

Latest FSB views on replacement commission

The information below is an extract from an FSB document titled: **An update on the “Phase1” Proposals identified in the Retail Distribution Review**, published on 12 November 2015.

The FSB will consult on amendments to the FAIS General Code and Regulations under the Long-term Insurance Act, collectively providing for:

(i) A definition of “policy replacement” that will clarify which transactions constitute the replacement of a long-term insurance risk policy, for purposes of the proposed new replacement obligations. The definition will encompass the effecting of any new long-term insurance risk cover on the same life insured as previously secured risk cover, where the previous cover is terminated.²⁷ The definition will be crafted to ensure that it includes transactions which have a similar effect, such as reducing cover on one policy (as opposed to full replacement) or increasing cover on another policy (as opposed to effecting a brand new policy), as well as transactions where the existing cover is terminated only after the new cover is effected.

(ii) Similar to current FAIS requirements, there will be an obligation on any adviser who recommends such a replacement to notify the new insurer at application stage that the application relates to a replacement policy.

(iii) Specific standardised requirements for the content and format of a “replacement policy advice record” in respect of such replacements.

(iv) A requirement that an appropriate person (role to be identified) within the new insurer must, within a stipulated period, review the replacement policy advice record and record in writing that they are satisfied that it complies with the applicable disclosure standards. The new insurer may issue the policy concerned in accordance with its normal new business processes, but will not be permitted to pay any commission, fee or other remuneration to the adviser concerned unless and until this confirmation has taken place. Note that this requirement applies regardless of whether or not the adviser is a representative of the insurer.

(v) A requirement that the new insurer must provide the insurer of the replaced policy (the original insurer) with a copy of the replacement policy advice record within a stipulated period after satisfying itself that the advice record complies with the applicable standards. This requirement will replace the current FAIS requirement that the adviser concerned must notify the original insurer of the replacement.

(vi) A provision that the 30 day “cooling off” period on the replacement policy does not begin to run until the advice record has been sent to the original insurer.

(vii) If it is established that the adviser concerned has failed to submit a replacement policy advice record to the new insurer where this is required, an obligation on the new insurer to reverse any commission or remuneration that may have been paid in respect of the new policy. The contravention must be reported to the regulator, and will be subject to regulatory action. The policyholder must be notified that they have a new 30 day cooling off period within which to review the suitability of the policy.

(viii) Reporting requirements to be submitted by the new insurer to the regulator in respect of aspects of the findings of the monitoring process.

(ix) Additional standards to address aspects of Proposals QQ and VV, relating to retirement annuity transfers and short-term insurance cover cancellations respectively. Note that, although the above new requirements apply specifically to long-term insurance risk policies, the existing FAIS disclosure obligations relating to all forms of product replacement recommendation will also remain in force, and may be clarified.

Consultation on the above FAIS General Code and Regulations will take place in March to April 2016. The consultation will include consultation on an appropriate implementation date for these particular obligations, recognising that they will entail business process changes for insurers but also recognising the FSB's serious concerns regarding the inadequacy of current replacement controls.

In addition, consultation will also take place on:

(x) Conduct of Business statutory returns for insurers. Among a broad range of other conduct related indicators, these will include specific reporting on both new business arising from replacements (i.e. reported by the new insurer) as well as policies terminated as a result of replacement (i.e. reporting by the original insurer). Consultation on these returns first commenced in late 2013, resulting in substantial revision of the structure of the returns to ensure reasonable alignment with future insurance product segmentation and prudential reporting frameworks. Consultation on the revised Conduct of Business return will take place in late 2015 into early 2016.

(xi) Conduct of business returns for FAIS licensed FSPs, intended to replace and enhance the current FAIS compliance reports, which will in future have a different format and purpose. These returns will include reporting on replacement advice details and volumes. Consultation on these returns is planned for the first quarter of 2016. The consultation will include consultation as to implementation timelines.

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