



SOLICITORS FINANCIAL SERVICES REGULATIONS 2018

The Council of the Law Society of Northern Ireland, in exercise of the powers conferred on it by Articles 74(1) and 75 of the Solicitors (Northern Ireland) Order 1976, Section 332 of the Financial Services and Markets Act 2000 and all other powers enabling it in that behalf, with the concurrence of the Lord Chief Justice of Northern Ireland, hereby makes the following regulations:

- 1.1 These regulations may be cited as the Solicitors Financial Services Regulations 2018 and shall come into effect on 1st July 2018.
- 1.2 The Solicitors Financial Services Regulations 2012 and any amendments thereto shall be repealed with effect from 1st July 2018.
- 2.1 The Interpretation Act (Northern Ireland) 1954 shall apply to the interpretation of these regulations as it applies to a statutory instrument.
- 2.2 In these regulations:
 - “the Act” means the Financial Services and Markets Act 2000;
 - “advice” has the same meaning as in Article 2(1)(15) of the IDD;
 - “appointed representative” has the same meaning as in section 39(2) of the Act;
 - “Ancillary Insurance Intermediary” has the same meaning as in Article 2(1)(4) of the IDD;
 - “Authority” means the Financial Conduct Authority;
 - “branch” has the same meaning as in Article 2(1)(12) of the IDD;
 - “client” has the same meaning as in section 328(8) of the Act;
 - “close links” means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or

more natural or legal persons are permanently linked to one and the same person by a control relationship;

“credit-related activity” means:-

- (1) consumer credit;
- (2) credit brokerage;
- (3) debt adjusting;
- (4) debt - counselling;
- (5) debt-collecting;
- (6) debt administration;
- (7) provision of credit information services (including credit repairs) as defined in the Financial Services Regulated Activities Order (2013);

“durable medium” has the same meaning as in Article 2(1)(18) of the IDD.”

“firm” means a solicitor or solicitors carrying on business as a sole practitioner or in partnership or as an incorporated body;

the expressions “the general prohibition”, “authorised person”, “regulated activity”, “exempt person”, “exempt regulated activity” and “professional services” have the same meaning as in the Act;

“IDD” means the “Insurance Distribution Directive” (EU 2016/97);

“insurance-based investment product” has the same meaning as in Article 2(1)(17) of the IDD;

“insurance distribution activities” means any of the following regulated activities carried on in relation to a contract of insurance:

- (i) advising on contracts of insurance;
- (ii) proposing contracts of insurance;
- (iii) carrying out other work preparatory to the conclusion of contracts of insurance;
- (iv) assisting in the administration and performance of contracts of insurance, in particular in the event of a claim

and “insurance distribution” shall be interpreted accordingly;

the expressions “contract of insurance”; contract of long term care insurance; and “contract of long-term insurance” and “regulated mortgage contract” shall have the same meaning as in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and Financial Services and Markets Act (Regulated Activities) (Amendment) (No.2) Order 2003.

“large risks” has the same meaning as in Article 2(1)(16) of the IDD;

“personal recommendation” has the same meaning as in the Authority’s Handbook;

“regulated mortgage activities” means:-

- (1) arranging (bringing about) regulated mortgage contracts;
- (2) making arrangements with a view to regulated mortgage contracts;
- (3) advising on a regulated mortgage contracts;
- (4) entering into a regulated mortgage contract as a lender;
- (5) administrating a regulated mortgage contract;
- (6) agreeing to carry on any of the above.

“remuneration” has the same meaning as in Article 2(1)(9) of the IDD and “remunerated” will be interpreted accordingly;

“solicitor” means a solicitor entitled to practice in accordance with the rules of the Society and who is not an authorised person, and includes a firm.

- 2.3 Other expressions in these regulations have the same meaning as in the Solicitors (Northern Ireland) Order 1976.

PART 1

3. No solicitor may carry on a regulated activity in the United Kingdom, or hold himself out as doing so, in contravention of the general prohibition.
4. In providing any professional service to a client, a solicitor must carry on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.
5.
 - 5.1 A solicitor must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of his carrying on of any exempt regulated activity.
 - 5.2 When carrying on insurance distribution activities as an Ancillary Insurance Intermediary, solicitors shall not be remunerated, and shall not remunerate or assess the performance of his employees, in a way which conflicts with their duty to act in accordance with the best interests of their clients. In particular, a solicitor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to the solicitor or their employees to recommend a particular insurance

product to a client when the solicitor could offer a different insurance product which would better meet the client's needs.

6. The manner of the provision by a solicitor of any service in the course of carrying on the regulated activities must be incidental to the provision by him of professional services.
7. A solicitor must not carry on, or hold himself out as carrying on, a regulated activity other than
 - (a) one which rules made by the Society for the purposes of the Act allow him to carry on; or
 - (b) one in relation to which he is an exempt person.
8. A solicitor must not carry on a regulated activity specified in an order made by the Treasury for the purposes of sub-section 327(6) of the Act.
9. A solicitor must not carry on a regulated activity if there is in force
 - (i) a direction under section 328 of the Act; or
 - (ii) an order under section 329 of the Act

which prevents subsection 327(1) of the Act from applying to the carrying on of that activity by the solicitor.

- 10.1 A solicitor must avoid any representation to a client that he is an authorised person or regulated by the Authority or that the regulatory protections provided by or under the Act to a person using the services of an authorised person are available to the client.
- 10.2 A solicitor must, in good time before he provides a service which includes the conduct of a regulated activity, including insurance distribution activities, with or for a client, disclose in writing to the client in a manner which is clear, fair and not misleading:
 - 10.2.1 that the solicitor is not an authorised person;
 - 10.2.2 the nature of the regulated activities carried on by the solicitor and the fact that they are limited in scope;
 - 10.2.3 that the solicitor is regulated by the Society in respect of regulated activities;
 - 10.2.4 (i) the nature of the complaints and redress mechanisms available to the client in respect of regulated activities carried on by the solicitor, and

- (ii) where such regulated activities include insurance distribution activities, similar information as to the complaints and redress mechanism available to clients and interested third parties including without limitation the right to make a claim for compensation under the provisions of the Solicitors (Northern Ireland) Order 1976.

10.3 A solicitor must, before he provides insurance distribution activities:

1. ensure that his name is included on the Authority's Register of persons undertaking such activities;
2. be of good repute; as a minimum, he must have a clean criminal record in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and he shall not have previously been declared bankrupt (unless he has been rehabilitated in accordance with Northern Ireland law); and
3. ensure that, any member of the firm's staff, directly involved in insurance distribution activities (and the persons within the firm's management structure responsible for them) are of good repute (i.e. have a clean criminal record and have not have previously been declared bankrupt (unless they have been rehabilitated in accordance with Northern Ireland law).

10.4 A firm may only carry on insurance distribution activities as an Ancillary Insurance Intermediary if the solicitor or employee or other persons within the management structure of the firm responsible for carrying on the insurance distribution activity possesses appropriate knowledge and ability in order to complete his tasks and perform his duties adequately.

10.5 When using insurance and reinsurance distribution services, a firm shall use the services of registered insurance and reinsurance intermediaries or ancillary insurance intermediaries only.

10.6 When monies are held by a solicitor in connection with any insurance distribution activity, such money shall not (a) be held jointly with the solicitor's client, another firm or any other third party and (b) be used to reimburse other creditors in the event of the bankruptcy of the solicitor.

11. Nothing in these regulations shall prevent a solicitor from carrying on a regulated activity as an appointed representative.

12. A solicitor must not carry on any regulated activity other than those carried on in accordance with these regulations.

13. These regulations apply to regulated activities carried on in, into or from the United Kingdom, subject insofar as insurance distribution activities are concerned to the passporting arrangements set out in Regulation 17 hereof.
- 14.1 A solicitor must maintain such records to demonstrate compliance with these regulations as may from time to time be prescribed by the Council.
- 14.2 A firm must not carry on any insurance distribution activities unless the firm is included on the Society's financial services register as an Ancillary Insurance Intermediary. To be included on the Society's financial services register, a firm must make an application to the Society, in such form and at such times as may be prescribed by the Society, with:
 - 14.2.1 confirmation that it is not directly authorised by the Authority;
 - 14.2.2 confirmation that it requires to be included in the Authority's register of exempt professional firms to conduct insurance distribution activities;
 - 14.2.3 details of the individual within the firm who is responsible for insurance distribution activities;
 - 14.2.4 if applicable, the identities of shareholders or members, whether natural or legal persons, that have a holding in the firm that exceeds 10% and the amounts of those holdings;
 - 14.2.5 if applicable, the identities of persons who have close links to the firm; and
 - 14.2.6 if applicable, information that such holdings or close links (as described in Regulation 14.2.4 and 14.2.5) do not prevent the effective exercise of the supervisory functions of the Society.
- 14.3 The Society will notify the firm, within 3 months of the receipt by the Society of a completed application, of the Society's decision whether to include the firm in the Society's financial services register as an Ancillary Insurance Intermediary.
- 14.4 Each firm must inform the Society without undue delay of any change in the information provided under Regulation 14.2.
- 14.5 The Society will deliver a copy of its financial services register to the Authority and each firm authorises the Society to give the Authority any information provided by that firm pursuant to Regulations 14.2 and 14.4.

- 14.6 A solicitor shall not be engaged in the distribution of insurance-based investment products unless the solicitor is authorised directly by the Authority for such activities.

PART 2

INSURANCE DISTRIBUTION

- 15.1 A solicitor must, in good time before the conclusion of any contract of insurance arising out of an insurance distribution activity :-
- (a) make the following statement in writing to the client in a way that is clear, fair and not misleading and not less prominent than any other information provided to the client at the same time:

“[This firm is]/[We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance distribution activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Law Society of Northern Ireland. The register can be accessed via the Financial Conduct Authority website at www.fca.org.uk/register”; and
 - (b) disclose to his client that the solicitor is an Ancillary Insurance Intermediary and provide to his client details of his identity and practising address;
 - (c) Confirm to the client if he has a holding direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking; and
 - (d) The nature of the remuneration received by the solicitor in relation to the insurance contract.
- 15.2 A solicitor carrying on insurance distribution activities as an Ancillary Insurance Intermediary shall always act honestly, fairly and professionally in accordance with the best interests of his clients.
- 16.1 In good time before the conclusion of a *contract of insurance* the solicitor or his *firm* must take reasonable steps to ensure that the contract is consistent with the *client's* demands and needs by:

- (a) considering relevant information already held;
- (b) obtaining details of any relevant existing insurance;
- (c) identifying the *client's* requirements and explaining to the *client* what the *client* needs to disclose;
- (d) assessing whether the level of cover is sufficient for the risks that the *client* wishes to insure; and
- (e) considering the relevance of any exclusions, excesses, limitations or conditions.

16.2 Where the *firm* recommends a *contract of insurance* that does not meet the needs of the *client* because there is no such contract available in the market, this must be disclosed to the *client*.

16.3.1 Where a firm recommends a contract of insurance or arranges a contract of insurance, the firm must, in good time before the conclusion of the *contract*, provide the *client* with a written statement based on the information provided by the client in a comprehensible form (a "demands and needs statement") that:

- (a) sets out the *client's* demands and needs on the basis of the information provided by the *client*;
- (b) where a recommendation has been made, explains the reason for recommending that *contract of insurance*;
- (c) reflects the complexity of the *insurance contract* being proposed; and
- (d) is on paper or on any other durable medium available and accessible to the *client*.

16.3.2 Where advice is provided prior to the conclusion of a contract of insurance, the firm shall provide the client with a personalised recommendation explaining why a particular product would best meet the client's demands and needs.

16.3.3 All of the information provided to a client prior to the conclusion of a contract of insurance shall be modulated according to the complexity of the insurance product being proposed and the type of client.

16.4.1 In good time before the conclusion of a *contract of insurance* the solicitor or his *firm* must provide the client with objective and relevant information about the insurance product in a comprehensible form to allow that client to make an informed decision while taking into account the complexity of the insurance product and the type of client.

16.4.2 In relation to the distribution of non-life insurance products, the information referred to in Regulation 16.4.1 shall be provided by way of a standardised insurance product information document ("IPID") on paper or on another

durable medium. The IPID shall be drawn up by the manufacturer of the product and shall:

- (a) be a short and stand-alone document;
- (b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- (c) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- (d) be written in English;
- (e) be accurate and not misleading;
- (f) contain the title "insurance product information document" at the top of the first page; and
- (g) include a statement that complete pre-contractual and contractual information is provided in other documents.

16.4.3 The IPID shall contain the following information:

- (a) information about the type of insurance;
- (b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
- (c) the means of payment of premiums and the duration of payments;
- (d) main exclusions where claims cannot be made;
- (e) obligations at the start of the contract;
- (f) obligations in the event that a claim is made;
- (g) the terms of the contract including the start and end dates of the contract; and
- (h) the means of terminating the contract.

16.5 The requirement in paragraph 16.3.1 to provide the *client* with a written demands and needs statement in good time before the conclusion of the contract will not apply in the following circumstances:

- (a) where the *firm* acts on the renewal or amendment of a *contract of insurance* other than a *life policy* if the information given to the *client* in relation to the initial contract is still accurate and up-to-date. If the information previously disclosed has changed, the *firm* must draw the attention of the *client* to the matters which have changed before the renewal or amendment takes place; or
- (d) where the *firm* is introducing the *client* to an *authorised person* or an *exempt person* and taking no further part in arranging the *contract of insurance*.

save that in (b), (c) and (d) above the information contained in the written demands and needs statement must be provided to the *client* immediately after the conclusion of the *contract of insurance*.

- 16.6 Where the firm recommends a contract of insurance, the client must be informed that
- (i) the advice is based on the obligations contained in Article 20 of the IDD to provide a fair analysis; or
 - (ii) the firm is under a contractual obligation to conduct insurance distribution business exclusively, with one or more insurance undertakings, in which case they shall, at the client's request, provide the names of those insurance undertakings; or
 - (iii) the firm is not under a contractual obligation to conduct insurance distribution business exclusively, with one or more insurance undertakings, and do not give advice based on the obligation referred to in paragraph (i), in which case they shall, at the client's request, provide the names of the insurance undertakings with which they may and do conduct business.
 - (iv) he has the right to request the information referred to in Regulation 16.6.1 (ii) and (iii).
- 16.7 Where a firm informs a client that advice is given on the basis of a fair analysis, that advice must be on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable them to make a personal recommendation in accordance with professional criteria regarding which insurance contract would be adequate to meet the clients' needs.
- 16.8 Subject to Regulation 16.9 below, all information relating to insurance distribution activities, including marketing communications, provided by a firm to its clients or potential clients pursuant to this Regulation 16 shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.
- 16.9 The information to be provided to clients pursuant to this Regulation 16 may be provided free of charge on one of the following media:
- 16.9.1 on paper or (i) on a durable medium other than paper (where the conditions laid down in Regulation 16.11 are met) or (ii) on a website (where the conditions laid down in Regulation 16.12 are met);
 - 16.9.2 in a clear and accurate manner, comprehensible to the client;
 - 16.9.3 in English; and
 - 16.9.4 free of charge.

- 16.10 Where information is provided to clients using a durable medium other than paper or by means of a website, a paper copy shall be provided to the client upon request and free of charge.
- 16.11 Information may be provided to clients using a durable medium other than paper if the use of the durable medium is appropriate (in the context of the business conducted between the solicitor and the client) and the client has been given the choice between information on paper and on a durable medium and has chosen the latter medium.
- 16.12 Information may be provided to clients by means of a website if it is addressed personally to the client or if:
- 16.12.1 the provision of that information by means of a website is appropriate (in the context of the business conducted between the solicitor and the client); and
- 16.12.2 the client has consented to the provision of that information by means of a website; and
- 16.12.3 the client has been notified electronically of the address of the website, and the place on the website where that information can be accessed; and
- 16.12.4 it is ensured that that information remains accessible on the website for such period of time as the client may reasonably need to consult it.
- 16.13 For the purposes of Regulations 16.11 and 16.12, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the solicitor and the client if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of that business shall be regarded as such evidence.
- 16.14 The information referred to in this Regulation 16 need not be provided when the solicitor carries out insurance distribution activities in relation to the insurance of "large risks".
- 16.15 In the case of telephone selling, the information given to the client by the solicitor prior to the conclusion of the contract, including the IPID, shall be provided in accordance with EU rules applicable to the distance marketing of consumer financial services. Moreover, even if the client has chosen to obtain prior information on a durable medium other than paper in accordance with paragraph 16.11, information shall be provided by the solicitor to the client in accordance with paragraph 16.4.2 or paragraph 16.9 immediately after the conclusion of the insurance contract.

- 16.16 A solicitor carrying on insurance distribution activities shall have in place adequate arrangements to obtain, from the manufacturer of the insurance product, all appropriate information on the insurance product and the product approval process, including the identified target market of each insurance product.
- 17.1 Where a firm offers an insurance product together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the firm shall inform the client whether it is possible to buy the different components separately and, if so, shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component.
- 17.2 In the circumstances referred to in Regulation 17.1, and where the risk or the insurance coverage resulting from such an agreement or package offered to a client is different from that associated with the components taken separately, the firm shall provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or the insurance coverage.
- 17.3 Where an insurance product is ancillary to a good or service which is not insurance, as part of a package or the same agreement, the firm shall offer the client the possibility of buying the good or service separately. This Regulation 17.3 shall not apply where an insurance product is ancillary to an investment service or activity as defined in point 2 of Article 4(1) of Directive 2014/65/EU, a credit agreement as defined in point 3 of Article 4 of Directive 2014/17/EU, or a payment account as defined in Article 2 of Directive 2014/92/EU.
- 17.4 In the cases referred to in Regulations 17.1 and 17.2, the firm must specify the demands and needs of the client in relation to the insurance products that form part of the overall package or the same agreement.
- 18.1 Firms which carry on insurance distribution activities shall have in place adequate arrangements to obtain all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product. This obligation is without prejudice to all other requirements under these Regulations including those relating to disclosure, suitability or appropriateness.
19. If a *firm* wishes to exercise the right conferred by Article 4 of the IDD (to provide cross-border services in another EEA state) or Article 6 of the IDD (to establish a branch in another EEA state), an appropriate application

must be made directly to the Authority. The Rules under the Authority's Supervision Manual, SUP 13, Exercise of Passport Rights by UK firms, contain details of the applicable process. A *firm* proposing to provide such services must comply with the applicable provisions of the *Act*, as laid down in the Authority's Professional Firms' Sourcebook Chapter 7 as amended from time to time.

PART 3

REGULATED MORTGAGE ACTIVITIES

- 20.1 A solicitor may carry on the regulated activities of arranging (bringing about) a regulated mortgage contract and making arrangements with a view to entering a regulated mortgage contract as borrower or varying it.
- 20.2 A solicitor may carry on the regulated activity of advising on a regulated mortgage contract only if the advice endorses a corresponding recommendation given to the borrower by an authorised person who has permission to advise on regulated mortgage contracts or by an exempt person whose exemption covers that activity, or where the advice is either not to accept such recommendation, or is to cancel or vary the terms of a regulated mortgage contract.
- 20.3 A solicitor may carry on the regulated activity of entering into and administering a mortgage contract only if the firm is acting as a Trustee or Personal Representative and provided that the borrower is a Trustee under the Trust, Will or intestacy.

20 solicitor wishing to carry out regulated mortgage activities beyond those permitted by 20.1 – 20.3 above must become an authorised person.

PART 3A

HOME REVERSION AND HOME PURCHASE PLANS

- 21.1 A solicitor may carry on the regulated activities of:
- entering (or agreeing to enter) into a home reversion plan;
 - entering (or agreeing to enter) into a home purchase plan;
 - administering (or agreeing to administer) a home reversion plan;

- administering (or agreeing to administer) a home purchase plan;

PROVIDED THAT the solicitor is acting as a trustee or personal representative and the reversion occupier or home purchaser as the case may be is a beneficiary under the trust, will or intestacy.

21.2 A solicitor may carry on the regulated activities of:

- arranging (bringing about) or agreeing to arrange a home reversion plan;
- arranging (bringing about) or agreeing to arrange a home purchase plan;
- making arrangements (or agreeing to make arrangements) with a view to home reversion plans;
- making arrangements (or agreeing to make arrangements) with a view to home purchase plans;
- advising or agreeing to advise on a home reversion plan;
- advising or agreeing to advise on a home purchase plan;

PROVIDED THAT:

- a. the advice given is given to a trustee or a reversion provider who, in either case, is not an individual or
- b. the advice is given to an individual but does not amount to a recommendation to enter into a plan as reversion provider, reversion occupier or home purchaser as the case may be or
- c. the advice is given to an individual and does amount to a recommendation enter into a plan as reversion provider, reversion occupier or home purchaser with a reversion provider or a home purchase provider but only if the advice endorses a corresponding recommendation that has been given to the individual by a suitably authorised or exempt person.

PART 4

CONSUMER CREDIT BUSINESS

22. A solicitor can carry on any credit-related activity or a connected activity. When carrying on a credit-related activity or a connected activity, a member must comply with the Authority's Consumer Credit sourcebook (CONC) (except CONC 10) and the Authority's Principles for Businesses referred to in CONC 1.1.4G in relation to that activity, as if it were authorised with a permission under Part 4A of the Act to carry on that activity.

I certify these to be a true copy of the Regulations approved by the Council of the Law Society of Northern Ireland.



Alan Hunter
Chief Executive/Secretary
Law Society of Northern Ireland

22 June 2018

I concur

Rt Honourable Sir Declan Morgan
Lord Chief Justice of Northern Ireland

Date

22 June 2018