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STATUTORY INSTRUMENTS

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**2007 No. 3254**

**FINANCIAL SERVICES AND MARKETS**

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

<i>Made</i>	- - - -	<i>19th November 2007</i>
<i>Laid before Parliament</i>		<i>19th November 2007</i>
<i>Coming into force</i>	- -	<i>10th December 2007</i>

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

**Citation and commencement**

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

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

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

(2) In article 39B(2)—

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

(b) for sub-paragraph (b)(ii) substitute—

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

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

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(1) 2000 c.8.

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

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

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

(2) In article 2 (exercised of deemed passport rights by Gibraltar-based firms)—

(a) after paragraph (3A) insert—

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

(b) in paragraph (4) for “and (3A)” substitute “, (3A) and (3B)” and after “5(a), (b), (d)” insert “, (da)”;

(c) in paragraph (5)—

(i) after “Passport Rights Regulations and” insert “(other than in relation to a Gibraltar-based firm falling within paragraph 5(da) of Schedule 3)”;

(ii) for “or (3A)” wherever it occurs substitute “, (3A) or (3B)”;

(d) in paragraph (7) for “or (3A)” substitute “, (3A) or (3B)”.

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

19th November 2007

*Frank Roy*  
*Alan Campbell*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order implements in part the provisions of Directive [2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L323 9.12.2005, p.1) (“the Reinsurance Directive”). The rest of the implementation is achieved through existing provisions of the Financial Services and Markets Act [2000 \(c.8\)](#) and its accompanying secondary legislation, and by the amendments made by the Reinsurance Directive Regulations 2007 ([S.I. 2007/3253](#)) and the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 ([S.I. 2007/3255](#)) and through rules made by the Financial Services Authority under powers available to them under the Financial Services and Markets Act 2000.

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

Article 3 makes amendments to the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 ([S.I. 2001/3084](#)) (“the Gibraltar Order”). The Gibraltar Order facilitates allowing UK firms to provide services and establish a branch in Gibraltar (for the purposes of UK law only) and allows Gibraltar-based firms to establish a branch and provide services in the UK. This is done as if Gibraltar firms were providing their services or establishing a branch in another EEA State (and vice versa for UK firms). These amendments permit Gibraltar-based firms carrying on reinsurance within the meaning of the Reinsurance Directive to do the same. There is no need to make further provision for UK-based firms in relation to Gibraltar, as article 4 of the Gibraltar Order makes a generic cross-reference to Schedule 3 which is amended to include UK reinsurers which fall within the Reinsurance Directive. Article 3 of the Gibraltar Order is disapplied in relation to such EEA reinsurers, since they have a right to provide services into or establish a branch in the United Kingdom without going through the procedures required for direct insurers, thus Article 3 is not relevant to them.

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](http://www.hm-treasury.gov.uk)). Copies of both documents have been placed in the libraries of both Houses of Parliament.