



Insurance Companies Act 1974

1974 CHAPTER 49

PART II

REGULATION OF INSURANCE COMPANIES

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the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed thereby;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information to the Secretary of State under or for the purposes of any provision of this Act or any enactment repealed thereby;

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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) 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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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).

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

(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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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.