

Financial Services: Insurance

Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019

What does the Act say?

Part 8 of the Act relates to insurance.

UK insurers and insurance intermediaries that will still have Irish business (i.e. policyholders) post-Brexit deadline are understandably anxious. "Dear CEO" letters were sent by the Central Bank of Ireland (CBI) in Q4 2018 to all UK insurers and intermediaries passported into Ireland, requesting confirmation of the status of their contingency plans and their intended communications with Irish policyholders about them. While most UK insurers and intermediaries accept that it would not be possible to continue to write new business into the Irish market post-Brexit, not all have a solution in relation to current/legacy business. Part 8 of the Act addresses some but not all concerns in this regard.

Part 8 has been described by Ireland's Department of Finance as "designed to ensure that Irish policyholders that hold existing life and non-life insurance policies with insurance undertakings or through insurance intermediaries, operating in Ireland from the UK or Gibraltar, will not be affected by those undertakings losing their right to conduct business by way of specific proposed regulatory amendments, in EU Member States post Brexit".

Key proposition

Part 8 of the Act proposes amendments to the European Union (Insurance and Reinsurance) Regulations 2015 (the Irish regulations that implement the Solvency II Directive into Irish law) and to the European Union (Insurance Distribution) Regulations 2018 (the Irish regulations that implement the Insurance Distribution Directive into Irish law). The effect of these amendments will be to allow for a temporary three-year run-off regime for UK insurers and insurance intermediaries, during which time no new insurance contracts can be written, but existing contracts can be serviced. The temporary run-off regime is to apply where the insurer/insurance intermediary:

- is authorised/registered in the UK or Gibraltar

- has exercised its right to carry on business in Ireland on a freedom of establishment or freedom of services basis
- has ceased to issue / administer new insurance contracts in Ireland
- is exclusively administering "its existing portfolio" in order to terminate its activity in the State Irish book of business
- complies with general good rules

Our thoughts

Part 8 is very helpful, and is attracting much client interest and discussion. However, its scope is narrower than we would have hoped and there are several ambiguities. If the purpose of the legislation is to create breathing space to allow UK insurers to restructure their businesses, in order that Irish policyholders will not be adversely impacted, the following aspects are less than ideal:

- The insurer must have ceased to "conduct [note: we assume means "issue"] new insurance contracts in the State". Significant disruption could result from a broad interpretation of "new contracts" e.g. if a life insurer is contractually committed to providing an annuity under the terms of an existing policy without it setting out the specific terms, it may not be authorised to issue that annuity, thereby depriving the customer of that benefit. The position in relation to mid-term adjustments is also unclear.
- What does "exclusively administers its existing portfolio" mean? It seems very likely that administering extends to paying claims, but more express terminology would have been helpful.
- The position of UK insurers that have also issued reinsurance policies for the benefit of Irish insurers, is unfortunately not clearly addressed. An insurer in that situation does not benefit from the existing exemption in Regulation 10(3) of the European Communities (Insurance and Reinsurance) Regulations 2015, so does equally need a transitional period to run off its reinsurance liabilities, as well as its insurance liabilities. Based on the drafting, it may not have either.



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