

2019 No. 663

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

**The Insurance Distribution (Amendment) (EU Exit) Regulations
2019**

Made - - - - *25th March 2019*

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018^(a), make the following Regulations.

In accordance with paragraph 1(1) of Schedule 7 to that Act a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General provisions

Citation and commencement

1. These Regulations may be cited as the Insurance Distribution (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

PART 2

Amendment of retained direct EU Legislation

CHAPTER 1

Commission Delegated Regulation (EU) 2017/2358

Commission Delegated Regulation (EU) 2017/2358

2. The Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors is amended in accordance with regulations 3 to 7.

General provisions

3.—(1) Chapter 1 (general provisions) is amended as follows.

(2) After Article 2 (scope), insert—

“Article 2A

Reference to a sourcebook in the Handbook of Rules and Guidance

A reference in this Regulation to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the Financial Conduct Authority, containing rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000, as the sourcebook has effect on exit day.”(a).

(3) In Article 3—

(a) in paragraph 1, for “Article 25(1) of Directive (EU) 2016/97” substitute “rules 4.2.1, 4.2.2, 4.2.29, 4.2.34, 4.3.1 and 4.3.2 of the Product Intervention and Product Governance sourcebook”;

(b) in paragraph 4, for “Article 25(1) of Directive (EU) 2016/97” substitute “rules 4.2.1, 4.2.2, 4.2.29, 4.2.33 and 4.2.34 of the Product Intervention and Product Governance sourcebook”.

Product governance requirements for manufacturers

4.—(1) Chapter 2 (product governance requirements for manufacturers) is amended as follows.

(2) In Article 5 (target market), after paragraph 4, insert—

“5. For the purposes of paragraph 2, reference to an ‘insurance-based investment product’ is to an insurance product which offers a maturity or surrender value where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, except those products listed in paragraph 6.

6. For the purposes of paragraph 5, an ‘insurance-based investment product’ does not include:

(a) non-life insurance products as listed in Annex I of Directive 2009/138/EC(b) (Classes of non-life insurance);

(b) life insurance products where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;

(c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;

(d) officially recognised occupational pension schemes as defined in section 1(1) of the Pension Schemes Act 1993(c);

(e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.”.

(3) In Article 8 (distribution channels), in paragraph 3, in point (d), for “Article 17(1) of Directive (EU) 2016/97” substitute “rule 2.5-1 of the Insurance: Conduct of Business sourcebook and rule 2.1.1 of the Conduct of Business sourcebook”.

(4) In Article 9 (documentation), for “competent authorities” substitute “Financial Conduct Authority”.

(a) The Handbook of Rules and Guidance published by the Financial Conduct Authority is available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

(b) OJ L 335, 17.12.2009, p. 1-155.

(c) 1993 c.48.

Product governance requirements for insurance distributors

5. In Chapter 3 (product governance requirements for insurance distributors), in Article 12 (documentation), for “competent authorities” substitute “Financial Conduct Authority”.

Transfer of Directive Functions

6. After Article 12, insert—

“CHAPTER IIIA

Transfer of functions

Article 12A

Directive functions transferred to the Treasury

1. The Treasury may make regulations by statutory instrument to further specify the principles laid down in rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000, equivalent to those in Article 25(1) of Directive 2016/97/EU^(a).

2. Regulations made for the purpose set out in paragraph 1 must take into account:

- (a) the activities performed;
- (b) the nature of the insurance products sold; and
- (c) the nature of the insurance distributor^(b).

3. Regulations made for the purposes set out in paragraph 1 shall not apply to insurance products referred to in rule 1.4.3(1) of the Product Intervention and Product Governance sourcebook.

4. A statutory instrument which contains regulations under paragraph 1 is subject to annulment in pursuance of a resolution of either House of Parliament.

Article 12B

Directive functions transferred to the Financial Conduct Authority

The Financial Conduct Authority may make technical standards regarding a standardised presentation format of the insurance product information document to further specify the information referred to in rule 2.1 in Annex 3 to chapter 6 of the Insurance: Conduct of Business sourcebook.”^(c).

Final provisions

7. After Article 13 (entry into force and application), omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

CHAPTER 2

Commission Delegated Regulation (EU) 2017/2359

Commission Delegated Regulation (EU) 2017/2359

8. The Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products is amended in accordance with regulations 9 to 13.

(a) OJ L 26, 2.2.2016, p. 19-59

(b) The powers in paragraphs 1 and 2 are transferred from Article 25(2) of the Insurance Distribution Directive (Directive 2016/97/EU).

(c) The powers in this paragraph are transferred from Article 20(9) of the Directive 2016/97/EU.

Scope and definitions

9.—(1) Chapter 1 (scope and definitions) is amended as follows.

(2) In Article 2 (definitions), after subparagraph (3), insert—

“(4) ‘insurance-based investment product’ refers to an insurance product which offers a maturity or surrender value where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. An insurance-based investment product does not include:

- (a) non-life insurance products as listed in Annex I to Directive 2009/138/EC(a) (classes of non-life insurance);
- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
- (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
- (d) officially recognised occupational pension schemes as defined in section 1(1) of the Pension Schemes Act 1993(b);
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;

(5) ‘insurance distribution’ has the meaning given in Article 4(5) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c);”.

(3) After Article 2 (definitions), insert—

“Article 2A

Reference to a sourcebook in the Handbook of Rules and Guidance

A reference in this Regulation to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the Financial Conduct Authority, containing rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000, as the sourcebook has effect on exit day.”(d).

Conflicts of interest and inducements

10.—(1) Chapter 2 (conflicts of interest and inducements) is amended as follows.

(2) In Article 3 (identification of conflicts of interest), in paragraph 1, for “Article 28 of Directive (EU) 2016/97” substitute “rules 3.3.5, 3.3.13, 10.1.3 and 10.1.8 of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to the insurance-based investment products”.

(3) In Article 4 (conflicts of interest policy), in paragraph 1, for “Article 27 of Directive (EU) 2016/97” substitute “rules 3.3.8, 3.3.9, 10.1.3, 10.1.7 and 10.1.7A of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to insurance-based investment products”.

(4) In Article 6 (disclosure), in paragraph 1—

- (a) for “Article 28(2) of Directive (EU) 2016/97” substitute “rules 3.3.13 and 10.1.8 of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to insurance-based investment products”;

(a) OJ L 335, 17.12.2009, p. 1-155

(b) 1993 c.48.

(c) S.I. 2001/544. Article 4(5) was inserted by S.I. 2018/546.

(d) The Handbook of Rules and Guidance published by the Financial Conduct Authority is available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

- (b) for “Article 27 of Directive (EU) 2016/97” substitute “rules 3.3.8, 3.3.9, 10.1.3, 10.1.7 and 10.1.7A of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to insurance-based investment products”.

(5) In Article 7 (review and record keeping), in paragraph 1, for “Article 27 of Directive (EU) 2016/97” substitute “rules 3.3.8, 3.3.9, 10.1.3, 10.1.7 and 10.1.7A of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to insurance-based investment products”.

Assessment of suitability and appropriateness

11.—(1) Chapter 3 (assessment of suitability and appropriateness) is amended as follows.

(2) In Article 9 (information to be obtained for the purposes of the assessment of suitability)—

- (a) in paragraph 1, for “Article 30(1) of Directive (EU) 2016/97” substitute “rules 9A.2.1 and 9A.2.16 of the Conduct of Business sourcebook”;
- (b) in paragraph 2, for “Article 20(1) of Directive (EU) 2016/97” substitute “rules 9A.2.3A, 9A.3.2 and 9A.3.2A of the Conduct of Business sourcebook”;
- (c) in paragraphs 5 and 6, for “Article 30(1) of Directive (EU) 2016/97” substitute “rules 9A.2.1 and 9A.2.16 of the Conduct of Business sourcebook”.

(3) In Articles 11 (communication with customers regarding the assessment of suitability) and 12 (automated advice), for “Article 30(1) of Directive (EU) 2016/97” substitute “rules 9A.2.1 and 9A.2.16 of the Conduct of Business sourcebook”.

(4) In Article 14 (suitability statement), in paragraph 1, for “Article 30(1) of Directive 2016/97” substitute “rules 9A.2.1 and 9A.2.16 of the Conduct of Business sourcebook”.

(5) In Article 15 (assessment procedure)—

- (a) for “Article 20(1) of Directive (EU) 2016/97” substitute “rules 9A.2.3A, 9A.3.2 and 9A.3.2A of the Conduct of Business sourcebook”;
- (b) for “Article 30(2) of Directive (EU) 2016/97” substitute “rules 10A.2.1 and 10A.2.2 of the Conduct of Business sourcebook”.

(6) In Article 16 (non-complex insurance-based investment products), in the opening words, for “Article 30(3)(a)(ii) of Directive (EU) 2016/97” substitute “rule 10A.4.1 of the Conduct of Business sourcebook”.

(7) In Article 17 (information to be obtained from the customer)—

- (a) in paragraphs 1 and 2, for “Article 30(1) and (2) of Directive (EU) 2016/97” substitute “rules 9A.2.1, 9A.2.16, 10A.2.1 and 10A.2.2 of the Conduct of Business sourcebook”;
- (b) in paragraph 3—
 - (i) for “Article 30(1) and (2) of Directive (EU) 2016/97” substitute “rules 9A.2.1, 9A.2.16, 10A.2.1 and 10A.2.2 of the Conduct of Business sourcebook”;
 - (ii) for “Article 20 of Directive (EU) 2016/97” substitute “rules 9A.2.3A, 9A.3.2 and 9A.3.2A of the Conduct of Business sourcebook”.

(8) In Article 18 (periodic report), in paragraph 1, for “Article 185 of Directive 2009/138/EC of the European Parliament and of the Council” substitute “rules 13.1.2, 13.3.2, 14.2.11, 14.2.5, 14.2.7, 16.6.3, 16.6.3A and 20.4.7 of the Conduct of Business sourcebook and Annexes 1 and 2 to chapter 13 of the Conduct of Business sourcebook”.

(9) In Article 19 (retention of records)—

- (a) in paragraph 1, for “Article 30(1) and (2) of Directive (EU) 2016/97” substitute “rules 9A.2.1, 9A.2.16, 10A.2.1 and 10A.2.2 of the Conduct of Business sourcebook”;
- (b) in paragraph 2, for “Article 30(1) of Directive (EU) 2016/97” substitute “rules 9A.2.1 and 9A.2.16 of the Conduct of Business sourcebook”;
- (c) in paragraph 3, for “Article 30(2) of Directive (EU) 2016/97” substitute “rules 10A.2.1 and 10A.2.2 of the Conduct of Business sourcebook”;

- (d) in paragraph 4, for “competent authority” whenever occurring, substitute “Financial Conduct Authority”.

Transfer of Directive functions

12. After Article 19 insert—

“CHAPTER IIIA

Transfer of functions

Article 19A

Directive functions transferred to the Treasury

1. The Treasury may make regulations by statutory instrument for the purposes set out in paragraphs 3, 4 and 6.
2. A statutory instrument which contains regulations under paragraph 1 is subject to annulment in pursuance of a resolution of either House of Parliament.
3. To specify:
 - (a) the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities;
 - (b) the criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking**(a)**.
4. To specify:
 - (a) the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer;
 - (b) the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer**(b)**;
5. Regulations made for the purposes set out in paragraph 4 must take into account:
 - (a) the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;
 - (b) the nature of the products being offered or considered, including different types of insurance-based investment products.
6. To specify how insurance intermediaries and insurance undertakings are to comply with the principles laid down in rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000, equivalent to those in Article 30 of Directive 2016/97/EU when carrying out insurance distribution activities with their customers, including, with regard to the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers:
 - (a) the criteria insurance intermediaries and insurance undertakings must use to assess other non-complex insurance-based investment products for the purposes of rule 10A.4.1(2A)(b) of the Conduct of Business sourcebook;
 - (b) the content and format of records and agreements for the provision of services to customers;

(a) The powers in this paragraph are transferred from Article 28(4) of Directive 2016/97/EU.

(b) The powers in this paragraph are transferred from Article 29(4) of Directive 2016/97/EU.

(c) the content and format of periodic reports to customers on the services provided^(a).

7. Regulations made for the purposes set out in paragraph 6 must take into account:

(a) the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;

(b) the nature of the products being offered or considered including different types of insurance-based investment products;

(c) the retail or professional nature of the customer or potential customer.”.

Final provisions

13. After Article 20 (entry into force and application), omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

*Mike Freer
Rebecca Harris*

25th March 2019

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular the deficiencies under paragraphs (b), (f) and (g) of section 8(2) of the Act) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 amends 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.

These Regulations refer to a sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 (c.8). Sourcebooks are available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

(a) The powers in paragraphs 6 and 7 are transferred from Article 30(6) of Directive 2016/97/EU.