



# Insurance Companies Act 1982

## 1982 CHAPTER 50

An Act to consolidate the Insurance Companies Acts 1974 and 1981. [28th October 1982]

### Modifications etc. (not altering text)

- C1 Act excluded (E.W.) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 21\(5\)](#)
- C2 Act extended by [S.I. 1990/1159, reg. 11](#)
- C3 Act saved (15.5.1991) by [Standard Life Assurance Company Act 1991 \(c. iii\), s. 21\(1\)](#); appointed day (15.5.1991) as published in the London Gazette on 19.4.1991
- C4 Act excluded (N.I.) (01. 05. 1991) by [S.I. 1991/194, art. 24\(5\)](#); [S.R. 1991/131, art. 2\(c\)](#), [Sch. Pt.II](#).  
Act modified (1.7.1994) by [S.I. 1994/1696, regs. 69\(1\)\(2\), 70\(1\)\(2\)](#)  
Act modified (*temp.*) (1.7.1994) by [S.I. 1994/1696, reg. 71\(2\)](#)  
Act applied (1.12.1997 for certain purposes, otherwise in accordance with art. 3 of the commencing S.I.) by [1996 c. 53, s. 9A\(5\)\(a\)](#) (as inserted by [1997 c. 32, s. 10](#); [S.I. 1997/2668, art. 2, Sch. Pt. II](#))  
Act: transfer of functions (5.1.1998) by [S.I. 1997/2781, art. 2](#) (subject to arts. 3-8, Sch.)

## PART I

### RESTRICTION ON CARRYING ON INSURANCE BUSINESS

#### *Preliminary*

#### 1 **Classification.**

(1) For the purposes of this Act insurance business is divided into long term business and general business; and—

“long term business” means insurance business of any of the classes specified in Schedule 1 to this Act, and

“general business” means insurance business of any of the classes specified in Part I of Schedule 2 to this Act.

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) For the purposes of this Act the effecting and carrying out of a contract whose principal object is within one class of insurance business, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of insurance business of the first-mentioned class, and no other, if subsection (3) or (4) below applies to the contract.
- (3) This subsection applies to a contract whose principal object is within any class of long term business but which contains subsidiary provisions within general business class 1 or 2 if the insurer is authorised under section 3 or 4 below to carry on long term business class I.
- (4) This subsection applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes, not being class 14 or 15 <sup>[F1]</sup>or (except as mentioned in subsection (4A) below) class 17.]
- <sup>[F2]</sup>(4A) Subsection (4) applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within general business class 17 if—
- (a) the principal object of the contract is the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence, or
  - (b) those subsidiary provisions concern disputes or risks arising out of, or in connection with, the use of sea-going vessels]

#### Textual Amendments

**F1** Words inserted by S.I. 1990/1159, reg. 10(2)

**F2** S. 1(4A) inserted by S.I. 1990/1159, reg. 10(3)

## 2 Restriction on carrying on insurance business.

- (1) Subject to the following provisions of this section, no person shall carry on any insurance business in the United Kingdom unless authorised to do so under section 3 or 4 below.
- <sup>[F3]</sup>(1A) Subsection (1) above shall not apply to insurance business carried on by an EC company through a branch in respect of which such of the requirements of Part I of Schedule 2F to this Act as are applicable have been complied with.]
- (2) Subsection (1) above shall not apply to insurance business (other than industrial assurance business) carried on—
- (a) by a member of Lloyd's, or
  - (b) by a body registered under the enactments relating to friendly societies; or
  - (c) by a trade union or employers' association where the insurance business carried on by the union or association is limited to the provision for its members of provident benefits or strike benefits.

In this subsection "trade union" and "employers' association" have (throughout the United Kingdom) the meanings <sup>[F4]</sup>respectively assigned by section 1 and section 122(1) of the Trade Union and Labour Relations (Consolidation) Act 1992].

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- (3) Subsection (1) above shall not apply to industrial assurance business carried on by a friendly society registered under the enactments relating to such societies.
  - (4) Subsection (1) above shall not apply to general business of class 14, 15, 16 [<sup>F5</sup>, 17 or 18] if it is carried on solely in the course of carrying on, and for the purposes of, banking business.
  - (5) Subsection (1) above shall not apply to general business consisting in the effecting and carrying out, by an insurance company that carries on no other insurance business, of contracts of such descriptions as may be prescribed, being contracts under which the benefits provided by the insurer are exclusively or primarily benefits in kind.
- [<sup>F6</sup>(6) In this Act 'EC company' means an insurance company—
- (a) which is incorporated in or formed under the law of a member State other than the United Kingdom;
  - (b) whose head office is in that member State; and
  - (c) which is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.]

#### Textual Amendments

- F3** S. 2(1A) inserted (1.7.1994) by S.I. 1994/1696, reg. 4(1)
- F4** Words in s. 2(2) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, Sch. 2 para. 31
- F5** Words substituted by S.I. 1987/2130, reg. 2(a)
- F6** S. 2(6) inserted (1.7.1994) by S.I. 1994/1696, reg. 4(2)

#### Modifications etc. (not altering text)

- C5** S. 2 restricted (1.1.1993) by S.I. 1992/3218, reg. 5(1)(d)

### *Authorised insurance companies*

## **3 Authorisation by Secretary of State.**

- (1) The Secretary of State may authorise a body to carry on in the United Kingdom such of the classes of insurance business specified in Schedule 1 or 2 to this Act, or such parts of those classes, as may be specified in the authorisation.
- (2) An authorisation under this section may be restricted to industrial assurance business or to reinsurance business; and a body may not carry on industrial assurance business by virtue of an authorisation under this section unless the authorisation expressly extends to such business.
- (3) An authorisation under this section may identify classes or parts of classes of general business by referring to the appropriate groups specified in Part II of Schedule 2 to this Act.
- (4) On the issue to a body of an authorisation under this section, any previous authorisation of that body under this section or section 4 below shall lapse.

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**Modifications etc. (not altering text)**

- C6** S. 3 restricted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 129, [Sch. 10 para. 10\(1\)](#)  
 s. 3: power to exclude conferred by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), [s. 184\(5\)](#)  
 s. 3 modified (24.12.1996) by [S.I. 1996/3011](#), [regs. 3\(1\)\(a\)](#), 10(1)

**4 Existing insurance companies.**

- (1) A body that was, immediately before the commencement of this Act, authorised under section 3 or 4 of the <sup>M1</sup>Insurance Companies Act 1981 to carry on in the United Kingdom insurance business of a class specified in Schedule 1 or 2 to that Act (or a part of such a class) is authorised to carry on there insurance business of the class identified by the same number in Schedule 1 or 2 to this Act (or that part of such a class).
- (2) A body may not carry on industrial assurance business by virtue of this section unless—
- (a) it was carrying on such business immediately before 1st January 1982, or
  - (b) it was immediately before the commencement of this Act authorised to carry on such business under section 3 of the Insurance Companies Act 1981.

**Modifications etc. (not altering text)**

- C7** S. 4: power to exclude conferred by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), [s. 184\(5\)](#)

**Marginal Citations**

- M1** 1981 c. 31.

*Applications for authorisation*

**5 Submission of proposals etc.**

- (1) The Secretary of State shall not issue an authorisation under section 3 above unless—
- (a) the applicant has submitted to him such proposals as to the manner in which it proposes to carry on business, such financial forecasts and such other information as may be required by or in accordance with regulations under this Act, and
  - (b) he is satisfied on the basis of that and any other information received by him that the application ought to be granted.

[<sup>F7</sup>(1A) The Secretary of State shall not issue an authorisation under section 3 above to an applicant which is a UK or non-EC company if it appears to him that the criteria of sound and prudent management are not or will not be fulfilled with respect to the applicant.]

- (2) [<sup>F8</sup>Subject to subsection (3) below,] the Secretary of State shall decide an application for an authorisation under section 3 above within six months of receiving the information referred to in subsection (1)(a) above; and if he refuses to issue the authorisation he shall inform the applicant in writing of the reasons for the refusal.

[<sup>F9</sup>(3) The Secretary of State may defer a decision on an application for an authorisation under section 3 above for such period as may be necessary for the purpose of

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implementing any decision of the Council or Commission of the Communities under—

- (a) Article 29b(4) of the first general insurance Directive; or
- (b) Article 32b(4) of the first long term insurance Directive.]

[<sup>F10</sup>(4) In this Act—

'criteria of sound and prudent management' means the criteria set out in Schedule 2A to this Act;

'EEA State' means a State which is a Contracting Party to the EEA Agreement but, until the EEA Agreement comes into force in relation to Liechtenstein, does not include the State of Liechtenstein;

'EFTA State' means an EEA State which is not a member State;

'non-EC company' means an insurance company—

- (a) whose head office is not in a member State;
- (b) which is authorised under section 3 or 4 above; and
- (c) whose business in the United Kingdom is not restricted to reinsurance business;

'UK company' means an insurance company—

- (a) which is incorporated in the United Kingdom;
- (b) whose head office is in the United Kingdom;
- (c) which is authorised under section 3 or 4 above;
- (d) whose business is not restricted to business to which subsection (5) below applies; and
- (e) which is not excluded from each Directive mentioned in that subsection by Article 3 of that Directive;

and any reference in this Part to an applicant or body which is a UK or non-EC company includes a reference to an applicant or body which would be such a company if the authorisation sought by it were issued.

<sup>F10</sup>(5) This subsection applies to—

- (a) reinsurance business;
- (b) business which is excluded from the first long term insurance Directive by Article 2(2) or (3) of that Directive;
- (c) business which is excluded from the first general insurance Directive by Article 2(2)(b) of that Directive; and
- (d) business which is exempted from the authorisation requirements contained in this Part of this Act by subsections (2) to (5) of section 2 above.]

#### Textual Amendments

**F7** S. 5(1A) inserted (1.7.1994) by S.I. 1994/1696, reg. 5(1)

**F8** Words in s. 5(2) inserted (19.11.1992) by S.I. 1992/2890, reg. 2(1)

**F9** S. 5(3) inserted (19.11.1992) by S.I. 1992/2890, reg. 2(2)

**F10** S. 5(4)(5) inserted (1.7.1994) by S.I. 1994/1696, reg. 5(2)

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## **[<sup>F11</sup>6] Combination of long term and general business.**

The Secretary of State shall not under section 3 above authorise a body to carry on both long term business and general business unless—

- (a) the long term business is restricted to reinsurance; or
- (b) the body is at the time the authorisation is issued already lawfully carrying on in the United Kingdom, otherwise than under paragraph (c) below, both long term business and general business (in neither case restricted to reinsurance); or
- (c) in the case of a body which is a UK company, the general business is restricted to Group 1 of Part II to Schedule 2 to this Act (accident and health) or to any class or part of a class of insurance within that group.]

### **Textual Amendments**

**F11** S. 6 substituted (1.7.1994) by S.I. 1994/1696, reg. 6

## **7 United Kingdom applicants.**

- (1) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom unless the applicant is—
  - (a) a company as defined in section [<sup>F12</sup>735] of the [<sup>F13</sup>Companies Act] or [<sup>F14</sup>Article 3] of the [<sup>F15</sup>Companies (Northern Ireland) Order 1986], or
  - (b) a registered society, or
  - (c) a body corporate established by royal charter or Act of Parliament and already authorised under section 3 or 4 above to carry on insurance business (though not to the extent proposed in the application).
- (2) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom if it has an issued share capital any part of which was issued after the commencement of this section but is not fully paid up.
- (3) The Secretary of State shall not issue an authorisation under section 3 above to an applicant
  - [<sup>F16</sup>(a) whose head office is in the United Kingdom; and
  - (b) which is not an applicant to which section 5(1A) above applies,]
 if it appears to the Secretary of State that any director, controller, manager or main agent of the applicant is not a fit and proper person to hold the position held by him.

[<sup>F17</sup>(4) In this section

“controller”, in relation to the applicant, means—

- (a) a managing director of the applicant or of a body corporate of which the applicant is a subsidiary;
- (b) a chief executive of the applicant or of a body corporate, being an insurance company, of which the applicant is a subsidiary;
- (c) a person—
  - (i) in accordance with whose directions or instructions the directors of the applicant or of a body corporate of which it is a subsidiary are accustomed to act, or

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- (ii) who either alone or with any associate or associates is entitled to exercise, or control the exercise of, [<sup>F18</sup>one-third][<sup>F18</sup>15 per cent] or more of the voting power at any general meeting of the applicant or of a body corporate of which it is a subsidiary.

<sup>F17</sup>(5) In this section

“manager”, in relation to the applicant, means an employee of the applicant (other than a chief executive) who, under the immediate authority of a director or chief executive of the applicant—

- (a) exercises managerial functions, or
- (b) is responsible for maintaining accounts or other records of the applicant,

not being a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom.

<sup>F17</sup>(6) In this section

“main agent”, in relation to the applicant, means, subject to such exceptions as may be prescribed, a person appointed by the applicant to be its agent in respect of general business in the United Kingdom, with authority to enter into contracts on behalf of the applicant in any financial year—

- (a) without limit on the aggregate amount of premiums; or
- (b) with a limit in excess of 10 per cent. of the premium limit as determined in accordance with Schedule 3 to this Act.

<sup>F17</sup>(7) In this section

“chief executive”, in relation to the applicant or a body corporate of which it is a subsidiary, means an employee of the applicant or that body corporate, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of the applicant or that body corporate.

<sup>F17</sup>(8) In this section

“associate”, in relation to any person, means—

- (a) the wife or husband or minor son or daughter of that person;
- (b) any company of which that person is a director;
- (c) any person who is an employee or partner of that person;
- (d) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary of that company;
  - (iii) any director or employee of any such subsidiary;

and for the purposes of this subsection

“son” includes step-son,

“daughter” includes step-daughter and

[<sup>F19</sup> “minor”, in relation to Scotland, includes pupil.]

#### Textual Amendments

**F12** Figure substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)

**F13** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)



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- F14** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F15** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F16** S. 7(3)(a)(b) substituted for words “whose head office is in the United Kingdom”(1.7.1994) by S.I. 1994/1696, **reg. 7(1)**
- F17** S. 7(4)-(8) ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, **reg. 7(2)**
- F18** “15 per cent” substituted (12.1.1987 for the purpose mentioned in 1986/2246, Sch. 2 but otherwise (*prosp.*)) for “one-third” by **Financial Services Act 1986 (c. 60, SIF 69), s. 134** (which said s. 134 ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, **reg. 68, Sch. 8 para. 12**)
- F19** Definition of “minor” in s. 7(8) repealed (S.) by **Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), s. 10(2), Sch. 2** (with savings s. 1(3))

**Modifications etc. (not altering text)**

- C8** Definition of “chief executive” in s. 7 applied (15.5.1991) by **Standard Life Assurance Company Act 1991 (c. iii), s. 14(1), Sch. reg. 1** (1); appointed day (15.5.1991) as published in the London Gazette on 19.4.1991

## 8 Applicants from other member States.

- (1) The Secretary of State shall not issue an authorisation under section 3 above to an [F20]applicant to which this section applies]unless the applicant has a representative fulfilling the requirements of section 10 below.
  - (2) The Secretary of State shall not issue an authorisation under section 3 above to an [F20]applicant to which this section applies] if it appears to the Secretary of State that any relevant executive or main agent of the applicant is not a fit and proper person to hold the position held by him.
  - (3) Where an [F20]applicant to which this section applies] seeks an authorisation under section 3 above restricted to reinsurance business—
    - (a) the Secretary of State shall not issue the authorisation unless he is satisfied that the applicant is a body corporate entitled under the law of that State to carry on insurance business there; and
    - (b) subsection (2) above shall have effect as if the reference to any relevant executive were a reference to any person who is a director, controller or manager of the applicant or a person within paragraph (a) or (b) of subsection (4) below.
- [F21] [ An applicant is one to which this section applies if—
- (3A) (a) its head office is in a member State other than the United Kingdom and it is not an EC company; or
  - (b) its head office is in an EFTA State; or
  - (c) its head office is in Switzerland and the authorisation sought by it is an authorisation to carry on general business which is not restricted to reinsurance business.]]
- (4) In this section
 

“relevant executive” in relation to the applicant means a person who is—

    - (a) the representative referred to in subsection (1) above or the individual representative referred to in section 10(5) below;
    - (b) an officer or employee of the applicant who, either alone or jointly with others, is responsible for the conduct of the whole of the insurance business carried on by the applicant in the United Kingdom, not being a person who—



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- (i) is also responsible for the conduct of insurance business carried on by the applicant elsewhere, and
  - (ii) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in the United Kingdom; or
- (c) an employee of the applicant who, under the immediate authority of a director or of an officer or employee within paragraph (b) above,—
- (i) exercises managerial functions, or
  - (ii) is responsible for maintaining accounts or other records of the applicant, not being a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom;

[<sup>F22</sup>and

“controller”

“manager”

“main agent” have the same meaning as in section 7 above].

#### Textual Amendments

**F20** Words in s. 8(1)(2)(3) substituted (1.7.1994) by S.I. 1994/1696, reg. 8(1)

**F21** S. 8(3A) substituted (1.7.1994) by S.I. 1994/1696, reg. 8(2)

**F22** Words in s. 8(4) ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, reg. 8(3)

## 9 Applicants from outside the Community.

- (1) The Secretary of State shall not issue an authorisation under section 3 above in respect of long term or general business to an applicant [<sup>F23</sup>to which this section applies] unless he is satisfied—
- (a) that the applicant is a body corporate entitled under the law of the place where its head office is situated to carry on long term or, as the case may be, general business there;
  - (b) that the applicant has in the United Kingdom assets of such value as may be prescribed; and
  - (c) that the applicant has made a deposit of such amount and with such person as may be prescribed;
- but subject to subsection (2) and (3) below.
- (2) Where the applicant seeks to carry on insurance business in the United Kingdom and one or more other [<sup>F24</sup>EEA States], the Secretary of State and the supervisory authority in the other State or States concerned may agree that this subsection shall apply to the applicant; and in that event—
- (a) paragraph (b) of subsection (1) above shall have effect as if the reference to the United Kingdom were a reference to the [<sup>F24</sup>EEA States] concerned taken together; and
  - (b) paragraph (c) of that subsection shall have effect as if the reference to such person as may be prescribed were a reference to such person as may be agreed between the Secretary of State and the other supervisory authority or authorities concerned.
- (3) Paragraph (c) of subsection (1) above shall not apply where the authorisation sought is one restricted to reinsurance.

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- (4) The Secretary of State shall not issue an authorisation under section 3 above to an applicant [<sup>F23</sup>to which this section applies] unless the applicant has a representative fulfilling the requirements of section 10 below.
- (5) The Secretary of State shall not issue an authorisation under section 3 above [<sup>F25</sup>which is restricted to reinsurance business to an applicant to which this section applies] if it appears to the Secretary of State that—
- (a) the representative of the applicant referred to in subsection (4) above or the individual representative referred to in section 10(5) below, or
  - (b) any director, controller or manager of the applicant, or
  - (c) a main agent of the applicant,
- is not a fit and proper person to hold the position held by him.
- [<sup>F26</sup>(5A) An applicant is one to which this section applies if—
- (a) its head office is not in an EEA State; and
  - (b) it is not an applicant to which section 8 above applies.]
- (6) [<sup>F27</sup>In this section
- “controller”,
- “manager” and
- “main agent” have the same meanings as in section 7 above, except that] for the purposes of this section the controllers of the applicant shall be taken to include any officer or employee who, either alone or jointly with others, is responsible for the conduct of the whole of the insurance business carried on by the applicant in the United Kingdom, not being a person who—
- (a) is also responsible for the conduct of insurance business carried on by it elsewhere; and
  - (b) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in the United Kingdom.
- (7) Regulations under this Act may make such provision as to deposits under this section as appears to the Secretary of State to be necessary or expedient, including provision for the deposits of securities instead of money, and, in relation to deposits with the Accountant General of the Supreme Court, provision applying (with or without modification) any of the provisions of the rules for the time being in force under section 38(7) of the <sup>M2</sup>Administration of Justice Act 1982.

#### Textual Amendments

- F23** Words in s. 9(1)(4) substituted (1.7.1994) by S.I. 1994/1696, **reg. 9(1)**
- F24** Words in s. 9(2) substituted (1.7.1994) by S.I. 1994/1696, **reg. 9(2)**
- F25** Words in s. 9(5) substituted (1.7.1994) by S.I. 1994/1696, **reg. 9(3)**
- F26** S. 9(5A) substituted (1.7.1994) by S.I. 1994/1696, **reg. 9(4)**
- F27** Words in s. 9(6) ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, **reg. 9(5)**

#### Modifications etc. (not altering text)

- C9** S. 9(b) modified (1.7.1994) by S.I. 1994/1516, **reg. 6(b)**

#### Marginal Citations

- M2** 1982 c. 53.

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## 10 General representatives.

- (1) The requirements referred to in sections 8(1) and 9(4) above are those set out in the following provisions of this section.
- (2) The representative must be a person resident in the United Kingdom who has been designated as the applicant's representative for the purposes of this section.
- (3) The representative must be authorised to act generally, and to accept service of any document, on behalf of the applicant.
- (4) The representative must not be an auditor, or a partner or employee of an auditor, of the accounts of any business carried on by the applicant.
- (5) If the representative is not an individual, it must be a company as defined in section [F28735] of the [F29Companies Act] or [F30Article 3] of the [F31Companies (Northern Ireland) Order 1986] with its head office in the United Kingdom and must itself have an individual representative resident in the United Kingdom who is authorised to act generally, and to accept service of any document, on behalf of the company in its capacity as representative of the applicant.

### Textual Amendments

- F28** Figure substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)
- F29** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)
- F30** Words substituted by [S.I. 1986/1035 \(N.I. 9\), art. 23, Sch. 1 Pt. II](#)
- F31** Words substituted by [S.I. 1986/1035 \(N.I. 9\), art. 23, Sch. 1 Pt. II](#)

### *Withdrawal of authorisation*

## 11 Withdrawal of authorisation in respect of new business.

- (1) The Secretary of State may, at the request of the company or on any grounds set out in subsection (2) below, direct that an insurance company authorised under section 3 or 4 above to carry on insurance business shall cease to be authorised to effect contracts of insurance, or contracts of any description specified in the direction.
- (2) The grounds referred to in subsection (1) above are—
  - (a) that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of this Act [F32] or the Financial Services Act 1986 or, if it is a member of a recognised self-regulating organisation within the meaning of that Act, an obligation to which it is subject by virtue of the rules of that organisation];
  - [F33](aa) that the company is a UK company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another EEA State which—
    - (i) gives effect to the general or long term insurance Directives; or
    - (ii) is otherwise applicable to the insurance activities of the company in that State;

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- (ab) that the company is a UK or non-EC company and it appears to the Secretary of State that any of the criteria of sound and prudent management is or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the company.]
  - (b) that there exists a ground on which he would be prohibited by section 7, 8 or 9 above from issuing an authorisation to the company;
  - (c) that the company has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in a member State where it has its head office or where it has in accordance with section 9(2) above made a deposit.
  - [<sup>F34</sup>(d) that the company is a Swiss general insurance company which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.]
- (3) After giving a direction under this section otherwise than at the request of the company concerned the Secretary of State shall inform the company concerned of his reasons for giving the direction.
- (4) A direction under this section shall not prevent a company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.
- [<sup>F35</sup>(5) Where a direction under this section has been given in respect of—
- (a) a company which has its head office, or has in accordance with section 9(2) above made a deposit, in a member State other than the United Kingdom; or
  - (b) a Swiss general insurance company, the Secretary of State may revoke or vary the direction if after consultation with the supervisory authority in that member State or, as the case may be, in Switzerland he considers it appropriate to do so.]
- (6) Subject to subsection (5) above a direction given under this section in respect of any insurance company may not be revoked or varied; but if the Secretary of State subsequently issues to the company under section 3 above an authorisation to carry on insurance business of a class to which the direction relates, the direction shall cease to have effect in relation to such business.
- [<sup>F36</sup>(7) In this Act “Swiss general insurance company” means an insurance company—
- (a) whose head office is in Switzerland;
  - (b) which is authorised under section 3 or 4 above to carry on general business; and
  - (c) whose authorisation is not restricted to reinsurance business.]

#### Textual Amendments

**F32** Words inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 129, [Sch. 10 para. 7\(1\)](#)

**F33** [S. 11\(2\)\(aa\)\(ab\)](#) substituted for [11\(2\)\(aa\)](#) (1.7.1994) by [S.I. 1994/1696](#), [reg. 10\(1\)](#)

**F34** [S. 11\(2\)\(d\)](#) inserted (5.1.1994) by [S.I. 1993/3127](#), [reg. 2\(4\)](#)

**F35** [S. 11\(5\)](#) substituted (5.1.1994) by [S.I. 1993/3127](#), [reg. 2\(5\)](#)

**F36** [S. 11\(7\)](#) inserted (5.1.1994) by [S.I. 1993/3127](#), [reg. 2\(6\)](#)

#### Modifications etc. (not altering text)

**C10** [S. 11](#) applied by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), ss. 98(4), 129, [Sch. 10 para. 9](#)

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## 12 Notices of withdrawal under section 11.

- (1) Before giving a direction under section 11 above otherwise than at the request of the company concerned the Secretary of State shall serve on the company a written notice stating—
    - (a) that he is considering giving a direction and the ground on which he is considering it; 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) Before giving a direction under section 11 above in respect of a company [<sup>F37</sup>on either of the grounds set out in subsection (2A) below], the Secretary of State shall serve on the person whose fitness is in question a written notice stating—
    - (a) that he is considering giving a direction on that ground; 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.
- [<sup>F38</sup>(2A) The grounds referred to in subsection (2) above are—
- (a) that the company is a UK or non-EC company and it appears to the Secretary of State that the second or third criterion of sound and prudent management is or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the company; and
  - (b) that there exists a ground on which the Secretary of State would be prohibited by section 7(3), 8(2) or 9(5) above from issuing an authorisation to the company.]
- (3) Subject to subsection (4) below, the Secretary of State shall consider any representations made in response to a notice under subsection (2) above before serving a notice under subsection (1) above.
  - (4) Subsection (3) above shall not apply where the position held by the person on whom the notice under subsection (2) above is served, and whose fitness for that position is in question, is controller of a company.
  - (5) A notice under subsection (1) or (2) above shall give particulars of the ground on which the Secretary of State is considering giving a direction.
  - (6) Where representations are to be made in response to a notice under subsection (1) or (2) above, the Secretary of State shall take them into consideration before giving a direction.
  - (7) Any notice to be served on a person under subsection (1) or (2) above may be served by post, and a letter containing the 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 the United Kingdom.
  - (8) After giving a direction under section 11 above the Secretary of State shall publish notice of it in the London, Edinburgh and Belfast Gazettes and in such other ways as appear to him expedient for notifying the public.

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### Textual Amendments

**F37** Words in s. 12(2) substituted (1.7.1994) by S.I. 1994/1696, reg. 10(2)

**F38** S. 12(2A) inserted (1.7.1994) by S.I. 1994/1696, reg. 10(3)

## [<sup>F39</sup>12A Suspension of authorisation in urgent cases.

- (1) Where, in the case of a UK or non-EC company, it appears to the Secretary of State—
  - (a) that one of the grounds in section 11(2) above exists in relation to the company: and
  - (b) that the authorisation should be suspended as a matter of urgency,
 the Secretary of State may direct that the company shall forthwith cease to be authorised to effect contracts of insurance, or contracts of any description specified in the direction.
- (2) A direction under this section—
  - (a) shall not prevent a company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance; and
  - (b) unless confirmed by the Secretary of State under subsection (6) below, shall cease to have effect at the end of the relevant period.
- (3) Where the Secretary of State gives a direction under this section, he shall forthwith serve on the company a written notice stating—
  - (a) the ground on which the direction is given; 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 and Industry appointed for the purpose by the Secretary of State.
- (4) Where the Secretary of State gives a direction under this section on the ground set out in section 11(2)(ab) above, the Secretary of State shall forthwith serve on any person whose fitness is in question a written notice stating—
  - (a) the ground for giving the direction; 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 and Industry appointed for the purpose by the Secretary of State.
- (5) The Secretary of State shall consider any representations made in response to a notice under subsection (3) or (4) above before confirming a direction under this section.
- (6) At any time before the end of the relevant period, the Secretary of State may confirm a direction under this section by a written notice served on the company.
- (7) Where a direction under this section is so confirmed, it may not be revoked or varied; but if the Secretary of State subsequently issues to the company under section 3 above an authorisation to carry on insurance business of a class to which the direction relates, the direction shall cease to have effect in relation to such business.
- (8) In this section 'the relevant period', in relation to a direction under this section, means the period of two months beginning with the date on which the direction is given.]

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#### Textual Amendments

**F39** S. 12A inserted (1.7.1994) by S.I. 1994/1696, reg. 11

### [13 Final withdrawal of authorisation.

[ Where—

- <sup>F40</sup>(1) (a) a UK company ceases to carry on insurance business or insurance business of any class in the European Community; or
- (b) an insurance company which is not a UK company ceases to carry on insurance business or insurance business of any class in the United Kingdom,
- the Secretary of State may direct that it shall cease to be authorised under section 3 or 4 above to carry on insurance business or insurance business of that class.

<sup>F40</sup>(2) If—

- (a) a body authorised under section 3 above to carry on insurance business of any class has not at any time carried on insurance business of that class, and at least twelve months have elapsed since the issue of the authorisation; or
- (b) a body authorised under section 4 above to carry on insurance business of any class has not at any time since the commencement of this Act carried on business of that class,

the Secretary of State may direct that the body shall cease to be authorised to carry on business of that class.]

(2A) The Secretary of State may direct that an insurance company shall cease to be authorised to carry on business which is insurance business by virtue of section 95(c) (ii) of this Act if it appears to him that the company has failed to satisfy an obligation to which it is subject by virtue of the Financial Services Act 1986 or, if it is a member of a recognised self-regulating organisation within the meaning of that Act, an obligation to which it is subject by virtue of the rules of that organisation.

(2B) Subsections (3), (5) and (6) of section 11 and subsections (1) and (5) to (8) of section 12 above shall apply to a direction under subsection (2A) above as they apply to a direction under section 11.]

(3) A direction under this section is without prejudice to the subsequent issue of an authorisation to carry on insurance business of a class to which the direction relates.

#### Textual Amendments

**F40** S. 13(1)(2) substituted (1.7.1994) by S.I. 1994/1696, reg. 12

#### Modifications etc. (not altering text)

**C11** S. 13 amended (1.1.1993) by S.I. 1992/3218, reg. 64



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## Offences

### 14 Offences under Part I.

- (1) A person who carries on business in contravention of this Part of this Act shall be guilty of an offence.
- (2) A person who for the purpose of obtaining the issue of an authorisation furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
  - (b) on summary conviction—
    - (i) in England and Wales . . . <sup>F41</sup>, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 32 of the <sup>M3</sup>Magistrates' Courts Act 1980;
    - (ii) in Scotland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 289B of the <sup>M4</sup>Criminal Procedure (Scotland) Act 1975;
    - <sup>F42</sup>(iii) in Northern Ireland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984.]

#### Textual Amendments

**F41** Words repealed by S.I. 1984/703 (N.I. 3), art. 19(1)(2), **Sch. 6 para. 30(a)**, Sch. 7

**F42** S. 14(3)(b)(iii) substituted for words by S.I. 1984/703 (N.I. 3), art. 19(1), **Sch. 6 para. 30(b)**

#### Marginal Citations

**M3** 1980 c. 43.

**M4** 1975 c. 21.

## PART II

### REGULATION OF INSURANCE COMPANIES

#### Modifications etc. (not altering text)

**C12** Pt. II (ss. 15-71) restricted (1.1.1993) by S.I. 1992/3218, **reg65**

Pt. II (ss. 15-71) extended (24.12.1996) by S.I. 1996/3011, **reg. 3(1)(b)**, 10(1)

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## Preliminary

### 15 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 the United Kingdom, which carry on insurance business within the United Kingdom.

[<sup>F43</sup>(1A) Except as otherwise provided by Part I of Schedule 2F to this Act, this Part of this Act (except sections 47A, 47B, 54 to 59 and Schedule 2B) does not apply to an EC company in so far as it is carrying on insurance business through a branch in respect of which such of the requirements of Part I of Schedule 2F to this Act as are applicable have been complied with.]

(2) This Part of this Act does not apply to any insurance company which is registered under the enactments 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 (throughout the United Kingdom) the meanings [<sup>F44</sup> respectively assigned by section 1 and section 122(1) of the Trade Union and Labour Relations (Consolidation) Act 1992].

(4) This Part of this Act does not apply to a member of Lloyd's who carries on insurance business of any class provided that he complies with the requirements set out in section 83 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 general business of class 14, 15, 16 [<sup>F45</sup>, 17 or 18] in the course of carrying on, and for the purposes of, banking business.

(6) This Part of this Act does not apply to an insurance company whose insurance business is restricted to general business consisting in the effecting and carrying out of contracts of such descriptions as may be prescribed, being contracts under which the benefits provided by the insurer are exclusively or primarily benefits in kind.

#### Textual Amendments

**F43** S. 15(1A) inserted (1.7.1994) by S.I. 1994/1696, reg. 13

**F44** Words in s. 15(3) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), s. 300(2), 302, Sch. 2 para. 31

**F45** Words substituted by S.I. 1987/2130, reg. 2(a)

### 16 Restriction of business to Insurance.

(1) An insurance company to which this Part of this Act applies shall not carry on any activities, in the United Kingdom or elsewhere, otherwise than in connection with or for the purposes of its insurance business.

(2) For the purposes of subsection (1) above any activities of an insurance company that are excluded from the definition of insurance business by section 95(c) (ii) below shall be treated as carried on in connection with its insurance business.

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### *Accounts and statements*

#### **17 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) Regulation 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—
  - (a) for any such document as aforesaid or,
  - (b) 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,
  - (c) 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.

#### **18 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 period of twelve months, cause an investigation to be made into its financial condition in respect of that business by the person who for the time being is its actuary under section 19(1) below or any corresponding enactment previously in force; 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) An investigation to which subsection (1)(b) above relates shall include—
  - (a) a valuation of the liabilities of the company attributable to its long term business; and
  - (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the company in respect of that business and, where any rights of any long term policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.

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- (3) At least once in every period of five years an insurance company to which subsection (1) above applies 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 an investigation in pursuance of paragraph (a) of that subsection.
- (4) 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.
- (5) The form and contents of any abstract or statement under this section shall be such as may be prescribed.

## **19 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 an actuary to the company; and whenever an appointment under this section or any corresponding enactment previously in force 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 any corresponding enactment previously in force 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.

## **20 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.

## **21 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 [<sup>F46</sup>the provisions relating to the audit of the accounts of companies under the Companies Acts], 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 17(2) above to be given in a statement or report so annexed.

### **Textual Amendments**

**F46** Words in s. 21(1) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, Sch. para. 47

*Status: Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.*

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## [<sup>F47</sup>21A Communication by auditor with Secretary of State.

- (1) No duty to which an auditor of an insurance company to which this Part of this Act applies may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that company and which is relevant to any functions of the Secretary of State under this Act.
- (2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may make regulations applying to that auditor or class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the regulations made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the regulations.
- (3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance or regulations may include matters relating to persons other than the company.
- (4) No regulations shall be made under subsection (2) above unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (5) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in subsection (2) above, the Secretary of State may disqualify him from being the auditor of an insurance company or any class of insurance company to which Part II of this Act applies; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.
- (6) An insurance company to which this Part of this Act applies shall not appoint as auditor a person disqualified under subsection (5) above.]

### Textual Amendments

**F47** S. 21A inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 135(1)

## 22 Deposit of accounts etc. with Secretary of State.

- (1) Every account, balance sheet, abstract or statement required by sections 17, 18 and 20 above and any report of the auditor of the company made in pursuance of section 21 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; but 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 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—

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- (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 74 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 by such persons as may be prescribed.
- (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 17 above to be so given and any certificate so annexed by virtue of subsection (3) of that section.

## **23 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 22 above;
  - (b) a copy of any document supplied to the Secretary of State under subsection (5) of that section which relates to any of those documents;
  - (c) a copy of any report deposited with any of those documents under subsection (6) of that section.
- (2) If, in the opinion of the Secretary of State, the disclosure of information contained in—
  - (a) a statement or report annexed to a document prepared in pursuance of section 17(1) above by an insurance company; or
  - (b) a statement prepared in pursuance of section 20 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.

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

- (1) A registered society shall, in addition to depositing with the Secretary of State, as required by section 22 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

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for depositing them, a copy with the appropriate registrar in the case of a society registered in Great Britain or with the registrar in the case of a society registered in Northern Ireland, 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 22 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 <sup>M5</sup>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) and section 97(1) of the <sup>M6</sup>Industrial and Provident Societies Act (Northern Ireland) 1969 (which confers corresponding powers on the Department of Commerce for Northern Ireland) shall have effect as if the reference to documents kept by the appropriate registrar under that Act of 1965 or, as the case may be, by the registrar under that Act of 1969 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 and
  - “registrar” has the meaning given by section 101(1) of the said Act of 1969.

#### Marginal Citations

- M5** 1965 c. 12.  
**M6** 1969 c. 24. (N.I.)

## 25 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 20 above which are deposited under section 22 above.
- (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 or with the registrar of companies in Northern Ireland or with both and may be published by the Secretary of State in such ways as he thinks appropriate.



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## 26 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 31 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 or with the registrar of companies in Northern Ireland or with both and may be published by the Secretary of State in such ways as he thinks appropriate.

## 27 Companies from outside the Community.

An insurance company to which this Part of this Act applies

- [<sup>F48</sup>(a) whose head office is not in a member State; and  
(b) which is not a Swiss general insurance company,]

shall keep in the United Kingdom proper accounts and records in respect of insurance business carried on in the United Kingdom.

### Textual Amendments

**F48** S. 27 (a)(b) substituted (5.1.1994) by S.I. 1993/3127, reg. 3(2)

*Assets and liabilities attributable to long term business*

## 28 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 ordinary long-term insurance business or industrial assurance business or both of those kinds of insurance business—
  - (a) the company shall maintain an account in respect of that business or, as the case may be, each of those kinds of business; and
  - (b) the receipts of that business or, as the case may be, of each of those kinds of business shall be entered in the account maintained for that business 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 ordinary long-term insurance business or industrial assurance business or both of those kinds of business shall maintain such accounting 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

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- (b) the liabilities attributable to that business or, as the case may be, each of those kinds of business.

## **29 Application of assets of company with long term business.**

- (1) Subject to subsections (2) and (4) and section 55(3) below, the assets representing the fund or funds maintained by an insurance company in respect of its long term business—
  - (a) shall be applicable only for the purposes of that business, and
  - (b) shall not be transferred so as to be available for other purposes of the company except where the transfer constitutes reimbursement of expenditure borne by other assets (in the same or the last preceding financial year) in discharging liabilities wholly or partly attributable to long term business.
- (2) Where the value of the assets mentioned in subsection (1) above is shown, by an investigation to which section 18 above applies or which is made in pursuance of a requirement imposed under section 42 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) Subsection (2) above shall not authorise a transfer or other application of assets by reference to an actuarial investigation at any time after the date when the abstract of the actuary's report of the investigation has been deposited with the Secretary of State in accordance with section 22(1) above or section 42(4) below.
- (4) 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.
- (5) Any mortgage or charge (including—
  - (a) a charge imposed by a court on the application of a judgment creditor,
  - (b) in Scotland, a charge imposed by way of diligence, and
  - (c) a charge imposed by the Enforcement of Judgments Office in Northern Ireland)
 shall be void to the extent to which it contravenes subsection (1) above.
- (6) 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.
- (7) 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.

## **30 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 category are eligible to participate, and

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- (b) an amount has been allocated to policy holders of that category in respect of a previously established surplus in which policy holders of that category were eligible to participate,

the company shall not by virtue of section 29(2) above transfer or otherwise apply assets representing any part of the surplus mentioned in paragraph (a) above unless the company has either allocated to policy holders of that category in respect of that surplus an amount not less than the relevant minimum, or complied with the requirements of subsection (3) below and made to those policy holders any allocation of which notice is given under paragraph (a) of that subsection.

- (2) Subject to subsections (6) and (7) below, the relevant minimum is the amount represented by the formula

$$\frac{b \times c}{a} \quad \longrightarrow \quad \frac{c}{200}$$

where—

*a* is the last previously established surplus in respect of which an amount was allocated to policy holders of the category in question;

*b* is the amount so allocated; and

*c* is the surplus referred to in subsection (1)(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 no allocation or 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, Edinburgh and Belfast 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 18 above applies or which is made in pursuance of a requirement imposed under section 42 below.

- (5) For the purposes of this section an amount is allocated to policy holders if, and only if—

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- (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 the next established surplus in respect of which an amount is allocated to eligible policy holders generally; and for the purposes of sub-section (2) above the amount of any surplus in respect of which such an allocation is made shall be treated as increased by the amount of any such payments.
- (7) Subsection (1) above shall not authorise the application for purposes other than those mentioned in section 29(1) above of assets representing any part of the surplus mentioned in sub-section (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.
- (8) For the purposes of subsection (1) above policy holders shall be taken to be eligible to participate in an established surplus in any case where they would be eligible to participate in a later established surplus representing it if it were carried forward unappropriated.

### **31 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.

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(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 sub-section (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 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;

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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(4)(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”) includes any body corporate;

“equity share capital” means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

“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 [<sup>F49</sup>Companies Act] or the [<sup>F50</sup>Companies (Northern Ireland) Order 1986];

“son” includes step-son,

“daughter” includes step-daughter, and

[<sup>F51</sup> “minor”, in relation to Scotland, includes pupil] and, (without prejudice to section 39(6) of the <sup>M7</sup>Adoption Act 1976 and section 39(4) of the <sup>M8</sup>Adoption (Scotland) Act 1978) in relation to Northern Ireland,

“son” includes step-son and adopted son and

“daughter” includes step-daughter and adopted daughter.

(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.

#### Textual Amendments

**F49** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2

**F50** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, Sch. 1 Pt. II

**F51** Definition of “minor” in s. 31(7) repealed (S.) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), s. 10(2), Sch.2 (with savings s. 1(3))

#### Marginal Citations

**M7** 1976 c. 36.

**M8** 1978 c. 28.

#### [<sup>F52</sup>31A Arrangement to avoid unfairness between separate insurance funds etc.

(1) An insurance company to which this Part of this Act applies which carries on long term business in the United Kingdom shall secure that adequate arrangements are in force

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for securing that transactions affecting assets of the company (other than transactions outside its control) do not operate unfairly between the section 28 fund or funds and the other assets of the company or, in a case where the company has more than one identified fund, between those funds.

(2) In this section—

“the section 28 fund or funds” means the assets representing the fund or funds maintained by the company under section 28(1)(b) above; and

“identified fund”, in relation to a company, means assets representing the company’s receipts from a particular part of its long term business which can be identified as such by virtue of accounting or other records by the company.]

#### Textual Amendments

**F52** S. 31A inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 136(1)

### *Financial resources*

## **32 Margins of solvency.**

(1) Every insurance company to which this Part of this Act applies—

- (a) whose head office is in the United Kingdom, or
- (b) whose business in the United Kingdom is restricted to reinsurance,

shall maintain a margin of solvency of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.

(2) Subject to subsection (3) below, every insurance company to which this Part of this Act applies whose head office is not in a member State shall maintain—

- (a) a margin of solvency, and
- (b) a United Kingdom margin of solvency,

of such amounts as may be prescribed by or determined in accordance with regulations made for the purposes of this section.

(3) Subsection (2) above shall not apply to an insurance company if its business in the United Kingdom is restricted to re-insurance [<sup>F53</sup>or if it is a Swiss general insurance company] or if section 9(2) above applies to it; but an insurance company that has made a deposit in the United Kingdom in accordance with section 9(2)(b) above shall maintain—

- (a) a margin of solvency, and
- (b) a [<sup>F54</sup>EEA margin of solvency],

of such amounts as may be prescribed by or determined in accordance with regulations made for the purposes of this section.

(4) An insurance company that fails to comply with subsection (1), (2) or (3) above—

- (a) shall at the request of the Secretary of State submit to him a plan for the restoration of a sound financial position;
- (b) shall propose modifications to the plan (or the plan as previously modified) if the Secretary of State considers it inadequate;
- (c) shall give effect to any plan accepted by the Secretary of State as adequate.



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- (5) For the purposes of this Act—
- (a) the margin of solvency of an insurance company is the excess of the value of its assets over the amount of its liabilities, that value and amount being determined in accordance with any applicable valuation regulations;
  - (b) the United Kingdom margin of solvency of an insurance company is its margin of solvency computed by reference to the assets and liabilities of the business carried on by the company in the United Kingdom;
  - (c) the [<sup>F55</sup>EEA margin of solvency] of an insurance company is its margin of solvency computed by reference to the assets and liabilities of the business carried on by the company [<sup>F56</sup>in EEA States (taken together)].
- (6) In the case of an insurance company that carries on both long term and general business, subsections (1), (2) and (3) above shall have effect as if—
- (a) the requirements to maintain a margin of solvency, and
  - (b) where the company carries on both kinds of business in the United Kingdom, the requirement to maintain a United Kingdom margin of solvency, and
  - (c) where the company carries on both kinds of business [<sup>F56</sup>in EEA States (taken together)], the requirement to maintain a [EEA margin of solvency],
- were requirements to maintain separate margins in respect of the two kinds of business (and accordingly as if the references in subsection (5) to assets and liabilities were references to assets and liabilities relating to the kind of business in question).

#### Textual Amendments

- F53** Words in s. 32(3) inserted (5.1.1994) by S.I. 1993/3127, reg. 3(3)  
**F54** Words in s. 32(3) substituted (1.7.1994) by S.I. 1994/1696, reg. 14(1)  
**F55** Words in s. 32(5)(6) substituted (1.7.1994) by S.I. 1994/1696, reg. 14(2)(a)  
**F56** Words in s. 32(5)(6) substituted (1.7.1994) by S.I. 1994/1696, reg. 14(2)(b)

#### Modifications etc. (not altering text)

- C13** S. 32 modified by S.I. 1983/224, reg. 3(1)  
**C14** S. 32(5) modified by S.I. 1990/1181, regs. 3(2), 4

### 33 Failure to maintain minimum margin.

- (1) If—
- (a) the margin of solvency of an insurance company to which section 32(1) above applies, or
  - (b) the margin of solvency or United Kingdom margin of solvency of an insurance company to which section 32(2) above applies, or
  - (c) the margin of solvency or [<sup>F57</sup>EEA margin of solvency] of an insurance company to which section 32(3) above applies,
- falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section, the company shall at the request of the Secretary of State submit to him a short-term financial scheme.
- (2) An insurance company that has submitted a scheme to the Secretary of State under subsection (1) above shall propose modifications to the scheme (or the scheme as previously modified) if the Secretary of State considers it inadequate, and shall give effect to any scheme accepted by him as adequate.

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- (3) Where a company is required by virtue of section 32(6) above to maintain separate margins in respect of long term and general business, subsection (1) above shall have effect as if any reference to the margin of solvency, the United Kingdom margin of solvency or the [<sup>F57</sup>EEA margin of solvency] of the company were a reference to the margin in respect of either of the two kinds of business.

#### Textual Amendments

**F57** Words in s. 33(1)(3) substituted (1.7.1994) by S.I. 1994/1696, reg. 14(3)

#### Modifications etc. (not altering text)

**C15** S. 33 modified by S.I. 1983/224, reg. 3(1)

### 34 Companies supervised in other member States.

- (1) An insurance company to which this Part of this Act applies—
- [<sup>F58</sup>(a) whose head office is in an EEA State other than the United Kingdom, or
  - (b) which has in accordance with section 9(2) above made a deposit in such a State, or]
- [<sup>F59</sup>or
- (c) which is a Swiss general insurance company,]

shall secure that the value of the assets of the business carried on by it in the United Kingdom does not fall below the amount of the liabilities of that business, that value and amount being determined in accordance with any applicable valuation regulations.

- (2) In the case of a company that carries on in the United Kingdom both long term and general business subsection (1) above shall have effect separately in relation to the assets and liabilities of the two kinds of business.

#### Textual Amendments

**F58** S. 34(1)(a)(b) substituted (1.7.1994) by S.I. 1994/1696, reg. 15

**F59** S. 34(1)(c) and the preceding word “or” inserted ((5.1.1994) by S.I. 1993/3127, reg. 3(4)

VALID FROM 30/04/1996

#### [<sup>F60</sup>34A General business: equalisation reserve.

- (1) Every insurance company to which this section applies which carries on general business of a prescribed description shall maintain, in accordance with regulations made for the purposes of this section, a reserve (in this section referred to as an “equalisation reserve”) in respect of its general business of that description.
- (2) Subject to subsection (3) below, this section applies to any insurance company to which this Part of this Act applies—
- (a) whose head office is in the United Kingdom;
  - (b) whose business in the United Kingdom is restricted to reinsurance; or

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(c) whose head office is not in a member State.

- (3) This section does not apply to an insurance company of a description prescribed for the purposes of this subsection.
- (4) Without prejudice to the generality of subsection (1) above, regulations made for the purposes of this section may make provision—
- (a) as to the circumstances in which, and times at which, amounts are to be placed to, or taken from, an equalisation reserve;
  - (b) as to the determination of the amounts to be so placed or taken; and
  - (c) as to such other matters incidental to the maintenance of an equalisation reserve as the Secretary of State considers expedient.]

#### Textual Amendments

**F60** S. 34A inserted (30.4.1996) by 1995 c. 29, s. 1(1); S.I. 1996/945, art. 2

### 35 Form and situation of assets.

- (1) Regulations may make provision for securing that, in such circumstances and to such extent as may be prescribed, the assets of an insurance company to which this Part of this Act applies are maintained in such places as may be prescribed and the nature of the assets is appropriate in relation to the currency in which the liabilities of the company are or may be required to be met.
- (2) Regulations made for the purposes specified in subsection (1) above shall not have effect in relation to the assets of [<sup>F61</sup>an insurance company whose head office is in an EFTA State][<sup>F62</sup>or which is a Swiss general insurance company]so far as their value exceeds the amount of the liabilities of the business carried on by the company in the United Kingdom, that value and amount being determined in accordance with any applicable valuation regulations.

#### Textual Amendments

**F61** Words in s. 35(2) substituted (1.7.1994) by S.I. 1994/1696, reg. 16

**F62** Words in s. 35(2) inserted (5.1.1994) by S.I. 1993/3127, reg. 3(5)

#### Modifications etc. (not altering text)

**C16** S. 35 modified by S.I. 1983/224, reg. 3(3)

### [35A <sup>F63</sup> Adequacy of assets.

- (1) A UK company shall secure—
- (a) that its liabilities under contracts of insurance entered into by it, other than liabilities in respect of linked benefits, are covered by assets of appropriate safety, yield and marketability having regard to the classes of business carried on; and
  - (b) without prejudice to the generality of paragraph (a) above, that its investments are appropriately diversified and adequately spread and that excessive reliance is not placed on investments of any particular category or description.

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- (2) A UK company which has entered into a linked long term contract shall secure that, as far as practicable, its liabilities under the contract in respect of linked benefits are covered as follows—
- (a) if those benefits are linked to the value of units in an undertaking for collective investments in transferable securities or to the value of assets contained in an internal fund, by those units or assets;
  - (b) if those benefits are linked to a share index or other reference value not mentioned in paragraph (a) above, by units which represent that reference value, or by assets of appropriate safety and marketability which correspond, as nearly as may be, to the assets on which that reference value is based.
- (3) A UK company which has entered into a linked long term contract shall also secure that [ its liabilities under the contract in respect of linked benefits under the contract in respect of linked benefits as are not covered by contracts of reinsurance] are covered by assets of a description prescribed by regulations under section 78 below.

- (4) In this section—

'linked benefits', in relation to a contract of insurance, means benefits payable to the policy holder which are determined by reference to the value of or the income from property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified);

'linked long term contract' means a contract of insurance —

- (a) the effecting of which constitutes the carrying on of long term business; and
- (b) under which linked benefits are payable to the policy holder.]

#### Textual Amendments

**F63** S. 35A inserted (1.7.1994) by S.I. 1994/1696, reg. 17

#### [<sup>F64</sup>35B Adequacy of premiums: long term business.

- (1) Before entering into a contract of insurance the effecting of which constitutes the carrying on of long term business, a UK company shall satisfy itself that the aggregate of—
- (a) the premiums payable under the contract and the income which will be derived from them; and
  - (b) any other resources of the company which will be available for the purpose, will be sufficient, on reasonable actuarial assumptions, to meet all commitments arising under or in connection with the contract.
- (2) A UK company shall not rely on other resources for the purposes of subsection (1) above in such a way as to jeopardise the solvency of the company in the long term.]

#### Textual Amendments

**F64** S. 35B inserted (1.7.1994) by S.I. 1994/1696, reg. 18

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### *Liabilities of unlimited amount*

#### **36 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*

#### **37 Grounds on which powers are exercisable.**

(1) The powers conferred on the Secretary of State by sections 38 to 45 below shall be exercisable in relation to any insurance company to which this Part of this Act applies and shall be exercisable in accordance with the following provisions of this section.

(2) The powers conferred by sections 38 and 41 to 45 below 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;
- [<sup>F65</sup>(aa) that the company is a UK or non-EC company and it appears to him that any of the criteria of sound and prudent management is not or has not been or may not be or may not have been fulfilled with respect to the company;]
- (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 by this Act or by the Insurance Companies Act 1974;
  - [<sup>F66</sup>(ia) that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State giving effect to the [<sup>F67</sup>general or long term insurance Directives];]
  - (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 29(7) above or section 24(6) of the <sup>M9</sup>Insurance Companies Act 1974 or section 8(6) of the <sup>M10</sup>Insurance Companies Amendment Act 1973; or
  - (iii) that a subordinate company within the meaning of section 31 above of the company has failed to satisfy an obligation to which it is or was subject by virtue of that section or section 26 above or section 22 or 26 of the <sup>M11</sup>Insurance Companies Act 1974 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 by this Act or by the Insurance Companies Act 1974;

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- (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, 8 or 9 above, from issuing an authorisation with respect to the company if it were applied for;
  - (f) that it appears to him that there has been a substantial departure from any proposal or forecast submitted to him by the company in accordance with section 5 above;
  - (g) that the company has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in [<sup>F68</sup>an EFTA State where it has its head office or an EEA State where it] has in accordance with section 9(2) above made a deposit.
  - [<sup>F69</sup>(h) that the company is a Swiss general insurance company which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.]
- (3) The powers conferred on the Secretary of State by [<sup>F70</sup>sections 39, 40 and 40A] below shall not be exercisable in relation to an insurance company except—
- (a) where the Secretary of State has given (and not revoked) a direction in respect of the company under [<sup>F71</sup>section 11 or 12A above] or section 11 of the <sup>M12</sup>Insurance Companies Act 1981; or
  - (b) on the ground that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 33, 34 or 35 above or section 26B, 26C or 26D of the Insurance Companies Act 1974; or
  - (c) on the ground that a submission by the company to the Secretary of State of an account or statement specifies, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies. [<sup>F72</sup>or
  - (d) on the grounds that the company is a UK or non-EC company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 32 or 35A above.]
- (4) The power conferred on the Secretary of State by sub-sections (2) to (4) of section 44 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.
- [<sup>F73</sup>(4A) The powers conferred on the Secretary of State by sections 43A and 44 below shall be exercisable in respect of a UK or non-EC company to obtain information to enable him to perform his functions under this Act.]
- (5) Any power conferred on the Secretary of State by section 38, 41, 42, 44(1) or 45 below shall also be exercisable, whether or not any of the grounds specified in subsections (2) and (4) above exists, in relation to—

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- (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 [F74 section 96C(1)(c), (d) or (e) below],
- [F75(c) any UK company in a case where a person has notified an intention to acquire a notifiable holding in accordance with section 61A(1) below,]  
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 [F76 or acquired such a holding], as the case may be; but no requirement imposed by virtue of this sub-section shall continue in force after the expiration of the period of ten years beginning with that date.
- (6) The power conferred on the Secretary of State by section 45 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 38 to 44 below or by the exercise of those powers alone.
- (7) The Secretary of State shall, when exercising any power conferred by sections 38 to 45 below, state the ground on which he is exercising it or, if he is exercising it by virtue of subsection (5) above, that he is so exercising it; but this subsection shall not apply where the Secretary of State has given notice under section 46 below of the proposed exercise of the power.
- (8) The grounds specified in subsections (2)(b) to (g) and (4) above are without prejudice to the ground specified in sub-section (2)(a) above.

#### Textual Amendments

- F65** S. 37(2)(aa) inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(1)(a)**
- F66** S. 37(2)(b)(ia) ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, **reg. 19(1)(b)**
- F67** Words in s. 37(2)(b)(ia) substituted (20.5.1993) by S.I. 1993/174, **reg. 2(1)(b)**
- F68** Words in s. 37(2)(g) substituted (1.7.1994) by S.I. 1994/1696, **reg. 19(c)**
- F69** S. 37(2)(h) inserted (5.1.1994) by S.I. 1993/3127, **reg. 3(6)**
- F70** Words in s. 37(3) substituted (1.7.1994) by S.I. 1994/1696, **reg. 19(2)(a)**
- F71** Words in s. 37(3)(a) substituted (1.7.1994) by S.I. 1994/1696, **reg. 19(2)(b)**
- F72** S. 37(3)(d) and preceding word “or” inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(2)(c)**
- F73** S. 37(4A) inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(3)**
- F74** Words in s. 37(5)(b) substituted (1.7.1994) by S.I. 1994/1696, **reg. 19(4)(a)**
- F75** S. 37(5)(c) inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(4)(b)**
- F76** Words in s. 37(5) inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(4)(c)**

#### Marginal Citations

- M9** 1974 c. 49.
- M10** 1973 c. 58.
- M11** 1974 c. 49.
- M12** 1981 c. 31.

## 38 Requirements about investments.

- (1) The Secretary of State may require a company—
  - (a) not to make investments of a specified class or description;



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- (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.
- (3) A requirement under this section shall not apply to the assets of a company so far as their value exceeds—
  - (a) in the case of a company
    - [<sup>F77</sup>(i) whose head office is in an EFTA State, or
    - (ii) which has in accordance with section 9(2) above made a deposit in an EEA State other than the United Kingdom, or
    - (iii) which is a Swiss general insurance company,]
    - the amount of the liabilities of the business carried on by the company in the United Kingdom;
  - (b) in any other case, the amount of the liabilities of the company;  
that value and amount being determined in accordance with any applicable valuation regulations.

#### Textual Amendments

**F77** S. 38(3)(a)(i)(ii)(iii) substituted for words in s. 38(a) (1.7.1994) by S.I. 1994/1696, reg. 20

### 39 Maintenance of assets in the United Kingdom.

- [<sup>F78</sup>(1) The Secretary of State may require—
  - (a) in the case of a UK company, that assets of the company of a value which at any time is equal to the whole or a specified proportion of the amount of its EC liabilities shall be maintained in the European Community; and
  - (b) in the case of an insurance company which is not a UK company, that assets 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
  - [<sup>F79</sup>(a) in the case of a UK company, as assets maintained in the European Community; and
  - (b) in the case of an insurance company which is not a UK company, 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 [<sup>F80</sup>EC or 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

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the expiration of a specified period (or such longer period as the Secretary of State may allow).

[<sup>F81</sup>(5) In this section—

- (a) any reference to an EC liability is a reference to a liability of the business carried on by the company in the European Community; and
- (b) any reference to a domestic liability is a reference to a liability of the business carried on by the company in the United Kingdom.]

(6) Subject to subsection (7) below, in computing the amount of any liabilities for the purposes of this section all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(7) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations; and subsection (6) above shall have effect subject to any such regulations made by virtue of section 90(2) below.

#### Textual Amendments

- F78** S. 39(1)(a)(b) substituted for s. 39(1) (1.7.1994) by S.I. 1994/1696, reg. 21(1)  
**F79** S. 39(2)(a)(b) substituted for words in s. 39(2) (1.7.1994) by S.I. 1994/1696, reg. 21(2)  
**F80** Words in s. 39(3) substituted (1.7.1994) by S.I. 1994/1696, reg. 21(3)  
**F81** S. 39(5) substituted (1.7.1994) by S.I. 1994/1696, reg. 21(4)

#### 40 Custody of assets.

- (1) The Secretary of State may, in the case of a company on which a requirement has been imposed under section 39 above or under section 31 of the <sup>M13</sup>Insurance Companies Act 1974, 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 39(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 it confers such a security, be void against the liquidator and any creditor of the company.

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#### Marginal Citations

M13 1974 c. 49.

### [<sup>F82</sup> 40A Prohibition on disposal of assets.

- (1) If on the application of the Secretary of State it appears to the court that any of the grounds set out in section 37(3) above are established in relation to a UK company, the court may grant an injunction restraining, or in Scotland an interdict prohibiting, the company from disposing of or otherwise dealing with any of its assets to the value of its EC liabilities.
- (2) Where a court makes an order under subsection (1) above, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Secretary of State to perform his functions under this Act.
- (3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (4) In this section “EC liabilities” has the same meaning as in section 39 above.]

#### Textual Amendments

F82 S. 40A inserted (1.7.1994) by S.I. 1994/1696, reg. 22

### 41 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.

### 42 Actuarial investigations.

- (1) The Secretary of State may require a company which carries on long term business—
  - (a) to cause the person who for the time being is its actuary under section 19(1) above or any corresponding enactment previously in force to make an investigation into its financial condition 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

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- (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 18 above and subsection (2) of that section shall apply to an investigation made in pursuance of this section as it applies to an investigation to which subsection (1) (b) of that section relates.
- (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 18 which are deposited under section 22 above.

#### **43 Acceleration of information required by accounting provisions.**

- (1) The Secretary of State may require any documents which under section 22 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 25 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.

#### **[<sup>F83</sup> 43A General investigations.**

- (1) The Secretary of State may appoint one or more competent persons to make an investigation into and report to the Secretary of State on—
  - (a) whether the criteria of sound and prudent management are fulfilled with respect to any insurance company which is a UK or non-EC company ; or
  - (b) where a person has notified the Secretary of State under section 60 or 61 below of his intention to become a controller of any such company, whether those criteria would be so fulfilled if that person became such a controller;
 and the Secretary of State shall give written notice of any such appointment to the company.
- (2) It shall be the duty of every person who is or was a director, manager, controller, agent, actuary, auditor or solicitor of a company which is under investigation—
  - (a) to produce to the persons appointed under subsection (1) above, within such time and at such place as they may require, all documents relating to the company which are in his custody or power;
  - (b) to attend before the persons so appointed at such time and place as they may require; and
  - (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

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and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.

- (3) For the purpose of exercising his powers under this section a person appointed under subsection (1) above may enter any premises occupied by a company which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required would be removed, tampered with or destroyed.
- (4) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.
- (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.]

#### Textual Amendments

**F83** S. 43A inserted (1.7.1994) by S.I. 1994/1696, reg. 23

#### 44 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 [<sup>F84</sup>documents] 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 [<sup>F84</sup>documents] which that person may specify.
- [<sup>F85F85</sup>(2A) Subsections (1) and (2) above shall have effect as if any reference to a company included a reference to any person who is or has been a controller, officer, agent or employee of a UK or non-EC company and to any body corporate which is or has been—
- (a) a parent undertaking or subsidiary undertaking of such a company;
  - (b) a subsidiary undertaking of a parent undertaking of such a company; or
  - (c) a parent undertaking of a subsidiary undertaking of such a company.
- <sup>F85</sup>(2B) The Secretary of State may require a UK or non-EC company to furnish him, at a specified time, with a report by a specified person, being an actuary or accountant or other person with relevant professional skills, on any matter about which the Secretary of State has required, or could require, the company to provide information under subsection (1) above.]
- (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 [<sup>F84</sup>documents] from any company, the Secretary of State or that person shall have the like power to require production of those [<sup>F84</sup>documents] from any person who appears to him to be in possession of them; but where any person from whom such production is required claims a lien on [<sup>F84</sup>documents] produced by him, the production shall be without prejudice to the lien.

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- (4) Any power conferred by or by virtue of [<sup>F86</sup>subsections (2), (2A) and (3)]above to require a company or other person to produce [<sup>F84</sup>documents] shall include power—
- (a) if the [<sup>F84</sup>documents] 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 [<sup>F84</sup>documents] 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.
- [<sup>F87</sup>(4A) Any person authorised by the Secretary of State may, on producing if required evidence of his authority, enter any premises occupied by—
- (a) a UK or non-EC company on which a requirement under subsection (1) or (2) above has been imposed; or
  - (b) a person on whom or a body on which such a requirement has been imposed by virtue of subsection (2A) above,
- for the purpose of obtaining the information or documents required to be furnished or produced and exercising the powers conferred by subsection (4) above.]
- (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.
- [<sup>F88</sup>(6) In this section “document” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.]

#### Textual Amendments

- F84** Word substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 77\(2\)](#)
- F85** [S. 44\(2A\)\(2B\)](#) inserted (1.7.1994) by [S.I. 1994/1696, reg. 24\(1\)](#)
- F86** Words in [s. 44\(4\)](#) substituted (1.7.1994) by [S.I. 1994/1696, reg. 24\(2\)](#)
- F87** [S. 44\(4A\)](#) inserted (1.7.1994) by [S.I. 1994/1696, reg. 24\(3\)](#)
- F88** [S. 44\(6\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 77\(2\)](#)

#### [<sup>F89</sup>44A Entry and search of premises.

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person authorised to exercise powers under section 44 above, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under section 44(2) to (4) above and which have not been produced in compliance with the requirement.
- (2) A justice of the peace may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person authorised to exercise powers under section 44 above—
  - (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment

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- for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
- (b) that the Secretary of State or, as the case may be, the authorised person has power to require the production of the documents under section 44(2) to (4) above, and
- (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.
- (3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—
- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of any such documents; and
- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) If in the case of a warrant under subsection (2) the justice of the peace is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in subsection (3) to be taken in relation to such documents.
- (5) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (7) In the application of this section to Scotland for the references to a justice of the peace substitute references to a justice of the peace or a sheriff, and for the references to information on oath substitute references to evidence on oath.
- (8) In this section “document” includes information recorded in any form.]

#### Textual Amendments

**F89** S. 44A inserted by Companies Act 1989 (c. 40, SIF 27), s. 77(3)

#### 45 Residual power to impose requirements for protection of policy holders.

[<sup>F90</sup>(1) The Secretary of State may require a company to take such action as appears to him to be appropriate—



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- (a) 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; or
  - (b) in the case of a UK or non-EC company, for the purpose of ensuring that the criteria of sound and prudent management are fulfilled with respect to the company.]
- (2) The power conferred by this section shall not be exercised in such a way as to restrict the company's freedom to dispose of its assets except where it is exercised—
- (a) after the Secretary of State has given a direction under [F91section 11 or 12A above] or section 11 of the M14Insurance Companies Act 1981; or
  - (b) on the ground that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 33, 34 or 35 above or section 26B, 26C or 26D of the M15Insurance Companies Act 1974; or
  - (c) where the ground for intervention arises out of the submission by the company to the Secretary of State of an account or statement specifying, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies [F92or
  - F92(d) on the grounds that the company is a UK or non-EC company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 32 or 35A above.]

#### Textual Amendments

**F90** S. 45(1) substituted (1.7.1994) by S.I. 1994/1696, reg. 25(1)

**F91** Words in s. 45(2)(a) substituted (1.7.1994) by S.I. 1994/1696, reg. 25(2)(a)

**F92** S. 45(2)(d) and preceding word “or” inserted (1.7.1994) by S.I. 1994/1696, reg. 25(2)(b)

#### Marginal Citations

**M14** 1981 c. 31.

**M15** 1974 c. 49.

## 46 Notice of proposed exercise of powers on ground of unfitness of certain persons.

- (1) Before exercising with respect to a company any power or powers conferred by sections 38 to 45 above on the ground that he would be prohibited from issuing an authorisation to the company because of the unfitness of a person for the position held by him (not being that of controller 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 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

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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 45 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 hold the position concerned.

#### **47 Rescission, variation and publication of requirements.**

- (1) The Secretary of State may rescind a requirement imposed under sections 38 to 45 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 (5) of section 37 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) Where a requirement is imposed under section 40 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 or on the registrar of companies in Northern Ireland or on both;
  - (b) if the requirement is imposed on a registered society, on the appropriate registrar as defined by section 73(1) of the <sup>M16</sup>Industrial and Provident Societies Act 1965 in the case of a society registered in Great Britain or on the registrar as defined by section 101(1) of the <sup>M17</sup>Industrial and Provident Societies Act (Northern Ireland) 1969 in the case of a society registered in Northern Ireland;

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.

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- (4) A notice served in pursuance of subsection (3) above on the registrar of companies or the registrar of companies in Northern Ireland 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 or, in the case of a notice served on the registrar of companies in Northern Ireland, the Department of Commerce for Northern Ireland may direct; and every document purporting to be certified by the registrar of companies or the registrar of companies in Northern Ireland 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.
- (5) 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) and section 97(1) of the said Act of 1969 (which confers corresponding powers on the Department of Commerce for Northern Ireland) shall have effect as if the reference to documents so kept included a reference to notices served in pursuance of subsection (3) above on the appropriate registrar or, as the case may be, on the registrar.

#### Marginal Citations

- M16** 1965 c. 12.  
**M17** 1969 c. 24

#### [<sup>F93</sup>47A Restriction on disclosure of information.

Schedule 2B to this Act (which, subject to certain exceptions, restricts the disclosure of information obtained under or by virtue of this Act) shall have effect.]

#### Textual Amendments

- F93** S. 47(A) substituted (1.7.1994) by S.I. 1994/1696, reg. 26(1)

#### [<sup>F94</sup>47B Privilege from disclosure.

- (1) A requirement imposed under [<sup>F95</sup>section 43A or 44(2) to (4)] above shall not compel the production by any person of a document which he would in an action in the High Court or, in Scotland, in the Court of Session be entitled to refuse to produce on grounds of legal professional privilege or authorise the taking of possession of any such document which is in his possession.

(2<sup>F96</sup>]

#### Textual Amendments

- F94** Ss. 47A, 47B inserted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 25  
**F95** Words in s. 47B(1) substituted (1.7.1994) by S.I. 1994/1696, reg. 27  
**F96** S. 47B(2) repealed by S.I. 1986/1035 (N.I. 9), art. 24, Sch. 2

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## 48 Power of Secretary of State to bring civil proceedings on behalf of insurance company.

- (1) [<sup>F97</sup>Section 438(1) of the Companies Act] (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 by this Act or by the <sup>M18</sup>Insurance Companies Act 1974.
- (2) The Secretary of State may bring civil proceedings in the name and on behalf of an insurance company to which this Part of the Act applies (whether or not a body corporate) under [<sup>F98</sup>Article 431(1) of the Companies (Northern Ireland) Order 1986] and that subsection shall have effect in relation to such an insurance company 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 by this Act or by the <sup>M19</sup>Insurance Companies Act 1980 and any reference to the Department of Commerce for Northern Ireland were a reference to the Secretary of State.
- (3) Where under a judgment given or decree pronounced in proceedings brought by virtue of [<sup>F99</sup>section 438(1) of the Companies Act] or [<sup>F100</sup>Article 431(1) of the said Order of 1986] on behalf of an insurance company a sum is recovered in respect of a loss of assets representing a fund or funds maintained by the company in respect of its long term business the court shall direct that the sum shall be treated for the purposes of this Act as assets of that fund or those funds and this Act shall have effect accordingly.

### Textual Amendments

**F97** Words substituted by [Companies Consolidated \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

**F98** Words expressed to be substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)

**F99** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

**F100** Words substituted by [S.I. 1986/1035](#), (N.I. 9), art. 23, Sch. 1 Pt. II

### Marginal Citations

**M18** 1974 c. 49.

**M19** 1980 c. 25.

### *Transfers of long term business*

## [<sup>F101</sup>49 Transfers of long term and general general business.

Schedule 2C to this Act shall have effect long term and with respect to transfers of business.]

### Textual Amendments

**F101** S. 49 substituted for ss. 49-52 (1.7.1994) by [S.I. 1994/1696](#), [reg. 28\(1\)\(3\)](#)

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### *Transfers of general business*

#### [<sup>F116</sup>52A Issue of certificates by Secretary of State.

[ Where it is proposed to execute an instrument by which—

- <sup>F117</sup>(1) (a) an EC company, or a non-EC company whose head office is in an EFTA State, is to transfer—
- (i) to a UK company; or
  - (ii) to a non-EC company whose solvency is supervised by the Secretary of State in accordance with Article 29 or 30 of the first long term insurance Directive or Article 25 or 26 of the first general insurance Directive,

all its rights and obligations under such long term or general policies, or long term or general policies of such descriptions, as may be specified in the instrument; or

- (b) a Swiss general insurance company is to transfer to a UK company all its rights and obligations under such general policies, or general policies of such descriptions, as may be so specified,

the Secretary of State may, if he is satisfied that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account, issue a certificate to that effect.]

- (2) In this section “general policy” means a policy evidencing a contract the effecting of which constituted the carrying on of general business, other than reinsurance; [<sup>F118</sup>‘long term policy’ means a policy evidencing a contract the effecting of which constitutes the carrying on of long term business, other than reinsurance].]

#### **Textual Amendments**

**F116** S. 52A inserted by S.I. 1990/1333, **reg. 9(2)**

**F117** S. 52A(1) substituted (1.7.1994) by S.I. 1994/1696, **reg. 29**

**F118** Definition of “long term policy” in s. 52A(2) inserted (20.5.1993) by S.I. 1993/174, **reg. 3(4)(b)**

#### [<sup>F119</sup>52B Effect of transfers authorised in other EEA States.

(1) This section applies where—

- (a) an EC company transfers to another body all its rights and obligations under any UK policies and the transfer is authorised in its home State in accordance with—
  - (i) Article 11 of the third long term insurance Directive, or
  - (ii) Article 12 of the third general insurance Directive;
- (b) a non-EC company whose head office is in an EFTA State transfers to another body all its rights and obligations under any UK policies and the transfer is

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authorised in an EEA State other than the United Kingdom in accordance with—

- (i) Article 6 of the second long term insurance Directive, or
  - (ii) Article 11 of the second general insurance Directive; or
- (c) a non-EC company whose head office is not in an EFTA State transfers to another body all its rights and obligations under any UK policies and the transfer is authorised in a member State other than the United Kingdom in accordance with—
- (i) Article 31a of the first long term insurance Directive (as amended by Article 49 of the third long term insurance Directive), or
  - (ii) Article 28a of the first general insurance Directive (as amended by Article 53 of the third general insurance Directive).
- (2) If notice of the execution of the instrument giving effect to the transfer is published in such manner as the Secretary of State may from time to time direct, the instrument shall be effectual in law—
- (a) to transfer to the transferee all the transferor’s rights and obligations under the UK policies included in the instrument, and
  - (b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,
- notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.
- (3) Directions under this section may make different provision for different cases or descriptions of case.
- (4) A policy which evidences a contract of direct insurance is a UK policy for the purposes of this section if the law applicable to it is the law of any part of the United Kingdom.]

#### Textual Amendments

**F119** S. 52B inserted (1.7.1994) by S.I. 1994/1696, reg. 30

### *Winding up*

## **53 Winding up of insurance companies under Companies Acts.**

The court may order the winding up, in accordance with the [<sup>F120</sup>Insolvency Act 1986] or, as the case may be, the [<sup>F121</sup>Insolvency (Northern Ireland) Order 1989], of an insurance company to which this Part of this Act applies and the provisions of [<sup>F122</sup>the][<sup>F120</sup>that Act of 1986] or, as the case may be, [<sup>F123</sup>that Order of 1989] 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.

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.

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### Textual Amendments

- F120** Words inserted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)
- F121** Words in s. 53 substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 33\(a\)](#); [S.R. 1991/411](#), [art. 2](#)
- F122** Word substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F123** Words in s. 53 substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 33\(b\)](#); [S.R. 1991/411](#), [art. 2](#)

## 54 Winding up on petition of Secretary of State.

- (1) The Secretary of State may present a petition for the winding up, in accordance with <sup>F124</sup>Part IV or V of the [Insolvency Act 1986](#), 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 <sup>F124</sup>123 or sections 222 to 224 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 by this Act or by the <sup>M22</sup>[Insurance Companies Act 1974](#); or
  - <sup>F125</sup>(bb) that the company is a UK company and has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another EEA State which—
    - (i) gives effect to the general or long term insurance Directives; or
    - (ii) is otherwise applicable to the insurance activities of the company in that State;]
  - (c) that the company, being under the obligation imposed by <sup>F126</sup>sections 221 and 222 of the [Companies Act](#) with respect to the keeping of accounting records, has failed to satisfy that obligation or to produce records kept in satisfaction of that obligation and that the Secretary of State is unable to ascertain its financial position.
- (2) The Secretary of State may present a petition for the winding up, in accordance with the <sup>F127</sup>Part V or VI of the [Insolvency \(Northern Ireland\) Order 1989](#), 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 <sup>F128</sup><sup>F129</sup>Article 103 or Articles 186 to 188 of that Order]
  - (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 by this Act or by the <sup>M23</sup>[Insurance Companies Act 1980](#); or
  - <sup>F130</sup>(bb) that the company is a UK company and has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another EEA State which—
    - (i) gives effect to the general or long term insurance Directives; or
    - (ii) is otherwise applicable to the insurance activities of the company in that State;]
  - (c) that the company, being under an obligation imposed by <sup>F131</sup>Articles 229 to 231 of the <sup>F132</sup>Part V or VI of the [Insolvency \(Northern Ireland\) Order 1989](#)



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- with respect to the keeping of accounting records, has failed to satisfy that obligation or to produce records kept in satisfaction of that obligation and that the Secretary of State is unable to ascertain its financial position;
- and [<sup>F133</sup>Article 433 of the said Order of 1986] shall have effect in relation to such an insurance company as if any reference to the Department of Commerce for Northern Ireland were a reference to the Secretary of State.
- (3) In any proceedings on a petition to wind up an insurance company presented by the Secretary of State under subsection (1) of (2) 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 22 above; or
- (ii) any statement of the company last deposited under section 25 above, relate; or
- (b) at any date or time specified in a requirement under section 42 or 44 above, shall be evidence that the company continues to be unable to pay its debts, unless the contrary is proved.
- (4) 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 [<sup>F134</sup>Insolvency Act 1986] or, as the case may be, the [<sup>F135</sup>Insolvency (Northern Ireland) Order 1989], 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.
- (5) 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.

#### Textual Amendments

- F124** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), **Sch. 14**
- F125** [S. 54\(1\)\(bb\)](#) substituted (1.7.1994) by [S.I. 1994/1696](#), **reg. 31(1)**
- F126** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, **Sch. 2**
- F127** Words in [s. 54\(2\)](#) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), **Sch. 9 para. 34(a)(i)**; [S.R. 1991/411](#), **art. 2**
- F128** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, **Sch. 1 Pt. II**
- F129** Words in [s. 54\(2\)\(a\)](#) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), **Sch. 9 para. 34(a)(ii)**; [S.R. 1991/411](#), **art. 2**
- F130** [S. 54\(2\)\(bb\)](#) substituted (1.7.1994) by [S.I. 1994/1696](#), **reg. 31(2)**
- F131** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, **Sch. 1 Pt. II**
- F132** Words in [s. 54\(2\)\(c\)](#) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), **Sch. 9 para. 34(a)(i)**; [S.R. 1991/411](#), **art. 2**
- F133** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, **Sch. 1 Pt. II**
- F134** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), **Sch. 14**
- F135** Words in [s. 54\(4\)](#) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), **Sch. 9 para. 34(b)(i)**; [S.R. 1991/411](#), **art. 2**

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#### Marginal Citations

**M22** 1974 c. 49.

**M23** 1980 c. 25.

### 55 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 29(1) above shall not have effect in relation to the winding up of a company to which section 28(1) above applies but, subject to subsection (4) below and to rules made by virtue of section 59(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 [<sup>F136</sup>section 168(2) of the Insolvency Act 1986] or, as the case may be, [<sup>F137</sup>Article 143(2) of the Insolvency (Northern Ireland) Order 1989] 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.
- (6) Where under section [<sup>F138</sup>212 of the Insolvency Act 1986] or [<sup>F139</sup>Article 176 of the Insolvency (Northern Ireland) Order 1989] (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.

#### Textual Amendments

**F136** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)

**F137** Words s. 55(5) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 35\(a\)](#); [S.R. 1991/411](#), [art.2](#)

**F138** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)

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**F139** Words in s. 55(6) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), Sch. 9 para. 35(b); S.R. 1991/411, art.2

## 56 Continuation of long term business of insurance companies 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) [<sup>F140</sup>Section 177(5) of the Insolvency Act 1986] or, in the case of a special manager appointed in proceedings in Northern Ireland, [<sup>F141</sup>Article 151(5) of the Insolvency (Northern Ireland) Order 1989] (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 [<sup>F140</sup>section 177 of the said Act of 1986] or, as the case may be, [<sup>F142</sup>Article 151 of the said Order of 1989]
- (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 [<sup>F143</sup>section 167 of, and Schedule 4 to, the Insolvency Act 1986] or, as the case may be, [<sup>F144</sup>Article 142 of, and Schedule 2 to, the Insolvency (Northern Ireland) Order 1989] (which requires a liquidator to obtain the sanction of the court or [<sup>F145</sup>a specified committee] 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 49 above.
- (8) In this section "the court" means the court having jurisdiction to wind up the company.

### Textual Amendments

**F140** Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(2), Sch. 14

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- F141** Words in s. 56(4) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 para. 36(a)(i)**; S.R. 1991/411, **art.2**
- F142** Words in s. 56(4) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 para. 36(a)(ii)**; S.R. 1991/411, **art. 2**
- F143** Words substituted by **Insolvency Act 1986 (c. 45, SIF 66)**, s. 439(2), **Sch. 14**
- F144** Words in s. 56(7) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 para. 36(b)(i)**; S.R. 1991/411, **art.2**
- F145** Words in s. 56(7) substituted (N.I.) by **Insolvency Act 1985 (c. 65, SIF 66)**, s. 235(1), **Sch. 8 para. 37(3)(b)** and S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 para. 36(b)(ii)**; S.R. 1991/411, **art. 2**

## 57 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 [<sup>F146</sup>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 the 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.

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### Textual Amendments

**F146** Words repealed (E.W.S.) by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), [Sch. 10 Pt. II](#) and [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 437, [Sch. 11 para. 7](#)

## 58 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.

## 59 Winding up rules.

- (1) Rules may be made under [<sup>F147</sup>section][<sup>F148</sup>411 of the [Insolvency Act 1986](#)] or [<sup>F149</sup>Article 359 of the [Insolvency \(Northern Ireland\) Order 1989](#)] (general rules about winding up) for determining the amount of the liabilities of an insurance company to 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 [<sup>F150</sup>section][<sup>F151</sup>411 of the [Insolvency Act 1986](#)] or, as the case may be, [<sup>F152</sup>Article 359 of the said [Order of 1989](#)] 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 55 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 [<sup>F151</sup>sections 175 and 176 of, and [Schedule 6 to, the \[Insolvency Act 1986\]\(#\)](#)] or, as the case may be, [<sup>F153</sup>Articles 149 and 150 of, and [Schedule 4 to, the \[Insolvency \\(Northern Ireland\\) Order 1989\]\(#\)](#)];
  - (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 55 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).

### Textual Amendments

**F147** Word substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1), [Sch. 8 para. 37\(4\)\(a\)](#)

**F148** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)

**F149** Words s. 59(1) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 37\(a\)](#); [S.R. 1991/411](#), [art.2](#)

**F150** Word substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1), [Sch. 8 para. 37\(4\)\(b\)](#)

**F151** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)

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**F152** Words in s. 59(2) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 para. 37(b)(i)**; S.R. 1991/411, **art.2**

**F153** Words s. 59(2)(b) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 para. 37(b)(ii)**; S.R. 1991/411, **art.2**

*Changes of director, controller or manager etc.*

**60 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 companies 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.
- [<sup>F154</sup>(3) The Secretary of State may serve a notice of objection under subsection (1) above on the ground—
  - (a) 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; or
  - (b) where the insurance company is a UK or non-EC company, that it appears to him that, if that person were appointed, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.
- <sup>F154</sup>(3A) Before serving such a notice the Secretary of State shall serve on the company and on the person proposed to be appointed a preliminary 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 or that person may, within the period of one month from the date of service of the preliminary notice, make written representations to the Secretary of State and, if the company or that person so requests, oral representations to an officer of the Department of Trade and Industry 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.



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### Textual Amendments

**F154** S. 60(3)(3A) substituted for s. 60(3) (1.7.1994) by S.I. 1994/1696, reg. 32

## **61 Approval of person proposing to become controller of insurance company where section 60 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 60 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.

[<sup>F155</sup>(1A) The Secretary of State may serve a notice of objection under subsection (1) above on the ground—

- (a) that it appears to him that the person concerned is not a fit and proper person to become a controller of the company; or
- (b) where the company is a UK or non-EC company, that it appears to him that, if that person were to become such a controller, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

[<sup>F155</sup>(2) Before serving such a notice the Secretary of State shall serve on the person proposing to become a controller a preliminary notice stating—

- (a) that the Secretary of State is considering the service on that person 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 and Industry appointed for the purpose by the Secretary of State.]

[<sup>F156</sup>(2A) The Secretary of State may serve a notice of objection under subsection (1) above for the purpose of implementing any decision of the Council or Commission of the Communities under—

- (a) Article 29b(4) of the first general insurance Directive; or
- (b) Article 32b(4) of the first long term insurance Directive.]

(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.



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#### Textual Amendments

**F155** S. 61(1A)(2) substituted for s. 61(2) (1.7.1994) by S.I. 1994/1696, reg. 33

**F156** S. 61(2A) inserted (19.11.1992) by S.I. 1992/2890, reg. 4

### [<sup>F157</sup>61A Approval of acquisition of notifiable holding in UK company.

- (1) No person who is a controller of a UK company shall acquire a notifiable holding in that company, or in another company of which it is a subsidiary undertaking, unless—
- (a) he has served on the Secretary of State a written notice stating—
    - (i) that he intends to acquire such a holding; and
    - (ii) the number of the shares or details of the voting rights which he proposes to acquire; 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 proposed acquisition of the holding, 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—
- (a) that it appears to him that the person concerned is not a fit and proper person to acquire such a holding; or
  - (b) that it appears to him that, if that person were to acquire such a holding, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.
- (3) Subsections (2) to (4) of section 61 above shall (with the necessary modifications) apply for the purposes of this section as they apply for the purposes of that section.]

#### Textual Amendments

**F157** S. 61A inserted (1.7.1994) by S.I. 1994/1696, reg. 34

### [<sup>F158</sup>61B Further provisions with respect to controllers of UK companies.

Schedule 2D to this Act (which makes further provision with respect to persons becoming or continuing to be companies, controllers of UK and persons who are such controllers acquiring or dealing with holdings in such companies) shall have effect.]

#### Textual Amendments

**F158** S. 61B inserted (1.7.1994) by S.I. 1994/1696, reg. 35(1)

## 62 Duty to notify change of director, controller or manager.

- [<sup>F159</sup>(1) If, in the case of a company to which this Part of this Act applies, a person becomes or ceases to be—
- (a) a controller of the company; or

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- (b) where the company is a UK company, a 10 per cent.shareholder controller, a 20 per cent.shareholder controller, a 33 per cent.shareholder controller, a 50 per cent.shareholder controller or a majority shareholder controller of the company,

he shall, before the expiration of the period of seven days beginning with the day next following that on which he does so, notify the company in writing of that fact and of such other matters as may be prescribed.

<sup>F159</sup>(1A) If, after ceasing to be a shareholder controller of any description mentioned in paragraph (b) of subsection (1) above, a person will still be a shareholder controller of the company, his notice under that subsection shall state the percentage of the shares or voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control.

<sup>F159</sup>(1B) A person who becomes a director or manager 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 company in writing of such matters as may be prescribed.]

(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 [<sup>F160</sup>subsection (1), (1A) or (1B)] 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.

[<sup>F161</sup>(3) In this section 'share' has the same meaning as in Part VII of the Companies Act or Part VIII of the Companies (Northern Ireland) Order 1986.]

#### Textual Amendments

**F159** S. 62(1)(1A)(1B) substituted for s. 62(1) by S.I. 1994/1696, reg. 36(1)

**F160** Words in s. 62(2) substituted (1.7.1994) by S.I. 1994/1696, reg. 36(2)

**F161** S. 62(3) inserted (1.7.1994) by S.I. 1994/1696, reg. 36(3)

## 62 Duty to notify change of director, controller or manager. U.K.

(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.

(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.

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### 63 Change of manager etc. of company from outside United Kingdom.

- (1) In relation to [<sup>F162</sup>a non-EC company whose head office is in an EFTA State or]<sup>F163</sup>a Swiss general insurance company],—
- (a) section 60 above shall have effect as if the references to a managing director or chief executive were references to a principal United Kingdom executive;
  - (b) section 61 above shall not apply;
  - (c) section 62 above shall have effect as if references to a director or manager were references to a principal United Kingdom executive, an employee within section 8(4)(c) above or an authorised United Kingdom representative.
- (2) In relation to any other insurance company whose head office is outside the United Kingdom—
- (a) section 60 above shall have effect as if the references to a chief executive included references to a principal United Kingdom executive; and
  - (b) section 62 above shall have effect as if the references to a director included references to a principal United Kingdom executive and to an authorised United Kingdom representative.
- (3) In this section—
- “principal United Kingdom executive” means an officer or employee within section 8(4)(b) or 9(6) above; and
- “authorised United Kingdom representative” means a representative fulfilling the requirements of section 10 above or an individual representative of the kind described in subsection (5) of that section.

#### Textual Amendments

**F162** Words in s. 63(1) substituted (1.7.1994) by S.I. 1994/1696, 37(1)

**F163** Words in s. 63(1) inserted (5.1.1994) by S.I. 1993/3127, reg. 3(10)

#### Modifications etc. (not altering text)

**C18** S. 63: power to contract out functions conferred (18.11.1998) by S.I. 1998/2842, arts. 2, 3, Sch. Pt. I para. 44

### [<sup>F165</sup>63A <sup>F164</sup>Duty to notify change of control

- (1) A person resident or having its head office in a country or territory other than a member State who becomes the parent undertaking of an insurance company—
- (a) which has its head office in the United Kingdom; and
  - (b) to which this Part of this Act applies,
- shall before the expiration of the period of fourteen days beginning with the day next following that on which he becomes the parent undertaking notify the Secretary of State in writing of that fact.
- (2) Subsection (1) above shall not apply if the insurance company concerned—
- (a) is required to give notice to the Secretary of State in accordance with section 62(2) above; or
  - (b) is not authorised to carry on in any member State any insurance business other than reinsurance business.]

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

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#### Textual Amendments

**F164** S. 63A inserted (19.11.1992) by S.I. 1992/2890, reg. 5

**F165** S. 63A ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, reg. 37(2)

### 64 Duty to notify change of main agent.

- (1) 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 main agent of the company and, if a main agent is a body corporate or a firm, of the fact that any person has become or ceased to be a director of the body or partner of the firm.
- (2) A notice under this section shall be given before the expiration of the period of fourteen days beginning with the day next following that on which the change comes to the knowledge of the insurance company.

#### Miscellaneous

### 65 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 22 above, including any document obtained under subsection (5) of that section;
  - (b) any document deposited with him under section 42(4) or 50(4) above.
- (2) Subject to subsection (3) below, any document deposited under this section or section 25(5) or 26(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 23(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.

### 66 Documents deposited in Northern Ireland.

Any insurance company which is required to prepare and deliver accounts under [F166]Articles 235 and 249 or Article 649 of the Companies (Northern Ireland) Order 1986] shall deposit with the registrar of companies in Northern Ireland one copy of—

- (a) any document deposited with the Secretary of State under section 22(1), 22(2), 22(6), [F167]or 42(4) above or paragraph 5(5) of Schedule 2C to this Act];
- (b) any document supplied by the company to the Secretary of State under section 22(5) above.

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### Textual Amendments

**F166** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, Sch. 1 Pt. II

**F167** Words in s. 66(a) substituted (1.7.1994) by S.I. 1994/1696, reg. 38

## 67 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.
- (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 17 to 20, 25, 28 to 31, 42, 55, 56 and 59(2) of this Act and section 21 of the <sup>M24</sup>Policyholders Protection Act 1975 and Schedule 3 to that Act.

### Marginal Citations

**M24** 1975 c. 75.

## 68 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 16 to 22, 23(1) and 25 to 36 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 31 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.

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## **69 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.

## **70 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.
- (2) 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.
- (3) Any notice to be served on any person by the Secretary of State under section 46, 60 or 61 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 the United Kingdom.

## **71 Offences under Part II.**

- (1) Any person who—
  - (a) makes default in complying with sections 28 to 30 or [F168 or 62(1), (1A) or (1B)] above; or
  - (b) in purported compliance with a requirement imposed under [F169 section 43A or 44] 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 22 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 19(2) or 26(1) above;
    - (iii) any document deposited with the Secretary of State under section 25(4) or 42(4) above;
    - [F170(iv) any statement sent out under paragraph 2(2)(b) of Schedule 2C to this Act or made available under paragraph 7(1)(c) of that Schedule,]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—

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- (i) in England and Wales <sup>F171</sup>, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 32 of the <sup>M25</sup>Magistrates' Courts Act 1980;
  - (ii) in Scotland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 289B of the <sup>M26</sup>Criminal Procedure (Scotland) Act 1975;
  - [<sup>F172</sup>(iii) in Northern Ireland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984.]
- [<sup>F173</sup>(2AA) Any person who intentionally obstructs a person exercising rights conferred by section 44(4A) above shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.]
- [<sup>F174</sup>(2A) A person who intentionally obstructs the exercise of any rights conferred by a warrant issued under section 44A above or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) of that section is guilty of an offence and liable—
- (a) on conviction on indictment, to a fine, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.]
- (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 26, 29(7), 31, 38, 39, 40, 41, [<sup>F175</sup>43A, 44, 45, 61(1) or 61A(1) above, paragraph 2(3) or 5(5) of Schedule 2C to this Act or Schedule 2D to this Act],
- shall be guilty of an offence and liable, on summary conviction in England and Wales and Scotland to a fine not exceeding level 5 on the standard scale and, on summary conviction in Northern Ireland to a fine not exceeding £400.
- (4) Where a person continues to make default in complying with—
- (a) section 22(1) or (2), 24(1), 25(4) or 42(4) above; or
  - (b) a requirement imposed under section 43 or [<sup>F176</sup>44(1) or (2B)] 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.
- [<sup>F177F178</sup>(4A) A person who publishes or discloses any information or document in contravention of section 47A above shall be guilty of an offence under section 449 of the Companies Act [<sup>F179</sup>or Article 442 of the Companies (Northern Ireland) Order 1986] and liable accordingly.]
- (5) A person shall not be guilty of an offence by reason of his default in complying with section [<sup>F180</sup>61, 61A(1) or 62(1), (1A) or (1B)] 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.



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- (6) Where a person is charged with an offence in respect of his default in complying with a requirement imposed under section 44(2) or (3) above to produce any [<sup>F181</sup>documents] 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.
- (7) An insurance company shall not be guilty of an offence by reason of its default in complying with section 16 [<sup>F182</sup>21A][<sup>F183</sup>or 31A above or Part II of Schedule 2C to this Act (other than paragraph 7(1)(c))].

#### Textual Amendments

- F168** Words in s. 71(1)(a) substituted (1.7.1994) by S.I. 1994/1696, **reg. 39(1)(a)**
- F169** Words in s. 71(1)(b) substituted (1.7.1994) by S.I. 1994/1696, **reg. 39(1)(b)**
- F170** S. 71(1)(c)(iv) substituted (1.7.1994) by S.I. 1994/1696, **reg. 39(1)(c)**
- F171** Words repealed by S.I. 1984/703 (N.I. 3), art. 19(1)(2), **Sch. 6 para. 31(a)**, Sch. 7
- F172** S. 71(2)(b)(iii) substituted for words after sub-paragraph (ii) by S.I. 1984/703 (N.I. 3), art. 19(1), **Sch. 6 para. 31(b)**
- F173** S. 71(2AA) inserted (1.7.1994) by S.I. 1994/1696, **reg. 39(2)**
- F174** S. 71(2A) inserted by Companies Act 1989 (c. 40, SIF 27), s. 77(5)
- F175** Words in s. 71(3)(b) substituted (1.7.1994) by S.I. 1994/1696, **reg. 39(3)**
- F176** Words in s. 71(4)(b) substituted (1.7.1994) by S.I. 1994/1696, **reg. 39(4)**
- F177** S. 71(4A) ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, **reg. 39(5)**
- F178** S. 71(4A) inserted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F179** Words inserted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F180** Words in s. 71(5) substituted (1.7.1994) by S.I. 1994/1696, **reg. 39(6)**
- F181** Word substituted by Companies Act 1989 (c. 40, SIF 27), s. 77(6)
- F182** “21A” inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 135(2)
- F183** Words in s. 71(7) substituted (1.7.1994) by S.I. 1994/1696, **reg. 39(7)**

#### Marginal Citations

- M25** 1980 c. 43.
- M26** 1975 c. 21.

## PART III

### CONDUCT OF INSURANCE BUSINESS

#### 72 Insurance advertisements.

- (1) Regulations may be made as to the form and contents of insurance advertisements.
- (2) Regulations under this section may make different provision in relation to insurance advertisements of different classes or descriptions.
- (3) Subject to subsection (4) below, any person who issues an insurance advertisement which contravenes regulations under this section shall be guilty of an offence.
- (4) A person who in the ordinary course of his business issues an advertisement to the order of another person, being an advertisement the issue of which by that other person constitutes an offence under subsection (3) above, shall not himself be guilty of the

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offence if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control.

- (5) In this section “insurance advertisement” means an advertisement inviting persons to enter into or to offer to enter into contracts of insurance, and an advertisement which contains information calculated to lead directly or indirectly to persons entering into or offering to enter into such contracts shall be treated as an advertisement inviting them to do so.
- (6) In this section “advertisement” includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting or television [<sup>F184</sup> or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service], and reference to the issue of an advertisement shall be construed accordingly.
- (7) For the purposes of this section an advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person; and for the purposes of any proceedings under this section an advertisement inviting persons to enter into or to offer to enter into contracts with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by that person.

#### Textual Amendments

**F184** Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), ss. 4(6), 87(6), 203(1), [Sch. 20 para. 34](#) for words inserted by [Cable and Broadcasting Act 1984 \(c. 46, SIF 96\)](#), s. 57(1), [Sch. 5 para. 43](#)

#### [<sup>F185</sup>72A Information for policy holders of UK insurers and EC companies.

Schedule 2E to this Act (which makes provision with respect to information for policy holders of UK insurers and EC companies) shall have effect.]

#### Textual Amendments

**F185** [S. 72A](#) inserted (1.7.1994) by [S.I. 1994/1696](#), [reg. 40\(1\)](#)

#### [<sup>F186</sup>72B Information for policy holders of EFTA companies.

- (1) Subject to subsection (2) below, this section applies to a contract entered into by an EFTA company the effecting of which constitutes the provision of insurance in the United Kingdom.
- (2) This section does not apply to a contract entered into by an authorised person the effecting of which constitutes the carrying on in the United Kingdom of investment business; and in this subsection expressions which are also used in the Financial Services Act 1986 have the same meanings as in that Act.
- (3) Before entering into a contract to which this section applies, the company shall, unless the contract is for the coverage of large risks only, inform the other party to the contract of the EEA State in which is situated the establishment through which the risk or

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commitment is to be covered; and any document issued to that party by the company shall also contain that information.

- (4) If the information required by subsection (3) above is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that subsection if it is also furnished in writing as soon as practicable after that time.
- (5) Any relevant document issued by an EFTA company in relation to a contract to which this section applies shall state—
  - (a) the address of the establishment through which the risk or commitment is or is to be covered; and
  - (b) where the insurance relates to relevant motor vehicle risks, the name and address of the claims representative.
- (6) In this section 'relevant document', in relation to a contract to which this section applies, means any proposal, policy or other document which, or statements contained in which, will or may bind the other parties to the contract.
- (7) In this Act 'EFTA company' means an insurance company—
  - (a) whose head office is in an EFTA State;
  - (b) which is authorised in accordance with Article 6 of the first general insurance Directive (as extended by the EEA Agreement) or Article 6 of the first long term insurance Directive (as so extended); and
  - (c) whose business in the United Kingdom is not restricted to reinsurance business.]

**Textual Amendments**

**F186** S. 72B inserted (1.7.1994) by S.I. 1994/1696, reg. 41

73 <sup>F187</sup> .....

**Textual Amendments**

**F187** S. 73 repealed by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), Sch. 17 Pt. I

**74 Intermediaries in insurance transactions.**

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

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respect of the contract in question to inform the person to whom the invitation is issued that the company is not such an insurer as aforesaid.

In this subsection “authorised insurer”, in relation to a contract of any description, means a person entitled to carry on in the United Kingdom insurance business of a class comprising the effecting of contracts of that description [<sup>F188</sup> or an EC or EFTA company entitled to provide in the United Kingdom insurance of such a class].

- (3) Any person who contravenes regulations under this section shall be guilty of an offence.

#### Textual Amendments

**F188** Words in s. 74(2) inserted (1.7.1994) by S.I. 1994/1696, reg. 42

#### Modifications etc. (not altering text)

**C19** S. 74 restricted by Financial Services Act 1986 (c.60, SIF 69), s. 129, Sch. 10 para. 5(2)

### 75 Statutory notice by insurer in relation to long term policy.

[<sup>F189</sup>(1) Subject to subsections (5) and (5A) below, unless the requirements of subsection (1A) below are fulfilled—

- (a) no insurance company which is authorised under section 3 or 4 above and no member of Lloyd’s shall enter into a contract the effecting of which constitutes the carrying on of long term business in the United Kingdom;
- (b) no EC company shall enter into a contract the effecting of which constitutes the carrying on of such business or the provision of long term insurance in the United Kingdom; and
- (c) no EFTA company shall enter into a contract the effecting of which constitutes the provision of such insurance in the United Kingdom.]

(1A) The requirements of this subsection are that—

- (a) the company or member (“the insurer”) sends by post to the other party to the contract, at or before the time when it is entered into, a statutory notice in relation to the contract; or
- (b) in the case of an EC contract, a representative of the insurer gives such a notice to that party at that time.

(1B) Where, in the case of an EC contract, a statutory notice is sent to the other party to the contract before the time when it is entered into, the insurer shall, not later than 14 days after the contract has become binding, inform that party in writing that it has done so.

(2) For the purposes of this section a statutory notice is a notice which—

- (a) contains such matters (and no others) and is in such form as may be prescribed for the purposes of this section and complies with such requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) as may be prescribed for securing that the notice is easily legible; and
- (b) has annexed to it a form of notice of cancellation of the prescribed description for use under section 76 below.

(3) The Secretary of State may, on the application of any insurer, alter the requirements of any regulations made for the purposes of subsection (2)(a) above so as to adapt those

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requirements to the circumstances of that insurer or to any particular kind of contract proposed to be entered into by that insurer.

(4) Any insurer who contravenes this section shall be guilty of an offence but, without prejudice to section 76(2) below, no contract shall be invalidated by reason of the fact that the insurer has contravened this section in relation to that contract.

- (a) the insurer is a company whose head office is in a member State or a member of Lloyd's; and
- (b) the other party is habitually resident in the United Kingdom;

and "non-EC contract" means a contract to which subsection (1) above applies which is not an EC contract.

(5) Subsection (1) of this section does not apply to <sup>F190</sup>any non-EC contract] the effecting of which by the insurer constitutes the carrying on of industrial assurance business; and regulations may exempt from that subsection contracts of any other class or description.

<sup>F191</sup>(5A) Subsection (1) of this section does not apply to a contract if the party other than the insurer is habitually resident in a member State other than the United Kingdom.

(5B) For the purposes of this section and section 76 below, "EC contract" means a contract to which subsection (1) above applies which fulfils the following conditions, namely—

- (a) the insurer is a company whose head office is in a member State or a member of Lloyd's; and
- (b) the other party is habitually resident in the United Kingdom;

and "non-EC contract" means a contract to which subsection (1) above applies which is not an EC contract.

(5C) In the case of a contract involving two or more parties other than the insurer, this section and section 76 below shall have effect as if a separate contract were being or had been entered into by the insurer with each of those parties.]

(6) In sections 76 and 77 below "insurer" and "statutory notice" have the same meaning as in this section.

#### Textual Amendments

**F189** S. 75(1) substituted (1.7.1994) by S.I. 1994/1696, reg. 43

**F190** Words in s. 75(5) inserted (20.5.1993) by S.I. 1993/1327, reg. 2(2)

**F191** S. 75(5A)(5B)(5C) inserted (20.5.1993) by S.I. 1993/1327, reg. 2(3)

#### Modifications etc. (not altering text)

**C20** Ss. 75–77 restricted by Financial Services Act 1986 (c. 60, SIF 69), s. 129, Sch. 10 para. 5(3)(4)

## 76 Right to withdraw from transaction in respect of long term policy.

<sup>F192</sup>(1) A person who has received a statutory notice in relation to an EC contract may, before the expiration of the fourteenth day after that on which he is informed in writing that the contract has become binding, serve a notice of cancellation on the insurer.

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- (1A) A person who has received a statutory notice in relation to a non-EC contract may, before the expiration of—
- (a) the tenth day after that on which he received the notice, or
  - (b) the earliest day on which he knows both that the contract has been entered into and that the first or only premium has been paid,
- whichever is the later, serve a notice of cancellation on the insurer.]
- (2) A person to whom an insurer ought to have, but has not, sent a statutory notice in relation to any such contract as aforesaid may serve a notice of cancellation on the insurer; but if the insurer sends him a statutory notice in relation to that contract before he has served a notice of cancellation under this subsection, then, without prejudice to his right to serve a notice of cancellation under [F193 subsection (1) or (1A)] above, his right to do so under this subsection shall cease.
- (3) A notice of cancellation may, but need not, be in the form annexed to the statutory notice and shall have effect if, however expressed, it indicates the intention of the person serving it to withdraw from the transaction in relation to which the statutory notice was or ought to have been sent.
- (4) Where a person serves a notice of cancellation, then—
- (a) if at the time when the notice is served the contract has been entered into, the notice shall operate so as to rescind the contract;
  - (b) in any other case, the service of the notice shall operate as a withdrawal of any offer to enter into the contract which is contained in, or implied by, any proposal made to the insurer by the person serving the notice of cancellation and as notice to the insurer that any such offer is withdrawn.
- (5) Where a notice of cancellation operates to rescind a contract or as the withdrawal of an offer to enter into a contract—
- (a) any sum which the person serving the notice has paid in connection with the contract (whether by way of premium or otherwise and whether to the insurer or to a person who is the agent of the insurer for the purpose of receiving that sum) shall be recoverable from the insurer by the person serving the notice;
  - (b) any sum which the insurer has paid under the contract shall be recoverable by him from the person serving the notice.
- (6) Any sum recoverable under subsection (5) above shall be recoverable as a simple contract debt in any court of competent jurisdiction.

#### Textual Amendments

**F192** s. 76(1)(1A) substituted for s. 76(1)(1A) (20.5.1993) by S.I. 1993/1327, reg. 2(4)

**F193** Words in s. 76(2) substituted (20.5.1993) by S.I. 1993/1327, reg. 2(5)

#### Modifications etc. (not altering text)

**C21** Ss. 75–77 restricted by Financial Services Act 1986 (c. 60, SIF 69), s. 129, Sch. 10 para. 5(3)(4)

## 77 Service of notice of cancellation.

- (1) For the purposes of section 76 above a notice of cancellation—



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- (a) shall be deemed to be served on the insurer if it is sent by post addressed to any person specified in the statutory notice as a person to whom a notice of cancellation may be sent, and is addressed to that person at an address so specified; and
  - (b) where paragraph (a) above applies, shall be deemed to be served on the insurer at the time when it is posted.
- (2) Subsection (1) above shall have effect without prejudice to the service of a notice of cancellation (whether by post or otherwise) in any way in which the notice could be served apart from that subsection, whether the notice is served on the insurer or on a person who is the agent of the insurer for the purpose of receiving such a notice.
- (3) A notice of cancellation which is sent by post to a person at his proper address, otherwise than in accordance with subsection (1) above, shall be deemed to be served on him at the time when it is posted.
- (4) So much of section 7 of the <sup>M27</sup>Interpretation Act 1978 as relates to the time when service is deemed to have been effected shall not apply to a notice of cancellation.

**Modifications etc. (not altering text)**

**C22** Ss. 75-77 restricted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 129, **Sch. 10 para 5(3)(4)**

**Marginal Citations**

**M27** 1978 c. 30.

**78 Linked long term policies.**

- (1) Regulations may be made, as respects the matters specified in subsection (2) below, in relation to contracts the effecting of which constitutes the carrying on of ordinary long-term insurance business and which—
- (a) are entered into by insurance companies to which Part II of this Act applies [<sup>F194</sup>, by EC companies] or by members of Lloyd’s; and
  - (b) are contracts under which the benefits payable to the policy holder are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
- (2) Regulations under this section may make provision for—
- (a) restricting the descriptions of property or the indices of the value of property by reference to which benefits under the contracts may be determined;
  - [<sup>F195</sup>(aa) restricting the proportion of those benefits which may be determined by reference to property of a specified description or a specified index;]
  - (b) regulating the manner in which and the frequency with which property of any description is to be valued for the purpose of determining such benefits and the times at which reference is to be made for that purpose to any index of the value of property;
  - (c) requiring insurers under the contracts to appoint valuers for carrying out valuations of property of any description for the purpose of determining such benefits (being valuers who comply with the prescribed requirements as to



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- qualifications and independence from the insurer) and to furnish the Secretary of State with the prescribed information in relation to such appointments;
  - (d) requiring insurers under the contracts to furnish, in such manner and at such times or intervals as may be prescribed, such information relating to the value of the benefits under the contracts as may be prescribed, whether by sending notices to policy holders, depositing statements with the Secretary of State or the registrar of companies or the registrar of companies in Northern Ireland or with both such registrars, publication in the press or otherwise;
  - (e) requiring insurers under the contracts to furnish to the Secretary of State, in such manner and at such times or intervals as may be prescribed, such information certified in such manner as may be prescribed with respect to so much of their business as is concerned with the contracts or with any class or description of the contracts, and enabling the Secretary of State to publish such information in such ways as he thinks appropriate.
- (3) Regulations made for the purposes of subsection (2)(d) above may, in relation to notices required to be sent to policy holders, impose requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) for securing that such notices are easily legible.
- (4) The Secretary of State may, on the application of any insurer, alter the requirements of any regulations under this section so as to adapt those requirements to the circumstances of that insurer or to any particular kind of contract entered into or proposed to be entered into by that insurer.
- (5) Regulations under this section may, to such extent as may be specified therein, apply in relation to contracts entered into before the coming into operation of the regulations, including contracts entered into before the passing of this Act.
- (6) Regulations under this section shall not apply in relation to any contract the effecting of which by the insurer constitutes the carrying on of industrial assurance business or to any contract entered into by an insurance company to which Part II of this Act applies by reason only that the policy holder is eligible to participate in any established surplus as defined in section 30(4) above.

**Textual Amendments**  
**F194** Words in s. 78(1)(a) inserted (1.7.1994) by S.I. 1994/1696, reg. 44  
**F195** S. 78(2)(aa) inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 137

79 <sup>F196</sup> .....

**Textual Amendments**  
**F196** S. 79 repealed by Financial Services Act 1986 (c. 60, SIF 69), s. 212(3), Sch. 17 Pt. I

**80 Capital redemption business.**

Where an insurance company to which Part II of this Act applies carries on capital redemption business in the case of which the premiums in return for which a contract is effected are payable at intervals of less than six months, the company shall not give

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the holder of any policy issued after 2nd December 1909 any advantage dependent on lot or chance.

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

## 81 Penalties and offences under Part III.

- (1) Any person guilty of an offence under section 72, 73 or 74 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—
    - (i) in England and Wales <sup>F197</sup>, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 32 of the <sup>M28</sup>Magistrates' Courts Act 1980;
    - (ii) in Scotland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 289B of the <sup>M29</sup>Criminal Procedure (Scotland) Act 1975,
    - <sup>F198</sup>(iii) in Northern Ireland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984.]
- (2) Any person who makes default in complying with, or with a requirement imposed under, any other provision of this Part of this Act shall be guilty of an offence and liable, on summary conviction in England and Wales and Scotland to a fine not exceeding level 5 on the standard scale and, on summary conviction in Northern Ireland to a fine not exceeding £400.

### Textual Amendments

**F197** Words repealed by S.I. 1984/703 (N.I. 3), art. 19(1)(2), Sch. 6 para. 32(a), Sch. 7

**F198** S. 81(1)(b)(iii) substituted for words after sub-paragraph (ii) by S.I. 1984/703 (N.I. 3), art. 19(1), Sch. 6 para. 32(b)

### Marginal Citations

**M28** 1980 c. 43

**M29** 1975 c. 21.

## <sup>F199</sup>PART IIIA

### RECOGNITION IN ACCORDANCE WITH INSURANCE DIRECTIVES]

### Textual Amendments

**F199** Part III: S. 81A and Part heading substituted for s. 81A (1.7.1994) by S.I. 1994/1696, reg. 45(1)

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### Introduction

#### <sup>F200</sup>81A <sup>F200</sup>Recognition in the United Kingdom of EC and EFTA companies.

Schedule 2F to this Act (which makes provision for or in connection with the recognition in the United Kingdom of EC and EFTA companies) shall have effect.

##### Textual Amendments

**F200** S. 81A and Part III heading substituted for s. 81A (1.7.1994) by S.I. 1994/1696, reg. 45(1)

*[<sup>F201</sup> Provision of insurance in the United Kingdom]*

##### Textual Amendments

**F201** Pt. IIIA (ss. 81A–81J) inserted by S.I. 1990/1333, reg. 10

#### <sup>F202</sup>81B Recognition in other EEA States of UK insurers.

Schedule 2G to this Act (which makes provision for or in connection with the recognition in other EEA States of UK insurers) shall have effect.]

##### Textual Amendments

**F202** S. 81B substituted for ss. 81B–81J (1.7.1994) by S.I. 1994/1696, reg. 46(1)

## PART IV

### SPECIAL CLASSES OF INSURERS

#### 82 Industrial assurance business.

- (1) In its application to industrial assurance business this Act shall have effect subject to the modifications specified in this section.
- (2) Where an insurance company carries on any industrial assurance business, the company shall deposit with the Industrial Assurance Commissioner and the Industrial Assurance Commissioner for Northern Ireland a copy of any document which relates to industrial assurance business and which is deposited with the Secretary of State under section 22(1), (2) and (6) above or which is supplied by the company to the Secretary of State under section 22(5) above.

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- (3) The provisions of sections 22 and 23(1) above shall have effect in relation to any document mentioned in subsection (2) above as if references in those provisions to the Secretary of State included references to the Commissioner and the Commissioner for Northern Ireland.
- (4) Where any document required to be deposited by a company under subsection (4) of section 42 above relates to industrial assurance business the company shall also, within the time required under that subsection, deposit one copy of that document with the Commissioner and the Commissioner for Northern Ireland, and section 71(4) above shall have effect in relation to this subsection as it has effect in relation to that subsection.
- (5) Where any business proposed to be transferred as mentioned in [<sup>F228</sup>Part I of Schedule 2C to this Act] above is or includes industrial assurance business [<sup>F229</sup>that Part of that Schedule] shall have effect as if references to the Secretary of State included references to the Commissioner and the Commissioner for Northern Ireland.
- (6) Where any apportionment is made between the industrial assurance business and any other business carried on by the company in respect of management expenses, income from investments, gains or losses on the disposal of investments, appreciation or depreciation in the value of investments, or taxation, the auditor shall include in his report a special report as to the propriety or otherwise of the apportionment; and a copy of every report of the auditor shall be furnished to the Commissioner and the Commissioner for Northern Ireland.
- (7) The provisions of this Act relating to industrial assurance business shall have effect notwithstanding anything in the memorandum or articles of association or rules or special Act of any insurance company carrying on such business; but nothing in this Act shall affect the liability of the industrial assurance fund or of the ordinary long-term insurance fund, in the case of a company established in Great Britain before 1st January 1924 or in Northern Ireland before 1st January 1925, to the prejudice of persons interested in contracts entered into by the company before that date.
- (8) The Commissioner shall include in his annual report under section 44 of the <sup>M30</sup>Industrial Assurance Act 1923 a report on his proceedings under this Act, and that section shall have effect accordingly.

#### Textual Amendments

**F228** Words in s. 82(5) substituted (1.7.1994) by S.I. 1994/1696, reg. 47(a)

**F229** Words in s. 82(5) substituted (1.7.1994) by S.I. 1994/1696, reg. 47(a)

#### Marginal Citations

**M30** 1923 c. 8.

### 83 Requirements to be complied with by Lloyd's underwriters.

- (1) The requirements referred to in section 15(4) above are as follows.
- (2) Every underwriter shall, in accordance with the provisions of a trust deed approved by the Secretary of State, carry to a trust fund all premiums received by him or on his behalf in respect of any insurance business.

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- (3) Premiums received in respect of long term business shall in no case be carried to the same trust fund under this section as premiums received in respect of general business, but the trust deed may provide for carrying the premiums received in respect of all or any classes of long term business and all or any classes of general business either to a common fund or to any number of separate funds.
- (4) The accounts of every underwriter shall be audited annually by an accountant approved by the Committee of Lloyd's and the auditor shall furnish a certificate in the prescribed form to the Committee and the Secretary of State.
- (5) The said certificate shall in particular state whether in the opinion of the auditor the value of the assets available to meet the underwriter's liabilities in respect of insurance business is correctly shown in the accounts, and whether or not that value is sufficient to meet the liabilities calculated—
  - (a) in the case of liabilities in respect of long term business, by an actuary; and
  - (b) in the case of other liabilities, by the auditor on a basis approved by the Secretary of State.
- (6) Where any liabilities of an underwriter are calculated by an actuary under subsection (5) above, he shall furnish a certificate of the amount thereof to the Committee of Lloyd's and to the Secretary of State, and shall state in his certificate on what basis the calculation is made; and a copy of his certificate shall be annexed to the auditor's certificate.
- (7) The underwriter shall, when required by the Committee of Lloyd's, furnish to them such information as they may require for the purpose of preparing the statement of business which is to be deposited with the Secretary of State under section 86 below.

**Modifications etc. (not altering text)**

**C23** s. 83 applied (3.5.1994) by 1994 c. 9, s. 230(1)

**[<sup>F230</sup>83A Lloyd's underwriters— insurance Directives.**

The powers conferred on the Secretary of State [<sup>F231</sup>which are exercisable in relation to UK companies] by sections 38 to 41, 44 and 45 above shall be exercisable in relation to the members of Lloyd's if there is a failure by Lloyd's to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State][<sup>F232</sup>which —.

- (a) gives effect to the general and long term insurance Directives; or
- (b) is applicable to the insurance activities of Lloyd's in that State]

**Textual Amendments**

**F230** S. 83A inserted (19.11.1992) by S.I. 1992/2890, reg. 8.

**F231** Words in s. 83A inserted (1.7.1994) by S.I. 1994/1696, reg. 48(1(a))

**F232** S. 83A(a)(b) and preceding word "which" substituted for words in s. 83A (1.7.1994) by S.I. 1994/1696, reg. 48(1)(b)

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#### **84 Lloyd’s underwriters —financial resources.**

- (1) Subject to such modifications as may be prescribed and to any determination made by the Secretary of State in accordance with regulations, sections 32, 33 and 35 above shall apply to the members of Lloyd’s taken together as they apply to an insurance company to which Part II of this Act applies and whose head office is in the United Kingdom.
- (2) The powers conferred on the Secretary of State by sections 38 to 41, 44 and 45 above shall be exercisable in relation to the members of Lloyd’s if there is a breach of an obligation imposed by virtue of subsection (1) above.

#### **85 Lloyd’s underwriters —transfer of business.**

- (1) [F<sup>233</sup>Schedule 2C to this Act] shall apply in relation to transfers to and from members of Lloyd’s if, and only if, the conditions specified in subsection (2) below are satisfied.
- (2) The conditions referred to in subsection (1) above are—
  - (a) that the transfer is not one where both the transferor and the transferee are members of Lloyd’s;
  - (b) that the Committee of Lloyd’s have by resolution authorised one person to act in connection with the transfer for the members concerned as transferor or transferee;
  - (c) that a copy of the resolution has been given to the Secretary of State.
- (3) Where [F<sup>234</sup>the provisions of Part I or II of Schedule 2C to this Act] apply in relation to a transfer to or from members of Lloyd’s they shall apply as if—
  - [F<sup>235</sup>(a) references to a 'UK company' included references to members of Lloyd’s;]
  - (b) anything done in connection with the transfer by the person authorised in accordance with subsection (2)(b) above had been done by the members for whom he acted.
- [F<sup>236</sup>(4) Section 52A above shall apply as if the reference in subsection (1) to a UK company included a reference to members of Lloyd’s.]

#### **Textual Amendments**

**F233** Words in s. 85(1) substituted (1.7.1994) by S.I. 1994/1696, reg. 48(2)(a)

**F234** Words in s. 85(3) substituted (1.7.1994) by S.I. 1994/1696, reg. 48(2)(b)

**F235** S. 85(3)(a) substituted (1.7.1994) by S.I. 1994/1696, reg. 48(2)(b)

**F236** S. 85(4) inserted (1.7.1994) by S.I. 1994/1696, reg. 48(2)(c)

#### **86 Statement of business by Committee of Lloyd’s.**

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

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## 87 Companies established outside the United Kingdom.

- (1) The provisions specified in subsection (2) below, if, apart from this section they would not so apply, shall apply in relation to an insurance company incorporated outside the United Kingdom which carries on insurance business within Great Britain or, as the case may be, Northern Ireland as they apply in relation to oversea companies within the meaning of [F237the Companies Act] or, as the case may be, companies to which [F238Part XXIII] of the [F239Companies (Northern Ireland) Order 1986] applies.
- (2) The provisions referred to in subsection (1) above are—
- [F240(a) sections 691, 692, 693(1), 695, 696 to 698, 700 to 703 and 708 of the Companies Act,]
- [F241(c) Articles 641, 642, 643(1) and (2), 645, 646 to 648, 649 to 652 and 657 of the Companies (Northern Ireland) Order 1986.]

### Textual Amendments

- F237** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F238** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F239** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F240** S. 87(2)(a) substituted (E.W.S.) (I.1.1993) for paras. (a) and (b) of s. 87(2) by virtue of Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2** and S.I. 1992/3179, reg. 4, **Sch. 3 para. 2**.
- F241** S. 87(2)(c) substituted (8.6.1993) by S.R. 1993/198, art. 4, **Sch. 3 para. 2**

## 88 Unregistered companies.

- (1) Every insurance company to which Part II of this Act applies, being a company which is not registered under the [F242Companies Act], under the [F243Companies (Northern Ireland) Order 1986] or under the former Companies Acts—
- (a) if it has not incorporated in its deed of settlement section 10 of the <sup>M31</sup>Companies Clauses Consolidation Act 1845, shall keep a shareholders address book in accordance with the provisions of that section and shall, on the application of any shareholder or policy holder of the company, furnish to him a copy of the book on payment of a sum not exceeding 2½p for every hundred words required to be copied;
- (b) shall cause a sufficient number of copies of its deed of settlement to be printed and shall, on the application of any shareholder or policy holder of the company, furnish to him one of those copies on payment of a sum not exceeding 5p.
- (2) Any insurance company which makes default in complying with this section shall be guilty of an offence and liable on summary conviction in England and Wales and Scotland to a fine not exceeding level 5 on the standard scale and, on summary conviction in Northern Ireland to a fine not exceeding £400.

### Textual Amendments

- F242** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F243** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**



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#### Marginal Citations

M31 1845 c. 16.

### 89 Insurance companies formed before 1967 in contravention of section 434 of the [F<sup>244</sup>Companies Act]

- (1) Section [F<sup>245</sup>716] of the [F<sup>244</sup>Companies Act] (which in certain cases forbids the formation otherwise than under that Act of a company, association or partnership consisting of more than twenty persons) shall be deemed not to have invalidated the formation of any insurance company which immediately before 3rd November 1966 was carrying on in Great Britain insurance business of any class relevant for the purposes of Part I of the M<sup>32</sup>Insurance Companies Act 1974 and was carrying on business of that class on 25th July 1973.
- (2) In subsection (1) above the reference to the said section [F<sup>245</sup>716] includes a reference to any corresponding enactment previously in force.

#### Textual Amendments

F244 Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2

F245 Figure substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2

#### Marginal Citations

M32 1974 c. 49.

## PART V

### SUPPLEMENTARY PROVISIONS

#### *Valuation regulations*

### 90 Power to make valuation regulations.

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

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## *Criminal proceedings*

### **91 Criminal liability of directors.**

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

### **92 Criminal proceedings against unincorporated bodies.**

- (1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body shall be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents shall have effect as if that body were a corporation.
- (2) A fine imposed on an unincorporated body on its conviction of an offence under this Act shall be paid out of the funds of that body.
- (3) In a case in which an unincorporated body is charged with an offence under this Act—
  - (a) in England or Wales, section 33 of the <sup>M33</sup>Criminal Justice Act 1925 and Schedule 3 to the <sup>M34</sup>Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation);
  - (b) in Northern Ireland, section 18 of the <sup>M35</sup>Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the <sup>M36</sup>Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation)
 shall have effect in like manner as they have effect in the case of a corporation so charged.
- (4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated body, section 74 of the <sup>M37</sup>Criminal Procedure (Scotland) Act 1975 (proceedings on indictment against bodies corporate) shall have effect as if that body were a body corporate.

#### **Marginal Citations**

- M33** 1925 c. 86.  
**M34** 1980 c. 43.  
**M35** 1945 c. 15 (N.I.)  
**M36** S.I. 1981/1675 N.I. 26)  
**M37** 1975 c. 21.

### **93 Restriction on institution of prosecutions.**

Proceedings in respect of an offence under this Act shall not be instituted—

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**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (a) in England or Wales, except by or with the consent of the Secretary of State, the Industrial Assurance Commissioner or the Director of Public Prosecutions,
- (b) in Northern Ireland, except by or with the consent of the Secretary of State, the Department of Commerce for Northern Ireland or the Director of Public Prosecutions for Northern Ireland.

#### 94 Summary proceedings.

- (1) Summary proceedings for any offence under this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.
- (2) Notwithstanding anything in section 127 of the Magistrates' Courts Act 1980, an information relating to an offence under this Act which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within three years after the commission of the offence and within twelve months after the date on which evidence sufficient, in the opinion of the Director of Public Prosecutions, the Secretary of State or the Industrial Assurance Commissioner, as the case may be, to justify the proceedings comes to his knowledge.
- (3) Summary proceedings in Scotland for an offence under this Act shall not be commenced after the expiration of three years from the commission of the offence.
- (4) Subject to the limitation in subsection (3) above and notwithstanding anything in section 331 of the Criminal Procedure (Scotland) Act 1975, the proceedings referred to in that subsection may be commenced at any time within twelve months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge or, where such evidence was reported to him by the Secretary of State or the Industrial Assurance Commissioner, within twelve months after the date on which it came to the knowledge of the Secretary of State or Commissioner.
- (5) Subsection (3) of section 331 of the said Act of 1975 shall apply for the purposes of subsections (3) and (4) above as it applies for the purposes of that section.
- (6) Notwithstanding anything in Article 19(1) of the <sup>M38</sup>Magistrates' Courts (Northern Ireland) Order 1981, a complaint relating to an offence under this Act which is triable by a court of summary jurisdiction in Northern Ireland may be so tried if it is made at any time within three years after the commission of the offence and within twelve months after the date on which evidence sufficient, in the opinion of the Director of Public Prosecutions for Northern Ireland, the Secretary of State or the Department of Commerce for Northern Ireland, as the case may be, to justify the proceedings comes to his or that Department's knowledge.
- (7) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Director of Public Prosecutions for Northern Ireland, the Secretary of State, the Department of Commerce for Northern Ireland or the Industrial Assurance Commissioner, as the case may be, as to the date on which such evidence as aforesaid came to his, or that Department's, knowledge shall be conclusive evidence.

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#### Marginal Citations

**M38** S.I. 1981/1675 (N.I. 26)

*[<sup>F246</sup> Law applicable to certain contracts of insurance]*

#### Textual Amendments

**F246** S. 94A and cross-heading inserted by S.I. 1990/1333, **reg. 6(1)**

#### **[<sup>F247</sup>94B]Law applicable to certain contracts of insurance.**

(1) The law applicable to a contract of insurance the effecting of which constitutes general business, and which covers risks situated in the United Kingdom or another member State, shall be determined in accordance with the provisions of [<sup>F248</sup>Part I of] Schedule 3A to this Act.

**[<sup>F249</sup>(1A)** The law applicable to a contract of insurance to which Article 1 of the first long term insurance Directive applies shall be determined in accordance with the provisions of Part II of Schedule 3A to this Act if–

- (a) where the policy holder is an individual, he is habitually resident in a member State; or
- (b) where the policy holder is not an individual, the establishment of the policy holder to which the contract relates is situated in a member State.

(2) Subsections (1) and (1A) above do not apply in relation to a contract of reinsurance.]

#### Textual Amendments

**F247** S. 94A (inserted by the Insurance Companies (Amendment) Regulations 1990) renumbered as S. 94B by S.I. 1992/2890, **reg. 9(2)** and, by that reg. 9(2), that section and s. 94A (inserted by Insurance (Fees) Act 1985) are transposed.

**F248** Words in s. 94B inserted (20.5.1993) by S.I. 1993/174, **reg. 5(2)**

**F249** S. 94B(1A)(2) substituted for s. 94B(2) (20.5.1993) by S.I. 1993/174, **reg. 5(3)**

*[<sup>F250</sup> Fees]*

#### Textual Amendments

**F250** S. 94A inserted (16.7.1985) by Insurance (Fees) Act 1985 (c. 46, SIF 67), **s. 1**

#### **94A Fees.**

(1) When documents are deposited under section 22(1) above the company concerned shall pay to the Secretary of State such fee as may be prescribed.

(2) In the case of a company for which a fee is prescribed, documents shall not be taken to have been deposited under section 22(1) until the company has paid the fee.

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- (3) When a statement is deposited under section 86(1) above the Council of Lloyd's shall pay to the Secretary of State such fee as may be prescribed.
- (4) In making regulations for the purposes of subsections (1) and (3) above the Secretary of State shall have regard to the object of securing (so far as practicable) that the amount of the fees payable in any relevant period by insurance companies and the Council of Lloyd's is equal to the cost incurred, or likely to be incurred, in the period by the Secretary of State in exercising relevant functions.
- (5) This section does not apply where documents are, or a statement is, deposited before 1st April 1986, and in subsection (4) above "relevant period" means the period of twelve months beginning with 1st April 1986 and each successive period of twelve months beginning with 1st April.
- (6) In subsection (4) above "relevant functions" means such functions of the Secretary of State in relation to insurance companies and the members of Lloyd's as may be prescribed.
- (7) Sums received by the Secretary of State under this section shall be paid into the Consolidated Fund.

**Modifications etc. (not altering text)**

C24 S. 94A(6) modified (1.4.1995) by S.I. 1995/688, reg. 10

*Interpretation*

**95 Insurance business.**

For the purposes of this Act "insurance business" includes—

- (a) the effecting and carrying out, by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidentally to some other business carried on by the person effecting them) in return for the payment of one or more premiums;
- (b) the effecting and carrying out of tontines;
- (c) the effecting and carrying out, by a body (not being a body carrying on a banking business) that carries on business which is insurance business apart from this paragraph, of—
  - (i) capital redemption contracts;
  - (ii) contracts to manage the investments of pension funds (other than funds solely for the benefit of its own officers or employees and their dependants or, in the case of a company, partly for the benefit of those persons and partly for the benefit of officers or employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company);
- (d) the effecting and carrying out of contracts to pay annuities on human life.

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## 96 General interpretation.

(1) In this Act, unless the context otherwise requires—

“actuary” means an actuary possessing the prescribed qualifications;

“annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons;

[<sup>F251</sup>‘associate’ shall be construed in accordance with section 96C below;]

“body corporate” does not include a corporation sole or a Scottish firm but includes a body incorporated outside the United Kingdom;

“chief executive” has the meaning given in [<sup>F252</sup>section 96D below];

[<sup>F253</sup>[<sup>F254</sup>“claims representative” has the meaning given in section 96F below;]

[<sup>F255</sup>“commitment” means a commitment represented by insurance business of any of the classes specified in Schedule 1 to this Act;]

“the Companies Act” means the Companies Act 1985]

“contract of insurance” includes any contract the effecting of which constitutes the carrying on of insurance business by virtue of section 95 above;

“controller” has the meaning given in [<sup>F256</sup>section 96C below];

[<sup>F257</sup>‘Community co-insurance operation’ and, in relation to such an operation, ‘leading insurer’ have the same meanings as in Council Directive [78/473/EEC](#) of 30th May 1978 <sup>F258</sup> on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance;]

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

[<sup>F259</sup>‘criteria of sound and prudent management’ means the criteria set out in Schedule 2A to this Act;]

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

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

[<sup>F260</sup>‘EC company’ has the meaning given in section 2 above;

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 <sup>F261</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993 <sup>F262</sup>;

‘EEA State’ means a State which is a Contracting Party to the EEA Agreement but, until the EEA Agreement comes into force in relation to Liechtenstein, does not include the State of Liechtenstein;

‘EFTA company’ has the meaning given by section 72B above;

‘EFTA State’ means an EEA State which is not a member State;]

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

“financial year” means, subject to section 69 above, each period of twelve months at the end of which the balance of the accounts of the insurance company is struck or, if no such balance is struck, the calendar year;

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“former Companies Acts” means the <sup>M39</sup>Companies Act 1929 or the <sup>M40</sup>Companies Act (Northern Ireland) 1932 and any enactment repealed by that Act of 1929 or, as the case may be, that Act of 1932 or by the <sup>M41</sup>Companies (Consolidation) Act 1908; [<sup>F263</sup>and the Companies Acts 1948 to 1983][<sup>F264</sup>and the Companies Acts (Northern Ireland) 1960 to 1983]

“general business” has the meaning given in section 1 above;

“holding company” shall be construed in accordance with section [<sup>F265</sup>736] of the [<sup>F266</sup>Companies Act] or [<sup>F267</sup>Article 4] of the [<sup>F268</sup>Companies (Northern Ireland) Order 1986];

[<sup>F269</sup>‘home State’, in relation to an EC company, means the member State in which the company’s head office is situated;]

“industrial assurance business” has the meaning given in section 1(2) of the <sup>M42</sup>Industrial Assurance Act 1923 or Articles 2(2) and 3(1) of the <sup>M43</sup>Industrial Assurance (Northern Ireland) Order 1979;

“insolvent” means, in relation to an insurance company at any relevant date, that if proceedings had been taken for the winding up of the company the court could, in accordance with the provisions of sections [<sup>F270</sup>122 and 123 or section 221 of the Insolvency Act 1986] or, as the case may be, [<sup>F271</sup>Articles 102 and 103 or Article 185 of the Insolvency (Northern Ireland) Order 1989], hold or have held that the company was at that date unable to pay its debts;

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

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

“long term business” has the meaning given in section 1 above;

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

“main agent” has the meaning given in [<sup>F272</sup>section 96E below];

“manager”, except in section 56, has the meaning given in [<sup>F273</sup>section 96D below];

- (a) where the policy holder is an individual, the member State in which he had his habitual residence at that date; or
- (b) where the policy holder is not an individual, the member State in which the establishment of the policy holder to which the commitment relates was situated at that date;

“margin of solvency”, “United Kingdom margin of solvency” and “Community margin of solvency” shall be construed in accordance with section 32 above;

“mortgage”, in relation to Scotland, means a heritable security within the meaning of section 9(8) of the <sup>M44</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;

[<sup>F274</sup>‘non-EC company’ has the meaning given in section 5 above;

‘notifiable holding’ means voting rights or shares which, if acquired by any person, will result in his becoming a 10 per cent.shareholder controller, a 20 per cent.shareholder controller, a 33 per cent.shareholder controller, a 50 per cent.shareholder controller or a majority shareholder controller;]



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“ordinary long-term insurance business” means long term business that is not industrial assurance business;

[<sup>F275</sup>“parent undertaking” shall be construed in accordance with section 258 of the Companies Act 1985 <sup>F276</sup> and Article 266 of the Companies (Northern Ireland) Order 1986 <sup>F277</sup>];

“policy”—

- (a) in relation to ordinary long-term insurance business and industrial assurance business, includes an instrument evidencing a contract to pay an annuity upon human life;
- (b) in relation to insurance business of any other class includes any policy under which there is for the time being an existing liability already accrued or under which a liability may accrue; and
- (c) in relation to capital redemption business, includes any policy, bond, certificate, receipt or other instrument evidencing the contract with the company;

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

- (a) in relation to such ordinary long-term insurance business or industrial assurance business as consists in the granting of annuities upon human life, includes an annuitant; and
- (b) in relation to insurance business of any kind other than such as is mentioned in the foregoing paragraph or capital redemption business, includes a person to whom, under a policy, a sum is due or a periodic payment is payable;

“prescribed” means prescribed by regulations under this Act;

“registered society” means a society registered or deemed to be registered under the <sup>M45</sup>Industrial and Provident Societies Act 1965 or the <sup>M46</sup>Industrial and Provident Societies Act (Northern Ireland) 1969;

“registrar of companies” has the [<sup>F278</sup>the same meaning as in] the [<sup>F266</sup>Companies Act] and “registrar of companies in Northern Ireland” means the registrar of companies within the meaning of [<sup>F279</sup>Article 2 of the Companies (Northern Ireland) Order 1986];

[<sup>F280</sup>‘relevant motor vehicle risks’ means risks falling within class 10 of Schedule 2 to this Act (motor vehicle liability), but excluding carrier’s liability;

‘shareholder controller’, ‘10 per cent.shareholder controller’, ‘20 per cent.shareholder controller’, ‘33 per cent.shareholder controller’, ‘50 per cent.shareholder controller’ and ‘majority shareholder controller’ have the meanings given by section 96C below;

‘State of the commitment’, in relation to a commitment entered into at any date, means—

- (a) where the policy holder is an individual, the State in which he had his habitual residence at that date;
- (b) where the policy holder is not an individual, the State in which the establishment of the policy holder to which the commitment relates was situated at that date,

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and 'member State of the commitment' shall be construed accordingly;]

“subsidiary”, except in section 57, shall be construed in accordance with section [F281736] of the [F266Companies Act] or [F282Article 4] of the [F268Companies (Northern Ireland) Order 1986]:

[F283'subsidiary undertaking' shall be construed in accordance with section 258 of the Companies Act F284 and Article 266 of the Companies (Northern Ireland) Order 1986;]

[F285“supervisory authority”, in relation to a member State other than the United Kingdom or in relation to Switzerland, means the authority responsible in that State or country for supervising insurance companies;]

[F285“Swiss general insurance company” has the meaning given in section 11 above;]

[F286'UK company' has the meaning given in section 5 above;]

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

“valuation regulations” means regulations under section 90 above;

“vessel” includes hovercraft.

(2) References in this Act to a fund or funds maintained in respect of long term business are references to a fund or funds maintained under section 28(1)(b) above and in sections 48(3) and 55(6) above include references to a fund or funds maintained under section 3(1) of the M47Insurance Companies Act 1958 or section 14(1) of the M48Insurance Companies Act (Northern Ireland) 1968.

(3) A person shall not be deemed to be within the meaning of any provision of this Act a person in accordance with whose directions or instructions the directors of a company or other body corporate or any of them are accustomed to act by reason only that the directors of the company or body act on advice given by him in a professional capacity.

(4) Any reference in this Act to an enactment of the Parliament of Northern Ireland or a Measure of the Northern Ireland Assembly shall include a reference to any enactment re-enacting it with or without modifications.

[F287(5) Except as otherwise provided by paragraph 27 of Schedule 2F to this Act, this Act shall apply as if Gibraltar were a member State.]

#### Textual Amendments

**F251** Definition of “associate” in s. 96(1) inserted (1.7.1994) by [S.I. 1994/1696, reg. 50\(1\)\(a\)](#)

**F252** Words in the definition of “chief executive” in s. 96(1) substituted (1.7.1994) by [S.I. 1994/1696, reg. 50\(1\)\(b\)](#)

**F253** Definition inserted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)

**F254** Definition of “claims representative” in s. 96(1) substituted (1.7.1994) by [S.I. 1994/1696, reg. 50\(1\)\(c\)](#)

**F255** Definition of commitment in s. 96(1) inserted (20.5.1993) by [S.I. 1993/174, reg. 6\(2\)\(b\)](#)

**F256** Words in the definition of “controller” in s. 96(1) substituted (1.7.1994) by [S.I. 1994/1696, reg. 50\(1\)\(d\)](#)

**F257** Definition of “Community co-insurance operation” in s. 96(1) inserted (1.7.1994) by [S.I. 1994/1696, reg. 50\(1\)\(e\)](#)

**F258** O.J. L151, 7.6.78, page 25.

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- F259** Definition of “criteria of sound and prudent management” in s. 96(1) inserted (1.7.1994) by S.I. 1994/1696, **reg. 50(1)(f)**
- F260** Definitions of “EC company”  
“EEA Agreement”  
“EEA State”  
“EFTA company” and “EFTA State” in s. 96(1) inserted (1.7.1994) by S.I. 1994/1696, **reg. 50(1)(g)**
- F261** O.J. L1, 3.1.94, page 3.
- F262** O.J. L1, 3.1.94, page 572.
- F263** Words added by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F264** Words added by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**.
- F265** Figure substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F266** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F267** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F268** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F269** Definition of “home State” in s. 96(1) inserted (1.7.1994) by S.I. 1994/1696, **reg. 50(1)(h)**
- F270** Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(2), **Sch. 14**
- F271** Words in s. 96(1) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 para. 38; S.R. 1991/411, art. 2**
- F272** Words in the definition of “main agent” in s. 96(1) substituted (1.7.1994) by S.I. 1994/1696, **reg. 50(1)(i)**
- F273** Words in the definition of “manager” in s. 96(1) substituted (1.7.1994) by S.I. 1994/1696, **reg. 50(1)(j)**
- F274** Definitions of “non-EC company” and “notifiable holding” in s. 96(1) substituted for “member State of the commitment” by S.I. 1994/1696, **reg. 50(1)(k)**
- F275** Definition in s. 96(1) inserted (19.11.1992) by S.I. 1992/2890, **reg. 9(3)(b)**
- F276** 1985 c.6; section 258 was inserted by section 21 of the Companies Act 1989 (c.40).
- F277** S.I. 1986/1032 (N.I.6); Article 266 was inserted by Article 23 of the Companies (Northern Ireland) Order 1990 (S.I.1990/593 (N.I.5)).
- F278** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F279** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F280** Definitions of “relevant motor vehicle risks”  
“shareholder controller”  
“10 per cent. shareholder controller”  
“20 per cent shareholder controller”  
“33 per cent. shareholder controller”  
“50 per cent. shareholder controller”  
“majority shareholder controller” and “State of the commitment” in s. 96(1) inserted (1.7.1994) by S.I. 1994/1696, **reg. 50(1)(l)**
- F281** Figure substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F282** Figure substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**.
- F283** Definition of “subsidiary undertaking” in s. 96(1) inserted (1.7.1994) by S.I. 1994/1696, **reg. 50(1)(m)**
- F284** 1985 c.6: section 258 was inserted by the Companies Act 1989 (c.40), **section 21**.
- F285** Definitions of “supervisory authority” and “Swiss general insurance company” substituted for definition of “supervisory authority” in s. 96(1) inserted (5.1.1994) by S.I. 1993/3127, **reg. 4**
- F286** Definition of “UK company” in s. 96(1) inserted (1.7.1994) by S.I. 1994/1696, **reg. 50(1)(n)**
- F287** S. 96(5) inserted (1.7.1994) by S.I. 1994/1696, **reg. 50(2)**

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#### Modifications etc. (not altering text)

- C25** Definition of "chief executive" in s. 96 applied (15.5.1991) by [Standard Life Assurance Company Act 1991 \(c. iii\)](#), s. 14(1), [Sch. reg. 1](#) (1); appointed day (15.5.1991) as published in the London Gazette on 19.4.1991

#### Marginal Citations

- M39** 1929 c. 23.  
**M40** 1932 c. 7(N.I.).  
**M41** 1908 c. 69.  
**M42** 1923 c. 8.  
**M43** S.I. 1979/1574 (N.I. 13)  
**M44** 1970 c. 35.  
**M45** 1965 c. 12.  
**M46** 1969 c. 24 (N.I.)  
**M47** 1958 c. 72.  
**M48** 1968 c. 6 (N.I.)

### [<sup>F288</sup>96A Interpretation of expressions derived from <sup>F289</sup>. . . insurance Directives.

(1) In this Act—

- (a) “the first general insurance Directive” means Council Directive [73/239/EEC](#) of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;
- (b) “the second general insurance Directive” means Council Directive [88/357/EEC](#) of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive [73/239/EEC](#);

[<sup>F290</sup>(c) ‘the third general insurance Directive’ means Council Directive [92/49/EEC](#) of 18 June 1992 <sup>F291</sup> on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives [73/239/EEC](#) <sup>F292</sup> and [88/357/EEC](#) <sup>F293</sup>.]

and “the general insurance Directives” means those Directives as amended and such other Directives as make provision with respect to the business of direct insurance other than life assurance.

[<sup>F294</sup>(1A) The Directives amending the general insurance Directives referred to in subsection (1) above include Council Directive [90/618/EEC](#) amending, particularly as regards motor vehicle liability insurance, Directive [73/239/EEC](#) and Directive [88/357/EEC](#).]

[ In this Act—

- <sup>F295</sup>(1B) (a) “the first long term insurance Directive” means Council Directive [79/267/EEC](#) of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance;
- (b) “the second long term insurance Directive” means Council Directive [90/619/EEC](#) of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive [79/267/EEC](#);

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[ 'the third long term insurance Directive' means Council Directive [92/96/EEC](#) of 10 November 1992 <sup>F297</sup> on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives [79/267 EEC](#) <sup>F298</sup> and [90/619/EEC](#) <sup>F299</sup>;

and "the long term insurance Directives" means those Directives.]

[ In this Act, in relation to an insurance company, 'establishment' means the head office <sup>F300</sup>(2) or a branch of the company; and references to a company being established in a State mean that the company has its head office or a branch there.

Any permanent presence of an insurance company in a State other than that in which it has its head office shall be regarded as a single branch, whether that presence consists of a single office which, or two or more offices each of which—

- (a) is managed by the company's own staff;
- (b) is an agency of the company; or
- (c) is managed by a person who is independent but has permanent authority to act for the company in the same way as an agency.]

(3) References in this Act to the member State where the risk is situated are—

- (a) where the insurance relates to buildings or to buildings and their contents (in so far as the contents are covered by the same policy), to the member State in which the property is situated;
- (b) where the insurance relates to vehicles of any type, to the member State of registration;
- (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the member State where the policy holder took out the policy;
- (d) in a case not covered by paragraphs (a) to (c)—
  - (i) where the policy holder is an individual, to the member State where he has his habitual residence;
  - (ii) otherwise, to the member State where the establishment of the policy holder to which the policy relates is situated.

[ In this Act references to the provision of insurance in the United Kingdom or any other <sup>F301</sup>(3A) EEA State are references to either or both of the following—

- (a) the covering (otherwise than by way of reinsurance) of a risk situated there through an establishment in another EEA State ('the provision of general insurance'); and
- (b) the covering (otherwise than by way of reinsurance) of a commitment situated there through an establishment in another EEA State ('the provision of long term insurance').]

(4) In this Act the "ECU" means the unit of account of that name defined in Council Regulation ([EEC](#)) No. [3180/78](#) as amended.

The exchange rates as between the ECU and the currencies of the member States to be applied for each year beginning on 31st December shall be the rates applicable on the last day of the preceding October for which rates for the currencies of all the member States were published in the Official Journal of the Communities.]

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### Textual Amendments

- F288** S. 96A inserted by S.I. 1990/1333, **reg. 2(1)**
- F289** Word in side-note omitted (20.5.1993) by virtue of S.I. 1993/174, **reg. 6(3)**
- F290** S. 96A(1)(c) inserted (1.7.1994) by S.I. 1994/1696, **reg. 51(1)**
- F291** O.J. L228, 11.8.92, page 1.
- F292** O.J. L228, 16.8.73, page 3.
- F293** O.J. L172, 4.7.88, page 1.
- F294** S. 96A(1A)(1B) inserted (19.11.1992) by S.I. 1992/2890, **reg. 9(4)**
- F295** S. 96A(1B) substituted (20.5.1993) by S.I. 1993/174, **reg. 6(4)**
- F296** S. 96A(1B)(c) inserted (1.7.1994) by S.I. 1994/1696, **reg. 51(2)**
- F297** O.J. L360, 9.12.92, page 1.
- F298** O.J. L63, 13.3.79, page 1.
- F299** O.J. L330, 29.11.90, page 50.
- F300** S. 96A(2) inserted (1.7.1994) by S.I. 1994/1696, **reg. 51(3)**
- F301** S. 96A(3A) inserted (1.7.1994) by S.I. 1994/1696, **reg. 51(4)**

### Modifications etc. (not altering text)

- C26** S. 96A(3) applied (3.5.1994) by S.I. 1994 c. 9, **s. 73(2)**

### [<sup>F302</sup>96B Meaning of “large risks”.

- (1) In this Act “large risks” means—
- risks falling within classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 2;
  - risks falling within classes 14 and 15 of that Part which relate to a business carried on by the policy holder;
  - risks falling within [<sup>F303</sup>classes 3, 8, 9, 10, 13 and 16] of that Part where the policy holder carries on a business in respect of which the condition specified in subsection (2) below is met.
- (2) The condition referred to in subsection (1)(c) is that at least two of the three following criteria were exceeded in the most recent financial year for which the information is available:
- First stage: until 31st December 1992—  
balance sheet total: 12.4 million ECU  
net turnover: 24 million ECU  
number of employees: 500;
- Second stage: from 1st January 1993—  
balance sheet total: 6.2 million ECU  
net turnover: 12.8 million ECU  
number of employees: 250.
- (3) For the purposes of subsection (2) as it applies to a company within the meaning of section 735(1) of the Companies Act 1985 or Article 3 of the Companies (Northern Ireland) Order 1986—
- “balance sheet total” has the meaning given by section 247(5) of that Act or Article 255(5) of that Order,
  - “net turnover” has the meaning given to “turnover” by section 262(1) of that Act or Article 270(1) of that Order, and



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- (c) “number of employees” has the meaning given by section 247(6) of that Act or Article 255(6) of that Order;
- and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the company shall be proportionately adjusted.
- (4) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive 83/349/EEC are drawn up, the question whether the condition in subsection (2) is met shall be determined by reference to those accounts.
- (5) For the purposes of subsection (1)(c) as it applies where the policy holder is a professional association, joint venture or temporary grouping, the question whether the condition in subsection (2) is met shall be determined by reference to the aggregate of the relevant figures for all the members of the professional association, joint venture or temporary grouping.
- (6) In this section “business” includes a trade or profession and, for the purposes of subsection (1)(c), any activity of a professional association, joint venture or temporary grouping.]

#### Textual Amendments

**F302** S. 96B inserted by S.I. 1990/1333, reg. 4

**F303** Words in s. 96B(1)(c) substituted (19.11.1992) by S.I. 1992/2890, reg. 9(5)

#### [96C <sup>F304</sup>Meaning of 'controller' etc.

- (1) In this Act 'controller', in relation to an insurance company, means—
- (a) a managing director of the company or of a body corporate of which the company is a subsidiary;
  - (b) a chief executive of the company or of a body corporate, being an insurance company, of which the company is a subsidiary;
  - (c) a person in accordance with whose directions or instructions the directors of the company or of a body corporate of which it is a subsidiary are accustomed to act;
  - (d) in the case of UK company, a person who satisfies the requirements of subsection (2) below; or
  - (e) except in the case of a UK company, a person who either alone or with any associate or associates is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any general meeting of the company or of a body corporate of which it is a subsidiary.
- (2) A person satisfies the requirements of this subsection in relation to a UK company if, either alone or with any associate or associates—
- (a) he holds 10 per cent. or more of the shares in the company or another company of which it is a subsidiary undertaking;
  - (b) he is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the company or another company of which it is a subsidiary undertaking; or
  - (c) he is able to exercise a significant influence over the management of the company or another company of which it is such an undertaking by virtue of—
    - (i) a holding of shares in; or



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(ii) an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of, the company or, as the case may be, that other company.

(3) In this Act—

'shareholder controller' means a person who is a controller of a UK company by virtue of subsection (2) above;

'10 per cent. shareholder controller' means a shareholder controller in whose case the percentage referred to in subsection (2) above is 10 or more but less than 20;

'20 per cent. shareholder controller' means a shareholder controller in whose case that percentage is 20 or more but less than 33;

'33 per cent. shareholder controller' means a shareholder controller in whose case that percentage is 33 or more but less than 50;

'50 per cent. shareholder controller' means a shareholder controller in whose case that percentage is 50;

'majority shareholder controller' means a shareholder controller whose shareholding is such that the UK company is his subsidiary undertaking.

(4) For the purpose of determining for the purposes of this Act whether any person is a controller of an insurance company or is a shareholder controller, or a shareholder controller of any particular description, of a UK company, 'associate' means, subject to subsection (5) below—

- (a) the wife or husband or minor son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession, or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary undertaking of that company;
  - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has made an agreement or arrangement with any other person—
  - (i) with respect to the acquisition, holding or disposal of shares or other interests in the company concerned or another company of which it is a subsidiary undertaking; or
  - (ii) under which they undertake to act together in exercising their voting power in relation to the company concerned or another company of which it is such an undertaking, that other person.

(5) For the purpose of determining for the purposes of this Act whether any person is a controller of an insurance company other than a UK company, subsection (4) above shall have effect as if—

- (a) paragraphs (b) and (f) were omitted; and
- (b) in paragraph (e), for the words 'subsidiary undertaking', in both places where they occur, there were substituted the word 'subsidiary'.

(6) In this section—

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'settlement' includes any disposition or arrangement under which property is held in trust;

'share' has the same meaning as in Part VII of the Companies Act or Part VIII of the Companies (Northern Ireland) Order 1986<sup>F305</sup>;

'son' includes stepson and 'daughter' includes stepdaughter.

- (7) Any reference in this section to a UK or non-EC company includes a reference to a company which, if any authorisation sought by it were issued, would be such a company.]

#### Textual Amendments

**F304** S. 96C inserted (1.7.1994) by S.I. 1994/1696, reg. 52 (with reg. 68(3))

**F305** S.I. 1986/1032 (N.I.6).

### [96D <sup>F306</sup>Meanings of 'manager' and 'chief executive'.

- (1) In this Act 'manager'—

- (a) in relation to a UK company, means any person (other than an employee of the company) appointed by the company to manage any part of its business, or any employee of the company (other than a chief executive) who, under the immediate authority of a director or chief executive of the company—
- (i) exercises managerial functions, or is responsible for maintaining accounts or other records of the company; and
  - (ii) is not a person whose functions relate exclusively to business conducted from a place of business which is not in a member State;
- (b) in relation to an insurance company which is not a UK company, means an employee of the company (other than a chief executive) who, under the immediate authority of a director or chief executive of the company—
- (i) exercises managerial functions, or is responsible for maintaining accounts or other records of the company; and
  - (ii) is not a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom.

- (2) In this Act 'chief executive', in relation to an insurance company or body corporate, means an employee of that company or body corporate, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of that company or body corporate.]

#### Textual Amendments

**F306** S. 96D inserted (1.7.1994) by S.I. 1994/1696, reg. 53

### [96E <sup>F307</sup>Meaning of 'main agent'.

- (1) In this Act 'main agent'—

- (a) in relation to a UK company, means a person appointed by the company to be its agent in respect of general business in one or more member States, with

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- authority to enter into contracts on behalf of the company in any financial year—
- (i) without limit on the aggregate amount of premiums; or
  - (ii) with a limit in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below;
- (b) in relation to an insurance company which is not a UK company, means, subject to such exceptions as may be prescribed, a person appointed by the company to be its agent in respect of general business in the United Kingdom, with authority to enter into contracts on behalf of the company in any financial year—
- (i) without limit on the aggregate amount of premiums; or
  - (ii) with a limit in excess of 10 per cent. of that premium limit.
- (2) A person shall not be regarded as falling within subsection (1)(a)(i) above in relation to a financial year unless—
- (a) the company is of the opinion that the aggregate amount of premiums, on contracts entered into by him on behalf of the company in that year in respect of general business in the member State or States concerned, will be in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below; or
  - (b) the aggregate amount of premiums, on contracts so entered into, actually is in excess of 10 per cent. of that premium limit.
- (3) Subject to subsections (4) and (5) below, the premium limit for the purposes of this section is the aggregate of the amounts of gross premiums shown in the annual accounts relating to the company's business last deposited under section 22 above as receivable in respect of general business in the financial year to which the accounts relate.
- (4) If the accounts so deposited relate to a financial year which is not a period of 12 months, the aggregate of the amounts of gross premiums shown in the accounts as receivable in that financial year shall be divided by the number of months in that financial year and multiplied by twelve.
- (5) If no accounts have been deposited under section 22 above the aggregate amount of gross premiums shall be the amount or, if more than one amount, the lower or lowest amount, shown in respect of gross premiums relating to the company's business in the financial forecast last submitted by the company in accordance with regulations made for the purposes of section 5(1)(a) above.
- (6) Any reference in subsection (3) or (5) above to the company's business is, in the case of an insurance company which is not a UK company, a reference to its business in the United Kingdom.]

#### Textual Amendments

F307 S. 96E inserted (1.7.1994) by S.I. 1994/1696, reg. 54

#### [96F <sup>F308</sup>Meaning of 'claims representative'.

- (1) In this Act 'claims representative', in relation to an insurance company and an EEA State, means a person who—

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- (a) has been designated as the company’s representative in that EEA State (‘the EEA State concerned’); and
  - (b) satisfies the requirements mentioned in subsections (2) to (5) below.
- (2) The claims representative must be authorised—
- (a) to act on behalf of the company and to represent, or to instruct others to represent, the company in relation to any matters giving rise to relevant claims;
  - (b) to pay sums in settlement of relevant claims;
  - (c) to accept service on behalf of the company of proceedings in respect of relevant claims;
- but the authority must not extend to the settlement of relevant claims.
- (3) The claims representative must be authorised to represent the company in any proceedings or enquiry to establish the existence or validity of a policy issued by the company which covers or purports to cover relevant motor vehicle risks in the EEA State concerned.
- (4) Without prejudice to subsection (2) above, the claims representative must not act on behalf of the company in the carrying on in the EEA State concerned of its general business (other than its reinsurance business, if any).
- (5) The claims representative must—
- (a) in the case of an individual, be resident in the EEA State concerned;
  - (b) in the case of a corporation, have a place of business in that EEA State.
- (6) In this section ‘relevant claim’ means any claim which may be made against a policy issued by the company to the extent that it covers relevant motor vehicle risks situated in the EEA State concerned, whether or not submitted to the company and whether by a policy holder or by a third party having rights of action against the company or a policy holder or by both.]

#### Textual Amendments

**F308** S. 96F inserted (1.7.1994) by S.I. 1994/1696, reg. 55

### Supplementary

#### 97 Regulations and orders.

- (1) The Secretary of State may make regulations under this Act for any purpose for which regulations are authorised or required to be made thereunder.
- (2) Regulations under this Act may make different provision for cases of different descriptions.
- (3) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.
- (4) Any statutory instrument containing regulations under this Act [F309, except regulations under section 21A(3),] shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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### Textual Amendments

**F309** Words inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), [s. 135\(2\)](#)

## 98 Annual report by Secretary of State.

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

## 99 Savings, transitionals, consequential amendments and repeals.

- (1) The saving and transitional provisions specified in Schedule 4 to this Act shall have effect.
- (2) The enactments mentioned in Schedule 5 to this Act shall have effect subject to the amendments there specified, being amendments consequential on the provisions of that Act.
- (3) The enactments mentioned Schedule 6 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

### Modifications etc. (not altering text)

**C27** [S. 99\(2\)\(3\)](#) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

## 100 Short title, commencement and extent.

- (1) This Act may be cited as the Insurance Companies Act 1982.
- (2) Subject to Schedule 4 to this Act, this Act shall come into force at the expiration of the period of three months beginning with the date on which it is passed.
- (3) This Act <sup>F310</sup> extends to Northern Ireland.

### Textual Amendments

**F310** Words inserted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), [s. 29](#), [Sch. 1](#) and repealed by [S.I. 1986/1035 \(N.I. 9\)](#), art 24, [Sch. 2](#)

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### CLASSES OF LONG TERM BUSINESS

<b>Number</b>	<b>Description</b>	<b>Nature of business</b>
I	Life and annuity.	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Class III below.
II	Marriage and birth.	Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
III	Linked long term.	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
IV	Permanent health.	Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness

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		or infirmity, being contracts that—
		(a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time, and
		(b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.
V	Tontines.	Effecting and carrying out tontines.
VI	Capital redemption.	Effecting and carrying out capital redemption contracts.
VII	Pension fund management.	Effecting and carrying out—
		(a) contracts to manage the investments of pension funds, or
		(b) contracts of the kind mentioned in paragraph (a) above that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.
[ <sup>F311</sup> VIII	Collective insurance etc.	Effecting and carrying out contracts of a kind referred to in Article 1(2)(e) of the first long term insurance Directive.
IX	Social insurance	Effecting and carrying out contracts of a kind referred to in Article 1(3) of the first long term insurance Directive.]

#### Textual Amendments

**F311** Classes VIII, IX in Sch. 1 inserted (1.7.1994) by S.I. 1994/1696, reg. 3



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## SCHEDULE 2

Sections 1 and 3.

## GENERAL BUSINESS

## PART I

## CLASSES

Number	Description	Nature of business
1	Accident.	<p>Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured or, in the case of a contract made by virtue of section 140, 140A or 140B of the Local Government Act 1972, a person for whose benefit the contract is made—</p> <p>(a) sustaining injury as the result of an accident or of an accident of a specified class, or</p> <p>(b) dying as the result of an accident or of an accident of a specified class, or</p> <p>(c) becoming incapacitated in consequence of disease or of disease of a specified class, inclusive of contracts relating to industrial injury and occupational disease but exclusive of contracts falling within class 2 below or within class IV in Schedule 1 to this Act (permanent health).</p>
2	Sickness.	<p>Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity,</p>

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		but exclusive of contracts falling within class IV in Schedule 1 to this Act.
3	Land vehicles.	Effecting and carrying out contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.
4	Railway rolling stock.	Effecting and carrying out contracts of insurance against loss of or damage to railway rolling stock.
5	Aircraft.	Effecting and carrying out contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.
6	Ships.	Effecting and carrying out contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels.
7	Goods in transit.	Effecting and carrying out contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.
8	Fire and natural forces.	Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 above relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.
9	Damage to property.	Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 above relate) due to hail or frost or to any event (such as theft) other than those mentioned in class 8 above.

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10	Motor vehicle liability.	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.
11	Aircraft liability.	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.
12	Liability for ships.	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third-party risks and carrier's liability.
13	General liability.	Effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which class 10, 11 or 12 above relates.
14	Credit.	Effecting and carrying out contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.
15	Suretyship.	Effecting and carrying out— (a) contracts of insurance against risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;  (b) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds

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		or similar contracts of guarantee.
16	Miscellaneous financial loss.	Effecting and carrying out contracts of insurance against any of the following risks, namely—  (a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;  (b) risks of loss to the persons insured attributable to their incurring unforeseen expense <sup>[F312]</sup> (other than loss such as is covered by contracts falling within class 18 below);  (c) risks neither falling within paragraph (a) or (b) above nor being of a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.
17	Legal expenses.	Effecting and carrying out contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).
<sup>[F313]</sup> 18]	<sup>[F313]</sup> Assistance]	<sup>[F313]</sup> Effecting and carrying out contracts of insurance providing either or both of the following benefits, namely—]  <sup>[F313]</sup> (a) assistance (whether in cash or in kind) for persons who get into difficulties while travelling, while away from home or while away from their permanent residence, or]  <sup>[F313]</sup> (b) assistance (whether in cash or in kind) for persons

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who get into difficulties otherwise than as mentioned in paragraph (a) above.]

#### Textual Amendments

**F312** Words added by S.I. 1987/2130, reg. 2(b)(i)

**F313** Class 18 added by S.I. 1987/2130, reg. 2(b)(ii)

## PART II

### GROUPS OF CLASSES

#### Modifications etc. (not altering text)

**C28** Pt. II Group 1 extended by S.I. 1984/1821 (N.I. 11), art. 17(3)

Number	Description	Nature of business
1	Accident and health.	Classes 1 and 2.
2	Motor.	Class 1 (to the extent that the relevant risks are risks of the person insured sustaining injury, or dying, as the result of travelling as a passenger) and classes 3, 7 and 10.
3	Marine and transport.	Class 1 (to the said extent) and classes 4, 6, 7 and 12.
4	Aviation.	Class 1 (to the said extent) and classes 5, 7 and 11.
5	Fire and other damage to property.	Classes 8 and 9.
6	Liability.	Classes 10, 11, 12 and 13.
7	Credit and suretyship.	Classes 14 and 15.
8	General.	All classes.

## [<sup>F314</sup>SCHEDULE 2A]

### CRITERIA OF SOUND AND PRUDENT MANAGEMENT

#### Textual Amendments

**F314** Sch. 2A inserted (1.7.1994) by S.I. 1994/1696, reg. 5(3), Sch. 1

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**Modifications etc. (not altering text)**

**C29** Sch. 2A: Power to contract out functions conferred (18.11.1998) by S.I. 1998/2842, arts. 2, 3, Sch. Pt. I para. 56

*Integrity and skill*

- 1 The business of the insurance company is carried on with integrity, due care and the professional skills appropriate to the nature and scale of its activities.
- 2 Each director, controller, manager or main agent of the insurance company is a fit and proper person to hold that position.
- 3 In the case of a non-EC company whose head office is not in an EFTA State—
  - (a) the representative referred to in section 9(4) above; or
  - (b) where that representative is not an individual, the individual representative referred to in section 10(5) above,is a fit and proper person to hold that position.

*Direction and management of the insurance company*

- 4 The insurance company is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold.

*Business to be conducted in a sound and prudent manner*

- 5 The insurance company conducts its business in a sound and prudent manner.
- 6
  - (1) The insurance company shall not be regarded as conducting its business in a sound and prudent manner unless it maintains—
    - (a) adequate accounting and other records of its business; and
    - (b) adequate systems of control of its business and records.
  - (2) Accounting and other records and systems of control shall not be regarded as adequate unless they are such as—
    - (a) to enable the business of the company to be prudently managed; and
    - (b) to enable the company to comply with the obligations imposed on it by or under this Act and, in the case of a UK company, enactments in other EEA States which apply to its insurance business.
  - (3) In determining whether any systems of control are adequate the Secretary of State shall have regard to the functions and responsibilities for those systems which are held by the persons who are responsible for the direction and management of the company and to whom paragraph 2 above applies.

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- 7 The insurance company shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the interests of policy holders and potential policy holders.
- 8 The insurance company shall not be regarded as conducting its business in a sound and prudent manner if—
- (a) it fails to satisfy an obligation to which it is subject by virtue of this Act; or
  - (b) in the case of a UK company, it fails to satisfy an obligation to which it is subject by virtue of any provision of the law of another EEA State which applies to its insurance business in that State.
- [9 The insurance company shall not be regarded as conducting its business in a sound and prudent manner if it fails to supervise the activities of a subsidiary undertaking—
- (a) with due care and diligence; and
  - (b) without detriment to the company’s business.]

[<sup>F315</sup>SCHEDULE 2B]

RESTRICTION ON DISCLOSURE OF INFORMATION]

**Textual Amendments**

**F315** Sch. 2B inserted (1.7.1994) by S.I. 1994/1696, reg. 26(2), Sch. 2

**Modifications etc. (not altering text)**

**C30** Sch. 2B: Power to contract out functions conferred (18.11.1998) by S.I. 1998/2842, arts. 2, 3, Sch. Pt. I para. 57

Sch. 2B: functions to be exercised by the Secretary of State and the Treasury concurrently (5.1.1998) by S.I. 1997/2781, art. 4(1)(h) (with art. 7)

**PART I**

INFORMATION RELATING TO UK, EC AND NON-EC COMPANIES

**Modifications etc. (not altering text)**

**C31** Sch. 2B Pt. I applied (with modifications) (1.7.1994) by S.I. 1994/1696, reg. 66(1)(2)

*Restriction on disclosure*

- 1 (1) Subject to the following provisions of this Part of this Schedule, information which—
- (a) is restricted information for the purposes of this paragraph; and



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- (b) relates to the business or other affairs of a relevant person, shall not be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.
- (2) Subject to sub-paragraph (3) below, information is restricted information for the purposes of this paragraph if it was obtained by the Secretary of State for the purposes of, or in the discharge of, functions under this Act or any rules or regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).
- (3) Information is not restricted information for the purposes of this paragraph if—
- (a) it has been made available to the public from other sources, or
  - (b) it is information in the form of a summary or is information so framed as not to enable information relating to any particular person to be ascertained from it.
- (4) The following are relevant persons for the purposes of this paragraph, namely—
- (a) any UK, EC or non-EC company; and
  - (b) any controller, manager, chief executive, general representative, agent or employee of such a company.
- (5) Any person who discloses information in contravention of this paragraph shall be guilty of an offence and liable—
- (a) on conviction or indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

*Disclosure for facilitating discharge of functions by Secretary of State*

- 2 Paragraph 1 above does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Secretary of State to discharge his functions under this Act or any rules or regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).

*Disclosure for facilitating discharge of functions by other regulatory authorities*

- 3 (1) Paragraph 1 above does not preclude the disclosure by the Secretary of State to any person specified in the first column of the following Table if the Secretary of State considers that the disclosure would enable or assist that person to discharge the functions specified in relation to him in the second column of that Table.

TABLE

Person	Functions
1 The Secretary of State.	Functions under the Companies Act, the Company Securities (Insider Dealing) Act 1985

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	F316
	, the Insolvency Act 1986
	F317
	, the Company Directors Disqualification Act 1986
	F318
	, the Financial Services Act 1986
	F319
	, or Part II, III or VII of the Companies Act 1989
	F320
	.
2The Treasury.	Functions under the Financial Services Act 1986 or under Part III or VII of the Companies Act 1989.
3An inspector appointed under Part XIV of the Companies Act or section 94 or 177 of the Financial Services Act 1986.	Functions under that Part or that section.
4A person authorised to exercise powers under section 43A or 44 above, section 447 of the Companies Act, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989.	Functions under that section.
5The Friendly Societies Commission, the Registrar of Friendly Societies for Northern Ireland and the Assistant Registrar of Friendly Societies for Scotland.	Functions under the enactments relating to friendly societies or under the Financial Services Act 1986.
6The Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland.	Functions under the enactments relating to industrial assurance.
7The Building Societies Commission.	Functions under the Building Societies Act 1986
	F321
	and protecting the interests of the shareholders and depositors of building societies.
8The Director General of Fair Trading.	Functions under the Fair Trading Act 1973
	F322
	except Part II, the Consumer Credit Act 1974
	F323
	, the Restrictive Trade Practices Act 1976
	F324
	, the Estate Agents Act 1979
	F325
	, the Competition Act 1980
	F326
	or the Control of Misleading Advertisements Regulations 1988

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	F327
9A designated agency (within the meaning of the Financial Services Act 1986).	Functions under that Act or Part VII of the Companies Act 1989.
10A transferee body (within the meaning of the Financial Services Act 1986) or the competent authority (within the meaning of that Act).	Functions under that Act.
11Any of the following (within the meaning of the Financial Services Act 1986), namely, a recognised self-regulating organisation, a recognised investment exchange, a recognised professional body and a recognised clearing house.	Functions in its capacity as a recognised self-regulating organisation, recognised investment exchange, recognised professional body or a recognised clearing house.
12The Department of Economic Development in Northern Ireland.	Functions under enactments relating to companies or insolvency.
13An inspector appointed by the Department of Economic Development in Northern Ireland under enactments relating to companies or insolvency.	Functions under those enactments.
14A person authorised to exercise powers under Article 440 of the Companies (Northern Ireland) Order 1986 <sup>F328</sup> or section 84 of the Companies Act 1989 <sup>F329</sup> .	Functions under that Article or section.
15An official receiver.	Functions under enactments relating to insolvency.
16The Panel on Take-overs and Mergers.	All functions.
17The Bank of England.	All functions.
18A body administering a scheme under section 54 of the Financial Services Act 1986.	Functions under the scheme.
19A body established by order under section 46 of the Companies Act 1989.	Functions under Part II of that Act.
20A supervisory body (as defined in section 30 of the Companies Act 1989) or a qualifying body (as defined in section 32 of that Act).	Functions under that Act.
21The Occupational Pensions Board.	Functions in respect of insurance companies or other credit and financial institutions.
22The Council of Lloyd's, the Committee of Lloyd's or the Disciplinary Committee or Appeal Tribunal established under the Lloyd's Act 1982 <sup>F330</sup> .	Functions under the Lloyd's Acts 1871 to 1982 and functions under bye-laws made under those Acts.

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23The Tribunal under the Prevention of Fraud (Investments) Act 1958 <sup>F331</sup> .	Functions under that Act.
24The Monopolies and Mergers Commission.	Functions under the Fair Trading Act 1973 and the Competition Act 1980.
25An auditor appointed under rules made under section 107 of the Financial Services Act 1986 or a person approved under section 108 of that Act.	All functions.

- (2) Paragraph 1 above does not preclude the disclosure by any person specified in the first column of the Table in sub-paragraph (1) above of information obtained by him by virtue of that sub-paragraph if he makes the disclosure—
- (a) with the consent of the Secretary of State; and
  - (b) for the purpose of enabling or assisting him to discharge any functions specified in relation to him in the second column of that Table;
- and before deciding whether to give consent to such a disclosure by any person the Secretary of State shall take account of any representations made by that person as to the desirability of or the necessity for the disclosure.
- (3) Paragraph 1 above does not preclude—
- (a) the disclosure of information to the Treasury; or
  - (b) the disclosure of information to the Secretary of State for purposes other than those specified in relation to him in sub-paragraph (1) above,
- if (in either case) disclosure is in accordance with Article 16(6) of the third general insurance Directive, or Article 15(6) of the third long term insurance Directive.
- (4) Paragraph 1 above does not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority not specified in the first column of the Table in sub-paragraph (1) above to discharge any functions if disclosure is in accordance with Article 16 of the third general insurance Directive, or Article 15 of the third long term insurance Directive.
- (5) Paragraph 1 above does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside the United Kingdom to exercise functions corresponding to those of—
- (a) the Bank of England;
  - (b) the Secretary of State under this Act or the Financial Services Act 1986;
  - (c) the designated agency under that Act or rules or regulations made under that Act; or
  - (d) the competent authority under Part IV of that Act.
- (6) Sub-paragraph (5) above does not apply in relation to disclosure to an authority which is not an authority in another member State unless the Secretary of State is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this Part of this Schedule.
- (7) Information which is disclosed to a person in pursuance of sub-paragraph (1) or (2) above shall not be used otherwise than for the purpose mentioned in that sub-paragraph.

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- (8) Any person who uses information in contravention of sub-paragraph (7) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.
- (9) Any reference in this paragraph to enabling or assisting any person to discharge or exercise any functions is a reference to enabling or assisting that person to discharge or exercise those functions in relation to—
- (a) a financial market; or
  - (b) persons carrying on the business of banking or insurance, Consumer Credit Act businesses or the business of providing other financial services;
- and in this sub-paragraph “Consumer Credit Act business” has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992<sup>F332</sup>.

#### Textual Amendments

- F316 1985 c.8.
- F317 1986 c.45.
- F318 1986 c.46.
- F319 1986 c.60.
- F320 1989 c.40.
- F321 1986 c.53.
- F322 1973 c.41.
- F323 1974 c.39.
- F324 1976 c.34.
- F325 1979 c.38.
- F326 1980 c.21.
- F327 S.I. 1988/915.
- F328 S.I. 1986/1032 (N.I.6).
- F329 1989 c.40.
- F330 1982 c.xiv.
- F331 1958 c.45.
- F332 S.I. 1992/3218.

#### *Other permitted disclosures*

- 4 (1) Paragraph 1 above does not preclude the disclosure of information—
- (a) for the purpose of enabling or assisting the Deposit Protection Board to discharge its functions under the Banking Act 1987<sup>F333</sup>;
  - (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
  - (c) for the purpose of enabling or assisting the Council of the Stock Exchange to discharge its functions in relation to insurance companies;
  - (d) with a view to the institution of, or otherwise for the purposes of, proceedings under section 6, 7 or 8 of the Company Directors Disqualification Act 1986<sup>F334</sup> in respect of a director or former director of an insurance company;
  - (e) with a view to the institution of, or otherwise for the purposes of, any civil proceedings arising under or by virtue of the Financial Services Act 1986

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- or proceedings before the Financial Services Tribunal, if those proceedings relate to an insurance company;
  - (f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by an auditor or actuary of his professional duties;
  - (g) in pursuance of a Community obligation.
- (2) Paragraph 1 above does not preclude the disclosure by the Secretary of State to the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland, the Lord Advocate, a procurator fiscal or a constable of—
- (a) information obtained by virtue of section 43A, 44 or 44A above; or
  - (b) information in the possession of the Secretary of State as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

#### Textual Amendments

F333 1987 c.22.

F334 1986 c.46.

#### *Information supplied by a supervisory authority*

- 5 (1) Paragraph 1 above applies also to information which—
- (a) has been supplied to the Secretary of State for the purposes of any relevant functions by a supervisory authority in a member State other than the United Kingdom; or
  - (b) has been obtained for those purposes by the Secretary of State, or by a person acting on his behalf, in another member State.
- (2) Subject to sub-paragraphs (3) and (4) below, information supplied or obtained as mentioned in sub-paragraph (1)(a) or (b) above shall not be disclosed except as provided by paragraph 1 above or—
- (a) for the purpose of enabling or assisting the Secretary of State to discharge any relevant functions; or
  - (b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Act or otherwise.
- (3) Information supplied as mentioned in sub-paragraph (1)(a) above may be disclosed—
- (a) to a relevant recipient, if the supervisory authority which supplied the information consents to its disclosure and the case is one in which information to which paragraph 1 above applies could be so disclosed by virtue of paragraph 3(1) above; or
  - (b) to the Treasury or the Secretary of State, if that authority consents to its disclosure and the case is one in which information to which paragraph 1 above applies could be so disclosed by virtue of paragraph 3(3) above.
- (4) Information obtained as mentioned in sub-paragraph (1)(b) above may be disclosed—

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- (a) to a relevant recipient, if the supervisory authority in the member State concerned consents to its disclosure and the case is one in which information to which paragraph 1 above applies could be so disclosed by virtue of paragraph 3(1) above; or
- (b) to the Treasury or the Secretary of State, if that authority consents to its disclosure and the case is one in which information to which paragraph 1 above applies could be so disclosed by virtue of paragraph 3(3) above.

(5) In this paragraph—

“relevant functions”, in relation to the Secretary of State, means his functions under this Act;

“relevant recipient” means a person specified in any of entries 1 to 7, 12, 13 and 17 in the Table in paragraph 3(1) above.

## PART II

### INFORMATION RELATING TO OTHER PERSONS

#### *Restriction on disclosure*

- 6 (1) Subject to paragraph 7 below, no information which—
- (a) has been obtained under section 44(2) to (4) <sup>F335</sup> or 44A <sup>F336</sup> above; and
  - (b) relates to the business or other affairs of a person who is not a relevant person for the purposes of paragraph 1 above,
- shall be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.
- (2) A person who discloses any information in contravention of this paragraph shall be guilty of an offence under section 449 of the Companies Act or Article 442 of the Companies (Northern Ireland) Order 1986 and liable accordingly.

#### **Textual Amendments**

**F335** Subsections (2) to (4) have been amended by the [Companies Act 1989 \(c.40\)](#), [section 77\(2\)](#).

**F336** [Section 44A](#) was inserted by the [Companies Act 1989 \(c.40\)](#), [section 77\(3\)](#).

#### *Permitted disclosures*

- 7 (1) Paragraph 6 above does not preclude the disclosure of information to any person who is a competent authority for the purposes of section 449 of the Companies Act or Article 442(1)(a) to (e) of the Companies (Northern Ireland) Order 1986.
- (2) Paragraph 6 above does not preclude the disclosure of information as mentioned in any of the paragraphs except (m) of subsection (1) of section 180 of the Financial Services Act 1986 or in subsection (3) or (4) of that section or as mentioned in section 449(1) of the Companies Act or Article 442 of that Order.



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- (3) Paragraph 6 above does not preclude the disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it.

## [<sup>F337</sup>SCHEDULE 2C]

### TRANSFERS OF INSURANCE BUSINESS

#### Textual Amendments

**F337** Sch. 2C inserted (1.7.1994) by S.I. 1994/1696, reg. 28(2), Sch. 3

#### Modifications etc. (not altering text)

**C32** Sch. 2C: Power to contract out functions conferred (18.11.1998) by S.I. 1998/2842, arts. 2, 3, Sch. Pt. I para. 58

## PART I

### TRANSFERS OF LONG TERM BUSINESS

#### *Sanction of court required*

- 1 (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”) and—
- (a) where the transferor company is a UK company, the business proposed to be transferred is business carried on in one or more member States;
  - (b) where that company is not a UK company, the business proposed to be transferred is business carried on in the United Kingdom,
- the transferor company or the transferee company may apply to the court, by petition, for an order sanctioning the scheme.
- (2) If any such scheme involves a compromise or arrangement falling within section 427A(1) of the Companies Act <sup>F338</sup> or Article 420A(1) of the Companies (Northern Ireland) Order 1986 <sup>F339</sup> (application of provisions about compromises and arrangements to mergers and divisions of public companies), the following provisions, namely—
- (a) sections 425 to 427 of that Act, or
  - (b) Articles 418 to 420 of that Order,
- shall have effect, as regards that compromise or arrangement, as provided by section 427A(1) or Article 420A(1) (as the case may be), but without prejudice to the operation of the provisions of this Part of this Schedule in relation to the scheme.
- (3) No such transfer as is mentioned in sub-paragraph (1) above shall be carried out unless the scheme relating to the transfer has been sanctioned by the court in

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accordance with this Part of this Schedule; and, except in the case of any such scheme as is mentioned in sub-paragraph (2) above, no order shall be made under any of the provisions specified in paragraph (a) or (b) of that sub-paragraph in respect of so much of any compromise or arrangement as involves any such transfer.

(4) In this Part of this Schedule—

“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 both registered or both have their head offices in Scotland;
- (b) the High Court of Justice in Northern Ireland if the transferor company and the transferee company are both registered or both have their head offices in Northern Ireland;
- (c) either the High Court of Justice in England or the Court of Session if either the transferor company or the transferee company is registered or has its head office in Scotland;
- (d) either the High Court of Justice in England or the High Court of Justice in Northern Ireland if either the transferor company or the transferee company is registered or has its head office in Northern Ireland; and
- (e) either the Court of Session or the High Court of Justice in Northern Ireland if the transferor company or the transferee company is registered or has its head office in Scotland and the other such company is registered or has its head office in Northern Ireland;

“direct insurance” means insurance other than reinsurance.

#### Textual Amendments

**F338** Section 427A was inserted by S.I. 1987/1991, **reg 2(a)** and Schedule, Part I and amended by the Companies Act 1989 (c.40), **section 114(2)**.

**F339** S.I. 1986/1032 (N.I.6); Article 420A was inserted by S.R. 1987/422, **reg 3** and Schedule, Part I.

#### Modifications etc. (not altering text)

**C33** Sch. 2C para. 1(2) continued (1.12.2001) by S.I. 2001/3639, **art. 3(2)** (with art. 2)

#### *Procedure with respect to applications*

- 2 (1) The court shall not determine an application under paragraph 1 above 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 sub-paragraph (2) below have been complied with.
- (2) The said requirements are—
  - (a) that a notice stating that the application has been 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 has been published—
    - (i) in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed, in two national newspapers in the United Kingdom;

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- (ii) where the transferor company is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, in two national newspapers in that member State; and
  - (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment, in two national newspapers in that EEA State;
  - (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 sub-paragraph (1) 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 sub-paragraph (1) 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 sub-paragraph (1) above have been open to inspection—
    - (i) at offices in the United Kingdom of the companies concerned;
    - (ii) where the transferor company is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, at such place in that member State as the court has directed; and
    - (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment, at such place in that EEA State as the court has directed,
 for a period of not less than twenty-one days beginning with the date of the first publication of a notice in accordance with paragraph (a) above;
  - (e) in the case of any such scheme as is mentioned in paragraph 1(2) above, that copies of the documents listed in paragraph 6(1) of Schedule 15B to the Companies Act or in paragraph 6(1) of Schedule 15B to the Companies (Northern Ireland) Order 1986 had been served on the Secretary of State by the beginning of the period referred to in paragraph 3(e) of that Schedule.
- (3) 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 sub-paragraph (1) above to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.
- (4) On any petition under paragraph 1 above, the following shall be entitled to be heard, namely—
- (a) the Secretary of State, and
  - (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.

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- (5) A policy which evidences a contract of direct insurance is an “EFTA policy” for the purposes of this Part of this Schedule if—
- (a) it covers a commitment situated in an EFTA State and the transferee company is a UK or EC company or a non-EC company whose head office is in an EFTA State; or
  - (b) it covers a commitment situated in a member State and the transferor company or the transferee company is a non-EC company whose head office is in an EFTA State.
- (6) Where the transferee company is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992<sup>F340</sup>, sub-paragraphs (2)(c) and (e) and (4)(a) above shall have effect as if the reference to the Secretary of State included a reference to the Friendly Societies Commission.

#### Textual Amendments

F340 1992 c.40.

#### *Determination of applications*

- 3 (1) Where the transferor company is a UK or non-EC company and any policy included in the proposed transfer evidences a contract of direct insurance, the court shall not make an order sanctioning the scheme unless—
- (a) it is satisfied that the transferee company is, or will be immediately after the making of the order—
    - (i) authorised under section 3 or 4 above to carry on, or
    - (ii) authorised in accordance with Article 6 of the first long-term insurance Directive to carry on in an EEA State other than the United Kingdom,long term business of the class or classes to be transferred under the scheme;
  - (b) the relevant authority certifies that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account; and
  - (c) where the transferor company is a UK company and the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Secretary of State certifies—
    - (i) that the supervisory authority in that member State has been consulted about the proposed scheme; and
    - (ii) either that the authority has responded or that the period of three months beginning with the consultation has elapsed.
- (2) Where sub-paragraph (1) above applies and, as regards any policy (other than an EFTA policy) which is included in the proposed transfer and evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, the court shall not make an order sanctioning the scheme unless the Secretary of State certifies—
- (a) that the supervisory authority in that member State has been notified of the proposed scheme; and

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- (b) either that the authority has consented to the scheme or that the authority has not refused its consent to the scheme within the period of three months beginning with the notification.
- (3) Where sub-paragraph (1) above applies, the establishment of the transferee company to which the policies are to be transferred is situated in the United Kingdom and, as regards any ETFA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment, the court shall not make an order sanctioning the scheme unless the Secretary of State certifies that—
- (a) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in that EEA State; and
  - (b) the supervisory authority in that EEA State agrees to the transfer.
- (4) Where sub-paragraph (1) above applies, the establishment of the transferee company to which the policies are to be transferred is situated in an EEA State other than the United Kingdom and, as regards any ETFA policy included in the proposed transfer, an EEA State is the State of the commitment, the court shall not make an order sanctioning the scheme unless—
- (a) where the EEA State in which the establishment is situated is also the State of the commitment, the Secretary of State certifies that the supervisory authority in that EEA State agrees to the transfer;
  - (b) where the United Kingdom is the State of the commitment, the Secretary of State certifies that the transferee company is not precluded by Schedule 2F to this Act from covering the commitment; and
  - (c) where an EEA State other than the United Kingdom or the EEA State in which the establishment is situated is the State of the commitment, the Secretary of State certifies that—
    - (i) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the EEA State which is the State of the commitment;
    - (ii) the law of that State provides for the possibility of such a transfer; and
    - (iii) the supervisory authority in that State agrees to the transfer.
- (5) Where the transferor company is not a UK or non-EC company or any policy included in the proposed transfer evidences a contract of reinsurance, the court shall not make an order sanctioning the scheme unless it is satisfied that the transferee company is, or will be immediately after the making of the order—
- (a) authorised under section 3 or 4 above to carry on, or
  - (b) an EC company which is not precluded by Part I of Schedule 2F to this Act from carrying on,
- long term business of the class or classes to be transferred under the scheme.
- (6) In this paragraph “the relevant authority” means—
- (a) if the transferee company is a UK company, the Secretary of State;
  - (b) if the transferee company is an EC company, the supervisory authority in its home State;
  - (c) if the transferee company is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
  - (d) if the transferee company does not fall within paragraphs (a) to (c) above, the Secretary of State or other authority which, in accordance with Article 29 or

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30 of the first long term insurance Directive, is responsible for supervising the company's margin of solvency.

- (7) Where the transferee company is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992—
- (a) sub-paragraphs (1)(a) and (5)(a) above shall have effect as if the reference to section 3 or 4 above were a reference to that Part of that Act; and
  - (b) sub-paragraph (1)(b) above shall have effect as if the relevant authority for the purposes of this paragraph were the Friendly Societies Commission.

#### *Rights of policy holders*

- 4 (1) This paragraph applies where the court makes an order under this Part of this Schedule sanctioning a scheme and either—
- (a) the transferor company is a UK or non-EC company and, as regards any policy included in the transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment; or
  - (b) as regards any EFTA policy included in the transfer, an EEA State other than the United Kingdom is the State of the commitment.
- (2) The court shall direct that—
- (a) notice of the making of any order, or the execution of any instrument, giving effect to the transfer shall be published in the member State or, as the case may be, the EEA State which is the State of the commitment; and
  - (b) the notice shall specify the period during which the policy holder may exercise any right to cancel the policy;
- and the instrument or order shall not bind the policy holder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.
- (3) The law of the member State or, as the case may be, the EEA State which is the State of the commitment shall determine—
- (a) whether the policy holder has a right to cancel the policy; and
  - (b) the conditions applicable to any such right.

#### **Modifications etc. (not altering text)**

**C34** Sch. 2C para. 4 continued (1.12.2001) by S.I. 2001/3639, art. 3(6) (with art. 2)

#### *Supplementary provisions*

- 5 (1) Where the court makes an order under this Part of this Schedule 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;

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- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person;
  - (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
  - (d) the dissolution, without winding up, of the transferor company;
  - (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.
- (2) Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.
- (3) Where the transferor company is a UK or non-EC company, it is immaterial for the purposes of sub-paragraphs (1)(a), (c) and (e) and (2) above that the law applicable to any of the contracts of direct insurance included in the transfer is the law of an EEA State other than the United Kingdom.
- (4) 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—
- (a) section 183(1) of the Companies Act and section 56(4) of the Finance Act 1946<sup>F341</sup>; and
  - (b) Article 193(1) and (2) of the Companies (Northern Ireland) Order 1986 and section 27(4) of the Finance (No 2) Act (Northern Ireland) 1946<sup>F342</sup>,
- an order which by virtue of this paragraph operates to transfer any property shall be treated as an instrument of transfer.
- (5) Where a scheme is sanctioned by an order of the court under this Part of this Schedule, 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.
- (6) In this paragraph “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 or the Companies (Northern Ireland) Order 1986.

#### Textual Amendments

**F341** 1946 c.64.

**F342** 1946 c.17 (N.I.).



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## PART II

### TRANSFERS OF GENERAL BUSINESS

#### *Approval of Secretary of State required*

- 6 (1) Where it is proposed to execute an instrument by which an insurance company to which this Part of this Act applies ("the transferor") is to transfer to another body ("the transferee") all its rights and obligations under such general policies, or general policies of such descriptions as may be specified in the instrument, and—
- (a) where the transferor is a UK company, the performance by it of the obligations proposed to be transferred constitutes the carrying on of insurance business in one or more member States; or
  - (b) where the transferor is not a UK company, the performance by it of the obligations proposed to be transferred constitutes the carrying on of insurance business in the United Kingdom,
- the transferor may apply to the Secretary of State for his approval of the transfer.
- (2) Any notice or other document authorised or required to be given or served under this Part of this Schedule may, without prejudice to any other method of service, be served by post; and a letter containing the notice or other document 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 the United Kingdom.
- (3) In this Part of this Schedule—
- "direct insurance" means insurance other than reinsurance;
- "general policy" means a policy evidencing a contract the effecting of which constitutes the carrying on of general business.

#### *Procedure with respect to applications*

- 7 (1) The Secretary of State shall not determine an application made under paragraph 6 above unless he is satisfied that—
- (a) a notice approved by him for the purpose has been published—
    - (i) in the London, Edinburgh and Belfast Gazettes and, if he thinks fit, in two national newspapers in the United Kingdom which have been so approved;
    - (ii) where the transferor is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, the risk is situated in a member State which is not the United Kingdom, in two national newspapers in that member State; and
    - (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the EEA State in which the risk is situated, in two national newspapers in that EEA State;
  - (b) except in so far as he has otherwise directed, a copy of the notice has been sent to every affected policy holder and every other person who claims an

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interest in a policy included in the proposed transfer and has given written notice of his claim to the transferor; and

- (c) copies of a statement setting out particulars of the transfer and approved by him for the purpose have been available for inspection—
  - (i) at one or more places in the United Kingdom;
  - (ii) where the transferor is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, the risk is situated in a member State which is not the United Kingdom, at one or more places in that member State; and
  - (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the EEA State in which the risk is situated, at one or more places in that EEA State,

for a period of not less than thirty days beginning with the date of the first publication of the notice in accordance with paragraph (a) above.

- (2) The notice referred to in sub-paragraph (1) above shall include a statement that written representations concerning the transfer may be sent to the Secretary of State before a specified day, which shall not be earlier than sixty days after the day of the first publication of the notice in accordance with sub-paragraph (1)(a) above; and the Secretary of State shall not determine the application until after considering any representations made to him before the specified day.
- (3) For the purposes of this paragraph a policy holder is an “affected policy holder” in relation to a proposed transfer if—
  - (a) his policy is included in the transfer, or
  - (b) his policy is with the transferor and the Secretary of State has certified, after consulting the transferor, that in the opinion of the Secretary of State the policy holder’s rights and obligations under the policy will or may be materially affected by the transfer.
- (4) A policy which evidences a contract of direct insurance is an “EFTA policy” for the purposes of this Part of this Schedule if—
  - (a) it covers a risk situated in an EFTA State and the transferee is a UK or EC company or a non-EC company whose head office is in an EFTA State; or
  - (b) it covers a risk situated in a member State and the transferor company or the transferee is a non-EC company whose head office is in an EFTA State.
- (5) Where the transferor is a UK or non-EC company and the transferee is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992, sub-paragraph (1)(b) shall have effect as if the reference to every affected policy holder included a reference to the Friendly Societies Commission.

#### *Determination of applications*

- 8 (1) Where the transferor is a UK or non-EC company and any policy included in the proposed transfer evidences a contract of direct insurance, the Secretary of State shall not approve the transfer unless—

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- (a) he is satisfied that the transferee is, or will be immediately after the approval—
    - (i) authorised under section 3 or 4 above to carry on, or
    - (ii) authorised in accordance with Article 6 of the first general insurance Directive to carry on in an EEA State other than the United Kingdom,general business of the class or classes to be transferred by the instrument;
  - (b) he is also satisfied that every policy included in the transfer evidences a contract which was entered into before the date of the application;
  - (c) the relevant authority certifies that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account; and
  - (d) where the transferor is a UK company and the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Secretary of State is satisfied
    - (i) that the supervisory authority in that member State has been consulted about the proposed transfer; and
    - (ii) either that the authority has responded or that the period of three months beginning with the consultation has elapsed.
- (2) Where sub-paragraph (1) above applies and, as regards any policy (other than an EFTA policy) which is included in the proposed transfer and evidences a contract of direct insurance, the risk is situated in a member State other than the United Kingdom, the Secretary of State shall not approve the transfer unless he is satisfied—
- (a) that the supervisory authority in that member State has been notified of the proposed transfer;
  - (b) either that the authority has consented to the transfer or that the authority has not refused its consent to the transfer within the period of three months beginning with the notification.
- (3) Where sub-paragraph (1) above applies, the establishment of the transferee to which the policies are to be transferred is situated in the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the risk is situated, the Secretary of State shall not approve the transfer unless he is satisfied that—
- (a) the transferee either fulfils the conditions in Articles 13 to 16 of the second general insurance Directive in that EEA State or will be participating, by virtue of the transfer of that policy, in a Community co-insurance operation otherwise than as the leading insurer; and
  - (b) the supervisory authority in that EEA State agrees to the transfer.
- (4) Where sub-paragraph (1) above applies, the establishment of the transferee to which the policies are to be transferred is situated in an EEA State other than the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the risk is situated, the Secretary of State shall not approve the transfer unless—
- (a) where the EEA State in which the establishment is situated is also the State in which the risk is situated, he is satisfied that the supervisory authority in that EEA State agrees to the transfer;
  - (b) where the United Kingdom is the State in which the risk is situated, he is satisfied that the transferee is not precluded by Schedule 2F to this Act from covering the risk; and

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- (c) where an EEA State other than the United Kingdom or the EEA State in which the establishment is situated is the State in which the risk is situated, he is satisfied that—
- (i) the transferee either fulfils the conditions in Articles 13 to 16 of the second general insurance Directive in the EEA State in which the risk is situated or will be participating, by virtue of the transfer of that policy, in a Community co-insurance operation otherwise than as the leading insurer;
  - (ii) the law of that State provides for the possibility of such a transfer; and
  - (iii) the supervisory authority in that State agrees to the transfer.
- (5) Where the transferor company is not a UK or non-EC company or any policy included in the proposed transfer evidences a contract of reinsurance, the Secretary of State shall not approve the transfer on an application under paragraph 6 above unless he is satisfied that the transferee is, or will be immediately after the approval—
- (a) authorised under section 3 or 4 above to carry on, or
  - (b) an EC company which is not precluded by Part I of Schedule 2F to this Act from carrying on,
- general business of the class or classes to be transferred by the instrument.
- (6) Where the Secretary of State determines an application under paragraph 6 above, he shall—
- (a) publish a notice of his decision in the London, Edinburgh and Belfast Gazettes and in such other manner as he may think fit, and
  - (b) send a copy of that notice to the transferor, the transferee and every person who made representations in accordance with the notice referred to in paragraph 7(1) above;
- and if he refuses the application he shall inform the transferor and the transferee in writing of the reasons for his refusal.
- (7) In this paragraph “the relevant authority” means—
- (a) if the transferee is a UK company, the Secretary of State;
  - (b) if the transferee is an EC company, the supervisory authority in its home State;
  - (c) if the transferee is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
  - (d) if the transferee is a Swiss general insurance company, the supervisory authority in Switzerland;
  - (e) if the transferee does not fall within paragraphs (a) to (d) above, the Secretary of State or other authority which, in accordance with Article 25 or 26 of the first general insurance Directive, is responsible for supervising the transferee’s margin of solvency.
- (8) Where the transferor is a UK or non-EC company and the transferee is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992—
- (a) sub-paragraphs (1)(a) and (5)(a) above shall have effect as if the reference to section 3 or 4 above were a reference to that Part of that Act; and
  - (b) sub-paragraph (1)(c) above shall have effect as if the relevant authority for the purposes of this paragraph were the Friendly Societies Commission.

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### *Rights of policy holders*

- 9 (1) This paragraph applies where the Secretary of State approves an application made under paragraph 6 above and either—
- (a) the transferor is a UK or non-EC company and, as regards any policy included in the transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the member State in which the risk is situated; or
  - (b) as regards any EFTA policy included in the transfer, an EEA State other than the United Kingdom is the EEA State in which the risk is situated.
- (2) The Secretary of State shall direct that—
- (a) notice of his decision, and of the execution of any instrument giving effect to the transfer, shall be published in the member State or, as the case may be, the EEA State in which the risk is situated; and
  - (b) the notice shall specify the period during which the policy holder may exercise any right to cancel the policy;
- and the instrument shall not bind the policy holder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.
- (3) The law of the member State or, as the case may be, the EEA State in which the risk is situated shall determine—
- (a) whether the policy holder has a right to cancel the policy; and
  - (b) the conditions applicable to any such right.

### *Effect of approval of Secretary of State*

- [10 (1) Subject to paragraph 9(2) above, an instrument giving effect to a transfer approved by the Secretary of State under this Part of this Schedule shall be effectual in law—
- (a) to transfer to the transferee all the transferor's rights and obligations under the policies included in the instrument, and
  - (b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations, notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.
- (2) Where the transferor is a UK or non-EC company, it is immaterial for the purposes of sub-paragraph (1) above that the law applicable to any of the contracts of direct insurance included in the transfer is the law of an EEA State other than the United Kingdom.
- (3) Except in so far as the Secretary of State may otherwise direct, a policy holder whose policy is included in such an instrument shall not be bound by it unless he has been given written notice of its execution by the transferor or the transferee.]

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[<sup>F343</sup>SCHEDULE 2D]

FURTHER PROVISIONS WITH RESPECT TO CONTROLLERS OF UK COMPANIES

**Textual Amendments**

**F343** Sch. 2D inserted (1.7.1994) by S.I. 1994/1696, reg. 35, Sch. 4

**Modifications etc. (not altering text)**

**C35** Sch. 2D: Power to contract out functions conferred (18.11.1998) by S.I. 1998/2842, arts. 2, 3, Sch. Pt. 1 para. 59

*Provisions supplementing sections 60 to 61A*

- 1 (1) This paragraph applies where—
- (a) a UK company which proposes to appoint a person as managing director or chief executive of the company;
  - (b) a person who proposes to become a controller of such a company; or
  - (c) a person who is a controller of such a company and who proposes to acquire a notifiable holding in the company,
- has served notice on the Secretary of State under subsection (1)(a) of section 60, 61 or 61A above (“the relevant section”).
- (2) The Secretary of State may by notice in writing require the person serving the notice or, in a case falling within sub-paragraph (1)(a) above, the person proposed to be appointed to provide such additional information or documents as the Secretary of State may reasonably require for the purpose of deciding whether to serve—
- (a) a notice of objection under the relevant section; or
  - (b) a notice imposing conditions under paragraph 3 below.
- (3) Where additional information or documents are required from any person by a notice under sub-paragraph (2) above, the time between the giving of that notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b) of the relevant section.
- (4) The notice shall be of no effect for the purposes of subsection (1) of the relevant section if either the notice is withdrawn or—
- (a) in the case of a notice under section 60(1)(a) above, the person proposed to be appointed as managing director or chief executive of the company is not so appointed;
  - (b) in the case of notice under section 61(1)(a) above, the person by whom it was served does not become a controller of the company; or
  - (c) in the case of notice under section 61A(1)(a) above, the person by whom it was served does not acquire the holding specified in the notice,
- before the end of the period of one year beginning with the date mentioned in sub-paragraph (5) below.
- (5) The date referred to in sub-paragraph (4) above is as follows—
- (a) in a case where the Secretary of State has, before the end of the period mentioned in subsection (1)(b) of the relevant section, given to the person

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- servicing the notice such a notification as is mentioned in that provision, the date of that notification;
  - (b) in a case where the Secretary of State has, before the end of that period, served a notice imposing conditions on that person in accordance with paragraph 3 below, the date of the service of that notice; and
  - (c) in any other case, the date immediately following the end of that period.
- (6) The period mentioned in subsection (1)(b) of the relevant section shall be deemed not to expire until fourteen days after the end of the period within which representations may be made in accordance with that section.

*Notice of objection where requisite notice not given*

- 2 (1) This paragraph applies where—
- (a) a UK company appoints a person as managing director or chief executive of the company;
  - (b) a person becomes a controller of such a company otherwise than by virtue of an appointment in relation to which section 60 above has effect; or
  - (c) a person who is a controller of such a company acquires a notifiable holding in the company,
- in contravention of subsection (1)(a) of section 60, 61 or 61A above; and references in this paragraph to the person in breach shall be construed accordingly.
- (2) The Secretary of State—
- (a) may serve the person in breach with a notice of objection at any time within three months after he becomes aware of the contravention; and
  - (b) for the purpose of deciding whether to serve the person in breach with such a notice or with a notice imposing conditions under paragraph 3 below, may require that person by notice in writing to provide such information or documents as the Secretary of State may reasonably require.
- (3) Before serving a notice of objection under sub-paragraph (2) above, the Secretary of State shall serve on the person in breach and, in a case falling within sub-paragraph (1)(a) above, on the person appointed as managing director or chief executive a preliminary written notice—
- (a) stating that he is considering serving a notice of objection on the person in breach; and
  - (b) specifying the matters mentioned in sub-paragraph (5) below as respects which he is not satisfied.
- (4) A person served with a preliminary notice under sub-paragraph (3) above may, within the period of one month from the date of service of that notice—
- (a) make written representations to the Secretary of State; and
  - (b) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for that purpose by the Secretary of State.
- (5) The Secretary of State shall not serve a notice of objection under sub-paragraph (2) above unless it appears to him—
- (a) that the person appointed is or may not be a fit and proper person to be the managing director or chief executive of the company or, as the case may be, that the person in breach is not or may not be a fit and proper person



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- to be a controller of the company or to retain the notifiable holding in the company; or
  - (b) that the interests of policy holders and potential policy holders of the company are or may in some other manner be jeopardised by that person's ability to influence the company.
- (6) Where representations are made in accordance with this paragraph the Secretary of State shall take them into consideration before serving a notice of objection.
- (7) The Secretary of State shall not be obliged to disclose to the person in breach any particulars of the ground on which he is considering the service of a notice of objection.
- (8) The period mentioned in sub-paragraph (2)(a) above shall be deemed not to expire until fourteen days after the end of the period within which representations may be made in accordance with this paragraph.
- (9) After a notice of objection has been served on a company in relation to a person who is a managing director or chief executive, the company shall forthwith remove that person from that office.

#### *Notices imposing conditions*

- 3 (1) This paragraph applies where either—
- (a) paragraph 1 above applies and the Secretary of State is entitled to serve a notice of objection under the relevant section; or
  - (b) paragraph 2 above applies;
- and in this paragraph expressions which are also used in paragraph 1 or 2 above have the same meanings as in that paragraph.
- (2) If, in a case falling within sub-paragraph (1)(a) above, the Secretary of State considers that, if certain conditions were complied with—
- (a) by the person serving the notice under subsection (1)(a) of the relevant section; or
  - (b) where the notice is under section 60(1)(a) above, by the person proposed to be appointed as managing director or chief executive,
- the criteria of sound and prudent management would continue to be or, as the case may be, would be fulfilled in respect of the company, he may, instead of serving a notice of objection under the relevant section, serve a notice requiring the conditions in question to be complied with by that person ("the person concerned").
- A notice under this sub-paragraph shall be served—
- (a) on the person concerned, and
  - (b) where that person is proposed to be appointed as managing director or chief executive, on the company.
- (3) If, in a case falling within sub-paragraph (1)(b) above, the Secretary of State considers that, if certain conditions were complied with—
- (a) by the person in breach; or
  - (b) where the contravention is of section 60(1)(a) above, by the person appointed as managing director or chief executive,

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the criteria of sound and prudent management would continue to be or, as the case may be, would be fulfilled in respect of the company, he may, instead of serving a notice of objection under paragraph 2 above, serve a notice requiring the conditions in question to be complied with by that person (“the person concerned”).

A notice under this sub-paragraph shall be served—

- (a) on the person concerned, and
- (b) where that person has been appointed as managing director or chief executive, on the company.

(4) Before serving a notice under sub-paragraph (2) or (3) above, the Secretary of State shall serve on the person concerned and, where that person is proposed to be or has been appointed as managing director or chief executive, on the company a preliminary written notice stating—

- (a) that the Secretary of State is considering serving a notice under that sub-paragraph;
- (b) the conditions which would be required by such a notice to be complied with by the person concerned;
- (c) the criteria of sound and prudent management which he considers would not be fulfilled in respect of the company if he served neither such a notice nor a notice of objection under subsection (1)(a) of the relevant section or, as the case may be, paragraph 2 above; and
- (d) that the person on whom the preliminary notice is served may, within the period of one month from the date of service of that notice—
  - (i) make written representations to the Secretary of State; and
  - (ii) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.

(5) Where representations are made in accordance with this paragraph the Secretary of State shall take them into consideration before serving a notice under sub-paragraph (2) or (3) above.

(6) The Secretary of State shall not be obliged to disclose—

- (a) to the person concerned; or
- (b) where that person is proposed to be or has been appointed as managing director or chief executive, to the company,

any particulars of the ground on which he is considering the service of a notice under sub-paragraph (2) or (3) above or a notice of objection under the relevant section or, as the case may be, paragraph 2 above.

#### *Objection to existing controller*

4 (1) Where it appears to the Secretary of State that the criteria of sound and prudent management are not or may not be fulfilled in respect of a UK company by reason of the ability of a person who is a controller of the company to influence the company, he may—

- (a) where that person is the managing director or chief executive, serve on the company; and
- (b) in any other case, serve on that person,

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- a written notice of objection to that person continuing to be a controller of the company.
- (2) Before serving a notice of objection under this paragraph, the Secretary of State shall serve—
- (a) on the person concerned; and
  - (b) where that person is the managing director or chief executive, on the company, a preliminary written notice stating that the Secretary of State is considering serving a notice of objection under this paragraph.
- (3) A notice under sub-paragraph (2) above shall—
- (a) give particulars of the rights conferred by sub-paragraph (4) below; and
  - (b) specify the criteria of sound and prudent management which are not or may not be fulfilled in respect of the company.
- (4) A person served with a notice under sub-paragraph (2) above may, within the period of one month beginning with the day on which the notice is served—
- (a) make written representations to the Secretary of State; and
  - (b) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.
- (5) Where representations are made in accordance with this paragraph, the Secretary of State shall take them into consideration before serving a notice of objection.
- (6) The Secretary of State shall not be obliged to disclose to the person concerned or to the company any particulars of the ground on which he is considering the service of a notice of objection.
- (7) After a notice of objection has been served on a company in relation to a person who is a managing director or chief executive, the company shall forthwith remove that person from that office.

*Restrictions etc. as respects shareholdings*

- 5 (1) This paragraph applies where a person—
- (a) has contravened section 61 or 61A above by becoming a shareholder controller of a UK company, or by acquiring a notifiable holding in such a company;
  - (b) having become such a controller or acquired such a holding in contravention of section 61 or 61A above, continues to be such a controller or to retain that holding after being served with a notice of objection under paragraph 2 above;
  - (c) having been served with a notice imposing conditions under paragraph 3 above in a case where—
    - (i) a notice of objection to his becoming such a controller or acquiring such a holding would otherwise have been served under section 61 or 61A above, or
    - (ii) a notice of objection to his continuing to be such a controller or retaining such a holding would otherwise have been served under paragraph 2 above,

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has failed to comply with any of the conditions specified in the notice under paragraph 3 above; or

- (d) having been served with a notice of objection under paragraph 4 above to his continuing to be such a controller,

continues to be such a controller; and references in this paragraph to the person in breach shall be construed accordingly.

- (2) The Secretary of State may by notice in writing served on the person in breach direct that any specified shares to which this paragraph applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of or agreement to transfer the shares, or (in the case of unissued shares) any transfer of or agreement to transfer the right to be issued with the shares, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of the shares or in pursuance of any offer made to the holder of the shares;
- (d) except in a liquidation, no payment shall be made of any sums due from the company in respect of the shares, whether by way of a repayment of capital or otherwise.

- (3) The court may, on the application of the Secretary of State, by order direct that any specified shares to which this paragraph applies—

- (a) shall be sold; and
- (b) if they are for the time being subject to any restrictions under sub-paragraph (2) above, shall cease to be subject to those restrictions.

- (4) Where an order has been made under sub-paragraph (3) above the court may, on the application of the Secretary of State, make such further order relating to the sale or transfer of the shares as it thinks fit.

- (5) Where the shares are sold in pursuance of an order under this section—

- (a) the net proceeds of the sale shall be paid into court for the benefit of persons beneficially interested in them; and
- (b) any such person may apply to the court for the whole or any part of the proceeds to be paid to him.

- (6) This paragraph applies to—

- (a) all shares in the company which—
- (i) are held by the person in breach; and
- (ii) were not so held immediately before he became a shareholder controller of the company or, as the case may be, acquired a notifiable holding in the company; and
- (b) where the person in breach became such a controller or acquired such a holding as a result of the acquisition by him of shares or voting rights in another company, all shares in that company which—
- (i) are held by him; and
- (ii) were not so held immediately before he became such a controller or acquired such a holding.

- (7) Sub-paragraph (6) above shall have effect as if references to the person in breach acquiring a notifiable holding in the company were—

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- (a) in a case falling within paragraph (a), (b) or (c)(ii) of sub-paragraph (1) above, references to his doing so in contravention of section 61 or 61A above; and
  - (b) in a case falling within paragraph (c)(i) of sub-paragraph (1) above, references to his doing so after the service of the notice imposing conditions under paragraph 3 above.
- (8) A copy of the notice served on the person in breach under sub-paragraph (2) above shall be served on the company to whose shares or voting rights it relates.
- (9) The jurisdiction conferred by this paragraph shall be exercisable by the High Court and the Court of Session.

[<sup>F344</sup>SCHEDULE 2E]

#### INFORMATION FOR POLICY HOLDERS OF UK INSURERS AND EC COMPANIES

##### Textual Amendments

**F344** Sch 2E inserted (1.7.1994) by S.I. 1994/1696, reg. 40, Sch. 5

#### *Information before contract of long term insurance*

- 1 (1) Subject to sub-paragraph (2) below, this paragraph applies to a contract entered into by a UK or EC company or a member of Lloyd's the effecting of which constitutes—
- (a) the carrying on in the United Kingdom of long term business which is not reinsurance business; or
  - (b) the provision there of long term insurance.
- (2) This paragraph does not apply to a contract entered into by an authorised person the effecting of which constitutes the carrying on in the United Kingdom of investment business; and in this sub-paragraph expressions which are also used in the Financial Services Act 1986 <sup>F345</sup> have the same meanings as in that Act.
- (3) Before entering into a contract to which this paragraph applies, the company or member ("the insurer") shall furnish the other party to the contract in writing with the information required by sub-paragraph (4) below and—
- (a) in the case of a company, the information required by sub-paragraph (5) below; and
  - (b) in the case of a member, the information required by sub-paragraph (6) below.
- (4) The information required by this sub-paragraph is—
- (a) a definition of each benefit and option;
  - (b) the term of the contract and the means by which it may be terminated;
  - (c) the method of paying premiums and the duration of the payments;
  - (d) the method of calculating bonuses and the distribution of bonuses;

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- (e) an indication of surrender and paid-up values and the extent to which such values are guaranteed;
  - (f) an indication of the premiums for each benefit, whether a main or supplementary benefit;
  - (g) in the case of a contract for a unit-linked policy, a definition of the units to which benefits are linked and an indication of the nature of the underlying assets;
  - (h) information as to the following, namely—
    - (i) the arrangements with respect to the period within which the policy holder may cancel the contract;
    - (ii) the tax arrangements applicable to the policy to be effected by the contract;
    - (iii) the arrangements for handling any complaints concerning the contract, whether by the other party or any other person who is a life assured or beneficiary; and
    - (iv) any compensation or guarantee arrangements which will be available if the insurer is unable to meet its liabilities under the contract; and
  - (i) whether the parties to the contract are entitled to choose the law applicable to the contract and—
    - (i) if so, the law which the insurer proposes to choose; and
    - (ii) if not, the law which will be so applicable.
- (5) The information required by this sub-paragraph is—
- (a) the name and legal form of the company;
  - (b) the company's home State and, where appropriate, the member State of the branch through which the contract is to be entered into; and
  - (c) the address of the company's head office and, where appropriate, the address of the branch through which the contract is to be entered into.
- (6) The information required by this sub-paragraph is—
- (a) the name or number of the syndicate which is to enter into the contract and a statement that it is a syndicate of members of Lloyd's;
  - (b) a statement that the syndicate's home State is the United Kingdom and, where appropriate, the member State of the branch through which the contract is to be entered into; and
  - (c) the address of the syndicate in the United Kingdom and, where appropriate, the address of the branch through which the contract is to be entered into.
- (7) Any information required by sub-paragraph (4), (5) or (6) above shall be furnished in English except that, where the other party to the contract so requests, it may instead be furnished in an official language of a member State other than the United Kingdom.

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**Textual Amendments**

**F345** 1986 c.60.

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*Information during contract of long term insurance*

- 2
- (1) This paragraph applies where a UK or EC company or a member of Lloyd's has, on or after 1st July 1994, entered into a contract the effecting of which constitutes—
    - (a) the carrying on in the United Kingdom of long term business which is not reinsurance business; or
    - (b) the provision there of long term insurance.
  - (2) If during the term of the contract there is—
    - (a) any change in the information mentioned in paragraphs (a) to (g) of sub-paragraph (4) of paragraph 1 above; or
    - (b) in the case of a company, any change in the information mentioned in sub-paragraph (5) of that paragraph; or
    - (c) in the case of a member, any change in the information mentioned in sub-paragraph (6) of that paragraph,
 the company or member ("the insurer") shall inform the other party to the contract in writing of the effect of the change.
  - (3) If the contract provides for the payment of bonuses, the insurer shall, at least once in every calendar year except the first, inform the other party to the contract in writing of the amount of any bonus—
    - (a) which has become payable under the contract, and
    - (b) of which that party has not been previously informed under this sub-paragraph.
  - (4) There is a sufficient compliance with sub-paragraph (3) above if the insurer furnishes the other party to the contract with such information as will enable him to determine the amount of any such bonus as is mentioned in that sub-paragraph, or if the insurer informs that party of—
    - (a) the total value of the benefits (including bonuses) which have accrued under the contract; and
    - (b) the rates of bonus which have been declared since that party was previously informed under this sub-paragraph.
  - (5) In this paragraph "bonus" does not include a bonus the amount of which is specified in the contract.

*Information before contract of general insurance*

- 3
- (1) This paragraph applies to a contract entered into by a UK or EC company or a member of Lloyd's if—
    - (a) the effecting of the contract constitutes—
      - (i) the carrying on in the United Kingdom of general business which is not reinsurance business; or
      - (ii) the provision there of general insurance; and
    - (b) the risk covered by the contract is situated in the United Kingdom.



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- (2) Before entering into a contract to which this paragraph applies, the company or member (“the insurer”) shall, if the other party (or one of the other parties) to the contract is an individual, inform that party in writing—
  - (a) of any arrangements which exist for handling complaints concerning the contract including, where appropriate, the name and address of any body which deals with complaints from any party to the contract;
  - (b) that the existence of a complaints body does not affect any right of action which any party to the contract may have against the insurer; and
  - (c) as to whether the parties to the contract are entitled to choose the law applicable to the contract and—
    - (i) if so, of the law which the insurer proposes to choose; and
    - (ii) if not, of the law which will be so applicable.
- (3) If the information required by sub-paragraph (2) above is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that sub-paragraph if it is also furnished in writing as soon as practicable after that time.

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- (1) Subject to sub-paragraph (2) below, this paragraph applies to a contract to which paragraph 3 above applies.
- (2) This paragraph does not apply to a contract entered into by a UK company or a member of Lloyd’s unless the effecting of the contract constitutes the provision of general insurance in the United Kingdom.
- (3) Before entering into a contract to which this paragraph applies, the UK or EC company or the member of Lloyd’s (“the insurer”) shall, unless the contract is for the coverage of large risks only, inform the other party to the contract in writing of the member State in which is situated the establishment which will cover the risks; and any document issued to that party by the insurer shall also contain that information.
- (4) If the information required by sub-paragraph (3) above is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that sub-paragraph if it is also furnished in writing as soon as practicable after that time.
- (5) Any relevant document issued by the insurer in relation to a contract to which this paragraph applies shall state—
  - (a) the address of the establishment through which the risk is to be covered; and
  - (b) where the contract relates to relevant motor vehicle risks and the effecting of the contract constitutes the provision of insurance in the United Kingdom, the name and address of the claims representative.
- (6) In this paragraph “relevant document”, in relation to a contract to which this paragraph applies, means any proposal, policy or other document which, or statements contained in which, will or may bind the other party to the contract.

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## [<sup>F346</sup>SCHEDULE 2F]

### RECOGNITION IN THE UNITED KINGDOM OF EC AND EFTA COMPANIES]

#### Textual Amendments

**F346** Sch. 2F inserted (1.7.1994) by S.I. 1994/1696, reg. 45(2), Sch. 6

#### Modifications etc. (not altering text)

**C36** Sch. 2F: Power to contract out certain functions conferred (18.11.1998) by S.I. 1998/2842, arts. 2, 3, Sch. Pt. I para. 60

## PART I

### EC COMPANIES CARRYING ON BUSINESS ETC. IN THE UNITED KINGDOM

#### *Requirements for carrying on direct insurance business*

- 1 (1) An EC company shall not carry on direct insurance business of a class or part of a class through a branch in the United Kingdom unless—
  - (a) the company is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive to carry on insurance business of that class or part of a class; and
  - (b) the requirements of this paragraph have been complied with in respect of that branch.
- (2) The requirements of this paragraph are—
  - (a) that the supervisory authority in the company's home State has sent to the Secretary of State—
    - (i) a notice which contains the requisite details; and
    - (ii) a certificate in accordance with sub-paragraph (3) below; and
  - (b) that either—
    - (i) the Secretary of State has informed that authority of the conditions which, in the interest of the general good, must be complied with by the company in carrying on insurance business through the branch; or
    - (ii) the period of two months beginning with the day on which the Secretary of State received the notice and certificate mentioned in paragraph (a) above has elapsed.
- (3) A certificate given in respect of the company by the supervisory authority in its home State is in accordance with this sub-paragraph if it—
  - (a) attests that the company has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
    - (i) Articles 16 and 17 of the first general insurance Directive, and
    - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and

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- (b) indicates the classes of business which the company is authorised to carry on in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.
  - (4) The Secretary of State shall as soon as practicable—
    - (a) acknowledge receipt of the documents sent by the supervisory authority in the company's home State; and
    - (b) where necessary, send a copy of those documents and a note of the date of their receipt to every other authority which he knows is a connected UK authority.
  - (5) Any connected UK authority which receives any documents under sub-paragraph (4) (b) above shall, within one month of the date on which they were received, inform the Secretary of State in writing of such provisions of the Acts, rules and regulations applying to insurance companies which the authority regulates as, having regard to the insurance business mentioned in the documents, it considers appropriate.
- 2
  - (1) An EC company shall not change the requisite details of a branch—
    - (a) which has been established by it in the United Kingdom; and
    - (b) through which it carries on direct insurance business,unless the requirements of this paragraph have been complied with in relation to its making of the change.
  - (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are—
    - (a) that the company has given a notice to the Secretary of State, and to the supervisory authority in its home State, stating the details of the proposed change not less than one month before the change is to take place;
    - (b) that the Secretary of State has received from that authority a notice stating that it has approved the proposed change; and
    - (c) that either—
      - (i) the Secretary of State has informed that authority of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the company in carrying on insurance business through the branch; or
      - (ii) the period of two months beginning with the day on which the company gave the Secretary of State the notice under paragraph (a) above has elapsed.
  - (3) In the case of a change occasioned by circumstances beyond the company's control, the requirements of this paragraph are that the company shall as soon as practicable (whether before or after the change) give a notice to the Secretary of State, and to the supervisory authority in its home State, stating the details of the change.
  - (4) The Secretary of State shall as soon as practicable—
    - (a) acknowledge receipt of the documents sent under sub-paragraph (2) or (3) above;
    - (b) send a copy of those documents, and a note of the date of their receipt, to every other authority which he knows is a connected UK authority; and
    - (c) in the case of a notice under sub-paragraph (3) above, inform the supervisory authority in the home State of any consequential changes in the conditions

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which, in the interest of the general good, must be complied with by the company in carrying on insurance business through the branch.

*Requisite details for purposes of paragraphs 1 and 2*

- 3 The requisite details for the purposes of paragraphs 1 and 2 above are—
- (a) the name of the company;
  - (b) the address of the branch in the United Kingdom and confirmation that it is an address for service on the company's authorised agent;
  - (c) the name of the company's authorised agent;
  - (d) a scheme of operations prepared in accordance with such requirements as may be imposed by the supervisory authority in its home State; and
  - (e) in the case of a company which intends to cover relevant motor vehicle risks, confirmation that the company has become a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946).

*Requirements for carrying on reinsurance business*

- 4 (1) An EC company shall not carry on reinsurance business of any description through a branch in the United Kingdom unless—
- (a) the company is entitled under the law of its home State to carry on business of that description; and
  - (b) the requirements of this paragraph have been complied with in respect of that branch.
- (2) The requirements of this paragraph are—
- (a) that the company has served on the Secretary of State—
    - (i) a written notice stating its intention to carry on reinsurance business and containing the requisite details; and
    - (ii) a statement from the supervisory authority in its home State stating the classes of business which the company carries on and declaring that the company has the required margin of solvency or minimum guarantee fund; and
  - (b) that either—
    - (i) the Secretary of State has informed the company that it may begin to carry on the reinsurance business; or
    - (ii) the period of three months beginning with the date of service of that notice has expired.
- 5 (1) An EC company shall not change the requisite details of a branch—
- (a) which has been established by it in the United Kingdom; and
  - (b) through which it carries on reinsurance business,
- unless the requirements of this paragraph have been complied with in relation to its making of the change.

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- (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are that the company has given a notice to the Secretary of State stating the details of the proposed change not less than one month before the change is to take place.
- (3) In the case of a change occasioned by circumstances beyond the company's control, the requirements of this paragraph are that the company shall as soon as practicable (whether before or after the change) give a notice to the Secretary of State stating the details of the change.

*Requisite details for purposes of paragraphs 4 and 5*

- 6 The requisite details for the purposes of paragraphs 4 and 5 above are—
  - (a) the name of the company;
  - (b) the address of the branch in the United Kingdom and confirmation that it is an address for service on the company's authorised agent;
  - (c) the name of the company's authorised agent;
  - (d) a scheme of operations containing particulars of the reinsurance business to be carried on through the branch.

*Power of Secretary of State where notice given under paragraph 4 or 5*

- 7 (1) This paragraph applies where the Secretary of State receives from an EC company a notice given in accordance with paragraph 4 or 5 above.
- (2) The Secretary of State may, before the end of the period of three months beginning with the day on which he receives the notice, direct that Part II of this Act shall apply to the company.
- (3) Before giving a direction under sub-paragraph (2) above, the Secretary of State shall serve on the company a written notice stating—
  - (a) that he is considering giving a direction and particulars of the ground on which he is considering it; 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 and Industry appointed for the purpose by the Secretary of State.
- (4) Where representations are made in response to a notice under sub-paragraph (3) above, the Secretary of State shall take them into account before giving a direction.

*Requirements for providing insurance*

- 8 (1) An EC company shall not provide insurance of a class or part of a class in the United Kingdom unless the company is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive to carry on insurance business of that class or part of a class and either—

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- (a) the requirements of this paragraph have been complied with in respect of that insurance; or
  - (b) the insurance is provided by the company participating in a Community co-insurance operation otherwise than as the leading insurer.
- (2) The requirements of this paragraph are—
- (a) that the supervisory authority in the company’s home State has sent to the Secretary of State a notice containing the requisite details and a certificate in accordance with sub-paragraph (3) below; and
  - (b) that the company has been notified by that authority that it has sent such a notice to the Secretary of State.
- (3) A certificate is in accordance with this sub-paragraph if it—
- (a) attests that the company has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
    - (i) Articles 16 and 17 of the first general insurance Directive, and
    - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
  - (b) indicates the classes of business which the company is authorised to carry on in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.
- 9 (1) An EC company shall not change the requisite details relating to the provision of insurance in the United Kingdom unless the requirements of this paragraph have been complied with in relation to its making of the change.
- (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are—
- (a) that the company has given a notice to the supervisory authority in its home State stating the details of the proposed change; and
  - (b) that that authority has passed to the Secretary of State the information contained in that notice.
- (3) In the case of a change occasioned by circumstances beyond the company’s control, the requirements of this paragraph are that the company shall, as soon as practicable, give a notice to the supervisory authority in its home State stating the details of the change.

*Requisite details for purposes of paragraphs 8 and 9*

- 10 The requisite details for the purposes of paragraph 8 and 9 are—
- (a) the name and address of the company;
  - (b) the nature of the risks or commitments which the company proposes to cover in the United Kingdom; and
  - (c) in the case of a company which intends to cover relevant motor vehicle risks—
    - (i) the name and address of the claims representative, and
    - (ii) confirmation that the company has become a member of the Motor Insurers’ Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946).

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### *Additional requirements for covering relevant motor vehicle risks*

- 11 An EC company shall not provide insurance in the United Kingdom to cover relevant motorvehicle risks unless—
- (a) it is a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946); and
  - (b) either it has appointed a claims representative or the insurance is provided by it participating in a Community co-insurance operation otherwise than as the leading insurer.

### *Power to prevent disposal of assets*

- 12 (1) The powers conferred on the Secretary of State by section 40A above shall be exercisable in relation to an EC company if the supervisory authority in the company's home State has, in accordance with Article 20(5) of the first general insurance Directive or Article 24(5) of the first long term insurance Directive, requested the Secretary of State to prohibit the free disposal of assets of that company and has confirmed—
- (a) that the company has failed to comply with the requirements of Article 15 of the first general insurance Directive or Article 17 of the first long term insurance Directive;
  - (b) that the solvency margin of the company has fallen below the minimum required by Article 16(3) of the first general insurance Directive or Article 19 of the first long term insurance Directive; or
  - (c) that the solvency margin of the company has fallen below the guarantee fund as defined in Article 17 of the first general insurance Directive or Article 20 of the first long term insurance Directive.
- (2) Those powers shall also be so exercisable if the Secretary of State is notified by that authority that the company's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term insurance Directive.

### *Powers to obtain information*

- 13 (1) Subject to sub-paragraph (2) below, the powers conferred by section 44 above on the Secretary of State or persons authorised by him shall be exercisable in respect of an EC company if either—
- (a) the following requirements are fulfilled, namely—
    - (i) the supervisory authority in the company's home State has made a written request to the Secretary of State to obtain information from the company; and
    - (ii) the Secretary of State is satisfied that the information to be acquired is necessary to enable that supervisory authority to perform its obligations under Article 19 of the first general insurance Directive or Article 23 of the first long term insurance Directive; or

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- (b) the Secretary of State considers the exercise of those powers in respect of that company to be necessary to enable him to perform his functions under this Act.
  - (2) The Secretary of State shall not exercise the powers conferred by subsection (2A), (2B) or (4A) of section 44 above in respect of an EC company unless the requirements of sub-paragraph (1)(a) above are fulfilled.
- 14 (1) The powers conferred by section 44 above on the Secretary of State shall be exercisable in respect of an EC company by a person authorised by the supervisory authority in the company's home State if—
- (a) the information to be requested by that person is necessary to enable the authority to perform its obligations in respect of the company under Article 19 of the first general insurance Directive or Article 23 of the first long term insurance Directive; and
  - (b) the authority has notified the Secretary of State in writing of that person's intention to exercise those powers.
- (2) An officer or agent of the Secretary of State may accompany a person so authorised while he is acting in the exercise of those powers.

VALID FROM 05/01/1998

[<sup>F347</sup>14A Paragraphs 13 and 14 above shall apply in relation to the powers conferred by section 44 above on the Secretary of State or persons authorised by him as they apply in relation to the powers conferred by that section on the Treasury or persons authorised by them; and for those purposes the references in those paragraphs to the Treasury shall be construed as references to the Secretary of State.]

**Textual Amendments**

**F347** Sch. 2F para. 14A inserted (5.1.1998) by S.I. 1997/2781, art. 8, Sch. Pt. I para. 79 (with art. 7)

*Residual power to protect policy holders*

- 15 The Secretary of State may exercise his powers under section 45 above in relation to an EC company if the supervisory authority in the company's home State—
- (a) has informed the Secretary of State that the company's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term Directive; and
  - (b) in accordance with that Article, has requested the Secretary of State to take measures in the United Kingdom to safeguard the interests of policy holders of the company.



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### *Powers of intervention*

- 16
- (1) Where it appears to the Secretary of State that an EC company has failed to comply with any provision of law applicable to its insurance activities in the United Kingdom, he may require it to take such steps as he may specify to comply with that provision.
  - (2) If the company fails to comply with a requirement under sub-paragraph (1) above, the Secretary of State shall notify the supervisory authority in the home State.
  - (3) If, after the Secretary of State has taken the action mentioned in sub-paragraphs (1) and (2) above, the company persists in contravening the provision in question, the Secretary of State may, after informing the supervisory authority of the home State, direct the company to cease to carry on insurance business or provide insurance, or to cease to carry on insurance business or provide insurance of any specified description, in the United Kingdom.
  - (4) The Secretary of State may exercise his powers under sub-paragraph (3) above without the conditions there mentioned being fulfilled if he considers that those powers should be exercised as a matter of urgency.
  - (5) After giving a direction under this paragraph, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.
  - (6) A direction under this paragraph does not prevent the company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.
  - (7) A requirement or direction under this paragraph may be varied or revoked by the Secretary of State.

### *Power to withdraw recognition*

- 17
- (1) This paragraph applies where—
    - (a) an EC company is carrying on insurance business or providing insurance in the United Kingdom; and
    - (b) the Secretary of State is notified by the supervisory authority in the home State that the company's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term insurance Directive.
  - (2) The Secretary of State may direct the company to cease to carry on insurance business or provide insurance, or to cease to carry on insurance business or provide insurance of a specified description, in the United Kingdom through all, or any specified, establishments.
  - (3) Where the Secretary of State receives notification under sub-paragraph (1) above he shall forthwith inform the connected UK authorities of its receipt.
  - (4) After giving such a direction, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.

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- (5) A direction under this paragraph does not prevent the company from effecting or carrying out a contract of insurance in pursuance of a term of a subsisting contract of insurance.

## PART II

### EFTA COMPANIES PROVIDING INSURANCE IN UNITED KINGDOM

#### *Documents to be furnished to the Secretary of State*

- 18 (1) An EFTA company which intends to provide insurance in the United Kingdom shall send to the Secretary of State—
- (a) a certificate, issued by the supervisory authority in the EFTA State in which the company's head office is situated, which attests—
    - (i) that the company possesses for its activities as a whole the minimum solvency margin calculated in accordance with the relevant provisions; and
    - (ii) that the company's authorisation in accordance with Article 7(1) of the relevant Directive enables the company to operate outside the EEA State in which the establishment through which the insurance will be provided is situated ("the EEA State of establishment");
  - (b) a certificate, issued by the supervisory authority in the EEA State of establishment, which—
    - (i) indicates the classes of insurance business which the company has been authorised to undertake through that establishment;
    - (ii) states that the authority does not object to the company providing insurance in the United Kingdom; and
    - (iii) where the company intends to provide long term insurance in the United Kingdom, confirms that all the commitments which the company intends to cover fall within the classes of insurance business which the company has been authorised to undertake through that establishment;
  - (c) a statement by the company of the nature of the risks or commitments which it proposes to cover in the United Kingdom;
  - (d) a notice stating the address of the company for the purpose of service of documents under this Schedule; and
  - (e) in the case of a company which intends to provide insurance to cover relevant motor vehicle risks—
    - (i) a notice stating the name and address of the claims representative; and
    - (ii) a declaration that the company has become a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946);
 and the company shall not provide insurance in the United Kingdom before the date certified as that on which those documents were received by the Secretary of State.

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- (2) Where an EFTA company wishes to provide insurance in the United Kingdom in respect of risks or commitments other than those mentioned in the statement given in accordance with sub-paragraph (1)(c) above, it shall give written notice to the Secretary of State amending that statement; and it shall not provide insurance in the United Kingdom in respect of such risks or commitments before the date certified as that on which written notice of the amendment was received by the Secretary of State.
- (3) An EFTA company providing insurance in the United Kingdom shall notify the Secretary of State in writing of—
  - (a) any change of address of the company for the purpose of the service of documents; and
  - (b) where it provides insurance to cover relevant motor vehicle risks, any change of name or address of the claims representative.
- (4) In sub-paragraph (1) above “the relevant Directive” and “the relevant provisions” mean respectively—
  - (a) if the company intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;
  - (b) if the company intends to cover commitments, the first long term insurance Directive and Articles 18, 19 and 20 of that Directive.
- (5) Any insurance which is provided by the company participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

*Additional requirements with respect to relevant motor vehicle risks*

- 19 An EFTA company shall not provide insurance in the United Kingdom to cover relevant motor vehicle risks unless—
- (a) it is a member of the Motor Insurers’ Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946); and
  - (b) either it has appointed a claims representative or the insurance is provided by it participating in a Community co-insurance operation otherwise than as the leading insurer.

*Powers of intervention*

- 20
- (1) Where it appears to the Secretary of State that an EFTA company providing insurance in the United Kingdom has failed to comply with any provision of this Act, he may require it to take such steps as he may specify to comply with that provision.
  - (2) If the company fails to comply with a requirement under sub-paragraph (1) above, the Secretary of State shall notify the supervisory authority in the EEA State in which the establishment through which the insurance is provided is situated.
  - (3) If the company persists in contravening a provision which has been the subject of a requirement under sub-paragraph (1) above, the Secretary of State may, after informing that supervisory authority, direct the company to cease to provide insurance, or insurance of any specified description, in the United Kingdom.

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- (4) After giving such a direction, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.
- (5) A direction under this paragraph does not prevent the company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.
- (6) A requirement or direction under this paragraph may be varied or revoked by the Secretary of State.

#### *Power to require information*

- 21        The Secretary of State may, for the purpose of facilitating the exercise by him of his functions under paragraph 20 above, require an EFTA company providing insurance in the United Kingdom to furnish him, at specified times or intervals with information about such matters as he may specify being, if he so requires, information verified in a specified manner.

#### *Withdrawal of authorisation*

- 22        (1) Where an EFTA company is providing insurance in the United Kingdom and the Secretary of State is notified by the supervisory authority in the EEA State in which the establishment through which the insurance is provided, or the company's head office, is situated that the authorisation of the company has been withdrawn in accordance with—
- (a) Article 22 of the first general insurance Directive, or
  - (b) Article 26 of the first long term insurance Directive,
- he may direct the company to cease to provide insurance, or insurance of any specified description, in the United Kingdom through all, or any specified, establishments.
- (2) After giving such a direction, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.
  - (3) A direction under this paragraph does not prevent the company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

### PART III

#### EFTA COMPANIES PROVIDING INSURANCE THROUGH ESTABLISHMENTS IN THE UNITED KINGDOM

#### *Notification to Secretary of State*

- 23        (1) Where an EFTA company intends to provide insurance through an establishment in the United Kingdom, it shall before doing so notify the Secretary of State of its intention.
- (2) The notification shall indicate—

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- (a) the EEA State in which the insurance is to be provided, and
  - (b) the nature of the risks or commitments which the company proposes to cover.
- (3) Where the company intends to provide insurance in more than one EEA State, the information specified above may be contained in a single notification but must be set out separately in relation to each such State.
- (4) Where a company has duly notified the Secretary of State of its intention to provide insurance in an EEA State where administrative authorisation is required for the provision of insurance, then, if the original notification related—
- (a) only to risks or commitments in respect of which such authorisation is required, or
  - (b) only to risks or commitments in respect of which such authorisation is not required,

#### *Issue of certificates by Secretary of State*

- 24 (1) An EFTA company which intends to provide insurance through an establishment in the United Kingdom may apply to the Secretary of State for a certificate—
- (a) indicating the classes of insurance which the company is authorised to carry on in the United Kingdom, and
  - (b) stating that the Secretary of State does not object to the company providing the insurance.
- (2) If it appears to the Secretary of State that a certificate applied for under subparagraph (1) above ought to be issued, he shall issue the certificate accordingly.
- (3) If the Secretary of State refuses to issue a certificate, he shall inform the company in writing of his decision and of the reasons for it.

## **PART IV**

### **SUPPLEMENTAL**

#### *Offences*

- 25 (1) An EC company commits an offence if—
- (a) it carries on insurance business in the United Kingdom in contravention of paragraph 1 or 4 above;
  - (b) in contravention of paragraph 2 or 5 above, it changes the requisite details of a branch established by it in the United Kingdom;
  - (c) it provides insurance in the United Kingdom in contravention of paragraph 8 or 11 above;
  - (d) in contravention of paragraph 9 above, it changes the requisite details relating to the provision of insurance in the United Kingdom; or
  - (e) it makes default in complying with, or with a requirement imposed under, any other provision of Part I of this Schedule.
- (2) An EFTA company commits an offence if—

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- (a) it provides insurance in the United Kingdom in contravention of paragraph 18 or 19 above; or
  - (b) it makes default in complying with, or with a requirement imposed under, any other provision of Part II or III of this Schedule.
- (3) A person commits an offence if—
- (a) in purported compliance with a requirement under paragraph 13, 14 or 21 above, he furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular; or
  - (b) he causes or permits to be included in a document required by paragraph 1, 2, 4, 8, 9 or 18 above to be sent to the Secretary of State a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.
- (4) A person committing an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Interpretation etc.*

26 (1) In this Schedule—

“authorised agent”, in relation to an EC company, means an agent or employee of the company who has authority—

- (a) to bind the company in its relations with third parties; and
- (b) to represent the company in its relations with the supervisory authorities and courts in the United Kingdom;

“connected UK authority”, in relation to an EC company, means an authority in the United Kingdom which has regulatory functions in relation to the insurance business which the company proposes to carry on, or the insurance which it intends to provide, in the United Kingdom;

“direct insurance business” means insurance business other than reinsurance business.

(2) In this Schedule—

- (a) references in Part I to the provision of insurance in the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in the United Kingdom through an establishment in another member State;
- (b) references in Part II to the provision of insurance in the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in the United Kingdom through an establishment in another EEA State;
- (c) references in Part III to the provision of insurance through an establishment in the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in another EEA State through an establishment in the United Kingdom.

(3) In sub-paragraph 2(b) and (c) above—

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- (a) references to a risk do not include a risk falling within any of the following classes of Schedule 2 to this Act (general business), namely—
    - class 1, so far as it relates to accidents at work;
    - classes 9 and 13, so far as they relate to the compulsory insurance of building works;
    - class 13, so far as it relates to nuclear civil liability and pharmaceutical product liability; and
  - (b) references to a commitment do not include a commitment falling within any of classes VII, VIII and IX of Schedule 1 to this Act (long term insurance).
- (4) An EC or EFTA company shall not be regarded for the purposes of Parts I and II of this Act as carrying on insurance business in the United Kingdom by reason only of the fact that it provides insurance in the United Kingdom.

### *Gibraltar*

- 27 (1) Except in its application to a Gibraltar company, this Schedule shall apply as if Gibraltar were part of the United Kingdom.
- (2) In this paragraph and paragraphs 28 and 29 below “Gibraltar company” means an insurance company whose head office is in Gibraltar.
- 28 (1) Where, in the case of an EC company which is not a Gibraltar company, Gibraltar requirements corresponding to those of paragraph 1 above have been complied with in respect of a branch, the requirements of that paragraph, and those of paragraph 2 above, shall not apply in respect of that branch.
- (2) Where, in the case of an EC company which is not a Gibraltar company, Gibraltar requirements corresponding to those of paragraph 4 above have been complied with in respect of a branch, the requirements of that paragraph, and those of paragraph 5 above, shall not apply in respect of that branch.
- (3) Where, in the case of an EC company which is not a Gibraltar company, Gibraltar requirements corresponding to those of paragraph 8 have been complied with in respect of the provision of any insurance, the requirements of that paragraph, and those of paragraph 9 above, shall not apply in respect of the provision of that insurance.
- (4) Where, in the case of an EFTA company, Gibraltar requirements corresponding to those of paragraph 18 have been complied with in respect of the provision of any insurance, the requirements of that paragraph shall not apply in respect of the provision of that insurance.
- (5) In this paragraph “Gibraltar requirements” means requirements imposed under any provision of the law of Gibraltar.
- 29 (1) Where, in the case of an EC company which is not a Gibraltar company—
- (a) the requirements of paragraph 1 or 4 above are complied with in respect of a branch; and

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- (b) the requisite details for the purposes of that paragraph indicate that the company intends to carry on insurance business in Gibraltar,  
the Secretary of State shall send to the supervisory authority in Gibraltar a notice which contains those details.
- (2) Where, in the case of an EC company which is not a Gibraltar company—
- (a) the requirements of paragraph 2 or 5 above are complied with in respect of a branch; and
- (b) the changes in requisite details for the purposes of that paragraph indicate that the company intends to carry on insurance business in Gibraltar,  
the Secretary of State shall send to the supervisory authority in Gibraltar a notice which contains details of the changes.
- (3) Where, in the case of an EC company which is not a Gibraltar company, the requirements of paragraph 8 above are complied with in respect of the provision of any insurance, the Secretary of State shall send to the supervisory authority in Gibraltar a notice which contains the requisite details for the purposes of that paragraph.
- (4) Where, in the case of an EFTA company, the requirements of paragraph 18 above are complied with in respect of the provision of any insurance, the Secretary of State shall send to the supervisory authority in Gibraltar a notice which contains the requisite details for the purposes of that paragraph.

## [<sup>F348</sup>SCHEDULE 2G]

### RECOGNITION IN OTHER EEA STATES OF UK INSURERS

#### Textual Amendments

**F348** Sch. 2G inserted (1.7.1994) by S.I. 1994/1696, reg. 46(2), Sch. 7

#### Modifications etc. (not altering text)

**C37** Sch. 2G: Power to contract out functions conferred (18.11.1998) by S.I. 1998/2842, arts. 2, 3, Sch. Pt. I para. 61

## PART I

### UK INSURERS CARRYING ON BUSINESS ETC. IN OTHER MEMBER STATES

#### *Requirements for carrying on direct insurance business*

- 1 (1) A UK insurer shall not carry on direct insurance business of a class or part of a class through a branch in a member State other than the United Kingdom unless—
- (a) the insurer is authorised under section 3 or 4 of this Act to carry on insurance business of that class or part of a class or is a member of Lloyd's; and



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- (b) the requirements of this paragraph have been complied with in respect of that branch.
- (2) The requirements of this paragraph are—
- (a) that the insurer has given to the Secretary of State a notice containing the requisite EC details and, in the case of a company, the requisite UK details;
  - (b) that the Secretary of State has given to the supervisory authority of the member State in which the branch is to be established (“the member State of the branch”)—
    - (i) a notice which contains the requisite EC details; and
    - (ii) a certificate in accordance with sub-paragraph (3) below; and
  - (c) that either—
    - (i) that authority has informed the Secretary of State of the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or
    - (ii) the period of two months beginning with the day on which the Secretary of State gave that authority the certificate mentioned in paragraph (b) above has elapsed.
- (3) A certificate is in accordance with this sub-paragraph if it—
- (a) attests that the insurer has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
    - (i) Articles 16 and 17 of the first general insurance Directive, and
    - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
  - (b) indicates the classes of insurance business which the insurer is authorised to carry on in the United Kingdom.
- (4) The Secretary of State shall, within the period of three months beginning with the date on which the insurer’s notice was received—
- (a) give the notice and certificate referred to in sub-paragraph (2)(b) above; or
  - (b) refuse to give either or both of those documents.
- (5) The Secretary of State shall, within the period of three months referred to in sub-paragraph(4) above, notify the insurer—
- (a) that he has given the notice and certificate referred to in sub-paragraph (2) (b) above, stating the date on which he did so; or
  - (b) that he has refused to give either or both of those documents, stating the reasons for the refusal.
- (6) In the case of a UK company, the Secretary of State shall not refuse to give the notice referred to in sub-paragraph (2)(b) above unless, having regard to the business to be carried on through the branch, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.
- (7) Where the supervisory authority of the member State of the branch has informed the Secretary of State as mentioned in sub-paragraph (2)(c)(i) above, he shall forward the information to the insurer.
- 2 (1) A UK insurer shall not change the requisite EC details of a branch—

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- (a) which has been established by it in a member State other than the United Kingdom (“the member State of the branch”); and
  - (b) through which it carries on direct insurance business,
- unless the requirements of this paragraph have been complied with in relation to its making of the change.
- (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are—
- (a) that the insurer has given a notice to the Secretary of State, and to the supervisory authority in the member State of the branch, stating the details of the proposed change not less than one month before the change is to take place;
  - (b) that the Secretary of State has sent to that authority a notice in accordance with sub-paragraph (4)(a) below; and
  - (c) that either—
    - (i) that authority has informed the insurer of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or
    - (ii) the period of two months beginning with the day on which the insurer gave that authority the notice of the proposed change in accordance with paragraph (a) above has elapsed.
- (3) In the case of a change occasioned by circumstances beyond the insurer’s control, the requirements of this paragraph are that the insurer shall as soon as practicable (whether before or after the change) give a notice to the Secretary of State, and to the supervisory authority in the member State of the branch, stating the details of the change.
- (4) The Secretary of State shall, as soon as practicable after receiving a notice under sub-paragraph(2)(a) above—
- (a) give notice to the supervisory authority in the member State of the branch informing it of the proposed change; or
  - (b) refuse to give such notice.
- (5) The Secretary of State shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the insurer—
- (a) that he has given the notice referred to in that sub-paragraph, stating the date on which he did so; or
  - (b) that he refused to give the notice, stating the reasons for that refusal.
- (6) In the case of a UK company, the Secretary of State shall not refuse to give the notice referred to in sub-paragraph (4)(a) above unless, having regard to the proposed change, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.
- 3 (1) A UK company shall not change the requisite UK details of a branch—
- (a) which has been established by it in a member State other than the United Kingdom; and
  - (b) through which it carries on direct insurance business,
- unless the requirements of this paragraph have been complied with in relation to its making of the change.

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- (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are that the company has given a notice to the Secretary of State stating the details of the proposed change at least one month before the change is effected.
- (3) In the case of a change occasioned by circumstances beyond the company's control, the requirements of this paragraph are that the company shall as soon as practicable (whether before or after the change) give a notice to the Secretary of State stating the details of the change.

*Requisite details for purposes of paragraphs 1 to 3*

- 4 (1) The requisite EC details for the purposes of paragraphs 1 and 2 above are—
  - (a) the member State in which the branch is to be or has been established (“the member State of the branch”);
  - (b) the address of the branch and confirmation that it is an address for service on the insurer's authorised agent;
  - (c) the name of the insurer's authorised agent and, in the case of a member of Lloyd's, confirmation that the authorised agent has power to accept service of proceedings on behalf of Lloyd's;
  - (d) the classes or parts of classes of business to be carried on, and nature of the risks or commitments to be covered, in the member State of the branch;
  - (e) details of the structural organisation of the branch;
  - (f) the guiding principles as to reinsurance of business to be carried on in the member State of the branch, including the insurer's maximum retention per risk or event after all reinsurance ceded;
  - (g) estimates of the following, namely—
    - (i) the costs of installing administrative services and the organisation for securing business in the member State of the branch;
    - (ii) the resources available to cover those costs; and
    - (iii) if risks within class 18 of Schedule 2 to this Act are to be covered, the resources available for providing assistance;
  - (h) for each of the first three financial years following the establishment of the branch—
    - (i) estimates of the insurer's margin of solvency and the margin of solvency required, and a statement showing how both have been calculated;
    - (ii) in the case of an insurer which intends to carry on long term business, the details mentioned in sub-paragraph (2) below as respects the business to be carried on in the member State of the branch; and
    - (iii) in the case of an insurer which intends to carry on general business, the details mentioned in sub-paragraph (3) below as respects the business to be so carried on;
  - (i) in the case of an insurer which intends to cover relevant motor vehicle risks, confirmation that it has become a member of the national bureau and the national guarantee fund in the member State of the branch; and
  - (j) in the case of an insurer which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.

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- (2) The details referred to in sub-paragraph (1)(h)(ii) above are—
- (a) a statement showing, on both optimistic and pessimistic bases, for each type of contract or treaty—
    - (i) the number of contracts or treaties expected to be issued;
    - (ii) the total premium income, both gross and net of reinsurance ceded;
    - (iii) the total sums assured or the total amounts payable each year by way of annuity;
  - (b) a statement setting out, on both optimistic and pessimistic bases, detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions; and
  - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (3) The details referred to in sub-paragraph (1)(h)(iii) above are—
- (a) estimates relating to expenses of management (other than costs of installation), and in particular those relating to current general expenses and commissions;
  - (b) estimates relating to premiums or contributions (both gross and net of all reinsurance ceded) and to claims (after all reinsurance recoveries); and
  - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (4) The requisite UK details for the purposes of paragraphs 1 and 3 above are—
- (a) the names of the company’s managers and main agents in the member State of the branch;
  - (b) particulars of any association which exists or is proposed to exist between—
    - (i) the directors and the controllers of the company; and
    - (ii) any person who will act as an insurance broker, agent, loss adjuster or reinsurer for the company in the member State of the branch;
  - (c) the names of the principal reinsurers of business to be carried on in the member State of the branch;
  - (d) the sources of business in the member State of the branch (for example, insurance brokers, agents, own employees or direct selling) with the approximate percentage expected from each of those sources;
  - (e) copies or drafts of the following, namely—
    - (i) any separate reinsurance treaties covering business to be written in the member State of the branch;
    - (ii) any standard agreements which the company will enter into with brokers or agents in the member State of the branch;
    - (iii) any agreements which the company will enter into with persons (other than employees of the company) who will manage the business to be carried on in the member State of the branch;
  - (f) in the case of a company which intends to carry on long term business—
    - (i) the technical bases which the actuary appointed in accordance with section 19 above proposes to use for each class of business to be carried on in the member State of the branch, including the bases needed for calculating premium rates and mathematical reserves;

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- (ii) a statement by the actuary so appointed as to whether he considers that the premium rates which will be used in the member State of the branch are suitable;
    - (iii) a statement by that actuary as to whether he agrees with the information provided under sub-paragraphs (1)(f) and (2)(b) and (c) above; and
    - (iv) the technical bases used to calculate the statements and estimates referred to in sub-paragraph (2) above; and
  - (g) in the case of a company which intends to carry on general business, copies or drafts of any agreements which the company will have with main agents in the member State of the branch.
- (5) In this paragraph “authorised agent” means an agent or employee of the insurer who has authority—
  - (a) to bind the insurer in its relations with third parties; and
  - (b) to represent the insurer in its relations with supervisory authorities and courts in the member State of the branch.

#### *Requirements for providing insurance*

- 5 (1) A UK insurer shall not provide insurance of any class or part of a class in a member State other than the United Kingdom unless the insurer is authorised under section 3 or 4 above to carry on insurance of that class or part of a class or is a member of Lloyd’s and either—
- (a) the requirements of this paragraph have been complied with in relation to the provision of the insurance in that member State; or
  - (b) the insurance is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer.
- (2) The requirements of this paragraph are—
- (a) that the insurer has given to the Secretary of State a notice containing the requisite details; and
  - (b) that the Secretary of State has given to the supervisory authority in the member State in which the insurance is to be provided—
    - (i) a notice which contains the requisite details; and
    - (ii) a certificate in accordance with sub-paragraph (3) below.
- (3) A certificate is in accordance with this sub-paragraph if it—
- (a) attests that the insurer has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
    - (i) Articles 16 and 17 of the first general insurance Directive, and
    - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
  - (b) indicates the classes of insurance business which the insurer is authorised to carry on in the United Kingdom.
- (4) Where the insurer intends to provide insurance in more than one member State, the requisite details may be contained in a single notification but must be set out separately in relation to each member State.

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- (5) The Secretary of State shall, within the period of one month beginning with the date on which the insurer's notice was received—
    - (a) give the notice and certificate referred to in sub-paragraph (2)(b) above to the supervisory authority in the member State in which the insurer intends to provide insurance; or
    - (b) refuse to give either or both of those documents.
  - (6) The Secretary of State shall, within the period of one month referred to in sub-paragraph (5) above, notify the insurer—
    - (a) that he has given the notice and certificate referred to in sub-paragraph (2)(b) above to the supervisory authority in the member State in which the insurer intends to provide insurance, stating the date on which he did so; or
    - (b) that he has refused to give either or both those documents, stating the reasons for the refusal.
  - (7) In the case of a UK company, the Secretary of State shall not refuse to give the notice referred to in sub-paragraph (2)(b) above unless, having regard to the insurance to be provided in the member State, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.
- 6
- (1) A UK insurer shall not change the requisite details of the provision of insurance in a member State other than the United Kingdom unless the requirements of this paragraph have been complied with in relation to its making of the change.
  - (2) The requirements of this paragraph are—
    - (a) that the insurer has given a notice to the Secretary of State stating the details of the proposed change;
    - (b) that the Secretary of State has sent to the supervisory authority in the member State in which the insurance is provided a notice in accordance with sub-paragraph (4)(a) below.
  - (3) In the case of a change occasioned by circumstances beyond the insurer's control, the requirements of this paragraph are that the insurer shall as soon as practicable give a notice to the Secretary of State stating the details of the change.
  - (4) The Secretary of State shall, as soon as practicable after receiving a notice under sub-paragraph (2)(a) above either—
    - (a) give notice to the supervisory authority in the member State in which the insurance is provided informing it of the proposed change; or
    - (b) refuse to give such notice.
  - (5) The Secretary of State shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the insurer—
    - (a) that he has given the notice referred to in that sub-paragraph, stating the date on which he did so; or
    - (b) that he has refused to give the notice, stating the reasons for the refusal.
  - (6) In the case of a UK company, the Secretary of State shall not refuse to give the notice referred to in sub-paragraph (4)(a) above unless, having regard to the proposed change, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

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*Requisite details for purposes of paragraphs 5 and 6*

- 7 The requisite details for the purposes of paragraphs 5 and 6 above are—
- (a) the member State in which the insurance is to be provided;
  - (b) the nature of the risks or commitments which the insurer proposes to cover in that State;
  - (c) in the case of an insurer which intends to provide insurance to cover relevant motor vehicle risks—
    - (i) a notice stating the name and address of the claims representative; and
    - (ii) a declaration that the insurer has become a member of the national bureau and the national guarantee fund in that State; and
  - (d) in the case of an insurer which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.

*Requirement to notify cessation of insurance business etc.*

- 8 (1) A UK insurer which has ceased—
- (a) to carry on direct insurance business through a branch in a member State other than the United Kingdom; or
  - (b) to provide insurance in such a member State,
- shall as soon as practicable notify the Secretary of State in writing that it has done so.
- (2) Any insurance which is provided by the insurer participating in a Community co-insuranceoperation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

**PART II**

UK INSURERS PROVIDING INSURANCE IN EFTA STATES

*Notification to Secretary of State*

- 9 (1) Where a UK insurer intends to provide insurance in an EFTA State, it shall before doing so notify the Secretary of State in writing of its intention.
- (2) The notification shall indicate—
- (a) the EFTA State in which the insurance is to be provided,
  - (b) the EEA State in which is situated the establishment through which the insurance will be provided (“the EEA State of establishment”), and
  - (c) the nature of the risks or commitments which the insurer proposes to cover.
- (3) Where the insurer intends to provide insurance in more than one EFTA State, the information specified above may be contained in a single notification but must be set out separately in relation to each such State.

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- (4) Where a UK insurer has duly notified the Secretary of State of its intention to provide insurance in an EFTA State where administrative authorisation is required for the provision of insurance, then, if the original notification related—
- (a) only to risks or commitments in respect of which such authorisation is required, or
  - (b) only to risks or commitments in respect of which such authorisation is not required,
- and the insurer subsequently intends to extend its activities to risks falling within the other category, it shall before doing so comply with sub-paragraphs (1) to (3) above in relation to those risks or commitments.
- (5) Any insurance which is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

*Issue of certificates by Secretary of State*

- 10 (1) A UK insurer which intends to provide insurance in an EFTA State may apply to the Secretary of State for a certificate—
- (a) attesting that the insurer possesses for its activities as a whole the minimum solvency margin calculated in accordance with the relevant provisions;
  - (b) indicating the classes of business which the insurer is authorised to carry on in the United Kingdom;
  - (c) stating that the Secretary of State does not object to the insurer providing the insurance; and
  - (d) in the case of a company, attesting that the company's authorisation to carry on business in the United Kingdom, issued in accordance with Article 7(1) of the relevant Directive, enables the company to carry on business outside the EEA State of establishment.
- (2) If it appears to the Secretary of State that a certificate applied for under sub-paragraph (1) above ought to be issued, he shall issue the certificate accordingly.
- (3) If the Secretary of State refuses to issue a certificate, he shall inform the company in writing of his decision and of the reasons for it.
- (4) In sub-paragraph (1) above "the relevant Directive" and "the relevant provisions" mean respectively—
- (a) if the company intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;
  - (b) if the company intends to cover commitments, the first long term insurance Directive and Articles 18, 19 and 20 of that Directive.



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### PART III

#### UK INSURERS PROVIDING INSURANCE IN THE UNITED KINGDOM THROUGH BRANCHES IN OTHER EEA STATES

- 11 (1) Where a UK insurer intends to provide insurance in the United Kingdom, it shall before doing so notify the Secretary of State in writing of its intention.
- (2) The notification shall indicate—
- (a) the EEA State in which is situated the branch through which the company intends to provide insurance in the United Kingdom; and
  - (b) the nature of the risks or commitments which the insurer proposes to cover in the United Kingdom.
- (3) Where the EEA State in which is situated the branch through which the company intends to provide insurance in the United Kingdom is an EFTA State, the notification shall be accompanied by a certificate, issued by the supervisory authority in that State, which—
- (a) indicates the classes of insurance business which the company has been authorised to undertake through that branch;
  - (b) states that the authority does not object to the company providing insurance in the United Kingdom; and
  - (c) where the company intends to provide long term insurance in the United Kingdom, confirms that all the commitments which the company intends to cover fall within the classes of insurance business which the company has been authorised to undertake through that branch.
- (4) The insurer shall notify the Secretary of State in writing if—
- (a) it changes either of the details notified to the Secretary of State under subparagraph (2) above; or
  - (b) it ceases to provide insurance in the United Kingdom.
- (5) Any insurance which is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

### PART IV

#### SUPPLEMENTAL

##### *Offences*

- 12 (1) A UK insurer commits an offence if—
- (a) it carries on insurance business in a member State other than the United Kingdom in contravention of paragraph 1 above;
  - (b) in contravention of paragraph 2 or 3 above, it changes the requisite EC details or, as the case may be, the requisite UK details of a branch established by it in such a member State;

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- (c) it provides insurance in such a member State in contravention of paragraph 5 above;
  - (d) in contravention of paragraph 6 above, it changes the requisite details relating to the provision of insurance in such a member State; or
  - (e) it makes default in complying with, or with a requirement imposed under, any other provision of this Schedule.
- (2) A person commits an offence if he causes or permits to be included in a notification sent to the Secretary of State under paragraph 1, 2, 3, 5 or 6 above a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.
- (3) A person committing an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Interpretation*

13 (1) In this Schedule—

“direct insurance business” means insurance business other than reinsurance business;

“health insurance risks”, in relation to a member State, means risks falling within class 2 of Schedule 2 to this Act (sickness) where—

- (a) insurance contracts covering those risks serve as a partial or complete alternative to the health cover provided by the statutory social security system in that State; and
- (b) the law of that State requires such contracts to be operated on a technical basis similar to life assurance in accordance with all the conditions listed in the first sub-paragraph of Article 54(2) of the third general insurance Directive;

“national bureau”, in relation to a member State, means a professional organisation—

- (a) which has been constituted in that State in accordance with Recommendation No 5 adopted on 25th January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe; and
- (b) which groups together insurance undertakings which in that State are authorised to conduct the business of motor vehicle liability insurance;

“national guarantee fund”, in relation to a member State, means a body—

- (a) which has been set up or authorised in that State in accordance with Article 1(4) of Council Directive 84/5/EEC<sup>F349</sup>; and
- (b) which provides compensation for damage to property or personal injuries caused by unidentified vehicles or vehicles for which the insurance obligation provided for in Article 1(1) of that Directive has not been satisfied;

“UK insurer” means a UK company or a member of Lloyd’s.

(2) In this Schedule—

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**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) references in Part I to the provision of insurance in a member State other than the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that member State through an establishment in another member State;
  - (b) references in Part II to the provision of insurance in an EFTA State are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that EFTA State through an establishment in another EEA State;
  - (c) references in Part III to the provision of insurance in the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in the United Kingdom—
    - (i) through an establishment in another member State; or
    - (ii) through an establishment in an EFTA State.
- (3) In sub-paragraph 2(b) and (c)(ii) above—
- (a) references to a risk do not include a risk falling within any of the following classes of Schedule 2 to this Act (general business), namely—
    - class 1, so far as it relates to accidents at work;
    - classes 9 and 13, so far as they relate to the compulsory insurance of building works;
    - class 13, so far as it relates to nuclear civil liability and pharmaceutical product liability; and
  - (b) references to a commitment do not include a commitment falling within any of classes VII, VIII and IX of Schedule 1 to this Act (long term insurance).

**Textual Amendments**

**F349** O.J. L8, 11.1.84, page 17.

[<sup>F350</sup>SCHEDULE 3

Section 7.

**Textual Amendments**

**F350** Sch. 3 ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, regs. 7(2), 68(3)

[<sup>F351</sup>SCHEDULE 3A

LAW APPLICABLE TO CERTAIN CONTRACTS OF INSURANCE]

**Textual Amendments**

**F351** Schedule 3A inserted by S.I. 1990/1333, reg. 6(2)

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## [<sup>F352</sup>PART I

### GENERAL BUSINESS]

#### Textual Amendments

**F352** By virtue of S.I. 1993/174, reg. 5(4)(5) the provisions of Sch. 3A have become (20.5.1993) Pt. I of that Sch. under that heading “GENERAL BUSINESS” and Pt. II of Sch. 3A inserted

<sup>XI</sup> *General rules as to applicable law*

#### Editorial Information

**X1** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading.

<sup>x2</sup><sub>1</sub> (1) Where the policy holder has his habitual residence or central administration within the territory of the member State where the risk is situated, the law applicable to the contract is the law of that member State.

However, where the law of that member State so allows, the parties may choose the law of another country.

- (2) Where the policy holder does not have his habitual residence or central administration within the territory of the member State where the risk is situated, the parties to the contract may choose to apply either—
- (a) the law of the member State where the risk is situated, or
  - (b) the law of the country in which the policy holder has his habitual residence or central administration.

(3) Where the policy holder carries on a business and the contract covers two or more risks relating to his business which are situated in different member States, the freedom of choice of the law applicable to the contract extends to the laws of those member States and of the country in which he has his habitual residence or central administration.

In this sub-paragraph “business” includes a trade or profession.

(4) Where the member States referred to in sub-paragraph (2) or (3) grant greater freedom of choice of the law applicable to the contract, the parties may take advantage of that freedom.

(5) Notwithstanding sub-paragraphs (1) to (3), when the risks covered by the contract are limited to events occurring in a member State other than the member State where the risk is situated, the parties may always choose the law of the former State.

[<sup>F353</sup>(6) Where the risk—

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) is situated in an EFTA state and falls within class 4, 5, 6, 7, 11 or 12 of Part I of Schedule 2 to this Act; or
  - (b) is situated in a member State and is a large risk,
- the parties to the contract may choose any law.
- (7) Where the risk is situated in a member State which has implemented the transitional provisions in Article 27 of the second general insurance Directive, the meaning of 'large risk' for the purposes of sub-paragraph (6) above shall be determined in accordance with the law applicable in that State.]

#### Editorial Information

**X2** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading

#### Textual Amendments

**F353** Sch. 3A para. 1(6)(7) substituted (1.7.1994) for Sch. 3A para. 1(6) by S.I. 1994/1696, reg. 49

### <sup>x3</sup> *Applicable law in the absence of choice*

#### Editorial Information

**X3** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading.

- <sup>x42</sup>
- (1) The choice referred to in paragraph 1 must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.
  - (2) If that is not so, or if no choice has been made, the contract shall be governed by the law of the country (from amongst those considered in the relevant sub-paragraphs) with which it is most closely connected.
  - (3) Nevertheless, a severable part of the contract which has a closer connection with another country (from amongst those considered in the relevant sub-paragraphs) may by way of exception be governed by the law of that other country.
  - (4) A contract is rebuttably presumed to be most closely connected with the member State where the risk is situated.

#### Editorial Information

**X4** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users

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either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading.

### <sup>x5</sup> *Mandatory rules*

#### **Editorial Information**

**X5** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading.

- <sup>x63</sup> (1) The fact that in the cases referred to in paragraph 1 the parties have chosen a law does not, where all the other elements relevant to the situation at the time of the choice are connected with one member State only, prejudice the application of the mandatory rules of the law of that member State, which means the rules from which the law of that member State allows no derogation by means of a contract.
- (2) Nothing in [<sup>F354</sup>this Part of this Schedule] restricts the application of the rules of a part of the United Kingdom in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

#### **Editorial Information**

**X6** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading.

#### **Textual Amendments**

**F354** Words in Sch. 3 paras. 3(2) substituted (20.5.1993) by S.I. 1993/174, reg. 5(4)(a)

### <sup>x7</sup> *Supplementary provisions*

#### **Editorial Information**

**X7** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading.

- <sup>x84</sup> (1) Where a member State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) The provisions of [<sup>F355</sup>this Part of this Schedule] apply to conflicts between the laws of the different parts of the United Kingdom.

#### Editorial Information

**X8** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading.

#### Textual Amendments

**F355** Words in Sch. 3, para. 4(2) substituted (20.5.1993) by S.I. 1993/174, reg. 5(4)(a)

- <sup>x95</sup> (1) Subject to the preceding provisions of [<sup>F356</sup>this Part of this Schedule], a court in a part of the United Kingdom [<sup>F357</sup>shall act in accordance with the provisions of the Contracts (Applicable Law) Act 1990;]
- (2) In particular, reference shall be made to [<sup>F358</sup>those provisions]—
- (a) to ascertain for the purposes of paragraph 1(1) and (4) what freedom of choice the parties have under the law of a part of the United Kingdom; and [<sup>F359</sup>those provisions]
  - (b) to determine whether the mandatory rules of another member State should be applied in accordance with paragraph 3(1) where the law otherwise applicable is the law of a part of the United Kingdom.

#### Editorial Information

**X9** The existing provisions of Sch. 3A (paras. 1-5) became Sch. 1A Pt. I with effect from 20.05.1993 when a new Pt. I heading was inserted. Versions of those provisions as they stood at any time before that date cannot be accessed by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 20.05.1993 or navigate via the Sch. 3A heading.

#### Textual Amendments

**F356** Words in Sch. 3 para. 5(1) substituted (20.5.1993) by S.I. 1993/174, reg. 5(4)(a)

**F357** Words in Sch. 3 para. 5(1) substituted (20.5.1993) by S.I. 1993/174, reg. 5(4)(b)

**F358** Words in Sch. 3 para. 5(2) substituted (20.5.1993) by S.I. 1993/174, reg. 5(4)(c)

**F359** Words in Sch. 3 para. 5(2) substituted (20.5.1993) by S.I. 1993/174, reg. 5(4)(c)

## [<sup>F360</sup>PART II

### LONG TERM BUSINESS]

#### Textual Amendments

**F360** Sch. 3A Pt. II (paras. 6-10) inserted (20.5.1993) by S.I. 1993/174, reg. 5(5)

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### *General rules as to applicable law*

- 6 The law applicable to the contract is the law of the member State of the commitment. However, where the law of that member State so allows, the parties may choose the law of another country.
- 7 Where the policy holder is an individual and has his habitual residence in a member State other than that of which he is a national, the parties may choose the law of the member State of which he is a national.

### *mandatory rules*

- 8 Nothing in this Part of this Schedule restricts the application of the rules of a part of the United Kingdom in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

### *supplementary provisions*

- 9 (1) Where a member State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.
- (2) The provisions of this Part of this Schedule apply to conflicts between the laws of the different parts of the United Kingdom.
- 10 (1) Subject to the preceding provisions of this Part of this Schedule, a court in a part of the United Kingdom shall act in accordance with the provisions of the Contracts (Applicable Law) Act 1990].
- (2) In particular, reference shall be made to those provisions to ascertain for the purposes of paragraph 6 what freedom of choice the parties have under the law of a part of the United Kingdom.

## SCHEDULE 4

Section 99(1).

### SAVING AND TRANSITIONAL PROVISIONS

#### *Saving for requirements, directions and powers under the Companies Act 1967*

- 1 The repeal by the <sup>M49</sup>Insurance Companies Amendment Act 1973 of sections 65, 68 and 80 and subsection (1)(f) of section 109 of the <sup>M50</sup>Companies Act 1967 shall not affect—
- (a) any requirement or direction imposed or given under any of those sections before 25th July 1973;



**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

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- (b) the giving of a direction under the said section 68 in any case in which a notice has been served under subsection (3) of that section before that date; or
  - (c) the exercise by an officer of any powers under the said section 109 in a case in which he has been authorised before that date to exercise them;
- and the said Act of 1967 shall have effect in relation to any such requirement, direction or powers as if the said Act of 1973, the <sup>M51</sup>Insurance Companies Act 1974 and this Act had not been passed.

**Marginal Citations**

- M49** 1973 c. 58.
- M50** 1967 c. 81
- M51** 1974 c. 49.

*Periodic actuarial investigations under section 18 above in relation to any period of twelve months beginning before 1st October 1982*

.....  
F361<sub>2</sub>

**Textual Amendments**

- F361** Sch. 4 para. 5 repealed (5.11.1993) by 1993 c.50, s. 1(1), Sch. 1 Pt.V

*Adjustments of established surplus for purposes of section 30(1) above*

.....  
F362<sub>3</sub>

**Textual Amendments**

- F362** Sch. 4 para. 5 repealed (5.11.1993) by 1993 c.50, s. 1(1), Sch. 1 Pt.V

*Margins of solvency*

.....  
F363<sub>4</sub>

**Textual Amendments**

- F363** Sch. 4 para. 4 repealed (5.11.1993) by 1993 c.50, s. 1(1), Sch. 1 Pt.V

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

.....  
F364<sup>5</sup>

.....  
**Textual Amendments**

**F364** Sch. 4 para. 5 repealed (5.11.1993) by 1993 c.50, s. 1(1), Sch. 1 Pt.V

*Postponement of coming into force of section 36 above*

- 6           F365 . . . Section 36 of this Act shall not take effect until the first regulations under the said section <sup>F365</sup> . . . 36 come into operation.

.....  
**Textual Amendments**

**F365** Words in Sch. 4 para. 6 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. V

*Saving for schemes of operation submitted under Insurance Companies (Authorisation and Accounts: General Business) Regulations*

- 7           For the purposes of section 37(2)(f) of this Act, a scheme of operations submitted pursuant to regulation 5 of the <sup>M52</sup>Insurance Companies (Authorisation and Accounts: General Business) Regulations 1978 shall be regarded as a proposal or forecast submitted in accordance with section 5 of this Act.

.....  
**Marginal Citations**

**M52** S.I. 1978/720.

*Saving for requirements under section 29 of the Insurance Companies Act 1974*

- 8           Where a requirement under section 29 of the Insurance Companies Act 1974 was in force immediately before 1st January 1982—
- (a) that requirement shall continue in force,
  - (b) any requirement imposed under sections 30 to 37 of that Act on the company concerned, if it was in force immediately before that day, shall continue in force, and
  - (c) section 47(1) of this Act shall apply to any requirement that continues in force under sub-paragraph (a) or (b) above.

*Postponement of effect of sections 37(3) and 38(3) above in respect of long term business*

.....  
F366<sup>9</sup>

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**Textual Amendments**

**F366** Sch. 4 para. 9 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

*Deposits made with Accountant General before 1st January 1982*

- 10 A deposit made under regulation 6 of the <sup>M53</sup>Insurance Companies (Solvency: General Business) Regulations 1977 shall, in so far as it remained with the Accountant General of the Supreme Court immediately before 1st January 1982, be regarded as having been made under section 9(1)(c) of this Act.

**Marginal Citations**

**M53** S.I. 1977/1553.

*Continuation of business where contract made before 1st January 1982*

- 11 Where—
- (a) as a result of the repeal of section 83(2)(b) of the Insurance Companies Act 1974 any particular kind of ordinary long-term insurance business has become general business, and
  - (b) an insurance company was immediately before 1st January 1982 lawfully carrying on that particular kind of business in the United Kingdom,
- then, notwithstanding the lack of an authorisation to carry on general business, the company may continue to carry out any contract of insurance relating to that particular kind of business if the contract was made before 1st January 1982.

*Applications for approval of transfer made before 1st January 1982*

.....  
**F367** 12

**Textual Amendments**

**F367** Sch. 4 Para. 12 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

*Saving for section 42 of the Insurance Companies Act 1974*

.....  
13

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Modifications etc. (not altering text)

**C38** Sch. 4 para. 13 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

F368

14

#### Textual Amendments

**F368** Sch. 4 para. 14 repealed by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 29, Sch. 1

*Saving for winding up commenced before rules made under section 365 of the [F369 Companies Act] or section 317 of the [F370 Companies (Northern Ireland) Order 1986]*

#### Textual Amendments

**F369** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2

**F370** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, Sch. 1 Pt. II

- 15 The provisions of this Act, so far as re-enacting provisions of the Insurance Companies Act 1974 which repealed and re-enacted provisions of the <sup>M54</sup>Insurance Companies Amendment Act 1973 relating to winding up, shall not affect any winding up commenced before the date on which the first rules made under section 365 of the [F371 Companies Act] or, as the case may be, section 317 of the <sup>M55</sup>[F372 Companies (Northern Ireland) Order 1986] by virtue of <sup>F373</sup>. . . section 59(2) above come into operation.

#### Textual Amendments

**F371** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2

**F372** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, Sch. 1 Pt. II

**F373** Words in Sch. 4 para. 15 repealed (5.11.1993) by 1993 c. 50 s. 1(1), Sch. 1 Pt.V

#### Marginal Citations

**M54** 1973 c. 58.

**M55** 1960 c. 22 (N.I.)

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**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.  
**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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*Saving for repeal of section 17(2) and (3) of, and  
Schedules 3 and 4 to, the Insurance Companies Act 1958*

.....  
F374 16

**Textual Amendments**

F374 Sch. 4 para. 16 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

*Northern Ireland*

17 Section 17(2)(a) of the <sup>M56</sup>Interpretation Act 1978 shall not apply to the reference to the Insurance Companies Act 1974 in paragraph 2 of Schedule 4 to the <sup>M57</sup>Insurance Companies Act 1980.

**Marginal Citations**

M56 1978 c. 30.

M57 1980 c. 25.

F375  
.....

18

**Textual Amendments**

F375 Sch. 4 para. 18 repealed by S.I. 1986/1035 (N.I. 9), art. 24, Sch. 2

*Continuing offences*

19 Where an offence for the continuance of which a penalty was provided has been committed under any enactment repealed by this Act proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act in the like manner as if the offence had been committed under the corresponding provision of this Act.

*Transitional provisions relating to sections 9(7), 71(3), 81(2) and 88(2) of this Act*

.....  
F376 20

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** *Insurance Companies Act 1982 (repealed)* is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**Textual Amendments**

**F376** Sch. 4 para. 20 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

F377 21

**Textual Amendments**

**F377** Sch. 4 para. 21 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

*General*

22 Subject to paragraph 17 above and without prejudice to any express amendment made by this Act, any enactment or other document whatsoever referring to any enactment repealed by this Act shall, unless the context otherwise requires, be construed as referring (or as including a reference) to the corresponding enactment in this Act.

23 Without prejudice to paragraph 22 above, any enactment or document whatsoever referring to an assurance company within the meaning of the <sup>M58</sup>Assurance Companies Act 1909 shall be construed as referring (or as including a reference) to an insurance company to which Part II of this Act applies.

**Marginal Citations**

**M58** 1909 c. 49.

24 Where a period of time specified in any enactment repealed by this Act is current at the commencement of this Act, this Act has effect as if the corresponding provision of this Act had been in force when that period began to run.

SCHEDULE 5

Section 99(2)

CONSEQUENTIAL AMENDMENTS

**Modifications etc. (not altering text)**

**C39** Schedule 5 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.  
**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## The Companies Act 1948

.....  
F378 1

### Textual Amendments

F378 Sch. 5 para. 1 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

F379 .....

2

### Textual Amendments

F379 Sch. 5 para. 2: the amendments to the Companies Act (Northern Ireland) 1960 are repealed by S.I. 1986/1035 (N.I. 9), art. 24, Sch. 2

F380 .....

3

### Textual Amendments

F380 Sch. 5 para. 3 repealed by Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5), 119(5), 120, Sch. 19 Pt. I

F381 .....

4

### Textual Amendments

F381 Sch. 5 para. 4 repealed by Housing (Consequential Provisions) Act 1985 (c. 71, SIF 61), ss. 3, 5(2), Sch. 1 Pt. I, Sch. 4

F382 .....

5

### Textual Amendments

F382 Sch. 5 para. 5 repealed by Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5), 119(5), 120, Sch. 19 Pt. I

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### *The Companies Act 1967*

.....  
F383 6

#### Textual Amendments

F383 Sch. 5 para. 6 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

### *The Children and Young Persons Act (Northern Ireland) Act 1968*

7 In section 7 of the <sup>M59</sup>Children and Young Persons Act (Northern Ireland) 1968 for “1974” substitute “ 1982 ”.

#### Marginal Citations

M59 1968 c. 34. (N.I.).

### *The Employers’ Liability (Compulsory Insurance) Act 1969*

8 In section 1(3)(b) of the <sup>M60</sup>Employers’ Liability (Compulsory Insurance) Act 1969 for “1981” substitute “ 1982 ”.

#### Marginal Citations

M60 1969 c. 57.

F384 .....

9

#### Textual Amendments

F384 Sch. 5 para. 9 repealed by S.I. 1984/1821 (N.I. 11), art. 53(3), Sch. 5 Pt. I

F385 .....

10

#### Textual Amendments

F385 Sch. 5 para. 10 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), ss. 843, 844(4), Sch. 31



**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.  
**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

*The Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972*

11 In Article 5(3)(b) of the <sup>M61</sup>Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 for "1981" substitute "1982".

**Marginal Citations**

**M61** S.I. 1972/963 (N.I. 6).

F386

12

**Textual Amendments**

**F386** Sch. 5 para. 12 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1 Pt. I, Sch. 4 paras. 1, 2

*The Local Government Act 1972*

13 In the <sup>M62</sup>Local Government Act 1972—  
(a) in section 140(1) for "1981" substitute "1982";  
(b) in paragraph (a) of section 140C(1) for "1981" substitute "1982".

**Marginal Citations**

**M62** 1972 c. 70.

*The Consumer Credit Act 1974*

14 In section 189(1) of the <sup>M63</sup>Consumer Credit Act 1974 in the definition of "insurance company" for the words from "section 33(1)" to "1968" there shall be substituted the words "section 96(1) of the Insurance Companies Act 1982"

**Marginal Citations**

**M63** 1974 c. 39.

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

*The <sup>M64</sup>Solicitors Act 1974*

**Marginal Citations**

**M64** 1974 c. 47.

- 15 In section 87(1) of the Solicitors Act 1974—
- (a) in the definition of “authorised manner” for “1974” substitute “ 1982 ” ;
  - (b) in the definition of “liability insurance business” for “1981” substitute “ 1982 ” ;
  - (c) in the definition of “pecuniary loss insurance business” for “1981” substitute “ 1982 ”.

*The <sup>M65</sup>Policyholders Protection Act 1975*

**Marginal Citations**

**M65** 1975 c. 75.

- 16 In the Policyholders Protection Act 1975—
- (a) in section 3(2) for “1981” substitute “ 1982 ” ;
  - (b) in subsections (1) and (3) of section 28 for the words from “1974” to “1981” there shall be substituted “ 1982 ” ;
  - (c) in section 29 for the words from “1974” to “1981” (in both places) there shall be substituted “ 1982 ” ;
  - (d) in section 32(2)(a) for “1974” substitute “ 1982 ” ;
  - (e) in paragraph 5(3) of Schedule 3 for the words “Sections 28(1)(b)(i) and 46(1)(b) of the <sup>M66</sup>Insurance Companies Act 1974” there shall be substituted the words “ Sections 37(2)(b)(i) and 54(1)(b) of the Insurance Companies Act 1982 ” ;
  - (f) in paragraph 5(4) of Schedule 3 for the words “Sections 79 to 82 of the Insurance Companies Act 1974” there shall be substituted the words “ Sections 91 to 94 of the Insurance Companies Act 1982 ”.

**Marginal Citations**

**M66** 1974 c. 49.

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.  
**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**Textual Amendments**

**F387** Sch. 5 para. 17 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), ss. 843, 844(4), Sch. 31

*The Insurance Brokers (Registration) Act 1977*

- 18 In section 29(1) of the <sup>M67</sup>Insurance Brokers (Registration) Act 1977 in the definition of “authorised insurers”—
- (a) for “1974” substitute “ 1982 ” ;
  - (b) for “1981” substitute “ 1982 ”.

**Marginal Citations**

**M67** 1977 c. 46.

F388

19

**Textual Amendments**

**F388** Sch. 5 para. 19: the amendments to the Companies (Northern Ireland) Order 1978 repealed by S.I. 1986/1035 (N.I. 9), art. 24, Sch. 2

*The <sup>M68</sup>Credit Unions Act 1979*

**Marginal Citations**

**M68** 1979 c. 34.

- 20 In section 15(2)(d) of the Credit Unions Act 1979 for “1974” substitute “ 1982 ”.

F389

21

**Textual Amendments**

**F389** Sch. 5 para. 21 repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(2), Sch. 7 Pt. I

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

*The <sup>M69</sup>Industrial Assurance (Northern Ireland) Order 1979*

**Marginal Citations**

**M69** S.I. 1979/1574 (N.I. 13).

- 22 In the Industrial Assurance (Northern Ireland) Order 1979—
- (a) in Article 3(4) for the words “Acts 1974 and 1981” there shall be substituted the words “ Act of 1982 ” ; and the words “of 1981” (in each place) shall be omitted ;
  - (b) in Article 18(1) for “1974” substitute “ 1982 ” ;
  - (c) in Article 32(1)(b) for “1974” substitute “ 1982 ” ;
  - (d) in Article 40 for the words “Sections 42 and 43 of the <sup>M70</sup>Insurance Companies Act 1974” there shall be substituted the words “ Sections 49 and 50 of the Insurance Companies Act 1982 ” ; and for “72(6)” substitute “ 82(5) ” ;
  - (e) in Article 50(2) for “1974” substitute “ 1982 ” ;
  - (f) in paragraph 1 of Schedule 5 for the words “section 85(1) of the Insurance Companies Act 1974” there shall be substituted the words “ section 96(1) of the Insurance Companies Act 1982 ” ;
  - (g) in paragraph 6 of Schedule 5 for “1974” substitute “ 1982 ”.

**Marginal Citations**

**M70** 1974 c. 49.

*The <sup>M71</sup>Companies Act 1980*

**Marginal Citations**

**M71** 1980 c. 22.

.....  
**F390**<sup>23</sup>

**Textual Amendments**

**F390** Sch. 5 para. 23 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt.V

**F391**  
.....

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.  
**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**Textual Amendments**

**F391** Sch. 5 para. 24 repealed by Finance Act 1984 (c. 43, SIF 63:1), s. 128(6), **Sch. 23 Pt. V** and by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), ss. 843, 844(4), **Sch. 31**

F392 .....  
25

**Textual Amendments**

**F392** Sch. 5 para. 25 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), ss. 843, 844(4), **Sch. 31**

*The Companies Act 1981*

.....  
F393<sup>26</sup>

**Textual Amendments**

**F393** Sch. 5 para. 26 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt.V**

*The<sup>M72</sup>Road Traffic (Northern Ireland) Order 1981*

**Marginal Citations**

**M72** S.I. 1981/154 (N.I. 1).

27 In Article 101(1) of the Road Traffic (Northern Ireland) Order 1981 for “1981” (in both places) substitute “ 1982 ”.

28 (a) ..... **F394**  
(b) ..... **F395**

**Textual Amendments**

**F394** Sch. 5 para. 28(a) repealed by Capital Transfer Tax Act 1984 (c. 51, SIF 65), ss. 274, 277, Schs. 7, **9**  
**F395** Sch. 5 para. 28(b) repealed by Income and Corporation Taxes Act 1988 (c. 51, SIF 63:1), ss. 843, 844(4), **Sch. 31**

**Status:** Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULE 6

Section 99(3).

## REPEALS

**Modifications etc. (not altering text)**

**C40** Schedule 6 is in the form in which it was originally enacted; it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1974 c. 49.	The Insurance Companies Act 1974.	The whole Act, except sections 88(1)(6) and 90 and Schedule 1.
1975 c. 75.	The Policyholders Protection Act 1975.	Section 22(1).
1976 c. 69.	The Companies Act 1976.	In Schedule 2, the entries relating to sections 17(1) and 75(2) of the Insurance Companies Act 1974.
1980 c. 25.	The Insurance Companies Act 1980.	In section 1, paragraph (a) and, to the extent an Act therein mentioned is repealed by this Act, paragraph (b). Section 2. Schedule 1. In Schedule 4, paragraph 18.
1980 c. 43.	The Magistrates' Courts Act 1980.	In Schedule 7, paragraph 18.
1981 c. 31.	The Insurance Companies Act 1981.	The whole Act, except sections 36(1), 38 and Part II of Schedule 4.
1981 c. 62.	The Companies Act 1981.	In Schedule 3, paragraph 35.
S.I. 1981/1657 (c. 44).	The Insurance Companies Act 1981 (Commencement) Order 1981.	In the Schedule, paragraphs 2-9, 11, 12, 14 and 15.

**Status:**

Point in time view as at 01/07/1994. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Insurance Companies Act 1982 (repealed) is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.