

2003 No.

FINANCIAL SERVICES AND MARKETS

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

<i>Made</i>	<i>June 2003</i>
<i>Laid before Parliament</i>	<i>June 2003</i>
<i>Coming into force</i>	<i>14th January 2005</i>

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 the authorisation and regulation of insurance intermediaries^(b);

The Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972, and sections 349(1)(b), (2) and (3), 417(1)(c) and 428(3) of, and paragraphs 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 14th January 2005.

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

PART 2

PASSPORTING

Passport rights - definitions

2.—(1) In section 425(1) of the Act (expressions relating to authorisation elsewhere in the single market)^(e), in paragraph (a), after ““insurance directives””, insert ““insurance mediation directive””.

^(a) 1972 c.68.

^(b) S.I. 2002/2840.

^(c) See the definition of “prescribed”.

^(d) 2000 c.8.

^(e) Amended by S.I. 2000/2952.

- (2) In Schedule 3 to the Act (EEA passport rights)(a) -
- (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 9 December 2002 on insurance mediation (No. 2002/92/EC).”;

- (c) in paragraph 5 (EEA firm) –
 - (i) for “head office”, substitute “relevant office”;
 - (ii) at the end of sub-paragraph (c), omit “or”; and
 - (iii) 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) which is registered with its home state regulator under Article 3.”;

- (d) after paragraph 5, insert –

“5A. In paragraph 5, “relevant office” means –

- (a) in relation to a firm falling within sub-paragraph (e) of that paragraph which has a registered office, its registered office;
- (b) in relation to any other firm, its head office.”;

- (e) for paragraph 6 (EEA authorisation), substitute –

“6. “EEA authorisation” means –

- (a) in relation to an EEA firm falling within paragraph 5(e), registration with its home state regulator under Article 3 of the insurance mediation directive;
- (b) in relation to any other EEA firm, authorisation granted to an EEA firm by its home state regulator for the purpose of the relevant single market directive.”;

- (f) in paragraph 7 (EEA right), for “head office”, substitute “relevant office”;

- (g) after paragraph 7, insert –

“7A. In paragraph 7, “relevant office” means –

- (a) in relation to a person who has a registered office and whose entitlement is subject to the conditions of the insurance mediation directive, his registered office;
- (b) in relation to any other person, his head office.”;

- (h) in paragraph 10 (UK firm), for “head office”, substitute “relevant office”; and

- (i) after paragraph 10, insert –

“10A. In paragraph 10, “relevant office” means –

- (a) in relation to a firm whose EEA right derives from the insurance mediation directive and which has a registered office, its registered office;
- (b) in relation to any other firm, its head office.”.

(a) Amended by the Enterprise Act 2002 (c. 40) Schedule 25, S.I. 2000/2952 and S.I. 2001/1376.

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;

(c) the firm’s home state regulator has informed the firm 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 the regulator’s notice has been sent 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 (services 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 the regulator’s notice has been sent 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–

(a) if the EEA right in question derives from the insurance mediation directive, that one month has elapsed beginning with the date on which the firm received notice, in accordance with sub-paragraph (11), that the Authority has given a consent notice;

(b) in any other case, that 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 EEA right in question derives from the insurance mediation directive, and
- (b) the EEA State in which the firm intends to establish a branch has not notified the Commission, in accordance with Article 6(2) of that directive, of its wish to be informed of the intention of any UK firm to establish a branch in its territory,

the second and third conditions do not apply (and so the 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) the second condition applies,

the Authority must give a consent notice, and must do so 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) If the firm’s EEA right derives from the insurance mediation directive and the EEA State in which the firm intends to provide services has notified the Commission, in accordance with Article 6(2) of that directive, of its wish to be informed of the intention of any UK firm to provide services in its territory –

- (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 copy in accordance with sub-paragraph (a), must give written notice to the firm concerned that it has done so; 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 (offences 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 any UK firm whose EEA right derives from the insurance mediation directive information as to each EEA State in which the UK firm, in accordance with such a right –

- (a) has established a branch; or
- (b) is providing services.”.

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.

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

(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 (provision of services: 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 carry on insurance mediation or reinsurance mediation (in each case, within the meaning of the insurance mediation directive) by providing 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”.

PART 3

PROFESSIONALS

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

9. 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–

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

(b) that 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)”.

PART 4

INFORMATION

Disclosure of confidential information

10. In regulation 2 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(interpretation)(a), in the definition of “directive restrictions”, for “and article 107 of the listing particulars directive”, substitute “, article 107 of the listing particulars directive and article 9 of the insurance mediation directive”.

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

(a) S.I. 2001/2188; amended by the Enterprise Act 2002 (c.40), section 2, S.I. 2001/3437, S.I. 2001/3624, S.I. 2001/3648 and S.I. 2002/1775.

These Regulations implement in part the European Parliament and Council Directive 2002/92/EC on insurance mediation (“the Directive”). A Transposition Note setting out how the main elements of the Directive will be transposed into UK law is available from the Banking and General Insurance Team, HM Treasury, 1 Horseguards Road, London SW1A 2HQ. The Transposition Note is also on HM Treasury’s website (www.hm-treasury.gov.uk).

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 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.

Part 4 of the Regulations amends the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188).