EXPLANATORY MEMORANDUM TO

THE INSURANCE DISTRIBUTION (REGULATED ACTIVITIES AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2024

2024 No. 1239

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Tulip Siddiq MP, Economic Secretary to the Treasury and City Minister at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Emma Kavanagh, Deputy Director for the Insurance and Pensions Markets Team at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Suzanne Kershaw at HM Treasury (email: suzanne.kershaw@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will remove or amend references to Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) ("Insurance Distribution Directive") ("IDD") which still exist across the UK statute book and are no longer required.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Further to EU Exit, statutory instruments used to implement EU Directives are considered assimilated law. As part of HM Treasury's Smarter Regulatory Framework policy to remove assimilated law from the UK statute book, insurance distribution directive related statutory instruments were revoked in 2023. The law applying to all sales relating to insurance products and corresponding principles and rules are now found within the Financial Conduct Authority's (FCA) Handbook or embedded within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, to which the insurance industry is already familiar.

5.2 This instrument ensures that remaining IDD related references across the UK statute book are removed where possible and will ensure clarity for the UK insurance industry by not referring to an EU Directive that is no longer relevant. Failing to remove such references could cause confusion for the UK insurance industry regarding firms' obligations where they are set out in both law and the FCA Handbook.

What was the previous policy, how is this different?

5.3 There is no policy change around how insurance distribution is regulated.

6. Legislative and Legal Context

6.1 The Financial Services and Markets Act 2000 (FSMA 2000) and the Financial Services and Markets Act 2023 (FSMA 2023) contain a number of legislative powers which work together as the government repeals assimilated law to deliver a Smarter Regulatory Framework for financial services.

6.2 Powers to remove and amend references to the IDD are contained within section 22(1) and (5) and 428(3) of, and paragraph 25(1)(a) of Schedule 2 to, FSMA 2000, and sections 5, 83(1) and (2) and 84(2) of FSMA 2023.

How has the law changed?

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO")

6.3 When the IDD was transposed into UK legislation in 2018, the relevant text of the IDD was copied into Schedule 4 of the RAO. This instrument deletes Schedule 4 and makes changes across the RAO to account for the references or definitions still required to not impact current practice.

6.4 This instrument amends the definitions of 'insurance distribution' and 'reinsurance distribution' in article 4 (Specified Activities: General) and the definitions of 'insurance intermediary' and 'reinsurance intermediary' in article 33B (Provision of information: Contracts of Insurance) to account for the deletion of Schedule 4. The definition of and references to 'ancillary insurance intermediary' have been deleted from article 4 and article 33B as they are a replication of existing legislation.

6.5 This instrument converts references from euro denominations in article 72B to sterling.

Amendments to other legislation

6.6 This instrument makes changes to primary legislation relying on the definitions of 'insurance intermediary' or 'ancillary insurance intermediary' found in the IDD by removing the references to 'ancillary insurance intermediary', as the scope of this term falls within the scope of 'insurance intermediary', and instead referring to the same term defined in the RAO. These are set out below.

6.7 The definition of 'financial institution' in both the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, and the Counter-Terrorism Act 2008, has been amended to refer to the definition of 'insurance intermediary' in article 33B(4) of the RAO.

6.8 The definition of 'businesses in the regulated sector' found in both the Proceeds of Crime Act 2002 and Terrorism Act 2000 have been amended to refer to the definition of 'insurance intermediary' within article 33B(4) of the RAO. References to 'ancillary insurance intermediary' have been removed altogether as they are no longer required.

6.9 This instrument will repeal articles 2, 3, 5 and 6 of the Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013.

Why was this approach taken to change the law?

6.10 The law relating to insurance distribution is contained within the FCA Handbook, and the UK statue book. Legislation referring to EU law has the potential to cause confusion for the UK insurance industry.

7. Consultation

Summary of consultation outcome and methodology

7.1 A formal consultation was not completed because there is no policy change.

7.2 However, these changes have been made following regular engagement with the FCA. In addition, we engaged with the Association of British Insurers (ABI) and the British Insurance Brokers Association (BIBA) and gained agreement with the changes being made.

7.3 We informally consulted with the FCA, ABI, BIBA and the Association of British Travel Agents with regards to the conversion of Euro denomination to GBP in the RAO, article 72B. This resulted in a general consensus that the change should not impact current practice. Whilst BIBA suggested a review of the limits should be considered, there is currently no evidence to suggest the existing limits are causing consumer harm.

8. Applicable Guidance

8.1 HM Treasury does not propose to provide any further guidance in relation to this instrument. Amendments to legislation do not change requirements on the UK insurance industry and relevant rules can be found within the FCA Handbook to which firms are already familiar.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 The changes as a result of this SI are technical in nature, removing redundant references to the Insurance Distribution Directive with no intended policy change. From 2018, the law applying to all sales relating to insurance products and corresponding principles and rules are found within the Financial Conduct Authority's (FCA) Handbook or embedded within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, to which the insurance industry is already familiar, and there has been no divergence between this and the EU directive since.

9.2 Changing the threshold in article 72B RAO so that it is denominated in GBP rather than Euro makes it simpler to identify connected contracts of insurance. The threshold itself has not been changed, beyond rounding to the nearest £25 once converted from Euro to GBP at the current exchange rate.

9.3 Any impact on businesses will be negligible and a full analysis of savings would be disproportionate. An Impact Assessment has therefore not been prepared for this instrument.

Impact on businesses, charities and voluntary bodies

9.4 The legislation is relevant for UK insurance firms and the changes to be implemented under this instrument are technical in nature and do not impact the status quo as to how UK insurance firms operate.

9.5 For this reason, there is no, or no significant, impact on business, charities or voluntary bodies.

9.6 The legislation does not impact small or micro businesses.

9.7 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury has made the following statement: A review clause would not be appropriate for this instrument and would be considered disproportionate given there is no change to policy, and it is not expected there will be any impact on businesses.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

13.2 It does however relate to the withdrawal of the United Kingdom from the European Union because it relates to HM Treasury's programme to deliver a Smarter Regulatory Framework for the UK through the repeal of assimilated law and tailoring regulation to the UK.