

## **EXPLANATORY MEMORANDUM TO**

### **THE REINSURANCE DIRECTIVE REGULATIONS 2007 2007 No. 3253**

### **THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REINSURANCE DIRECTIVE) REGULATIONS 2007 2007 No. 3255**

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1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The statutory instruments described in this memorandum are to implement in part the EC Reinsurance Directive (Directive 2005/68/EC).

2.2 The Directive has been already partially been implemented by existing provisions of the Financial Services and Markets Act 2000 ("FSMA") and by rules made by the Financial Services Authority ("FSA") which form parts of its handbook.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Background**

4.1 The instruments referred to are partially to implement the Reinsurance Directive. The key parts of the Directive which have not yet been implemented either by existing provisions in FSMA or in rules set out in the Handbook of the Financial Services Authority are:-

- (a) amendments to Part 7 of FSMA which deal with insurance business transfer schemes, and
- (b) amendments to Schedule 3 to FSMA which deals with the rights of UK reinsurers to passport into other EU Member States and of Member State reinsurers to passport into the UK.

4.2 Amendments are also made to permit reinsurers established in Gibraltar to carry on reinsurance business in the UK. This is not an EC obligation. Other amendments made by the instruments are technical amendments which are related to the implementation of the Directive.

4.3 Many of the provisions of the Reinsurance Directive are not new and are covered by existing provisions in FSMA which apply across the board to insurers, mixed insurers (i.e. direct insurers who also carry out reinsurance business) and pure reinsurers. The majority of the directive covers reinsurers who only carry out reinsurance. Until now the insurance directives<sup>1</sup> cover reinsurance in a limited way and only in relation to insurers that also carry out reinsurance. “Pure reinsurers” have not before been covered to any extent by EC regulatory legislation. An example of a section of FSMA which applies across the board is section 40 – which deals with applications for permission to carry on a regulated activity. Article 10 of the FSMA (Regulated Activities Order) 2001<sup>2</sup> makes the effecting and carrying on (as a principal) of a contract of insurance a regulated activity. As a matter of English law a contract of reinsurance is a contract of insurance. Section 40 of FSMA therefore implements Article 3 of the Directive. As noted above the FSA have implemented the technical solvency provisions etc. via rules in their Handbook

Attached as an annex to this Memorandum is a transposition note for the provisions of the Directive.

4.4 The Directive was scrutinised by the Parliamentary EU scrutiny committees on the following dates:-

Twenty-first Report of 17 June 2004 – not cleared;

Thirty-third Report of 4 November 2004 – cleared.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the amendments to primary legislation contained in the Reinsurance Directive Regulations 2007 (S.I. 2007 No. 3253), are compatible with the Convention rights.

Other provisions of those regulations and the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (S.I. 2007 No. 3255), and the Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 (S.I. No. 3254) are subject to the negative resolution procedure and do not amend primary legislation, therefore no statement is required in relation to them.

## **7. Policy background**

7.1 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. As noted above, at European Community level until the adoption of this Directive there was no EC

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<sup>1</sup> Directives 73/239/EC, 88/357/EEC, 92/49/EEC and 2002/83/EC.

<sup>2</sup> S.I. 2001/544.

regulatory law concerning reinsurers who do not also carry on direct insurance business (i.e. “pure reinsurers”). This led to differences in levels of supervision of pure reinsurers between different member states and barriers to trade within the internal market.

7.2 The Directive provides for a regulatory framework for pure reinsurers based on the existing regime introduced by the Third Insurance Directives to establish the internal market in insurance. It extends to reinsurance companies the system for the authorisation and financial supervision of an insurance undertaking by the Member State in which it has its head office (“home country control”). Such authorisation is for reinsurance companies a true "single passport" which enables them to carry on their business anywhere in the EEA. The Directive also sets out prudential rules for the supervision of reinsurance undertakings.

7.3 The Directive replicates many of the technical provisions that apply at Community level to direct insurance, for example, the authorisation process and many of the provisions concerning regulatory capital. That said it was also accepted in the drafting of the Directive that some provisions of the insurance directives are not relevant in relation to pure reinsurers. The regulation of insurance is based on the protection of policyholders. Since reinsurance is wholesale insurance, the protection of policyholders takes on a different, lighter touch, form in that reinsurance policyholders are major business customers.

7.4 In completing implementation of the Directive, the statutory instruments covered by this memorandum provide for the single passport, and make some changes concerning domestic requirements for notification of transfers of reinsurance business. This reflects both that a solvency certificate is required for transfers by pure reinsurers, and that notification of policyholders is an important element of the court approval process for insurance business transfers in the UK. These provisions have been regularised and extended to cover all transfers of reinsurance.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There is no significant impact on the public sector: the instruments address changes to legislation to implement provisions which affect the carrying on of reinsurance business.

## **9. Contact**

David Beardsworth at Her Majesty’s Treasury Tel: 020-7270 4427 or e-mail: david.beardsworth@hm-treasury.x.gsi.gov.uk can answer any queries regarding the instrument.



**IMPLEMENTING THE REINSURANCE DIRECTIVE (RD):  
A TRANSPOSITION NOTE**

Article	Objectives	Implementation (by HM Treasury)	Implementation (by the Financial Services Authority (FSA))
General			<p><i>The General Prudential Sourcebook Instrument 2006</i>(FSA 2006/40) and <i>The Prudential Sourcebook for Insurers Instrument 2006</i> (FSA 2006/42) together with the <i>Reinsurance Directive (Consequential Amendments) Instrument 2006</i> (FSA 2006/39), implemented for pure reinsurers, mixed insurers and other direct insurers and insurance special purpose vehicles the prudential requirements 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 (the Reinsurance Directive). These changes were detailed in Handbook Notice 59 published on the FSA website in October 2006 and commenced on 31 December 2006.</p>
1(1)	<b>Scope</b>	<p>Section 22 of FSMA sets out the scope of financial services regulation under this Act. The detailed rules are in the FSMA 2000 (Regulated Activities) Order 2001, Statutory Instrument (S.I.) 2001/544 (“RAO”). Effecting or carrying out a contract of insurance (which as a matter of UK law includes a contract of reinsurance) is a regulated activity by virtue of article 10 of that Order.</p>	<p>The Handbook Glossary definition of an insurer is "a firm with permission to effect or carry out contracts of insurance (other than a UK ISPV)". It follows that a Handbook rule which is expressed to apply to an insurer will, unless the application of the rule is modified, include within its scope a pure reinsurer.</p>
1(2)		<p>No implementation is necessary.</p>	<p>No implementation is necessary.</p>
2	Definitions	<p>Definitions, apart from SPV, are covered by present provisions of FSMA. No amendments are necessary.</p>	<p>Generally covered by the FSA Handbook Glossary.</p> <p>The following definitions were added to the FSA Handbook by FSA 2006/39 in implementing the Reinsurance Directive:</p>

			<p><i>"Captive reinsurer", "EEA ISPV", "EEA pure reinsurer", "insurance special purpose vehicle", "ISPV", "life protection reinsurance business", "mixed insurer", "permanent health reinsurance business", "Reinsurance Directive", "reinsurance undertaking", "UK ISPV".</i></p> <p>The following definitions in the FSA Handbook were amended by FSA 2006/39 in implementing the Reinsurance Directive:</p> <p><i>"Admissible asset", "EEA firm", "insurance health risk capital component", "insurance holding company", "insurer", "regulated related undertaking".</i></p>
	definition of "reinsurance directive"	Inserted into paragraph 3A of Schedule 3 to FSMA and into section 119 of the Friendly Societies Act 1992.	Added to FSA Handbook Glossary as above.
2.1(a)	"reinsurance"	Falls within scope of "contract of insurance" in FSMA and in article 10 of the RAO.	Falls within the scope of "contract of insurance" as per FSMA. Definition of "reinsurance" includes retrocession.
2.1(b)	"captive reinsurance undertaking"		"captive reinsurer" in FSA Handbook Glossary.
2.1(c)	"reinsurance undertaking"		"insurer", "pure reinsurer" and "EEA pure reinsurer" in FSA Handbook Glossary.
2.1(d)	"branch"		Already provided for in FSA Handbook Glossary.
2.1(e)	"establishment"		"establishment" not defined but relevant definitions make reference to location of head office or permanent presence of insurance undertaking in an EEA State other than that in which it has its head office.
2.1(f)	"home Member State"		"Home State" in FSA Handbook Glossary.
2.1(g)	"Member State of branch"		Not a defined term but concept used in relevant definitions and rules.
2.1(h)	"host Member State"		"Host State" in FSA Handbook Glossary.
2.1(i)	"control"		Already provided for in FSA Handbook Glossary.
2.1(j)	"qualifying holding"	Section 179 of FSMA defines holdings for the purposes of the provisions on acquisitions.	

2.1(k)	“parent undertaking”		Already provided for in FSA Handbook Glossary.
2.1(l)	“subsidiary”		"subsidiary undertaking" in FSA Handbook Glossary.
2.1(m)	“competent authorities”		"competent authority" in FSA Handbook Glossary.
2.1(n)	“close links”		Already provided for in FSA Handbook Glossary.
2.1(o)	“financial undertaking”		Covered by "regulated related undertaking" in FSA Handbook Glossary.
2.1(p)	“special purpose vehicle”		"insurance special purpose vehicle", "ISPV" and "UK ISPV" in FSA Handbook Glossary.
2.1(q)	“finite reinsurance”	Member State option, see Article 45.	
2.2			See definition of "branch" above.  3 <sup>rd</sup> -5 <sup>th</sup> paras. Are provided for in the definitions of "subsidiary undertaking" and "close links".
2.3	Euro conversion rate		GENPRU 2.1.33R, INSPRU 1.1.50R and INSPRU 1.4.48R.
3	Principle of authorisation	Section 19 of FSMA imposes a prohibition on carrying out a regulated activity in the UK. Effecting or carrying out a contract of insurance (which as a matter of UK law includes a contract of reinsurance) is a regulated activity by virtue of article 10 of the FSMA 2000 (Regulated Activities) Order 2001, S.I. 2001/544. Section 40 of FSMA requires an application for authorisation to be made to the FSA. No amendments of FSMA are necessary. A small amendment is made to the FSMA 2000 (Passport Rights) Regulations 2001, S.I. 2001/2511 to include a reference to reinsurers to regulations 10 and 19. The amendment is made in Schedule 2 to the Reinsurance Directive Regulations 2007.	
4	Scope of authorisation	Section 31 provides that EEA firms are authorised persons. Schedule 3 to FSMA is amended to include within the definition of “EEA firm” a reinsurance undertaking. Schedule 3 is amended to provide that EEA firms and UK firms can take advantage of the specific passport rights under the Directive. The amendment is made in Schedule 1 to the Reinsurance Directive Regulations 2007. Section 41 of, and Schedule 6 to, FSMA set out the threshold conditions for authorisation.	

5.1	Form of reinsurance undertaking	Paragraph 1(1) of Schedule 6 to FSMA sets out the undertakings that can be reinsurers in the UK. No amendment is necessary	COND 2.1.
5.2	Form of reinsurance undertakings – public law forms	Member State option.	
6a	Condition – objects		In the FSA's Handbook, this limitation on the activities of a pure reinsurer is expressed as an ongoing requirement, rather than simply as a prior condition to authorisation: see INSPRU 1.5.13AR and INSPRU 1.5.13BG.
6b	Condition – scheme of operations	Paragraph 5(b) of Schedule 6 to FSMA requires that the applicant must satisfy the FSA he is fit and proper having regard to all the circumstances including “the nature of any regulated activity that he carries on or seeks to carry on”. No amendment is necessary.	SUP APP 2.10.1G, SUP 6.3.25G. Application Pack Notes (page 4 of notes to regulatory business plan).
6c	Condition – minimum guarantee fund	Paragraph 4 of Schedule 6 requires that the applicant has adequate resources. No amendment is necessary.	In the FSA's Handbook, the minimum guarantee fund for different kinds of insurer, including pure reinsurers, is defined as the base capital resources requirement (see GENPRU 2.1.27G). The level of the base capital resources requirement an insurer is required to maintain is set out in the table in GENPRU 2.1.30R (see GENPRU 2.1.29R). The minimum guarantee fund of 3 million euros under the Reinsurance Directive for pure reinsurers has been set out in the table as 3.2 million euros, so as to be consistent with the recent index-linked increase under the Insurance Directives in the minimum guarantee fund for direct insurers. (See also the comments on the FSA's implementation of article 41).
6d	Condition – effectively run etc.	Paragraph 5 of Schedule 6 to FSMA requires the applicant to satisfy the FSA that it is a fit and proper person having regard to all the circumstances. Sections 59 to 63 require persons carrying out certain controlled functions defined in FSA's rules to be approved by the FSA, such approval may be withdrawn under section 63. No amendment is necessary.	SYSC 2: Senior management arrangements. SUP 10: Approved persons.
7	Close links	Paragraph 3(1)(a) of Schedule 6 to FSMA requires the FSA to be satisfied the links in question “are not likely	COND 2.3. SUP 11.9: Changes in close links and SUP 16.5: Annual Close Links Report.



		to prevent effective supervision". Paragraph 3(1)(b) makes provisions for close links to non-EEA persons. No amendment is necessary.	
8	Head office of the reinsurance undertaking	Paragraph 2 of Schedule 6 to FSMA requires a reinsurer to have its head office and registered office in the UK. No amendment is necessary.	COND 2.2.
9	Policy conditions and scales of premiums	The UK does not require prior approval or systematic notification of policy conditions, sales of premiums, forms and other printed documents. No amendment is necessary.	
10	Economic requirements of the market	The UK has no such requirements. No amendment is necessary.	
11	Scheme of operations		SUP APP 2.12.
12	Shareholders and members with qualifying holdings		Application Pack Notes and Controllers Forms.
13	Refusal of authorisation	Section 52(1) of FSMA requires the FSA to determine applications within 6 months. Under section 52(9), if the FSA decides to refuse an application it must give the applicant a decision notice. Section 388 sets out that such a notice must give the FSA's reasons for the decision. Section 55 sets out a right to apply to the Financial Services Tribunal if a person is aggrieved at a determination of an application. No amendment necessary.	
14	Prior consultation	Section 49(2)(a) of FSMA requires the FSA to consult with the home state regulator of an EEA firm connected to an applicant for authorisation. Connected person is defined in section 49(3). Section 420 of FSMA gives an extended definition of subsidiary and parent undertaking which includes the concept of control by an individual. No amendment is necessary.	
15.1	Competent authorities and general rules	Section 138 of FSMA provides for the rule making power of the FSA which is responsible for financial supervision. By virtue of section 138(6)(b) that power is restricted in relation to matters which are reserved to a firm's home state regulator.	
15.2	Verification of solvency margin		IPRU(INS) Chapter 9 and Appendix 9 (see in particular Forms 1 and 2).
15.3	Refusal of retrocession contract		The UK does not allow for the refusal of

			retrocession contracts on such grounds. Under INSPRU 2.1.23R to INSPRU 2.1.32G, where a pure reinsurer has an exposure to a counterparty arising from a retrocession contract or contracts which exceeds certain limits, the reinsurer must notify the FSA and explain how the credit risk from that exposure is being safely managed.
15.4	Requirement to have sound administrative and accounting procedures and adequate internal controls		SYSC 3: System and Controls.
16	Supervision of branches established in another Member State	Section 169 of FSMA sets out the powers of the FSA in support of an overseas regulator. No amendment is necessary.	
17	Accounting prudential and statistical information: supervisory powers	The powers available under FSMA in relation to reinsurers are extensive. Section 418 Case 1 makes clear that activities of a UK authorised reinsurer in another Member State are deemed to be regulated activities under FSMA. Information gathering and investigations are provided for under Part XI and disciplinary measures are provided for under Part XIV of FSMA. No amendment is necessary.	IPRU(INS) Chapter 9 and Appendix 9. Minor amendments are made to comply with detailed requirements of the Reinsurance Directive as set out in FSA 2006/39.
18	Transfer of portfolio	Sections 104 to 117 of, and schedule 12 to, FSMA provide for the insurance business transfer schemes. Minor amendments are made to Part 7. Schedule 1 to the Reinsurance Directive Regulations 2007 makes the necessary amendments to sections 105, 114 and 116 and to Schedule 12 and inserts new section 114A of FSMA.	SUP 18: Transfers of Business.
19	Acquisitions	Section 178 of FSMA requires the notification of acquisition of control (as defined in section 179) to the FSA. Section 183 of FSMA requires the FSA to decide whether or not to approve the acquisition within 3 months. Section 186(2) of FSMA sets out the approval criteria. No amendments are necessary to FSMA. A definition of the Directive and a reference are added to the FSMA 2000 (Consultation with Competent Authorities) Regulations 2001, S.I. 2001/2509 to facilitate consultation where the Directive is relevant in relation to acquisitions. The	

		amendment is made in regulation 4 of the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007.	
20	Acquisitions by financial undertakings	Section 183(2) and 188(2) of FSMA provides a power to prescribe when FSA must consult competent authorities outside the UK. The secondary legislation which implements the existing obligations in this field is FSMA 2000 (Consultation with Competent Authorities) Regulations 2001, SI 2001/2509 (as amended). Amendment is made to add a definition of EEA reinsurance undertaking and to include among the acquirers EEA reinsurance undertakings by the FSMA 2000 (Consultation with Competent Authorities) Regulations 2001, S.I. 20012001/2509. The amendment is made in regulation 4 of the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007. A reinsurer would be caught by the reference to a UK authorised persons who has permission to effect or carry on contracts of insurance. See also comments on Articles 58.1 and 60.4 below.	
21	Disposals	Section 190 of FSMA requires notification of reduction in control to be notified to the FSA. No amendment is necessary.	
22	Information to the competent authority by the reinsurance undertaking		SUP 11.4.2R, SUP 16.4.5R. SUP 16.4.12R, IPRU(INS) 9.30R.
23	Qualifying holdings: powers of the competent authorities	Section 186 requires authorisation of acquisitions of qualifying holdings of shares in reinsurers. Section 189 of FSMA provides sanctions in relation to improperly acquired qualifying holdings of shares and section 191 sets out criminal offences for failure to notify acquisition or reduction of qualifying holdings. No amendment is necessary.	
24	Professional secrecy and exchanges of information	Section 348 of FSMA sets out the prohibition on disclosure of confidential information. See under Article 25.	
25	Exchanges of information between competent authorities of MSs	Sections 349, 350 and 351 of FSMA and the regulations made under section 349 (in particular regulation 9 of the FSMA 2000 (Disclosure of	

		Confidential Information) Regulations 2001, Statutory Instrument (S.I.) 2001/2188) allows for certain information to be disclosed. Amendments are made to refer to the provisions of this Directive in regulation 3 of the FSMA 2000 (Reinsurance Directive) Regulations 2007.	
26	Cooperation agreements with third countries	Regulation 9 of the SI 2001/2188, permits disclosure where there is a cooperation agreement. Amendments are made to refer to the provisions of this Directive in regulation 3 of the FSMA 2000 (Reinsurance Directive) Regulations 2007.	
27	Use of confidential information	SI 2001/2188 sets out the situations in which disclosures of information can be made subject to the conditions in the instrument. No amendment is necessary.	
28	Exchange of information with other authorities	Regulation 9(1) of SI 2001/2188 permits disclosure only for purposes of the functions of the respective persons. The different persons referred to in article 28 are set out in column 1 of the Schedule to SI 2001/2188. No amendment is necessary.	
29	Transmission of information to central banks and monetary authorities	Regulation 9 of SI 2001/2188 permits disclosure to the Bank of England (referred to in column 1 of the schedule) in relation to discharge of its functions. No amendment is necessary.	
30	Disclosure of information to government administration responsible for financial legislation	Regulation 3 of SI 2001/2188 permits disclosure between the bodies responsible in the UK for financial legislation. No amendment is necessary.	
31	Duties of auditors	The duties of auditors to report on certain specified matters that arise in their roles in reinsurance undertakings or those with close links to them are implemented in sections 342 and 343 of FSMA respectively and the secondary legislation made under those sections, namely, the FSMA 2000 (Communications by Auditors) Regulations 2001, SI 2001/2587. The latter regulations set out the circumstances in which a report is required. No amendments are necessary.	
32.1	Establishment of technical provisions		INSPRU 1.1.12R and INSPRU 1.1.16R require the establishment of adequate technical provisions in respect of general insurance business and long-term

			<p>insurance business, respectively. In the case of general insurance business, the technical provisions must be established in accordance with GENPRU 1.3.4R, which requires the valuation of liabilities in accordance with Schedule 9A to the Companies Act 1985 (Form and content of accounts of insurance companies) or Schedule 9A to the Companies (Northern Ireland) Order 1986 and relevant accounting standards. In the case of long-term insurance business, more specific rules are laid down in INSPRU 1.2 (Mathematical reserves).</p>
32.2	Prohibition on gross reserving system		<p>The UK's regulation of insurance does not provide for a system of gross reserving which requires the pledging of assets in respect of claims against any reinsurer.</p>
32.3	Conditions for accepting claims against non-Directive reinsurers and insurers		<p>INSPRU 1.1.20R and INSPRU 1.1.21R require that technical provisions must be covered by admissible assets.</p> <p>For a pure reinsurer, admissible assets must be in accordance with the 'prudent person investment principles' set out in INSPRU 3.1.61A.</p> <p>Under INSPRU 2.1.23R to INSPRU 2.1.30R, where an exposure arising from a reinsurance contract exceeds certain limits, the insurer must notify the FSA and explain how the credit risk from that exposure is being safely managed.</p> <p>The risk associated with retrocession is taken into account in a pure reinsurer's individual capital assessment under INSPRU 7.</p> <p>The risk transfer principle means that a firm may only take credit for reinsurance in its solvency margin calculation if and to the extent there has been effective risk transfer. (INSPRU 1.1.19AG to 1.1.19FG).</p>
33.1	Equalisation reserves credit reinsurance		<p>INSPRU 1.4.38R requires every insurer and reinsurer carrying on business within general</p>

			insurance business class 14 to comply with the rules relating to the calculation and maintenance of a credit equalisation provision. The exemption in article 62(1) of the Reinsurance Directive has been used to exclude from this requirement pure reinsurers which went into run-off before 31 December 2006 (the date when the FSA's amended prudential rules implementing the Reinsurance Directive came into effect): see INSPRU 1.4.38R(2).
33.2	Equalisation reserve calculation		The detailed rules relating to the calculation of the credit equalisation provision are set out in INSPRU 1.4.39R to INSPRU 1.4.46R.
33.3	Member State option for low value of credit reinsurance		This exemption is given effect in INSPRU 1.4.44R.
33.4	Member State option for other types of insurance		INSPRU 1.4.11R TO 1.4.34R require insurers/reinsurers to calculate and maintain non-credit equalisation provisions in respect of other kinds of general insurance business.
34.1	Investment criteria for assets covering technical reserves		<p>The "prudent person" investment principles are given effect for pure reinsurers in INSPRU 3.1.61AR, which applies the principles to all investments of a pure reinsurer's assets. The option not to apply the requirements in point (e) to investment in government bonds is exercised in INSPRU 3.1.61AR(6).</p> <p>INSPRU 1.1.20R and INSPRU 1.1.21R require that technical provisions (including equalisation provisions: see INSPRU 1.1.12R(1)) are covered by admissible assets. The Handbook Glossary definition of admissible asset has been amended in the case of a pure reinsurer to mean an asset the holding of which is consistent with compliance with INSPRU 3.1.61AR.</p>
34.2	Member States not to require particular categories of assets		The list of admissible assets in GENPRU 2 Annex 7R does not apply to a pure reinsurer; see GENPRU 2.2.251R and the amended Handbook Glossary definition of admissible asset.
34.3	No prior approval or systematic notification		Investment decisions of a pure reinsurer are not subject to prior approval or systematic notification

			requirements under the UK's regulation of pure reinsurers.
34.4	Member States may require quantitative rules		INSPRU 2.1.22R (Market risk and counterparty limits) does not apply to a pure reinsurer: see INSPRU 2.1.22AR. INSPRU 3.1.53R (Currency matching of assets and liabilities) does not apply to a pure reinsurer: see INSPRU 3.1.54R.
34.5	Rules setting conditions for amounts outstanding from an SPV		A pure reinsurer requires an FSA waiver before amounts recoverable from an ISPV can be included in the cash flows used to calculate mathematical reserves is made in INSPRU 1.2.28R and INSPRU 1.2.28AG. Furthermore, GENPRU 1.3.55R and GENPRU 1.3.56G provide that, in the absence of specific provision in another rule in GENPRU or INSPRU, no value must be placed on amounts recoverable from an ISPV for the purposes of any rule in GENPRU or INSPRU unless a waiver is obtained from the FSA. In addition to the statutory tests under section 148(4) of FSMA, the conditions that will need to be met before the FSA will consider granting any such waiver are set out in INSPRU 1.6.13G to INSPRU 1.6.18G.
35	General rule		GENPRU 2.1.13R. GENPRU 2.1.3R(1) makes clear that, except where a particular provision provides for a narrower scope, GENPRU 2.1 applies in relation to the whole of an insurer's business.
36.1	Eligible items for available solvency margin shall consist of assets free of any foreseeable liabilities, including share capital and reserves, less any intangible items		<p>The capital items eligible to be included in the calculation of the capital resources of an insurer are set out in the table in GENPRU 2 Annex 1R (see GENPRU 2.2.17R and GENPRU 2.2.19R) and the rules in GENPRU 2.2. referred to in that table. In order to determine whether a particular item of capital is eligible to be counted as capital resources it is often necessary to apply a number of different rules in GENPRU 2.2. However, it is possible to highlight the main rules applicable to the items of capital expressly mentioned in article 36.1 as follows:</p> <p>- paragraph 1 (a): GENPRU 2.2.83R (permanent</p>

			<p>share capital) and GENPRU 2.2.109R (perpetual non-cumulative preference shares) (see also GENPRU 2.2.110G which identifies the other main provisions relevant to the eligibility of such shares for inclusion in tier one capital);</p> <p>- paragraphs 1(b) and (c): GENPRU 2.2.85R (profit and loss account and other reserves: losses), GENPRU 2.2.87R (profit and loss account and other reserves: dividends), GENPRU 2.2.88R (profit and loss account and other reserves: capital contributions), GENPRU 2.2.101R (share premium account), GENPRU 2.2.102R (externally verified interim net profits) and GENPRU 2.2.108R (fund for future appropriations).</p> <p>Deduction of intangible assets is provided for in GENPRU 2.2.155R and GENPRU 2.2.156G.</p>
36.2	Deductions from available solvency margin		<p>The requirement to deduct investments in own shares is set out in GENPRU 2 Annex 1R.</p> <p>The requirement to deduct from capital resources the difference between discounted and undiscounted technical provisions for general insurance business is covered in GENPRU 2.2.107R. The exemption in article 62(1) of the Reinsurance Directive has been used to exclude from the requirement to deduct pure reinsurers which went into run-off before 31 December 2006 (the date when the FSA's amended prudential rules implementing the Reinsurance Directive came into effect): see GENPRU 2.2.107R(3).</p> <p>In relation to each of its related undertakings that is a regulated related undertaking (other than an insurance undertaking), under GENPRU 2.2.256R an insurer/pure reinsurer must add to (if positive), or deduct from (if negative), its capital resources the value of its shares in that undertaking, as calculated in accordance with GENPRU 1..3.47R (Shares in</p>



			and debts due from related undertakings) (i.e. if positive, the regulatory surplus of the undertaking after deducting the book value of investments in the undertaking).. In the case of related undertakings which are insurance undertakings, no deduction is required under GENPRU 2.2.256R because an insurer that is a participating insurance undertaking is subject to the requirements of INSPRU 6.1 (Group Risk: Insurance Groups): see also GENPRU 2.1.13R(2). Related undertaking, regulated related undertaking, insurance undertaking and participating insurance undertaking all have the meaning given in the Handbook Glossary.
36.3	Available solvency margin may also consist of cumulative preferential share capital, subordinated loan capital and securities with no specified maturity date and other instruments		The conditions which must be met in order for perpetual cumulative preference shares, perpetual subordinated debt and perpetual subordinated securities to be included in capital resources, as upper tier two capital, are set out in GENPRU 2.2.159R to GENPRU 2.2.181R and GENPRU 2.2.270R and GENPRU 2.2.271R. The conditions for fixed term preference shares, long term subordinated debt and fixed term subordinated securities to be included in capital resources, as lower tier two capital, are set out in GENPRU 2.2.159R to GENPRU 2.2.175G, GENPRU 2.2.194R to GENPRU 2.2.196R and GENPRU 2.2.270R and GENPRU 2.2.271R. The limits on the use by insurers/reinsurers of different forms of capital are set out in GENPRU 2.2.32R to GENPRU 2.2.41R (see in particular GENPRU 2.2.37R and GENPRU 2.2.38R).
36.4	Available solvency margin may, with the agreement of competent authority, also consist of unpaid share capital or initial fund, members' calls for supplementary contributions and hidden reserves		Such items may only be included in capital resources if the FSA grants a waiver under section 148 of FSMA: see GENPRU 2 Annex 1R and the guidance in GENPRU 2.2.266G to GENPRU 2.2.269G on waivers in respect of unpaid share capital or initial funds and calls for members' supplementary contributions. For hidden reserves, see GENPRU 2 Annex 8G.
36.5	Available solvency margin may,		Such items may only be included in capital

	with the agreement of competent authority, also consist of implicit items		resources if the FSA grants a waiver under section 148 of FSMA: see GENPRU 2 Annex 1R and GENPRU 2 Annex 8G.
36.6	Procedure for amendments to article	No amendments required.	
37.1	Required solvency margin shall be determined on basis of annual amount of premiums or average burden of claims over the past three or seven financial years		GENPRU 2.1.17R, GENPRU 2.1.24R, GENPRU 2.1.26R and GENPRU 2.1.34R set out the general provisions for the required solvency margin. INSPRU 1.1.63R(2) provides for the increase to seven years for the reference period for the average burden of claims where the business underwritten is essentially only in respect of one or more of the risks of credit, storm, hail or frost.
37.2	Subject to the minimum guarantee fund, the required solvency margin shall equal the higher of the premium basis calculation and the claims basis calculation		GENPRU 2.1.24R, GENPRU 2.1.26R and GENPRU 2.1.34R.
37.3 37.4	Premium basis calculation and claims basis calculation		INSPRU 1.1.45R to INSPRU 1.1.72R. The FSA has elected to increase the amounts of 50 million euros and 35 million euros, representing the dividing point between the two portions of the calculation under the premium basis and the claims basis respectively, to 53.1 million euros and 37.2 million euros. This reflects the increase in these amounts for direct insurers resulting from the index-linking provisions of the Insurance Directives: see INSPRU 1.1.49G. The exemption in article 62(1) of the Reinsurance Directive has been used to exclude pure reinsurers which went into run-off before 31 December 2006 (the date when the FSA's amended prudential rules implementing the Reinsurance Directive came into effect) from the requirement to increase by 50% the amount included in the calculations in respect of premiums and claims for classes 11, 12 and 13: see INSPRU 1.1.56R(1) and INSPRU 1.1.60R(1). Amounts recoverable from an ISPV may be treated as retrocession for the purposes of the reinsurance ratio in INSPRU 1.1.54R if a waiver is granted by the FSA under section 148 of FSMA: INSPRU

			1.1.92AR and INSPRU 1.1.92BG. The conditions to which the FSA will have regard in considering an application for such a waiver, in addition to the statutory tests in section 148(4), are set out in INSPRU 1.6.13G to INSPRU 1.6.18G.
37.5	The brought forward amount		GENPRU 2.1.34R and INSPRU 1.1.51R.
37.6	Treatment of actuarial health insurance		INSPRU 1.1.56R(2), INSPRU 1.1.60R(2) and INSPRU 1.1.72R.
38	Required solvency margin for life reinsurance activities		GENPRU 2.1.18R to GENPRU 2.1.23R, GENPRU 2.1.24AR to GENPRU 2.1.26R GENPRU 2.1.36R and INSPRU 1.1.80G to INSPRU 1.1.92BG. For the life protection reinsurance business and permanent health reinsurance business of a pure reinsurer carrying on long-term insurance business, the long-term insurance capital requirement is calculated on the same basis as the general insurance capital requirement for a pure reinsurer carrying on general insurance business: see INSPRU 1.1.83AR, INSPRU 1.1.85R, INSPRU 1.1.88AR and INSPRU 1.1.89R(3). For all other classes of long-term insurance business, the option in article 38(2) has been applied.
39	Required solvency margin for a reinsurance undertaking simultaneously conducting non-life and life reinsurance		GENPRU 2.1.3R(2), GENPRU 2.1.14R and GENPRU 2.1.26R
40	Amount of guarantee fund		<p>The requirement that pure reinsurers maintain a guarantee fund comprising capital items identified as eligible by article 40(1) is implemented in GENPRU 2.2.33R to GENPRU 2.2.35R.</p> <p>The requirement for a minimum guarantee fund (article 40(2)) is set out in GENPRU 2.1.29R and GENPRU 2.1.30R. The table in GENPRU 2.1.30R incorporates the Member State discretion to allow a minimum guarantee fund of 1 million euros for captive reinsurers.</p> <p>The fact that the Reinsurance Directive requires a single minimum guarantee fund for pure reinsurers</p>

			<p>carrying on both life and general reinsurance business is reflected in GENPRU 2.1.26R.</p> <p>The requirement for a single guarantee fund for pure reinsurers carrying on both life and general reinsurance business is covered by Forms 1 and 2 of IPRU(INS) Appendix 9.1 when calculating the excess over the guarantee fund requirement. The base capital resources requirement for a pure reinsurer is split between general and long-term business in proportion to the general insurance capital requirement and the sum of the long-term insurance capital requirement and resilience reserve requirement.</p>
41	Review of the amount of the guarantee fund		<p>To ensure consistency as between direct insurers, including those carrying on reinsurance business, and pure reinsurers, the FSA has stated in GENPRU 2.1.31G that it will aim, so far as is possible without breaching the minimum index-linking required by the Reinsurance Directive, to amend the amounts of the base capital resources requirements in the table in GENPRU 2.1.30R for all insurers (including pure reinsurers) in line with the index-linked rate of increase of the minimum guarantee fund amounts under the direct Insurance Directives. Any increases will also be published on the FSA website; GENPRU 2.1.32G.</p>
42	Reinsurance undertakings in difficulty	<p>Sections 43, 45, 47 and 48 of FSMA implement the framework of Article 42. Section 43 provides for the FSA's power to impose restrictions on authorised persons. Section 45 provides own-initiative powers to the FSA, including the power to impose a restriction. Section 47 permits the FSA to act in support of an overseas competent authority where requested to act by such an authority. Section 48 sets out the effect of a restriction on the free disposal of assets. The FSA is under a general duty to cooperate with competent authorities including a duty to share information under section 354 of FSMA. A reference to Article 42.4 of the Directive is added to section 198 of FSMA by</p>	<p>SUP App 2.4, App 2.5 and App 2.12.</p>

		Schedule 1 to the Reinsurance Directive Regulations 2007.	
43	Financial recovery plan	Sections 45 and 165 of FSMA allow FSA to impose requirements on the permission of firms and to require information of specified kinds from firms.	SUP App 2.14. Under INSPRU 1.1.19AR a reinsurer may only take credit for retrocession if and to the extent that there has been an effective transfer of risk from the reinsurer to a third party. The FSA may also use its power under section 45 of FSMA to vary an insurer's permission so as to impose a requirement that the firm decrease the reduction it takes for retrocession in the calculation of its capital resources requirement.
44	Withdrawal of authorisation	The obligations are implemented under section 45 of FSMA. The four specific grounds referred to in Article 44 are covered in different terms by the three grounds referred to in section 45.	
45	Finite reinsurance		The UK has not exercised this option.
46	Special purpose vehicles	Amendments are made to section 268 of the Companies Act 1985 and to section 843 of the Companies Act 2006 to disapply those sections from ISPVs which would otherwise fall within the definition of authorised insurance company under those Acts.	INSPRU 1.6, GENPRU 1.3, SUP 16.7.21AR AND 16.7.21BR, SYSC, FIT, APER, GEN, COND, PRIN, FEES. ISPVs require authorisation because carrying on contracts of insurance under the RAO.
47	Reinsurance undertakings not complying with legal provisions	The obligations are implemented by section 199 of FSMA which implements the analogous provisions in Article 40 of 92/49/EC and Article 46 of 2002/83. Amendments to the section are necessary to take into account the differences between Article 47 and that in direct insurance directives. The amendments are made by Schedule 1 to the Reinsurance Directive Regulations 2007.	
48	Winding up	The liabilities of a reinsurer written by it under the freedom to provide services or by an EEA branch are dealt with under UK winding up provisions in the same way as liabilities arising out of UK business. No amendments are necessary.	
49	Principle and conditions for conducting reinsurance business	The UK does not apply more favourable provisions to reinsurance undertakings having their head offices outside of the EEA than to those with head offices within the UK. Non-EEA reinsurance undertakings wishing to set up branches in the UK must be	Non-EEA pure reinsurers with branches established in the UK are subject to the same provisions as UK pure reinsurers. Reinsurance contracts entered into by UK insurers with non-EEA reinsurers are subject to the same provisions as are those with EEA

		authorised under Part 4 of FSMA. No amendments are necessary.	reinsurers.
50	Agreements with third countries	No Member State obligations.	
51	Information from MSs to the Commission	Under section 354 of FSMA the FSA is under a general duty to cooperate with persons (whether in the UK or outside it) who have similar functions to the FSA. No amendment is necessary.	
52	Third country treatment of Community reinsurance undertakings	Under section 354 of FSMA the FSA is under a general duty to cooperate with persons (whether in the UK or outside it) who have similar functions to the FSA. No amendment is necessary.	
53	Right to apply to the courts	Sections 132 and 133 of FSMA set up the Financial Services Tribunal, which is a first instance court to hear references from decisions of the FSA. Appeal from the Tribunal maybe made to the Court of Appeal on points of law under section 137. Particular provisions of FSMA permit references to the Tribunal including, sections 55 (authorisations, variations and cancellations), 57 (prohibition orders), 185 (control), 197 (intervention EEA firm) and 415 (general right to bring proceedings in High Court/Court of Session). No amendments are necessary.	
54	Cooperation between the Member States and the Commission	Under section 354 of FSMA the FSA is under a general duty to cooperate with persons (whether in the UK or outside it) who have similar functions to the FSA. No amendment is necessary.	
55	Committee procedure	Nothing required to implement.	
56	implementing procedures	Nothing required to implement.	
57	<i>Amendments to Directive 73/239</i>		
57(1)	Art. 12a of 73/239 Consultation with MSs	Section 49(2)(a) of FSMA requires the FSA to consult with the home state regulator of an EEA firm connected to an applicant for authorisation. Connected person is defined in section 49(3). Section 420 of FSMA gives an extended definition of subsidiary and part undertaking which includes the concept of control by an individual. No amendment is necessary.	
57(2)	Art. 13(2)sub-2 of 73/239 Refusal of reinsurance contract		The UK does not allow for refusal of reinsurance contracts on such grounds. No amendments are required

57(3)	<p>Art. 15(2) and (3) of 73/239  Localisation of assets, system of gross reserving requiring pledges of assets, conditions for accepting claims of an insurer or reinsurer not authorised in accordance the EEA</p>		<p>The UK's regulation of insurance does not provide for a system of gross reserving which requires the pledging of assets in respect of claims against any reinsurer.</p> <p>INSPRU 1.1.20R and INSURU 1.1.21R require that technical provisions must be covered by admissible assets. The list of admissible assets for insurers other than pure reinsurers is set out in GENPRU 2 Annex 7R. Annex 7R includes at paragraph (1)(B)(a) debts owed by reinsurers, including reinsurers' shares of technical provisions.</p> <p>Under INSURU 2.1.23R to INSURU 2.1.30R, where an exposure arising from a reinsurance contract exceeds certain limits, the insurer must notify the FSA and explain how the credit risk from that exposure is being safely managed.</p> <p>The risk associated with reinsurance is taken into account in an insurer's individual capital assessment under INSURU 7.</p> <p>The risk transfer principle means that a firm may only take credit for reinsurance in its technical provisions if and to the extent there has been effective risk transfer. (INSURU 1.1.19AR to 1.1.19FG).</p>
57(4)	<p>Art. 16(2) of 73/239  Deductions from available solvency margin</p>		<p>See 36.2 above in relation to regulated related undertakings. No amendment required as pure reinsurers already treated as insurers and insurance undertakings. (GENPRU 2 Annex 1R)</p>
57(5)	<p>Art. 16a of 73/239  Amounts recoverable from ISPVs in calculation of reinsurance ratio</p>		<p>Amounts recoverable from an ISPV may be treated as reinsurance for the purposes of the reinsurance ratio in INSURU 1.1.54R if a waiver is granted by the FSA under section 148 of FSMA: INSURU 1.1.92AR and INSURU 1.1.92BG. The conditions to which the FSA will have regard in considering an application for such a waiver, in addition to the</p>

			statutory tests in section 148(4), are set out in INSPRU 1.6.13G to INSPRU 1.6.18G.
57(6)	Art. 17b of 73/239 Solvency for mixed insurer		Insurers of the kind referred to in new article 17b(1) are covered by the new Handbook Glossary definition of "mixed insurer". The amended minimum guarantee fund for such firms is set out in the table in GENPRU 2.1.30R. The Member State option to apply the "prudent person" investment principles to mixed insurers has not been exercised.
57(7)	Art. 20a(4) of 73/239 Decrease of reduction for reinsurance in required solvency margin		Under INSPRU 1.1.19AR an insurer may only take credit for reinsurance if and to the extent that there has been an effective transfer of risk from the insurer to a third party. This risk transfer principle applies for the purposes of the reduction for reinsurance in the calculation of the general insurance capital requirement: see INSPRU 1.1.19CG to INSPRU 1.1.19FG. The FSA may also use its power under section 45 of FSMA to vary an insurer's permission so as to impose a requirement that the firm decrease the reduction it takes for reinsurance in the calculation of its general insurance capital requirement.
58	<i>Amendments to Directive 92/49</i>		
58(1)	Art. 15(1a) of 92/49 Consultation with MSs	Article 15 of 92/49/EC is implemented by section 183(2) and the FSMA 2000 (Consultation with Competent Authorities) Regulations 2001, S.I. 2001/2509. Amendments to add references to EEA reinsurance undertakings are necessary to regulations 2 and 5(4) and are made by regulation 4 of the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007. See comments on Article 20 above.	
58(2)	Art. 16(4)(5) and (5a) of 92/49 Confidential information	Covered by s348-352 of FSMA and secondary legislation the FSMA 2000 (Disclosure of confidential information) Regulations 2001, SI 2001/2188. No amendment is necessary.	
58(3)	Art. 21(1) of 92/49 Categories of authorised assets		INSPRU 1.1.12R requires insurers carrying on general insurance business to establish technical provisions, including in accordance with the rules in INSPRU 1.4 for equalisation provisions. Under



			<p>INSPRU 1.1.20R and INSPRU 1.1.21R those provisions must be covered by admissible assets.</p> <p>GENPRU 2 Annex 7R provides that an insurer may only treat amounts recoverable from an ISPV as an admissible asset (and so available to cover technical provisions) if it first obtains a waiver from the FSA under section 148 of FSMA. In addition to the statutory tests under section 148(4) of FSMA, the conditions that will need to be met before the FSA will consider granting any such waiver are set out in INSPRU 1.6.13G to INSPRU 1.6.18G.</p>
58(4)	Art. 22(1) of 92/49 Rules for investment diversification		INSPRU 2.1.22R already applies to assets covering equalisation provisions. No amendment required.
59	<i>Amendments to Directive 98/78</i>		
59(1)	Amendment of title		No amendments required.
59(2)	Definitions in art. 1		Definition of insurance holding company amended to include EEA reinsurance undertakings and to exclude a mixed financial holding company from the definition.
59(3)	Arts. 2, 3 and 4		Insurance groups' rules extended to groups that consist entirely of reinsurance entities. (INSPRU 6.1). Reinsurance entities otherwise already included.
59(4)	Art. 5(1)		Insurance groups' rules extended to groups that consist entirely of reinsurance entities. (INSPRU 6.1). Reinsurance entities otherwise already included.
59(5)	Arts. 6, 7 and 8		Insurance groups' rules extended to groups that consist entirely of reinsurance entities. (INSPRU 6.1). Reinsurance entities otherwise already included.
59(6)	Art. 9(3)		Insurance groups' rules extended to groups that consist entirely of reinsurance entities. (INSPRU 6.1). Reinsurance entities otherwise already included.
59(7)	Art. 10		Insurance groups' rules extended to groups that consist entirely of reinsurance entities. (INSPRU 6.1). Reinsurance entities otherwise already included.

			included.
59(8)	Art. 10a		Insurance groups' rules extended to groups that entirely of reinsurance entities. (INSPRU 6.1). Reinsurance entities otherwise already included.
59(9)	Replacement of Annexes I and II		Insurance groups' rules extended to groups that consist entirely of reinsurance entities. (INSPRU 6.1). Reinsurance entities otherwise already included.
60	<i>Amendments to Directive 2002/83</i>		
60(1)	Definitions of reinsurance undertaking		Glossary definition of pure reinsurer and EEA pure reinsurer
60(2)	Art. 9a inserted	Section 49(2) of FSMA requires prior consultation with Member State competent authorities.	
60(3)	Art. 10(2) Refusal of reinsurance contract		The UK does not allow for refusal of reinsurance contracts on such grounds. No amendments required.
60(4)	Art. 15(1a) Consultation with MSs	Article 15 of 92/49/EC is implemented by section 183(2) and the FSMA 2000 (Consultation with Competent Authorities) Regulations 2001, S.I. 2001/2509. Amendments to add references to EEA reinsurance undertakings are necessary to regulations 2 and 5(4) and are made by regulation 4 of the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007. See comments on Article 20 above.	
60(5)	Art. 16(4), (5), (6) and (8) Confidential information	Covered by s348-352 of FSMA and secondary legislation the FSMA 2000 (Disclosure of confidential information) Regulations 2001, SI 2001/2188.	
60(6)	Art. 20(4) Establishment of technical reserves		The UK's regulation of insurance does not provide for a system of gross reserving which requires the pledging of assets in respect of claims against any reinsurer.  INSPRU 1.1.20R and INSPRU 1.1.21R require that technical provisions must be covered by admissible assets. The list of admissible assets for insurers other than pure reinsurers is set out in GENPRU 2 Annex 7R. Annex 7R includes at paragraph (1)(B)(a) debts owed by reinsurers, including

			<p>reinsurers' shares of technical provisions.</p> <p>Under INSPRU 2.1.23R to INSPRU 2.1.30R, where an exposure arising from a reinsurance contract exceeds certain limits, the insurer must notify the FSA and explain how the credit risk from that exposure is being safely managed.</p> <p>The risk associated with reinsurance is taken into account in an insurer's individual capital assessment under INSPRU 7.</p> <p>The risk transfer principle means that a firm may only take credit for reinsurance in its technical provisions if and to the extent there has been effective risk transfer. (INSPRU 1.1.19AR to 1.1.19FG).</p>
60(7)	Art. 23 Categories of authorised assets		<p>GENPRU 2 Annex 7R provides that an insurer may only treat amounts recoverable from an ISPV as an admissible asset (and so available to cover technical provisions) if it first obtains a waiver from the FSA under section 148 of FSMA. In addition to the statutory tests under section 148(4) of FSMA, the conditions that will need to be met before the FSA will consider granting any such waiver are set out in INSPRU 1.6.13G to INSPRU 1.6.18G.</p>
60(8)	Art. 27(2) Available solvency margin		<p>See 36.2 above in relation to regulated related undertakings. No amendment required as pure reinsurers already treated as insurers and insurance undertakings. (GENPRU 2 Annex 1R)</p>
60(9)	Art. 28(2) Required solvency margin		<p>Amounts recoverable from an ISPV may be treated as reinsurance for the purposes of the calculation of the insurance death risk capital component in accordance with INSPRU 1.1.81R and the adjusted mathematical reserves in accordance with INSPRU 1.1.90R if a waiver is granted by the FSA under section 148 of FSMA: INSPRU 1.1.92AR and</p>

			INSPRU 1.1.92BG. The conditions to which the FSA will have regard in considering an application for such a waiver, in addition to the statutory tests in section 148(4), are set out in INSPRU 1.6.13G to INSPRU 1.6.18G.
60(10)	Art. 28a Solvency margin for assurance undertakings conducting reinsurance activities		Firms of the kind referred to in new article 28a(1) are covered by the new Handbook Glossary definition of "mixed insurer". For the life protection reinsurance business and permanent health reinsurance business of a mixed insurer, the long-term insurance capital requirement is calculated on the same basis as the general insurance capital requirement for general insurance business in accordance with Article 37 of the RD: see INSPRU 1.1.83AR, INSPRU 1.1.85R, INSPRU 1.1.88AR and INSPRU 1.1.89R(3). For all other classes of long-term reinsurance business, the rules that apply to direct insurers carrying on long-term insurance business under INSPRU 1.1.80G to INSPRU 1.1.92BG apply to the reinsurance activities of mixed insurers in accordance with Article 38(2) of the RD. The amended minimum guarantee fund for mixed insurers is set out in the table in GENPRU 2.1.30R. The Member State option to apply the "prudent person" investment principles to mixed insurers has not been exercised.
60(11)	Art. 38(4) Decrease of reduction for reinsurance in required solvency margin		Under INSPRU 1.1.19AR an insurer may only take credit for reinsurance if and to the extent that there has been an effective transfer of risk from the insurer to a third party. This risk transfer principle applies for the purposes of the reduction for reinsurance in the calculation of the long-term insurance capital requirement: see INSPRU 1.1.19CG to INSPRU 1.1.19FG. The FSA may also use its power under section 45 of FSMA to vary an insurer's permission so as to impose a requirement that the firm decrease the reduction it takes for reinsurance in the calculation of its long-term insurance capital requirement.
61	Rights acquired by existing	The definition of EEA reinsurance undertaking in	

	reinsurance undertakings	paragraph 5(da) of Schedule 3 to FSMA is added. The definition includes reference to the situation where the reinsurer is deemed to be authorised. The amendment is made in Schedule 1 to the Reinsurance Directive Regulations 2007.	
62	Reinsurance undertakings closing their activity		FSA to draw up list of reinsurers in run off as at 10 December 2007. INSPRU 1.1.56R(1), INSPRU 1.1.60R(1), INSPRU 1.4.38R(2), INSPRU 6.1.15R(2) and GENPRU 2.2.107R(3) all use the discretion conferred by this exemption to provide limited exemptions for firms in run-off at 31/12/2006 or, in the case of INSPRU 6.1.15R, 10/12/2007.
63	Transitional period for articles 57(3) and 60(6)		Not required because UK system does not require pledging of assets.
64	Transposition		
65	Entry into force	Nothing to transpose.	
66	Addresses	Nothing to transpose.	
Annex I	List of legal forms	See comments on Article 5.	
Annex II	Replacement of Annexes I and II of Directive 98/78/EC		See article 59(9).



# IMPACT ASSESSMENT

## SUMMARY: INTERVENTION & OPTIONS

<b>HM Treasury</b>		<b>Impact Assessment of regulations to complete implementation of the Reinsurance Directive</b>
<b>Stage:</b> Implementation	<b>Version # 2</b> 19/11/07	<b>Related Publications:</b> Proposals to implement the Reinsurance Directive – consultation document

Available to view or download at: [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

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**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 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 is maintaining and extending slightly 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: 19 November 2007

SUMMARY: ANALYSIS & EVIDENCE

Policy Option		Description	
<p><b>ANNUAL COSTS</b></p> <p>One off (Transition)    £    n/a    -</p> <p><b>Average Annual Cost</b> (excluding one-off)</p> <p>£ 75,000</p>		<p>Description and scale of <b>key monetised costs</b> 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><b>Total Cost (PV)</b></p> <p>£ 215,000</p>	
<p>Other <b>key non-monetised costs</b> by 'main affected groups'</p>			
<p><b>ANNUAL BENEFITS</b></p> <p>One off    £    n/a    -</p> <p><b>Average Annual Benefit</b> (excluding one-off)</p> <p>£    -</p>		<p>Description and scale of <b>key monetised benefits</b> 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><b>Total Benefit (PV)</b></p> <p>£ 600,000</p>	
<p>Other <b>key non-monetised benefits</b> by 'main affected groups'</p> <p>Additional savings may also be expected in the periodic costs of supervision by host states.</p>			
<p><b>Key Assumption/Sensitivities/Risks</b></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>			
Price Base Year 2007	Time Period Years 3	<b>Net Benefit Range (NPV)</b> £ -	<b>NET BENEFIT (NPV Best estimate)</b> £ 385,000
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)				
Increase of £	n/a	Decrease of £	n/a-	Net Impact
				£ --
			<b>Annual Cost: Constant Prices</b>	<b>(Net) Present Value</b>

## Evidence Base for Summary Sheets

The 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.

a) 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

b) 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.

c) 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.

d) 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 may 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.

e) 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).

f) 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.

g) 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 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 in the UK, the FSA receives notice from the insurer's home state regulator and takes certain action before the insurer may commence business.

h) 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.

i) 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.

j) 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.

k) 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.

l) 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.

m) 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**

n) 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”.

o) 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 maintaining and extending slightly existing exclusions, subject to a requirement to obtain a solvency certificate, reflecting the low-risk nature of certain types of transfer.

p) 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 amendments 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 the amendment represents 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**

q) 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.

r) 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. The amendment standardises and regularises the position for reinsurance transfers.

s) 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, that publication requirement is framed in terms of one business newspaper published or circulated 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.

t) 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.

u) 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.

v) 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.

w) 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**

x) 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).

y) 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, a new provision is introduced for publication of reinsurance transfers.

**z)** 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 – is 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 principle is that the publication process is proportionate to the benefit being realised.

**aa)** 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.

#### **Consultation – further amendment**

**bb)** The consultation period for these proposals ran between 25 July 2007 and 17 October 2007. No comments were received on the Impact Assessment. One amendment to the original proposals is being made in the light of wider consultation responses. This is as follows:

Article 46 of the Reinsurance Directive provides for an optional regime to allow for the use of Insurance Special Purpose Vehicles (ISPVs). ISPVs are special purpose reinsurance vehicles which must be fully funded. The introduction of an ISPV regime allows insurers to manage their capital more efficiently. The FSA has made changes to its rulebook to establish an appropriate regime, proportionate to the lower risks resulting from the structure of ISPVs.

In doing so, various rules which apply to insurance companies have been disapplied in relation to ISPVs, including rules restricting the ability of long term insurers to transfer funds out of the company from the long term fund. For the ISPV regime to work properly where long term business is involved, a consequential amendment is needed to the Companies Act to exclude ISPVs from the definition in that Act of authorised insurance companies. This change is made through a new provision in the Reinsurance Directive Regulations. No cost impact arises in relation to this IA as it is under FSA rules that the ISPV regime is established.

## Specific Impact Tests - Checklist

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

