

Proposals to implement the Reinsurance Directive

July 2007



HM TREASURY



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EXECUTIVE SUMMARY

The Reinsurance Directive (Directive 2005/68/EC) was adopted in November 2005. Reinsurance is defined as the accepting of risks ceded by an insurance undertaking or a reinsurance undertaking. Being essentially insurance for insurers, reinsurance plays a significant role in maintaining insurance markets and promoting international financial stability.

The Reinsurance Directive establishes authorisation and supervision of reinsurers by competent authorities in their “home” Member State, on the basis of which they can operate throughout the European Economic Area (“EEA”). It fills a gap in EU law which, hitherto, has not covered specialised or pure reinsurers. (The reinsurance activities of mixed insurers, i.e. direct insurers that also carry on reinsurance business, are covered under the direct insurance directives; however only certain provisions of those directives apply to those activities.)

This consultation document is concerned with changes to UK legislation, mostly the Financial Services and Markets Act 2000 (“FSMA”) and related secondary legislation, necessary to complete implementation. In practice, as many provisions in the Reinsurance Directive are the same as or similar to those in the direct insurance directives, which have already been implemented, changes are only required in a limited number of areas where differences occur. These are principally in terms of passporting, where the process is much more straightforward in the case of the Reinsurance Directive, and provisions in the FSMA in which a distinction is drawn between reinsurers and insurers, particularly in relation to Part VII FSMA concerning the transfer of insurance portfolios.

HM Treasury intends to take a proportionate and risk-based approach to implementing the provisions. For example, although some current exemptions from Part VII FSMA for transfers of reinsurance business cannot be maintained in their entirety, it is not proposed to apply the full Part VII Court approval process in all cases (see Chapter 2). The Treasury also intends to introduce a requirement for publication of transfers of reinsurance in line with current UK provisions applying more generally. This will be low cost but will help improve certainty of process.

In the UK, the prudential supervision of reinsurers is dealt with under the FSMA and the rules of the Financial Services Authority (“FSA”) made under the FSMA. The FSA consulted in 2006 on proposals for implementing the prudential provisions in the Reinsurance Directive which fall to its handbook. The resulting rule changes came into force on 31 December 2006. Details can be accessed through the FSA website (see paragraph 1.22). These FSA prudential rules apply to pure reinsurers with their head offices in the UK and non-EEA reinsurers with branches established in the UK. No UK prudential rules are applied directly to reinsurers not established in the UK.

INTRODUCTION

1.1 The Council and the European Parliament adopted Directive 2005/68/EC (“the Reinsurance Directive”) on 16 November 2005. It was adopted using a fast track procedure, pending proposals for a solvency system covering the insurance industry as a whole under the long-term “Solvency II” project. It provides for harmonisation of the prudential supervision of reinsurance firms across Member States and will help remove barriers to the provision of reinsurance services cross-border and through branches established in Member States, thus providing for a more efficient internal market.

1.2 The reinsurance sector plays a key role in the economy by providing wholesale cover for the risks assumed by insurance companies on behalf of their clients. The transfer of risks to reinsurers reduces the fluctuations in the business performance of direct insurers, reducing insurance risks in and allowing better management of their insurance portfolios. It enables insurance companies to offer higher limits of protection than their assets would otherwise allow by avoiding the need to hold capital covering the whole of the risks they have insured. It also helps to reduce the volatility of financial results of insurance companies.

1.3 Reinsurance policyholders are, of course, commercial organisations rather than individual consumers. Reinsurance is a business transaction between professional, knowledgeable parties, and this is reflected in the regulatory framework introduced by the Reinsurance Directive which is based on the existing regime for the internal market in insurance but is lighter touch in some respects.

1.4 A key point is that the Reinsurance Directive extends to UK and EEA reinsurance companies the system for authorisation and financial supervision of an insurance undertaking by the Member State in which it has its head office.

1.5 Such authorisation provides reinsurers with a single passport enabling them to carry on business anywhere in the EEA, either by establishing themselves in other Member States or by providing services directly from their home or another Member State. Unlike the equivalent provisions in the direct insurance directives, however, the Reinsurance Directive does not require additional administrative process involving the provision of information to and by the competent authorities in the host Member States before the reinsurance undertaking can commence business,

1.6 The Reinsurance Directive sets out prudential rules for the supervision of reinsurance undertakings. These include rules on the establishment of technical provisions (ie the amount that a reinsurance undertaking must set aside in order to pay its contractual commitments) and rules on the investment of assets covering those technical provisions.

1.7 It also lays down rules on required solvency margins and minimum capital requirements as well as rules on measures to be adopted by regulators if reinsurance undertakings are in financial difficulties.

1.8 Many of the changes necessary to implement these technical rules have been implemented by the Financial Services Authority through its handbook.

1.9 The Reinsurance Directive also updates the life, non-life and insurance groups directives in line with supervision rules for reinsurance undertakings.

Scope 1.10 The Reinsurance Directive applies to pure reinsurers (ie those that carry on reinsurance business only). The reinsurance activities of mixed insurers (i.e. direct insurers that also carry on reinsurance business) are covered under the direct insurance directives; however only certain provisions of those directives apply to those activities. Accordingly, the proposed changes set out in this document, for the most part, only affect pure reinsurers. The main exceptions are in relation to the provisions concerning publication of notice about transfers of reinsurance business (see Chapter 2 paragraphs 2.20 to 2.27).

1.11 The Directive will have little impact on Lloyd's since EC regulatory insurance law treats the Lloyd's market as one entity, namely "the association of underwriters known as Lloyd's". Since the Lloyd's market as a whole is not confined to reinsurance, the Directive provisions which deal with pure reinsurers will not apply.

1.12 The directive has been adopted by the European Economic Area (EEA) Council and therefore will cover EU and EEA firms.

STATUTORY INSTRUMENTS

1.13 The proposed amendments are intended to be implemented through secondary legislation. Three Statutory Instruments (SIs) are attached at Annexes A-C. These contain the provisions necessary to complete the implementation of the Reinsurance Directive. HM Treasury would welcome comments on the draft SIs. The remainder of implementation is provided for in existing provisions of the Financial Services and Markets Act 2000 ("FSMA"), other secondary legislation, and through rules made by the Financial Services Authority.

Annex A This SI makes the main amendments, under powers in section 2(2) of the European Communities Act. The most significant sets of amendments concern provisions in the FSMA relating to insurance business transfer and the rules permitting EEA firms to establish in and provide services into the UK. The SI also contains some amendments to reflect small changes in wording compared to the direct insurance directives and makes some consequential amendments to secondary legislation.

Annex B This SI uses powers in the FSMA to amend the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001. It also makes some consequential amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 and the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001.

Annex C This SI uses powers in the FSMA to make a consequential amendment to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and amends the Financial Services and Markets Act 2000 (Gibraltar) Order 2001.

1.14 This consultation document should be read in conjunction with the Impact Assessment with which it is published (see Chapter 3). A revised Impact Assessment will be published, using any updated information on costs provided in response to this consultation, when the SIs are laid.

1.15 HM Treasury invites views on the questions posed in this document, as listed below. HM Treasury also invites comments more generally on any of the proposals in this consultation, or on the drafting of the proposed statutory instruments.

Summary of the specific consultation questions set out in Chapter 2:

Q1. Do you agree with the proposals for implementing the passport rights for pure reinsurance companies?

Q2. Do you agree that a 'Part VII-lite' regime requiring only a solvency certificate could usefully be introduced for certain kinds of transfers of reinsurance business?

Q3. What are the specific types of transfers that might be considered for this lighter touch process?

Q4. Do you agree that the court should have discretion to apply the publication requirement for transfers of reinsurance?

Q5. Do you agree that the court discretion to apply publication requirements should apply to all transfers of reinsurance, not just those by pure reinsurers?

Q6. Do you agree that pre-transfer publication in a business newspaper in circulation in each of the states concerned should be extended to reinsurance transfers that include EEA reinsurance risks?

Q7. Do you agree that pure reinsurers authorised and having their head office in Gibraltar should be able to exercise rights to establish branches in and provide services in the UK and vice versa, as is the case for direct insurers?

IMPLEMENTATION TIMESCALE

1.16 Member states have until 10 December 2007 to implement the Directive. Accordingly, the proposed changes to domestic legislation set out in this consultation document will need to be in force by that date. The FSA will also in due course be making some consequential changes to its handbook, subject to its own consultation where appropriate, with a view to ensuring that its provisions are consistent with the implementation of the Directive in relation to the areas covered by this consultation.

HOW TO RESPOND

1.17 The consultation period will begin on 25 July 2007 and run for 12 weeks until 17 October 2007. Please ensure that your response reaches us by that date. Please send responses to this consultation document to:

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1.18 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

CONFIDENTIALITY

1.19 All written responses may be made public on HM Treasury's website unless the author specifically requests otherwise in writing. In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of e-mails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

1.20 Even where confidentiality is requested, if a request for disclosure of the consultation response is made in accordance with the freedom of information legislation, and the response is not covered by one of the exemptions in the legislation, the Government will have to disclose the response in whole or in part.

1.21 Subject to the previous paragraphs, if you wish part (but not all) of your response to remain confidential, please supply two versions – one for publication on the website with the confidential information deleted, and another confidential version for the Treasury.

RELATED CONSULTATIONS

1.22 Changes necessary to implement the Reinsurance Directive in relation to the prudential supervision of reinsurance companies have been implemented via FSA Rules. The FSA consulted on its proposals from 20 June until 20 August 2006 following pre-consultation discussions with the insurance industry and implemented the prudential changes with effect from 31 December 2006. These changes are described in Handbook Notice 59 published in October 2006 (http://www.fsa.gov.uk/pubs/handbook/hb_notice59.pdf).

1.23 HM Treasury published a consultation document in November 2006 on amendments aimed at clarifying certain provisions, particularly relating to transfers of insurance business, under Part VII of the FSMA. This consultation closed on 26 January 2007. The proposals in this consultation also include amendments to Part VII of the FSMA and, for ease of use and clarity, HM Treasury will consider whether it might be possible to implement the proposals from this consultation and the earlier consultation at the same time if this proves the most practical way forward.

2

LEGISLATIVE CHANGES TO IMPLEMENT THE REINSURANCE DIRECTIVE

2.1 This Chapter describes and summarises the proposed amendments set out in the Statutory Instruments at Annexes A-C and sets out the specific questions relating to those changes on which HM Treasury would welcome views.

PASSPORTING

2.2 Passporting in this context refers to the rights of EEA firms to establish branches or provide services in other EEA countries, and the processes and conditions associated with exercising those rights. Article 4(1) of the Reinsurance Directive sets out the basis by which home state authorisation of reinsurance undertakings with their head offices in the home state permits them to carry out business throughout the EEA. As noted previously, it provides a single passport which, unlike the equivalent provisions for direct insurance undertakings, is not subject to further process in terms of host state supervision or approval. The Reinsurance Directive does not extend this additional freedom to EEA branches of non-EEA reinsurers. Such branches will continue to need to satisfy the specific requirements of host Member States.

2.3 In UK law, Schedule 3 to the FSMA contains the provisions which relate to passport rights for financial services firms. Schedule 3 sets out ‘the single market directives’ under which the rights are established, and defines ‘EEA firms’ for the purposes of applying those rights. It also sets out the conditions which must be met in exercise of the rights. In general, this amounts to a process of notification and consent of the relevant regulators, and the need to comply with such provisions that might apply in the host state before establishing a branch or providing services.

2.4 Consequently, Schedule 3 will need amending - insofar as it applies to pure reinsurance companies - to remove that element of process so that home-state authorisation is sufficient in itself to allow pure reinsurance companies to exercise their passporting rights. Pure reinsurance firms authorised in the UK will be able to use their authorisation to operate elsewhere in the EEA. The provisions amending Schedule 3 are contained in the SI at Annex A.

2.5 It is proposed to add a new category of EEA firm to Schedule 3 for non-UK EEA reinsurers (the latter being defined in terms of being a reinsurance undertaking within the meaning of the Reinsurance Directive). Introducing the new category of EEA firm for reinsurers will provide a straightforward way of disapplying from them the procedure for requiring approval for passporting that applies to EEA firms under Schedule 3. A separate category will also be simpler in terms of ensuring that references to EEA firms in other legislation, many of which are relevant to insurers but not reinsurers, remain consistent.

Q1. Do you agree with the proposals for implementing the passport rights for pure reinsurance companies?

REINSURANCE BUSINESS TRANSFERS

2.6 One of the most significant sets of amendments concerns transfers of portfolios of reinsurance contracts. An insurance business transfer scheme is a process by which

an insurer is able to transfer either part or the entirety of its insurance or reinsurance business to another legal entity. There are a number of different circumstances under which an insurer or reinsurer might embark upon such a scheme, for example, a restructuring of the business or because of financial difficulty.

2.7 Portfolio transfers are addressed in Article 18 of the Reinsurance Directive. Under Article 18, Member States are responsible for authorising reinsurance business transfers by undertakings with head offices within their territories. The key requirement under Article 18 is for a solvency certificate from the competent authorities of the home Member State of the accepting office. Article 18 offers Member States flexibility over procedures to be adopted for transfers, which are to be authorised “under conditions laid down by national law”.

2.8 In this it is similar to the analogous provisions of the direct insurance directives, but differs in the important respect of not going further to require consultation of the Member State of a branch involved in a transfer, nor the agreement of the competent authorities of the Member State of the commitment (i.e. the Member State in which the policyholder is habitually resident).

2.9 The practical effect is that, for transfers by UK pure reinsurers to a transferee within the EEA, the minimum requirement under the Directive is that only a solvency certificate from the competent authority of the home Member State of the accepting office is required.

2.10 In UK law, the control of insurance business transfers is covered by Part VII of the FSMA. One of the areas that it legislates for is that relating to the process for transferring insurance and reinsurance business from one legal entity to another.

2.11 Part VII outlines the following in respect of transfer schemes for insurance business:

- the criteria for determining which proposed transfers fall within the definition of “insurance business transfer scheme” and therefore require UK court sanction;
- the process of applying to the court for an order to sanction the scheme and the potential terms of that order;
- what is required of the applicants (both the entity that is transferring the business - “the authorised person concerned” - and “the transferee”);
- conditions for sanction of a scheme by the court;
- effect of the court order, including as regards the rights of policyholders and other parties concerned.

2.12 In order to implement Article 18 amendments are needed to the scope of Part VII FSMA in terms of those transfers covered (and not covered) by the current provisions. These are as follows.

2.13 Section 105 FSMA sets out a number of conditions which determine whether a scheme is an insurance business transfer scheme that falls within Part VII. One of these conditions, set out in section 105(2)(b), relates to transfers of reinsurance business carried on in the UK by non-UK EEA firms. To the extent that it covers reinsurance firms within the Reinsurance Directive, it will need to be disapplied to reflect that it is for the Member State in which the firm has its head office to authorise reinsurance transfers by that firm.

2.14 Section 105 also sets out a number of transfer schemes which are to be treated as being excluded schemes from Part VII (and, in consequence, not subject to its provisions). Case 2 excludes transfers by UK authorised persons of reinsurance business in EEA states other than the UK where the scheme has been approved by a court in an EEA state other than the UK, or by the host state regulator. Because the Reinsurance Directive makes it the responsibility of each Member State to authorise transfers for reinsurance undertakings with a head office in that state, it is no longer appropriate for UK authorised reinsurance undertakings to have transfers authorised in other EEA states. Transfers within Case 2, to the extent they are by reinsurers within the scope of the Reinsurance Directive, will need to be brought within Part VII so that the authorisation takes place in the UK.

2.15 The exclusion in Case 3 relates to transfers of EEA reinsurance risks by UK reinsurers or insurers where the business is carried on outside of the EEA and approved outside of the EEA. This case will be limited to transfers which don't include any EEA risks (either reinsurance or insurance).

2.16 The excluded scheme in Case 4(a) of section 105(3) also needs to be amended to bring it into line with the Directive. Case 4(a) excludes transfers by UK authorised persons of the whole of a business which consists only of reinsurance, and where all of the policyholders who are affected have consented to the transfer. Where the transfer is to an accepting office in the EEA, such schemes can, as a minimum, no longer be excluded from the basic Directive requirement for a solvency certificate.

2.17 In implementing the Directive requirements in relation to reinsurance business transfers, HM Treasury proposes to take a proportionate approach where possible that avoids unnecessary process and prescription.

2.18 In particular, rather than maintaining the need for court approval across the board, for certain types of transfer - for example where all of the reinsurance policyholders who will be affected by the transfer have consented, as in section 105(3) Case 4(a) - an alternative, lighter touch route will be introduced which will only require a solvency certificate, without the need for court approval of the transfer. This is set out in a new Case 5. The existing excluded scheme in section 105 Case 4(b) is maintained in a revised Case 4. The ability to apply for court sanction of the transfer, if preferred, would continue to be available. HM Treasury would welcome views on this proposed approach.

2.19 HM Treasury would also welcome views from respondents on the types of transfers that could or should benefit from this approach. For example, section 105(3) Case 4(a) only applies to transfers of the whole business. Would it be useful (and justifiable in the context of ensuring that all policyholders' interests are given consideration) to include partial transfers too, subject to safeguards such as ensuring that the consent of all reinsurance policyholders was obtained (i.e. including those not being transferred)? A provision in new Case 5 has been included to this effect.

Q2. Do you agree that a 'Part VII-lite' regime requiring only a solvency certificate could usefully be introduced for certain kinds of transfers of reinsurance business?

Q3. What are the specific types of transfers that might be considered for this lighter touch process?

NOTICE TO POLICYHOLDERS ABOUT TRANSFERS

2.20 A further feature of insurance business transfers under Part VII FSMA is the requirement that notice be given to policyholders about transfers, where any policies included in the transfer relate to risks in EEA states other than the UK. This reflects provisions in the direct insurance directives. The requirement is set out in section 114 FSMA (and for EEA insurers' transfers which include UK policies in section 116).

2.21 HM Treasury considers that the principle of notification can play an important role in helping increase confidence that the validity of transfers in foreign jurisdictions will be recognised. Given that it is likely that a UK transfer of reinsurance business could affect foreign persons, the intention is that some provision should be made to provide for publication in relation to reinsurers, where the route requiring approval of a court is being used.

2.22 The Reinsurance Directive does not set out provisions on publication of transfers. In recognition of this and to provide flexibility and proportionality, it is proposed to apply the publication provision for reinsurance in terms of a discretion of the court (rather than making publication a requirement). The court will have the power to direct that notification of the making of an order giving effect to a transfer of reinsurance is published in the EEA states concerned. For example, the court may wish to use its discretion where it considers that publication of a particular transfer would help ensure its recognition, or where the court otherwise thinks that publication of a transfer is necessary or appropriate. A new section 114A, applying only to reinsurance, has been drafted to this effect.

2.23 In order to provide for clarity, and parity of treatment, new section 114A will apply to all transfers of reinsurance where a policyholder is established in the EEA (not just those by pure reinsurers), including life reinsurance and non-life reinsurance. Section 114 will be limited to transfers of direct insurance, and, for those transfers, will continue to make publication a requirement. Where there is a mixed portfolio of direct and reinsurance business where there is a likelihood that there are policyholders in EEA states other than the UK, both sections 114 and 114A could apply. In such a case, an applicant could propose to the court that the publication obligation should apply to the whole portfolio. HM Treasury would welcome views on this proposed approach.

Q4. Do you agree that the court should have discretion to apply the publication requirement for transfers of reinsurance?

Q5. Do you agree that the court discretion to apply publication requirements should apply to all transfers of reinsurance, not just those by pure reinsurers?

PRE-TRANSFER NOTIFICATION AND PUBLICATION

2.24 Publication and notification requirements also extend to pre-transfer applications for a court order sanctioning an insurance business transfer scheme. These are set out in the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001.

2.25 The current position is that any applicant to court for an insurance business transfer scheme (concerning insurance or reinsurance) is subject to certain notification conditions. These are publication of notice of the application in the London,

Edinburgh, and Belfast Gazettes; publication in two national newspapers in the UK; and that notice be sent to all policyholders of the parties. For insurance business transfer schemes that include risks in EEA states other than the UK, notice of the application must additionally be published in two national newspapers in each EEA state where the risk is situated or where the commitment resides. The court may waive these requirements (except for publication in the respective Gazettes).

2.26 Notification is an important element of ensuring that those who have an interest are aware of the application for a court order, and so have the chance to make representations about a proposed transfer if they so wish, including the right to be heard by the court under section 110 FSMA. HM Treasury considers that this principle extends to proposed reinsurance transfers. Accordingly, for reinsurance business transfers that include policies held by policyholders whose establishment is in EEA states other than the UK, it is proposed to introduce a publication requirement for those EEA states.

2.27 In recognition of the practical issues in arranging such publication, the requirement is framed in terms of one business newspaper in circulation in each of the states concerned. As it presently does, the court would have power to waive the publication requirement. HM Treasury would welcome views on this approach.

Q6. Do you agree that pre-transfer publication in a business newspaper in circulation in each of the states concerned should be extended to reinsurance transfers that include EEA reinsurance risks?

TRANSFERS OF UK POLICIES AUTHORISED IN ANOTHER EEA STATE

2.28 Section 116 of the FSMA sets out what is to be considered sufficient notice concerning a UK policy whose transfer is authorised in another EEA state, and gives effect in the UK to such transfers provided that appropriate notice is given. This provision is helpful in terms of providing for recognition of transfers relating to UK policies by EEA pure reinsurers more widely. HM Treasury considers it should be extended to reinsurance transfers too. The amendments here insert an EEA pure reinsurer into subsection 1 of section 116, by reference to the new category of EEA firm added to Schedule 3.

2.29 Amendments are also made to section 116 FSMA to add references to transfers by non UK-based branches of non-EEA reinsurers (ie those with head offices outside the EEA) which we consider to be a sensible change should other Member States allow for such transfers.

2.30 We also propose some small technical amendments in the context of transfers by non-EEA direct insurance firms. These changes are not in relation to the Reinsurance Directive. The changes are being made to Schedule 12 of the FSMA to clarify how the certificates provided for apply to transfers by non-EEA insurers. Schedule 12 makes provision for the necessary certificates for a transfer from a UK-based insurer but does not explicitly refer to transfers out of the UK by branches or agencies of non-EEA insurers. References to the relevant provisions in the first non-life directive and the life assurance consolidation directive have been added to Schedule 12 to address this point.

AMENDMENTS TO SECTIONS 198 AND 199 FSMA

2.31 Amendment is made to section 198 FSMA to implement the provisions in Article 42 of the Reinsurance Directive which have the effect that the competent authority (which in the UK is the FSA) can prohibit the free disposal of assets when requested to do so by the home Member State of the undertaking where a reinsurer is in financial difficulty.

2.32 Amendment is made to section 199 FSMA which provides for the procedure which must be followed where an incoming EEA firm is found not to be complying with UK law. The amendment is to implement Article 47 (reinsurance undertakings not complying with the legal provisions) of the Reinsurance Directive, which makes no provision for dispensing with the terms of subsections (3) to (5) where there is urgency.

GIBRALTAR

2.33 The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 allows UK financial services firms to provide services and establish in Gibraltar and vice versa. It is proposed to extend this facility to those carrying on reinsurance within the terms of the Reinsurance Directive, as it is for direct insurers. HM Treasury welcomes views on this point. The relevant amendments to the Gibraltar order are made in the Statutory Instrument at Annex C.

Q7. Do you agree that pure reinsurers authorised and having their head office in Gibraltar should be able to exercise rights to establish branches in and provide services in the UK and vice versa, as is the case for direct insurers?

CONSEQUENTIAL AMENDMENTS TO TAX LAW

2.34 Corporation tax law as it applies to companies carrying on life assurance business contains a substantial number of provisions applying where there is a transfer of insurance business between one company and another. For the purposes of these provisions there is a definition of “insurance business transfer scheme” in section 431(2) of the Income and Corporation Taxes Act 1988 (“ICTA”). This definition covers schemes falling within section 105 of the FSMA and also schemes which are excluded schemes falling within Cases 2, 3 or 4 of section 105(3). This is to ensure that excluded cases get the same tax treatment as Court approved cases and means that cases which would otherwise wish to be excluded do not have to seek Court approval merely to obtain the same tax treatment.

2.35 Paragraph 2.18 explains that the draft regulations create a new Case 5. It is necessary to ensure that this Case is also covered by the definition of insurance business transfer schemes in ICTA or else the advantages of the “light touch” approach would in practical terms be unavailable. The Government included, at Report stage of the Finance Bill 2007, a power to enable the definition of insurance business transfer scheme to be amended in regulations. Assuming the Finance Bill is passed, and the regulations introduce Case 5 into section 105(3), it is the Government’s intention to lay regulations under this new power to include Case 5 transfers in the definition of insurance business transfer scheme.

2.36 A reinsurer falling within the scope of the Reinsurance Directive will, when the regulations come into force, fall within the new paragraph 5(da) of Schedule 3 to the

FSMA. As such it will not qualify as an "EEA firm" within the meaning given by section 431(2) of ICTA as modified by regulation 6 of SI 2006/3271. There are two ways in which such reinsurers might be brought within the scope of the life assurance tax provisions: by generalising the definition of EEA firm to cover any undertaking within paragraph 5 and then relying on the limitation to insurance business in the definition, or to add a reference to sub-paragraph (da) to that to sub-paragraph (d). The Government's preference is for the second approach and it is proposed that that amendment be made in an instrument made under section 156 Finance Act 2003.

3

IMPACT ASSESSMENT

HM Treasury		Impact Assessment of regulations to complete implementation of the Reinsurance Directive
Stage: Consultation	Version # 1 dd/mm/yy	Related Publications

Available to view or download at: www.hm-treasury.gov.uk

Contact name for enquiries: **David Beardsworth**

Telephone number: **0207 270 4427**

What is the problem under consideration? Why is government intervention necessary?

The Reinsurance Directive provides for harmonisation of the prudential supervision of reinsurance firms. The Directive will help remove barriers to EEA cross-border reinsurance services, providing for a more efficient internal market. The deadline for implementing the Reinsurance Directive is 10 December 2007. Government action is necessary as changes are required to the Financial Services and Markets Act 2000 ("FSMA") and related secondary legislation to complete implementation.

What are the policy objectives and the intended effects?

Many of the provisions necessary to implement the Directive are already in force. The objectives of the main changes made by the regulations to which this assessment relates are to complete implementation by reflecting the new passporting regime for reinsurance services (so that home state authorisation of EEA reinsurers provides a single passport for providing services or establishing branches in other EEA states) and to bring the UK regime for transfers of reinsurance business in line with the Directive.

What policy options have been considered? Please justify any preferred option.

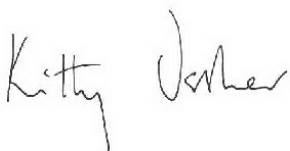
Most of the draft regulations make changes in direct consequence of Directive provisions. Options are available in relation to transfers of reinsurance business. Changes are necessary to UK law to complete implementation. However, rather than apply the existing UK court approval process for transfers for all reinsurance transfers covered by the Directive, the Treasury proposes to introduce a lighter touch regime for certain low-risk transfers in implementation only of the minimum Directive requirement for a solvency certificate.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 12/2010

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



Date: 25 July 2007

Policy Option	Description
<p>ANNUAL COSTS</p> <p>One off £ n/a Yrs -</p> <p>Average Annual Cost (excluding one-off)</p> <p>£ 75,000</p>	<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>Average annual cost is based on an assumption of 1.5 transfers from pure reinsurers per year on average, a cost of £5, 000 per country, and advertising in 10 countries per transfer.</p> <p>Total Cost (PV) £ 215,000</p>
<p>Other key non-monetised costs by 'main affected groups'</p>	
<p>ANNUAL BENEFITS</p> <p>One off £ n/a Yrs -</p> <p>Average Annual Benefit (excluding one-off)</p> <p>£ -</p>	<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>6 pure reinsurers based in the UK can benefit from the single passport. These are one-off savings.</p> <p>Total Benefit (PV)</p> <p>£ 600,000</p>
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Additional savings may also be expected in the periodic costs of supervision by host states.</p>	
<p>Key Assumption/Sensitivities/Risks</p> <p>No transitional costs are envisaged. Assessments of costs assume a requirement for publication, though in practice this may be disapplied by the court. The benefits are calculated on the basis of saving four FSA complex authorisation fees. Further information is given in the evidence base text below. Time period used is period until review.</p>	
<p>Price Base</p> <p>Year: 2007</p>	<p>Time Period</p> <p>Years: 3</p>
<p>Net Benefit Range (NPV)</p> <p>£ -</p>	
<p>NET BENEFIT (NPV Best estimate)</p> <p>£ -</p>	
What is the geographic coverage of the policy/option?	United Kingdom
On what date will the policy be implemented?	December 2007
Which organisation(s) will enforce the policy?	FSA, courts
What is the total annual cost of enforcement for these organisations?	£ -
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Yes
What is the value of the proposed offsetting measure per year?	-
What is the value of changes in greenhouse gas emissions?	Negligible
Will the proposal have a significant impact on competition?	Yes

Annual cost (£-£) per organisation (excluding one-off)	Micro -	Small -	Med -	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A
Impact on Admin Burdens Baseline (2005 prices)	Net Impact			£ --
Increase of £ n/a Decrease of £ n/a-	Annual Cost: Constant Prices			(Net) Present Value

Evidence Base for Summary Sheets

The draft regulations address areas of change to UK legislation necessary to complete implementation of the Reinsurance Directive. In practice, as many of the provisions in the directive are the same as or similar to those in the direct insurance directives, and these have largely already been applied to pure reinsurers in UK legislation, changes are being made only in a limited number of areas.

3.1 There are two areas in which those changes have an impact, or potential impact, in terms of imposing or reducing costs on businesses.

Exercise of passport rights

3.2 Firstly, implementation of the Reinsurance Directive means that authorisation of a pure reinsurance company (one which only conducts reinsurance business) by the state in which it has its head office provides a single passport for that firm to set up branches in or provide services into all other EEA states without further process. The Reinsurance Directive does not affect the passporting rights of direct insurers that also carry out reinsurance business.

3.3 At present pure reinsurers are not covered by the insurance directives (see in particular the single passporting provisions in Article 10 of Directive 73/239/EEC, Articles 14 and 16 of Directive 88/357/EEC and Articles 40 to 42 of Directive 2002/83/EC). Hence Member States do not have harmonised rules for dealing with EEA pure reinsurers from other Member States. Such reinsurers do of course benefit from the EC Treaty provisions on freedom of establishment and freedom to provide services.

3.4 Given the position above the passporting provisions of the FSMA in Schedule 3 do not presently apply to pure reinsurers. The provisions in Schedule 4 for incoming Treaty firms do apply to a pure reinsurer based in another EEA State and seeking to do business in or into the UK. They set out the UK’s conditions to be met prior to such a reinsurer carrying on its business in or into the UK.

3.5 The UK does not require authorisation of an insurer or reinsurer in another EEA State (with no physical presence in the UK) in order for it to provide reinsurance services into the UK other than through a UK branch since the UK also regulates the UK insurers and reinsurers to which those services are provided. The existing conditions for incoming EEA pure reinsurers which need to be satisfied for them to exercise Treaty rights in order to establish a branch in the UK on the basis of their home state authorisation are that (i) the firm in question is authorised to carry on its activity, (ii) the provisions of the home state law afford equivalent protection to that provided by or

under the FSMA (or they meet conditions set down in an EC instrument) and (iii) the firm does not have a right under a single market directive (which is of course the case until 10 December 2007). If the firm in question does meet those conditions it may begin to carry on its activity on giving 7 days notice of that fact to the Financial Services Authority (FSA).

3.6 Alternatively, a pure reinsurer may apply to the FSA for a branch in the UK to be authorised in the UK by obtaining permission to carry on reinsurance business under Part IV of FSMA.

3.7 The provisions in the insurance directives provide for a consent procedure in respect of direct insurance business whereby a UK firm gives notice of its wish to establish a branch in or provide services into another EEA State to the FSA. The FSA, assuming that it has no reason to doubt the firm's adequacy of resources or administrative structure and does not question the firm's reputation etc, forwards the notice to the host state regulator which has two months in which to consider the notice. Similarly, in respect of direct insurance business, an insurer in another EEA State seeking to establish a branch or provide services into the UK, the FSA receives notice from the insurer's home state regulator and takes certain action before the insurer may commence business.

3.8 The Reinsurance Directive does not follow the insurance directives and does not require a consent procedure, merely stating that the authorisation is "valid for the entire Community" and "shall permit a reinsurance undertaking to carry on business there under the freedom of establishment or to provide services". Hence the Reinsurance Directive will remove any need for a consent procedure prior to commencing establishment of a branch or to provide services in another EEA State and makes clear that supervision of the reinsurance business of the reinsurer is for the home Member State of the firm.

3.9 As a result the draft regulations add a reference to the Reinsurance Directive to Schedule 3 to FSMA, but disapply the conditions which would otherwise apply to UK and other EEA pure reinsurance companies which have EEA passporting rights under the Reinsurance Directive.

3.10 EEA authorised pure reinsurers with their head offices in the EEA will no longer need to exercise treaty rights or apply for authorisation by another Member State to do business there. This will result in cost savings for UK pure reinsurers and for other EEA pure reinsurers doing business in the UK. It will also make cross-border provision of services easier and result in cost savings for the regulatory authorities involved.

3.11 For the avoidance of doubt, it should be noted that these passporting rights do not apply to firms with their head offices outside the EEA with branches authorised in the EEA. Such firms will continue to need to obtain such individual permission from the authorities of each of the Member States in which they wish to do business as may be required under the law of that State.

3.12 There are 20 pure reinsurance companies authorised by the FSA. Of these some have head-offices outside the EEA, some are intra-group reinsurers and some are in run-off. This leaves 9 reinsurers headquartered in the EEA including 6 in the UK that will accordingly benefit from the single passport.

3.13 Exercise of passport rights is of course a voluntary activity for reinsurance firms, albeit that reinsurance is one of the most international of all financial activities. Any estimate of possible savings represented by the regulations are necessarily speculative,

but if, as seems likely, all those in the UK that might benefit use their passporting rights and if they save the equivalent of four FSA complex authorisation fees avoiding the need for authorisation by host states this would amount to about £600,000 in total. The multiplier of four (i.e. 4 x (6 reinsurers x £25,000)) is intended to allow for the possibility that, without a single passport, each reinsurer may need branches to be authorised in some host states, and for the authorisation-related costs incurred by firms which are in addition to the fee that would currently be charged by the host state regulator for authorisation. Additional savings may also be expected in the periodic costs of supervision by host states.

Transfers of reinsurance business

3.14 The second area of impact relates to transfers of reinsurance business to accepting offices in other EEA states. The directive imposes a minimum requirement for a solvency certificate from the competent authorities of the home Member State of an accepting office (i.e. the transferee of the reinsurance business) certifying that it has the necessary solvency margin, but otherwise provides that transfers be authorised under “conditions laid down by national law”.

3.15 In the UK, Part VII of the FSMA governs transfers of insurance (including reinsurance) business and applies a process of court approval except in certain excluded cases. In implementation of the Reinsurance Directive, some of the existing exclusions will need to be disapplied, at least to the extent that a solvency certificate is required. In doing so, the option of applying the full Part VII Court approval process has been considered but rejected in favour of a providing a new alternative that is limited to a requirement to obtain a solvency certificate, reflecting the low-risk nature of certain types of transfer based on the current exemptions.

3.16 The types of transfer affected are:

Case 2 in section 105(3) of the FSMA currently excludes from Part VII transfers of reinsurance risks in EEA countries other than the UK by UK pure reinsurers or mixed insurers which have been approved by a Court or the host state regulator in those other EEA countries. Under the Directive, it is for the Member State in which a pure reinsurer has its head office to authorise transfers by that reinsurer, so the exclusion will need to be disapplied to the extent it covers transfers by UK reinsurers within the scope of the Directive. As this will, in the main, be exchanging one system of EEA court approval for the UK court approval process the impact is assumed to be neutral for the reinsurers concerned in a particular transfer, and that the additional costs for the UK authorities are assumed to be offset by savings in respect of transfers into the UK which will no longer be authorised in the UK.

Case 3 in section 105(3) excludes transfers of EEA reinsurance risks by UK reinsurers or insurers where the business is carried on outside of the EEA and the transfer is approved outside of the EEA. Under the new regulations, to benefit from Case 3, the transfer must not include any EEA risks (whether reinsurance or insurance). It is anticipated that few transfers will be affected.

Case 4(a) in section 105(3) currently excludes transfers of the whole of a UK business which consists only of reinsurance, and where all the policyholders who will be affected have consented to the transfer. Under the Directive, a solvency certificate is now needed. The new regime applying the need for a solvency certificate only will apply to these transfers so that court approval is not necessary.

The Treasury proposes to extend the scope of the Case 4(a) exclusion above by introducing a new Case 5 to exclude transfers of part of a pure reinsurer's business from the court process, provided that the other conditions of the exemption are satisfied, so that only a solvency certificate is needed. Such transfers are currently subject to the full court procedure under Part VII, and if implemented following the consultation process, the proposal will represent savings in court costs. We would expect the cost to the transferee and its Home State regulator of providing the FSA with a solvency certificate to vary according to the riskiness of the business being transferred and the size and financial strength of the transferee. The cost for types of transfer subject to the streamlined alternative would be expected to be small in view of their low-risk nature.

Transfers – notification and pre-publication requirement

3.17 Applicants to a court for approval of a transfer of insurance business need to give notice of the application under conditions set out in the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001. This includes sending notice to all policyholders, publication of the notice in the UK and, where the transfer scheme includes risks or commitments in other EEA states, publication in two national newspapers in each EEA state affected. The court has the power to waive the publication requirement.

3.18 Currently, transfers of non-life reinsurance are covered by the provisions but those concerning life reinsurance are not. The Reinsurance Directive does not address this area, but it is an important part of the process of court approval that governs insurance business transfers in the UK, providing those affected by a transfer with the chance to make representations. HM Treasury therefore proposes to standardise and regularise the position for reinsurance transfers.

3.19 All transfers of reinsurance under the court approval process will be subject to the requirement to publish notice of an application in any EEA state in which the establishment of the policyholder to which the policy relates is situated. However, the intention is that the publication requirement will be framed in terms of one business newspaper in circulation or available in each state, rather than two national newspapers in each of the affected states (as in the existing provisions, which will continue to apply to insurance transfer schemes). This will enable more efficient and effective targeting of those likely to be affected by reinsurance transfer schemes.

3.20 In terms of impact, life reinsurance transfer schemes, previously outside the scope of the provisions, will now be included. It is anticipated that the revised publication requirement will however be less costly than the existing requirement to publish in two newspapers in each affected EEA state.

3.21 No hard figures are available for the cost of publication, which will of course vary from transfer to transfer. A very provisional figure of savings of £2,500 per country has been estimated for this assessment, based on scaling down the requirement from two newspapers in each state to one newspaper bringing the cost down to £5000 per country. We would welcome comments on this figure and any estimates of the cost of publication that respondents are able to provide.

3.22 Assuming 20 reinsurance transfers a year (from both mixed and pure reinsurers) and taking a percentage split of 80/20 between non-life reinsurance and life reinsurance respectively, the cost savings for transfers of non-life reinsurance would outweigh the new costs for transfers of life reinsurance.

3.23 In terms of absolute costs imposed where, as a minimum requirement under the Reinsurance Directive, none are required (ie publication for transfers by pure reinsurers), the additional annual cost is provisionally estimated at around £75,000. This is based on an assumption of 1.5 transfers from pure reinsurers per year on average, a cost of £5, 000 per country, and advertising in 10 countries per transfer. It should again be emphasised that these are very provisional estimates used to illustrate the possible scale of costs based on available information.

Transfers – post-publication requirement

3.24 Part VII of the FSMA contains provisions relating to the need to publicise transfers in EEA states in which risks included in the transfer are situated, once a court order has been made. Currently, all transfers of insurance and transfers of non-life reinsurance under the Part VII court approval process are subject to this publication requirement (which may be waived at the discretion of the court).

3.25 The Reinsurance Directive does not address publication requirements. The Treasury considers that publication can help increase confidence that a transfer will be recognised in foreign jurisdictions. Because of this, and in order to help clarify the publication requirements as they apply to reinsurance, it is proposed to introduce a new provision for publication of reinsurance transfers.

3.26 Unlike the existing provision (which will continue to apply to insurance business transfers) the new provision – which will apply to all reinsurance business transfers subject to the court approval process – will be framed in terms of a discretion of the court rather than a requirement that may subsequently be waived, reflecting that it will only be applied where the court thinks fit. The consultation on the draft regulations invites comment on this proposal, and the Treasury welcomes comment on how much value the publication requirement adds in terms of helping to ensure transfers are recognised in all jurisdictions covered by Part 7. The intention is that the publication process is proportionate to the benefit being realised.

3.27 In terms of impact, transfers of life reinsurance business to EEA accepting offices that are subject to court approval will now be within the publication provisions. Transfers of non-life reinsurance will remain subject to the provisions, but because they are now expressed as a discretion of the court, it is likely that they may be applied less often. We expect the court, in exercising its discretion to impose a requirement to publish, will seek submissions from the applicant and any others before the court as to the likely efficacy of the publication provision.

Specific Impact Tests - Checklist

Type of testing undertaken	Results in Evidence Base? (Y/N)	Results annexed? (Y/N)
Competition Assessment	Proposals implement the Reinsurance Directive which will promote competition by providing for a more efficient internal market in reinsurance	N
Small Firms Impact Test	Proposals do not affect small firms	N
Legal Aid	-	N
Sustainable Development	-	N
Carbon Assessment	-	N
Other Environment	-	N
Health Impact Assessment	-	N
Race Equality	-	N
Disability Equality	-	N
Gender Equality	-	N
Human Rights	-	N
Rural Proofing	-	N

 STATUTORY INSTRUMENTS

2007 No.

FINANCIAL SERVICES AND MARKETS

The Reinsurance Directive Regulations 2007

<i>Made</i>	- - - -	2007
<i>Laid before Parliament</i>		2007
<i>Coming into force</i>	- -	[10th December] 2007

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to—

- (a) the authorisation of the carrying on of insurance business and the regulation of such business and its conduct⁽²⁾;
- (b) transfers of insurance contracts other than contracts of life insurance from one insurance undertaking to another⁽³⁾;
- (c) matters relating to the transfer of contracts of life assurance from one insurance undertaking to another⁽⁴⁾;
- (d) anything supplemental or incidental to matters in (a) to (c)⁽⁵⁾; and
- (e) the conduct of insurance business carried on by friendly societies and the authorisation and regulation of the carrying on of such business by friendly societies⁽⁶⁾;

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of that Act:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Reinsurance Directive Regulations 2007 and come into force on [10th December] 2007.

⁽¹⁾ 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 c.51. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183). For the decision of the EEA Joint Committee in relation to Directive 2005/68/EC, see Decision No 59/2006 O.J. No. L245 7.9.2006 p.5.

⁽²⁾ S.I. 1976/2141; the designation was transferred to the Treasury in place of the Secretary of State in 1997 by S.I. 1997/2781.

⁽³⁾ S.I. 1975/427; the designation was transferred to the Treasury in place of the Secretary of State in 1997 by S.I. 1997/2781.

⁽⁴⁾ S.I. 1990/600; the designation was transferred to the Treasury in place of the Secretary of State in 1997 by S.I. 1997/2781.

⁽⁵⁾ S.I. 1997/2781.

⁽⁶⁾ S.I. 2001/3495.

(2) In these Regulations “the Act” means the Financial Services and Markets Act 2000⁽⁷⁾.

Amendments of primary and secondary legislation

2.—(1) Schedule 1 to these Regulations (which contains amendments to the Act) has effect.

(2) Schedule 2 to these Regulations (which contains amendments to secondary legislation made under the Act) has effect.

(3) Schedule 3 to these Regulations (which contains amendments to other primary legislation) has effect.

(4) Schedule 4 to these Regulations (which contains amendments to other secondary legislation) has effect.

Date Name
Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE 1

Regulation 2(1)

Amendments to the Act

Amendments to the Act

1. The Act is amended as set out in this Schedule.

Amendments to Part 7 of, and Schedule 12 to, the Act [implements art 18 of RD and clarifies application of 28a of 73/239/EEC and part of 53 of 2002/83/EC]

2.—(1) In section 105 (insurance business transfer schemes)—

(a) in subsection (2)(b) for the words from “qualifying for” to “contracts of insurance” substitute “falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule”; [so far as subsection (2)(b) applies to reinsurers within the Directive it will be for their member State to authorise transfers]

(b) in subsection (3) in Case 2 after paragraph (a) insert—

“(aa) the authorised person concerned is not a reinsurance undertaking (within the meaning of Article 2.1(c) of the reinsurance directive);” [with the implementation of the RD it will be for each MS to authorise transfers for all reinsurance undertakings with a head office in that state – therefore no longer appropriate to have this provision for UK authorised reinsurance undertakings which assumes a UK undertaking can have a transfer authorised in another EEA state]

(c) in subsection (3) in Case 3 in paragraph (b) omit “(other than reinsurance)”;

(d) in subsection (3) in Case 4—

(i) for the words from “the business to be transferred” to the end of paragraph (a) (including the word “or” at the end of that paragraph) substitute “—

(a) the business to be transferred under the scheme is the whole of the business of the authorised person concerned;”;

(ii) for “, in either case, ” substitute “(c)”;

(e) in subsection (3) after Case 4 insert—

“CASE 5

Where—

⁽⁷⁾ 2000 c.8.

- (a) the business of the authorised person concerned consists solely of the effecting or carrying out of contracts of reinsurance;
 - (b) the business to be transferred is the whole or part of that business;
 - (c) the scheme does not fall within Case 4;
 - (d) all of the policyholders who will be affected by the transfer have consented to it; and
 - (e) a certificate has been obtained under paragraph 2 of Schedule 12 in relation to the proposed transfer.”;
 - (f) in subsection (4) for “3 or 4” substitute “3, 4 or 5”.
- (2) In section 114 (rights of certain policyholders)—
- (a) in subsection (1)(c) after “contract of insurance” insert “(other than a contract of reinsurance)”.
- (3) After section 114 insert—

“114A Notice of transfer of reinsurance contracts

- (1) This section applies in relation to an insurance business transfer scheme if—
- (a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
 - (b) the court has made an order under section 111 in relation to the scheme; and
 - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of reinsurance, the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into (“the EEA State concerned”).
- (2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.”.
- (4) In section 116 (effect of insurance business transfers authorised in other EEA States)—
- (a) in subsection (1) after “paragraph 5(d)” insert “or (da)”;
 - (b) for subsection (2) substitute—

“(2) This section also applies if, as a result of an authorised transfer, any of the following transfers to another body all its rights and obligations under any UK policies—

 - (a) an undertaking authorised in an EEA State other than the United Kingdom under Article 51 of the life assurance consolidation directive;
 - (b) an undertaking authorised in an EEA State other than the United Kingdom under Article 23 of the first non-life insurance directive;
 - (c) an undertaking, whose head office is not within the EEA, authorised under the law of an EEA State other than the United Kingdom to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).”;
 - (c) in subsection (5)—
 - (i) at the end of paragraph (a)(i) omit “or”;
 - (ii) at the end of paragraph (a)(ii) for “and” substitute “or”;
 - (iii) after paragraph (a)(ii) insert “(iii) Article 18 of the reinsurance directive; and”;
 - (iv) at the end of paragraph (b)(i) omit “or”;
 - (v) at the end of paragraph (b)(ii) insert “or (iii) the provisions in the law of that EEA State which provide for the authorisation of transfers of all or part of a portfolio of contracts of an undertaking authorised to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).”;
 - (d) for subsection (6) substitute—

“(6) “UK policy” means—

 - (a) in the case of an authorised transfer within the meaning of paragraph (a)(i) or (ii) or (b)(i) or (ii) of subsection (5), a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of a part of the United Kingdom;

- (b) in the case of an authorised transfer within the meaning of paragraph (a)(iii) or (b)(iii) of that subsection, a policy evidencing a contract of reinsurance to which the applicable law is the law of a part of the United Kingdom.”.[UK policies extended only to EEA transfers from EEA reinsurer within the Reinsurance Directive]

(5) In Schedule 12 (transfer schemes: certificates)—

- (a) at the end of paragraph 1(1)(d) insert “; (e) if sub-paragraph (5) applies, the certificates under paragraph 5A.”;[third country insurers issue – for Art. 28a(3) – 73/239/EEC]
- (b) in paragraph 1(3)(a)⁽⁸⁾ after “Article 4” insert “or Article 51”;^[third country insurers issue – necessary for 53(3) of 2002/83/EC]
- (c) in paragraph 1(4)(a) after “Article 6” insert “or Article 23”;^[third country insurers issue]
- (d) after paragraph 1(4) insert—^[third country insurers issue – discretionary point under 28a(3) of 73/239/EEC and 53(3) of 2002/83/EC]

“(5) This sub-paragraph applies if—

- (a) the authorised person concerned has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive from the Authority; and
- (b) the proposed transfer is to a branch or agency, in an EEA State other than the United Kingdom, authorised under the same Article.”;

(e) in paragraph 2—

- (i) in sub-paragraph (6)(a) after “paragraph 5(d)” insert “or (da)”;

(ii) after sub-paragraph (6)(a) insert—

“(aa) if the transferee is a non-EEA branch, the competent authorities of the EEA State in which the transferee is situated or, where appropriate, the competent authorities of an EEA State which supervises the state of solvency of the entire business of the transferee’s agencies and branches within the EEA in accordance with Article 26 of the first non-life insurance directive or Article 56 of the life assurance consolidation directive;”;

- (iii) in sub-paragraph (6)(c) for “paragraph (a)” substitute “paragraph (a), (aa)”;

- (iv) after sub-paragraph (7) insert “(7A) “Competent authorities” has the same meaning as in the insurance directives”;

(v) after sub-paragraph (8) insert—

“(9) “Non-EEA branch” means a branch or agency which has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive.”;

- (f) after paragraph 5 insert—^[third country insurers issue – Art. 28a(3) of 73/239/EEC & 53(3) of 2002/83/EC]

“Certificates as to legality and as to consent

5A.—(1) The certificates under this paragraph are to be given—

- (a) in the case of the certificate under sub-paragraph (2), by the Authority;
- (b) in the case of the certificate under sub-paragraph (3), by the relevant authority.

(2) A certificate given under this sub-paragraph is one certifying that the relevant authority has been notified of the proposed scheme and that—

- (a) the relevant authority has consented to the proposed scheme; or
- (b) the period of three months beginning with the notification has elapsed and that relevant authority has not refused its consent.

(3) A certificate given under this sub-paragraph is one certifying that the law of the EEA State in which the transferee is established permits such a transfer.

⁽⁸⁾ Paragraph 1(3)(a) was amended by S.I. 2004/3379.

(4) “Relevant authority” means the competent authorities of the EEA State in which the transferee is established.

(5) In this paragraph the expression “competent authorities” has the same meaning as in the insurance directives.”;

(g) in paragraph 10(2) after “paragraph 5(d)” insert “or (da)”.

Amendments to section 198 of the Act[implements art 42]

3. In section 198 (power to apply to court for injunction in respect of certain overseas insurance companies)—

(a) at the end of subsection (1)(a) omit “or”;

(b) at the end of subsection (1)(b)⁽⁹⁾ insert “; or (c) Article 42.4 of the reinsurance directive”.

Amendments to section 199 of the Act[implements art 47]

4. In section 199 (additional procedure for EEA firms in certain cases)—

(a) for subsection (2)(b) substitute—

“(b) as respects its contravention, the single market directive in question provides that a procedure of the kind set out in the following provisions of this section (so far as they are relevant in the firm’s case) is to apply.”;

(b) after subsection (3) insert—

“(3A) If the firm falls within paragraph 5(da) of Schedule 3, the Authority must at the same time as it gives notice to the firm under subsection (3) refer its findings to the firm’s home state regulator.

(3B) Subsections (4) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) of Schedule 3.”;

(c) in subsection (5) after “its power of intervention” insert “before informing the firm’s home state regulator and ”;

(d) after subsection (8) insert—

“(9) In the case of a firm falling within paragraph 5(da) of Schedule 3, the Authority may not exercise its power of intervention before informing the firm’s home state regulator and unless satisfied—

(a) that the firm’s home state regulator has failed or refused to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which gave rise to the notice under subsection (3); or

(b) that the measures taken by the home state regulator have proved inadequate for that purpose.”.

Amendment to section 425 to the Act

5. In section 425(1)(a)⁽¹⁰⁾ (expressions relating to authorisation elsewhere in the single market) after ““insurance directives”,” insert ““reinsurance directive”,”.

Amendments to Schedule 3 to the Act

6. In Schedule 3 (EEA Passport Rights)—

(a) after paragraph 1(c)⁽¹¹⁾ insert “(ca) the reinsurance directive;”;

(b) after paragraph 3 insert—

“The reinsurance directive

⁽⁹⁾ Section 198(1)(b) was amended by S.I. 2004/3379.

⁽¹⁰⁾ Section 425(1)(a) was amended by S.I. 2003/2066; 2004/3379 and 2006/2975.

⁽¹¹⁾ Paragraph 1 was amended by S.I. 2000/2952; 2003/1473 and 2003/2066.

3A. “The reinsurance directive” means Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.”;

(c) after paragraph 5(d) insert—

“(da) an undertaking pursuing the activity of reinsurance (within the meaning of Article 2.1(a) of the reinsurance directive) which has received authorisation under (or is deemed to be authorised in accordance with) Article 3 of the reinsurance directive from its home state regulator.”;

(d) after paragraph 12(2) insert—

“(3) An EEA firm which falls within paragraph 5(da) which establishes a branch in the United Kingdom, or provides services in the United Kingdom, in exercise of an EEA right qualifies for authorisation.

(4) Sub-paragraphs (1) and (2) do not apply to an EEA firm falling within paragraph 5(da).”;

(e) in paragraph 15—

(i) in sub-paragraph (1) for “paragraph 12” substitute “paragraph 12(1) or (2)”;

(ii) after sub-paragraph (4) insert—

“(5) A firm which qualifies for authorisation as a result of paragraph 12(3) has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch or by providing services in the United Kingdom.

(6) The permission is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm under Article 3 of the reinsurance directive by its home state regulator (“its home authorisation”).

(7) For the purposes of sub-paragraph (5), “permitted activity” means an activity which the firm is permitted to carry on under its home authorisation.”;

(f) after paragraph 19(1)⁽¹²⁾ insert “(1A) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.”;

(g) after paragraph 20(1)⁽¹³⁾ insert “(1A) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.”

SCHEDULE 2

Regulation 2(2)

Amendments to secondary legislation made under the Act

Amendments to the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001

The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001⁽¹⁴⁾ are amended as follows—

(h) in regulation 10—

(i) after “includes” insert “(a)”;

(ii) at the end of regulation 10 insert—

“, and

(b) an EEA firm which falls within paragraph 5(da) of Schedule 3 which establishes a branch in the United Kingdom”;

(i) in regulation 19—

(i) the existing text becomes paragraph (1);

(ii) after paragraph (1) insert—

“(2)Where—

⁽¹²⁾ Paragraph 19 was amended by S.I. 2003/1473 and 2003/2066.

⁽¹³⁾ Paragraph 20 was amended by S.I. 2001/1376; 2003/1473 and 2003/2066.

⁽¹⁴⁾ S.I. 2001/2511; as amended by S.I. 2003/1473.

- (a) the activities of a UK firm which pursues the activity of reinsurance (within the meaning of Article 2(1)(a) of the reinsurance directive) includes any activity which is not a regulated activity, and
- (b) that activity is one which the UK firm in question is able to carry on in the EEA State in question without contravening any provision of the law of the United Kingdom (or any part of the United Kingdom),

the UK firm is to be treated, for the purpose of the exercise of its EEA right, as being authorised to carry on that activity.”.

SCHEDULE 3

Regulation 2(3)

Amendments to other primary legislation

Amendments to the Friendly Societies Act 1992

Section 119 of the Friendly Societies Act 1992⁽¹⁵⁾(general interpretation) is amended as follows—

- (j) in subsection (1A)⁽¹⁶⁾—
 - (i) for “72/239/EEC” substitute “73/239/EEC”; and
 - (ii) at the end insert “and as amended by the reinsurance Directive.”;
- (k) after subsection (1C) add—

“(1D) References in this Act to the life assurance consolidation Directive are references to that Directive as amended by the reinsurance Directive.”;
- (l) after subsection (2) insert—

(3) In this section, “the reinsurance Directive” means Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.”.

SCHEDULE 4

Regulation 2(4)

Amendments to other secondary legislation

Amendment to the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000

7.—(1) The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000⁽¹⁷⁾ are amended as follows.

(2) In paragraph 1 of the Schedule at the end of the definition of “insurance undertaking” insert “or a reinsurance undertaking carrying on the business of reinsurance under Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance”.

Amendment to the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000

8.—(1) The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000⁽¹⁸⁾ is amended as follows.

(2) In paragraph 1 of the Schedule at the end of the definition of “insurance undertaking” insert “or a reinsurance undertaking carrying on the business of reinsurance under Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance”.

⁽¹⁵⁾ 1992 c.40.

⁽¹⁶⁾ Subsections (1A), (1B) were inserted by S.I. 1996/1669. Subsection (1A) was amended by S.I. 2001/3649 and 2004/3379.

⁽¹⁷⁾ S.I. 2000/262; as amended by S.I. 2000/2952, S.I. 2004/3379 and S.I. 2006/3221.

⁽¹⁸⁾ S.I. 2000/309; as amended by S.I. 2000/2952, S.I. 2004/1259, S.I. 2004/3379 and S.I. 2006/3221.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part the provisions of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (OJ L323 9.12.2005 p.1) (“the Reinsurance Directive”). The rest of the implementation is achieved through existing provisions of the Financial Services and Markets Act 2000 (c.8) (“the Act”), other secondary legislation [...] and through rules made by the Financial Services Authority under powers available to them under the Act. The Reinsurance Directive applies only to reinsurers which carry out reinsurance to the exclusion of direct insurance business and therefore does not apply to mixed insurers (other than by virtue of amendments made to the directives referred to in its title).

Schedule 1 to these Regulations amends the Act.

Paragraph 2 of that Schedule amends Part 7 of, and Schedule 12 to, the Act. These provisions provide for the transfer of insurance business by insurers and the relevant solvency and other certificates required. It has always been possible under Part 7 to transfer reinsurance portfolios, therefore the amendments required are to make the provisions work in the context of the Reinsurance Directive. Article 18 of the Reinsurance Directive requires Member States to permit reinsurance transfers by a reinsurance undertaking, including of business carried out under the freedom of establishment or to provide services in other Member States. Such a transfer is subject to the home State regulator of the transferee providing a certificate of the necessary solvency margin (taking the transfer into account). The amendments provide a new procedure for certain reinsurance transfers (those where there is consent of all policyholders) which does not require an application to court, but does require obtaining a solvency certificate.

The amendments to Schedule 12 to the Act also include provision (related to the third non-life insurance directive (92/49/EEC) and the consolidated life assurance directive (2002/83/EC)) to clarify the application of the certificates required under Schedule 12 to transfers by non-EEA insurers with a branch in the United Kingdom.

Paragraph 6 of that Schedule amends Schedule 3 to the Act. Schedule 3 to the Act sets out the rules to permit UK firms to establish in and to provide services into other EEA States on the basis of their UK authorisation, and for EEA-based firms to do the same in or into the UK. The present provisions require a process to be gone through by firms seeking to establish or to provide services which are subject to time limits. The Reinsurance Directive provides for an EU reinsurer to provide services or to establish on the basis of their home Member State’s authorisation without any further requirements. The amendments here make the necessary changes to Schedule 3 in relation to reinsurers falling within the Reinsurance Directive.

Other amendments made by Schedule 1 are either consequential on the Reinsurance Directive or by virtue of small changes in wording of the Directive when compared to the direct insurance directives, provisions of which are already implemented by the Act. Such is the case for the amendments to section 199 of the Act.

Schedule 2 to these Regulations makes amendments to the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (S.I. 2001/2511). The main amendment provides that where a reinsurer provides a service which is not a regulated activity under the Act, provided that activity may lawfully be provided in an EEA State as a matter of UK law, it is deemed for the purposes of its EEA right to be authorised to carry out that activity.

Schedule 3 makes consequential amendments to the Friendly Societies Act 1992 (c.40).

Schedule 4 makes amendments to secondary legislation made under the Competition Act 1998 inserting references to reinsurers (within the meaning of the Reinsurance Directive) in relation to the exception from penalties under section 36 of the Competition Act 1998 for small agreements and agreements of minor significance and to the method of determining competition fines.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared. Both may be obtained from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.

STATUTORY INSTRUMENTS

2007 No.

FINANCIAL SERVICES AND MARKETS

Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007

<i>Made</i>	- - - -	2007
<i>Laid before Parliament</i>		2007
<i>Coming into force</i>	- -	[10th December] 2007

The Treasury, in exercise of the powers conferred on them by sections 108, 183(2), 188(2), 349(1)(b), [349(2),] 349(3), 417(1) and 428(3) of the Financial Services and Markets Act 2000⁽¹⁾, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 and come into force on [10th December] 2007.

Amendment to the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001

2.—(1) The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001⁽²⁾ are amended as follows.

(2) In regulation 3(2)—

- (a) at the end of sub-paragraph (a)(ii) omit “and”;
- (b) in sub-paragraph (a)(iii) after “any policy” insert “(other than a policy which evidences a contract of reinsurance)”;
- (c) after sub-paragraph (a)(iii) insert—

“(iv) where, as regards any policy included in the proposed transfer which evidences a contract of reinsurance, an EEA State other than the United Kingdom is the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into, in [one] business newspaper which [is published/circulates] in that EEA State; and”

(3) In regulation 4(2) for “and (iii)” substitute “, (iii) and (iv)”.

⁽¹⁾ 2000 c.8.

⁽²⁾ S.I. 2001/3625.

Amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

3.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001⁽³⁾ are amended as follows.

(2) In regulation 2 in the definition of “directive restrictions” after “third non-life insurance directive, ” insert “articles 24 to 30 of the reinsurance directive”.

(3) In regulation 9(2)—

- (a) at the end of sub-paragraph (d) omit “or”;
- (b) after sub-paragraph (e) insert—
 - “; or
 - (f) article 26 of the reinsurance directive”

(4) In regulation 9(3)(b)—

- (a) at the end of paragraph (iii) omit “or”;
- (b) after paragraph (iv) insert—
 - “; or
 - (v) article 16 of the reinsurance directive,”

Amendments to the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001

4.—(1) The Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001⁽⁴⁾ are amended as follows.

(2) In regulation 2 after the definition of “EEA management company” insert—

““EEA reinsurance undertaking” means an EEA firm falling within paragraph 5(da) of Schedule 3 to the Act.”.

(3) In regulation 5(4)—

- (a) at the end of sub-paragraph (c)(iii) omit “or”;
- (b) after sub-paragraph (c)(iii) insert—
 - “(iia) an EEA reinsurance undertaking; or”;
- (c) in sub-paragraph (c)(iv) for “or (iii)” substitute “, (iii) or (iia)”.

Date Name
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part the provisions of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ No L 323, 9.12.2005, p 1) (“the Reinsurance Directive”). The rest of the implementation is achieved through existing provisions of the Financial Services and Markets Act 2000 (c.8) (“FSMA”), other secondary legislation ... and through rules made by the Financial Services Authority under powers available to them under FSMA.

Regulation 2 amends the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001, (S.I. 2001/3625) so that a proposed transfer by a reinsurance undertaking must

⁽³⁾ S.I. 2001/2188, as amended by S.I. 2004/1273, 2004/3379, 2006/3221 and 2006/3413; there are other amending instruments but none is relevant.

⁽⁴⁾ S.I. 2001/2509, as amended by S.I. 2001/2509, 2003/2066 and 2004/1862; there are other amending instruments but none is relevant.

be publicised and notified to policyholders. Those requirements may be waived by the court in appropriate circumstances.

Regulation 3 makes consequential amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001, (S.I. 2001/2188) to add references to the relevant provisions of the Reinsurance Directive.

Regulation 4 makes consequential amendments to the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001, (S.I. 2001/2509) adding references to EEA reinsurance undertakings.

A transposition note has been prepared which sets out how the main elements of the Reinsurance Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared. Both may be obtained from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury's website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.



FINANCIAL SERVICES AND MARKETS ACT 2000 (REINSURANCE DIRECTIVE) ORDER 2007

STATUTORY INSTRUMENTS

2007 No.

FINANCIAL SERVICES AND MARKETS

Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007

Made - - - - 2007
Laid before Parliament 2007
Coming into force - - [10th December] 2007

The Treasury, in exercise of the powers conferred on them by sections 22(1) and (5), 409(1)(a) and (5) and 428(3) of, and paragraph 25(1) of Schedule 2 to, the Financial Services and Markets Act 2000⁽¹⁾, makes the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 and comes into force on [10th December] 2007.

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽²⁾ is amended as follows.

(2) In article 39B(2)—

- (a) at the end of sub-paragraph (b)(i) omit “or”;
- (b) for sub-paragraph (b)(ii) substitute—

“(ii) an EEA firm falling within paragraph 5(da) of Schedule 3 to the Act (reinsurance undertaking); or

(iii) a person established outside the United Kingdom and not falling within paragraph (ii) who carries on an activity of the kind specified by article 10 by way of business”.

Amendments to the Financial Services and Markets Act 2000 (Gibraltar) Order 2001

3.—(1) The Financial Services and Markets Act 2000 (Gibraltar) Order 2001⁽³⁾ is amended as follows.

(2) In article 2—

- (a) after paragraph (3A) insert—

(1) 2000 c.8.

(2) S.I. 2001/544, as amended by 2003/1476.

(3) S.I. 2001/3084, as amended by 2005/1 and 2006/1805.

“(3B) A Gibraltar-based firm falling within paragraph 5(da) of Schedule 3 is to be treated as having an entitlement, corresponding to its EEA right deriving from the reinsurance directive, to establish a branch or provide services in the United Kingdom.”;

- (b) in paragraph (4) for “and (3A)” substitute “, (3A) and (3B)” and after “5(a), (b), (d)” insert “, (da)”;
- (c) in paragraph (5)—
 - (i) after “Passport Rights Regulations and” insert “(other than in relation to a Gibraltar-based firm falling within paragraph 5(da) of Schedule 3)”;
 - (ii) for “or (3A)” wherever it occurs substitute “, (3A) or (3B)”;
- (d) in paragraph (7) for “or (3A)” substitute “, (3A) or (3B)”.

(3) In paragraph (5)(e) of article 3 (EEA firms satisfying conditions under Gibraltar law) after “means an EEA firm” insert “, other than a firm falling within paragraph 5(da) of Schedule 3,”.

	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements in part the provisions of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L323 9.12.2005, p.1) (“the Reinsurance Directive”). The rest of the implementation is achieved through existing provisions of the Financial Services and Markets Act 2000 (c.8), [other secondary legislation] ... and through rules made by the Financial Services Authority under powers available to them under the Financial Services and Markets Act 2000.

Article 2 makes a minor consequential change to article 39B(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544). The existing article refers to “a relevant reinsurer”, this expression partly covers reinsurers falling within the Reinsurance Directive. The amendment makes clear that the expression includes reinsurers that fall within the Reinsurance Directive, as well as other foreign reinsurers.

Article 3 makes amendments to the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084) (“the Gibraltar Order”). The Gibraltar Order facilitates allowing UK firms to provide services and establish a branch in Gibraltar (for the purposes of UK law only) and allows Gibraltar-based firms to establish a branch and provide services in the UK. This is done as if Gibraltar firms were providing their services or establishing a branch in another EEA State (and vice versa for UK firms). These amendments permit Gibraltar-based firms carrying on reinsurance within the meaning of the Reinsurance Directive to do the same, there is no need to make further provision for UK-based firms in relation to Gibraltar, as article 4 of the Gibraltar Order makes a generic cross-reference to Schedule 3 which is amended to include UK reinsurers which fall within the Reinsurance Directive. Article 3 of the Gibraltar Order is disapplied in relation to such EEA reinsurers.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared. Both may be obtained from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.

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