

Product Intervention and Product Governance Sourcebook (PROD)

Chapter 1

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1.1 Application and purpose

Purpose

- 1.1.1 **G** The purpose of *PROD* is to improve *firms'* product oversight and governance processes and to set out the *FCA's* statement of policy on making *temporary product intervention rules*.
- 1.1.2 **G** Product oversight and governance refers to the systems and controls *firms* have in place to design, approve, market and manage products throughout the products' lifecycle to ensure they meet legal and regulatory requirements.
- 1.1.3 **G** Good product governance should result in products that:
- (1) meet the needs of one or more identifiable target markets;
 - (2) are sold to *clients* in the target markets by appropriate *distribution channels*; and
 - (3) deliver appropriate *client* outcomes.
- 1.1.4 **G** Unless the contrary intention appears, a reference to Gibraltar-based firm in *PROD* has the same meaning as in the *Gibraltar Order*.



1.2 Application of PROD 2

1.2.1

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■ PROD 2 sets out the *FCA's* approach to issuing *temporary product intervention rules*. It is of relevance to all *firms*.

1.3 Application of PROD 3

General: Who? What?

1.3.1

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■ PROD 3 applies to

- (1) a *MiFID investment firm*;
- (2) a *CRD credit institution*;
- (3) a *MiFID optional exemption firm*; and
- (4) *branches of third country investment firms*; with respect to:
- (5) *manufacturing financial instruments and structured deposits*; and
- (6) *distributing financial instruments, structured deposits and investment services*.

[Note: articles 1(3), 1(4), 16(3), 24(2) and 41(2) of *MiFID*]

1.3.-1A

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A *TP firm* and a Gibraltar-based firm must also comply with the provisions in ■ PROD 1.3 and ■ PROD 3 in relation to a *pathway investment*, with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

Other firms manufacturing or distributing financial instruments or structured deposits

1.3.2

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- (1) Subject to (2) other *firms* which *manufacture or distribute financial instruments or structured deposits* should take account of ■ PROD 3 as if it were *guidance on the Principles* and other relevant *rules* and as if "should" appeared in ■ PROD 3 rules instead of "must".
- (2) Paragraph (1) does not apply to a *firm* to the extent that it is required to comply with *Principle 12 (Consumer Duty)* and ■ PRIN 2A in relation to a *product*.

Eligible counterparty business

1.3.3

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■ PROD 3.3.1R does not apply to *eligible counterparty business*.

[Note: article 30(1) of *MiFID*]

Where?

1.3.4 **R** ■ PROD 3 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

1.3.5 **R**

- (1) ■ PROD 3 also applies to a *firm* with respect to activities from an establishment *overseas* with a *client* in the *United Kingdom*.
- (2) But ■ PROD 3 does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:
 - (a) would fall within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*; or
 - (b) would not be regarded as being carried on in the *United Kingdom*.

1.3.6 **R** [deleted]

1.3.7 **G** [deleted]

1.3.8 **G** [deleted]

1.3.9 **G** [deleted]

1.3.10 **G** [deleted]

MiFID

1.3.11 **G** ■ PERG 13 contains general *guidance* on the *persons* and businesses to which the *UK* provisions which implemented *MiFID* apply.

1.3.12 **G** [deleted]

1.3.13 **G** [deleted]

1.3.14 **G** [deleted]

Interaction of PROD 3 and the RPPD Guide

1.3.15 **G** A *firm* to which ■ PROD 3 applies need not apply the *guidance* in *RPPD* for matters covered by *PROD* if the *firm* has complied with ■ PROD 3.

Manufacturing pathway investments and default options

1.3.16 **G** A *firm* that is within the scope of ■ PROD 3 (Product governance: MiFID) when it *manufactures pathway investments* or *default options* other than in

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connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*, is also subject to ■ PROD 6 (Product governance: additional provisions for pathway investments and default options) as *guidance* with respect to that *manufacturing* activity (see ■ PROD 1.6.1R(3)).

1.4 Application of PROD 4

- 1.4.1** **R** ■ PROD 4 applies to:
- (1) an *insurance intermediary*; and
 - (2) an *insurer*,
- with respect to:
- (3) *manufacturing* insurance products;
product governance and distribution arrangements for *legacy non-investment insurance products* (see ■ PROD 4.6); and
 - (4) *distributing* insurance products.
- [Note: articles 1(2) and 25 of the *IDD*]
- 1.4.-1A** **R** A *TP firm* and a *Gibraltar-based firm* must also comply with the provisions in:
- (1) ■ PROD 1.4 and ■ PROD 4.5 (Additional expectations for manufacturers and distributors in relation to value measures data);
 - (2) ■ PROD 1.4 and ■ PROD 4 in relation to a *pathway investment*;
■ PROD 1.4, ■ PROD 4 and (where applicable) ■ PROD TP 1 in relation to *non-investment insurance products* (including *legacy non-investment insurance products*) that are, or will be, marketed or *distributed*, or there are *policies* under the product that remain in force, in the *United Kingdom*.
- 1.4.1A** **R** ■ PROD 4.5 (Additional expectations for manufacturers and distributors in relation to value measures data) applies regardless of when the product was first manufactured.
- 1.4.2** **G** In *PROD* an insurance product may be read as being a reference to the product for distribution to *customers* generally and is not intended to refer to each individual *contract of insurance* being sold or underwritten (unless the context indicates otherwise).

- 1.4.3** **R** ■ PROD 4 does not apply in relation to an insurance product that is:
- (1) a *contract of large risks* where the insurance product meets the conditions in ■ PROD 1.4.-3AR; or
 - (2) a *reinsurance contract*.
- [Note: article 25(4) of the *IDD*]
- 1.4.-3A** **R** The conditions in ■ PROD 1.4.3R(1) are that the insurance product is used exclusively for effecting *contracts of large risks* where there are no:
- (1) *policyholder(s)*; or
 - (2) (where relevant) *policy stakeholders*, including, in relation to a *multi-occupancy building insurance contract*, any *leaseholder*,
- who in that context are natural *persons* acting for purposes outside of their trade, business or profession.
- Manufacturing and distributing pathway investments and default options**
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- 1.4.3A** **G** A *firm* that is within the scope of ■ PROD 4 (Product governance: *IDD*) when it *manufactures pathway investments* or *default options* other than in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*, is also subject to ■ PROD 6 (Product governance: additional provisions for pathway investments and default options) as *guidance* with respect to that *manufacturing* activity (see ■ PROD 1.6.1R(2)).
- 1.4.3B** **R** Where a *firm*:
- (1) *manufactures* or *distributes pathway investments* or *default options* in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*; and
 - (2) is not otherwise within the scope of the *rules* in *PROD* in relation to that *manufacturing* or *distribution* activity, then ■ PROD 4, ■ PROD 1.4.4R and ■ PROD 1.4.10G apply with respect to that *manufacturing* or *distribution* activity.
- 1.4.3C** **G** The effect of ■ PROD 1.4.3BR is to apply ■ PROD 4 to any *firm*, such as a *SIPP* operator, which:
- (1) *manufactures* or *distributes pathway investments* or *default options* in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*; and
 - (2) before the entry into force of ■ PROD 1.4.3BR, was not subject to the *rules* or *onshored regulations* in *PROD*.

When an intermediary may be considered to be manufacturing

1.4.4

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For the purposes of **PROD 4**, an *insurance intermediary* will be considered a *manufacturer* where an overall analysis of their activity shows that it has a decision-making role in designing and developing an insurance product for the market.

For the purposes of (1), a decision-making role must be assumed, in particular, where an *insurance intermediary* autonomously determines the essential features and main elements of an insurance product, including its coverage, price, costs, risk, target market and compensation and guarantee rights, which are not substantially modified by the *insurance undertaking* providing coverage for the insurance product.

Personalisation of and adaptation of an existing insurance product in the context of *insurance distribution activities* for an individual *customer*, as well as the design of tailor-made contracts at the request of a single *customer*, will not be considered *manufacturing*.

[Note: article 3 of the *IDD POG Regulation*]

1.4.5

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The effect of **PROD 1.4.4R** and **PROD 1.4.6R** is that an *insurance intermediary* needs to consider if it is *manufacturing* an insurance product or if it would be a *manufacturer* for a *legacy non-investment insurance product* for **PROD 4.6**, and, if so, should comply with **PROD 4.2** (Manufacture of insurance products).

Scope of ‘manufacturing’

1.4.5A

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- (1) **PROD 4.2** applies to *firms* that *manufacture* insurance products. The terms ‘firm’ and ‘manufacturer’ are used in that section interchangeably to refer to such persons.
- (2) The *Glossary* term ‘manufacture’ includes ‘designing, developing, creating and/or underwriting’ which cover activities prior to the insurance product being approved for marketing and *distribution*, and on a continuing basis after such approval.

[deleted]

1.4.6

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Effect and interpretation of PROD 1.4 and PROD 4 for certain manufacturers and distributors of pathway investments and default options

1.4.6A

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A *firm* to which **PROD 1.4.3BR** applies must

- (1) [deleted]
- (2) read terms or phrases found in **PROD 1.4** or **PROD 4** as follows:
 - (a) terms referred to in column (1) of the table below have the meaning indicated in the same row of column (2) of the table;

- (b) terms relating to insurance or insurance products have the meaning of the corresponding term relevant in the context of *pathway investments* or *default options*; and
- (c) terms or phrases which are only relevant to *firms manufacturing* or *distributing* insurance products may be disregarded.

This table belongs to PROD 1.4.6AR(2)(a).

(1)	(2)

(1)	(2)
"insurance-based investment products"	<i>pathway investment or default option</i>
"insurance product"	<i>pathway investment or default option</i>
"premiums"	costs and charges

Where?

- 1.4.7 **R** ■ PROD 4 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*:
 - (1) (for all insurance products and *pathway investments*) in the *United Kingdom*; and
 - (2) (in addition, for *non-investment insurance products*) overseas, in relation to an insurance product that is, or will be, marketed or *distributed*, or there are policies under the product that remain in force, in the *United Kingdom*.

[Note: in respect of (1), article 7(2) of the *IDD*]

1.4.8 **R** [deleted]

1.4.9 **G** [deleted]

Interaction of PROD 4 and the RPPD Guide

- 1.4.10 **G** A *firm* to which ■ PROD 4 applies need not apply the *guidance* in *RPPD* for matters covered by *PROD* if the *firm* has complied with ■ PROD 4 (see also ■ PROD 4.4.2G). ■ PROD 4.4 includes *guidance* based on the *RPPD* which *firms* subject to ■ PROD 4 should apply.

Modification of PROD 4.2 and PROD 4.3 for overseas non-investment insurance products

- 1.4.11 **R** ■ PROD 4 applies in relation to an *overseas non-investment insurance product* with the following modifications:
 - (1) The changes made to ■ PROD 4.2 and ■ PROD 4.3 in Annex E of the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 do not apply, unless otherwise specified in (2).
 - (2) The following *rules* and *guidance* in Annex E of the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 continue to apply:

- (a) ■ PROD 4.2.1AG;
- (b) ■ PROD 4.2.21AG;
- (c) ■ PROD 4.2.34AG; and
- (d) ■ PROD 4.2.36BR.

[**Note:** the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 can be found at [https://www.handbook.fca.org.uk/instrument/2021/FCA_2021_19.pdf]]

1.4.12

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- (1) The effect of ■ PROD 1.4.11R is that, for an *overseas non-investment insurance product*, including where this is a *legacy non-investment insurance product* subject to ■ PROD 4.6, a *firm's* product approval process (and arrangements for ongoing monitoring) need only comply with:
 - (a) the requirements in ■ PROD 4.2 or ■ PROD 4.3 as they stood on 30 September 2021, except for those provisions in ■ PROD 1.4.11R(2); and
 - (b) any subsequent changes made by an instrument other than the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021.

■ PROD 1.4 and ■ PROD 4 as it stood on 30 September 2021 can be accessed by using the timeline on the *FCA Handbook* website. *Firms* will need to consider any further changes to *PROD* after this date to consider if they apply in relation to *overseas non-investment insurance products*.
- (2) A *non-investment insurance product*:
 - (a) that will be or is available for *distribution* or marketing to *customers* who are *habitually resident* or, if applicable, where the *state of the risk* is, in the *United Kingdom*; or
 - (b) where, for any *policy* issued under the product, the *policyholder* is *habitually resident* in or, if applicable, the *state of the risk* is in, the *United Kingdom*,will not be an *overseas non-investment insurance product* and the *firm* will need to meet all applicable requirements in ■ PROD 4 including ■ PROD 4.2.14AR in relation to providing fair value.
- (3) A *firm* should also consider in relation to any *overseas non-investment insurance product* what is required to meet obligations

under other rules in the *FCA Handbook* including, for example, the *Principles* and *SYSC*.

Meaning of ‘customer’ in PROD 4 for non-investment insurance contracts: consideration of policyholders, and policy stakeholders (including leaseholders)

1.4.13

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Firms are reminded that in ■ PROD 4, in relation to *non-investment insurance contracts*, as the context requires, ‘customer’ includes:

- (1) a *person* who is a *policyholder*, or a prospective *policyholder*, whether or not they make the arrangements preparatory to the conclusion of the *contract of insurance*; and
- (2) a *policy stakeholder* including a *leaseholder*.

1.4.14

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For a *non-investment insurance product* that is or will be used to effect a *multi-occupancy building insurance contract*, when meeting the requirements under ■ PROD 4, including in particular whether the product provides fair value for the purposes of ■ PROD 4.2.14AR, a *firm* should consider the interests of:

- (1) any *policyholder* making the arrangements preparatory to the conclusion of the *contract of insurance*;
- (2) the *freeholder* and any other *policyholder* of the product; and
- (3) *leaseholders*.

1.5 Application of PROD 5

General: Who? What?

1.5.1 **R** ■ PROD 5 applies to a *firm* which:

- (1) offers to sell an *extended warranty* to a *customer*; or
- (2) refers, invites or induces a *customer* to obtain an *extended warranty* from a person connected to the *firm*;

in connection with the entering into of a *rent-to-own agreement* with the *firm*.

1.5.2 **G** A *person* connected to the *firm* includes someone who has a relevant business relationship with the *firm*.

Where?

1.5.3 **R** ■ PROD 5 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

1.5.4 **R** [deleted]

1.5.5 **G** [deleted]

1.5.6 **G** [deleted]

1.5.7 **G** [deleted]

1.6 Application of PROD 6

1.6.1

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■ PROD 6 applies to a *firm*:

- (1) that *manufactures or distributes pathway investments or default options* in connection with its operating of a *retail client's personal pension scheme or stakeholder pension scheme*;
- (2) within the scope of ■ PROD 4 when *manufacturing pathway investments or default options*, other than in connection with its operating of a *retail client's personal pension scheme or stakeholder pension scheme*, as *guidance with respect to that manufacturing activity*;
- (3) within the scope of ■ PROD 3 when *manufacturing pathway investments or default options*, other than in connection with its operating of a *retail client's personal pension scheme or stakeholder pension scheme*, as *guidance with respect to that manufacturing activity*.

1.7 Application of PROD 7

Application of PROD 7

1.7.1

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- (1) ■ PROD 7 applies to:
- (a) a *funeral plan provider*; and
 - (b) a *funeral plan intermediary*,
- with respect to:
- (c) *manufacturing funeral plan products*; and
 - (d) *distributing funeral plan products*.

1.7.2

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A *Gibraltar-based firm* must also comply with the provisions in ■ PROD 7 (Product governance: funeral plans).

Manufacturing a funeral plan product

1.7.3

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The *Glossary* term 'manufacture' includes 'designing, developing, creating and/or entering into or carrying out a *funeral plan contract* as provider' which cover activities prior to the *funeral plan product* being approved for marketing and *distribution*, and on a continuing basis after such approval.

1.7.4

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- (1) For the purposes of ■ PROD 7, a *funeral plan intermediary* is a *manufacturer* of a *funeral plan product* where an overall analysis of their activity shows that they have a decision-making role in designing and developing a *funeral plan contract* for the market.
- (2) A decision-making role will be assumed, in particular, where a *funeral plan intermediary* autonomously determines the essential features and main elements of a *funeral plan contract*, including any of its price, costs, target market or guarantee rights, which are not substantially modified by the *funeral plan provider*.
- (3) Personalisation of and adaptation of existing *funeral plan products* in the context of *funeral plan distributions* for individual *customers*, as well as the design of tailor-made contracts at the request of a single *customer*, are not manufacturing.

Territorial scope

1.7.5

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■ PROD 7 applies to a *firm* with respect to activities carried on by it, or its *appointed representative*, in relation to:

- (1) a funeral plan product; and
- (2) a subsisting funeral plan.

Interaction of PROD 7 and the RPPD Guide

1.7.6

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The RPPD Guide does not apply to a firm to which PROD 7 applies for matters covered by, and where the firm has complied with, PROD 7.

