary;</p> <p>(b) the Member State or Member States in which the intermediary intends to operate;</p> <p>(c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;</p>	.	
		Articles 17 and 22 of this Order makes changes to Schedule 3 FSMA 2000 and the FSMA 2000 (EEA Passport Rights) Regulations 2001 to reflect changes to information and notification requirements in Article 4 IDD.	HMT

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
	(d) the relevant classes of insurance, if applicable.		
	<p>2. The competent authority of the home Member State shall, within one month of receiving the information referred to in paragraph 1, communicate that information to the competent authority of the host Member State, which shall acknowledge its receipt without delay.</p> <p>The competent authority of the home Member State shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of the host Member State and that the intermediary can commence its business in the host Member State.</p> <p>Where applicable, at the same time, the competent authority of the home Member State shall communicate to the intermediary the fact that information concerning the legal provisions referred to in Article 11(1) applicable in the host Member State is available through the means referred to in Article 11(3) and (4) and also that the intermediary must comply with those provisions in order to commence its business in the host Member State.</p>		
	<p>3. In the event of a change in any of the particulars communicated in accordance with paragraph 1, the insurance, reinsurance or ancillary insurance intermediary shall notify that change to the competent authority of the home Member State at least one month before implementing the change.</p> <p>The competent authority of the home Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt of the information by the competent authority of the home Member State.</p>		
5	<p>1. Where the competent authority of the host Member State has reason to consider that an insurance, reinsurance or ancillary insurance intermediary acting within its territory under the freedom to provide services is in breach of any obligation set out in this Directive, it shall communicate those considerations to the competent authority of the home Member State.</p>	<p>Article 13 of this Order inserts new section 195C into FSMA 2000 to implement Article 5 and Article 8.2-8.5 IDD.</p>	HMT

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
	<p>After assessing the information received pursuant to the first subparagraph, the competent authority of the home Member State shall, where applicable, and, if so, at the earliest opportunity, take appropriate measures to remedy the situation. It shall inform the competent authority of the host Member State of any such measures taken.</p> <p>Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of host Member State consumers on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after informing the competent authority of the home Member State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business within its territory.</p> <p>In addition, the competent authority of the home Member State or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.</p>		
	<p>2. Paragraph 1 shall not affect the power of the host Member State to take appropriate measures to prevent or penalise irregularities committed within its territory, in a situation where immediate action is necessary in order to protect the rights of consumers. This power shall include the possibility of preventing insurance, reinsurance and ancillary insurance intermediaries from carrying out new business within its territory.</p>		
	<p>3. Any measure adopted by the competent authorities of the host Member State under this Article shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and notified to the competent authority of the home Member State, to EIOPA and to the Commission without undue delay.</p>		

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
6	<p>1. Member States shall ensure that any insurance, reinsurance or ancillary insurance intermediary that intends to exercise its freedom of establishment by establishing a branch or permanent presence within the territory of another Member State communicates that to the competent authority of its home Member State and provides that competent authority with the following information:</p> <p>(a) the name, address and, where applicable, the registration number of the intermediary;</p> <p>(b) the Member State within the territory of which the intermediary plans to establish a branch or permanent presence;</p> <p>(c) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;</p> <p>(d) the relevant classes of insurance, if applicable;</p> <p>(e) the address in the host Member State from which documents may be obtained;</p> <p>(f) the name of any person responsible for the management of the branch or permanent presence.</p> <p>Any permanent presence of an intermediary in the territory of another Member State that is equivalent to a branch shall be treated in the same way as a branch, unless the intermediary lawfully sets up such permanent presence in another legal form.</p>	<p>Articles 17 and 22 of this Order makes changes to Schedule 3 FSMA 2000 and the FSMA 2000 (EEA Passport Rights) Regulations 2001 to reflect change to information and notification requirements in Article 6 IDD.</p>	HMT
	<p>2. Unless the competent authority of the home Member State has reason to doubt the adequacy of the organisational structure or the financial situation of the insurance, reinsurance or ancillary insurance intermediary, taking into account the distribution activities envisaged, it shall, within one month of receiving the information referred to in paragraph 1, communicate that information to the competent authority of the</p>		

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	<p>host Member State, which shall acknowledge its receipt without delay.</p> <p>The competent authority of the home Member State shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of the host Member State.</p> <p>Within one month of receipt of the information referred to in the first subparagraph of this paragraph, the competent authority of the host Member State shall communicate the legal provisions referred to in Article 11(1) through the means referred to in Article 11(3) and (4) which are applicable in its territory to the competent authority of the home Member State.</p> <p>The competent authority of the home Member State shall communicate that information to the intermediary and inform the intermediary that it may commence its business in the host Member State provided that it complies with those legal provisions.</p> <p>Where no communication is received within the period provided for in the second subparagraph, the insurance, reinsurance or ancillary insurance intermediary may establish the branch and commence its business.</p>		
	<p>3. Where the competent authority of the home Member State refuses to communicate the information referred to in paragraph 1 to the competent authority of the host Member State, it shall give reasons for its refusal to the insurance, reinsurance or ancillary insurance intermediary within one month of receiving all the information referred to in paragraph 1.</p> <p>A refusal as referred to in the first subparagraph or any failure by the competent authority of the home Member State to communicate the information referred to in paragraph 1 shall be subject to a right of appeal to the courts of the home Member State.</p>		

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
	<p>4. In the event of a change in any of the particulars communicated in accordance with paragraph 1, an insurance, reinsurance or ancillary insurance intermediary shall notify that change to the competent authority of the home Member State at least one month before implementing the change.</p> <p>The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt of the information by the competent authority of the home Member State.</p>		
7	<p>1. If an insurance, reinsurance or ancillary insurance intermediary's primary place of business is located in a Member State other than the home Member State, the competent authority of that other Member State may agree with the home Member State competent authority to act as if it were the home Member State competent authority with regard to the provisions of Chapters IV, V, VI and VII. In the event of such an agreement, the home Member State competent authority shall notify the insurance, reinsurance or ancillary insurance intermediary and EIOPA without delay.</p> <p>2. The competent authority of the host Member State shall have responsibility for ensuring that the services provided by the establishment within its territory comply with the obligations laid down in Chapters V and VI and with measures adopted pursuant thereto.</p> <p>The competent authority of the host Member State shall have the right to examine establishment arrangements and to request such changes as are needed to enable the competent authority to enforce the obligations under Chapters V and VI and measures adopted pursuant thereto with respect to the services or activities provided by the establishment within its territory.</p>	<p>Article 14 of this Order inserts new Part 13A into FSMA 2000 to implement Article 7 IDD.</p>	HMT
8	<p>1. Where the competent authority of a host Member State ascertains that an insurance, reinsurance or ancillary insurance intermediary is in breach of the legal or regulatory provisions adopted in that Member State pursuant to the provisions of</p>	<p>Article 12 of this Order inserts new section 194D FSMA 2000 to implement Article 8.1 IDD.</p>	HMT

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
	<p>Chapters V and VI, that authority may take appropriate measures.</p> <p>2. Where the competent authority of a host Member State has reason to consider that an insurance, reinsurance or ancillary insurance intermediary acting within its territory through an establishment is in breach of any obligation set out in this Directive, and where that competent authority does not have responsibility in accordance with Article 7(2), it shall refer those findings to the competent authority of the home Member State. After assessing the information received, the competent authority of the home Member State shall, where applicable and, if so, at the earliest opportunity take appropriate measures to remedy the situation. It shall inform the competent authority of the host Member State of any such measures taken.</p>	<p>Article 13 of this Order inserts new section 195C FSMA 2000 to implement Article 5 and Article 8.2-8.5 IDD</p>	<p>HMT</p>
	<p>3. Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of host Member State consumers on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after informing the competent authority of the home Member State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business within its territory.</p> <p>In addition, the competent authority of the home Member State or of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.</p>		
	<p>4. Paragraphs 2 and 3 shall not affect the power of the host Member State to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed within its territory, in situations where immediate action is strictly necessary, in order to protect the rights of consumers of the host Member State, and where equivalent measures of the home Member State are inadequate or lacking. In such situations, the</p>		

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	<p>host Member State shall have the possibility of preventing the insurance, reinsurance or ancillary insurance intermediary concerned from carrying out new business within its territory.</p> <p>5. Any measure adopted by the competent authorities of the host Member State under this Article shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and notified to the competent authority of the home Member State, to EIOPA and to the Commission without undue delay.</p>		
17	<p>1. Member States shall ensure that, when carrying out insurance distribution, insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers.</p> <p>2. Without prejudice to Directive 2005/29/EC of the European Parliament and of the Council (14), Member States shall ensure that all information related to the subject of this Directive, including marketing communications, addressed by the insurance distributor to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall always be clearly identifiable as such.</p> <p>3. Member States shall ensure that insurance distributors are not remunerated or do not remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their customers. In particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.</p>	<p>Article 11 of this Order amends section 137R FSMA 2000 to allow FCA to make rules regarding financial promotion in accordance with Article 17 IDD.</p>	HMT
32	<p>1. Member States shall ensure that the competent authorities publish any administrative sanction or other measure that has been imposed for breaches of the national provisions implementing this Directive and against which no appeal was lodged in time, without undue delay, including information on the type and nature of the breach and the identity of persons responsible for it.</p>	<p>Article 16 of this Order inserts new section 391E(1)-(4) FSMA 2000 to implement Article 32 IDD.</p>	HMT

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
	<p>However, where the publication of the identity of the legal persons, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data or where publication jeopardises the stability of financial markets or an ongoing investigation, the competent authority may decide to defer publication, not to publish, or to publish the sanctions on an anonymous basis.</p>		
	<p>2. Where national law provides for the publication of a decision to impose a sanction or other measure which is subject to an appeal before the relevant judicial or other authorities, the competent authorities shall publish on their official website, without undue delay, such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or other measure which has been published shall also be published.</p>		
	<p>3. Competent authorities shall inform EIOPA of all administrative sanctions and other measures imposed, but not published in accordance with paragraph 1, including any appeal in relation thereto and the outcome thereof.</p>		
	<p>4. Member States may empower competent authorities to provide for additional sanctions or other measures and for levels of administrative pecuniary sanctions which are higher than those provided for in this Article.</p>		
36	<p>1. Competent authorities shall inform EIOPA of all administrative sanctions and other measures imposed but not published in accordance with Article 32(1).</p>	<p>Article 16 inserts section 391E(5) FSMA to implement Article 36 IDD.</p>	HMT
	<p>2. Competent authorities shall provide EIOPA annually with aggregated information regarding all administrative sanctions and other measures imposed in accordance with Article 31. EIOPA shall publish that information in an annual report.</p>		
	<p>3. Where the competent authority has disclosed an administrative sanction or other measure to the public, it shall at the same time report that fact to EIOPA.</p>		

IDD ARTICLE	TEXT	HOW TRANSPOSED	RESPONSIBLE BODY
42	<p>1. [By 1 July 2018, Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof. Member States shall apply those measures from 1 October 2018 at the latest.]</p> <p>When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.</p>	<p>Article 1 of this Order provides that the changes made to UK legislation shall come into force on 1st October 2018.</p>	