

Implementing the Insurance Distribution Directive

Consultation response

June 2018

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Implementing the Insurance Distribution Directive

Our response to consultation

Executive summary

1. The Insurance Distribution Directive (IDD) is a European Directive that replaces the Insurance Mediation Directive and seeks to strengthen consumer protection by imposing requirements on firms providing, facilitating and arranging insurance products. SRA firms involved in personal injury, conveyancing and probate will most likely be carrying on insurance distribution activities. The insurance products that they arrange are likely to include for example, after the event insurance in a personal injury matter or insurance for defective title in a conveyance. There may be other insurance products that firms advise on or arrange for their clients.
2. The IDD aims to deliver a number of requirements of a professional and organisational nature, for example continuing professional development and professional indemnity insurance requirements, as well as dealing with requirements for the provision of information, complaints handling and out-of-court redress.
3. The deadline for implementing the IDD in the UK was delayed to 1 July 2018 and the date on which new rules need to come into force was delayed to 1 October 2018. This means that new legislation, regulations and rules implementing the new requirements under the IDD will be introduced by HM Treasury and the Financial Conduct Authority (FCA) and will need to be made by 1 July 2018 (originally 23 February 2018).
4. As a Designated Professional Body (DPB), we must update our regulatory arrangements so that we comply with the new obligations under the IDD. We can only do this through changes to our SRA Financial Services (Scope) Rules 2001 (Scope rules) and the SRA Financial Services (Conduct of Business) Rules 2001 (COB rules) which govern the way in which firms carry on financial services activities¹. Our new rules will also need to be made by 1 July 2018 but will come into effect on 1 October 2018.
5. We have worked with the FCA to consider the changes to our rules and to make sure that it is comfortable with us making changes in a manner that best fits with our regulatory style. The FCA is comfortable with an approach that does not require us to copy out the requirements of the IDD and instead rely on existing

¹ These implement the Insurance Mediation Directive and were approved by the FCA

rules that will achieve the same outcomes and only to put in place specific requirements where there is no other route to achieving the desired outcome. The FCA and the Legal Services Board will be responsible for approving our final rules.

6. In our consultation we set out the proposed changes to the Scope and COB rules. The approach we took was because the IDD makes a distinction between the types of businesses that carry on insurance distribution activities and prescribes different requirements in relation to each. These are insurance intermediaries, reinsurance intermediaries and a new category of insurance intermediaries; ancillary insurance intermediaries.
7. Our view was that exempt professional firms (EPFs) can be classed as ancillary insurance intermediaries (AIs) and this, therefore, provides us with some discretion over how certain parts of the IDD are implemented.
8. The requirements are intended to benefit the users of legal services from all parts of the community. The services that are likely to be impacted are some of the most widely used areas of law so effective and proportionate implementation may improve the quality of provision for a wide range of consumers.

Consultation responses and key rule changes

9. In response to the consultation, we received six responses which included a response from the Law Society. The responses raised no issue of substance in relation to the rules but sought guidance on how the new requirements would need to be implemented in practice.

SRA response

10. We will develop guidance (in the form of case studies/questions and answers) that helps firms comply with the requirements of the IDD. We will share a draft with respondents and other groups, for example, the small firms virtual reference group, before it is published.

FCA comments on draft rules

11. Following our consultation, the FCA provided further comment and sought changes to the draft rules that we consulted on. Key changes to the draft rules they sought include:
 - confirmation that exempt professional firms may only carry on insurance distribution activities as an AI

- a new rule that prohibits firms from carrying on insurance distribution activities in relation to insurance-based investment products, e.g. life policies with an investment element
- a new rule that prohibits firms from creating, developing, designing and/or underwriting a contract of insurance (essentially manufacturing insurance products).

SRA response

12. As explained in our consultation, the IDD makes a distinction between the types of businesses that carry on insurance distribution activities and prescribes different requirements in relation to each. Alls are firms that meet the following conditions:

- the firm's principal professional activity is not insurance distribution
- the firm only distributes certain insurance products which are complementary to a good or service
- the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity.

13. There are clearly similarities between how Alls carry on insurance distribution activities and how EPFs carry on financial services activities under Part 20 of the Financial Services and Markets Act 2000 (FSMA) as both require the insurance services to be 'complementary' to other services provided by the firm. We interpret "complementary" in Article 2 of the IDD to mean the same as set out in Part 20 of FSMA and therefore consider that EPFs can be treated as Alls.

14. If a firm provides insurance services as mainstream services, it would not be possible for the firm to rely on Part 20 of FSMA and they would have to be authorised by the FCA. The introduction of a rule which states that EPFs may only carry on insurance distribution activities as an All confirms our understanding and intention that firms can only carry on insurance distribution activities if they meet the conditions of an All.

15. We have included a new rule that prohibits firms from carrying on insurance distribution activities in relation to insurance-based investment products (e.g. life policies with an investment element) under Part 20 FSMA. This has been included because the FCA has informed us that the EU Commission has now stated that the intention of the IDD is that Alls cannot distribute insurance-based investment products. If we were to allow firms to carry on insurance distribution activities in relation to insurance-based investment products, then we would need to include a number of additional provisions from the IDD. The impact of this

decision is that a firm that is currently carrying on insurance distribution activities in relation to insurance-based investment products would need FCA authorisation to do so. However, we consider it unlikely that anyone is currently carrying out this activity under Part 20 because firms are already prohibited from advising on or arranging retail investment products and there is a significant overlap between this and insurance-based investment products and the requirements that apply.

16. It is also very unlikely that firms are currently manufacturing insurance products and it is difficult to envisage a situation in which a firm would be able to do this under Part 20. However, if we do not prohibit firms from carrying on these activities, the FCA expect us to include many additional provisions relating to manufacturing insurance products. These activities are considered to carry more risks and in the unlikely event that there are any firms that carry on these activities then it would be appropriate for them to be authorised by the FCA in future.
17. Some other changes have been made so that the language used in and requirements of the IDD are replicated in our rules. These include for example, confirmation that information to a client should be provided in good time, requirements relating to services provided over the telephone and what information should be given to clients when other products or services are provided as part of a package or in the same agreement with an insurance product. We do not consider that these additional changes will impact on firms in a disproportionate way.

Next steps

18. We will be submitting our rules to the FCA and the Legal Services Board for formal approval. The FCA has confirmed that the date for implementing the IDD has been delayed until October 2018 however, rules need to be available by 1 July 2018.
19. We will also continue to develop guidance for firms to support the interpretation of the rules and the new requirements that have been introduced.