

SOLICITORS' FINANCIAL SERVICES REGULATIONS 2004

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' (NI) 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 2004 and shall come into effect insofar as they relate to long term care insurance and regulated mortgage activities on 31st October 2004 and shall come into operation generally on 14th January 2005.

1.2 The Solicitors Financial Services Regulations 2001 shall be repealed with effect from 14th January 2005.

2.1 The Interpretation Act (NI) 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;

“appointed representative” has the same meaning as in section 39(2) of the Act;

“Authority” means the Financial Services Authority;

“client” has the same meaning as in section 328(8) of the Act;

“durable medium” has the same meaning as in Article 2 of the IMD.”

“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;

“IMD” means the “Insurance Mediation Directive” (EC 92/2002);

“insurance mediation activities” means any of the following regulated activities carried on in relation to a contract of insurance or rights to or interests in a life policy:

- (i) dealing in investments as an agent;
- (ii) arranging (bringing about) deals in investments;
- (iii) making arrangements with a view to transactions in investments;
- (iv) assisting in the administration and performance of a contract of insurance;
- (v) advising on investments;
- (vi) agreeing to carry on a regulated activity in (i) to (v).

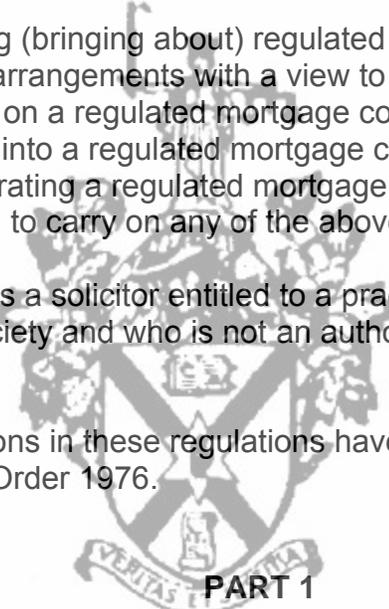
the expressions “contract of insurance”; contract of long term care insurance; and “contract of long-term insurance” and “regulated mortgage contract” shall have the same meaning as in the FSMA 2000 (Regulated Activities) Order 2001 and FSMA (Regulated Activities) (Amendment) (No.2) Order 2003.

“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.

“solicitor” means a solicitor entitled to a 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' (NI) 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 may carry on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.
5. 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.

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, before he provides a service which includes the conduct of a regulated activity, including insurance mediation, 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 mediation activities, similar information as to the complaints and redress mechanism available to clients and interested third parties.

10.3 A solicitor must, before he provides insurance mediation activities,

1. ensure that his name is included on the Authority's Register of persons undertaking such activities;
2. have a clean Police record or other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and should not be an undischarged bankrupt; and
3. ensure that any member of his staff directly involved in insurance mediation activities has a similar clean Police record and is not an undischarged bankrupt."

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 mediation activities are concerned to the passporting arrangements set out in Regulation 17 hereof.

14.1 A solicitor shall maintain such records to demonstrate compliance with these regulations as may from time to time be prescribed by the Council.

14.2 Each firm shall in such form and at such times as may be prescribed by the Society from time to time, provide the Society with

- (i) confirmation that it is not directly authorised by the Authority;
- (ii) confirmation that it requires to be included in the Authority's register of exempt professional firms to conduct insurance mediation activities; and
- (iii) details of the individual within it who is responsible for insurance mediation activity, **and shall immediately inform the Society if any changes occurs in respect of the information provided by the firm to the Society pursuant to this Regulation 14.**

PART 2

INSURANCE MEDIATION

- 15.1 A solicitor must, before he provides a service which includes the carrying out of an insurance mediation activity with or for a client:-
- (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 Services Authority. However, we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation 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 Services Authority website at www.fsa.gov.uk/register/home.do and
 - (b) Provide details of his identity and practising address; and
 - (c) Confirm 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
- 16.1 Before a *firm* recommends a *contract of insurance* (other than a *life policy*) the solicitor or his *firm* must take reasonable steps to ensure that the recommendation is suitable to 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 should be disclosed to the *client*.
- 16.3 Where a firm recommends a contract of insurance (other than a life policy) or arranges a contract of insurance, the firm must, before the *contract* is

finalised, provide the *client* with a written statement (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*.

16.4 Where a *firm* arranges a *contract of insurance* on an *execution-only* basis, the demands and needs statement need only identify the *contract of insurance* requested by the *client*, confirm that no advice has been given and state that the *firm* is undertaking the arrangement at the *client’s* specific request.

16.5 The requirement in paragraph 16.3 to provide the *client* with a written demands and needs statement before the contract is finalised 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;
- (b) where the information is provided orally at the request of the *client*;
- (c) where immediate cover is required;
- (d) where the *contract* is concluded by telephone; or
- (e) 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* shall be informed that

- (i) the advice is based on the obligations contained in Article 12(2) of the IMD to provide a fair analysis; or

- (ii) the firm is under a contractual obligation to conduct insurance mediation business exclusively, with one or more insurance undertakings, in which case they shall, at the customers' request, provide the names of those insurance undertakings; or
- (iii) the firm is not under a contractual obligation to conduct insurance mediation 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 customers' 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).

16.6.2 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 recommendation in accordance with professional criteria regarding which insurance contract would be adequate to meet the clients' needs.

16.7.1 All information provided to clients pursuant to the foregoing paragraphs of this Regulation and to Regulation 10.2.4(ii) and Regulation 15 must be communicated to the customer on paper or on any other durable medium available and accessible to the customer in a clear and accurate manner, comprehensible to the customer and in an official language of the Member State where the contract of insurance is put in place, or any other language agreed by the parties; and

16.7.2 provided that where the customer requests the information orally, the information shall be provided to the customer on paper or on any other durable medium available and accessible to the customer immediately after the conclusion of the insurance contract and in a similar manner as required by Regulation 16.7.1.

17. If a *firm* wishes to exercise the right conferred by Article 6 of the Insurance Mediation Directive to establish a branch or provide cross-border services in another EEA state an appropriate application must be made directly to the FSA. The Rules under the FSA'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 FSA's Professional Firms' Sourcebook Chapter 7 as amended from time to time.

PART 3

REGULATED MORTGAGE ACTIVITIES

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 A solicitor wishing to carry out regulated mortgage activities beyond those permitted by 18.1 – 18.3 above must become an authorised person.

