



Policyholders Protection Act 1975

1975 CHAPTER 75

An Act to make provision for indemnifying (in whole or in part) or otherwise assisting or protecting policyholders and others who have been or may be prejudiced in consequence of the inability of authorised insurance companies carrying on business in the United Kingdom to meet their liabilities under policies issued or securities given by them, and for imposing levies on the insurance industry for the purpose; to authorise the disclosure of certain documents and information to persons appointed by the Secretary of State to advise him on the exercise of his powers under the Insurance Companies Act 1974; and for purposes connected with the matters aforesaid. [12th November 1975]

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

The Policyholders Protection Board

1 The Policyholders Protection Board

- (1) There shall be a body corporate, to be called the Policyholders Protection Board (hereafter in this Act referred to as "the Board").
- (2) The functions of the Board shall be—
 - (a) to take the measures provided for by sections 6 to 16 below for the purpose of indemnifying (in whole or in part) or otherwise assisting or protecting policyholders and others who have been or may be prejudiced in consequence of the inability of insurance companies carrying on business in the United Kingdom to meet their liabilities under policies issued or securities given by them; and
 - (b) for the purpose of financing their expenditure on the performance of their functions under those sections, to impose levies, in accordance with sections 19, 20 and 21 below and Schedules 2 and 3 to this Act, on insurance companies and other persons engaged in the insurance industry in the United Kingdom ;

and otherwise to do anything requisite for carrying out the provisions of this Act.

- (3) Subject to subsection (4) below, the Board shall have power to borrow any sums they may from time to time require for performing any of their functions under this Act.
- (4) The aggregate amount outstanding in respect of the principal of any money borrowed by the Board under subsection (3) above shall not exceed £10 million.
- (5) Schedule 1 to this Act shall have effect with respect to the constitution of the Board and the other matters there mentioned.

2 Guidance to the Board by the Secretary of State

- (1) Subject to subsection (2) below, the Secretary of State may from time to time, after consultation with the Board, give guidance to the Board in writing with respect to the performance of any of their functions under this Act; and it shall be the duty of the Board to perform the functions in question in such a manner as they consider is in accordance with the guidance for the time being given to them in pursuance of this section.
- (2) No guidance shall be given to the Board in pursuance of subsection (1) above unless a draft of the document containing it has been approved by a resolution of each House of Parliament.

General scope of the Board's functions under this Act

3 Authorised insurance companies

- (1) The functions of the Board under this Act shall be exercisable in relation to policyholders and others who have been or may be prejudiced in consequence of the inability of insurance companies to meet their liabilities under policies issued or securities given by them only in cases where the insurance companies in question are authorised insurance companies.
- (2) An insurance company is an authorised insurance company for the purposes of this Act if it is permitted by virtue of—
 - (a) section 2(1)(a) or (b) or (2)(a) of the Insurance Companies Act 1974; or
 - (b) section 3(1)(a) or (b) or (2)(a) of the Insurance Companies Act (Northern Ireland) 1968 ;
 to carry on insurance business of any class in Great Britain or (as the case may be) in Northern Ireland.

4 Protection confined to United Kingdom policies

- (1) A policyholder is eligible for the assistance or protection of the Board in accordance with any provision of sections 6 to 16 below only in respect of a policy of insurance which was a United Kingdom policy for the purposes of this Act at the material time for the purposes of the provision in question.
- (2) A policy of insurance is a United Kingdom policy for the purposes of this Act at any time when the performance by the insurer of any of his obligations under the contract evidenced by the policy would constitute the carrying on by the insurer of insurance business of any class in the United Kingdom.

Duties of the Board in case of companies in liquidation

5 Application of sections 6 to 11

- (1) Subject to the following provisions of this section, the functions of the Board under sections 6 to 11 below are exercisable where in the case of any authorised insurance company—
 - (a) a resolution has been passed, in accordance with the provisions of the Companies Act 1948 or (as the case may be) of the Companies Act (Northern Ireland) 1960 for the voluntary winding up of the company, otherwise than merely for the purpose of reconstruction of the company or of amalgamation with another insurance company; or
 - (b) without any such resolution having been passed before hand, an order has been made for the winding up of the company by the court under either of those Acts.
- (2) Sections 6 to 11 shall not apply in a case falling within subsection (1)(d) above (whether or not an order for the winding up of the company by or subject to the supervision of the court has been made since the resolution there mentioned was passed) unless the resolution was passed after 29th October 1974.
- (3) Sections 6 to 11 shall not apply in a case falling within subsection (1)(b) above unless the petition for the winding up of the company by the court was presented after 29th October 1974.
- (4) References in this Act to a company in liquidation are references to an authorised insurance company in whose case—
 - (a) a resolution has been passed as mentioned in subsection (1)(a) above after 29th October 1974; or
 - (b) an order has been made as mentioned in subsection (1)(b) above on a petition presented after that date.
- (5) References in this Act, in relation to a company in liquidation, to the beginning of the liquidation, are references—
 - (a) in a case falling within subsection (1)(a) above, to the passing of the resolution ; and
 - (b) in a case falling within subsection (1)(b) above, to the making of the order.

6 Compulsory insurance policies and securities

- (1) This section applies to any policy which satisfies the requirements of any of the following, that is to say—
 - (a) section 1(4A)(d) of the Riding Establishments Act 1964 or any corresponding enactment for the time being in force in Northern Ireland ;
 - (b) section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 or Article 5 of the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 ; or.
 - (c) Part VI of the Road Traffic Act 1972 or Part V of the Road Traffic Act (Northern Ireland) 1970 ;

and to any policy evidencing a contract of insurance effected for the purposes of section 19 of the Nuclear Installations Act 1965.

- (2) This section applies to any security in respect of third-party risks given by an authorised insurance company which satisfies the requirements of Part VI of the Road Traffic Act 1972 or Part V of the Road Traffic Act (Northern Ireland) 1970.
- (3) In this section " a liability subject to compulsory insurance " means any liability required under any of the enactments mentioned in subsection (1) above to be covered by insurance or (as the case may be) by insurance or by some other provision for securing its discharge.
- (4) Subject to sections 9, 13 and 14 below and the following provisions of this section, it shall be the duty of the Board to secure that a sum equal to the full amount of any liability of a company in liquidation towards any policyholder or security holder under the terms of any policy or security to which this section applies is paid to the policyholder or security holder as soon as reasonably practicable after the beginning of the liquidation.
- (5) Subsection (4) above does not apply by reference to any liability of a company in liquidation under the terms of a policy to which this section applies arising otherwise than in respect of a liability of the policyholder which is a liability subject to compulsory insurance.
- (6) Subject to sections 9, 13 and 14 and subsection (8) below, it shall be the duty of the Board to secure that a sum equal to ninety per cent, of the amount of any liability of a company in liquidation towards a private policyholder under the terms of any policy to which this section applies, being a liability arising otherwise than in respect of a liability of the policyholder which is a liability subject to compulsory insurance, is paid to the policyholder as soon as reasonably practicable after the beginning of the liquidation.
- (7) In subsection (6) above " private policyholder " means a policyholder who is either—
 - (a) an individual; or
 - (b) a partnership or other unincorporated body of persons all of whom are individuals.
- (8) The duty of the Board under subsection (4) or (6) above shall not apply—
 - (a) in the case of any policy, unless it was a United Kingdom policy at the beginning of the liquidation; or
 - (b) in the case of any security in respect of third-party risks, unless it would have been a United Kingdom policy at the beginning of the liquidation if it had been an insurance policy and the contract governing the security had been a contract of insurance.
- (9) References hereafter in this Act to policies which were United Kingdom policies at any time and to policyholders in respect of such policies shall be construed as including references to—
 - (a) securities to which this section applies which would have been United Kingdom policies at the time in question if they had been insurance policies and the contracts governing the securities had been contracts of insurance ; and
 - (b) security holders in respect of such securities.

7 Third-party rights against insurance companies in road traffic cases

Without prejudice to section 6 above, but subject to sections 9, 13 and 14 below, it shall be the duty of the Board to secure that a sum equal to the full amount of any liability of a company in liquidation in respect of a sum payable to a person entitled to the benefit of a judgment under-

- (a) section 149 of the Road Traffic Act 1972 (duty of insurers to satisfy judgment against persons insured or secured against third-party risks); or
- (b) section 83 of the Road Traffic Act (Northern Ireland) 1970 (court orders for recovery from insurers of sums due under unsatisfied judgments against persons insured or secured by them);

is paid to that person as soon as reasonably practicable after the beginning of the liquidation.

8 General policies other than compulsory insurance policies

- (1) This section applies to any general policy other than a policy to which section 6 above applies.
- (2) Subject to sections 9, 13 and 14 below, it shall be the duty of the Board to secure that a sum equal to ninety per cent, of the amount of any liability of a company in liquidation towards a private policyholder under the terms of any policy to which this section applies which was a United Kingdom policy at the beginning of the liquidation is paid to the policyholder as soon as reasonably practicable after the beginning of the liquidation.
- (3) In subsection (2) above " private policyholder " has the same meaning as in section 6(6) above.
- (4) In this Act " general policy " means any policy evidencing a contract the effecting of which constituted the carrying on of general business of any class, not being—
 - (a) a contract the effecting of which constituted the carrying on of marine, aviation and transport insurance business, or
 - (b) a contract of reinsurance.

9 Limits on the duties of the Board under sections 6 to 8

- (1) The Board shall not by virtue of any provision of sections 6 to 8 above be required to secure any sum for a policyholder in respect of a policy of a company in liquidation which was a United Kingdom policy at the beginning of the liquidation or (as the case may be) for a person entitled to the benefit of a judgment by reference to any liability (or any part of any liability) of a company in liquidation which is duplicated by the liability of any other authorised insurance company which is not a company in liquidation.
- (2) A liability of a company towards a policyholder is duplicated by the liability of another company for the purposes of subsection (1) above in so far as that other company is also under a liability, under the terms of any general policy which was a United Kingdom policy at the beginning of the first-mentioned company's liquidation, to make any payment to or on behalf of the policyholder in respect of the matter to which the liability of the first-mentioned company relates.
- (3) A liability of a company in respect of a sum payable under section 149 of the Road Traffic Act 1972 or section 83 of the Road Traffic Act (Northern Ireland) 1970 to a

person entitled to the benefit of a judgment is duplicated by the liability of another company for the purposes of subsection (1) above in so far as that other company is also liable under either of those sections to pay any sum to that person in respect of the same judgment.

10 Long term policies

- (1) In this Act "long term policy" means any policy evidencing a contract the effecting of which constituted the carrying on of long term business of either class, not being a contract of reinsurance.
- (2) Subject to sections 13 and 14 below, it shall be the duty of the Board to secure that a sum equal to ninety per cent, of the amount of any liability of a company in liquidation towards any policyholder under the terms of a long term policy which was a United Kingdom policy at the beginning of the liquidation is paid to the policyholder as soon as reasonably practicable after the beginning of the liquidation.

11 Special provision for future benefits under long term policies

- (1) Subject to subsection (2) below, in this section "future benefit", in relation to any long term policy of a company in liquidation, means any benefit provided for under the policy which has not fallen due to be paid by the company before the beginning of the liquidation.
- (2) Any bonus provided for under a policy shall not by virtue of subsection (1) above be treated as a future benefit within the meaning of this section unless it was declared before the beginning of the liquidation.
- (3) Subject to sections 13 and 14 below and to the following provisions of this section, it shall be the duty of the Board, as soon as reasonably practicable after the beginning of the liquidation, to make arrangements in pursuance of subsection (5) below for securing continuity of insurance for every policyholder of a company in liquidation who is a policyholder in respect of a long term policy which was a United Kingdom policy at the beginning of the liquidation.
- (4) Subject to subsection (6) below, the duty of the Board under subsection (3) above to secure continuity of insurance for any policyholder extends only to securing that the policyholder will receive ninety per cent, of any future benefit under his policy, subject to and in accordance with terms corresponding so far as appears to the Board to be reasonable in the circumstances to the terms which would have applied under the policy.
- (5) For the purpose of securing continuity of insurance for any policyholders of a company in liquidation in accordance with subsection (3) above, the Board may take such measures as appear to them to be appropriate—
 - (a) for securing or facilitating the transfer of the long term business of the company, or of any part of that business, to another authorised insurance company; or
 - (b) for securing the issue by another authorised insurance company to the policyholders in question of policies in substitution for their existing policies.
- (6) Where a long term policy of a company in liquidation contains terms relating to matters other than future benefits under the policy the duty of the Board under subsection (3) above to secure continuity of insurance for the policyholder in question extends also

to securing that the policy after any transfer of business in which it is included or (as the case may be) any policy issued in substitution for the policy in question contains terms relating to those matters which correspond so far as appears to the Board to be reasonable in the circumstances to the terms first mentioned above.

- (7) During any period while the Board are seeking to make arrangements for securing continuity of insurance for any policyholders of a company in liquidation in accordance with subsection (3) above, it shall be the duty of the Board, subject to sections 13 and 14 and subsection (11) below, to secure that ninety per cent, of any future benefit under a long term policy which would have fallen due to be paid to any of those policyholders during that period is paid to the policyholder in question as soon as reasonably practicable after the time when the benefit in question would have fallen due under the policy (but subject to and in accordance with any other terms which would have applied under the policy).
- (8) Arrangements made by the Board in pursuance of subsection (5) above shall not be required to cover any future benefit under a policy in so far as any sums have been paid to the policyholder in pursuance of subsection (7) above by reference to that benefit.
- (9) Where it appears to the Board that it is not reasonably practicable to secure continuity of insurance for any policyholder of a company in liquidation in accordance with subsection (3) above, it shall be the duty of the Board, subject to sections 13 and 14 and subsection (10) below, to pay to the policyholder a sum equal to ninety per cent, of the value attributed to his policy for the purposes of any claim in respect of his policy in the winding up of the company, as soon as reasonably practicable after any such claim is admitted.
- (10) The Secretary of State may by regulations made by statutory instrument—
 - (a) require the Board, in a case to which subsection (9) above applies, to pay to the policyholder at his option, instead of the sum there mentioned, a sum equal to ninety per cent, of the value of the future benefits under his policy, or of such of those benefits as may be specified by the regulations, determined in such manner as the regulations may provide ;
 - (b) make such provision as appears to him to be appropriate with respect to the time within which and the manner in which the Board are to perform any of their functions under this section (including any function conferred on them by virtue of paragraph (a) above).
- (11) Any duty of the Board under subsection (3) or (7) above to take any measures for assisting a policyholder of a company in liquidation shall be subject to compliance on his part with any conditions imposed by the Board with respect to the payment, in any case or in any class or description of case, of sums which would have fallen due from policyholders of a company in liquidation by way of premiums under long term policies if the company had not gone into liquidation.

12 Disproportionate benefits under long term policies

- (1) If it appears to the Board, in the case of any long term policy of a company in liquidation which was a United Kingdom policy at the beginning of the liquidation, that the benefits provided for thereunder are or may be excessive in any respect, having regard to the premiums paid or payable and to any other terms of the policy, the Board shall refer the policy to an independent actuary.

- (2) This subsection applies in any case where an actuary to whom a policy is referred under subsection (1) above makes to the Board a report in writing—
- (a) stating, with respect to any of the benefits provided for under the policy, that in his view the benefit or benefits in question are excessive ; and
 - (b) recommending, accordingly, that for the purposes of sections 10 and 11 above any liability of the company under the policy or any future benefit under the policy should be treated as reduced or (as the case may be) disregarded.
- (3) In any case to which subsection (2) above applies the Board may determine in the light of any recommendation contained in the actuary's report that the liability or benefit to which that recommendation relates shall be treated as reduced or disregarded for the purposes of sections 10 and 11 above; and where the Board so determine the liability or benefit in question shall be treated as reduced or (as the case may be) disregarded accordingly for the purposes of the application of section 10, of any provision of subsections (3) to (7) of section 11, or of any provision of any regulations made under subsection (10) of section 11 above (as the case may require) in relation to the policy in question.
- (4) This subsection applies in any case where—
- (a) a claim has been admitted in the winding up of a company in respect of any policy which is the subject of a report by an actuary under subsection (2) above; and
 - (b) that report indicates, or the actuary makes to the Board a further report in writing indicating, what value would in his view have been attributed to the policy in the winding up if any future benefit under the policy to which any recommendation in the report under subsection (2) above relates had been treated as reduced or disregarded in accordance with the recommendation in determining the claim in respect of the policy in the winding up.
- (5) In any case to which subsection (4) above applies the Board may determine in the light of the value indicated in the actuary's report that the value attributed to the policy in question for the purposes of the claim in respect of the policy in the winding up shall be treated as reduced for the purpose of calculating the sum payable to the policyholder in accordance with subsection (9) of section 11 above; and where the Board so determine the value so attributed to the policy shall be treated as reduced for that purpose accordingly.
- (6) In this section " future benefit" has the same meaning as in section 11 above.

General provisions with respect to the duties of the Board

13 General provisions with respect to the performance by the Board of their duties

- (1) Where it appears to the Board, in the case of any policy of a company in liquidation—
- (a) that payment in respect of any sums falling due under the policy could have been made in accordance with the policy to a person other than the policyholder; or
 - (b) that any sums paid under the policy would have been subject to any trust, charge or other agreement binding on the policyholder;
- the Board may secure the payment of any sum payable to the policyholder in accordance with any of the provisions of sections 6 to 10 or in accordance with section 11(7) above or pay any sum so payable in accordance with section 11(9) or

(10) above (in whole or in part) to that other person or (as the case may be) to the person appearing to the Board to be entitled under the trust, charge or agreement in question, instead of to the policyholder.

Any payment made by virtue of this subsection to a person other than the policyholder shall be treated for the purposes of the provision in question as a payment to the policyholder and may be made on such conditions (with respect to the total or partial assignment to the Board of any rights of the recipient against the policyholder or any other person, or otherwise) as the Board think fit.

(2) The Board may secure the payment of any sum payable to a policyholder in accordance with any of the provisions of sections 6 to 10 or in accordance with section 11(7) above, or payable under section 7 above to a person entitled to the benefit of a judgment, and of any sum they are authorised to secure for a person other than the policyholder by virtue of subsection (1) above, by either or both of the following methods, that is to say—

- (a) by themselves making payments in respect of the sum in question; or
- (b) by securing by any measures appearing to them to be appropriate that such payments are made by any other person.

(3) Nothing in any provision of sections 6 to 11 above shall be construed as requiring the Board to make any payment or to incur any other expenditure thereunder at a time when it appears to the Board that the funds available to them for expenditure under that provision, together with any funds they may raise by means of a levy under section 19 or 21 below which might be applied on such expenditure, fall short of what they may require ; and accordingly the Board may—

- (a) postpone making any payment, or any part of any payment, they propose to make under any such provision ; and
- (b) postpone taking any measures under any such provision involving expenditure on their part;

from time to time, until it appears to them that their funds are adequate to meet the expenditure they propose to incur under the provision in question.

(4) Any duty of the Board to assist a policyholder of a company in liquidation by any of the measures provided for by sections 6 to 11 above shall be subject to compliance on his part with any conditions imposed by the Board with respect to the total or partial assignment to the Board of—

- (a) his rights under or in respect of the policy;
- (b) any rights he may have in respect of any payments made by him to the liquidator by way of premiums under the policy since the beginning of the liquidation ; and
- (c) any rights he may have against any other persons in respect of any event giving rise to any liability of the company under the policy.

(5) Any duty of the Board to secure the payment of any sum payable under section 7 above to a person entitled to the benefit of a judgment shall be subject to compliance on his part with any conditions imposed by the Board with respect to the total or partial assignment to the Board of any rights he may have against any other persons in respect of any event giving rise to the liability of the company in liquidation by reference to which that sum is so payable.

(6) In connection with imposing any conditions under any of the preceding provisions of this section with respect to the assignment to them of any rights the Board may make

any arrangement which appears to them to be appropriate with any person on whom the conditions are imposed with respect to the manner in which they are to apply any sums they may receive by virtue of the rights in question.

(7) The Secretary of State may by regulations made by statutory instrument provide for the transfer to and the vesting in the Board by virtue of the regulations, in such circumstances as may be specified therein—

- (a) of any such rights of a policyholder to whom the Board have given assistance by any of the measures provided for by sections 6 to 11 above as are mentioned in subsection (4) above;
- (b) of any such rights of a person for whom the Board have secured any payment in accordance with section 7 above as are mentioned in subsection (5) above; and
- (c) of any rights which a person to whom any payment has been made by virtue of subsection (1) above may have against the policyholder in respect of the policy or any sums falling due thereunder or against any other persons in respect of any event giving rise to any liability of the policyholder by virtue of which the payment in question was made ;

and regulations made under this subsection may also provide for the manner in which the Board are to apply any sums received by them by virtue of any rights vested in them by the regulations.

14 Exclusion and modification of duties of the Board where payments are made by other persons, etc.

(1) Any payment made by any person other than the Board to the policyholder, to a person entitled to the benefit of a judgment, or to any other person, being a payment which is referable to any such liability of a company in liquidation as is mentioned in section 6, 7 or 8 above, shall be treated as reducing any sum payable to the policyholder or to the person entitled to the benefit of the judgment, in accordance with any provision of those sections, by reference to that liability.

(2) This subsection applies in any case where it appears to the Board, in respect of a long term policy of a company in liquidation—

- (a) that any other person has made a payment to the policy holder or to any other person which is referable to any liability of the company under the policy which was outstanding at the beginning of the liquidation or which is otherwise required in accordance with subsection (3) below to be taken into account in relation to the policy; or
- (b) that any other person has taken any other measures for assisting or protecting the policyholder (whether measures of a like description to those open to the Board under subsection (5) of section 11 above or otherwise) which ought to be taken into account for the purpose of excluding or modifying any of their duties towards the policyholder under sections 10 and 11 above.

(3) Any payment made—

- (a) by reference to any valuation of a long term policy of a company in liquidation or of any of the benefits provided for under any such policy ; or
- (b) by reference to any future benefits under a long term policy of a company in liquidation ;

shall be taken into account in relation to that policy for the purposes of subsection (2)

(a) above (whether it was made to the policyholder or to any other person).

- (4) Nothing in sections 10 and 11 above shall require the Board, in a case to which subsection (2) above applies, to take any measures for assisting the policyholder in respect of the long term policy in question where it appears to the Board to be inappropriate to do so in view of any such payment or other measures of assistance or protection as are mentioned in that subsection.
- (5) In any case to which subsection (2) above applies, other than one falling within subsection (4) above, the Board may treat any sum payable to the policyholder in accordance with section 10 or section 11(7), (9) or (10) above and any sum to be secured for the policyholder by virtue of section 11(4) above as reduced to any extent appearing to them to be appropriate in the circumstances of the case.
- (6) Any sums secured by the Board under subsection (7) of section 11 above for a policyholder of a company in liquidation or for any other person by reference to any future benefits under a long term policy shall be treated as reducing any sum payable to the policyholder in respect of that policy in accordance with subsection (9) or (10) of that section.
- (7) The Board may postpone taking any of the measures provided for by sections 6 to 11 above in any case where it appears to the Board that, independently of any measures they may take, any other person (not being the liquidator) may make any payment or take any measures which would, by virtue of subsection (1), (4) or (5) above, affect any of their duties under those sections in relation to the case in question.
- (8) A payment is referable to a liability of a company in liquidation for the purposes of this section if it has the effect of reducing or discharging, or is otherwise made by reference to, that liability or any liability of the policyholder or any other person from which that liability arises.
- (9) In this section " future benefit" has the same meaning as in section 11 above.

Powers of the Board to assist policyholders of companies in liquidation, etc.

15 Interim payments to policyholders of companies in liquidation, etc.

- (1) An authorised insurance company, not being a company in liquidation, is a company in provisional liquidation for the purposes of this section if a provisional liquidator has been appointed in respect of the company under section 238 of the Companies Act 1948 or section 222 of the Companies Act (Northern Ireland) 1960, provided that the petition for the winding up of the company which led to his appointment was presented after 29th October 1974.
- (2) A policyholder is eligible for assistance under this section—
 - (a) if he is a policyholder in respect of a general policy or a long term policy of a company in liquidation which was a United Kingdom policy at the beginning of the liquidation ; or
 - (b) if he is a policyholder in respect of a general policy or a long term policy of a company in provisional liquidation which was a United Kingdom policy at the time when the provisional liquidator was appointed.
- (3) In any case where it appears to the Board to be desirable to do so, the Board may—

- (a) make payments to or on behalf of policyholders who are eligible for assistance under this section, on such terms (including any terms requiring repayment, in whole or in part) and on such conditions as the Board think fit; or
- (b) secure that payments are made to or on behalf of any such policyholders by the liquidator or the provisional liquidator by giving him an indemnity covering any such payments or any class or description of such payments.

Powers of the Board to protect policyholders of companies in financial difficulties

16 Companies in financial difficulties: transfers of business, etc.

- (1) An authorised insurance company, not being a company in liquidation, is a company in financial difficulties for the purposes of this section if—

- (a) it is a company in provisional liquidation within the meaning of section 15 above;
- (b) it has been proved, in any proceedings on a petition for the winding up of the company under the Companies Act 1948 or (as the case may be) the Companies Act (Northern Ireland) 1960, to be unable to pay its debts ; or
- (c) an application has been made to the court under section 206 of the Companies Act 1948 or section 197 of the Companies Act (Northern Ireland) 1960 for the sanctioning of a compromise or arrangement proposed between the company and its creditors or any class of them (whether or not any of its members are also parties there to) and the terms of the compromise or arrangement provide for reducing the liabilities or the benefits provided for under any of the company's policies;

provided that, in a case falling within paragraph (b) above, the petition was presented after 29th October 1974, and in a case falling within paragraph (c) above, the application was made after that date.

- (2) Subject to section 17 below and to the following provisions of this section, the Board may exercise any power conferred on them by subsection (3) or (4) below for the purpose of safeguarding policyholders of a company in financial difficulties who are eligible for protection under this section, or any class or description of such policyholders, to any extent appearing to the Board to be appropriate in any case or in any class or description of case, against loss arising from the financial difficulties of the company.
- (3) Subject to section 17 below and to the following provisions of this section, the Board may take any measures appearing to them to be appropriate for securing or facilitating the transfer of all or any part of the insurance business carried on by a company in financial difficulties to another authorised insurance company, on terms (including terms reducing the liabilities or the benefits provided for under any policies) appearing to the Board to be appropriate in any case or in any class or description of case.
- (4) Subject to section 17 below and to the following provisions of this section, in any case where it appears to the Board that it would be practicable to secure the purpose mentioned in subsection (2) above by giving assistance to the company in financial difficulties to enable it to continue to carry on insurance business, the Board may take such measures as appear to them to be appropriate for giving such assistance.
- (5) Without prejudice to the generality of subsection (4) above, the Board may make the giving of any assistance to a company in financial difficulties under subsection (4)

above conditional on the reduction of any liabilities or benefits provided for under any policies of the company to any extent appearing to them to be appropriate in any case or in any class or description of case.

- (6) The Board shall not exercise any power conferred on them by subsection (3) or (4) above for the purpose of safeguarding any policyholders of a company in financial difficulties in any case where it appears to the Board that—

- (a) persons who were members of the company at the relevant time; or
- (b) persons who had any responsibility for or who may have profited from the circumstances giving rise to the company's financial difficulties;

would benefit to any material extent as a result of any measures the Board may take under either of those subsections.

In this subsection and in the following provisions of this section " the relevant time " means—

- (a) in a case falling within subsection (1)(a) above, the time when the provisional liquidator was appointed;
- (b) in a case falling within subsection (1)(b) above, the time when the winding up petition was presented; and
- (c) in a case falling within subsection (1)(c) above, the time when the application was made under section 206 of the Companies Act 1948 or (as the case may be) under section 197 of the Companies Act (Northern Ireland) 1960.

- (7) The Board shall disregard for the purposes of subsection (6) above any benefit which may accrue to any such persons as are there mentioned who are policyholders of the company in financial difficulties in their capacity as such.
- (8) The Board shall not take any measures in pursuance of subsection (3) or (4) above for the purpose of safeguarding any policyholders of a company in financial difficulties in any case where it appears to the Board that to take whatever measures may be required for the assistance of the policyholders in question under sections 6 to 11 above in the event of the company's going into liquidation would cost them less than to take the measures in question under subsection (3) or (4) above.
- (9) A policyholder of a company in financial difficulties is eligible for protection under this section if he is a policyholder in respect of a general policy or a long term policy of the company which was a United Kingdom policy at the relevant time.

17 Special provision with respect to long term business of a company in financial difficulties

- (1) Without prejudice to subsection (8) of section 16 above, the Board shall not take any measures in pursuance of subsection (3) or (4) of that section for the purpose of safeguarding any policyholders of a company in financial difficulties in respect of long term policies of the company, other than measures allowed by subsection (2) below, in any case where it appears to the Board that to take those other measures would cost them more than to take measures allowed by subsection (2) below.
- (2) The measures allowed by this subsection are any measures open to the Board under subsection (3) or (4) of section 16 above for the purpose of safeguarding policyholders of a company in financial difficulties which involve the imposition by the Board, as a prerequisite of their incurring any expenditure or liabilities for that purpose, of conditions requiring—

- (a) the reduction of all liabilities of the company under relevant long term policies and of all benefits provided for under any such policies which have not fallen due to be paid by the company before the time when the reduction is to take effect, to ninety per cent, of the amount which would otherwise have been payable in accordance with the terms of the policies; and
- (b) the reduction of all premiums under any such policies which have not fallen due before that time to ninety per cent, of the amount which would otherwise have been so payable.

A long term policy is a relevant long term policy for the purposes of this subsection if it is included in any transfer secured or facilitated by the Board under subsection (3) of section 16 or in any business continued by virtue of any assistance given by the Board under subsection (4) of that section.

- (3) Without prejudice to the power of the Board to impose conditions in relation to taking any measures under subsection (3) or (4) of section 16 above with respect to matters other than those covered by the conditions mentioned in subsection (2) above, the benefits mentioned in paragraph (a) of subsection (2) shall not include any bonus provided for under a policy unless it was declared before the time when any such reduction of liabilities and benefits under that policy as is mentioned in that paragraph is to take effect.
- (4) If it appears to the Board, in the case of any long term policy of a company in financial difficulties which was a United Kingdom policy at the relevant time as defined by section 16(6) above, that the benefits provided for thereunder are or may be excessive in any respect, having regard to the premiums paid or payable and to any other terms of the policy, the Board shall refer the policy to an independent actuary.
- (5) Where an actuary to whom a policy of a company in financial difficulties is referred under subsection (4) above makes to the Board a report in writing—
 - (a) stating, with respect to any of the benefits provided for under the policy, that in his view the benefit or benefits in question are excessive ; and
 - (b) recommending, accordingly, that for the purposes of any measures to be taken by the Board in pursuance of subsection (3) or (4) of section 16 above for safeguarding the policyholder in question against loss arising from the financial difficulties of the company any such benefit should be treated as reduced or (as the case may be) disregarded ;

the Board may determine in the light of any recommendation contained in the actuary's report that any benefit to which that recommendation relates shall be treated as reduced or disregarded for those purposes.

- (6) Where in a case falling within subsection (5) above the Board determine that the benefit in question shall be disregarded for the purposes there mentioned, the conditions mentioned in subsection (2) above shall include conditions requiring the cancellation of that benefit or (as the case may be) of any liability representing that benefit.
- (7) Where in a case falling within subsection (5) above the Board determine that the benefit in question shall be treated as reduced for the purposes there mentioned, subsection (2)(a) above shall apply in relation to the policy as if the amount of that benefit or (as the case may be) of any liability representing that benefit, as reduced in accordance with the Board's determination, were the amount which would otherwise have been payable in accordance with the terms of the policy.

- (8) In this section " company in financial difficulties " has the same meaning as in section 16 above.

Levies on the insurance industry to finance the performance by the Board of their functions

18 General business expenditure and long term business expenditure

- (1) In this Act "general business expenditure" means—
- (a) any expenditure of the Board under section 6, 7 or 8 above; and
 - (b) any expenditure attributed by the Board under subsection (3) below to general business expenditure.
- (2) In this Act " long term business expenditure " means—
- (a) any expenditure of the Board under section 10 or 11 above; and
 - (b) any expenditure attributed by the Board under subsection (3) below to long term business expenditure.
- (3) The Board may, in the case of—
- (a) any expenditure under section 15 or 16 above;
 - (b) any expenditure in repaying or servicing any loans; and
 - (c) any expenditure on their administrative expenses in performing their functions under this Act;

attribute that expenditure to general business expenditure or to long term business expenditure, or partly to the one and partly to the other, in such manner as may appear to them to be reasonable in the circumstances of the case.

19 Levies on intermediaries

- (1) Where—
- (a) the Board have incurred or propose to incur any long term business expenditure in relation to a company in liquidation or a company which is a company in financial difficulties within the meaning of section 16 above; and
 - (b) it appears to the Board that the company in question has accountable intermediaries;
- it shall be the duty of the Board to impose a levy on those intermediaries in accordance with the following provisions of this section and Schedule 2 to this Act.
- (2) Subject to section 20 and subsections (3) and (5) below, a person is an accountable intermediary of a company for the purposes of this section and Schedule 2 to this Act if—
- (a) he has acted as an intermediary for the company in relation to any relevant long term contract of the company; and
 - (b) his income from the company in respect of his services (whether as an intermediary or otherwise) in relation to any such contracts (hereafter in this section and in section 20 below referred to as " relevant services ") for either or each of the two years comprised in the period of two years ending immediately before the time mentioned below in this subsection exceeded his exempt income level for the year in question.

The time referred to above is the beginning of the liquidation in the case of a company in liquidation and the relevant time as defined by section 16(6) above in the case of a company in financial difficulties within the meaning of that section.

- (3) An individual shall not be an accountable intermediary of a company for the purposes of this section and Schedule 2 to this Act if the services in question under subsection (2) (b) above were performed in pursuance of a contract of exclusive agency with the company.

For the purposes of this subsection a contract is a contract of exclusive agency with a company in relation to the performance of any services thereunder if it provides that the person performing the services must not perform services of a like description for any other insurance company.

- (4) Subject to section 20 and subsection (5) below, the income of an accountable intermediary of a company which is liable to levy under this section shall be—

- (a) one-half of any amount by which his income from the company in respect of relevant services for the later of the two years mentioned in subsection (2) above exceeded his exempt income level for that year; and
- (b) one-quarter of any amount by which his income from the company in respect of relevant services for the earlier of those two years exceeded his exempt income level for that year;

and in relation to any intermediary, his income liable to levy for either of those years or, where he had income liable to levy for each of those years, the aggregate of his income liable to levy for both of those years, is hereafter in this Act referred to as income of the intermediary which is income liable to levy.

- (5) For the purposes of this section and section 20 below a person's income from a company in respect of relevant services for any year is the total amount of the sums paid or allowed to that person by the company in respect of relevant services which were recorded as debits in the company's accounts during that year; but no account shall be taken for those purposes of any sums recorded in a company's accounts at any time before 1st January 1976.
- (6) If the proceeds of any levy imposed under this section in respect of any company exceed the long term business expenditure incurred by the Board in relation to that company the Board shall distribute the excess among the accountable intermediaries of that company who have made any payments to the Board under the levy in proportion to the sums those intermediaries have respectively paid thereunder.
- (7) References in this section, in section 20 below and in Schedule 2 to this Act to an intermediary of a company are references to a person who has acted as an intermediary for the company in relation to any relevant long term contract of the company.
- (8) For the purposes of this section a person acts as an intermediary for a company in relation to a long term contract if, otherwise than as an employee of the company—
- (a) he invites any other person to take any step with a view to entering into a long term contract with the company;
 - (b) he introduces any other person to the company with a view to his entering into such a contract with the company; or
 - (c) he takes any other action with a view to securing that any other person will enter into such a contract with the company.

- (9) In this section " long term contract" means a contract the effecting of which by a company constitutes the carrying on by the company of long term business of either class in the United Kingdom, not being a contract of reinsurance; and a long term contract is a relevant long term contract of a company for the purposes of this section if it was effected by the company within the period of two years mentioned in subsection (2) above.
- (10) Schedule 2 to this Act shall have effect with respect to the imposition and enforcement Of levies under this section.

20 The exempt income level for the purposes of section 19

- (1) For the purposes of section 19 above the exempt income level of an intermediary of a company for any year is—
- (a) where no other person is linked with the intermediary, £5,000; and
 - (b) in any other case, that proportion of £5,000 which is equal to the proportion which the intermediary's income from the company in respect of relevant services for the year in question bears to the total amount of the group's income from the company in respect of such services for that year.

In paragraph (b) above " the group " means the intermediary together with the person or (where there are more than one) all of the persons linked with the intermediary.

- (2) Where in a case falling within subsection (1)(b) above the income from the company in respect of relevant services for any year—
- (a) of the intermediary ; and
 - (b) of each person linked with the intermediary;
- did not exceed £1,000, no account shall be taken of that income for the purposes of section 19 above.
- (3) The following are persons linked with an intermediary for the purposes of this section, whether the intermediary is a company or a person other than a company—
- (a) any partner of the intermediary and any partnership of which the intermediary is a member;
 - (b) any company of which the intermediary is a director; and
 - (c) any director of any company which is linked with the intermediary.
- (4) Where the intermediary in question is a company the following are also persons linked with the intermediary for the purposes of this section—
- (a) any person other than a company who has a controlling interest in the intermediary, and any company other than the intermediary in which any such person also has a controlling interest;
 - (b) any company of which the intermediary is a subsidiary and any other subsidiary of any such company;
 - (c) any subsidiary of the intermediary ; and
 - (d) any director of the intermediary.
- (5) Where the intermediary in question is a person other than a company the following are also persons linked with the intermediary far the purposes of this section—
- (a) any company in which the intermediary has a controlling interest;

- (b) any company of which a company linked with the intermediary by virtue of subsection (3)(b) or paragraph (a) above is a subsidiary and any other subsidiary of any such company;
 - (c) any subsidiary of any company linked with the intermediary by virtue of subsection (3)(b) or paragraph (a) above; and
 - (d) where the intermediary is a partnership, each of its members.
- (6) A person other than a company shall be treated as having a controlling interest in a company for the purposes of subsections (4) (a) and (5) (a) above if, but only if, that company would be a subsidiary of the person in question if that person were a company.
- (7) In determining for the purposes of subsection (6) above whether a company would be a subsidiary of any person other than a company, any shares held or power exercisable by either of two spouses or by both spouses jointly shall be treated as held or exercisable by each spouse.
- (8) In subsections (3) to (7) above " company " has the same meaning as in section 154 of the Companies Act 1948 (meaning of " holding company " and " subsidiary ").

21 Levies on authorised insurance companies

- (1) Subject to the following provisions of this section and to Schedule 3 to this Act, the Board may from time to time, for the purpose of financing general business expenditure, impose a levy on authorised insurance companies carrying on general business in the United Kingdom (hereafter in this Act referred to as a " general business levy ").
- (2) Subject to the following provisions of this section and to Schedule 3 to this Act, the Board may from time to time, for the purpose of financing long term business expenditure, impose a levy on authorised insurance companies carrying on long term business in the United Kingdom (hereafter in this Act referred to as a " long term business levy ").
- (3) The amount each insurance company may be required to pay under general business levies imposed in any financial year shall be calculated by reference to the net premium income of the company for the year ending last before the beginning of that financial year in respect of general policies which were United Kingdom policies at the relevant time; and any such income is hereafter in this Act referred to, in relation to any company, as income of the company for the year in question which is income liable to the general business levy.
- (4) The amount each insurance company may be required to pay under long term business levies imposed in any financial year shall be calculated by reference to the net premium income of the company for the year ending last before the beginning of that financial year in respect of long term policies effected after 31st December 1974 which were United Kingdom policies at the relevant time ; and any such income is hereafter in this Act referred to, in relation to any company, as income of the company for the year in question which is income liable to the long term business levy.
- (5) In subsections (3) and (4) above, the net premium income of a company for any year in respect of policies of any description which were United Kingdom policies at the relevant time means the gross amounts recorded in the company's accounts during that year as paid or due to the company by way of premiums under policies of that

description which were United Kingdom policies at the time when the amounts in question were so recorded, less any amounts deductible for that year in respect of policies of that description in accordance with subsection (6) or (7) below.

- (6) In calculating a company's net premium income for any year in respect of policies of any description, any rebates or refunds recorded in the company's accounts during that year as allowed or given in respect of any amounts so recorded during that or any previous year as paid or due to the company by way of premiums under policies of that description which were United Kingdom policies at the time when the rebates or refunds were so recorded shall be deductible.
- (7) In calculating a company's net premium income for any year in respect of general policies, any sums recorded in the company's accounts during that year as paid by or due from the company by way of premiums for reinsuring its liabilities towards policyholders under general policies which were United Kingdom policies at the time when the sums in question were so recorded shall be deductible.
- (8) The proceeds of general business levies may be applied by the Board only on general business expenditure, and the proceeds of long term business levies may be applied by the Board only on long term business expenditure.
- (9) Schedule 3 to this Act shall have effect with respect to the imposition and enforcement of general business levies and long term business levies and the other matters there mentioned.

22 Treatment of business as, or as not being, long term business for the purposes of section 21 and Schedule 3

- (1) The provisions to which section 56 of the Insurance Companies Act 1974 (treatment of certain business as or as not being ordinary long term insurance business) applies shall include section 21 of and Schedule 3 to this Act; and accordingly at the end of subsection (4) of section 56 there shall be added the words " and section 21 of the Policyholders Protection Act 1975 and Schedule 3 to that Act ".
- (2) The provisions to which section 37 of the Insurance Companies Amendment Act 1973 (which makes similar provision for Northern Ireland to that made for Great Britain by the said section 56) applies shall include section 21 of and Schedule 3 to this Act; and accordingly, in subsection (4) of section 37, after the word " above" there shall be inserted the words " section 21 of the Policyholders Protection Act 1975 and Schedule 3 to that Act ".

Miscellaneous and supplementary

23 Special provision for persons insured under contracts of insurance not evidenced by policies

- (1) Where it appears to the Board—
 - (a) that a person is a person insured under a contract of insurance with an authorised insurance company which is not evidenced by any policy ; and
 - (b) that if a policy evidencing the contract had been issued the person in question would have been eligible as a policyholder in respect of that policy for the assistance or protection of the Board under any provision of sections 6 to 16 above (hereafter in this section referred to as " the relevant provision ");

the Board may take such measures for the assistance or protection of the person in question as they would in their view have been required of authorised to take under the relevant provision if such a policy had been issued and the person in question had been the policyholder.

- (2) For the purposes of section 18 above any expenditure of the Board under this section shall be treated as expenditure under the relevant provision.

24 Application of general receipts by the Board

Subject to any arrangement made by the Board under subsection (6) of section 13 above and to any regulations made by the Secretary Of State under subsection (7) of that section, any sums from time to time received by the Board in the course of or in connection with the exercise of any of their functions under this Act, but otherwise than by virtue of any levy imposed under section 19 or 21 above, may be applied by the Board—

- (a) in so far as the sums are received in repayment or otherwise by virtue of any general business expenditure incurred by the Board, on expenditure of that description only;
- (b) in so far as the sums are received in repayment or otherwise by virtue of any long term business expenditure incurred by the Board, on expenditure of that description only.

25 Application of surplus funds by the Board

- (1) If at any time the Secretary of State, after consultation with the Board, considers that the funds for the time being held by the Board exceed what is reasonably required for the purpose of exercising their functions under this Act, he may by order made by statutory instrument require the Board to distribute any of those funds appearing to him to be surplus to their requirements among authorised insurance companies, carrying on business in the United Kingdom, in such manner and subject to such conditions as may be prescribed by the order.
- (2) An order made under this section may make different provision for different circumstances and may be varied or revoked by a subsequent order so made.
- (3) Any statutory instrument containing an order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

26 Overseas companies

- (1) In this section " overseas company " means an authorised insurance company established in a country outside the United Kingdom.
- (2) Where it appears to the Secretary of State that any circumstances have occurred in relation to an overseas company which are the equivalent under the law relating to companies in force in the country in which it is established of any of the events mentioned in section 5, section 15(1) or section 16(1) above, the Secretary of State may refer the company's case to the Board, in terms indicating whether it is to be treated as a company in liquidation for the purposes of this Act or solely as a company in provisional liquidation within the meaning of section 15 above or (as the case may be) as a company in financial difficulties for the purposes of section 16 above.

- (3) The functions of the Board under this Act or, as the case may be, under section 15 or 16 above shall be exercisable in relation to a company whose case has been referred to the Board under this section in accordance with the terms of the reference ; and the provisions of this Act or, as the case may be, of section 15 or 16 shall apply in any such case subject to any modifications notified by the Secretary of State to the Board in connection with the reference.
- (4) The modifications notified by the Secretary of State to the Board in connection with a reference under this section shall be such only as appear to the Secretary of State to be necessary having regard to any differences between the law in force in the United Kingdom and the law for the time being in force in the country in which the overseas company in question is established.

27 Disclosure of documents and information to the Board

Nothing in section 111 of the Companies Act 1967 or section 34 of the Insurance Companies Act (Northern Ireland) 1968 (provision for security of information) shall prevent the disclosure to the Board of any information or document obtained as mentioned in subsection (1) of that section, if the disclosure is required for the purpose of facilitating the performance by the Board of any of their functions under this Act.

28 Statement by Secretary of State with respect to the exercise of his powers in relation to a company in liquidation, etc.

- (1) Subject to the following provisions of this section, in the case of a company—
 - (a) which is a company in liquidation ; or
 - (b) which is a company in financial difficulties within the meaning of section 16 above in relation to which the Board have exercised any of their powers under that section or under section 15 above ;the Secretary of State shall before the end of the period applicable by virtue of subsection (2) below lay before Parliament a statement with respect to the exercise of his powers under the Insurance Companies Act 1974 in relation to that company during the year ending immediately before the time mentioned below in this subsection.

The time referred to above is the beginning of the liquidation in a case falling within paragraph (a) above and the relevant time as defined by section 16(6) above in a case falling within paragraph (b) above.
- (2) The period applicable by virtue of this subsection is—
 - (a) in a case falling within paragraph (a) of subsection (1) above, the period of six months beginning with the beginning of the liquidation ; and
 - (b) in a case falling within paragraph (b) of that subsection, the period of six months beginning with the date on which the Secretary of State receives written notification from the Board that they have exercised any of their powers under section 15 or 16 above in relation to the company in question.
- (3) Where by virtue of paragraph (b) of subsection (1) above the Secretary of State is required to lay before Parliament a statement with respect to the exercise of his powers under the Insurance Companies Act 1974 in relation to any company, that subsection shall not also apply by virtue of paragraph (a) thereof in the case of that company in the event of the company's going into liquidation.

- (4) The Secretary of State shall not be required to include in any statement under this section any information which might in his view prejudice any criminal proceedings which have been or may be instituted against any person.

29 Disclosure of documents and information to insurance advisers appointed by the Secretary of State

Nothing in section 111 of the Companies Act 1967 shall prevent the disclosure to any person appointed by the Secretary of State to advise him on the exercise of his powers under the Insurance Companies Act 1974, during the currency of that person's appointment, of any information or document obtained as mentioned in subsection (1) of that section if the disclosure is required for the purpose of enabling the Secretary of State to consult that person with respect to the exercise of any of his powers under the said Act of 1974.

30 Report by Secretary of State with respect to the operation of this Act

Within the period of six months beginning with 1st January 1981 the Secretary of State shall lay before Parliament a report: reviewing the operation of this Act and its effectiveness as a method of protecting policyholders of authorised insurance companies carrying on business in the United Kingdom.

31 Regulations

- (1) Any statutory instrument containing regulations made under any provision of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) The power of the Secretary of State to make regulations under any provision of this Act includes power to make different provision for different circumstances, but shall only be exercisable after consultation with the Board.

32 Interpretation

- (1) In this Act—

" authorised insurance company " has the meaning given by section 3(2) above ;

" the Board " has the meaning given by section 1(1) above;

" company in liquidation " has the meaning given by section 5(4) above;

" enactment " includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;

" financial year " means a period of twelve months ending with 31st March in any year;

" general business expenditure " has the meaning given by section 18(1) above ;

" general business levy " has the meaning given by section 21(1) above;

" general policy " has the meaning given by section 8(4) above;

" long term business expenditure " has the meaning given by section 18(2) above ;

" long term business levy " has the meaning given by section 21(2) above;

" long term policy " has the meaning given by section 10(1) above;
and references to United Kingdom policies shall be construed in accordance with
section 4 above.

- (2) Except as provided by subsection (1) above, but subject to subsection (3) below—
 - (a) expressions used in this Act have the same meaning as in the Insurance Companies Act 1974; and
 - (b) references in this Act to insurance business of any class are references to insurance business of a class relevant for the purposes of Part I of that Act.
- (3) In the application of this Act to Northern Ireland—
 - (a) expressions used therein have the same meaning, except as provided by subsection (1) above, as in the Insurance Companies Act (Northern Ireland) 1968 or the Insurance Companies Amendment Act 1973 (as the case may require); and
 - (b) references to insurance business of any class are references to insurance business of a class relevant for the purposes of the said Act of 1968.
- (4) For the purposes of this Act, a liability of a company in liquidation towards a policyholder arising otherwise than under the terms of the policy shall be treated as a liability under the terms of the policy if the liability of the company arises from any failure on the part of the company to perform an obligation under the policy to provide any services or facilities on the occurrence of any event to which the risk under the policy relates.
- (5) References in this Act to any other enactment include references to that enactment as amended or extended by or under any other enactment.

33 Short title and extent

- (1) This Act may be cited as the Policyholders Protection Act 1975.
- (2) It is declared that this Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 1.

ADDITIONAL PROVISIONS WITH RESPECT TO THE POLICYHOLDERS PROTECTION BOARD

Constitution of the Board

- 1 (1) The Board shall consist of five persons appointed by the Secretary of State to be members of the Board, together with any persons appointed by the Secretary of State under sub-paragraph (3) below to be alternate members.
- (2) Of the persons appointed to be members of the Board—
 - (a) at least three shall be persons who are directors, chief executives or managers* of authorised insurance companies ; and
 - (b) at least one shall be a person appearing to the Secretary of State to be qualified to represent the interests of policyholders of authorised insurance companies.
- (3) The Secretary of State may appoint, in respect of each member of the Board, a person to perform his duties as a member in his absence, and a person so appointed shall be an alternate member of the Board and may take part in the proceedings of the Board in the absence of the member in respect of whom he was appointed or as provided by paragraph 4(4) below (but not otherwise).
- (4) A person appointed as an alternate member of the Board in respect of a person who is a director, chief executive or manager of an authorised insurance company shall himself be such a director, chief executive or manager; and a person so appointed in respect of any such person as is mentioned in sub-paragraph (2)(b) above shall himself be a person appearing to the Secretary of State to be qualified as there mentioned.
- (5) The Secretary of State shall consult persons appearing to him to be representative of the interests of authorised insurance companies before appointing a person who is a director, chief executive or manager of an authorised insurance company to be a member or alternate member of the Board.

Appointment and tenure of members, etc.

- 2 (1) Any appointment made by the Secretary of State under paragraph 1 above shall be for a term not exceeding two years and the term of appointment of an alternate member shall not exceed the term, or the remainder of the term (as the case may be) of the member in respect of whom he is appointed.
- (2) Nothing in sub-paragraph (1) above shall be taken as prejudicing the power of the Secretary of State to re-appoint a person as a member or alternate member of the Board on his ceasing to hold office in either capacity, or at any time thereafter.
- 3 (1) The Secretary of State shall appoint one of the members of the Board to be the chairman of the Board.

- (2) If the chairman ceases to be a member of the Board he shall cease to be the chairman.
- 4 (1) Subject to the following provisions of this paragraph, the members and alternate members of the Board (including the chairman) shall hold and vacate office in accordance with the terms of their respective appointments.
- (2) A person may at any time resign his office as a member, as an alternate member or as chairman by giving to the Secretary of State a notice in writing signed by that person and stating that he resigns that office.
- (3) If the Secretary of State is satisfied that a member or an alternate member—
- (a) is incapacitated by physical or mental illness ; or
 - (b) is otherwise unable or unfit to discharge his functions as such;
- the Secretary of State may by notice in writing given to the person in question remove him from office as member or (as the case may be) as alternate member; and his office shall thereupon become vacant.
- (4) Where before the end of the term for which he was appointed a member dies or vacates office by virtue of sub-paragraph (2) or (3) above—
- (a) the alternate member in respect of that member may act as member in his place until a person is appointed to fill his office as member ; and
 - (b) the Secretary of State may vary the terms of appointment of the alternate member on appointing a person to fill the office vacated by the member in question.

Remuneration, etc. of members

- 5 (1) Subject to sub-paragraph (2) below, the Board shall pay to each member or alternate member such remuneration and such travelling, subsistence or other allowances as the Board may determine.
- (2) Any determination of the Board with respect to the remuneration to be paid to any member or alternate member shall be subject to the approval of the Secretary of State, and the Secretary of State shall not give his approval without the consent of the Minister for the Civil Service.
- 6 If a person ceases to be a member or an alternate member of the Board and it appears to the Secretary of State that there are special circumstances which make it right that that person should receive compensation, the Secretary of State may require the Board to pay to that person a sum of such amount as the Secretary of State may with the consent of the Minister for the Civil Service determine.

Powers and procedure, etc.

- 7 (1) The Board may invest any funds held by them which appear to them to be surplus to their requirements for the time being—
- (a) in any investment for the time being falling within Part I, Part II or Part III of Schedule 1 to the Trustee Investments Act 1961 ; or
 - (b) in any investment approved for the purpose by the Secretary of State.
- (2) Subject to sub-paragraph (1) above, the Board shall have power to do anything incidental or conducive to the proper performance of their functions under this Act

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

- (3) Without prejudice to the generality of sub-paragraph (2) above, the measures open to the Board under any provision of this Act which authorises or requires the Board to take any measures appearing to them to be appropriate for any purpose include in particular—
- (a) the making of payments to any person, on such terms (including terms requiring repayment, in whole or in part) and on such conditions as the Board think fit;
 - (b) the giving of guarantees or indemnities to or in favour of any person; and
 - (c) the making of any other agreement or arrangement with or for the benefit of any person.
- 8 Subject to the provisions of this Schedule, the Board shall have power to regulate their own procedure.
- 9 (1) Subject to sub-paragraph (2) below, a member or an alternate member of the Board who is in any way directly or indirectly interested (whether as being a member or policyholder of an insurance company or in any other manner whatsoever) in any matter falling to be considered by the Board shall disclose the nature of his interest at a meeting of the Board and the disclosure shall be recorded in the minutes of the meeting; and the member or the alternate member in question shall not take part in any deliberation or decision of the Board with respect to that matter.
- (2) Sub-paragraph (1) above shall not apply in relation to any interest of a member or alternate member arising from any connection with an insurance company where the only connection of the company in question with the matter under consideration arises from the fact that it has agreed or may agree to take a transfer of all or any part of the insurance business of a company in liquidation or of a company which is a company in financial difficulties within the meaning of section 16 above.
- (3) A notice given by a member or alternate member at a meeting of the Board to the effect that he is a member or a policyholder of a specified insurance company and is to be regarded as interested in any matter affecting that company which falls to be considered by the Board after the date of the notice shall, for the purposes of sub-paragraph (1) above, be a sufficient disclosure of his interest in any such matter.
- (4) A member or alternate member need not attend in person at a meeting of the Board in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at such a meeting.
- 10 The validity of any proceedings of the Board shall not be affected by any vacancy among the members or by any defect in the appointment of a member or of an alternate member or by any failure to comply with the requirements of paragraph 9 above.

Performance of functions

- 11 The Board may authorise any member or alternate member or any other person who is either an employee or an agent of theirs to perform on their behalf such of their functions (including the function conferred on them by this paragraph) as are specified in the authorisation.

Instruments and contracts

- 12 The fixing of the common seal of the Board shall be authenticated by the signature of the chairman of the Board or some other person authorised by the Board to act for that purpose.
- 13 A document purporting to be duly executed under the seal of the Board shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

Accounts, audit and annual report

- 14 (1) It shall be the duty of the Board—
- (a) to keep proper accounts and proper records in relation to the accounts ; and
 - (b) to prepare in respect of the period beginning with the date on which this Act is passed and ending with 31st March 1976 and in respect of each subsequent financial year a statement of accounts, in such form as the Secretary of State may direct, showing the state of affairs and income and expenditure of the Board.
- (2) A statement of accounts prepared in accordance with sub-paragraph (1)(b) above shall be audited by auditors appointed by the Board.
- (3) A person shall not be qualified to be appointed as auditor by the Board under sub-paragraph (2) above unless he is a member of one or more of the following bodies—
- the Institute of Chartered Accountants in England and Wales ;
 - the Institute of Chartered Accountants of Scotland ;
 - the Association of Certified Accountants ;
 - the Institute of Chartered Accountants in Ireland ;
 - any other body of accountants established in the United Kingdom and for the time being recognised for the purposes of section 161(1)(a) of the Companies Act 1948 by the Secretary of State ;
- but a Scottish firm may be so appointed if each of the partners therein is qualified to be so appointed.
- (4) It shall be the duty of the Board, as soon as possible after the end of the period mentioned in sub-paragraph (1)(b) above and each subsequent financial year, to prepare, in such manner as the Secretary of State may direct, a report on the performance of their functions during that period or (as the case may be) during that year.
- (5) It shall be the duty of the Board to publish the statement of accounts prepared in accordance with sub-paragraph (1)(b) above and the report prepared in accordance with sub-paragraph (4) above in respect of the period mentioned in sub-paragraph (1) (b) above and any subsequent financial year at such time and in such manner as the Secretary of State may direct.

SCHEDULE 2

Section 19.

ADDITIONAL PROVISIONS WITH RESPECT TO LEVIES ON INTERMEDIARIES

Restriction on the imposition of the levy

- 1 No levy shall be imposed under section 19 above in respect of any company—
- (a) after the end of the period of two years beginning with the beginning of the liquidation if the company is a company in liquidation; or
 - (b) after the end of the period of two years beginning with the relevant time as defined by section 16(6) above if the company is a company in financial difficulties within the meaning of that section.

The rate of the levy

- 2 (1) Subject to sub-paragraph (2) below, the rate of a levy imposed under section 19 above in respect of any company shall be—
- (a) where the long term business expenditure incurred by the Board in relation to that company is less than the total amount of the income liable to levy, a percentage equal to the percentage of that amount which that expenditure represents ; and
 - (b) in any other case, one hundred per cent.
- (2) Where a levy is imposed under section 19 above in respect of any company before the exact amount of the long term business expenditure of the Board in relation to that company is ascertained sub-paragraph (1)(a) above shall apply as if the Board's estimate of that expenditure were the expenditure actually incurred.
- (3) In sub-paragraph (1) above "the total amount of the income liable to levy " means, in relation to any company, the total amount of the income of all the persons who appear to the Board to be accountable intermediaries of that company which appears to the Board to be income liable to levy.

Statements for the purposes of section 20

- 3 (1) The Board may by notice in writing require any person who appears to them to be an intermediary of any such company as is mentioned in sub-paragraph (a) or (b) of paragraph 1 above to give to them any information which appears to them to be necessary in order to determine what (if any) persons would be linked with that person within the meaning of section 20 above if that person were an intermediary of that company.
- (2) A person to whom a notice is sent under this paragraph shall send to the Board within one month of the date of the notice a statement—
- (a) giving any of the information required by the notice which he is able to give ; or
 - (b) informing the Board that he is unable to give any of the information required by the notice.
- 4 (1) Any person who causes or permits to be included in a statement sent to the Board under paragraph 3 above any information which he knows to be false in a material particular or recklessly causes or permits to be so included any information which is false in a material particular shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both ;
 - (b) on summary conviction, to a fine not exceeding £400.
- (2) Any person who makes default in complying with paragraph 3 above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £400.

Declaration and enforcement of the levy

- 5 (1) On imposing a levy under section 19 above in respect of any company, the Board shall send notice of the levy to every person who appears to the Board to be an accountable intermediary of that company.
- (2) A notice under sub-paragraph (1) above shall indicate—
- (a) the name of the company in respect of which the levy is being imposed ;
 - (b) the period covered, in the case of that company, by each of the two years mentioned in section 19(2) above ; and
 - (c) what in the view of the Board is the amount of the income of the intermediary in question which is income liable to levy;
- and shall specify the rate of the levy.
- 6 (1) An intermediary to whom notice of a levy is sent under paragraph 5 above shall pay to the Board within one month of the date of the notice the percentage specified in the notice of any income of the intermediary which is income liable to levy.
- (2) Any sum due to the Board in respect of a levy imposed under section 19 above shall be recoverable in any court of competent jurisdiction.

Notices under paragraphs 3 and 5

- 7 A notice under paragraph 3 or 5 above may be sent by post, and a letter containing such a notice shall be deemed to be properly addressed if it is addressed to the person to whom it is sent at his last known place of business in the United Kingdom.

SCHEDULE 3

Section 21.

ADDITIONAL PROVISIONS WITH RESPECT TO
LEVIES ON AUTHORISED INSURANCE COMPANIES

Restrictions on the imposition of the levies

- 1 No levy may be imposed by the Board under section 21 above before the beginning of the financial year ending with 31st March 1977.
- 2 (1) The amounts required to be paid by any company under general business levies imposed by the Board in any financial year shall not exceed one per cent, of any income of the company for the year ending last before the beginning of that financial year which is income liable to the general business levy.
- (2) The amounts required to be paid by any company under long term business levies imposed by the Board in any financial year shall not exceed one per cent, of any

income of the company for the year ending last before the beginning of that financial year which is income liable to the long term business levy.

- 3 The Board may not impose a levy for the purpose of financing expenditure of any description unless—
- (a) the expenditure in question has already been incurred by the Board; or
 - (b) it appears to the Board that the expenditure will be incurred within twelve months of the imposition of the levy.

Statements of premium income

- 4 (1) Every authorised insurance company shall send to the Secretary of State before 1st March 1976, and thereafter before 1st March in any subsequent year, a statement of any income of the company for the previous year which is income liable to the general business levy.
- (2) Every authorised insurance company shall send to the Secretary of State before 1st March 1976, and thereafter before 1st March in any subsequent year, a statement of any income of the company for the previous year which is income liable to the long term business levy.
- (3) Where an authorised insurance company is required under this paragraph to send a statement to the Secretary of State in respect of income of both descriptions mentioned in sub-paragraphs (1) and (2) above it shall send a separate statement in respect of income of each description.
- 5 (1) Any person who causes or permits to be included in a statement sent to the Secretary of State under paragraph 4 above any information which he knows to be false in a material particular or recklessly causes or permits to be so included any information which is false in a material particular shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both ;
 - (b) on summary conviction, to a fine not exceeding £400.
- (2) Any insurance company which makes default in complying with paragraph 4 above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £400.
- (3) Sections 28(1)(b)(i) and 46(1)(a) of the Insurance Companies Act 1974 (failure to satisfy an obligation under that Act to be a ground for the exercise by the Secretary of State of certain powers in relation to an insurance company) shall have effect in relation to the obligation imposed on an insurance company by paragraph 4 above as they have effect in relation to obligations imposed on an insurance company under that Act.
- (4) Sections 79 to 82 of the Insurance Companies Act 1974 shall apply in relation to an offence committed or alleged to have been committed under this paragraph as they apply in relation to an offence committed or alleged to have been committed under that Act.
- (5) In the application of sub-paragraph (3) above to Northern Ireland—
- (a) for the references to sections 28(1)(b)(i) and 46(1)(a) of the Insurance Companies Act 1974 there shall be substituted respectively references to section 12(1)(b)(i) of the Insurance Companies Amendment Act 1973 and section 42(2)(b) of the Insurance Companies Act (Northern Ireland) 1968 ;

(b) the words " that Act", in both places where they occur, shall be construed as referring to the Act in which the provision in question is included ; and

(c) for the reference to the Secretary of State there shall be substituted a reference to the Department of Commerce ;

and in the application of sub-paragraph (4) above to Northern Ireland, for the reference to sections 79 to 82 of the said Act of 1974 there shall be substituted a reference to sections 63 to 66 of the said Act of 1968.

Declaration and enforcement of levies

- 6 (1) Subject to paragraphs 1 to 3 above, levies may be imposed by the Board under section 21 above at such times and at such rates in relation to income of authorised insurance companies liable to the general business levy or to the long term business levy as the Board may determine.
- (2) On imposing a levy under section 21 above, the Board shall send notice of the rate of levy to every authorised insurance company which may in the opinion of the Board have had income liable to the levy for the year ending last before the financial year in which the levy is imposed.
- (3) A notice under sub-paragraph (2) above shall indicate—
- (a) whether the levy is a general business levy or a long term business levy;
 - (b) what description of income is income liable to the levy in question ; and
 - (c) the purpose for which the levy is being imposed ;
- and shall specify the rate of the levy as a percentage of the income liable to the levy.
- (4) A notice required to be sent by sub-paragraph (2) above may be sent by post, and a letter containing such a notice shall be deemed to be properly addressed if it is addressed to the insurance company to which it is sent at its last known place of business in the United Kingdom.
- 7 (1) An insurance company to which notice of the rate of a levy is sent under paragraph 6 above shall pay to the Board within one month of the date of the notice the percentage specified in the notice of any income of the company for the year ending last before the financial year in which the levy is imposed which is income liable to the levy in question.
- (2) Any sum due to the Board in respect of a levy imposed under section 21 above shall be recoverable in any court of competent jurisdiction.