



# Insurance Companies Act 1974

## 1974 CHAPTER 49

An Act to consolidate, with certain exceptions, the provisions of the Insurance Companies Acts 1958 to 1973. [31st July 1974]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### RESTRICTION ON CARRYING ON INSURANCE BUSINESS

##### *Preliminary*

#### **1 Classes of insurance business relevant for Part I**

- (1) The classes of insurance business relevant for the purposes of this Part of this Act are—
- (a) ordinary long-term insurance business;
  - (b) industrial assurance business;
  - (c) liability insurance business;
  - (d) marine, aviation and transport insurance business;
  - (e) motor vehicle insurance business;
  - (f) pecuniary loss insurance business;
  - (g) personal accident insurance business;
  - (h) property insurance business.
- (2) In this Act "long term business" means insurance business of either or both of the classes mentioned in paragraphs (a) and (b) of subsection (1) above and includes, in relation to any insurance company, insurance business carried on by the company as incidental only to any such class of business; and "general business" means insurance business not being long term business.

### *Authorised insurers*

## **2 Persons permitted to carry on insurance business**

- (1) No person shall carry on in Great Britain insurance business of a class relevant for the purposes of this Part of this Act, other than industrial assurance business, except—
  - (a) a body corporate which is authorised under section 3 below to carry on business of that class ;
  - (b) an unincorporated body of persons which is authorised under that section to carry on business of that class, being a body which immediately before 3rd November 1966 was carrying on insurance business (whether of that class or not) in Great Britain;
  - (c) a member of Lloyd's, or of any other association of underwriters approved for the purposes of this Part of this Act by the Secretary of State;
  - (d) a body registered under the Acts relating to friendly societies; or
  - (e) a trade union or employers' association (within the meaning of the Trade Union and Labour Relations Act 1974) where the insurance business carried on by the union or association is limited to the provision for its members of provident benefits or strike benefits.
- (2) No person shall carry on in Great Britain industrial assurance business except—
  - (a) a body corporate which is authorised under section 3 below to carry on such business; or
  - (b) a society registered under the Friendly Societies Act 1896, being a friendly society within the meaning of that Act.
- (3) Subsection (1) above shall not preclude any person from carrying on pecuniary loss insurance business if he carries it on solely in the course of carrying on, and for the purposes of, banking business.
- (4) The Acts mentioned in subsection (1)(d) above include Acts of the Parliament of Northern Ireland and Measures of the Northern Ireland Assembly, and the reference in subsection (2)(b) above to the Friendly Societies Act 1896 includes a reference to that Act as it applies to Northern Ireland and to any enactment of the Parliament of Northern Ireland or Measure of the Northern Ireland Assembly re-enacting that Act with or without modifications.

## **3 Authorisations**

- (1) A body corporate and, subject to subsection (2) below, an unincorporated body of persons shall be authorised to carry on in Great Britain insurance business of a class relevant for the purposes of this Part of this Act if either—
  - (a) it was carrying on in Great Britain insurance business of that class immediately before 3rd November 1966 (and was not then carrying on business in contravention of section 2(1) of the Insurance Companies Act 1958); or
  - (b) it is authorised by the Secretary of State to carry on insurance business of that class.
- (2) An unincorporated body of persons shall not be authorised under either paragraph of subsection (1) above to carry on industrial assurance business and no such body shall be authorised under paragraph (b) of that subsection to carry on insurance business of

any other class unless it was carrying on in Great Britain insurance business (whether of that class or not) immediately before 3rd November 1966.

#### 4 Margin of solvency required for authorisation

- (1) Subject to section 8 below, the Secretary of State shall not issue an authorisation under section 3(1)(b) above (hereafter referred to as "an authorisation") in respect of any body unless he is satisfied—
- (a) in a case in which the body is, when the authorisation is applied for, carrying on (whether within or outside Great Britain) general business and has completed its first financial year, that the value of its assets exceeds the amount of its liabilities by the relevant amount;
  - (b) in any other case, that it has assets whose value amounts (after deduction, if it has liabilities, of the amount thereof) to not less than £50,000.
- (2) For the purposes of subsection (1)(a) above the relevant amount is, subject to subsection (3) below, in each of the cases set out in the first column of the following Table, the amount specified in relation to that case in the second column of that Table.

TABLE

Case	Relevant Amount
1. The general premium income of the body in its last preceding financial year did not exceed £250,000.	£50,000.
2. The said income in that year exceeded £250,000 but did not exceed £2,500,000.	One fifth of the said income in that year.
3. The said income in that year exceeded £2,500,000.	The aggregate of £500,000 and one tenth of the amount by which the said income in that year exceeded £2,500,000.

- (3) In the case of a body whose last preceding financial year was not a period of twelve months (other than a body which has not completed its second financial year and whose first financial year was a period of less than twelve months) subsection (2) above shall have effect—
- (a) with the substitution for each number specified in the Table (other than 50,000 and 500,000) of a number equal to the product derived by multiplying the number so specified by the relevant fraction ; and
  - (b) with the substitution for each fraction specified in that Table of a fraction equal to the quotient derived by dividing the fraction so specified by the relevant fraction;
- and for the purposes of this subsection the relevant fraction is a fraction whose numerator is the number of days in the body's last preceding financial year and whose denominator is 365.
- (4) For the purposes of this section—
- (a) in computing the amount of the liabilities of a body, all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital; and

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- (b) the general premium income of a body in any year shall be taken to be the net amount, after deduction of any premiums paid by the body for reinsurance, of the premiums received by the body in that year in respect of all insurance business other than long term business.
- (5) For the purposes of this section the value of any assets and the amount of any liabilities shall, subject to subsection (6) below, be determined in accordance with any applicable regulations made under section 78 below (hereafter referred to as "valuation regulations"), and subsection (4)(a) above shall have effect subject to any such regulations made by virtue of subsection (2) of that section.
- (6) For the purposes of this section the amount of the liabilities of the long term business of a body at any time shall be taken to be—
  - (a) an amount equal to the total amount at that time standing to the credit of the fund or funds maintained by the body in respect of its long term business; or
  - (b) the amount of those liabilities at that time as determined in accordance with any applicable valuation regulations,
 whichever is the greater.

## **5 Paid up share capital required for authorisation**

Subject to section 8 below, the Secretary of State shall not issue an authorisation in respect of any body corporate (other than a registered society) which has a share capital unless the amount paid up thereon is £100,000 or more.

## **6 Reinsurance arrangements required for authorisation**

The Secretary of State shall not issue an authorisation in respect of any body unless he is satisfied, as regards each class of risks against which, in the course of carrying on business, the body insures or proposes to insure persons—

- (a) that adequate arrangements are in force, or will be made, for the reinsurance of risks of that class against which persons are, or are to be, insured by the body in the course of carrying on business; or
- (b) that it is justifiable not to make arrangements for that purpose.

## **7 No authorisation for body under control etc. of unfit persons**

- (1) The Secretary of State shall not issue an authorisation in respect of any body ("the relevant body") if It appears to him that any director, controller or manager of that body is not a fit and proper person to be a director, controller or manager of that body, as the case may be.
- (2) In this section "controller", in relation to the relevant body, means—
  - (a) a managing director of the relevant body or of a body corporate of which it is a subsidiary;
  - (b) a chief executive of the relevant body or of a body corporate, being an insurance company, of which it is a subsidiary;
  - (c) a person—
    - (i) in accordance with whose directions or instructions the directors of the relevant body or of a body corporate of which it is a subsidiary (or any of them) are accustomed to act; or

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- (ii) who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the relevant body or of a body corporate of which it is a subsidiary.
- (3) In this section "manager", in relation to the relevant body, means a person (other than a chief executive) employed by that body who, under the immediate authority of a director or chief executive of that body—
  - (a) exercises managerial functions; or
  - (b) is responsible for maintaining accounts or other records of that body,not being a person whose functions relate exclusively to business conducted from a place of business outside Great Britain.
- (4) Subject to subsection (5) below, in this section "chief executive", in relation to the relevant body or a body corporate of which it is a subsidiary, means a person employed by the relevant body or that body corporate, who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of the relevant body or that body corporate.
- (5) In relation to a relevant body incorporated outside Great Britain—
  - (a) the reference in paragraph (a) of subsection (2) above to a managing director of that body includes a reference to a person who is a managing director of that body in respect of so much of its insurance business as is carried on within Great Britain; and
  - (b) the reference in paragraph (b) of that subsection to a chief executive of that body includes a reference to a person employed by that body who, either alone or jointly with one or more other persons, is responsible (whether or not under the immediate authority of the directors) for the conduct of the whole of the insurance business carried on by that body within Great Britain but, if he is responsible also for the conduct of insurance business carried on by it elsewhere, only if there is no other person subordinate to him who is responsible for the conduct of the whole of the insurance business carried on by it within Great Britain.
- (6) In this section "associate", in relation to any person, means—
  - (a) the wife or husband or minor son or daughter of that person;
  - (b) any company of which that person is a director ;
  - (c) any person who is an employee or partner of that person;
  - (d) if that person is a company—
    - (i) any director of that company;
    - (ii) any subsidiary of that company;
    - (iii) any director or employee of any such subsidiary ;and for the purposes of this subsection "son" includes step-son and adopted son, "daughter" includes step-daughter and adopted daughter and "minor", in relation to Scotland, includes pupil.

## **8 Authorisation for business limited to persons or risks of specified class**

- (1) This section applies to the issue of an authorisation to a body in a case in which the Secretary of State is satisfied that the purpose for which the authorisation is sought

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is to enable the body to carry on business for the purpose only of insuring persons of a limited class or of insuring persons against risks of a limited category of the class against which insurance cannot, in the absence of the authorisation, lawfully be undertaken by the body in the course of carrying on business in Great Britain.

- (2) Sections 4 and 5 above shall not apply to an authorisation to which this section applies, but any such authorisation may contain provision imposing on the body either or both of the following obligations—
  - (a) to refrain, in the course of carrying on business of the class to which the authorisation relates, from insuring persons other than of a specified class ;
  - (b) to refrain, as aforesaid, from insuring persons against risks other than of a specified class.
- (3) An obligation binding on a body by virtue of subsection (2) above may be discharged by the Secretary of State if it appears to him to be no longer necessary for the obligation to continue in force or may be varied by him at any time.

## **9 Termination of authorisations**

- (1) The Secretary of State may direct that a body shall cease to be authorised under either paragraph of section 3(1) above to carry on insurance business of a class relevant for the purposes of this Part of this Act if that body ceases to carry on in Great Britain insurance business of that class.
- (2) The Secretary of State may direct that a body shall cease to be authorised under paragraph (b) of section 3(1) above to carry on insurance business of a class relevant for the purposes of this Part of this Act if that body does not, before the expiration of the period of twelve months beginning with the day next following that on which the authorisation was issued, commence to carry on in Great Britain insurance business of that class.
- (3) A direction under this section is without prejudice to the subsequent issue of an authorisation to carry on insurance business of the class to which the direction relates.

### *Supplementary*

## **10 Power to amend ss. 4 and 5**

- (1) The Secretary of State may by order amend the provisions of section 4(1) to (4) and section 5 above by substituting for any amount specified in or to be determined in accordance with those provisions (whether as originally enacted or as amended by a previous order under this section) an amount specified in or to be determined in accordance with the order.
- (2) The power to make orders under this section includes power to vary or revoke a previous order, and an order under this section may make different provision in relation to different cases or circumstances.

## **11 Offences under Part I**

- (1) A person who carries on business in contravention of this Part of this Act shall be guilty of an offence.

- (2) A person who for the purpose of obtaining the issue of an authorisation furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
  - (b) on summary conviction, to a fine not exceeding £400.
- (4) A body corporate or unincorporated body of persons shall not be taken to carry on insurance business in contravention of this Part of this Act by reason only of carrying on business for the purpose of discharging liabilities lawfully assumed by it before 27th July 1967.

## PART II

### REGULATION OF INSURANCE COMPANIES

#### *Preliminary*

#### **12 Insurance companies to which Part II applies**

- (1) Subject to the provisions of this section, this Part of this Act applies to all insurance companies, whether established within or outside Great Britain, which carry on insurance business within Great Britain.
- (2) This Part of this Act does not apply to any insurance company which is registered under the Acts relating to friendly societies.
- (3) Where a trade union or an employers' association carries on insurance business, this Part of this Act does not apply to it as an insurance company if the insurance business is limited to the provision for its members of provident benefits or strike benefits.

In this subsection " trade union " and " employers' association " have the same meanings respectively as they have in the Trade Union and Labour Relations Act 1974.
- (4) This Part of this Act does not apply to a member of Lloyd's, or of any other association of underwriters approved for the purposes of Part I of this Act by the Secretary of State, who carries on insurance business of any class provided that he complies with the requirements set out in section 73 below and applicable to business of that class.
- (5) This Part of this Act does not apply to a person by reason only that he carries on pecuniary loss insurance business in the course of carrying on, and for the purposes of, banking business.
- (6) The Acts mentioned in subsection (2) above include Acts of the Parliament of Northern Ireland and Measures of the Northern Ireland Assembly.

*Accounts and statements*

**13 Annual accounts and balance sheets**

- (1) Every insurance company to which this Part of this Act applies shall, with respect to each financial year of the company, prepare a revenue account for the year, a balance sheet as at the end of the year and a profit and loss account for the year or, in the case of a company not trading for profit, an income and expenditure account for the year.
- (2) The contents of the documents required by subsection (1) above to be prepared shall be such as may be prescribed, but regulations may provide for enabling information required to be given by such documents to be given instead in a note thereon or statement or report annexed thereto or may require there to be given in such a note, statement or report such information in addition to that given in the documents as may be prescribed.
- (3) Regulations may, as respects such matters stated in such documents as aforesaid or in statements or reports annexed thereto as may be prescribed, require there to be given by such persons as may be prescribed and to be annexed to the documents certificates of such matters as may be prescribed.
- (4) If a form is prescribed for any such document as aforesaid or as that in which information authorised or required to be given in a statement or report annexed to any such document is to be given or for a certificate to be so annexed, the document shall be prepared, the information shall be given or, as the case may be, the certificate shall be framed, in that form.

**14 Periodic actuarial investigation of company with long term business**

- (1) Every insurance company to which this Part of this Act applies which carries on long term business—
  - (a) shall, once in every three years or at such shorter intervals as may be prescribed by the deed of settlement of the company or by its regulations or byelaws, cause an investigation to be made into its financial condition in respect of that business, including a valuation of its liabilities in respect thereof, by the person who for the time being is its actuary under section 15(1) below or section 3(5) of the Insurance Companies Amendment Act 1973; and
  - (b) when such an investigation has been made, or when at any other time an investigation into the financial condition of the company in respect of its long term business has been made with a view to the distribution of profits, or the results of which are made public, shall cause an abstract of the actuary's report of the investigation to be made.
- (2) Where under subsection (1) above an insurance company causes an abstract to be made of the report of an actuary on his investigation into the financial condition of the company in respect of its long term business, the company shall prepare a statement of its long term business at the date to which the accounts of the company are made up for the purposes of the investigation:

Provided that if the investigation is made annually the company may prepare such a statement at any time so long as it is made at least once in every five years.

- (3) For the purposes of any investigation to which this section applies the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.
- (4) The form and contents of any abstract or statement under this section shall be such as may be prescribed.

## **15 Appointment of actuary by company with long term business**

- (1) Every insurance company to which this Part of this Act applies shall within one month of beginning to carry on long term business appoint an actuary as actuary to the company; and whenever an appointment under this section or section 3(5) of the Insurance Companies Amendment Act 1973 comes to an end the company shall as soon as practicable make a fresh appointment.
- (2) A company making an appointment under this section shall within fourteen days serve on the Secretary of State a written notice stating that fact and the name and qualifications of the person appointed; and if an appointment under this section or the said section 3(5) comes to an end the company shall within fourteen days serve on the Secretary of State a written notice stating that fact and the name of the person concerned.

## **16 Annual statements by company with prescribed class of insurance business**

Classes of insurance business may be prescribed for the purposes of this section, and every insurance company to which this Part of this Act applies which carries on such business of a prescribed class shall annually prepare the prescribed statement of business of that class, being, if a form is prescribed for the statement, a statement in the prescribed form.

## **17 Audit of accounts**

- (1) The accounts and balance sheets of every insurance company to which this Part of this Act applies shall be audited in the prescribed manner by a person of the prescribed description, and regulations made for the purposes of this section may apply to such companies the provisions of the Companies Acts 1948 to 1967 relating to audit, subject to such adaptations and modifications as may appear necessary or expedient.
- (2) In subsection (1) above the reference to accounts and balance sheets shall include a reference to any statement or report annexed thereto giving information authorised or required by virtue of section 13(2) above to be given in a statement or report so annexed.

## **18 Deposit of accounts etc. with Secretary of State**

- (1) Every account, balance sheet, abstract or statement required by sections 13, 14 and 16 above and any report of the auditor of the company made in pursuance of section 17 above shall be printed, and five copies shall be deposited with the Secretary of State within six months after the close of the period to which the account, balance sheet, abstract, statement or report relates:

Provided that if in any case it is made to appear to the Secretary of State that the circumstances are such that a longer period than six months should be allowed, the

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Secretary of State may extend that period by such period not exceeding three months as he thinks fit.

- (2) There shall be deposited with the Secretary of State, at the same time as the documents mentioned in subsection (1) above, five printed copies of a statement of the names and the connection with the company of any persons who, during the period to which those documents relate—
  - (a) were authorised by the company to issue, or to the knowledge of the company have issued, any such invitation in relation to the company as is mentioned in subsection (1)(a) of section 64 below ; and
  - (b) were connected with the company as provided by regulations under that section.
- (3) One of the copies of any document deposited under subsection (1) or (2) above except an auditor's report shall be a copy signed—
  - (a) in any case—
    - (i) where there are more than two directors of the company, by at least two of those directors and, where there are not more than two directors, by all the directors;
    - (ii) by a chief executive, if any, of the company or (if there is no chief executive) by the secretary, if any; and
  - (b) in the case of an abstract or statement under section 14 above, by the actuary who made the investigation to which the abstract relates or by reference to which the statement was prepared.
- (4) One of the copies of any auditor's report deposited under subsection (1) above shall be a copy signed by the auditor.
- (5) The Secretary of State shall consider the documents deposited under subsections (1) and (2) above, and if any such document appears to him to be inaccurate or incomplete in any respect he shall communicate with the company with a view to the correction of any such inaccuracies and the supply of deficiencies.
- (6) There shall be deposited with every revenue account and balance sheet of a company any report on the affairs of the company submitted to the shareholders or policy holders of the company in respect of the financial year to which the account and balance sheet relate.
- (7) In this section any reference to an account or balance sheet includes a reference to any statement or report annexed thereto giving information authorised or required by virtue of subsection (2) of section 13 above to be so given and any certificate so annexed by virtue of subsection (3) of that section.

## **19 Right of shareholders and policy holders to receive copies of deposited documents**

- (1) Subject to subsection (2) below, an insurance company shall forward by post or otherwise to any shareholder or policy holder who applies for one—
  - (a) a printed copy of any of the documents last deposited by the company under subsection (1) or (2) of section 18 above;
  - (b) a copy of any document supplied to the Secretary of State under subsection (5) of that section which relates to any of those documents;

- (c) a copy of any report deposited with any of those documents under subsection (6) of that section.
- (2) If, in the opinion of the Secretary of State, the disclosure of information contained in—
- (a) a statement or report annexed to a document prepared in pursuance of section 13(1) above by an insurance company; or
  - (b) a statement prepared in pursuance of section 16 above by such a company,
- would be harmful to the business of the company or of any of its subsidiaries, the Secretary of State may dispense the company from complying with the obligation imposed by subsection (1) above to forward a copy of the document containing the information to a shareholder or policy holder who applies for it.

## **20 Deposit of accounts etc. by registered society**

- (1) A registered society (other than one registered in Northern Ireland) shall, in addition to depositing with the Secretary of State, as required by section 18 above, five copies of each document to which subsections (1) and (2) of that section apply, deposit, within the time limited by virtue of that section for depositing them, a copy with the appropriate registrar, being a copy signed by the like persons as those by whom the copies deposited under that section are required to be signed.
- (2) Subsection (6) of the said section 18 shall have effect in relation to the deposit by virtue of this section of accounts and balance sheets as it has effect in relation to the deposit by virtue of that section of accounts and balance sheets.
- (3) Section 71(1) of the Industrial and Provident Societies Act 1965 (which empowers the Treasury to make regulations respecting, among other things, the inspection of documents kept by the appropriate registrar under that Act) shall have effect as if the reference to documents kept by the appropriate registrar under that Act included a reference to documents deposited in pursuance of this section.
- (4) In this section " appropriate registrar " has the meaning given in section 73(1) of the said Act of 1965.

## **21 Periodic statements by company with prescribed class of business**

- (1) Every insurance company to which this Part of this Act applies which carries on business of a class or description prescribed for the purposes of this section shall prepare, at such intervals and for such periods as may be prescribed, a statement of its business of that class or description.
- (2) The form and contents of any statement under this section shall be such as may be prescribed.
- (3) Regulations may, as respects such matters contained in a statement under this section as may be prescribed, require there to be given by such persons as may be prescribed and to be annexed to the statement certificates of such matters and in such form as may be prescribed.
- (4) Five copies of any statement made under this section (with any certificate annexed thereto in pursuance of subsection (3) above) shall be deposited by the company with the Secretary of State within such period as may be prescribed, and one of those copies shall be a copy signed by the persons required to sign copies of statements made under section 16 above which are deposited under section 18 above.

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- (5) The whole or any part of any document deposited under subsection (4) above may be deposited by the Secretary of State with the registrar of companies and may be published by the Secretary of State in such ways as he thinks appropriate.

## **22 Statements of transactions of prescribed class or description**

- (1) Classes or descriptions of agreements or arrangements appearing to the Secretary of State as likely to be undesirable in the interests of policy holders may be prescribed for the purposes of this section, and every insurance company to which this Part of this Act applies or subordinate company within the meaning of section 26 below of any such company which enters into an agreement or arrangement of a class or description so prescribed shall, within such period as may be prescribed, furnish the Secretary of State with a statement containing such particulars of that agreement or arrangement as may be prescribed.
- (2) Different classes or descriptions of agreements or arrangements may be prescribed for the purposes of this section in relation to companies of different classes or descriptions.
- (3) The whole or any part of any statement furnished to the Secretary of State under this section may be deposited by him with the registrar of companies and may be published by the Secretary of State in such ways as he thinks appropriate.

*Assets and liabilities attributable to long term business*

## **23 Separation of assets and liabilities attributable to long term business**

- (1) Where an insurance company to which this Part of this Act applies carries on long term business of either or both classes—
  - (a) the company shall maintain an account in respect of that class or, as the case may be, each of those classes of long term business ; and
  - (b) the receipts of that class or, as the case may be, of each of those classes of business shall be entered in the account maintained for that class and shall be carried to and form a separate insurance fund with an appropriate name.
- (2) An insurance company to which this Part of this Act applies which carries on long term business of either or both classes shall maintain such books of account and other records as are necessary for identifying—
  - (a) the assets representing the fund or funds maintained by the company under subsection (1)(b) above (but without necessarily distinguishing between the funds if more than one); and
  - (b) the liabilities attributable to that class or, as the case may be, each of those classes of long term business.
- (3) An insurance company to which this Part of this Act applies which was carrying on long term business on 25th July 1973—
  - (a) shall in accordance with regulations made for the purposes of this paragraph make arrangements, during the financial year of the company beginning next after the date on which the regulations are made, for identifying the assets and liabilities of the company as on the last day of that financial year which are attributable to its long term business; and
  - (b) shall not be subject to the provisions of subsection (2) above until the day after the end of that financial year.

- (4) Regulations made for the purposes of subsection (3)(a) above may make provision for requiring companies to furnish the Secretary of State with certificates of such matters relating to the making of the arrangements, signed by such persons, as may be prescribed.

## **24 Application of assets of company with long term business**

- (1) Subject to subsections (2) and (3) and section 47(3) below, the assets representing the fund or funds maintained by an insurance company in respect of its long term business shall be applicable only for the purposes of that business.
- (2) Where the value of the assets mentioned in subsection (1) above is shown, by an investigation to which section 14 above applies or which is made in pursuance of a requirement imposed under section 34 below, to exceed the amount of the liabilities attributable to the company's long term business the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.
- (3) Nothing in subsection (1) above shall preclude an insurance company from exchanging, at fair market value, assets representing a fund maintained by the company in respect of its long term business for other assets of the company.
- (4) Any mortgage or charge (including a charge imposed by a court on the application of a judgment creditor and, in Scotland, a charge imposed by way of diligence) shall be void to the extent to which it contravenes subsection (1) above.
- (5) For the avoidance of doubt it is hereby declared that money from a fund maintained by a company in respect of its long term business may not be used for the purposes of any other business of the company notwithstanding any arrangement for its subsequent repayment out of the receipts of that other business.
- (6) No insurance company to which this Part of this Act applies, and no company of which any such insurance company is a subsidiary, shall declare a dividend at any time when the value of the assets representing the fund or funds maintained by the insurance company in respect of its long term business, as determined in accordance with any applicable valuation regulations, is less than the amount of the liabilities attributable to that business as so determined.

## **25 Allocations to policy holders**

- (1) Where in the case of an insurance company to which this Part of this Act applies—
- (a) there is an established surplus in which long term policy holders of any class are eligible to participate; and
  - (b) an amount has been allocated to policy holders of that class in respect of the last preceding established surplus in which policy holders of that class were eligible to participate,
- the company shall not apply assets representing any part of the surplus mentioned in paragraph (a) above for purposes other than those mentioned in section 24(1) above unless the company has allocated to policy holders of that class in respect of that surplus either an amount not less than the relevant minimum, or, if the requirements of subsection (3) below have been complied with, the smaller amount specified in the notice served under paragraph (a) of that subsection.

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- (2) Subject to subsections (6) and (7) below, the relevant minimum is an amount calculated by—
- (a) taking an amount which bears to the surplus mentioned in paragraph (a) of subsection (1) above the same proportion as the amount mentioned in paragraph (b) of that subsection bears to the surplus mentioned in that paragraph; and
  - (b) deducting an amount equal to one half of 1 per cent. of the amount of the surplus mentioned in the said paragraph (a).
- (3) The requirements of this subsection are that the company—
- (a) has served on the Secretary of State a written notice stating that it proposes to make an allocation of an amount (specifying it) which is smaller than the relevant minimum; and
  - (b) has published a statement approved by the Secretary of State in the London and Edinburgh Gazettes and in such other ways as he may have directed,
- and that a period of not less than fifty-six days has elapsed since the date, or the last date, on which the company has published the statement mentioned in paragraph (b) above as required by or under that paragraph.
- (4) In this section "established surplus" means an excess of assets representing the whole or a particular part of the fund or funds maintained by the company in respect of its long term business over the liabilities, or a particular part of the liabilities, of the company attributable to that business as shown by an investigation to which section 14 above applies or which is made in pursuance of a requirement imposed under section 34 below.
- (5) For the purposes of this section an amount is allocated to policy holders if, and only if—
- (a) bonus payments are made to them; or
  - (b) reversionary bonuses are declared in their favour or a reduction is made in the premiums payable by them ;
- and the amount of the allocation is, in a case within paragraph (a) above, the amount of the payments and, in a case within paragraph (b) above, the amount of the liabilities assumed by the company in consequence of the declaration or reduction.
- (6) For the purposes of this section the amount of any bonus payments made in anticipation of an established surplus shall be treated as an amount allocated in respect of that surplus; and for the purposes of subsection (2) above the amount of any surplus shall be treated as increased by the amount of any such payments made in anticipation of it.
- (7) Subsection (1) above shall not authorise the application for purposes other than those mentioned in section 24(1) above of assets representing any part of the surplus mentioned in subsection (1)(a) above which the company has decided to carry forward unappropriated; and for the purposes of subsection (2) above the amount of any surplus shall be treated as reduced by any part thereof which the company has decided to carry forward as aforesaid.

## **26 Restriction on transactions with connected persons**

- (1) Neither an insurance company to which this Part of this Act applies which carries on long term business nor a subordinate company of any such insurance company shall enter into a transaction to which this section applies—
- (a) at a time when the aggregate of the value of the assets and the amount of the liabilities attributable to such transactions already entered into by the insurance company and its subordinate companies exceeds the prescribed percentage of the total amount standing to the credit of the insurance company's long term funds ; or
  - (b) at any other time when the aggregate of the value of those assets and the amount of those liabilities would exceed that percentage if the transaction were entered into.
- (2) This section applies to any transaction entered into by any such insurance company as is mentioned in subsection (1) above (whether or not itself a subordinate company of another company), being a transaction under which—
- (a) a person connected with the insurance company will owe it money; or
  - (b) the insurance company acquires shares in a company which is a person connected with it; or
  - (c) the insurance company undertakes a liability to meet an obligation of a person connected with it or to help such a person to meet an obligation,
- if the right to receive the money would constitute a long term asset of the insurance company, the acquisition is made out of its long term funds or the liability would fall to be discharged out of those funds, as the case may be.
- (3) Without prejudice to subsection (2) above, this section applies to any transaction entered into by a subordinate company of any such insurance company as is mentioned in subsection (1) above, being a transaction under which—
- (a) the insurance company or a person connected with it will owe money to the subordinate company (not being money owed by the insurance company which can be properly paid out of its long term funds); or
  - (b) the subordinate company acquires shares in the insurance company or in a company which is a person connected with the insurance company ; or
  - (c) the subordinate company undertakes a liability to meet an obligation of the insurance company or of a person connected with that company or to help the insurance company or such a person to meet an obligation ;
- but where the subordinate company is itself such an insurance company as is mentioned in subsection (1) above this section shall not by virtue of this subsection apply to any such transaction if the right to receive the money would constitute a long term asset of the subordinate company, the acquisition is made out of its long term funds or the liability would fall to be discharged out of those funds, as the case may be.
- (4) In this section " subordinate company", in relation to any such insurance company as is mentioned in subsection (1) above, means—
- (a) a company having equity share capital some or all of which is held by the insurance company as part of its long term assets where the share capital so held by the insurance company—
    - (i) amounts to more than half in nominal value of that share capital; and
    - (ii) confers on the insurance company the power to appoint or remove the holders of all or a majority of the directorships of the company whose

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share capital is held and more than one half of the voting power at any general meeting of that company ;

- (b) a company having equity share capital some or all of which is held by another company which is itself a subordinate company of the insurance company where the share capital held by that other company—

- (i) amounts to more than half in nominal value of that share capital; and
- (ii) confers on that other company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company;

and for the purposes of this subsection share capital held for any person by a nominee shall (except where that person is concerned only in a fiduciary capacity) be treated as held by that person, and share capital held by a person in a fiduciary capacity or by way of security shall be treated as not held by that person.

- (5) For the purposes of this section a person is connected with any such insurance company as is mentioned in subsection (1) above if that person is not a subordinate company of the insurance company but—

- (a) controls, or is a partner of a person who controls, the insurance company; or
- (b) being a company, is controlled by the insurance company or by another person who also controls the insurance company; or
- (c) is a director of the insurance company or the wife or husband or a minor son or daughter of such a director;

and for the purposes of this subsection a person controls a company if he is a controller of it within the meaning of section 7(2)(c) above.

- (6) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.

- (7) In this section—

" company " (except in the expression " insurance company ") and " equity share capital " have the meaning given in section 154(5) of the Companies Act 1948 ;

" liability " includes a contingent liability;

" long term assets " and " long term funds ", in relation to an insurance company, mean respectively assets representing the fund or funds maintained by the company in respect of its long term business and that fund or those funds;

" the prescribed percentage " means 5 per cent. or such greater percentage as may from time to time be prescribed for the purposes of this section by regulations;

" share " has the same meaning as in the Companies Act 1948;

" son " includes step-son and adopted son, " daughter " includes step-daughter and adopted daughter, and " minor ", in relation to Scotland, includes pupil.

- (8) This section shall not be construed as making any transaction unenforceable as between the parties thereto or as otherwise making unenforceable any rights or liabilities in respect of property.

### *Liabilities of unlimited amount*

#### **27 Avoidance of contracts for unlimited amounts**

A contract entered into after the coming into force of this section by an insurance company to which this Part of this Act applies shall be void if—

- (a) it is a contract under which the company undertakes a liability the amount, or maximum amount, of which is uncertain at the time when the contract is entered into; and
- (b) it is not a contract of insurance or a contract of a class or description exempted by regulations from the operation of this section.

### *Powers of intervention*

#### **28 Grounds on which powers are exercisable**

(1) Any power conferred on the Secretary of State by sections 29 to 37 below shall be exercisable in relation to any insurance company to which this Part of this Act applies and shall be exercisable on any of the following grounds—

- (a) that the Secretary of State considers the exercise of the power to be desirable for protecting policy holders or potential policy holders of the company against the risk that the company may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders;
- (b) that it appears to him—
  - (i) that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed thereby;
  - (ii) that a company of which it is a subsidiary has failed to satisfy an obligation to which it is or was subject by virtue of section 24(6) above or section 8(6) of the Insurance Companies Amendment Act 1973; or
  - (iii) that a subordinate company within the meaning of section 26 above of the company has failed to satisfy an obligation to which it is or was subject by virtue of that section or section 22 above or of section 6 or 10 of the said Act of 1973 ;
- (c) that it appears to him that the company has furnished misleading or inaccurate information to the Secretary of State under or for the purposes of any provision of this Act or any enactment repealed thereby;
- (d) that he is not satisfied that adequate arrangements are in force or will be made for the reinsurance of risks against which persons are insured by the company in the course of carrying on business, being risks of a class in the case of which he considers that such arrangements are required;
- (e) that there exists a ground on which he would be prohibited, by section 7 above, from issuing an authorisation with respect to the company if it were applied for.

(2) Any power mentioned in subsection (1) above shall also be exercisable in relation to any such company as is there mentioned—

- (a) if it is carrying on general business, on the ground that the Secretary of State is not satisfied that the company is not to be deemed (by virtue of section 44(1)

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below) for the purposes of section 222 or 399 of the Companies Act 1948 to be unable to pay its debts;

- (b) if it is carrying on long term business, on the ground that he is not satisfied that the value of the assets representing the fund or funds maintained in respect of its long term business exceeds the amount of the liabilities of its long term business;

and for the purposes of paragraph (b) above the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.

- (3) The power conferred on the Secretary of State by subsections (2) to (4) of section 36 below shall also be exercisable on the ground that he considers the exercise of that power to be desirable in the general interests of persons who are or may become policy holders of insurance companies to which this Part of this Act applies, and references in those subsections to a company include references to any body (whether incorporated or not) which appears to the Secretary of State to be an insurance company to which this Part of this Act applies.
- (4) Any power conferred on the Secretary of State by sections 29 to 34, 36(1) or 37 below shall also be exercisable, whether or not any of the grounds specified in subsections (1) to (3) above exists, in relation to—
  - (a) any body in respect of which the Secretary of State has issued an authorisation;
  - (b) any insurance company to which this Part of this Act applies in the case of which a person has become a controller within the meaning of section 7(2) (c) above,

if that power is exercised before the expiration of the period of five years beginning with the date on which the authorisation was issued or that person became such a controller, as the case may be; but no requirement imposed by virtue of this subsection shall continue in force after the expiration of the period of ten years beginning with that date.

- (5) The power conferred on the Secretary of State by section 37 below shall not be exercisable except in a case in which he considers that the purpose mentioned in that section cannot be appropriately achieved by the exercise of the powers conferred by sections 29 to 36 below or by the exercise of those powers alone.
- (6) The Secretary of State shall, when exercising any power conferred by sections 29 to 37 below, state the ground on which he is exercising it or, if he is exercising it by virtue of subsection (4) above, that he is so exercising it; but this subsection shall not apply where the Secretary of State has given notice under section 38 or 39 below of the proposed exercise of the power.
- (7) The grounds specified in subsections (1)(b) to (e), (2) and (3) above are without prejudice to the ground specified in subsection (1)(a) above.

## **29 Restrictions on new business**

- (1) The Secretary of State may require a company—
  - (a) not to effect any contracts of insurance or contracts of insurance of a specified description ;
  - (b) not to vary any contracts of insurance of a specified description, being contracts effected in the course of carrying on general business and in force when the requirement is imposed;

- (c) not to vary in such a manner as to increase the liabilities of the company any contracts of insurance of a specified description, being contracts effected in the course of carrying on long term business and in force when the requirement is imposed.
- (2) A requirement under this section may apply to contracts of insurance whether or not the effecting of them falls within a class of insurance business which the company is for the time being authorised to carry on.

### **30 Requirements about investments**

- (1) The Secretary of State may require a company—
  - (a) not to make investments of a specified class or description;
  - (b) to realise, before the expiration of a specified period (or such longer period as the Secretary of State may allow), the whole or a specified proportion of investments of a specified class or description held by the company when the requirement is imposed.
- (2) A requirement under this section may be framed so as to apply only to investments which are (or, if made, would be) assets representing a fund or funds maintained by the company in respect of its long term business or so as to apply only to other investments.

### **31 Maintenance of assets in the United Kingdom**

- (1) The Secretary of State may require that assets of a company of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in the United Kingdom.
- (2) The Secretary of State may direct that for the purposes of any requirement under this section assets of a specified class or description shall or shall not be treated as assets maintained in the United Kingdom.
- (3) The Secretary of State may direct that for the purposes of any requirement under this section the domestic liabilities of a company, or such liabilities of any class or description, shall be taken to be the net liabilities after deducting any part of them which is reinsured.
- (4) A requirement imposed under this section may be framed so as to come into effect immediately after the day on which it is imposed or so as to come into effect after the expiration of a specified period (or such longer period as the Secretary of State may allow).
- (5) In this section any reference to a domestic liability is a reference to a liability arising under a contract made in the United Kingdom, or under a contract of insurance made elsewhere, being a contract of insurance in whose case, if only one premium is payable thereunder, that premium, or, if more than one premium is payable thereunder, any of those premiums, is payable or has been paid in the United Kingdom.
- (6) Subject to subsection (7) below, in computing the amount of any liabilities for the purposes of this section all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.
- (7) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations; and

subsection (6) above shall have effect subject to any such regulations made by virtue of section 78(2) below.

### **32 Custody of assets**

- (1) The Secretary of State may, in the case of a company on which a requirement has been imposed under section 31 above, impose an additional requirement that the whole or a specified proportion of the assets to which the requirement under that section applies shall be held by a person approved by him for the purposes of the requirement under this section as trustee for the company.
- (2) Section 31(4) above shall apply also to a requirement under this section.
- (3) Assets of a company held by a person as trustee for a company shall be taken to be held by him in compliance with a requirement imposed under this section if, and only if, they are assets in whose case the company has given him written notice that they are to be held by him in compliance with such a requirement or they are assets into which assets in whose case the company has given him such written notice have, by any transaction or series of transactions, been transposed by him on the instructions of the company.
- (4) No assets held by a person as trustee for a company in compliance with a requirement imposed under this section shall, so long as the requirement is in force, be released except with the consent of the Secretary of State.
- (5) If a mortgage or charge is created by a company at a time when there is in force a requirement imposed on the company by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee for the company in compliance with the requirement, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the company.

### **33 Limitation of premium income**

- (1) The Secretary of State may require a company to take all such steps as are requisite to secure that the aggregate of the premiums—
  - (a) to be received by the company in consideration of the undertaking by it during a specified period of liabilities in the course of carrying on general business or any specified part of such business; or
  - (b) to be received by it in a specified period in consideration of the undertaking by the company during that period of liabilities in the course of carrying on long term business or any specified part of such business,shall not exceed a specified amount.
- (2) A requirement under this section may apply either to the aggregate premiums to be received as mentioned in subsection (1) above or to the aggregate of those premiums after deducting any premiums payable by the company for reinsuring the liabilities in consideration of which the first-mentioned premiums are receivable.

### **34 Actuarial investigations**

- (1) The Secretary of State may require a company which carries on long term business—

- (a) to cause the person who for the time being is its actuary under section 15(1) above or section 3(5) of the Insurance Companies Amendment Act 1973 to make an investigation into its financial condition (including a valuation of its liabilities) in respect of that business, or any specified part of that business, as at a specified date;
  - (b) to cause an abstract of that person's report of the investigation to be made ; and
  - (c) to prepare a statement of its long term business or of that part thereof as at that date.
- (2) For the purposes of any investigation made in pursuance of a requirement under this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.
- (3) The form and contents of any abstract or statement made in pursuance of a requirement under this section shall be the same as for an abstract or statement made under section 14 above.
- (4) Five copies of any abstract or statement made in pursuance of a requirement under this section shall be deposited by the company with the Secretary of State on or before such date as he may specify, and one of those copies shall be a copy signed by the persons required to sign copies of abstracts or statements made under the said section 14 which are deposited under section 18 above.

### **35 Acceleration of information required by accounting provisions**

- (1) The Secretary of State may require any documents which under section 18 above are required to be deposited with him by a company within the period specified in that section to be deposited with him on or before a specified date before the end of that period, being a date not earlier than three months before the end of that period and not earlier than one month after the date on which the requirement is imposed.
- (2) The Secretary of State may require any statement which under section 21 above is required to be deposited with him by a company within a period prescribed under that section to be deposited with him on or before a specified date before the end of that period.

### **36 Power to obtain information and require production of documents**

- (1) The Secretary of State may require a company to furnish him, at specified times or intervals, with information about specified matters being, if he so requires, information verified in a specified manner.
- (2) The Secretary of State may—
  - (a) require a company to produce, at such time and place as he may specify, such books or papers as he may specify; or
  - (b) authorise any person, on producing (if required so to do) evidence of his authority, to require a company to produce to him forthwith any books or papers which that person may specify.
- (3) Where by virtue of subsection (2) above the Secretary of State or a person authorised by him has power to require the production of any books or papers from any company, the Secretary of State or that person shall have the like power to require production of those books or papers from any person who appears to him to be in possession of

them; but where any person from whom such production is required claims a lien on books or papers produced by him, the production shall be without prejudice to the lien.

- (4) Any power conferred by or by virtue of subsections (2) and (3) above to require a company or other person to produce books or papers shall include power—
  - (a) if the books or papers are produced—
    - (i) to take copies of them or extracts from them; and
    - (ii) to require that person, or any other person who is a present or past director, controller or auditor of, or is or was at any time employed by, the company in question, to provide an explanation of any of them;
  - (b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (6) References in this section to books and papers shall be construed as if they were contained in the Companies Act 1948.

### **37 Residual power to impose requirements for protection of policy holders**

The Secretary of State may require a company to take such action as appears to him to be appropriate for the purpose of protecting policy holders or potential policy holders of the company against the risk that the company may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders.

### **38 Notice of proposed exercise of power under s. 29**

- (1) Before exercising with respect to a company the power conferred by section 29 above the Secretary of State shall serve on the company a written notice stating—
  - (a) that the Secretary of State is considering exercising that power and the ground on which he is considering the exercise of the power; and
  - (b) that the company may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if the company so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (2) Subsection (1) above shall not apply if the ground on which the Secretary of State proposes to exercise the power is that specified in section 28(1)(e) above unless the person whose fitness is in question is a controller of the company; and, if that person is a controller of the company, the Secretary of State, before exercising the power, shall also serve a written notice on that person containing the matters mentioned in subsection (1) above, taking references to the company as references to that person.
- (3) A notice under this section shall give particulars of the ground on which the Secretary of State is considering the exercise of the power except that no particulars need be given if the ground is that mentioned in section 28(2) above.
- (4) Where representations are made in accordance with this section the Secretary of State shall take them into consideration before exercising the power.

- (5) This section shall not apply in relation to the exercise of the power conferred by section 29 above where, by virtue of subsection (4) of section 28 above, it is exercised by the Secretary of State when issuing an authorisation; and in relation to any other exercise of that power by virtue of that subsection this section shall have effect as if subsection (1)(a) required the notice to state that the Secretary of State is considering exercising the power by virtue of the said subsection (4) and as if subsections (2) and (3) were omitted.

### **39 Notice of proposed exercise of powers on ground of unfitness of director or manager**

- (1) Before exercising with respect to a company any power or powers conferred by sections 29 to 37 above on the ground specified in section 28(1)(e) above where the person whose fitness is in question is a director, not being a controller, of the company or a manager of the company, the Secretary of State shall serve on that person a written notice stating—
- (a) that the Secretary of State is considering exercising a power or powers conferred by those sections and the ground on which he is considering the exercise of the power or powers; and
  - (b) that the person on whom the notice is served may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if that person so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (2) Unless the Secretary of State, after considering any representations made in accordance with subsection (1) above by the person served with a notice under that subsection, decides not to exercise the power or powers in relation to which the notice was served, he shall before exercising the power or powers serve on the company a written notice—
- (a) containing the matters mentioned in paragraphs (a) and (b) of that subsection, taking references to the person there mentioned as references to the company; and
  - (b) specifying the power or powers which he proposes to exercise and, if the power or one of them is that conferred by section 37 above specifying the manner of its proposed exercise.
- (3) A notice under this section shall give particulars of the ground on which the Secretary of State is considering the exercise of the power or powers in question.
- (4) Where representations are made in accordance with this section the Secretary of State shall take them into consideration before exercising the power or powers in question.
- (5) A requirement imposed on a company in the exercise of any power or powers to which this section applies may be framed so as to come into effect after the expiration of a specified period (or such longer period as the Secretary of State may allow) unless before the expiration of that period the person whose fitness is in question has ceased to be a director or manager of the company.

**40 Rescission, variation and publication of requirements**

- (1) The Secretary of State may rescind a requirement imposed under sections 29 to 37 above if it appears to him that it is no longer necessary for the requirement to continue in force, and may from time to time vary any such requirement.
- (2) No requirement imposed by virtue of subsection (4) of section 28 above shall be varied after the expiration of the period of five years mentioned in that subsection except in a manner which relaxes that requirement.
- (3) A rescission under subsection (1) above of a requirement imposed under section 29 above may be limited so as to apply only to contracts of a specified description.
- (4) Notice of the imposition of a requirement under the said section 29 and of the rescission or variation of any such requirement shall be published by the Secretary of State in the London and Edinburgh Gazettes and in such other ways as appear to him expedient for notifying the public.
- (5) Where a requirement is imposed under section 32 above or any such requirement is rescinded or varied the Secretary of State shall forthwith serve—
  - (a) except where paragraph (b) below applies, on the registrar of companies;
  - (b) if the requirement is imposed on a registered society (other than one registered in Northern Ireland), on the appropriate registrar as defined by section 73(1) of the Industrial and Provident Societies Act 1965,
 a written notice stating that fact and, in the case of a notice of the imposition of a requirement, setting out the terms of the requirement, in the case of a notice of the rescission of a requirement, identifying the requirement and, in the case of a notice of a variation of a requirement, identifying the requirement and setting out the terms of the variation.
- (6) A notice served in pursuance of subsection (5) above on the registrar of companies shall be open to inspection, and a copy thereof may be procured by any person on payment of such fee as the Secretary of State may direct; and every document purporting to be certified by the registrar of companies to be a copy of such a notice shall be deemed to be a copy of that notice and shall be received in evidence as if it were the original notice unless some variation between it and the original is proved.
- (7) Section 71(1) of the said Act of 1965 (which empowers the Treasury to make regulations respecting, among other things, the inspection of documents kept by the appropriate registrar under that Act) shall have effect as if the reference to documents so kept included a reference to notices served in pursuance of subsection (5) above on the appropriate registrar.

**41 Power of Secretary of State to bring civil proceedings on behalf of insurance company**

- (1) Section 37(1) of the Companies Act 1967 (power of Secretary of State to bring civil proceedings on behalf of body corporate) shall have effect in relation to an insurance company to which this Part of this Act applies (whether or not a body corporate) as if the reference to any information or document obtained under the provisions there mentioned included a reference to any information or document obtained under this Act or any enactment repealed thereby.
- (2) Where under a judgment given or decree pronounced in proceedings brought by virtue of the said section 37(1) on behalf of an insurance company a sum is recovered in

respect of a loss of assets representing a fund or funds maintained by the company in respect of its long term business the court shall direct that the sum shall be treated for the purposes of this Act as assets of that fund or those funds and this Act shall have effect accordingly.

### *Transfers of long term business*

## **42 Sanction of court for transfer of long term business**

- (1) Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on by an insurance company to which this Part of this Act applies (" the transferor company ") is to be transferred to another body whether incorporated or not (" the transferee company ") the transferor company or transferee company may apply to the court, by petition, for an order sanctioning the scheme.
- (2) The court shall not entertain an application under this section unless the petition is accompanied by a report on the terms of the scheme by an independent actuary and the court is satisfied that the requirements of subsection (3) below have been complied with.
- (3) The said requirements are—
  - (a) that a notice has been published in the London and Edinburgh Gazettes and, except where the court has otherwise directed, in two national newspapers stating that the application is to be made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in paragraph (d) below will be available as required by that paragraph;
  - (b) except where the court has otherwise directed, that a statement—
    - (i) setting out the terms of the scheme ; and
    - (ii) containing a summary of the report mentioned in subsection (2) above sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term policy holders of the companies concerned,has been sent to each of those policy holders and to every member of those companies;
  - (c) that a copy of the petition, of the report mentioned in subsection (2) above and of any statement sent out under paragraph (b) above has been served on the Secretary of State and that a period of not less than twenty-one days has elapsed since the date of service;
  - (d) that copies of the petition and of the report mentioned in subsection (2) above have been open to inspection at offices in Great Britain of the companies concerned for a period of not less than twenty-one days beginning with the date on which the notice mentioned in paragraph (a) above was published as required by that paragraph.
- (4) Each of the companies concerned shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the petition and of the report mentioned in subsection (2) above to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.
- (5) On any petition under this section—
  - (a) the Secretary of State, and

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- (b) any person (including any employee of the transferor company or the transferee company) who alleges that he would be adversely affected by the carrying out of the scheme,

shall be entitled to be heard.
- (6) The court shall not make an order sanctioning the scheme unless it is satisfied that the transferee company is, or immediately after the making of the order will be, authorised under section 3 above to carry on long term business of the class or classes to be transferred under the scheme.
- (7) No such transfer as is mentioned in subsection (1) above shall be carried out unless the scheme relating to the transfer has been sanctioned by the court in accordance with this section; and no order shall be made under section 206 or 208 of the Companies Act 1948 (compromises and arrangements between a company and its creditors or members) in respect of so much of any compromise or arrangement as involves any such transfer.
- (8) In this section "the court" means the High Court of Justice in England except that it means—
  - (a) the Court of Session if the transferor company and the transferee company are registered or have their head offices in Scotland ; and
  - (b) either the High Court of Justice in England or the Court of Session if one only of those companies is registered or has its head office in Scotland.
- (9) This section does not apply to any scheme if the transferor company and transferee company are registered or have their head offices in Northern Ireland; and subsection (7) above does not apply if either of those companies is registered or has its head office in Northern Ireland and the scheme has been sanctioned by the High Court of Justice in Northern Ireland.
- (10) Subsection (7) above does not apply to a transfer of long term business carried on elsewhere than in Great Britain but, save as aforesaid, this section applies whether or not the long term business is carried on in Great Britain and whether or not the scheme involves the transfer of any other part of the transferor company's undertaking or the amalgamation of that company with one or more other companies.

#### **43 Provisions supplementary to s. 42**

- (1) Where the court makes an order under section 42 above sanctioning a scheme the court may, either by that order or by any subsequent order, make provision for all or any of the following matters—
  - (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
  - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person ;
  - (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
  - (d) the dissolution, without winding up, of the transferor company;
  - (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

- (2) Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.
- (3) For the purposes of any provision requiring the delivery of an instrument of transfer as a condition for the registration of a transfer of any property (including in particular section 75 of the Companies Act 1948 and section 56(4) of the Finance Act 1946) an order which by virtue of this section operates to transfer any property shall be treated as an instrument of transfer.
- (4) Where a scheme is sanctioned by an order of the court under section 42 above the transferee company shall, within ten days from the date on which the order is made or such longer period as the Secretary of State may allow, deposit two office copies of the order with the Secretary of State.
- (5) In this section " property " includes property, rights and powers of every description, " liabilities " includes duties and " shares " and " debentures " have the same meaning as in the Companies Act 1948.

#### *Insolvency and winding up*

### **44 Margin of solvency for general business**

- (1) An insurance company to which this Part of this Act applies, being a company which carries on (whether within or outside Great Britain) general business, shall be deemed for the purposes of sections 222 and 399 of the Companies Act 1948 (winding up of company unable to pay its debts) to be unable to pay its debts if—
  - (a) at any time in its first financial year the value of its assets does not exceed the amount of its liabilities by, £50,000; or
  - (b) at any time after the expiration of that year the value of its assets does not exceed the amount of its liabilities by the amount which is the relevant amount for the purposes of section 4(1)(a) above ;and the provisions of this Act as to winding up shall have effect accordingly.
- (2) For the purposes of this section—
  - (a) in computing the amount of the liabilities of an insurance company, all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital; and
  - (b) the general premium income of an insurance company in any year shall be taken to be the net amount, after deduction of any premiums paid by the company for reinsurance, of the premiums received by the company in that year in respect of insurance business other than long term business.
- (3) For the purposes of this section the value of any assets and the amount of any liabilities shall, subject to subsections (4) and (5) below, be determined in accordance with any applicable valuation regulations, and subsection (2)(a) above shall have effect subject to any such regulations made by virtue of section 78(2) below.
- (4) In the case of an insurance company which carries on long term business as well as general business the amount of the liabilities of its long term business at any time shall, for the purposes of this section, be taken to be—

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- (a) an amount equal to the total amount at that time standing to the credit of the fund or funds maintained by the company in respect of its long term business ; or
  - (b) the amount of those liabilities at that time as determined in accordance with any applicable valuation regulations,

whichever is the greater.
- (5) Regulations made for the purposes of this section may require that, in every balance sheet prepared under section 13 above by an insurance company carrying on general business, there shall be included a certificate—
  - (a) in such form and signed by such persons as may be prescribed by the regulations ; and
  - (b) containing such a statement with respect to the assets and liabilities of the company as may be so prescribed;

and if any such company fails to comply with the regulations so made the value of its assets shall, in any proceedings under this section for the winding up of the company, be deemed, until the contrary is proved, not to exceed the amount of its liabilities by the amount required by subsection (1) above.
- (6) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with whether by virtue of section 47 below or otherwise.

#### **45 Winding up of insurance companies under Companies Act 1948**

The court may order the winding up, in accordance with the Companies Act 1948, of an insurance company to which this Part of this Act applies and the provisions of that Act shall apply accordingly subject to the modification that the company may be ordered to be wound up on the petition of ten or more policy holders owning policies of an aggregate value of not less than £10,000:

Provided that such a petition shall not be presented except by leave of the court, and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the court and until security for costs for such amount as the court may think reasonable has been given.

#### **46 Winding up on petition of Secretary of State**

- (1) The Secretary of State may present a petition for the winding up, in accordance with the Companies Act 1948, of an insurance company to which this Part of this Act applies, being a company which may be wound up by the court under the provisions of that Act, on the ground—
  - (a) that the company is unable to pay its debts within the meaning of sections 222 and 223 or section 399 of that Act;
  - (b) that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed thereby; or
  - (c) that the company, being under the obligation imposed by section 147 of the said Act of 1948 with respect to the keeping of proper books of account, has failed to satisfy that obligation or to produce books kept in satisfaction of that obligation and that the Secretary of State is unable to ascertain its financial position.

- (2) In any proceedings on a petition to wind up an insurance company presented by the Secretary of State under subsection (1) above, evidence that the company was insolvent—
  - (a) at the close of the period to which—
    - (i) the accounts and balance sheet of the company last deposited under section 18 above; or
    - (ii) any statement of the company last deposited under section 21 above, relate; or
  - (b) at any date or time specified in a requirement under section 34 or 36 above, shall be evidence that the company continues to be unable to pay its debts, unless the contrary is proved.
- (3) If, in the case of an insurance company to which this Part of this Act applies, being a company which may be wound up by the court under the provisions of the said Act of 1948, it appears to the Secretary of State that it is expedient in the public interest that the company should be wound up, he may, unless the company is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up.
- (4) Where a petition for the winding up of an insurance company to which this Part of this Act applies is presented by a person other than the Secretary of State, a copy of the petition shall be served on him and he shall be entitled to be heard on the petition.

#### **47 Winding up of insurance companies with long term business**

- (1) No insurance company to which this Part of this Act applies which is an unincorporated body and carries on long term business shall be made the subject of bankruptcy proceedings or, in Scotland, sequestration proceedings.
- (2) No insurance company to which this Part of this Act applies which carries on long term business shall be wound up voluntarily.
- (3) Section 24(1) above shall not 'have effect in relation to the winding up of a company to which section 23(1) above applies but, subject to subsection (4) below and to rules made by virtue of section 51(2) below, in any such winding up—
  - (a) the assets representing the fund or funds maintained by the company in respect of its long term business shall be available only for meeting the liabilities of the company attributable to that business;
  - (b) the other assets of the company shall be available only for meeting the liabilities of the company attributable to its other business.
- (4) Where the value of the assets mentioned in either paragraph of subsection (3) above exceeds the amount of the liabilities mentioned in that paragraph the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.
- (5) In relation to the assets falling within either paragraph of subsection (3) above the creditors mentioned in subsections (1) and (2) of section 246 of the Companies Act 1948 shall be only those who are creditors in respect of liabilities falling within that paragraph; and any general meetings of creditors summoned for the purposes of that section shall accordingly be separate general meetings of the creditors in respect of the liabilities falling within each paragraph.

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- (6) Where under section 333(1) of the said Act of 1948 (defalcations of directors etc. disclosed in course of winding up) a court orders any money or property to be repaid or restored to a company or any sum to be contributed to its assets then, if and so far as the wrongful act which is the reason for the making of the order related to assets representing a fund or funds maintained by the company in respect of its long term business, the court shall include in the order a direction that the money, property or contribution shall be treated for the purposes of this Act as assets of that fund or those funds and this Act shall have effect accordingly.

#### **48 Continuation of long term business of insurance company in liquidation**

- (1) This section has effect in relation to the winding up of an insurance company to which this Part of this Act applies, being a company carrying on long term business.
- (2) The liquidator shall, unless the court otherwise orders, carry on the long term business of the company with a view to its being transferred as a going concern to another insurance company, whether an existing company or a company formed for that purpose; and, in carrying on that business as aforesaid, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.
- (3) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the company attributable to its long term business require the appointment of a special manager of the company's long term business, he may apply to the court, and the court may on such application appoint a special manager of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.
- (4) Subsections (2) and (3) of section 263 of the Companies Act 1948 (special manager to give security and receive remuneration) shall apply to a special manager appointed under subsection (3) above as they apply to a special manager appointed under that section.
- (5) The court may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by the company in the course of carrying on its long term business.
- (6) The court may, on the application of the liquidator, a special manager appointed under subsection (3) above or the Secretary of State, appoint an independent actuary to investigate the long term business of the company and to report to the liquidator, the special manager or the Secretary of State, as the case may be, on the desirability or otherwise of that business being continued and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.
- (7) Notwithstanding section 245(1) of the said Act of 1948 (which requires a liquidator to obtain the sanction of the court or committee of inspection for the bringing of legal proceedings in the name of and on behalf of the company) the liquidator may without any such sanction make an application in the name of and on behalf of the company under section 42 above.
- (8) In this section "the court" means the court having jurisdiction to wind up the company.

## **49      Subsidiary companies**

- (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to an insurance company to which this Part of this Act applies under an arrangement in pursuance of which the first-mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which the transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the court, the court shall, subject to the provisions of this section, order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the court necessary, with a view to the companies being wound up as if they were one company.
- (2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the court, be the commencement of the winding up of the subsidiary company.
- (3) In adjusting the rights and liabilities of the members of the several companies between themselves, the court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.
- (4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the court shall not direct the subsidiary company to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the court is of opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.
- (5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.
- (6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

## **50      Reduction of contracts as alternative to winding up**

In the case of an insurance company which has been proved to be unable to pay its debts, the court may, if it thinks fit, reduce the amount of the contracts of the company on such terms and subject to such conditions as the court thinks just, in place of making a winding up order.

## **51      Winding up rules**

- (1) Rules may be made under section 365 of the Companies Act 1948 (general rules about winding up) for determining the amount of the liabilities of an insurance company to

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policy holders of any class or description for the purpose of proof in a winding up and generally for carrying into effect the provisions of this Part of this Act with respect to the winding up of insurance companies.

- (2) Without prejudice to the generality of subsection (1) above, rules under the said section 365 may make provision for all or any of the following matters—
- (a) the identification of the assets and liabilities falling within either paragraph of subsection (3) of section 47 above;
  - (b) the apportionment between the assets falling within paragraphs (a) and (b) of that subsection of the costs, charges and expenses of the winding up and of any debts of the company having priority under section 319 of the said Act of 1948;
  - (c) the determination of the amount of liabilities of any description falling within either paragraph of that subsection for the purpose of establishing whether or not there is any such excess in respect of that paragraph as is mentioned in subsection (4) of section 47 above;
  - (d) the application of assets within paragraph (a) of the said subsection (3) for meeting the liabilities within that paragraph;
  - (e) the application of assets representing any such excess as is mentioned in the said subsection (4).

#### *Changes of director, controller or manager*

## **52 Approval of proposed managing director or chief executive of insurance company**

- (1) No insurance company to which this Part of this Act applies shall appoint a person as managing director or chief executive of the company unless—
- (a) the company has served on the Secretary of State a written notice stating that it proposes to appoint that person to that position and containing such particulars as may be prescribed; and
  - (b) either the Secretary of State has, before the expiration of the period of three months beginning with the date of service of that notice, notified the company in writing that there is no objection to that person being appointed to that position or that period has elapsed without the Secretary of State having served on the company a written notice of objection.
- (2) A notice served by a company under subsection (1)(a) above shall contain a statement signed by the person proposed to be appointed that it is served with his knowledge and consent.
- (3) The Secretary of State may serve a notice of objection under subsection (1) above on the ground that it appears to him that the person proposed to be appointed is not a fit and proper person to be appointed to the position in question, but before serving such a notice the Secretary of State shall serve on the company and on that person a preliminary written notice stating—
- (a) that the Secretary of State is considering the service on the company of a notice of objection on that ground; and
  - (b) that the company and that person may, within the period of one month from the date of service of the preliminary notice, make written representations to the Secretary of State and, if the company or that person so requests, oral

representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.

- (4) The Secretary of State shall not be obliged to disclose to the company or to the person proposed to be appointed any particulars of the ground on which he is considering the service on the company of a notice of objection.
- (5) Where representations are made in accordance with this section the Secretary of State shall take them into consideration before serving the notice of objection.

**53      Approval of person proposing to become controller of insurance company where s. 52 does not apply**

- (1) No person shall become a controller of an insurance company to which this Part of this Act applies otherwise than by virtue of an appointment in relation to which section 52 above has effect unless—
  - (a) he has served on the Secretary of State a written notice stating that he intends to become a controller of that company and containing such particulars as may be prescribed; and
  - (b) either the Secretary of State has, before the expiration of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming a controller of the company or that period has elapsed without the Secretary of State having served on him a written notice of objection.
- (2) The Secretary of State may serve a notice of objection under subsection (1) above on the ground that it appears to him that the person concerned is not a fit and proper person to be a controller of the company, but before serving such a notice the Secretary of State shall serve on that person a preliminary written notice stating—
  - (a) that the Secretary of State is considering the service on him of a notice of objection on that ground ; and
  - (b) that that person may, within the period of one month from the date of service of the preliminary notice, make written representations to the Secretary of State and, if that person so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (3) The Secretary of State shall not be obliged to disclose to any person any particulars of the ground on which he is considering the service on him of a notice of objection.
- (4) Where representations are made in accordance with this section the Secretary of State shall take them into consideration before serving the notice of objection.

**54      Duty to notify change of director, controller or manager**

- (1) A person who becomes or ceases to be a controller of an insurance company to which this Part of this Act applies shall, before the expiration of the period of seven days beginning with the day next following that on which he does so, notify the insurance company in writing of that fact and of such other matters as may be prescribed ; and a person who becomes a director or manager of any such insurance company shall, before the expiration of the period of seven days beginning with the day next following that on which he does so, notify the insurance company in writing of such matters as may be prescribed.

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- (2) An insurance company to which this Part of this Act applies shall give written notice to the Secretary of State of the fact that any person has become or ceased to be a director, controller or manager of the company and of any matter of which any such person is required to notify the company under subsection (1) above; and that notice shall be given before the expiration of the period of fourteen days beginning with the day next following that on which that fact or matter comes to the company's knowledge.

### *Miscellaneous*

## **55 Documents deposited with Secretary of State**

- (1) The Secretary of State shall deposit with the registrar of companies one copy of—
- (a) any document deposited with the Secretary of State under section 18 above, including any "document obtained under subsection (5) of that section;
  - (b) any document deposited with him under section 34(4) or 43(4) above.
- (2) Subject to subsection (3) below, any document deposited under this section or section 21(5) or 22(3) above with the registrar of companies shall be open to inspection and copies thereof may be procured by any person on payment of such fees as the Secretary of State may direct.
- (3) Subsection (2) above shall not apply to any document if it is a copy of a document in respect of which a dispensation has been granted under section 19(2) above.
- (4) Every document deposited with the Secretary of State under this Part of this Act and certified by the registrar of companies to be a document so deposited shall be deemed to be a document so deposited; and every document purporting to be certified by the registrar of companies to be a copy of a document so deposited shall be deemed to be a copy of that document and shall be received in evidence as if it were the original document unless some variation between it and the original is proved.

## **56 Power to treat certain business as or as not being ordinary long-term insurance business**

- (1) The Secretary of State may, on the application or with the consent of an insurance company to which this Part of this Act applies, by order direct that for the purposes of the application to the company of all or any of the provisions to which this section applies—
- (a) business of a kind specified in the order, not being ordinary long-term insurance business, shall be treated as being such business ; or
  - (b) ordinary long-term insurance business of a kind so specified shall be treated as not being such business.
- (2) An order under subsection (1)(b) above may direct that the business specified in the order shall be treated as falling within a specified class of business relevant for the purposes of Part I of this Act.
- (3) An order under this section may be subject to conditions and may be varied or revoked at any time by the Secretary of State.
- (4) The provisions to which this section applies are sections 13 to 16, 21, 23 to 26, 34, 44, 47, 48 and 51(2) of this Act.

**57 Power to modify Part II in relation to particular companies**

- (1) The Secretary of State may, on the application or with the consent of an insurance company to which this Part of this Act applies, by order direct that all or any of the provisions to which this section applies shall not apply to the company or shall apply to it with such modifications as may be specified in the order.
- (2) An order under this section may be subject to conditions.
- (3) An order under this section may be revoked at any time by the Secretary of State; and the Secretary of State may at any time vary any such order on the application or with the consent of the company to which it applies.
- (4) The provisions to which this section applies are sections 13 to 18, 19(1), 21 to 27 and 44 of this Act, the provisions of regulations made for the purposes of any of those sections and the provisions of any valuation regulations.
- (5) In relation to section 26 above, subsection (1) above shall have effect as if the reference to an insurance company to which this Part of this Act applies included a reference to any subordinate company within the meaning of that section of any such insurance company.

**58 Power to amend s. 44**

- (1) The Secretary of State may by order amend subsections (1) and (2) of section 44 above by substituting for any amount specified in or to be determined in accordance with those subsections (whether as originally enacted or as amended by a previous order under this section) an amount specified in or to be determined in accordance with the order.
- (2) No amendment of the said section 44 made by an order under this section shall come into force before the expiration of the period of twelve months beginning with the date on which the order is made.
- (3) The power to make orders under this section includes power to vary or revoke a previous order, and an order under this section may make different provision in relation to different cases or circumstances.

**59 Power to alter insurance company's financial year**

The Secretary of State may extend or shorten, for the purposes of this Part of this Act, the duration of any financial year of an insurance company to which this Part of this Act applies.

**60 Service of notices**

- (1) Any notice which is by this Part of this Act required to be sent to any policy holder may be addressed and sent to the person to whom notices respecting that policy are usually sent, and any notice so addressed and sent shall be deemed to be notice to the holder of the policy:

Provided that where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any notice which is by this Part of this Act required to be sent to policy holders shall also be sent to that person at the address specified by him in his notice.

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- (2) Any notice to be served on any person by the Secretary of State under section 38, 39, 52 or 53 above may be served by post, and a letter containing that notice shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in Great Britain.

## **61 Offences under Part II**

- (1) Any person who—
- (a) makes default in complying with sections 23 to 25 or 54(1) above or with any requirement imposed under section 29 above ; or
  - (b) in purported compliance with a requirement imposed under section 36 above furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular; or
  - (c) causes or permits to be included in—
    - (i) any document copies of which are, by section 18 of this Act, required to be deposited with the Secretary of State;
    - (ii) any notice, statement or certificate served or furnished under or by virtue of section 15(2), 22(1) or 23(4) above;
    - (iii) any document deposited with the Secretary of State under section 21(4) or 34(4) above;
    - (iv) any statement sent out under section 42(3)(b) above,
 a statement which he knows to be false in a material particular or recklessly causes or permits to be so included any statement which is false in a material particular,
- shall be guilty of an offence.
- (2) Any person guilty of an offence under subsection (1) above shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
  - (b) on summary conviction, to a fine not exceeding £400.
- (3) Subject to the following provisions of this section—
- (a) any insurance company which makes default in complying with, or with a requirement imposed under, any provision of this Part of this Act, being a default for which no penalty is provided by the foregoing provisions of this section; and
  - (b) any other person who makes default in complying with, or with a requirement imposed under, section 22, 24(6), 26, 30, 31, 32, 33, 36, 37, 42(4), 43(4) or 53(1) above,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £400.
- (4) Where a person continues to make default in complying with—
- (a) section 18(1) or (2), 20(1), 21(4) or 34(4) above; or
  - (b) a requirement imposed under section 35 or 36(1) above,
- after being convicted of that default he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £40 for each day on which the default so continues.

- (5) A person shall not be guilty of an offence by reason of his default in complying with section 53 or 54(1) above if he proves that he did not know that the acts or circumstances by virtue of which he became or ceased to be a controller of the body in question were such as to have that effect.
- (6) Where a person is charged with an offence in respect of his default in complying with a requirement imposed under section 36(2) or (3) above to produce any books or papers it shall be a defence to prove that they were not in his possession or control and that it was not reasonably practicable for him to comply with the requirement.

## **PART III**

### **CONDUCT OF INSURANCE BUSINESS**

#### **62 Insurance advertisements**

- (1) Regulations may be made as to the form and contents of insurance advertisements.
- (2) Regulations under this section may make different provision in relation to insurance advertisements of different classes or descriptions.
- (3) Subject to subsection (4) below, any person who issues an insurance advertisement which contravenes regulations under this section shall be guilty of an offence.
- (4) A person who in the ordinary course of his business issues an advertisement to the order of another person, being an advertisement the issue of which by that other person constitutes an offence under subsection (3) above, shall not himself be guilty of the offence if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control.
- (5) In this section "insurance advertisement" means an advertisement inviting persons to enter into or to offer to enter into contracts of insurance, and an advertisement which contains information calculated to lead directly or indirectly to persons entering into or offering to enter into such contracts shall be treated as an advertisement inviting them to do so.
- (6) In this section "advertisement" includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting or television, and references to the issue of an advertisement shall be construed accordingly.
- (7) For the purposes of this section an advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person ; and for the purposes of any proceedings under this section an advertisement inviting persons to enter into or to offer to enter into contracts with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by that person.

#### **63 Misleading statements etc. inducing persons to enter into contracts of insurance**

Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by

the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into any contract of insurance with an insurance company shall be guilty of an offence.

## **64 Intermediaries in insurance transactions**

- (1) Regulations may be made for requiring any person who—
  - (a) invites another person to make an offer or proposal or to take any other step with a view to entering into a contract of insurance with an insurance company; and
  - (b) is connected with that company as provided in the regulations,
 to give the prescribed information with respect to his connection with the company to the person to whom the invitation is issued.
- (2) Regulations may be made for requiring any person who, in the course of carrying on any business or profession, issues any such invitation as is mentioned in subsection (1) (a) above in relation to an insurance company which is not an authorised insurer in respect of the contract in question to inform the person to whom the invitation is issued that the company is not such an insurer as aforesaid.
 

In this subsection "authorised insurer", in relation to a contract of any description, means a person entitled to carry on in Great Britain insurance business of a class comprising the effecting of contracts of that description.
- (3) Regulations under this section may make different provision in relation to different cases or circumstances.
- (4) Any person who contravenes regulations under this section shall be guilty of an offence.

## **65 Statutory notice by insurer in relation to long term policy**

- (1) Subject to subsection (5) below, no insurance company to which Part II of this Act applies and no member of Lloyd's or of any other association of underwriters approved for the purposes of Part I of this Act by the Secretary of State shall enter into a contract of a kind mentioned in section 83(2) below unless that company or member ("the insurer") either—
  - (a) has sent by post to the other party to the contract a statutory notice in relation to that contract; or
  - (b) does so at the time when the contract is entered into.
- (2) For the purposes of this section a statutory notice is a notice which—
  - (a) contains such matters (and no others) and is in such form as may be prescribed for the purposes of this section and complies with such requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) as may be prescribed for securing that the notice is easily legible; and
  - (b) has annexed to it a form of notice of cancellation of the prescribed description for use under section 66 below.
- (3) Regulations made for the purposes of subsection (2) above may make different provision—

- (a) in relation to contracts of different classes or descriptions;
- (b) in relation to cases where the statutory notice is sent before the contract is entered into and in relation to other cases;

and the Secretary of State may, on the application of any insurer, alter the requirements of any regulations made for the purposes of subsection (2)(a) above so as to adapt those requirements to the circumstances of that insurer or to any particular kind of contract proposed to be entered into by that insurer.

- (4) Any insurer who contravenes this section shall be guilty of an offence but, without prejudice to section 66(2) below, no contract shall be invalidated by reason of the fact that the insurer has contravened this section in relation to that contract.
- (5) Subsection (1) of this section does not apply to any contract the effecting of which by the insurer constitutes the carrying on of industrial assurance business; and regulations may exempt from that subsection contracts of any other class or description.
- (6) In sections 66 and 67 below "insurer" and "statutory notice " have the same meaning as in this section.

## **66 Right to withdraw from transaction in respect of long term policy**

- (1) A person who has received a statutory notice from an insurer in relation to any contract to which section 65(1) above applies may before the expiration of—
  - (a) the tenth day after that on which he received the notice; or
  - (b) the earliest day on which he knows both that the contract has been entered into and that the first or only premium has been paid,whichever is the later, serve a notice of cancellation on the insurer.
- (2) A person to whom an insurer ought to have, but has not, sent a statutory notice in relation to any such contract as aforesaid may serve a notice of cancellation on the insurer but if the insurer sends him a statutory notice in relation to that contract before he has served a notice of cancellation under this subsection, then, without prejudice to his right to serve a notice of cancellation under subsection (1) above, his right to do so under this subsection shall cease.
- (3) A notice of cancellation may, but need not, be in the form annexed to the statutory notice and shall have effect if, however expressed, it indicates the intention of the person serving it to withdraw from the transaction in relation to which the statutory notice was or ought to have been sent.
- (4) Where a person serves a notice of cancellation, then—
  - (a) if at the time when the notice is served the contract has been entered into, the notice shall operate so as to rescind the contract;
  - (b) in any other case, the service of the notice shall operate as a withdrawal of any offer to enter into the contract which is contained in, or implied by, any proposal made to the insurer by the person serving the notice of cancellation and as notice to the insurer that any such offer is withdrawn.
- (5) Where a notice of cancellation operates to rescind a contract or as the withdrawal of an offer to enter into a contract—
  - (a) any sum which the person serving the notice has paid in connection with the contract (whether by way of premium or otherwise and whether to the insurer

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*Status: This is the original version (as it was originally enacted).*

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or to a person who is the agent of the insurer for the purpose of receiving that sum) shall be recoverable from the insurer by the person serving the notice;

- (b) any sum which the insurer has paid under the contract shall be recoverable by him from the person serving the notice.

- (6) Any sum recoverable under subsection (5) above shall be recoverable as a simple contract debt in any court of competent jurisdiction.

## **67 Service of notice of cancellation**

- (1) For the purposes of section 66 above a notice of cancellation—
  - (a) shall be deemed to be served on the insurer if it is sent by post addressed to any person specified in the statutory notice as a person to whom a notice of cancellation may be sent, and is addressed to that person at an address so specified; and
  - (b) where paragraph (a) above applies, shall be deemed to be served on the insurer at the time when it is posted.
- (2) Subsection (1) above shall have effect without prejudice to the service of a notice of cancellation (whether by post or otherwise) in any way in which the notice could be served apart from that subsection, whether the notice is served on the insurer or on a person who is the agent of the insurer for the purpose of receiving such a notice.
- (3) A notice of cancellation which is sent by post to a person at his proper address, otherwise than in accordance with subsection (1) above, shall be deemed to be served on him at the time when it is posted.
- (4) So much of section 26 of the Interpretation Act 1889 as relates to the time when service is deemed to have been effected shall not apply to a notice of cancellation.

## **68 Linked long term policies**

- (1) Regulations may be made, as respects the matters specified in subsection (2) below, in relation to contracts of the kinds mentioned in section 83(2) below which—
  - (a) are entered into by insurance companies to which Part II of this Act applies or by members of Lloyd's or of any other association of underwriters approved for the purposes of Part I of this Act by the Secretary of State; and
  - (b) are contracts under which the benefits payable to the policy holder are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
- (2) Regulations under this section may make provision for—
  - (a) restricting the descriptions of property or the indices of the value of property by reference to which benefits under the contracts may be determined;
  - (b) regulating the manner in which and the frequency with which property of any description is to be valued for the purpose of determining such benefits and the times at which reference is to be made for that purpose to any index of the value of property;
  - (c) requiring insurers under the contracts to appoint valuers for carrying out valuations of property of any description for the purpose of determining such benefits (being valuers who comply with the prescribed requirements as to

- qualifications and independence from the insurer) and to furnish the Secretary of State with, the prescribed information in relation to such appointments;
- (d) requiring insurers under the contracts to furnish, in such manner and at such times or intervals as may be prescribed, such information relating to the value of the benefits under the contracts as may be prescribed, whether by sending notices to policy holders, depositing statements with the Secretary of State or the registrar of companies, publication in the press or otherwise;
- (e) requiring insurers under the contracts to furnish to the Secretary of State, in such manner and at such times or intervals as may be prescribed, such information certified in such manner as may be prescribed with respect to so much of their business as is concerned with the contracts or with any class or description of the contracts, and enabling the Secretary of State to publish such information in such ways as he thinks appropriate.
- (3) Regulations made for the purposes of subsection (2)(d) above may, in relation to notices required to be sent to policy holders, impose requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) for securing that such notices are easily legible.
- (4) Regulations under this section may make different provision in relation to different cases or circumstances; and the Secretary of State may, on the application of any insurer, alter the requirements of any regulations under this section so as to adapt those requirements to the circumstances of that insurer or to any particular kind of contract entered into or proposed to be entered into by that insurer.
- (5) Regulations under this section may, to such extent as may be speckled therein, apply in relation to contracts entered into before the coming into operation of the regulations, including contracts entered into before the passing of this Act.
- (6) Regulations under this section shall not apply in relation to any contract the effecting of which by the insurer constitutes the carrying on of industrial assurance business or to any contract entered into by an insurance company to which Part II of this Act applies by reason only that the policy holder is eligible to participate in any established surplus as defined in section 25(4) above.

## **69 Scope of Prevention of Fraud (Investments) Act 1958**

The agreements and arrangements mentioned in section 13(1) of the Prevention of Fraud (Investments) Act 1958 (misleading statements etc. inducing persons to invest money) and in the definition of " dealing in securities " in section 26(1) of that Act shall not include contracts of insurance.

## **70 Capital redemption business**

Where an insurance company to which Part II of this Act applies carries on capital redemption business in the case of which the premiums in return for which a contract is effected are payable at intervals of less than six months, the company shall not give the holder of any policy issued after 2nd December 1909 any advantage dependent on lot or chance:

Provided that this section shall not be construed as in any way prejudicing any question as to the application to any such transaction, whether in respect of a policy issued before, on or after that date, of the law relating to lotteries.

**71 Penalties and offences under Part III**

- (1) Any person guilty of an offence under section 62, 63 or 64 above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
  - (b) on summary conviction, to a fine not exceeding £400.
- (2) Any person who makes default in complying with, or with a requirement imposed under, any other provision of this Part of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

**PART IV****SPECIAL CLASSES OF INSURERS****72 Industrial assurance business**

- (1) In its application to industrial assurance business this Act shall have effect subject to the modifications specified in this section.
- (2) The power to make regulations for the purposes of section 13 above so far as it relates to revenue accounts, section 14 above so far as it relates to the form and contents of abstracts and statements and section 16 above shall, in relation to industrial assurance business, be exercisable by the Industrial Assurance Commissioner.
- (3) The provisions of sections 18 and 19(1) above shall have effect in relation to any document which relates to industrial assurance business as if references in those provisions to the Secretary of State included references to the Commissioner.
- (4) The power conferred by section 19(2) above shall be exercisable by the Commissioner in the case of a document which relates only to industrial assurance business.
- (5) Where any document required to be deposited by a company under subsection (4) of section 34 above relates to industrial assurance business the company shall also, within the time required under that subsection, deposit one copy of that document with the Commissioner, and section 61(4) above shall have effect in relation to this subsection as it has effect in relation to that subsection.
- (6) Where any business proposed to be transferred as mentioned in section 42 above is or includes industrial assurance business that section and section 43(4) above shall have effect as if references to the Secretary of State included references to the Commissioner.
- (7) The power to make orders under section 57 above as respects section 13 above so far as it relates to revenue accounts, sections 14, 16 and 18 above and the provisions of regulations made for the purposes of any of those sections (other than valuation regulations) shall, in relation to industrial assurance business, be exercisable by the Commissioner.
- (8) The power conferred by section 59 above shall be exercisable by the Commissioner in the case of a company which carries on in Great Britain no insurance business except industrial assurance business.
- (9) Where any expenses of management, or interest on investments, or sums on account of depreciation of securities, are apportioned between the industrial assurance business

and any other business carried on by the company the auditor shall include in Ins report a special report as to the propriety or otherwise of the apportionment; and a copy of every report of die auditor shall be furnished to the Commissioner.

- (10) The provisions of this Act relating to industrial assurance business shall have effect notwithstanding anything in the memorandum or articles of association or rules or special Act of any insurance company carrying on such business:

Provided that nothing in this Act shall affect the liability of the industrial assurance fund or of the ordinary long-term insurance fund, in the case of a company established before 1st January 1924, to the prejudice of persons interested in contracts entered into by the company before that date.

- (11) The Commissioner shall include in his annual report under section 44 of the Industrial Assurance Act 1923 a report on his proceedings under .this Act. and that section shall have effect accordingly.

### **73 Requirements to be complied with by Lloyd's underwriters etc.**

- (1) The requirements referred to in section 12(4) above are as follows.
- (2) Every underwriter shall, in accordance with the provisions of a trust deed approved by the Secretary of State, carry to a trust fund all premiums received by him or on his behalf in respect of any insurance business.
- (3) Premiums received in respect of long term business shall in no case be carried to the same trust fund under this section as premiums received in respect of general business, but the trust deed may provide for carrying the premiums received in respect of all or any classes of long term business and all or any classes of general business either to a common fund or to any number of separate funds.
- (4) The accounts of every underwriter shall be audited annually by an accountant approved by the Committee of Lloyd's or the managing body of the association, as the case may be, and the auditor shall furnish a certificate in the prescribed form to the Committee or managing body and the Secretary of State.
- (5) The said certificate shall in particular state whether in the opinion of the auditor the value of the assets available to meet the underwriter's liabilities in respect of insurance business is correctly shown in the accounts, and whether or not that value is sufficient to meet the liabilities calculated—
  - (a) in the case of liabilities in respect of long term business, by an actuary ; and
  - (b) in the case of other liabilities, by the auditor on a basis approved' by the Secretary of State.
- (6) Where any liabilities of an underwriter are calculated by an actuary under subsection (5) above, he shall furnish a certificate of the amount thereof to the Committee of Lloyd's or the managing body of the association, as the case may be, and to the Secretary of State, and shall state in his certificate on what basis the calculation is made; and a copy of his certificate shall be annexed to the auditor's certificate.
- (7) The underwriter shall, when required by the Committee of Lloyd's or the managing body of the association, as the case may be, furnish to them such information as they may require for the purpose of preparing the statement of business which is to be deposited with the Secretary of State under section 74 below.

**74 Statement of business by Committee of Lloyd's etc.**

- (1) The Committee of Lloyd's, and the managing body of every association of underwriters approved by the Secretary of State for the purposes of Part I of this Act, shall deposit every year with the Secretary of State a statement in the prescribed form summarising the extent and character of the insurance business done by the members of Lloyd's or of the association, as the case may be, in the twelve months to which the statement relates.
- (2) Regulations made for the purposes of this section may require the statement to deal separately with such classes or descriptions of business as may be specified in the regulations.

**75 Companies established outside Great Britain**

- (1) Regulations may provide that, in their application to an insurance company established in a country outside Great Britain, sections 4, 5 and 44 above shall have effect subject to such adaptations of the references to sums of money and to paid up share capital as appear to the Secretary of State to be necessary having regard to the currency of that country or the law relating to companies in force in that country.
- (2) The following provisions of the Companies Act 1948, that is to say, sections 407, 409 to 415 and 425, if, apart from this subsection they would not so apply, shall apply in relation to an insurance company incorporated outside Great Britain which carries on insurance business within Great Britain as they apply in relation to overseas companies within the meaning of section 406 of that Act.

**76 Unregistered companies**

- (1) Every insurance company to which Part II of this Act applies, being a company which is not registered under the Companies Act 1948 or under the former Companies Acts—
  - (a) if it has not incorporated in its deed of settlement section 10 of the Companies Clauses Consolidation Act 1845, shall keep a shareholders address book in accordance with the provisions of that section and shall, on the application of any shareholder or policy holder of the company, furnish to him a copy of the book on payment of a sum not exceeding 2½p. for every hundred words required to be copied;
  - (b) shall cause a sufficient number of copies of its deed of settlement to be printed and shall, on the application of any shareholder or policy holder of the company, furnish to him one of those copies on payment of a sum not exceeding 5p.
- (2) Any insurance company which makes default in complying with this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

**77 Insurance companies formed before 1967 in contravention of s. 434 of Companies Act 1948**

- (1) Section 434 of the Companies Act 1948 (which in certain cases forbids the formation otherwise than under that Act of a company, association or partnership consisting of more than twenty persons) shall be deemed not to have invalidated the formation of any insurance company which immediately before 3rd November 1966 was carrying

on in Great Britain insurance business of any class relevant for the purposes of Part I of this Act and was carrying on business of that class on 25th July 1973.

- (2) In subsection (1) above the reference to the said section 434 includes a reference to any corresponding enactment previously in force.

## **PART V**

### **SUPPLEMENTARY PROVISIONS**

#### *Valuation regulations*

#### **78 Power to make valuation regulations**

- (1) Regulations may be made with respect to the determination of the value of assets and the amount of liabilities in any case in which the value or amount is required by any provision of this Act to be determined in accordance with valuation regulations.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent.
- (3) Regulations under this section may make different provision in relation to different cases or circumstances.

#### *Criminal proceedings*

#### **79 Criminal liability of directors**

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

#### **80 Criminal proceedings against unincorporated bodies**

- (1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body shall be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to file service of documents shall have effect as if that body were a corporation.
- (2) A fine imposed on an unincorporated body on its conviction of an offence under this Act shall be paid out of the funds of that body.

- (3) Section 33 of the Criminal Justice Act 1925 and Schedule 2 to the Magistrates' Courts Act 1952 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated body is charged in England or Wales with an offence under this Act in like manner as they have effect in the case of a corporation so charged.
- (4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated body, section 40 of the Criminal Justice (Scotland) Act 1949 (proceedings on indictment against bodies corporate) shall have effect as if that body were a body corporate.

## **81      Restriction on institution of prosecutions**

Proceedings in respect of an offence under this Act shall not, in England or Wales, be instituted except by or with the consent of the Secretary of State, the Industrial Assurance Commissioner or the Director of Public Prosecutions.

## **82      Summary proceedings**

- (1) Summary proceedings for any offence under this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.
- (2) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, an information relating to an offence under this Act which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within three years after the commission of the offence and within twelve months after the date on which evidence sufficient, in the opinion of the Director of Public Prosecutions, the Secretary of State or the Industrial Assurance Commissioner, as the case may be, to justify the proceedings comes to his knowledge.
- (3) Summary proceedings in Scotland for an offence under this Act shall not be commenced after the expiration of three years from the commission of the offence but, subject to the foregoing limitation and notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954, such proceedings may be commenced at any time within twelve months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge or, where such evidence was reported to him by the Secretary of State or the Industrial Assurance Commissioner, within twelve months after the date on which it came to the knowledge of the Secretary of State or Commissioner; and subsection (2) of the said section 23 shall apply for the purpose of this subsection as it applies for the purpose of that section.
- (4) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Secretary of State or the Industrial Assurance Commissioner, as the case may be, as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence.

## *Interpretation*

### **83 Definitions of classes of insurance business**

- (1) In this Act "industrial assurance business" has the meaning given in section 1(2) of the Industrial Assurance Act 1923.
- (2) In this Act "ordinary long-term insurance business" means business of any of the following kinds, namely,—
  - (a) effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life;
  - (b) effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or of disease of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and
  - (c) effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future, not being such contracts as fall within either of the foregoing paragraphs;but does not include industrial assurance business.
- (3) In this Act "liability insurance business" means the business of effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, not being risks arising out of, or in connection with the use of, motor vehicles or out of, or in connection with the the use of, vessels or aircraft or risks incidental to the construction, repair or docking of vessels or aircraft.
- (4) In this Act " marine, aviation and transport insurance business " means, subject to subsection (9) below, the business of effecting and carrying out contracts of insurance—
  - (a) upon vessels or aircraft, or upon the machinery, tackle, furniture or equipment of vessels or aircraft;
  - (b) upon goods, merchandise or property of any description whatever on board of vessels or aircraft;
  - (c) upon the freight of, or any other interest in or relating to, vessels or aircraft;
  - (d) against damage arising out of, or in connection with, the use of vessels or aircraft, including third-party risks;
  - (e) against risks incidental to the construction, repair or docking of vessels, including third-party risks;
  - (f) against transit risks (whether the transit is by sea, inland water, land or air, or partly one and partly another), including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance; or
  - (g) against any other risks insurance against which is customarily undertaken in conjunction with, or as incidental to, the undertaking of such business as falls within this definition by virtue of any of the foregoing paragraphs.

- (5) In this Act " motor vehicle insurance business " means, subject to subsection (9) below, the business of effecting and carrying out contracts of insurance against loss of, or damage to, or arising out of or in connection with the use of, motor vehicles, inclusive of third-party risks but exclusive of transit risks.
- (6) In this Act " pecuniary loss insurance business " means the business of effecting and carrying out contracts of insurance against any of the following risks, namely,—
- (a) risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due;
  - (b) risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;
  - (c) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reductions of the scope of businesses so carried on;
  - (d) risks of loss to the persons insured attributable to then incurring unforeseen expense; and
  - (e) risks neither falling within any of the foregoing paragraphs nor being of a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.
- (7) In this Act " personal accident insurance business " means the business of effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or of disease of a specified class, not being contracts falling within subsection (2)(b) above.
- (8) In this Act " property insurance business " means the business of effecting and carrying out contracts of insurance against risks of loss of, or damage to, material property, not being risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business or motor vehicle insurance business.
- (9) In subsections (3) and (4) above "vessels or aircraft" includes hovercraft to which this Act applies; but the business of effecting and carrying out contracts of insurance against loss of, or damage to, or arising out of or in connection with the use of, such hovercraft (inclusive of third-party risks but exclusive of transit risks), if carried on by a person who at the same time carries on motor vehicle insurance business but does not otherwise carry on marine, aviation and transport insurance business, shall be taken for the purposes of this Act to be motor vehicle insurance business.

#### **84 Insurance business of one class incidental to insurance business of different class**

- (1) For the purposes of this Act, a person shall not be taken to carry on liability insurance business by reason only of the incidental inclusion, in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes property insurance business, of provision whereby he assumes liability against the risk of the person insured incurring liabilities to third parties.

- (2) For the purposes of this Act, a person shall not be taken to carry on marine, aviation and transport insurance business by reason only of the incidental inclusion, in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes insurance business of some other class, of provision whereby he assumes a liability of a kind whose assumption by itself in a contract of insurance would make that contract such a one as is mentioned in section 83(4) above.
- (3) For the purposes of this Act, a person shall not be taken to carry on motor vehicle insurance business by reason only of the fact that goods, merchandise or property upon which a contract of insurance is effected by him (being goods, merchandise or property on board of a vessel or aircraft or of a hovercraft to which this Act applies) consist of, or include, motor vehicles.
- (4) For the purposes of this Act, a person shall not be taken to carry on ordinary long-term insurance business by reason only of the incidental inclusion in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, of provision whereby he assumes liability against the happening of personal accidents (whether fatal or not).
- (5) For the purposes of this Act, a person shall not be taken to carry on pecuniary loss insurance business by reason only of the incidental inclusion, in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, of provision whereby he assumes liability against such risks as are mentioned in section 83(6)(c) and (d) above.
- (6) For the purposes of this Act, a person shall not be taken to carry on personal accident insurance business by reason only of the incidental inclusion, in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, of provision whereby he assumes liability against the happening of personal accidents (whether fatal or not).

## **85 General interpretation**

- (1) In this Act, unless the context otherwise requires—
  - "actuary" means an actuary possessing the prescribed qualifications;
  - "annuities on human life" does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons;
  - "authorisation" means an authorisation under section 3(1)(b) above;
  - "body corporate" does not include a corporation sole or a Scottish firm but includes a body incorporated outside Great Britain;
  - "capital redemption business" means such business as, by virtue of paragraph (c) of subsection (2) of section 83 above falls within the definition in that subsection of ordinary long-term insurance business ;

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*Status: This is the original version (as it was originally enacted).*

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" chief executive " has the meaning given in section 7 above;

" contract of insurance ", except in sections 83 and 84, includes a contract to pay an annuity on human life;

" controller " has the meaning given in section 7 above;

" court " means the High Court of Justice in England or, in the case of an insurance company registered or having its head office in Scotland, the Court of Session;

" deed of settlement ", in relation to an insurance company, includes any instrument constituting the company;

" director " includes any person occupying the position of director by whatever name called ;

" financial year " means, subject to section 59 above, each period of twelve months at the end of which the balance of the accounts of the insurance company is struck or, if no such balance is struck, the calendar year;

" former Companies Acts " means the Companies Act 1929 and any enactment repealed by that Act or by the Companies (Consolidation) Act 1908 ;

" general business " has the meaning given in section 1 (2) above;

" hovercraft to which this Act applies " means a hovercraft, other than a hovertrain, which is used—

- (a) wholly or partly on or over the sea or navigable waters; or
- (b) on or over land to which the public have access or non-navigable waters to which the public have access; or
- (c) elsewhere for the carriage of passengers for reward;

and for the purposes of this definition "navigable waters " means any waters which are in fact navigable by ships or vessels, whether or not the tide ebbs and flows there and whether or not there is a public right of navigation in those waters;

" hover train " means a hovercraft which is at all times guided by tracks, rails or guides fixed to the ground;

" industrial assurance business " has the meaning given in section 1(2) of the Industrial Assurance Act 1923 ;

" insolvent " means, in relation to an insurance company at any relevant date, that if proceedings had been taken for the winding up of the company the court could, in accordance with the provisions of sections 222 and 223 or section 399 of the Companies Act 1948, hold or have held that the company was at that date unable to pay its debts ;

" insurance company " means a person or body of persons (whether incorporated or not) carrying on insurance business;

" liability insurance business " has the meaning given in section 83(3) above ;

" life policy " means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life ;

" long term business " has the meaning given in section 1(2) above;

" long term policy holder " means a policy holder in respect of a policy the effecting of which by the insurer constituted the carrying on of long term business;

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*Status: This is the original version (as it was originally enacted).*

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" manager ", except in section 48, has the meaning given in section 7 above;

" marine, aviation and transport insurance business " has the meaning given in section 83(4) above ;

" mortgage ", in relation to Scotland, means a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970;

" motor vehicle insurance business " has the meaning given in section 83(5) above ;

" ordinary long-term insurance business " has the meaning given in section 83(2) above ;

" pecuniary loss insurance business " has the meaning given in section 83(6) above ;

" personal accident insurance business " has the meaning given in section 83(7) above ;

" policy "—

(a) in relation to ordinary long-term insurance business and industrial assurance business, includes an instrument evidencing a contract to pay an annuity upon human life;

(b) in relation to insurance business of any other class includes any policy under which there is for the time being an existing liability already accrued or under which a liability may accrue; and

(c) in relation to capital redemption business, includes any policy, bond, certificate, receipt or other instrument evidencing the contract with the company;

" policy holder " means the person who for the time being is the legal holder of the policy for securing the contract with the insurance company or, in relation to capital redemption business, means the person who for the time being is the legal holder of the policy, bond, certificate, receipt or other instrument evidencing the contract with the company, and—

(a) in relation to such ordinary long-term insurance business or industrial assurance business as consists in the granting of annuities upon human life, includes an annuitant; and

(b) in relation to insurance business of any kind other than such as is mentioned in the foregoing paragraph or capital redemption business, includes a person to whom, under a policy, a sum is due or a periodic payment is payable ;

" prescribed " means prescribed by regulations under this Act;

" property insurance business " has the meaning given in section 83(8) above;

" registered society " means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or any corresponding enactment or Measure in force in Northern Ireland ;

" registrar of companies " has the meaning given in section 455 of the Companies Act 1948 ;

" subsidiary ", except in section 49, shall be construed in accordance with section 154 of the Companies Act 1948;

" underwriter " includes any person named in a policy or other contract of insurance as liable to pay or contribute towards the payment of the sum secured by the policy or contract;

" valuation regulations " means regulations under section 78 above.

- (2) References in this Act to a fund or funds maintained in respect of long term business are references to a fund or funds maintained under section 23(1)(b) above and in sections 41(2) and 47(6) above include references to a fund or funds maintained under section 3(1) of the Insurance Companies Act 1958.
- (3) A person shall not be deemed to be within the meaning of any provision of this Act a person in accordance with whose directions or instructions the directors of a company or other body corporate or any of them are accustomed to act by reason only that the directors of the company or body act on advice given by him in a professional capacity.
- (4) Except where the context otherwise requires, references in this Act to any other enactment are references to that enactment as amended by or under any subsequent enactment.

### *Supplementary*

#### **86 Regulations and orders**

- (1) The Secretary of State may make regulations under this Act for any purpose for which regulations are authorised or required to be made thereunder.
- (2) Any power conferred by this Act to make regulations and the power to make orders under sections 10 and 58 above shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order shall be made under section 10 or 58 above unless a draft of it has been approved by resolution of each House of Parliament.

#### **87 Annual report by Secretary of State**

The Secretary of State shall cause a general annual report of matters within this Act to be laid before Parliament.

#### **88 Consequential amendments, repeals and savings**

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) In so far as any instrument made or other thing done (or by virtue of section 36(4) of the Insurance Companies Act 1958 or section 54(5), (6) or (7) of the Insurance Companies Amendment Act 1973 having effect as if made or done) under an enactment repealed by this Act could have been made or done under a corresponding enactment in this Act, it shall not be invalidated by the repeal effected by this section but shall have effect as if it had been made or done under that corresponding enactment.

- (4) Without prejudice to subsection (1) above, any enactment or other document whatsoever referring to any enactment repealed by this Act shall be construed as referring (or including a reference) to the corresponding enactment in this Act.
- (5) Without prejudice to the generality of subsection (4) above, any enactment or document whatsoever referring to an assurance company within the meaning of the Assurance Companies Act 1909 shall be construed as referring (or as including a reference) to an insurance company to which Part II of this Act applies.
- (6) The foregoing provisions of this section are without prejudice to section 38 of the Interpretation Act 1889 (effect of repeals).

## **89      Transitory provisions relating to coming into force of Insurance Companies Amendment Act 1973**

- (1) The repeal by the Insurance Companies Amendment Act 1973 of sections 65, 68 and 80 and subsection (1)(f) of section 109 of the Companies Act 1967 shall not affect—
  - (a) any requirement or direction imposed or given under any of those sections before 25th July 1973 ;
  - (b) the giving of a direction under the said section 68 in any case in which a notice has been served under subsection (3) of that section before that date; or
  - (c) the exercise by an officer of any powers under the said section 109 in a case in which he has been authorised before that date to exercise them ;and the said Act of 1967 shall have effect in relation to any such requirement, direction or powers as if the said Act of 1973 and this Act had not been passed.
- (2) The provisions of this Act, so far as re-enacting provisions of the said Act of 1973 relating to winding up, shall not affect any winding up commenced before the date on which the first rules made by virtue of section 30(5) of the said Act of 1973 or section 51(2) above come into operation.
- (3) In relation to any amalgamation or transfer in respect of which proceedings under section 11 of the Insurance Companies Act 1958 were begun before 25th January 1974, the said Act of 1958 and the Act of 1967 shall continue to have effect as if the said Act of 1973 and this Act had not been passed.
- (4) In relation to any offence committed before 25th July 1973 sections 11(3)(b) and 61(2)(b) above shall have effect as if they contained provisions corresponding to sections 60(4)(b) and 84(2)(b) of the said Act of 1967 respectively, and sections 61(3), 71(2) and 76(2) above shall have effect as if for "£400" there were substituted " £200 ".
- (5) If no regulations under section 11 of the said Act of 1973 have come into operation before the expiration of the period mentioned in section 90(2) below (in this section referred to as "the commencement of this Act") section 27 above shall not take effect until the first regulations under the said section 11 or 27 come into operation.
- (6) If no rules under section 30(5) of the said Act of 1973 have come into operation before the commencement of this Act the repeal of section 17(2) and (3) of, and Schedules 3 and 4 to, the said Act of 1958 shall not take effect until the first rules under the said section 30(5) or under section 51(2) above come into operation.
- (7) If no regulations made for the purposes of sections 33 to 35 of the said Act of 1973 have come into operation before the commencement of this Act sections 52 to 54 above and the repeal of sections 82 and 83 of the said Act of 1967 shall not take effect

until the date on which the first regulations made for the purposes of the said sections 33 to 35 or 52 to 54 come into operation ; and so long as the said sections 82 and 83 continue in force the said Act of 1967 shall have effect in relation to them as if the said Act of 1973 and this Act had not been passed.

- (8) If no regulations under section 44(5) of the said Act of 1973 have come into operation before the commencement of this Act sections 65 to 67 above shall not take effect until the first regulations under the said section 44(5) or under section 65(5) above come into operation.

## **90 Short title, commencement and extent**

- (1) This Act may be cited as the Insurance Companies Act 1974.
- (2) Subject to section 89 above, this Act shall come into operation at the expiration of the period of one month beginning with the date on which it is passed.
- (3) This Act shall not extend to Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 88.

#### CONSEQUENTIAL AMENDMENTS

##### *The Companies Act 1948*

In section 433(6) of the Companies Act 1948 for the words " the Assurance Companies Act 1909 " there shall be substituted the words " the Insurance Companies Act 1974 " .

In paragraph 24(1) of Schedule 8 to the said Act of 1948, for the words " the Insurance Companies Act 1958 " there shall be substituted the words " Part II of the Insurance Companies Act 1974 " .

##### *The Insurance Companies Act 1958*

In section 20(2) of the Insurance Companies Act 1958, as it has effect by virtue of section 51 of the Insurance Companies Amendment Act 1973, for the words " section thirteen of this Act " there shall be substituted the words " section 44 of the Insurance Companies Act 1974 " .

##### *The Building Societies Act 1962*

In section 129(1) of the Building Societies Act 1962, in the definition of " policy of life assurance ", for the words " the Insurance Companies Act 1958 " there shall be substituted the words " Part II of the Insurance Companies Act 1974 " .

In paragraphs 2, 7 and 9 of Schedule 3 to the said Act of 1962 for the words " the Insurance Companies Act 1958 " there shall be substituted the words " Part II of the Insurance Companies Act 1974 " .

##### *The Housing Subsidies Act 1967*

In section 32(1) of the Housing Subsidies Act 1967 for the words " the Insurance Companies Act 1958 " there shall be substituted the words " Part II of the Insurance Companies Act 1974 " .

##### *The Companies Act 1967*

In section 89(1) of the Companies Act 1967 for the words from " director " to " manager " there shall be substituted the words " director, chief executive or manager (as defined in the Insurance Companies Act 1974) " .

In section 97 of the said Act of 1967 the words from " 1(5) " to " 60(2)(b) and " shall be omitted.

In section 99 of the said Act of 1967 the words from the beginning to " column 2 of that Part of that Schedule, and " shall be omitted.

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*Status: This is the original version (as it was originally enacted).*

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In section 110(1) of the said Act of 1967 for the words " section 20 of the Insurance Companies Amendment Act 1973 " there shall be substituted the words " section 36 of the Insurance Companies Act 1974 " .

In section 111(1) of the said Act of 1967 for the words "section 20(2) to (4) of the Insurance Companies Amendment Act 1973 " there shall be substituted the words " section 36(2) to (4) of the Insurance Companies Act 1974 " and for the words " or the Insurance Companies Amendment Act 1973 " (in both places) there shall be substituted the words " or the Insurance Companies Act 1974 " .

In section 113(1) of the said Act of 1967 for the words "the Insurance Companies Act 1958 " there shall be substituted the words " Part II of the Insurance Companies Act 1974 " .

In section 116 of the said Act of 1967 for the words " section 20(2) to (4) of the Insurance Companies Amendment Act 1973 " (in both places) there shall be substituted the words " section 36(2) to (4) of the Insurance Companies Act 1974 " .

*The Employers' Liability (Compulsory Insurance) Act 1969*

In section 1(3)(b) of the Employers' Liability (Compulsory Insurance) Act 1969 for the words " Part II of the Companies Act 1967 " there shall be substituted the words " Part I of the Insurance Companies Act 1974 " .

*The Income and Corporation Taxes Act 1970*

In section 19(2)(a)(ii) of the Income and Corporation Taxes Act 1970 for the words "Schedule 1 to the Insurance Companies Act 1958 " there shall be substituted the words " section 73 of the Insurance Companies Act 1974 " .

In section 323(2) of the said Act of 1970 for the words "the Insurance Companies Act 1958" (in both places) there shall be substituted the words " Part II of the Insurance Companies Act 1974 " .

SCHEDULE 2

Section 88.

REPEALS

Chapter	Short Title	Extent of Repeal
<a href="#">6 &amp; 7 Eliz. 2. c. 72.</a>	The Insurance Companies Act 1958.	The whole Act, so far as unrepealed, except sections 19 (1), 20, 34, 36(4), (5) and (7) and 37(1) and (3).
<a href="#">1967 c. 81.</a>	The Companies Act 1967.	Part II, so far as unrepealed, except sections 60(3), 86, 87, 89, 90, 91, 96, 97, 99, 102(3) and (4), 107 and 108 and the definition of " director " in section 102(2).  In section 111(1)(a) the words " the Insurance Companies Act 1958 " .

Chapter	Short Title	Extent of Repeal
<a href="#">1973 c. 58.</a>	The Insurance Companies Amendment Act 1973.	Section 130(3). Schedule 5. Part I of Schedule 6. Part VI of Schedule 8. The whole Act except sections 50, 51, 54(1), 56, 57(1), paragraphs 15 to 17 of Schedule 1, and Schedules 3 to 5.