

2003 No.

FINANCIAL SERVICES AND MARKETS

**The Insurance Mediation Directive (Miscellaneous
Amendments) Regulations 2003**

Made 2003

Laid before Parliament 2003

Coming into force October 2004

Whereas, the Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972(a) [in relation to measures relating to the authorisation and regulation of insurance and reinsurance intermediaries(b)];

The Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972, and sections 39(1)(c) and 428(3) of, and paragraph 14(1)(b) and 17(a) of Schedule 3 to, the Financial Services and Markets Act 2000(d), hereby make the following Regulations:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 and come into force on [October 2004].

(2) In these Regulations, “the Act” means the Financial Services and Markets Act 2000.

PART 2

PASSPORTING

(a) 1972 c.68.

(b) [designation order]

(c) “Prescribed” is defined in section 417(1) of the Act.

(d) 2000 c.8.

Passport rights - definitions

2.—(1) In section 425(1) of the Act (expressions relating to authorisation elsewhere in the single market)(a) –

- (a) in paragraph (a), after ““insurance directives,””, insert ““insurance mediation directive,””;
- (b) at the end of paragraph (a), omit “and”; and
- (c) at the end of paragraph (b), insert –

“; and

(c) any reference to the EEA authorisation of an EEA firm which falls within paragraph 5(e) of Schedule 3 being withdrawn is to be construed as a reference to the removal of that EEA firm from the register maintained by its home state regulator pursuant to Article 3 of the insurance mediation directive.”.

(2) In Schedule 3 to the Act (EEA passport rights)(b) -

- (a) in paragraph 1 (the single market directives) –
 - (i) at the end of sub-paragraph (c), omit “and”, and
 - (ii) at the end of sub-paragraph (d), insert –

“; and

(e) the insurance mediation directive.”;

(b) after paragraph 4, insert –

“The insurance mediation directive

4A. “The insurance mediation directive” means the European Parliament and Council Directive of 30 September 2002 on insurance mediation (No.[]).”;

(c) in paragraph 5 (EEA firm) –

- (i) at the end of sub-paragraph (c), omit “or”; and
- (ii) at the end of sub-paragraph (d), insert –

“; or

(e) an insurance intermediary (as defined in Article 2.5 of the insurance mediation directive), or a reinsurance intermediary (as defined in Article 2.6 of that directive), which has registered with its home state regulator under Article 3 of that directive.”; and

(d) in paragraph 6 (EEA authorisation), at the end, insert “or, in the case of a firm falling within paragraph 5(e), registration with its home state regulator under Article 3 of the insurance mediation directive”.

Exercise of rights to establish a branch by EEA firms

3.—(1) Paragraph 13 of Schedule 3 to the Act (establishment conditions for EEA firms) is amended as follows.

(2) At the beginning of sub-paragraph (1), insert “If the firm falls within paragraph 5(a), (b), (c) or (d),”.

(3) After sub-paragraph (1), insert –

“(1A) If the firm falls within paragraph 5(e), the establishment conditions are that –

- (a) the firm has given its home state regulator notice of its intention to establish a branch in the United Kingdom;
- (b) the Authority has received notice (“a regulator’s notice”) from the firm’s home state regulator that the firm intends to establish a branch in the United Kingdom;

(a) Amended by S.I. 2000/2952.

(b) Amended by S.I. 2000/2952 and S.I. 2001/1376.

- (c) the firm’s home state regulator has informed it that the regulator’s notice has been sent to the Authority; and
- (d) one month has elapsed beginning with the date on which the firm’s home state regulator informed the firm that it had sent a regulator’s notice to the Authority.”.
- (4) In sub-paragraph (4), in the definition of “permitted activity”, after “consent notice”, insert “or regulator’s notice, as the case may be”.

Exercise of rights to provide services by EEA firms

4.—(1) Paragraph 14 of Schedule 3 to the Act (service conditions for EEA firms) is amended as follows.

- (2) In sub-paragraph (1) –
 - (a) in sub-paragraph (b), for “paragraph 5(a) or (d)”, substitute “paragraph 5(a), (d) or (e)”;
 - (b) at the end of sub-paragraph (b), omit “and”;
 - (c) in sub-paragraph (c), for “paragraph 5(d)”, substitute “paragraph 5(d) or (e)”;
 - (d) at the end of sub-paragraph (c), insert –
 - “; and
 - (d) if the firm falls within paragraph 5(e), one month has elapsed beginning with the date on which the firm’s home state regulator informed the firm that it had sent a regulator’s notice to the Authority.”.
- (3) In sub-paragraph (2), after “it must”, insert “, unless the firm falls within paragraph 5(e)”.

Exercise of rights to establish a branch by UK firms

5.—(1) Paragraph 19 of Schedule 3 to the Act (exercise of passport rights by UK firms to establish a branch) is amended as follows.

- (2) At the beginning of sub-paragraph (1), insert “Subject to sub-paragraph (5A)”.
- (3) For sub-paragraph (5), substitute –
- “(5) The third is that –
 - (a) if the firm’s EEA right derives from the insurance mediation directive, one month has elapsed beginning on the date on which the firm received notice that the Authority had given a consent notice in accordance with sub-paragraph (11);
 - (b) in any other case, either –
 - (i) the host state regulator has notified the firm (or, where the EEA right in question derives from any of the insurance directives, the Authority) of the applicable provisions; or
 - (ii) two months have elapsed beginning with the date on which the Authority gave the consent notice.”.
- (4) After sub-paragraph (5), insert –
- “(5A) If –
 - (a) the firm’s EEA right derives from the insurance mediation directive, and
 - (b) the EEA State in which the UK firm is seeking to establish a branch has not notified the Commission of its wish to be informed of the intention of persons to establish a branch in its territory in accordance with Article 6(2) of that directive,
 sub-paragraphs (4) and (5) do not apply (and so the UK firm may establish the branch to which its notice of intention relates as soon as the first condition is satisfied).”.
- (5) After sub-paragraph (7), insert –
- “(7A) If –
 - (a) the firm’s EEA right derives from the insurance mediation directive,

(b) the first condition is satisfied, and

(c) sub-paragraph (4) applies,

the Authority must (and may not refuse to) give a consent notice within one month beginning with the date on which it received the firm's notice of intention.”.

Exercise of rights to provide services by UK firms

6.—(1) In paragraph 20 of Schedule 3 to the Act (exercise of passport rights by UK firms to provide services), after sub-paragraph (3A), insert –

“(3B) Where the firm's EEA right derives from the insurance mediation directive and the EEA State in which the UK firm is seeking to provide services has notified the Commission of its wish to be informed of the intention of persons to provide services in its territory in accordance with Article 6(2) of that directive –

(a) the Authority must, within one month of receiving the notice of intention, send a copy of it to the host state regulator;

(b) the Authority, when it sends the notice in accordance with sub-paragraph (a), must give written notice to the firm concerned; and

(c) the firm concerned must not provide the services to which its notice of intention relates until one month beginning with the date on which it receives the notice under sub-paragraph (b) has elapsed.”.

(2) In paragraph 21 of that Schedule (offence relating to exercise of passport rights), in sub-paragraph (1)(b), for “sub-paragraph (1) or (4B)”, substitute “sub-paragraph (1), (3B)(c) or (4B)”.

Authority's public record

7. After paragraph 24 of Schedule 3 to the Act, insert –

“Information to be included in the public record

25. The Authority must include in the record that it maintains under section 347 in relation to a UK firm a list of each EEA State in which the UK firm –

(a) has established a branch,

(b) is providing services, or

(c) may, pursuant to this Schedule, exercise its EEA right to establish a branch or to provide services,

pursuant to an EEA right derived from the insurance mediation directive.”.

Amendments to the Passport Rights Regulations

8.—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(a) are amended as follows.

(2) In regulation 1(2) (interpretation), after the definition of “insurance firm”, insert –

““insurance intermediary” means an EEA firm falling within paragraph 5(e) of Schedule 3;”.

(3) In regulation 3 (contents of regulator's notice), after paragraph (3), insert –

“(4) In the case of an insurance intermediary, the prescribed information is that the firm intends to provide services in the United Kingdom.”.

(4) In regulation 10 (applications for approval under section 60 by EEA firms), after “consent notice”, insert “or regulator's notice”.

(a) S.I. 2001/2511; amended by S.I. 2002/765.

PART 3

APPOINTED REPRESENTATIVES

Amendment to the Appointed Representatives Regulations

9.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001^(a) are amended as follows.

(2) In regulation 1(2), for “and “contractually based investment””, substitute “, “contract of insurance” and “relevant investment””.

(3) In regulation 2(1), for “contractually based investments”, substitute “relevant investments”.

(4) In regulation 3 –

(a) in paragraph (2), for “contractually based investment”, substitute “relevant investment”; and

(b) after paragraph (2), insert –

“(3) Where the contract between the principal and the representative permits or requires the representative to carry on business which includes an activity –

(a) of the kind specified by article 25 or 53 of the Regulated Activities Order or an activity of the kind specified by article 64 of that Order, so far as relevant to that article, and

(b) which relates to a contract of insurance,

paragraph (4) applies.

(4) Where this paragraph applies, it is also a prescribed requirement for the purposes of subsection (1)(a)(ii) of section 39 of the Act that the contract between the principal and the representative contain a provision providing that the representative is not permitted or required to carry on business, so far as it comprises an activity of the kind specified by paragraph (3), unless he is included in the record maintained by the Authority under section 347 of the Act by virtue of article 93 of the Regulated Activities Order (recorded insurance intermediaries).”.

PART 4

PROFESSIONALS

Authority’s power to give directions in relation to the application of the general prohibition to members of a profession

10. In section 328 of the Act (directions in relation to the general prohibition) –

(a) for subsection (6), substitute –

“(6) The Authority may exercise the power conferred by subsection (1) only if it is satisfied either that –

(a) it is desirable in order to protect the interests of clients; or

(b) it is necessary to do so in order to comply with a Community obligation imposed by the insurance mediation directive.”; and

(b) in subsection (7), for “so satisfied”, substitute “satisfied of the matter specified in subsection (6)(a)”.

^(a) S.I. 2001/1217; amended by S.I. 2001/2508.

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part the European Parliament and Council Directive 2002/[]/EC on insurance mediation ("the Directive").

Part 2 of the Regulations amends the Financial Services and Markets Act 2000 ("the Act") and Regulations made under that Act so as to make provision for persons who are registered with their home state competent authority in accordance with Article 3 of the Directive to exercise the rights conferred upon them by Article 6 of the Directive to establish a branch or provide services in another EEA State. These rights are known as passporting rights. Regulations 3 and 4 relate to the passporting rights of EEA firms (within the meaning of the Act). Regulations 5 to 7 relate to the passporting rights of UK firms (within the meaning of the Act).

Part 3 of the Regulations amends the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) so as to provide that an appointed representative (within the meaning of the Act) may carry on mediation activities of the kind already specified by those Regulations in relation to any contract of insurance. The effect of this amendment is to permit appointed representatives to carry on activities in relation to *any* contract of insurance. These Regulations also specify that the contract between the appointed representative and his principal must provide that the representative is not permitted or required to carry on certain activities in relation to a contract of insurance unless he is included in the record of insurance intermediaries maintained by the Financial Services Authority under section 347 of the Act.

Part 4 of the Regulations amends section 328 of the Act so as to permit the Financial Services Authority to exercise the power conferred by that provision (power to direct that the exemption from the general prohibition for members of the professions in section 327 of the Act does not apply) where necessary in order to comply with the Directive.