



# Insurance Companies Act 1974

## 1974 CHAPTER 49

### 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.

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### *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.

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- (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;

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- (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.

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- (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.

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## 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.

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### *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;

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- (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

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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—

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- (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

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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.

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- (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.

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#### **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

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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.

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- (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.

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- (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.

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## **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

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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.

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## **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.

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- (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.