

REGULATING INSURANCE MEDIATION

SUMMARY OF CONSULTATION FEEDBACK, & HM TREASURY DECISIONS

Preamble

The Government received around 400 responses to the consultation document 'Regulating Insurance Mediation' that was published by the Treasury in October 2002. This note summarises the responses and explains the decisions taken as a result of the consultation.

ANSWERS TO SPECIFIC QUESTIONS IN THE CONSULTATION DOCUMENT

1. The Government is seeking views on the scale of any problem with the sale of travel insurance sold as part of a package and the proposed options. In particular views are sought on:

- ***The factors to be taken into account in determining the nature and extent of regulation including supporting evidence***
- ***The scale and nature of consumer detriment in relation to travel insurance sold as part of a package***
- ***Which of the three options outlined in Para 2.4 of the consultation document is most appropriate in terms of balancing consumer protection against industry costs and competition***
- ***Any other relevant considerations***
- ***Whether there are any other options that should be considered?***

The options outlined in paragraph 2.4 of the consultation document were:

- no statutory regulation of sales of travel insurance sold as part of a package;
- regulation by the Financial Services Authority (FSA) to cover these sales in the same way as stand alone sales of travel insurance;
- industry specific regulation, requiring sellers of these products to be authorised by the FSA unless they are subject to an industry specific code, such as the Association of British Travel Agents' (ABTA) Code, which would be certified by the FSA.

Comments of those favouring FSA regulation

1. Many respondents favoured FSA regulation of travel insurance sold as part of a package – option 2 in paragraph 2.4 of the consultation document. The views of those in favour of FSA regulation are given below.
2. There should be a **level competitive playing** field regardless of whether travel insurance is sold as part of a package or as a standalone product. Such regulation would also help ensure the credibility and fairness of the overall regulatory regime, and avoid customer confusion. A single regulatory regime would have across the board disclosure, training and competence and redress requirements.
3. The **complexity** of travel insurance products and the bundling of travel insurance sold as part of a package with the holiday is likely to lead to mis-selling, as there is little opportunity for consumers to check that the policy meets all the requirements, let alone for shopping around and comparing prices. It is essential that consumers are aware of medical exemptions before they make a decision to purchase.
4. If travel insurance sold as part of a package were not regulated there would be **tricky boundary issues** between regulated and unregulated insurance. It would be difficult for customers to understand the distinction between policies sold as part of a package and those sold separately perhaps by the same firm under the same brand.
5. As some travel agents offer annual travel insurance policies which do not fall within the scope of the exclusion, some travel agents will need to be authorised or become appointed representatives to carry on selling such policies in any case. Three large organisations who have the ability to meet the regulatory requirements should they wish have a substantial market share and at the small business end there will be the opportunity to operate as an appointed representative.
6. There is no access to the Financial Ombudsman Service at any point where cover is provided through wholly owned offshore captives (as by some larger travel operations).
7. A small number of respondents provided evidence of **complaints and misselling**. A small number of individuals provided evidence of misselling in relation to themselves or close friends or relatives. In addition, the following organisations provided evidence of complaints and misselling.
8. The **Financial Ombudsman Service (FOS)** received 9437 complaints about general insurance in 2002 of which 1148 (about one in eight) related to travel insurance.

9. The **Consumers' Association** (CA) undertook mystery shopping research in January 2003. 20 outlets of the 4 largest travel agent and holiday chains were visited and 8 independent travel agents. Only 3 of the 20 nationals and 3 of the 8 independents asked about pre-existing medical conditions. Only 3 nationals and 1 independent explained the cover. Only 1 travel agent did both. 34 direct insurers were also contacted. Only half asked about pre-existing medical conditions as well as explaining the basic details of the cover. A 1999 survey of Which? Magazine members showed consumers were twice as likely to be dissatisfied if they had claimed on travel insurance bought from travel companies or tour operators rather than if they had claimed on travel insurance bought direct from banks, building societies or other specialist advisors.

10. Travel insurance represents the third highest category of complaints to the **General Insurance Standards Council** (GISC) Dispute Resolution Facility.

11. Those in favour of FSA regulation of travel insurance sold as part of a package were generally **opposed to industry specific regulation** involving the FSA certification of an industry code or codes - see option 3 in paragraph 2.4 of the consultation document. Their reasons are summarised below.

12. This would be dual regulation, going against the Government's stated policy of the FSA being the sole regulatory authority for the sale of financial services products in the UK. While at present it appears that only the ABTA Code would be capable of meeting the requirements specified by the Treasury, it is possible that other codes might emerge that would meet the same requirements. There is a possibility that in the future, other codes could be certified. This could lead to **regulatory arbitrage** as travel agents sought out the most cost effective regulatory framework to maintain competitive advantage.

13. Some consultees considered that products sold through ABTA members are unlikely to be regulated as rigorously as those sold within the scope of FSA regulation. There is a danger of a conflict of interest between ABTA's role as a trade association and its role as a regulator under this option.

Comments of those in favour of no statutory regulation

14. Those who favoured no statutory regulation of travel insurance sold as part of package (or deemed the industry specific option to be an acceptable alternative to this) did so for the following reasons.

15. Given the low unit cost of any one travel insurance product the likely **cost of regulation** may be prohibitive for many travel agents and tour operators. It is claimed regulation might put some small travel agents out of

business. Regulation would be a significant burden for a small travel agent with a low profit margin selling insurance products that, according to ABTA, account for only between 1% and 4% of a typical agent's turnover. Travel insurance is a key part of the travel package that they sell and so not offering insurance would put them at a competitive disadvantage. ABTA state that travel agents tend to trade on low profit margins (1.15% of turnover in a PWC survey for ABTA in 2000). FSA regulation could lead to larger companies being able to put a squeeze on smaller companies to monopolise travel insurance cover. Therefore regulation would have a significant impact on competition within the travel market.

16. The general level of complaints about travel insurance does not provide a clear case for sufficient consumer detriment to justify regulation. The numbers of complaints about travel insurance need to be seen **in the context of annual sales of travel insurance of 18-20 million policies per annum**. In this context the level of complaints is not high when compared with other lines of general insurance.

17. The **appointed representatives route**, which tends to be a cheaper way of ensuring regulatory compliance while avoiding direct authorisation by the FSA, would probably not be appropriate for many travel agents, particularly the small independents. This is because, under the FSA's proposed revision of the appointed representatives regime (see in particular CP 159), a travel agent could only be the appointed representative of one provider for the selling of travel insurance. Being an appointed representative would thus limit the agent to selling the travel insurance of one insurer or intermediary, and hence probably (as the insurance is sold as a package with the holiday) limit the agent to selling the holidays of one company.

18. Financial regulation may not be the best way of dealing with any problems regarding the "**bundling**" of insurance with the holiday, as this is more of a competition issue. In any case concerns about bundling may be overstated.

19. One respondent pointed out that the Foreign and Commonwealth Office (FCO) are keen to see more holidaymakers take out travel insurance. The regulation of travel insurance sold as part of a package could result in some travel agents ceasing to sell such policies. This could mean that **fewer people would take out travel insurance** leading to potential problems for the uninsured holidaymakers and for the FCO who come under pressure to deal with uninsured holidaymakers in difficulties.

20. Those respondents who considered the ABTA option to be acceptable, in general favoured no statutory regulation at all of sales of travel insurance sold as part of a package. The ABTA option was only acceptable since compared to FSA regulation it would reduce the burdens and costs of

regulation to small travel agents. This would reduce the effect of gold plating of the Directive, and travel agents would continue to offer insurance sold as part of a package such that cover would still be available.

HMT decision

21. **The Treasury considers the industry specific route to be inappropriate.** For competition reasons the FSA would be obliged to consider for certification not only the ABTA code, but the codes that, as the consultation as shown, would likely be put forward by other trade bodies representing travel agents or tour operators. There would be a danger of a complex system of competing codes, which the FSA would have to keep under careful scrutiny, and there would be associated risks of regulatory arbitrage. It therefore appears that this route would be complex for the FSA to administer and potentially confusing for customers.

22. **The Treasury also considers that FSA regulation of travel agents is inappropriate** because there is not sufficient justification for **gold plating** the Directive and increasing the regulatory burden in this way. The consultation specifically asked for evidence of consumer detriment in this market but few respondents provided such evidence, and that which was provided was not sufficient to justify FSA regulation. The numbers of complaints about travel insurance need to be seen in the context of the large number of policies sold. In this context the level of complaints is not particularly high when compared with other lines of general insurance. The Consumers' Association did provide some evidence of misselling, and misselling can potentially lead to consumer detriment. However it was only a one-off survey, and does not demonstrate systematic actual consumer detriment in the market.

23. The strongest argument for regulation is the establishment of a level playing field between the regulation of travel insurance sold as part of a package and that of travel insurance sold separately from the holiday. However the Treasury considers this argument to be less compelling than in the two other areas where the Government intends to go beyond the Directive in part for level playing field reasons. One such area is the selling of general insurance directly by insurers, which the Government intends to regulate (the Directive only requires the regulation of the selling of insurance by intermediaries). The other is motor warranties, which are contracts of insurance where the Directive provides an exclusion for contracts costing less than €500 per annum but where the Treasury intends all such contracts to be regulated.

24. Motor warranties are considered in more detail on page 6 below. The Government considers that to regulate all motor warranties that are contracts of insurance (rather than differentiating on price as provided by the Directive) would have fewer adverse effects on dealers than the equivalent regulation for travel insurance. Many car dealers will need to be FSA regulated or become

appointed representatives in any case because for example they sell payment protection insurance for car loans. There was little if any opposition to the Government's proposal within the industry. In regard to the selling of general insurance direct by insurers, all insurers are already regulated by the FSA and so there will not result any extra firms being regulated. In addition insurers are used to a culture of FSA compliance as they are already subject to FSA requirements on the prudential aspects of their business. No consultation respondents objected to the FSA regulating the selling of general insurance direct by insurers.

25. However for travel insurance sold as part of a package, as stated above, there is the risk that FSA regulation would bring several hundred extra firms into FSA authorisation. This would have a potentially significant impact on the profitability and viability of small independent travel agents and hence a potentially significant impact on competition within the structure of the travel industry. Therefore the impact of establishing a level playing field in travel insurance would probably be far more detrimental than with the other areas described in paragraph 25 above. Another potential cost of regulating travel insurance sold as part of a package is that fewer people may take out travel insurance thus posing risks to themselves whilst abroad and to the Government which comes under pressure to assist travelers in difficulties.

26. Given the lack of a clear case to regulate on consumer detriment grounds, **the Government considers that the costs of FSA regulation and the potential detrimental impact on smaller travel agents trading in a low profit margin business do not to justify the benefits of FSA regulation.**

27. Whilst the Government does not consider there to be sufficient justification to regulate travel insurance sold as part of a package, it does recognise that there are concerns about this market. **Therefore the Treasury will hold a review as to whether to subject these products to FSA regulation two years after implementation of general insurance regulation, that is in early 2007.**

2. Should all motor warranties which are contracts of insurance be subject to regulation by the FSA or only those costing more than €500 (about £300) per annum?

28. Virtually all respondents agreed with the Treasury's proposal that all motor warranties which are contracts of insurance should be subject to regulation by the FSA including those costing less than €500 per annum.

29. There was concern that if only those warranties costing more than €500 per annum were regulated by the FSA then companies would transfer the

premium onto the vehicle price to avoid regulation, and suppliers might price their products just below the threshold to avoid regulation. Many respondents also considered that those warranties that require the most regulation are those costing the least. This is because they tend to offer poorer levels of cover in comparison with more expensive ones.

30. Some respondents were concerned that up to three quarters of motor warranty policyholders would be left unprotected by regulation simply because the technical financial processes backing their policies meant they were legally classed as service contracts (rather than insurance contracts), which cannot fall within the scope of FSA regulation. These respondents therefore considered there to be a need to establish a level regulatory playing field across the whole warranty market, otherwise the regime will appear incoherent to policyholders.

31. One respondent did issue a couple of notes of caution on the proposals, as follow:

a) blanket regulation may result in many small dealers taking the view that the sale of warranties is no longer viable or in their interests if they are regulated. This may not benefit consumers; and

b) regulation may not differentiate between uninsured and insured warranties, as any differences will potentially cause confusion with consumers who are not in a position to discriminate between the two.

HMT decision

32. As virtually all respondents agreed with the proposed approach, the Treasury confirms that all motor warranties which are contracts of insurance should be subject to regulation by the FSA including those costing less than €500 per annum. This to avoid the market distortions that would arise if some of these contracts of insurance were regulated and some not.

3. Are there other factors which the Government should take into account in considering regulation of extended warranties on domestic electrical appliances or other goods?

33. Most respondents wanted extended warranties to be regulated, but most of these were prepared to wait for the outcome of the Competition Commission report, in the hope that this will result in a whole of market solution for all extended warranties and not just those which are contracts of insurance.

34. One respondent considered that the government should note the growth in the market for uninsured service contracts, which occurred noticeably when the Insurance Premium Tax (IPT) rate changed in 1998. One respondent considered that legislation should be passed to define what constitutes a “contract of insurance” in the extended warranty sector.

35. Some responses did sound notes of caution about any eventual regulation of extended warranties. They noted the potential for a negative impact on the competitiveness of the extended warranty market if smaller independent businesses decided to discontinue their sale due to regulation. One respondent considered that the extended warranty market for jewellery is very different to that for domestic electrical appliances and considered that the former poses lower risks to the consumer.

36. Some respondents noted that there was evidence of misselling and complaints in the extended warranties market, and that FSA regulation should be applied equally to all extended warranties. One response considered that all extended warranties should be offered either as insurance warranties or uninsured guarantees funded by a bond or trust held by a third party.

HMT decision

37. It would be inappropriate to preempt the outcome of the Competition Commission’s investigation into the extended warranty market for domestic electrical appliances. Therefore the Treasury confirms that a decision about FSA regulation of non-motor extended warranties which are contracts of insurance will be postponed until after the Competition Commission publishes its final report. Most respondents agreed with this approach. However the Treasury notes the concerns raised about this market in many responses.

4. Are there other activities in relation to work preparatory to the conclusion of contracts of insurance that should be regulated?

38. Most respondents did not think so, although some raised concerns that introducers should be given a broader exemption. Some had particular points of clarification or observations summarised below.

39. One respondent considered that collecting premiums via payroll, and worksite marketing should definitely be excluded from regulation. The concern was that some employers carrying out worksite marketing may fall within the scope of regulation and therefore be discouraged from marketing health cash plans.

40. One respondent stressed that not all mortgage brokers undertake general insurance activities and it would therefore be unfortunate if the mere passing of specific information about the insurance that the consumer had selected (without advice) meant that the broker had to extend their FSA authorisation.

41. Some respondents noted that the regulation of the activities of arranging and introducing for insurance is inconsistent with the regulation of mortgage sales. All introductions are exempt under the mortgages regime (so long as they meet certain conditions), but not all introductions are exempt under the general insurance regime. This inconsistency is particularly concerning for an introducer of both mortgages and insurance products.

42. One respondent considered that legislation should contain a definition of what amounts to regulated introducing, such as “introducing for remuneration or other benefit in kind whether direct or indirect” rather than leaving it to FSA guidance.

43. One respondent was concerned about the extent to which those who introduce clients to IFA’s will need to be regulated. The consultation document explicitly acknowledges that the provision of information by a professional could include an introduction. However the decision tree in Annex C page 3 of the HM Treasury consultation document “Regulating Insurance Mediation” seems to provide a different conclusion.

HMT decision

44. The Insurance Mediation Directive (IMD) requires the UK to regulate introducing in relation to insurance contracts except where certain exclusions apply. However introducing in relation to mortgages is not subject to the Directive and therefore all introductions for mortgages are exempt subject to certain conditions including that the introducer does not handle client money.

45. HM Treasury will implement the exclusion in the IMD for the provision of information on an incidental basis in the course of another profession or business. Such provision of information could include an introduction, and such an introduction would therefore be excluded from regulation.

46. This paragraph and the next aim to provide clarification regarding the decision tree for Introducers in page C3 of the consultation document, which was misleading in one aspect. The first box of this decision tree correctly refers to exclusion for the provision of information about providers. However introducers who also advise or arrange will not benefit from the exclusion, and any introducing activity which goes beyond the mere provision of information, would be caught by regulation.

47. This is reflected in the second box, which asks the question “do you actively introduce clients to insurance firms?” But it is the example that follows, “e.g. by passing on leaflets” which is misleading. **In fact “passing on leaflets” would probably be considered to be merely providing information so long as it was on an incidental basis in the context of another professional activity.** If this were so it **would** benefit from the provision of information exclusion.

5. Do you agree that claims handling by intermediaries on behalf of insurance companies, expert appraisal and loss adjusting should not be subject to direct FSA regulation? If not, do you have evidence of consumer detriment that would warrant such regulation?

48. Most respondents agreed that claims handling by intermediaries on behalf of insurance companies, expert appraisal and loss adjusting should not be subject to direct FSA regulation. Most respondents considered that there was little or no evidence of consumer detriment, and that FSA regulation of the insurer should provide sufficient protection. Moreover direct regulation of these activities would lead to increased costs and administration with little extra benefit to consumers.

49. One respondent noted that many loss adjusters work for a number of different principals whose interpretation of FSA regulations would differ leading to loss adjusters having to comply with a myriad of different interpretations.

50. Some respondents considered that claims handling on behalf of insurers, expert appraisal and loss adjusting should be directly regulated by the FSA for the reasons given below.

51. There is a danger of insurers delegating claims handling to intermediaries to avoid direct regulation, and the ability of the insurer to monitor the compliance of the claims handling intermediary where there may be a chain of delegation is questionable. One respondent considered that these concerns were particularly relevant to the Lloyd’s market where a number of syndicates do not have claims handling facilities so they delegate claims handling to a cover holder who may be a Lloyd’s broker. Without a direct relationship with the FSA and its disciplinary processes, an unregulated firm could act to the detriment of consumers.

52. One respondent noted that the largest percentage (24%) of all complaints handled by GISC’s Dispute Resolution Facility relate to claims although the majority are outside its terms of reference. One respondent

asserted that there was evidence of consumer detriment in connection with claims handling. This respondent proposed that the FSA should be required to break the insurers' monopoly of loss adjustor services in favour of an equal access system. This could be achieved by policy wordings to allow the policyholder to appoint their own adjustor (say where claim exceeded £10,000) to prepare and negotiate the claim and recover the fees as part of the policy indemnity.

53. One respondent noted that a survey conducted by the Nutfield Association into legal expenses insurance highlighted potential conflicts of interest as solicitors had two clients, the insurer and the policyholder.

54. Some respondents requested clarification as to whether loss assessors acting for customers will be subject to regulation.

HMT decision

55. The Treasury confirms that claims handling by intermediaries on behalf of insurance companies, expert appraisal and loss adjusting will not be subject to direct FSA regulation. This is because the FSA has some powers over insurers in relation to excluded activities in any case, and because there is not clear evidence of significant consumer detriment. Claims handling on behalf of consumers falls within the scope of the IMD and will therefore be regulated by the FSA. Most respondents agreed with this approach.

6. Do you agree that the financial promotion regime should not apply to promotions of general insurance mediation activities? Is there sufficient consumer detriment to justify bringing insurance mediation

56. Virtually all respondents agreed that the financial promotion regime should not apply to general insurance mediation.

57. One of the small number of respondents which disagreed asked whether it would be easy to distinguish between promotions of advisory services and promotions of the relevant products. If not, it may be preferable to simply regulate promotions of advisory services relating to general insurance products in the same way that general insurance products are regulated.

HMT decision

58. The Treasury confirms that the financial promotion regime will not apply to promotions of general insurance mediation activities. Little evidence of significant consumer detriment was presented, and the regulation of the sales process itself should provide sufficient protection for consumers. Most respondents agreed with this approach.

7. Should the exclusion for information provided on an incidental basis in the context of another professional activity apply to “qualifying contracts” of long-term insurance? Would this be likely to cause significant consumer detriment?

59. Most respondents thought this exclusion should apply on the basis that there is unlikely to be significant consumer detriment, and that it would avoid gold plating the Directive.

HMT decision

60. The exclusion for information provided on an incidental basis in the context of another professional activity will apply to “qualifying contracts” of long-term insurance. This is because there is little evidence that disapplying this exclusion would cause significant consumer detriment.

8. Should the regulatory regime be extended to mediation activities in relation to rights to and interests in, all contracts of insurance?

61. The response to this proposal was mixed. Those respondents who were in favour of this proposal did not give clear reasons for extending the regulatory regime in this way or any examples of where this extension would benefit consumers. The IMD does not require the Treasury to apply this extension.

HMT decision

62. Given the lack of evidence of benefits to the consumer, the Treasury has decided not to extend the regulatory regime to mediation activities in relation to rights to and interests in contracts of general insurance and “non-qualifying” contracts of long-term insurance.

63. Activities in relation to rights to and interests in qualifying contracts of life insurance (e.g. advising on traded endowments policies) are already, and will continue to be regulated.

9. Do you agree that the appointed representatives regime should be extended to insurance mediation activities? Would this cause significant consumer detriment?

64. Most respondents supported the extension of the appointed representatives regime to mediation activities in relation to general insurance. However there were some notes of caution and questions as to how the regime would work in practice. Some respondents considered that many general insurers would be reluctant to accept the additional responsibility of compliance and regulation of an appointed representative. It could be costly to establish, maintain and monitor firms that have appointed representative status, particularly where there could be a requirement for liaison with numerous other principals.

65. Some respondents considered that small authorised persons should not be placed in the invidious position of accepting responsibility for the behaviour of much larger non-authorised firms. They considered that there is a real possibility that a smaller firm might be unable to control the activities of a larger appointed representative firm, with resulting possibilities of consumer detriment. One respondent considered that HMT and the FSA should consider a restriction on the general insurance income appointed representatives can earn before they would need to seek direct authorisation.

66. Some respondents considered that the appointed representatives regime should permit appointed representatives to conclude contracts of general insurance as an agent. This would also mean that binding authorities (an arrangement that permits the holder to “bind” or commit his Principal to an insurance contract) would be able to be held by appointed representatives.

HMT decision

67. The Treasury confirms that the appointed representatives regime should be extended to insurance mediation activities, because this would reduce the numbers requiring direct FSA authorisation thus reducing the burden of regulation. There was little evidence that this would cause significant consumer detriment. Most respondents agreed with this approach.

68. The Treasury will also amend the appointed representatives regime to enable the appointed representatives to conclude general insurance contracts as an agent, and assist in the administration and performance of general insurance contracts. This reflects market practice and appears not to present significant risks of consumer detriment. The ability of appointed representatives to conclude will only be extended to contracts of general insurance and will not apply to the qualifying contracts of long-term insurance. Sales of these products are already regulated, the risks of significant consumer detriment are greater, and normal market practice does not require appointed representatives to be able to conclude.

**10. Should the provision of information exclusion also cover advice?
Would this cause significant consumer detriment?**

69. Most respondents agreed with the Government's proposal that the provision of information exclusion should not cover advice. They made a number of points in support of their argument as follow. To extend the exclusion could potentially give rise to significant consumer detriment if the wrong advice were given. Advice should be regulated at whichever point it is given. It is difficult to justify why a consumer should be placed at a significant disadvantage simply because the activity is incidental to another professional activity. Indeed the risk is greater because the adviser is less familiar with and knowledgeable about the products.

70. Some respondents noted that the appointed representatives regime was available for those who wanted to provide advice; and that customers would be confused if the regime differed significantly from the investment regime where there is a clear distinction between information and advice. It was noted that the definition of a "professional activity" has been deliberately drawn widely to cover a person carrying out any business activity.

71. Some respondents considered that the exclusion should apply to advice stating that the benefits to consumers of more choice would outweigh the risks, that the risk of consumer detriment is low, and that not applying the exclusion to advice would be gold plating the directive.

HMT decision

72. The Treasury confirms that the provision of information exclusion will not cover advice. This is because there would likely be significant risks to consumers arising from unregulated advice given by persons who may have

little knowledge or expertise about insurance products. Most respondents agreed with this approach.

11. Do you agree that the FSMA Part XX regime for Designated Professional Bodies should apply to insurance mediation activities? Would this cause significant consumer detriment?

73. Most respondents supported the application of the DPB regime for insurance mediation activities. Many noted that given the generally high standards required by the professional bodies, it is not thought that the extension of the DPB regime would cause significant consumer detriment. The DPB's will have rules governing insurance mediation activities to protect consumers. Professionals will only be able to carry on (without FSA authorisation) insurance mediation activities which are "incidental" to their main activities. The DPB regime is already in place for investment products, where there is arguably greater risk of significant consumer detriment, so there is little justification for not applying the DPB regime to insurance mediation activities.

74. Some respondents stated that they would review their agreement to this approach if the government were to add to the current list of DPB's. Some respondents disagreed with extending the DPB regime. They considered that this would create an unlevel playing field, and that DPB members do not have the training or experience in respect of selling insurance products that specialist insurance intermediaries have. One respondent considered that all general insurance customers should have access to the Financial Ombudsman Service, and was concerned that this did not apply in the DPB regime.

HMT decision

75. The FSMA Part XX regime for Designated Professional Bodies will apply to insurance mediation activities because this will reduce the numbers requiring direct FSA authorisation, and there is little evidence this would lead to significant consumer detriment. Most respondents agreed with this approach.

12. Do you agree that the limitations that currently apply to the advice that a professional can give under Part XX in relation to long term contracts of insurance should not apply to advice given in relation to general insurance?

76. Most respondents supported the proposal not to apply the current limitations under the Part XX regime to advice given in relation to general insurance and non-qualifying contracts of life insurance. The main reason given was that such insurance products were generally low risk and there was no evidence to suggest that advice from professionals needs to be restricted on any of the products that fall within regulation. Therefore this activity is unlikely to give rise to significant consumer detriment. The DBP regime in any case only applies to insurance mediation activities “incidental” to their main professional activities.

77. Some respondents disagreed noting that this proposal would put FSA firms at a competitive disadvantage vis a vis DPB regulated firms. There was concern that DPB’s will not adopt a sufficiently rigorous regulatory approach.

HMT decision

78. The limitations that currently apply to the advice that a professional can give under Part XX in relation to qualifying contracts of insurance should not apply to advice given in relation to general insurance or non-qualifying contracts of insurance. This is because this will reduce the numbers requiring direct FSA authorisation, and there is little evidence this would lead to significant consumer detriment. Most respondents agreed with this approach.

13. Do you agree that the notification requirements for the controllers’ regime for general insurance intermediaries should be streamlined as outlined in para 5.14 above? Would this cause significant consumer detriment and if so, how?

79. Most respondents supported the proposals for a streamlined regime. This regime would still impose regulatory requirements on controllers but in a lighter touch way than the regime for investment firms, as irregularities in general insurance intermediary firms probably pose lower risks to consumers and the economy as a whole than those in investment firms. One respondent was concerned that a lighter touch regime may make such firms attractive to organised crime, and that it would be preferable to see a level playing field.

HMT decision

80. The Treasury intends that the notification requirements for the controllers’ regime for general insurance intermediaries be streamlined as outlined in para 5.14 of the consultation paper. This is because the lighter touch

regime should reduce the regulatory burden on the industry, and there is little evidence to suggest that this will significantly increase risks to consumers or the economy as a whole. Most respondents agreed with this approach.

14. The Government would welcome views on the assumptions made in the Regulatory Impact Assessment. It would be helpful to receive views on both the costs and benefits to businesses and consumers of the proposed regulation. We should particularly like to receive views on the likely impact on the smaller firms that will be covered by FSA regulation of general insurance mediation.

81. Please see the revised Regulatory Impact Assessment which takes account of the consultation responses.

GENERAL COMMENTS

82. Respondents made some general and specific observations on the proposals in the consultation document that are not specifically covered by the questions above. A summary of the main points follows.

Mediation by employees of insurance companies

83. The Directive requires the UK to regulate certain insurance mediation activities carried on by intermediaries, but these activities are not within the scope of the Directive when carried on by employees of insurance companies. The Government outlined its intention in the consultation document to regulate the activities of persons directly employed by insurers in the same way as the activities of intermediaries.

HMT decision

84. The Government considers that to regulate the activities of intermediaries but not insurers would cause confusion to customers and create an unlevelled playing field in terms of competition between intermediaries and insurers' direct sales forces. Also as insurers are already subject to regulation on the basis that they carry on insurance business the FSA could make rules about their mediation activities in any event. Therefore to ensure clarity and a level playing field the Government intends to regulate these activities in the same way whether carried on by intermediaries or by persons directly employed by insurers.

Transitioning of Complaints

85. One respondent requested that the FOS be given powers to deal with consumer complaints that arise after the commencement of FSA regulation that relate to products bought before commencement from firms regulated by the GISC. This is because the GISC would be expected to wind down soon after the commencement of FSA regulation, and therefore would not be able to deal with such complaints.

HMT decision

86. Such transitionals would benefit consumers. However this has to be weighed up against the possibility of additional costs for firms and any differences in approach and scope between the FOS and the GISC Dispute Resolution Facility. Therefore the Treasury will hold an open consultation later this summer to give all interested parties a chance to comment on these issues before making a decision. This consultation will include a parallel consultation on whether the FOS should be given powers to deal with consumer complaints which arise after the commencement of FSA regulation of mortgages which relate to products bought before that date from firms regulated by the Mortgage Code Compliance Board (MCCB).

Training and Competence

87. One response noted that the introduction of a simple badging of qualification in the general insurance market would support the FSA's objectives for consumer protection, education and trust in financial services.

HMT comment

88. The details of the training and competence regime are a matter for the FSA.

Proportionality of regulation

89. One respondent noted that the Treasury and the FSA should be concerned to ensure that the regulatory regime is not disproportionate or unworkable for small businesses, or that it would result in them stopping selling insurance which would be detrimental to consumers and insurers. Credit protection insurance and extended warranties have far less effect on consumers' lives than mortgages and pensions.

HMT comment

90. The Treasury and the FSA intend to ensure the regulatory regime is light touch and proportionate, giving adequate weight to consumer interests and competition concerns. The Treasury's revised draft regulatory impact assessment sets out its assessment of the costs and benefits of regulation. Under the Financial Services and Markets Act 2000 a range of safeguards are in place to ensure that the FSA adopts a proportionate approach to regulation, these are summarised at paragraph 1.4 of the consultation document.

Territorial scope

91. One respondent wanted all insurance activities of UK based intermediaries to be regulated irrespective of the location of the various parties. A major part of most Lloyd's brokers' business is broking risks outside the EEA and this should be within the scope of regulation. Also the respondent considered that reinsurance should similarly be regulated, because if this market is not regulated non-EEA policyholders will not be prepared to place risks in an unregulated market. This would lead to a decline in business and hence a decline in the UK's invisible exports.

92. One respondent noted that in practice it will be difficult to identify EEA and non-EEA risks; doing so will be linked to final rules drawn up by the FSA. Assuming these are proportionate then most firms in practice will apply the same regime to both regulated and unregulated business. In part it will also depend on whether firms are required to report information on the basis of regulated and non-regulated activities. Any requirement along these lines could require significant investment in management systems and greatly increase regulatory costs.

93. One respondent considered that large risks outside the EEA should be regulated, owing to the risks to the reputation of the industry and the solvency of insurers or the problems arising with such unregulated business. On the other hand one respondent considered that the Government should avoid the super equivalent approach of including within the scope of regulation non-large risks outside the EEA mediated in the UK. This is because the Government's approach will distort EEA competition by placing extra burdens on UK intermediaries, and will mean that many international risks placed in the London market could be subject to dual regulation.

HMT decision

94. The mediation in the UK of contracts covering non-large risks situated outside the EEA will be covered by regulation to provide protection for

consumers who would otherwise face confusion and possible consumer detriment. However the mediation of contracts for large risks situated outside the EEA will be excluded from regulation. Large risks are as defined in article 5(d) of the First Non-Life Directive 73/239/EEC, and relate to risks taken on by large companies who will be able to make more informed decisions and be less at risk of consumer detriment.