

2007 No. 3253

FINANCIAL SERVICES AND MARKETS

The Reinsurance Directive Regulations 2007

Made - - - - *19th November 2007*

Laid before Parliament *19th November 2007*

Coming into force - - *10th December 2007*

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

- (a) the authorisation of the carrying on of insurance business and the regulation of such business and its conduct(b);
- (b) transfers of insurance contracts other than contracts of life insurance from one insurance undertaking to another(c);
- (c) matters relating to the transfer of contracts of life assurance from one insurance undertaking to another(d);
- (d) anything supplemental or incidental to matters in (a) to (c)(e); 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(f).

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.

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- (a) 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.
 - (b) 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.
 - (c) 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.
 - (d) 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.
 - (e) S.I. 1997/2781.
 - (f) S.I. 2001/3495.

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

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.

*Frank Roy
Alan Campbell*

19th November 2007

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

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”;

(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);”;

(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—

(a) 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) 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.”.

(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.”;

(b) in paragraph 1(3)(a)(a) after “Article 4” insert “or Article 51”;

(c) in paragraph 1(4)(a) after “Article 6” insert “or Article 23”;

(d) after paragraph 1(4) insert—

“(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—

“*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.

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

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

(4) “Relevant authority” means the competent authorities (within the meaning of the insurance directives) of the EEA State in which the transferee is set up.”;

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

Amendments to section 198 of the Act

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)(a) insert—
 - “; or
- (c) Article 42.4 of the reinsurance directive”.

Amendments to section 199 of the Act

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

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

- (a) after paragraph 1(c)(a) insert “(ca) the reinsurance directive;”;
- (b) after paragraph 3 insert—

“*The reinsurance directive*

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(4)(b) insert—

“(5) 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.

(6) 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), (2) or (3)”;

- (ii) after sub-paragraph (4) insert—

“(5) A firm which qualifies for authorisation as a result of paragraph 12(5) 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) in paragraph 19(1)(c) for “sub-paragraph (5A)” substitute “sub-paragraphs (5ZA) and (5A)”;

- (g) after paragraph 19(5) insert—

“(5ZA) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.”;

- (h) in paragraph 20(1)(d) at the beginning insert “Subject to sub-paragraph (4D), ”;

- (i) after paragraph 20(4C) insert—

“(4D) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.”.

(a) Paragraph 1 was amended by S.I. 2000/2952; 2003/1473, 2003/2066 and 2007/126.

(b) Paragraph 12 was amended by S.I. 2007/1473.

(c) Paragraph 19 was amended by S.I. 2003/1473, 2003/2066 and 2007/126.

(d) Paragraph 20 was amended by S.I. 2001/1376; 2003/1473, 2003/2066 and 2007/126.

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(a) are amended as follows—

- (a) in regulation 10—
 - (i) the original text from “an EEA firm” to the end becomes paragraph (a);
 - (ii) at the end insert—
 - “; and
 - (b) an EEA firm which falls within paragraph 5(da) of Schedule 3 which establishes a branch in the United Kingdom”;
- (b) in regulation 19—
 - (i) the existing text becomes paragraph (1);
 - (ii) after paragraph (1) insert—
 - “(2) Where—
 - (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

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

- (a) in subsection (1A)(c)—
 - (i) for “72/239/EEC” substitute “73/239/EEC”; and
 - (ii) at the end insert “and as amended by the reinsurance Directive.”;
- (b) 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.”;
- (c) after subsection (2) insert—

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

(b) 1992 c.40.

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

“(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.”.

Amendments to the Companies Acts

2.—(1) Section 843 of the Companies Act 2006(a) (realised profits and losses of long term insurance business) is amended as follows—

- (a) in subsection (1) after “authorised insurance company” insert “, other than an insurance special purpose vehicle,”;
- (b) after subsection (7) insert—

“(8) In this section “insurance special purpose vehicle” means a special purpose vehicle within the meaning of Article 2.1(p) 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.”

(2) Until the coming into force of section 843 of the Companies Act 2006, section 268 of the Companies Act 1985(b) (realised profits of authorised insurance company with long term business) has effect as if—

- (a) in subsection (1)(c) after “authorised insurance company” there were inserted “, other than an insurance special purpose vehicle,”; and
- (b) in subsection (3)(d) after paragraph (a) there were inserted—

“(aa) “insurance special purpose vehicle” means a special purpose vehicle within the meaning of Article 2.1(p) 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.”.

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

1.—(1) The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000(e) 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

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

(a) 2006 c.46.

(b) 1985 c.6.

(c) Subsection (1) was amended by S.I. 1996/189 and 2001/3649.

(d) Subsection (3) was amended by S.I. 2001/3649.

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

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

(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”.

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 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”) and its accompanying secondary legislation and the amendments made in Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (S.I. 2007/3255), the Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 (S.I. 2007/3254) 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 authorise reinsurance transfers (under conditions laid down in national law) 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). It also makes consequential provision in relation to the implementation of Article 46 of the Reinsurance

Directive concerning the accounting treatment of insurance special purpose vehicles (doing long term insurance business) by amending section 843 (c.46) of the Companies Act 2006 and modifying section 268 of the Companies Act 1985 (c.6) until the former provision comes into force. Section 843 of the 2006 Act is the analogous provision to section 268 of the 1985 Act.

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.

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