

Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of changes to regulatory arrangements relating to the regulation of insurance distribution activities

A. Summary

1 This application is made by the Solicitors Regulation Authority (SRA) to the Legal Services Board (LSB) for approval of changes to the SRA's regulatory arrangements that implement the requirements of the Insurance Distribution Directive (IDD).

B. Background

2 The IDD is a European Directive that replaces the Insurance Mediation Directive (IMD). It seeks to strengthen consumer protection by imposing requirements on firms that provide, facilitate and arrange insurance products. SRA-authorized firms involved in personal injury, conveyancing and probate will most likely be carrying on insurance distribution activities. For example, they may arrange for clients' after the event insurance in a personal injury matter or insurance for defective title in a conveyancing matter. There may be other insurance products that firms advise on or arrange for their clients.

3 The IDD aims to deliver a number of requirements of a professional and organisational nature, for example continuing professional development and professional indemnity insurance requirements, as well as dealing with requirements for the provision of information, complaints handling and out-of-court redress.

4 Member States (and appropriate regulators) are required to implement the IDD by 1 July 2018 but the rules do not need to come into effect until 1 October 2018. This allows firms time to become familiar with the new requirements and to make the necessary changes to their procedures in readiness for the rules coming into force.

5 As a designated Professional Body (DPB) for financial services activities we are expected to make changes to our rules so that we implement the IDD within our arrangements.

6 In October 2017, we consulted on our proposal to amend our regulatory arrangements to implement the IDD and therefore to allow SRA-authorized firms to carry on insurance distribution activities under our regulation. In preparing our proposed changes we worked closely with the Financial Conduct Authority (FCA) to identify the changes that we needed to make and to make sure that it was comfortable with us making changes in a manner that best suited our regulatory style.

- 7 We explained that we wanted to make sure that firms were compliant without imposing any significant additional regulatory burdens. Such a burden could impact disproportionately on smaller firms and BAME solicitors who may not have the time and resources to navigate their way around complex legislation and rules. The costs of any additional burden would most likely be passed on to clients, making services less affordable, thereby potentially reducing access for vulnerable and poorer clients.

C. Details of the SRA's current regulatory arrangements

- 8 SRA-authorized firms can carry on financial services activities which include insurance distribution activities (for example, after the event insurance in a personal injury matter or insurance for defective title in a conveyance) under the scope of our regulation if they comply with our rules and, in particular, the activity "*...arises out of, or is complementary to, the provision of a particular professional service to a particular client...*" (s332(4) of FSMA). Firms carrying on these activities in this way are referred to as exempt professional firms (EPFs).

- 9 As a DPB, we have in place rules that govern the carrying on of financial services activities by EPFs; these are the SRA Financial Services (Scope) Rules 2001 (Scope rules) and the SRA Financial Services (Conduct of Business) Rules 2001 (COB rules). The purpose of these rules is to set out the scope of the FSMA regulated activities which a firm can undertake and to regulate the way in which firms carry on such activities. In all circumstances, SRA-authorized firms must comply with the SRA Principles 2011 and the Outcomes set out in the SRA Code of Conduct 2011, therefore, ensuring adequate consumer protection.

- 10 The purpose of the Scope rules is to set out the scope of the FSMA regulated activities which may be undertaken by SRA-authorized firms that are not authorized by the FCA. These rules:

- (i) prohibit firms which are not regulated by the FCA from carrying on certain financial services activities;
- (ii) set out the basic conditions which those firms must satisfy when carrying on financial services activities; and
- (iii) set out other restrictions on financial services activities carried on by those firms.

- 11 The COB rules regulate the way in which firms carry on financial services activities.

- 12 The current Scope and COB rules (prior to these amendments) include requirements that were introduced to implement the Insurance Mediation Directive which has now been replaced by the IDD.

D. Nature and effect of the proposed alterations to the SRA's regulatory arrangements

- 13 The SRA Amendments to Regulatory Arrangements (Insurance Distribution) Rules 2018, which are set out in Annex 1, were made by the SRA Board on 19 April 2018 and are due to come into effect on 1 October 2018.

- 14 The requirements of the IDD are very detailed and prescriptive (for example requiring 15 hours of continuing professional development (CPD) for those involved in insurance distribution activities) and in some respects the FCA, in its rules, has gone further than the directive. However, the FCA indicated that it was comfortable with an approach by us and other DPBs that did not copy out the requirements of the IDD but relied on existing rules that would achieve the same outcomes where firms are carrying out the insurance distribution activities as ancillary insurance intermediaries (All).
- 15 Alls are defined in the IDD as firms that meet some key requirements including:
- the firm's principal professional activity is not insurance distribution
 - the firm only distributes insurance products which are complementary to goods and services they provide as their primary professional activity.
- 16 Our approach to amending the rules has meant that we have not had to copy out every requirement of the IDD and provided us with some discretion over how some elements of the IDD were implemented. For example, we were able to rely on our existing provisions in relation to CPD and our existing sanctions and professional indemnity insurance requirements.
- 17 Key changes to our rules that firms will need to familiarise themselves with relate to:
- Registration requirements
 - Professional and organisational requirements
 - Conduct of business requirements
 - Information requirements
 - Demands and needs of their client.
- 18 The rules specifically confirm that EPFs may only carry on insurance distribution activities under our regulation as Alls. As we made clear in the consultation document this has always been our intention, but the rules now put the matter beyond doubt. The impact of this is that if firms wish to carry on the work in another capacity they will need to be authorised by the FCA.
- 19 Since the consultation version, we have included a new rule that prohibits firms from carrying on insurance distribution activities in relation to insurance-based investment products (e.g. life policies with an investment element) under our regulation. This has been included because the FCA has informed us that the EU Commission has stated that the intention of the IDD is that Alls cannot distribute insurance-based investment products. The impact of this decision is that a firm that is currently carrying on insurance distribution activities in relation to insurance-based investment products would need FCA authorisation to do so. However, we consider it unlikely that anyone is currently carrying out this activity under our regulation because firms are already prohibited from advising on or arranging retail investment products and there is a significant overlap between this and insurance-based investment products and the requirements that apply.

- 20 Since the consultation version, we have also included a new rule that prohibits firms from creating, developing, designing and/or underwriting a contract of insurance (essentially manufacturing insurance products) under Part 20 FSMA. It is also very unlikely that firms are currently manufacturing insurance products and it is difficult to envisage a situation in which a firm would be able to do this under Part 20. However, if we did not explicitly prohibit firms from carrying on these activities, the FCA would have expected us to include many additional provisions from the IDD relating to manufacturing insurance products. These activities are considered to carry more risks and in the unlikely event that there are any firms that carry on these activities then it would be appropriate for them to be authorised by the FCA in future.
- 21 Finally, some other changes have been made to the rules following the consultation so that the language used in and some specific requirements of the IDD are replicated. These include for example, confirmation that information to a client should be provided in good time, requirements relating to services provided over the telephone and what information should be given to clients when other products or services are provided as part of a package or in the same agreement with an insurance product.
- 22 SRA-authorised firms wanting to carry on 'prohibited' activities or work outside the scope of our regulation would have to be authorised by the FCA to do so. FCA authorisation would mean that SRA-authorised firms would no longer be able to benefit from the Part 20 regime in relation to any other financial services activities. This is because FSMA prevents a firm from being authorised by the FCA and an EPF at the same time.

E. Rationale for amendments

- 23 In designing our regulatory framework that implements the IDD, we wanted to make sure that SRA-authorised firms would be able to continue to carry on activities that would now fall within the definition of “insurance distribution activities” and are central to the delivery of legal services, under Part 20 of FSMA. This required changes to be made to the Scope and COB rules.

F. Statement in respect of the Regulatory Objectives

- 24 Our position with regards to the regulation of insurance distribution activities has been led by the replacement of the IMD by the IDD. Our comments on the regulatory objectives therefore relate to our policy as a DPB in implementing the transfer of regulation. We have imposed no additional obligations beyond those required to implement the IDD.
- 25 The SRA Board is satisfied that its proposals for implementing the IDD are compatible with the regulatory objectives and represent the most appropriate means of meeting these objectives whilst fulfilling our obligations under FSMA.
- 26 The IDD continues to make sure that the public are protected and by making changes to our regulatory arrangements, consumers can continue to access good quality services through SRA-authorised firms. The changes to our rules will aim to make sure that SRA-authorised firms can compete in a market that is diverse and effective whilst adhering to professional principles - to act with

integrity, maintain proper standards of work, and act in their clients' best interests. The approach to changing our rules aligns with the better regulation principles of transparency, proportionality and targeting and best regulatory practice.

Protecting and promoting the public interest

- 27 Our arrangements benefit the public interest by enabling the public to safely access insurance distribution services central to the delivery of the legal services provided by those that we regulate. By providing arrangements that are targeted and proportionate, we make sure that the restrictions imposed by, and the cost of, regulation do not outweigh the benefits for the public.

Supporting the constitutional principle of the rule of law

- 28 These proposals will have a neutral impact on the constitutional principle of the rule of law.

Improving access to justice

- 29 Our arrangements allow for SRA-authorized firms to continue to carry on insurance distribution activities that are closely related to the legal services they provide. Our view is that the additional requirements that we have had to introduce should not place a significant barrier to firms carrying insurance distribution activities that are ancillary to their legal practice. By being able to continue to offer these services, clients of firms will not have to be referred to a third-party supplier for insurance that relates specifically to their legal matter.

Protecting and promoting the interests of consumers

- 30 We consider that the arrangements will have a positive impact on the interests of the public and users of legal services. As set out above, they allow SRA-authorized firms to continue to carry on insurance distribution activities and provide the necessary services to their clients. At the same time, by implementing the IDD requirements we can make sure that appropriate consumer protections are in place.

Promoting competition in the provision of services such as are provided by authorised persons

- 31 The changes will not have a negative impact on the provision of legal services or reduce competition. By providing a proportionate and targeted regulatory regime that does not add unnecessary costs or restrictions to SRA authorised firms they are unlikely to be impacted negatively in terms of their competitiveness or services offered.

Encouraging an independent, strong, diverse and effective legal profession

- 32 We have reviewed the requirements for any potential impacts on specific groups of the profession and no equality and diversity issues have been identified that would impact on firms or consumers. The measures will apply equally to all firms that engage in the activities, and there is a spread of firms across the most affected categories (conveyancing, probate and personal

injury). The obligations to encourage an independent and strong legal profession are neutral in relation to this policy.

Increasing public understanding of the citizen's legal rights and duties

33 The proposals will have a neutral impact.

Promoting and maintaining adherence to the professional principles

34 The proposals will have a neutral impact.

G. Statement in respect of the Better Regulation Principles

35 The SRA considers that the proposed alterations fulfil our obligation under section 28 of the Legal Services Act 2007 (LSA) to have regard to the Better Regulation Principles.

36 The SRA's regulatory arrangements are proportionate and targeted and they fulfil our obligations as a DPB and to implement the requirements of the IDD.

37 We note the obligations under section 54 of the LSA aimed at avoiding regulatory conflict and duplication between approved regulators and external regulatory regimes. We consider it to be particularly important to make sure transparency regarding which regime applies in what circumstances and a clear distinction between the aims and purposes of each. The regulatory arrangements seek to achieve this aim by ensuring that our regulation is focused on the provision of legal services and activities central to those services, and reserves to the FCA activities which are of a specialist financial nature or where high risks have been identified, for example, the manufacturing of insurance products.

38 The changes also ensure an efficient and effective use of SRA resource.

H. Statement in relation to desired outcomes

39 The SRA's desired outcome is that SRA-authorized firms comply with the Scope and COB rules if they are involved in the carrying on of insurance distribution activities as an EPF.

I. Stakeholder engagement

40 On receipt of confirmation from the FCA that the IDD needed to be implemented, we worked closely with them to inform our communications. Our consultation was communicated to the profession through our communication channels (SRA update, Compliance News).

41 We received six responses including one from The Law Society. The responses raised no issue of substance in relation to the rules but made a request for guidance on how the new requirements would need to be implemented in practice.

42 We are reviewing information that we already have on our website about the regulation of financial services activities and will update that content to include any material that will help firms.

43 To ensure effective communication to small firms, many of which provide the legal services likely to be engaged here, we will ensure that groups including our Small Firms Virtual Reference Group (VRG), our Diversity Matters VRG, the Sole Practitioners Group and the Black Solicitors Network are updated. We will also consider using Legal Choices as a platform for making consumers aware about information they might find useful when they are advised by a law firm/solicitor to have in place an insurance policy.

J. Statement in relation to impact on other Approved Regulators

44 We do not believe our proposals give rise to any conflict between any of the approved regulators.

K. Implementation timetable

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Changes to the SRA's regulatory arrangements approved by the FCA and the LSB	June 2018
Publication of rules on SRA website	1 July 2018
SRA rules come into effect	1 October 2018

L. SRA contact for matters relating to this application

46 If you have any queries in relation to this application, please contact:

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Annex 1 SRA Amendments to Regulatory Arrangements (Insurance Distribution) Rules 2018