



# Friendly Societies Act 1992

## 1992 CHAPTER 40

### PART V

#### REGULATION OF FRIENDLY SOCIETIES' BUSINESS

##### *Preliminary*

#### **44 Appointment of actuary by societies with long term business.**

- (1) Subject to subsection (3) below, every friendly society which carries on long term business in the United Kingdom shall not later than the end of the relevant period appoint an actuary as actuary to the society; and whenever an appointment under this section comes to an end, the society shall as soon as practicable make a fresh appointment.
- (2) In subsection (1) above “the relevant period” means—
  - (a) if the society is carrying on long term business on the day when this section comes into force, the period of one month beginning with that day; and
  - (b) if it is not carrying on long term business on that day, the period of one month beginning with the day on which it begins to carry on such business.
- (3) The Commission may direct that a friendly society shall not be subject to the duty imposed by subsection (1) above if it considers it inappropriate that the society should be subject to it.
- (4) A society making an appointment under this section shall serve on the Commission a notice stating that fact and the name and qualifications of the person appointed and that he has accepted the appointment.
- (5) If an appointment under this section comes to an end, the society shall serve on the Commission a notice stating that fact and the name of the person concerned.
- (6) A notice under subsection (4) above shall be served not later than the end of the period of 14 days commencing with the day on which the appointment is accepted.

*Status: Point in time view as at 01/09/1994. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, Part V. (See end of Document for details)*

- (7) A notice under subsection (5) above shall be served not later than the end of the period of 14 days commencing with the day on which the appointment comes to an end.
- (8) No person is qualified for appointment under this section unless he possesses qualifications prescribed by the Commission in regulations.

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

**C1** S. 44(2)(a) excluded (1.1.1994) by S.I. 1993/3084, **reg.10**

**Commencement Information**

**I1** S. 44 wholly in force; s. 44 not in force at Royal Assent see s. 126(2); s. 44 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 44(8) in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), **Sch. 2**; s. 44 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), **Sch. 5**

**45 Valuation of assets and liabilities.**

- (1) Any determination of the value of any assets or the amount of any liabilities of a friendly society which is required for the purposes of any provision of this Part of this Act shall be made in accordance with regulations made by the Commission with the consent of the Treasury.
- (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 taken into account only to a specified extent.

**Commencement Information**

**I2** S. 45 wholly in force; s. 45 not in force at Royal Assent see s. 126(2); s. 45 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 45 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), **Sch. 2**

*Actuarial investigations*

**46 Annual investigation into condition of certain societies.**

- (1) A friendly society which is authorised under section 32 above to carry on long term business and which—
- (a) is a society to which subsection 37(2) above applies; or
  - (b) is a society of a description prescribed by regulations,
- shall, once in every period of 12 months, cause an investigation to be made by the appropriate actuary into the financial condition of the society in respect of its long term business.
- (2) The first investigation into a society's financial condition under this section shall be—
- (a) in the case of a friendly society to which section 37(2) above applies which—

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- (i) is a registered friendly society that was authorised under the <sup>M1</sup>Friendly Societies (Long Term Insurance Business) Regulations 1987; or
    - (ii) is an incorporated friendly society which was formerly a registered friendly society so authorised,  
an investigation into its condition at a date not later than 12 months after the date to which the accounts of the society were made up for the purposes of the last investigation under regulation 11 of those regulations;
  - (b) in the case of any other friendly society to which section 37(2) above applies, an investigation into its condition at a date not later than 12 months after the date on which it became such a society or the commencement of this section, whichever is later; and
  - (c) in the case of a friendly society which is of a description prescribed in regulations under subsection (1)(b) above, an investigation into its condition at a date not later than 12 months after it became such a society or the coming into operation of the regulations, whichever is later.
- (3) When such an investigation has been made, the society shall—
- (a) cause an abstract of the actuary's report of the investigation to be made; and
  - (b) send three copies of that abstract to the Commission within the period of 6 months beginning with the date to which the accounts of the society were made up for the purposes of the investigation or such further period (not exceeding 3 months) as the Commission may by notice to the society direct; and one of those copies shall be signed by such persons as may be prescribed by regulations.
- (4) The Commission shall consider the abstract, and if it appears to the Commission to be inaccurate or incomplete in any respect, it shall communicate with the society with a view to the correction of any such inaccuracies and the supply of deficiencies.
- (5) An investigation under this section shall include—
- (a) a valuation of the liabilities of the society 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 society 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.
- (6) At least once in every period of 5 years a friendly society to which this section applies shall prepare a statement of its long term business at the date to which the accounts of the society are made up for the purposes of an investigation under this section.
- (7) The form and contents of any abstract or statement under this section shall be such as the Commission may direct; and a direction under this subsection may be given to societies of a specified description or to a specified society.
- (8) Regulations under this section shall be made by the Commission with the consent of the Treasury.

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*Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, Part V. (See end of Document for details)*

#### Commencement Information

- I3** S. 46 wholly in force; s. 46 not in force at Royal Assent see s. 126(2); s. 46 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 46(1)(3)(8) in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 46 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

#### Marginal Citations

- M1** S.I.1987/2132.

### 47 Triennial investigations into condition of certain societies.

- (1) Subject to the following provisions of this section, a friendly society which—
- (a) is not a society to which section 46 above applies and carries on insurance business; or
  - (b) is a society to which that section applies and carries on general business;
- shall, at least once in every period of 3 years, cause an investigation to be made by the appropriate actuary into the financial condition of the society in respect of its insurance business.
- (2) Where an investigation under this section is carried out, the society shall cause an abstract of the actuary's report to be made and sent to the Commission within 6 months of the date to which the accounts of the society were made up for the purposes of that investigation or such further period (not exceeding 6 months) as the Commission may by notice to the society direct.
- (3) The first investigation into a society's financial condition under this section shall be—
- (a) in the case of a registered friendly society, or an incorporated friendly society which was formerly a registered friendly society, an investigation into its condition at a date not later than 3 years after—
    - (i) the commencement of this section; or
    - (ii) the date as at which its assets and liabilities were last valued under section [F134 of the 1970 Act],
 whichever is earlier; or
  - (b) in the case of any other incorporated friendly society, an investigation into its condition at a date not later than 3 years after the date on which it is registered.
- (4) Subject to subsection (5) below, a friendly society shall send to the Commission, not later than 6 months after each anniversary of the date to which the accounts of the society were made up for the purposes of the last investigation into its financial condition under this section—
- (a) a certificate given by the appropriate actuary that there has been no material change in its financial condition in respect of its insurance business since it sent the last abstract under subsection (2) above; or
  - (b) a statement by the appropriate actuary that he is unable to give such a certificate.
- (5) A society is not under the duty imposed by subsection (4) above if, before a date by which a certificate or statement must be sent, a further investigation under this section has been carried out and the requisite abstract has been sent to the Commission.

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- (6) If a society sends the Commission a statement under subsection (4)(b) above, it shall be the society's duty to cause an investigation to be carried out under this section; and in such a case—
- (a) the date to which the society's accounts are made up for the purposes of the investigation shall be the latest anniversary of the date to which its accounts were made up for the purposes of the last investigation under this section; and
  - (b) the abstract required by subsection (2) above shall be sent to the Commission within 6 months of the date by which that statement was required to be sent under subsection (4) above.
- (7) An investigation under this section into the financial condition of a society which falls within subsection (1)(a) above shall include—
- (a) a valuation of the liabilities of the society attributable to its insurance business; and
  - (c) a determination of any excess over the liabilities so attributable of the assets representing the fund or funds maintained by the society in respect of its insurance 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.
- (8) An investigation under this section into the financial condition of a society falling within subsection (1)(b) above shall include—
- (a) a valuation of the liabilities of the society attributable to its general business; and
  - (b) a determination of any excess over the liabilities so attributable of the assets representing the fund or funds maintained by the society in respect of that business.
- (9) The form and contents of any abstract under this section shall be such as the Commission may direct; and such a direction may be given to societies of a specified description or to a specified society.
- (10) The Commission may dispense with the requirements of subsections (1) to (6) above in respect of societies to whose purposes, or the nature or scale of whose insurance business, it may deem those provisions inapplicable.
- (11) The Commission may dispense with the requirements of subsections (1) to (6) above in respect of any particular insurance business of a society if, in the Commission's opinion, those provisions are inapplicable to that business because of its nature or scale or the manner in which it is carried on.
- (12) In relation to any society on which a partial exemption is conferred under subsection (11) above, subsections (1) to (8) above shall have effect as if—
- (a) references to the financial condition of the society excluded its condition in relation to the business to which the partial exemption relates; and
  - (b) subsections (7) and (8) referred only to the assets and liabilities other than those attributable to that business.
- (13) The Commission may direct that this section shall have effect, in relation to societies of a specified description or to a specified society, as if for any reference to 3 years there were substituted a reference to 5 years.

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- (14) A direction under subsection (12) or (13) above may make such transitional provision as the Commission considers appropriate.

**Textual Amendments**

**F1** Words in s. 47(3)(a)(ii) substituted (1.1.1994) by S.I. 1993/3226, art. 3, Sch.3

**Commencement Information**

**I4** S. 47 wholly in force; s. 47 not in force at Royal Assent see s. 126(2); s. 47 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 47 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

*Margins of solvency*

**48 Margins of solvency in relation to insurance business of certain societies.**

- (1) This section applies to a friendly society which—
- (a) carries on long term business<sup>F2</sup> . . . and falls within subsection (2) of section 37 above;
  - (b) carries on general business<sup>F2</sup> . . . and falls within subsection (3) of that section; or
  - (c) not being a society to which either of those subsections applies, carries on insurance business in the United Kingdom and is of any such description as may be prescribed by regulations.
- (2) A society to which this section applies shall maintain a margin of solvency in respect of its insurance business of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (3) If such a society fails to comply with a requirement to maintain a margin of solvency, the society—
- (a) shall at the request of the Commission submit to it 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 Commission considers it inadequate;
  - (c) shall give effect to any plan accepted by the Commission as adequate.
- (4) Where a friendly society carries on both long term and general business, subsection (2) above shall have effect as if the requirement to maintain a margin of solvency were a requirement to maintain separate margins in respect of each of those two kinds of business.
- (5) For the purposes of this Act a margin of solvency, in relation to a friendly society, is the excess of the value of the society's assets over the amount of its liabilities.
- (6) Regulations under this section may—
- (a) make different provision with respect to societies of different descriptions;
  - (b) prescribe different margins of solvency with respect to different descriptions of business carried on by societies;
  - (c) prescribe the descriptions of assets or liabilities that are to be taken into account in determining whether a margin of solvency is being maintained; and

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- (d) prescribe different criteria for determining whether a margin of solvency is being maintained by reference to the different descriptions of long term or general business which may be carried on by societies.
- (7) Regulations under this section shall be made by the Commission with the consent of the Treasury.

#### Textual Amendments

- F2** Words in s. 48(1)(a) ceased to have effect (1.9.1994) by virtue of S.I. 1994/1984 reg. 8  
Words in s. 48(1)(b) ceased to have effect (1.9.1994) by virtue of S.I. 1994/1984 reg. 8

#### Commencement Information

- I5** S. 48 wholly in force; s. 48 not in force at Royal Assent see s. 126(2); s. 48 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 48(1)(2)(6)(7) in force for certain purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 4; s. 48 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### 49 Failure to maintain prescribed margin of solvency.

- (1) If the margin of solvency maintained by a friendly society in respect of its insurance business falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section by the Commission with the consent of the Treasury, the society shall at the request of the Commission submit to it a short-term financial scheme.
- (2) A friendly society that has submitted a scheme to the Commission under subsection (1) above shall propose modifications to the scheme (or the scheme as previously modified) if the Commission considers it inadequate, and shall give effect to any scheme accepted by it as adequate.
- (3) Where a friendly society carries on both long term and general business, subsection (1) above shall have effect as if the reference to the margin of solvency maintained by the society were a reference to the margin of solvency maintained in respect of each of those two kinds of business.

#### Commencement Information

- I6** S. 49 wholly in force; s. 49 not in force at Royal Assent see s. 126(2); s. 49 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 49(1) in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 49 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

*[<sup>F3</sup> Adequacy of assets and premiums]*

#### Textual Amendments

- F3** Cross heading inserted (1.9.1994) by S.I. 1994/1984 reg. 9

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**[49A** <sup>F4</sup> **Adequacy of assets.**

- (1) A friendly society to which section 37(2) or (3) above applies which has entered into contracts of insurance shall secure–
  - (a) that its liabilities under those contracts, 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.
- (2) A friendly society to which section 37(2) above applies 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 under the contract are linked to the value of units in an undertaking for collective investments in transfer– able securities or to the value of assets contained in an internal fund, by those units or assets;
  - (b) if those benefits under the contract 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, yield and marketability which correspond, as nearly as may be, to the assets on which that reference value is based.
- (3) A friendly society to which section 37(2) above applies which has entered into a linked long term contract shall also secure that its liabilities under the contract in respect of linked benefits are covered by assets of a description prescribed by regulations under section 56 below.

(4) In this section–

“linked benefits”, in relation to a linked long term contract, means benefits payable under the contract 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 the effecting of which constitutes the carrying on of insurance business falling within class III in head A in Schedule 2 to this Act.]

**Textual Amendments**

**F4** S. 49A inserted (1.9.1994) by S.I. 1994/1984 reg. 9

**[<sup>F5</sup>49B Adequacy of premiums in respect of long term insurance.**

- (1) Before entering into a contract the effecting of which constitutes the carrying on of long term business, a friendly society to which section 37(2) above applies 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 society which are available for the purpose,



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will be sufficient, on reasonable actuarial assumptions, to meet all commitments arising under or in connection with the contract.

- (2) A friendly society to which section 37(2) above applies shall not rely on other resources for the purposes of subsection (1) above in such a way as to jeopardise the solvency of the society in the long term.]

#### Textual Amendments

F5 S. 49B inserted (1.9.1994) by S.I. 1994/1984 reg. 10

### *Criteria of prudent management*

#### **50 The criteria of prudent management.**

- (1) If it appears to the Commission—
- (a) that there has been or is, on the part of a friendly society or its committee of management, a failure to satisfy any one or more of the following criteria of prudent management; or
  - (b) that the society's officers do not have the capacity and intention to conduct its affairs so as to satisfy those criteria,
- it shall be entitled to assume for the purposes of its relevant prudential powers that it is expedient to exercise the powers in order to protect the interests of members of the society.
- (2) The prudential powers relevant for the purposes of this section are its powers—
- (a) under section 34 above to impose conditions on a society's authorisation;
  - (b) under section 40 above to give a direction by virtue of subsection (3)(c);
  - (c) under section 51 below to make an order forbidding the acceptance of new members;
  - (d) under section 53 below, to give a direction;
  - (e) under section 90 below, to order a transfer of the society's engagements.
- (3) For the purposes of this Act, the criteria of prudent management are—
- (1) Maintenance of any margin of solvency required by section 48 above.
  - (2) Maintenance of liquid assets sufficient to meet the liabilities of the society as they become due.
  - (3) Maintenance of the requisite accounting records and systems of control of business and of inspection and report.
  - (4) Direction and management—
    - (a) by a sufficient number of persons who are fit and proper to be members of the committee of management or, as the case may be, other officers, in their respective positions,
    - (b) conducted by them, with prudence and integrity, in the interests of the members of the society.
  - (5) In relation to insurance business, direction and management which, in addition to satisfying the other requirements as to direction and management, is such as to fulfil the reasonable expectations of members of the society as to the conduct of such business.

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- (6) Conduct of the society’s activities with adequate professional skills.
- (7) Supervision of the activities—
  - (a) of any subsidiary of the society or of any body of which the society has joint control; and
  - (b) of any registered branch of the society;
 with due care and diligence in the interests of the members of the society and without detriment to the conduct of the society’s activities.
- [<sup>F6</sup>(8) In the case of a society to which section 37(2) or (3) applies, direction and management which, in addition to satisfying the other requirements as to direction and management, is such as to secure compliance with any obligation imposed on the society by any provision (whether of the law of any part of the United Kingdom or of the law of another EEA State) which—
  - (a) gives effect to the general insurance or life Directives; or
  - (b) is otherwise applicable to the insurance activities of the society.]
- (4) Nothing in this section implies that it is improper for a determination for any purpose of the Commission’s relevant prudential powers to take account of factors other than the criteria in subsection (3) above.
- (5) In considering whether a society has satisfied the 7th criterion in subsection (3) above, the Commission shall have regard to the extent to which the operation of the subsidiary, jointly controlled body or registered branch is undertaken in accordance with [<sup>F7</sup>the other 7 criteria] in that subsection so far as they are relevant.
- (6) A failure to satisfy any of the first 3 criteria in subsection (3) above shall be treated, for the purposes of this section, as a failure on the part of a society’s committee of management prudently to conduct the affairs of the society.
- (7) A failure on the part of an authorised friendly society to comply with any conditions to which its authorisation under section 32 above is subject shall be treated, for the purposes of this section, as a failure on the part of the society’s committee of management prudently to conduct the affairs of the society.
- (8) Any carrying on by a friendly society of an activity beyond its powers shall be treated, for the purposes of this section, as a failure on the part of the society’s committee of management prudently to conduct the affairs of the society.
- (9) Any carrying on of activities which are beyond its powers—
  - (a) by a subsidiary of, or a body jointly controlled by, an incorporated friendly society; or
  - (b) by a registered branch of a registered friendly society,
 shall be treated for the purposes of this section as a failure on the part of the society’s committee of management to supervise the activities of the subsidiary, jointly controlled body or registered branch with due care and diligence.
- (10) The following provisions apply for the interpretation of the list of criteria in subsection (3) above in their application to a friendly society, that is to say—
  - “activities” includes activities the society proposes to carry on;
  - “requisite”, with reference to accounting records and systems of control, means such as are required by section 68 below; and
  - “sufficient” with reference to the number of members of a committee of management or of other officers, means sufficient having regard to the range and scale of the society’s business.

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#### Textual Amendments

- F6** S. 50(3): eighth criterion substituted (1.9.1994) by S.I. 1994/1984 reg. 11(1)  
**F7** Words in s. 50(5) substituted (1.1.1994) by S.I. 1993/2519, reg. 2(3)

#### Commencement Information

- I7** S. 50 wholly in force; s. 50 not in force at Royal Assent see s. 126(2); s. 50 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 50 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

### *Powers of Commission*

#### **51 Power to forbid acceptance of new members.**

- (1) Subject to the provisions of this section, if the Commission considers it expedient to do so in the interests of the members or potential members of a friendly society, it may give the society a direction forbidding it to accept any new members.
- (2) If the Commission proposes to give such a direction, it shall serve on the society a notice stating that it proposes to give a direction.
- (3) A notice under subsection (2) above shall specify the grounds for the proposed direction.
- (4) The Commission shall consider any representations made by the society within such period (not being less than one month) from the date on which the society is served with the notice as the Commission may allow and, if the society so requests, shall afford to it an opportunity of being heard by the Commission within that period.
- (5) The Commission may not give a direction unless all the grounds for giving it are those, or among those, which were specified in the notice served on the society under subsection (2) above.
- (6) On giving a direction, the Commission shall—
  - (a) serve notice of it on the society, specifying the grounds for making it;
  - (b) publish notice of it in one or more of the London, Edinburgh and Belfast Gazettes and in any such other ways as it considers appropriate; and
  - (c) send a copy of it to the central office.
- (7) A society which contravenes a direction given to it under this section shall be guilty of an offence and shall be liable—
  - (a) on conviction on indictment, to a fine; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (8) The central office shall keep a copy of a direction given to a friendly society under this section in the public file of the society.

#### Commencement Information

- I8** S. 51 wholly in force; s. 51 not in force at Royal Assent see s. 126(2); s. 51 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 51 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

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## 52 Applications to court.

- (1) Where the Commission has reason to believe that any of the conditions mentioned in subsection (2) below is satisfied, it may present a petition to the High Court for the winding up of the society under the applicable winding up legislation.
- (2) The conditions referred to in subsection (1) above are—
  - (a) that a friendly society is carrying on activities that are not activities which such a society is permitted by this Act or the 1974 Act to carry on;
  - (b) that the society is not carrying on any activity falling within Schedule 2 to this Act;
  - [<sup>F8</sup>(c) that the society is failing to satisfy any obligation to which it is subject by virtue of any provision of the law of any EEA State other than the United Kingdom which—
    - (i) gives effect to the general insurance or life Directives; or
    - (ii) is otherwise applicable to the insurance activities of the society in that State;]
    - (d) that a subsidiary of an incorporated friendly society or a body jointly controlled by such a society is carrying on activities other than those mentioned in Schedule 7 to this Act;

and a court shall not make an order for the winding up of a society by virtue of this section unless it is satisfied that one or more of those conditions is satisfied.
- (3) Where the Commission has reason to believe that any of the conditions mentioned in subsection (4) below is satisfied, it may make an application to the High Court for an order under subsection (5) below.
- (4) The conditions referred to in subsection (3) above are—
  - (a) any of the conditions mentioned in subsection (2) above; or
  - (b) that an incorporated friendly society has taken part in forming or has acquired control of a body corporate jointly with any person other than another incorporated friendly society without the consent of the Commission;

and a court shall not make an order under subsection (5) below unless it is satisfied that one or both of the conditions mentioned in this subsection is satisfied.
- (5) An order under this subsection is an order directing the society to modify its business as directed in the order or to take such other steps as may be so directed or, where the condition mentioned in subsection (4)(b) above is satisfied, an order directing the society to cease jointly controlling the body corporate.
- (6) Where a court makes an order under subsection (5) above, the Commission shall send a copy of it to the central office and the central office shall keep the copy in the public file of the society.
- (7) The power to present a petition or to make an application for an order under subsection (5) above is available to the Commission whether or not it has previously presented a petition or made an application for such an order, as the case may be.
- (8) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, references to the High Court shall be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.
- (9) In this section “the applicable winding up legislation”, in relation to an incorporated friendly society, has the same meaning as in section 23 above and, in relation to a

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registered friendly society, means Part V of the <sup>M2</sup>Insolvency Act 1986 or (where the society's registered office is in Northern Ireland) Part VI of the <sup>M3</sup>Insolvency (Northern Ireland) Order 1989.

#### Textual Amendments

**F8** S. 52(2)(c) substituted (1.9.1994) by S.I. 1994/1984 reg. 12

#### Commencement Information

**I9** S. 52 wholly in force; s. 52 not in force at Royal Assent see s. 126(2); s. 52 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 52 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

#### Marginal Citations

**M2** 1986 c.45.

**M3** S.I. 1989/2405 (N.I. 19).

### [52A] <sup>F9</sup> Prohibition on disposal of assets.

- (1) Where the Commission has reason to believe that any of the conditions mentioned in subsection (2) below is satisfied in relation to a friendly society to which section 37(2) or (3) applies, it may apply to the court for an injunction restraining, or in Scotland an interdict prohibiting, the society from disposing of or otherwise dealing with any of its assets to the value of its EC liabilities.
- (2) The conditions referred to in subsection (1) above are—
  - (a) that the Commission has given (and not revoked) a direction in respect of the society under section 40 above; or
  - (b) that the society has failed to satisfy an obligation to which it is or was subject by virtue of section 48, 49, 49A above or Part III of the Friendly Societies (Insurance Business) Regulations 1994 <sup>M4</sup>; or
  - (c) that a submission by the society to the Commission of an account or statement specifies, as the amount of any liabilities of the society, an amount appearing to the Commission to have been determined otherwise than in accordance with—
    - (i) valuation regulations; or
    - (ii) where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for friendly societies,and a court shall not make an order under this section unless it is satisfied that one or more of those conditions are satisfied.
- (3) Where a court makes an order under this section, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Commission to perform its functions under this Act.
- (4) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (5) In this section any reference to an EC liability is a reference to a liability of the business carried on by the society in the European Community.]

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*Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, Part V. (See end of Document for details)*

#### Textual Amendments

**F9** S. 52A added (1.9.1994) by S.I. 1994/1984 reg. 13

#### Marginal Citations

**M4** S.I. 1994/1981.

### 53 Residual power to impose requirements for protection of members.

- (1) If the Commission considers it expedient to do so in order to protect the interests of members of a friendly society which does not require authorisation under section 32 above, it may direct the society to take such action as appears to the Commission to be appropriate, having regard to any risk—
  - (a) that the society may be unable to meet its liabilities; or
  - (b) that it will not be managed in the interests of its members.
- (2) The power conferred by this section shall not be exercised in such a way as to restrict the society's freedom to dispose of its assets except where the ground for intervention arises out of the submission by the society to the Commission of an account or statement specifying, as the amount of any liabilities of the society, an amount appearing to the Commission to have been determined otherwise than in accordance with—
  - (a) valuation regulations; or
  - (b) where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for friendly societies.

#### Commencement Information

**I10** S. 53 wholly in force; s. 53 not in force at Royal Assent see s. 126(2); s. 53 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 53 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

### 54 Supervision of activities of subsidiaries etc.

- (1) In this section “friendly society group” means an incorporated friendly society, subsidiaries of that society and bodies jointly controlled by it.
- (2) If it appears to the Commission that the activities of subsidiaries of an incorporated friendly society or bodies jointly controlled by it are or may become disproportionate to those of the friendly society group as a whole, it may direct the society—
  - (a) to take or refrain from taking steps specified in the direction with a view to securing that the activities in question cease to be or do not become disproportionate; or
  - (b) to take steps so specified with a view to securing—
    - (i) that it ceases to have control or joint control of any subsidiary or jointly controlled body in question; or
    - (ii) that any such subsidiary or jointly controlled body is wound up.

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- (3) If it appears to the Commission that any activity of a subsidiary of an incorporated friendly society or of a body jointly controlled by such a society is unsuitable for a member of a friendly society group, it may direct the society—
  - (a) to take steps specified in the direction with a view to securing that that activity ceases; or
  - (b) to take steps so specified with a view to securing—
    - (i) that it ceases to have control or joint control of the subsidiary or jointly controlled body; or
    - (ii) that the subsidiary or jointly controlled body is wound up.
- (4) A direction under this section may specify when the society is to comply with it and may do so by reference to a date, the end of a period or the happening of an event.
- (5) A society given a direction under this section must—
  - (a) comply with the direction; or
  - (b) convert itself into a company in accordance with Part VIII of this Act.
- (6) The Commission may by notice to the society vary or revoke a direction under this section.
- (7) If a society requests the Commission to notify it as to whether in the opinion of the Commission it has complied with a direction under this section, the Commission shall comply with the request.
- (8) The Commission may issue to incorporated friendly societies (or to any description of such societies) such general guidance as it thinks appropriate as to circumstances in which a direction under this section is or is not likely to be given.
- (9) The Commission shall send to the central office a copy—
  - (a) of a direction under this section;
  - (b) of a notice under subsection (6) above; or
  - (c) of a notification under subsection (7) above;and the central office shall keep a copy in the public file of the society.

#### Commencement Information

**I11** S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 126(2); s. 54 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 54 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

## 55 Supervision of group insurance business.

- (1) This section applies where a friendly society carries on any group insurance business providing benefits for or in respect of a group of persons who are not members of the society.
- (2) If it appears to the Commission that the business so carried on is or may become disproportionate to the other activities of the society (including any group insurance business carried on for the provision of benefits for or in respect of persons who are members of the society), it may direct the society to take or refrain from taking steps specified in the direction with a view to securing that the group business in question ceases to be or does not become disproportionate.

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- (3) Subsections (4) to (9) of section 54 above shall apply in relation to a direction under this section as they apply to a direction under that section.

#### Commencement Information

**I12** S. 55 wholly in force; s. 55 not in force at Royal Assent see s. 126(2); s. 55 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 55 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

#### [55A] <sup>F10</sup> Supervision of controllers.

- (1) Schedule 13A to this Act shall have effect for making provision for or in connection with the supervision by the Commission of controllers of friendly societies to which section 37(2) or (3) above applies.

- (2) In this Act–

“controller”, in relation to a friendly society to which section 37(2) or (3) of this Act applies, means a person who, either alone or with any associate or associates–

- (a) is entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
- (b) is able to exercise a significant influence over the management of the society by virtue of an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of the society;

“notifiable voting rights”, in relation to a friendly society to which section 37(2) or (3) above applies, means voting rights which, if acquired by any person, will result in his becoming a 10 per cent. controller, a 20 per cent. controller, a 33 per cent. controller, a 50 per cent. controller or a majority controller of the society.

- (3) In this section and Schedule 13A to this Act, in relation to a friendly society to which section 37(2) or (3) above applies–

“10 per cent. controller” means a controller in whose case the percentage referred to in paragraph (a) of the definition of “controller” in subsection (2) above is 10 or more but less than 20;

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

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

“50 per cent. controller” means a controller in whose case that percentage is 50;

“majority controller” means a controller in whose case that percentage is more than 50.]

#### Textual Amendments

**F10** S. 55A added (1.9.1994) by S.I. 1994//1984 reg. 14(1)



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*Status:* Point in time view as at 01/09/1994. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Friendly Societies Act 1992, Part V. (See end of Document for details)

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## **56 Linked long-term insurance contracts.**

- (1) Regulations may be made by the Commission, with the consent of the Treasury, as respects the matters specified in subsection (2) below, in relation to contracts made by friendly societies the effecting of which constitutes the carrying on of insurance business falling within class III in head A in Schedule 2 to this Act.
- (2) Regulations under this section may make provision for—
  - (a) restricting the descriptions of property or the indices of the value of property by reference to which benefits under the contracts may be determined;
  - (b) restricting the proportion of those benefits which may be determined by reference to property of a specified description or a specified index;
  - (c) regulating the manner in which and the frequency with which property of any description is to be valued for the purpose of determining those benefits and the times at which reference is to be made for that purpose to any index of the value of property;
  - (d) requiring friendly societies that enter into such contracts to appoint valuers for carrying out valuations of property of any description for the purpose of determining benefits under the contracts (being valuers who comply with the prescribed requirement as to qualifications and independence from the society) and to furnish the Commission with the prescribed information in relation to such appointments;
  - (e) requiring societies that enter into such 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 their members, depositing statements with the Commission, publication in the press or otherwise;
  - (f) requiring societies that enter into such contracts to furnish to the Commission 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 Commission to publish such information in such ways as it thinks appropriate.
- (3) Regulations made for the purposes of subsection (2)(e) above may, in relation to notices required to be sent to members of friendly societies, 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 Commission may, on the application of any friendly society, alter the requirements of regulations under this section so as to adapt those requirements to the circumstances of that society or to any particular kind of contract entered into or proposed to be entered into by that society.
- (5) Regulations under this section may, to such extent as may be specified in them, 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) In this section “prescribed” means prescribed by regulations under this section.

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*Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, Part V. (See end of Document for details)*

### Commencement Information

- I13** S. 56 wholly in force; s. 56 not in force at Royal Assent see s. 126(2); s. 56 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 56 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

### *Covering of risks situated in another member State*

#### [<sup>F11</sup>57] **Recognition of societies in accordance with insurance Directives.**

Schedule 13B to this Act shall have effect for making provision for or in connection with the recognition in other EEA States of friendly societies to which section 37(2) or (3) of this Act applies.]

- (2) After Schedule 13A to that Act insert Schedule 2 to these Regulations (recognition of friendly societies in other EEA States), as Schedule 13B.
- (3) If a friendly society to which section 37(2) or (3) of the 1992 Act applies was immediately before the commencement date lawfully carrying on direct insurance business of a class or part of a class in a member State other than the United Kingdom through an overseas branch in that State, it shall be treated for the purposes of that Act as if the requirements of paragraph 1 of Schedule 13B to that Act had been complied with in relation to insurance business of that class or part of a class.
- (4) If a friendly society to which section 37(2) or (3) of the 1992 Act applies was immediately before the commencement date lawfully providing insurance of a class or part of a class in a member State other than the United Kingdom through an establishment in another member State, it shall be treated for the purposes of that Act as if the requirements of paragraph 5 of Schedule 13B to that Act had been complied with in relation to insurance of that class or part of a class.
- (6) Regulation 4 of the Friendly Societies (Amendment) Regulations 1993 (which is superseded by this regulation) shall cease to have effect.

### Textual Amendments

- F11** S. 57 substituted (1.9.1994) by S.I. 1994/1984 reg. 15(1)

#### [57A] <sup>F12</sup> **Notification by Commission of measures taken by it.**

- (1) This section applies where the Commission is considering taking or has taken any measures in relation to a friendly society to which section 37(2) or (3) above applies which—
  - (a) carries on insurance business through an overseas branch in an EEA State other than the United Kingdom; or
  - (b) provides insurance in an EEA State other than the United Kingdom through an establishment in another EEA State.
- (2) The Commission—
  - (a) shall, if required by Article 24 of the first life Directive or Article 20 of the first general insurance Directive, or by any other provision of the life or general

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- insurance Directives to do so, notify any supervisory authority of such a State of those measures or proposed measures; and
- (b) may, if it is satisfied that it is expedient to do so, request that authority to take similar measures in relation to the friendly society.
- (3) In this section “measure” includes imposing conditions which prohibit the disposals of assets and exercising any power conferred by this Part of the Act.]

#### Textual Amendments

**F12** S. 57A substituted (1.9.1994) by S.I. 1994/1984 reg. 16

### Appeals

#### <sup>F13</sup> 58 Rights of appeal.

- (1) A friendly society which is aggrieved by a decision of the Commission—
- to refuse to grant authorisation under section 32 above,
  - to impose conditions, or as to the conditions imposed, under section 34 or 36 above,
  - to withdraw authorisation under section 40 or 41 above,
  - to give a direction under section 51 above; or
  - to give a direction to the society, or as to the steps specified in a direction, under section 54 or 55 above,
- may appeal against the decision to a tribunal constituted in accordance with section 59 below.
- (2) Any person in relation to whom the Commission, in deciding to refuse to grant authorisation, to impose conditions or to withdraw authorisation—
- makes a determination that he is not a fit and proper person to hold or, as the case may be, to remain in an office in the society in question, or
  - imposes a requirement that he be removed from an office in the society,
- may appeal against the decision so far as it relates to that determination or requirement.
- (3) The withdrawal of a society’s authorisation shall not have effect—
- until the end of the period within which an appeal can be brought against the Commission’s decision to withdraw that authorisation; and
  - if such an appeal is brought, until it is determined or withdrawn.
- (4) Where the Commission decides to refuse to grant authorisation to a society on an application made in pursuance of a direction under section 39 above, the society’s authorisation shall not expire under subsection (5) of that section—
- until the end of the period within which an appeal can be brought against the decision not to grant authorisation; and
  - if such an appeal is brought, until it is determined or withdrawn.
- (5) A direction under section 51, 54 or 55 above shall not have any effect until—
- the end of the period within which an appeal can be brought against the Commission’s decision to give the direction or as to any steps specified in the direction; and

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- (b) if such an appeal is brought, until it is determined or withdrawn.
- (6) Subject to any order of the tribunal made under section 59(6) below, an appeal under subsection (1)(b) or (2) above shall not affect the operation, pending the determination of the appeal, of any condition which is the subject of the appeal.
- (7) Subject to subsection (8) below, no determination of an appeal brought by any person under subsection (2) above shall affect any decision of the Commission on the ground of (or on grounds including) the determination made in relation to that person or, as the case may be, the failure of the society to comply with the requirement imposed in relation to that person.
- (8) The tribunal may revoke a decision of the Commission to impose a condition which is the subject of an appeal under subsection (2) above in so far as it seeks to prevent the person making the appeal from holding, or continuing to hold, office in the society.

#### Textual Amendments

**F13** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

VALID FROM 17/08/2001

#### [<sup>F14</sup>58A Notices, hearings and appeals.

- (1) If the Authority proposes—
  - (a) to give a direction to a society under section 54 or section 55, or to vary such a direction other than at the request of the society, or
  - (b) to give a direction in relation to a society under section 90,
 it must give the society a warning notice.
- (2) The warning notice must set out the terms of the direction which the Authority proposes to give and, in the case of a proposal to give a direction under section 54 or 55, any provisions which the Authority proposes to include in the direction by virtue of section 54(4) (including that provision as applied by section 55(3)).
- (3) If the Authority decides—
  - (a) to give a direction to a society under section 54 or section 55, or to vary such a direction other than at the request of the society, or
  - (b) to give a direction in relation to a society under section 90,
 it must give the society a decision notice.
- (4) The decision notice must set out the terms of the direction which the Authority has decided to give and, in the case of a decision to give a direction under section 54 or 55, any provisions to be included in the direction by virtue of section 54(4) (including that provision as applied by section 55(3)).
- (5) A society to whom a decision notice is given under this section may refer the matter to the Financial Services and Markets Tribunal.
- (6) Part XXVI of the Financial Services and Markets Act 2000 (notices) is to be treated as applying in respect of warning notices and decision notices given under this section

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as it applies in respect of warning notices and decision notices given under that Act, subject to subsection (8) below.

- (7) The provisions of Part IX of the Financial Services and Markets Act 2000 (hearings and appeals) are to be treated as applying in respect of references to the Financial Services and Markets Tribunal made under this section as they apply in respect of references made to that Tribunal under that Act.
- (8) In the application of Part XXVI of that Act in respect of warning notices and decision notices given under this section—
- (a) section 388(1)(e)(i) (which requires a decision notice to indicate any right given under that Act to refer a decision to the Tribunal) is to be read as if, for the words “this Act”, there were substituted “the Friendly Societies Act 1992”;
  - (b) section 388(2) (which makes provision for the type of action to which a decision notice may relate if it was preceded by a warning notice) is to be read as if, for the word “Part”, there were substituted “section”;
  - (c) section 390(4) (which provides for the content of a final notice about an order) is to be read as if—
    - (i) for the words “an order” there were substituted “a direction”, and
    - (ii) for the words “the order”, in both places where they appear, there were substituted “the direction”; and
  - (d) section 392 (application of sections 393 (third party rights) and 394 (access to Authority material)) is to be read as if—
    - (i) paragraph (a) of that section contained a reference to a warning notice given under subsection (1) above, and
    - (ii) paragraph (b) of that section contained a reference to a decision notice given under subsection (3) above.]

#### Textual Amendments

**F14** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

## 59 Determination of appeals.

- (1) Where an appeal is brought under section 58 above, a tribunal to determine the appeal shall be constituted in accordance with subsection (2) below.
- (2) The tribunal shall consist of—
- (a) a chairman appointed by the Lord Chancellor or, where the society concerned has its registered office in Scotland, by the Lord Chancellor in consultation with the Lord Advocate; and
  - (b) two other members appointed by the Treasury.
- (3) The chairman shall be a person who—
- (a) has a seven year general qualification, within the meaning of the <sup>M5</sup>Courts and Legal Services Act 1990;
  - (b) is an advocate or solicitor in Scotland of at least seven years' standing; or

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- (c) is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years' standing;
- and the other two members shall be persons appearing to the Treasury to have experience of accountancy, the business of insurance or the business of friendly societies.
- (4) Subject to subsection (5) below, on any appeal against a decision of the Commission the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.
- (5) In the case of an appeal against a decision to give a direction under section 54 or 55 above—
- (a) the tribunal shall, on the evidence adduced before it, reconsider the decision to give the direction and the steps specified in the direction (according to the extent of the appeal);
  - (b) if the tribunal determines that such a direction should not be given, it shall reverse the decision; and
  - (c) if the tribunal determines that those steps should not be so specified, it may give the Commission such guidance as it thinks fit as to what the appropriate steps might be.
- (6) The tribunal may, on the application of the friendly society concerned, order that the operation of any condition which is the subject of an appeal by the society be suspended pending the determination of the appeal.
- (7) The tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except by directing the Commission—
- (a) in the case of an appeal against a decision to refuse to grant authorisation, to determine conditions to which the grant of authorisation is to be subject;
  - (b) in the case of an appeal against the imposition of conditions or as to the conditions imposed by the decision, to determine conditions or different conditions subject to which the authorisation is to be granted or is to continue, as the case may be;
  - (c) in the case of an appeal against a decision to withdraw authorisation, to determine conditions or different conditions subject to which the authorisation is to continue in force, as the case may be;
  - (d) in the case of an appeal against a decision as to the steps specified in a direction under section 54 or 55 above, to determine, having taken account of any guidance given under subsection (5) above, the steps which are to be so specified.
- (8) Where by virtue of subsection (7)(d) above the tribunal directs the Commission to determine the steps to be specified in the direction, the society may appeal against the steps so specified.
- (9) Where by virtue of subsection (7) above the tribunal directs the Commission to determine conditions or different conditions—
- (a) the Commission shall in accordance with section 34 or 36 above impose such conditions as it thinks fit; and
  - (a) paragraphs 7 and 8 of Schedule 13 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule;
- and the society may appeal to the tribunal against any condition so imposed.

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- (10) On any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions which are the subject of the appeal or may direct the Commission to determine different conditions; and where by virtue of this subsection the tribunal directs the Commission to determine different conditions, subsection (9) above shall apply as it applies where the tribunal gives such a direction by virtue of subsection (7) above.
- (11) Where the tribunal reverses a decision of the Commission to refuse to grant authorisation, it shall direct the Commission to grant it; and where the tribunal reverses a decision of the Commission to make the grant of authorisation subject to conditions, it shall direct the Commission to grant it unconditionally.
- (12) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Commission; and unless the tribunal has directed the Commission to determine conditions or, in any other case, the tribunal directs otherwise, the determination shall come into operation when the notice is given to the appellant.
- (13) The Treasury may out of money provided by Parliament pay to the persons appointed as members of a tribunal under this section such fees and allowances in respect of expenses as the Treasury may determine and any other expenses incurred for the purposes of this section.

**Marginal Citations**

M5 1990 c. 41.

**<sup>F15</sup>60 Costs, procedure and evidence.**

- (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to an appeal.
- (2) On an appeal under section 58(2) above the friendly society in relation to which the determination was made, or upon which the requirement was imposed, shall be entitled to be heard.
- (3) The Treasury may make regulations with respect to appeals under section 58 above; and those regulations may in particular make provision—
  - (a) as to the period within which and the manner in which such appeals are to be brought;
  - (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private;
  - (c) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
  - (d) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court in England and Wales or Northern Ireland or, in Scotland, for granting to any person such recovery or inspection of documents as might be granted by the sheriff;

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- (e) for enabling an appellant to withdraw an appeal or the Commission to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
  - (f) for taxing or otherwise settling any costs or expenses directed to be paid by the tribunal and for the enforcement of any such direction;
  - (g) for enabling any functions in relation to an appeal to be discharged by the chairman of the tribunal; and
  - (h) as to any other matter connected with such appeals.
- (4) Regulations under this section with respect to appeals where the friendly society concerned has its registered office in Scotland shall be made by the Lord Advocate.
- (5) A person who, having been required in accordance with regulations under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person who intentionally alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **Textual Amendments**

**F15** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

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

**C2** S. 60: power to transfer functions conferred (19.5.1999) by S.I. 1999/678, **art. 2(1), Sch.**

**C3** S. 60(4): power to transfer certain functions conferred (1.7.1999) by S.I. 1999/1750, arts. 1(1), 2, **Sch. 1**

#### **<sup>F16</sup>61 Further appeals on points of law.**

- (1) An appeal shall lie to the High Court at the instance of the friendly society or other person concerned or of the Commission on any question of law arising from any decision of a tribunal under section 59 above; and if the court is of the opinion that the decision was erroneous in law, it shall remit the matter to the tribunal for re-hearing and determination by it.
- (2) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, references to the High Court shall be construed as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.
- (3) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (1) above except with the leave of that court or of the court or judge from whose decision the appeal is brought.
- (4) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given



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on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

#### Textual Amendments

**F16** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

### Information

#### 62 Powers to obtain information and documents etc.

- (1) This section applies to information, documents or other material, or explanations of matters which relate to—
  - (a) the activities or the plans for future development of a friendly society; or
  - (b) the activities or the plans for future development of a subsidiary of or body jointly controlled by an incorporated friendly society;and, in relation to the imposition of requirements under this section, “the purposes of its supervisory functions” means the purposes of the discharge by the Commission of any of its functions under this Act.
- (2) This section does not authorise any requirement in relation to information, documents or other material to be imposed on a subsidiary of or body jointly controlled by an incorporated friendly society unless that subsidiary or body carries on business in the United Kingdom; but a requirement may be imposed under this section on a friendly society in relation to information, documents or other material in the possession or control of a subsidiary of or body jointly controlled by the society which does not carry on business in the United Kingdom.
- (3) Subject to subsection (2) above, the Commission may by notice to a friendly society or to a subsidiary of, or body jointly controlled by, an incorporated friendly society, require the body to which it is addressed—
  - (a) to furnish to it, within a specified period or at a specified time or times, such specified information as the Commission considers it needs for the purposes of its supervisory functions;
  - (b) to produce to it, at a specified time and place, such specified documents or other material as the Commission considers it needs for the purposes of its supervisory functions;
  - (c) to provide to it, within a specified period, such explanations of specified matters as the Commission considers it needs for the purposes of its supervisory functions;
  - (d) to furnish to it, within a specified period, a report by an accountant or actuary approved by the Commission on, or on specified aspects of, information or documents or other material furnished or produced to the Commission.
- (4) Where by virtue of subsection (3)(a), (b) or (c) above the Commission has power to require the furnishing of any information, the production of any document or material or the provision of any explanation by a friendly society, the Commission shall have the like power as regards any person who—

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- (a) is or has been an officer, employee or agent of the society [<sup>F17</sup>or, in the case of a society to which section 37(2) or (3) above applies, a controller or manager of the society], or
  - (b) in the case of documents or material, appears to the Commission to have the document or material in his possession or under his control.
- (5) Where by virtue of subsection (3)(a), (b) or (c) above the Commission has power to require the furnishing of any information, the production of any document or material or the provision of any explanation by a subsidiary of or body jointly controlled by an incorporated friendly society, the Commission shall have the like power as regards any person who—
- (a) is or has been an officer, employee or agent of the subsidiary or jointly controlled body, or
  - (b) in the case of documents or material, appears to the Commission to have the document or material in his possession or under his control.
- [<sup>F18</sup>(5A) Any person authorised by the Commission may, on producing if required evidence of his authority, enter any premises occupied by—
- (a) any body which is a friendly society to which section 37(2) or (3) above applies, or is a subsidiary of, or body jointly controlled by, such a society, and on which a notice has been served under subsection (3) above; or
  - (b) any person who is or has been a controller, manager, officer, employee or agent of such a society, or of a subsidiary of, or body jointly controlled by, such a society, and on whom a notice has been served under subsection (4) or (5) above,
- for the purpose of obtaining the information or documents required by the notice and exercising the powers conferred by subsection (3) above.]
- (6) Where any person from whom production of a document or material is required under subsection (4) or (5) above claims a lien on the document or material, the production of it shall be without prejudice to the lien.
- (7) Nothing in the foregoing provisions of this section shall compel the production—
- (a) by a barrister, solicitor, advocate or licensed conveyancer of a document or material contained in a privileged communication or, in Scotland, a communication which is protected from disclosure on the ground of confidentiality, made by him or to him in that capacity or the furnishing of information contained in such communication so made;
  - (b) by a person who is not a barrister or solicitor of a document or material contained in a communication made by him or to him which is privileged by virtue of section 63 of the <sup>M6</sup>Courts and Legal Services Act 1990 or the furnishing of information contained in such a communication; or
  - (c) by an independent qualified conveyancer, an executry practitioner or a recognised financial institution of a document or material contained in a communication made by him or to him which is protected from disclosure by virtue of section 22 of the <sup>M7</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or the furnishing of information contained in such a communication.
- (8) Where, by virtue of subsection (3), (4) or (5) above, the Commission requires the production by a friendly society or other body or any other person of documents or material, the Commission may—

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- (a) if the documents or material are not produced, require that person to state, to the best of his knowledge and belief, where the documents or material are;
  - (b) if the documents or material are produced, take copies of or extracts from them and require that person or any other person who is or has been an officer, employee or agent of the friendly society or other body, as the case may be, to provide an explanation of the documents or material.
- (9) Any person who, when required to do so under this section, fails without reasonable excuse to furnish any information or report, to produce any documents or material, or to provide any explanation or make any statement, shall be guilty of an offence and liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding one tenth of that level for every day during which the offence continues.
- (10) Any friendly society which furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular, 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.
- (11) Any person who knowingly or recklessly furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (12) In this section—
- “specified” means specified in a notice under this section; and
  - “agent”, in relation to a friendly society or a subsidiary of, or body jointly controlled by, an incorporated friendly society, includes its bankers, accountants, solicitors and auditors and the appropriate actuary.

#### Textual Amendments

**F17** S. 62(4)(a) words substituted (1.9.1994) by S.I. 1994/1984 reg. 17(1)

**F18** S. 62(5A) inserted (1.9.1994) by S.I. 1994/1984, reg. 17(2)

#### Commencement Information

**I14** S. 62 wholly in force; s. 62 not in force at Royal Assent see s. 126(2); s. 62 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 62 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

#### Marginal Citations

**M6** 1990 c. 41.

**M7** 1990 c. 40.

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VALID FROM 17/08/2001

**[<sup>F19</sup>62A Entry of premises under warrant under section 176 of the Financial Services and Markets Act 2000.**

- (1) A justice of the peace may issue a warrant under section 176 of the Financial Services and Markets Act 2000 if satisfied on information on oath given by or on behalf of the Authority, an authorised officer within the meaning of section 62(3A) above, or a person appointed as an investigator under section 65(1) below or as an inspector under section 66(1) below, that there are reasonable grounds for believing that the first or second set of conditions below is satisfied.
- (2) The first set of conditions is that—
- (a) there are on the premises specified in the warrant information, documents or other material in relation to which a requirement has been imposed on any person under section 62(3), (3A), (4) or (5) above or section 67(3) below, or which it is the duty of any person to produce under section 65(3) or 67(2) below, and
  - (b) that person has failed (wholly or in part) to comply with that requirement or, having been requested to do so, has failed (wholly or in part) to comply with that duty.
- (3) The second set of conditions is that—
- (a) there are on the premises specified in the warrant information, documents or other material in relation to which a requirement could be imposed on any person under section 62(3), (3A), (4) or (5) above or section 67(3) below, or which any person could be requested to produce in compliance with the duty imposed on them by section 65(3) or 67(2) below, and
  - (b) if such a requirement were imposed, or such a request made,—
    - (i) it would not be complied with, or
    - (ii) any information, documents or other material to which it related would be removed, tampered with or destroyed.]

**Textual Amendments**

**F19** S. 62A inserted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, art. 2, 13(1), Sch. 3, Pt. 1 para 77 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

**<sup>F20</sup>63 Confidentiality of certain information.**

- (1) Subject to section 64 below, no restricted information which relates to the business or other affairs of a friendly society, a registered branch of a friendly society or any other person shall be disclosed (otherwise than to an officer or employee of the primary recipient) by—
- (a) the primary recipient; or
  - (b) any person obtaining the information directly or indirectly from him,
- without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

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- (2) For the purposes of this section—
- “the primary recipient” means the Commission, the Chief Registrar, the central office or any officer or servant of any such person; and
- “restricted information” means information which is obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Act or the 1974 Act;
- but information shall not be treated as restricted information if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.
- (3) Any information disclosed to the Commission or the Chief Registrar by an overseas regulatory authority (within the meaning of section 64 below) shall be treated as restricted information for the purposes of this section.
- (4) A person who discloses information in contravention of this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both.

#### Textual Amendments

**F20** S. 63A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 63, 64 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 78** (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

#### Commencement Information

**I15** S. 63 wholly in force; s. 63 not in force at Royal Assent see s. 126(2); s. 63 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 63 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), **Sch. 2**

VALID FROM 17/08/2001

#### [<sup>F21</sup>63A Disclosure of information.

- (1) For the purposes of sections 348 to 353 of the Financial Services and Markets Act 2000 (restrictions on disclosure of confidential information)—
- (a) information to which this section applies is to be treated as confidential information; and
  - (b) in relation to such information, each of the following is a primary recipient—
    - (i) the Authority;
    - (ii) any person who is or has been employed by the Authority; and
    - (iii) any person appointed by the Authority to carry out functions under this Act or the 1974 Act.
- (2) This section applies to information which—
- (a) relates to the business or other affairs of a friendly society, a registered branch of a friendly society or any other person;

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- (b) was received by a primary recipient (within the meaning of subsection (1) (b)) for the purposes of, or in the discharge of, any functions of the Authority under any provision made by or under this Act or the 1974 Act; and
  - (c) is not excluded information by virtue of subsection (4).
- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
- (a) by virtue of a requirement to provide it imposed by or under this Act;
  - (b) for other purposes as well as purposes mentioned in that subsection.
- (4) Information is excluded information if—
- (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by section 348 of the Financial Services and Markets Act 2000 (restrictions on disclosure of confidential information); or
  - (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.]

#### Textual Amendments

**F21** S. 63A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 63, 64 by S.I. 2001/2617, art. 2, 8(1), 13(1), **Sch. 3, Pt. 1** para. 78 (with art. 13(3), Sch. 5); S.I. 2001/3538. art. 2(1)

#### <sup>F20</sup>63 Confidentiality of certain information.

- (1) Subject to section 64 below, no restricted information which relates to the business or other affairs of a friendly society, a registered branch of a friendly society or any other person shall be disclosed (otherwise than to an officer or employee of the primary recipient) by—
- (a) the primary recipient; or
  - (b) any person obtaining the information directly or indirectly from him,
- without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.
- (2) For the purposes of this section—
- “the primary recipient” means the Commission, the Chief Registrar, the central office or any officer or servant of any such person; and
- “restricted information” means information which is obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Act or the 1974 Act;
- but information shall not be treated as restricted information if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.
- (3) Any information disclosed to the Commission or the Chief Registrar by an overseas regulatory authority (within the meaning of section 64 below) shall be treated as restricted information for the purposes of this section.
- (4) A person who discloses information in contravention of this section shall be guilty of an offence and liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both.

#### Textual Amendments

**F20** S. 63A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 63, 64 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 78** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

#### Commencement Information

**I15** S. 63 wholly in force; s. 63 not in force at Royal Assent see s. 126(2); s. 63 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 63 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), **Sch. 2**

## 64 Exceptions from restrictions on disclosure.

- (1) Information which is restricted information for the purposes of section 63 above may be disclosed—
- (a) to any person with a view to the institution of, or otherwise for the purposes of, relevant proceedings;
  - (b) if it is information which is or has been available to the public from other sources;
  - (c) in the form of a summary or collection of information so framed as not to enable information related to any particular body or person to be ascertained from it;
  - (d) to the extent that it is information which is provided for the purpose, under any provision of this Act or the 1974 Act, of its being made available to the public in any manner;
  - (e) in pursuance of any Community obligation;
  - (f) for the purpose of facilitating the discharge by the Commission, the Chief Registrar or the central office of any of their functions under this Act or the 1974 Act;
  - (g) to the Treasury, if the disclosure is made for the purpose of facilitating the discharge of any functions of the Treasury under this Act or the 1974 Act or otherwise in the interests of members of friendly societies or in the public interest;
  - (h) for the purpose of enabling or assisting any person appointed investigator under section 65 below or inspector under section 66 below to discharge his duties under that section; or
  - (i) for the purpose of facilitating the discharge by the auditors of a friendly society of their duties to the Commission.
- (2) For the purposes of subsection (1)(a) above “relevant proceedings” are—
- (a) any criminal proceedings;
  - (b) any civil proceedings by or at the relation of or against the Commission or the Chief Registrar arising out of the discharge of any of their functions under this Act or the 1974 Act;
  - (c) any disciplinary proceedings relating to—

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(i) the exercise by a solicitor, auditor, accountant, actuary or valuer of his professional duties;

(ii) the discharge by a public servant of his duties;

and in paragraph (c) above “public servant” means an officer or servant of the Crown (including an officer or servant of the Crown in right of Her Majesty’s Government in Northern Ireland) or of any public or other authority designated for the purpose by order made by the Treasury.

(3) Nothing in section 63 above prohibits the disclosure of information to the Secretary of State or the Department of Economic Development in Northern Ireland in circumstances where it is desirable or expedient—

(a) that the information should be disclosed in the interests of members of a friendly society or in the public interest; or

(b) it is desirable or expedient that the information should be disclosed for the purpose of facilitating the discharge—

(i) by the Secretary of State, of any functions of his under the enactments relating to companies, insurance companies, or insolvency or under the <sup>M8</sup>Financial Services Act 1986 or any provision of Parts II, III or VII of the <sup>M9</sup>Companies Act 1989; or

(ii) by the Department, of any of its functions relating to companies or insolvency, or under Part III of the <sup>M10</sup>Companies (Northern Ireland) Order 1990 or Part II or V of the <sup>M11</sup>Companies (No. 2) (Northern Ireland) Order 1990;

nor does that section prohibit further disclosure of the information by the Secretary of State or the Department with the consent of the Commission.

[<sup>F22</sup>(3A) Nothing in section 63 above prohibits the disclosure of information to the Treasury in circumstances where it is desirable or expedient that the information should be disclosed for the purpose of facilitating the discharge by the Treasury of any functions of theirs under the Financial Services Act 1986 or under Part III or Part VII of the Companies Act 1989 nor does that section prohibit further disclosure of the information by the Treasury with the consent of the Commission.]

(4) Nothing in section 63 above prohibits the disclosure of information to an authority mentioned in subsection (5) below (a “relevant authority”) in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed—

(a) in the interests of members of a friendly society or in the public interest; or

(b) with a view to facilitating the discharge by the authority, of any functions of the authority (including functions in relation to proceedings) mentioned in that subsection (“relevant functions”);

nor does that section prohibit further disclosure of the information, with the consent of the Commission.

(5) The relevant authorities mentioned in subsection (4) above and the relevant functions in relation to each such authority, are as follows—

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***Authority***

An inspector appointed under Part XIV of the Companies Act 1985, Part XV of the Companies (Northern Ireland)

***Functions***

Functions under that Part or that section or Article.



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Order 1986 or section 94 or 177 of the Financial Services Act 1986.	
A person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of the Companies Act 1985, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989 or Article 440 of the Companies (Northern Ireland) Order 1986.	Functions under that section or Article.
The Policyholders Protection Board.	Functions under the Policyholders Protection Act 1975.
A designated agency within the meaning of the Financial Services Act 1986.	Functions under that Act or Part VII of the Companies Act 1989.
A transferee body or the competent authority within the meaning of the Financial Services Act 1986.	Functions under that Act.
A body administering a scheme under section 54 of the Financial Services Act 1986.	Functions under the scheme.
A recognised self-regulating organisation, recognised professional body, recognised investment exchange, recognised clearing house, or recognised self-regulating organisation for friendly societies (within the meaning of the Financial Services Act 1986).	Functions in its capacity as an organisation, body, exchange or clearing house recognised under that Act.
The Bank of England.	Functions under the Banking Act 1987 and any other functions.
A body established by order under section 46 of the Companies Act 1989.	Functions under Part II of that Act.
A recognised supervisory or qualifying body within the meaning of Part II of the Companies Act 1989.	Functions as such a body.
The Industrial Assurance Commissioner for Northern Ireland.	Functions under the enactments relating to industrial assurance.
The Insurance Brokers Registration Council.	Functions under the Insurance Brokers (Registration) Act 1977.
The Official Receiver or the Official Receiver for Northern Ireland.	Functions under the enactments relating to insolvency.
A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986).	Functions in its capacity as such a body under that Act.
The Building Societies Commission.	Functions under the Building Societies Act 1986.

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The Director-General of Fair Trading.      Functions under the Financial Services  
 Act 1986.

- (6) The Commission, with the consent of the Treasury, may by order—
- (a) amend the Table in subsection (5) above so as to—
    - (i) add any public or other authority to the Table and specify the relevant functions of that authority;
    - (ii) remove any authority from the Table; or
    - (iii) add functions to, or remove functions from, those which are relevant functions in relation to an authority specified in the Table;
  - (b) restrict the circumstances in which information may, by virtue of subsection (4) above, be disclosed or further disclosed; and
  - (c) impose conditions subject to which the information may be disclosed or further disclosed.
- (7) Nothing in section 63 above prohibits the disclosure to an overseas regulatory authority of information for the purpose of assisting that authority in the discharge of its functions.
- [<sup>F23</sup>(7A) In the case of restricted information which relates to the business or other affairs of a friendly society to which section 37(2) or (3) above applies, no disclosure may be made by virtue of subsection (1), (3), (4) or (7) above unless the disclosure appears to be in accordance with—
- (a) Article 16 of the third general insurance Directive; or
  - (b) Article 15 of the third life Directive.]
- (8) In this section—
- “authority” includes any body (corporate or unincorporate) which is charged with the regulation of the carrying on of any description of financial or insurance business or the practice of any profession to which the carrying on of such business is incidental;
- “overseas regulatory authority” means any government department or public or other authority in a country or territory outside the United Kingdom which is charged under the law of that country or territory with the regulation of companies, insurance companies, financial services, banking or any business corresponding to the business which may be carried on by friendly societies (or their subsidiaries); and
- “regulation”, in relation to any public or other authority, means regulation in the public interest or for the protection of private interests.

**Textual Amendments**

**F22** S. 64(3A) inserted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 14**

**F23** S. 64(7A) inserted (1.9.1994) by S.I. 1994/1984 reg. 18

**Commencement Information**

**I16** S. 64 wholly in force; s. 64 not in force at Royal Assent see s. 126(2); s. 64 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 64 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), **Sch. 2**

*Status: Point in time view as at 01/09/1994. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, Part V. (See end of Document for details)*

#### Marginal Citations

- M8 1986 c. 60
- M9 1989 c. 40
- M10 S.I. 1990/593 (N.I. 5)
- M11 S.I. 1990/1504 (N.I. 10)

#### *Inspections etc.*

### 65 Investigations on behalf of Commission.

- (1) If it appears to the Commission desirable to do so for the purpose of its supervisory functions in relation to a friendly society, the Commission may appoint one or more competent persons to investigate and report to it on the state and conduct of the activities of the society, or any particular aspect of those activities.

[<sup>F24</sup>(1A) Where a person has notified the Commission under paragraph 1 or 2 of Schedule 13A to this Act of his intention to become a controller of or to acquire notifiable voting rights in a friendly society to which section 37(2) or (3) above applies, the Commission may, if it appears to it desirable to do so, appoint one or more competent persons to investigate and report to it on whether, if that person became such a controller or acquired such voting rights, the criteria of prudent management would be fulfilled with respect to the society.]

- (2) If a person appointed under subsection (1) [<sup>F24</sup>or (1A)] above thinks it necessary for the purposes of his investigation, he may also investigate the activities of any body corporate which is or has at any relevant time been a subsidiary of, or jointly controlled by, the society under investigation.

- (3) It shall be the duty of every person who is or has been an officer, employee and agent of a friendly society or other body which is under investigation—

- (a) to produce to the persons appointed under subsection (1) [<sup>F24</sup>or (1A)] above all records, books and papers relating to the body concerned which are in his custody or power; and
- (b) to attend before those persons when required to do so;
- (c) to answer any question which is put to him by those persons with respect to any friendly society or other body which is under investigation,

and otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.

[<sup>F24</sup>(3A) A person appointed under subsection (1) or (1A) above may enter any premises occupied by a friendly society to which section 37(2) or (3) above applies or any subsidiary of or body jointly controlled by such a society 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 who, without reasonable excuse—

- (a) fails to produce any records, books or papers which it is his duty to produce under subsection (3)(a) above; or
- (b) fails to comply with his duty under subsection (3)(b) or (c) above;

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shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who is or has been an officer, employee or agent of a friendly society or other body and who knowingly or recklessly furnishes to any person appointed under subsection (1) [<sup>F24</sup>or (1A)] above any information which is false or misleading in a material particular, shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

[<sup>F24</sup>(5A) In relation to a friendly society to which section 37(2) or (3) above applies, any reference in subsection (3) or (5) above to a person who is or has been an officer shall be read as including a reference to a person who is or has been a controller or manager.]

(6) In this section—

“agent”, in relation to a friendly society or other body whose activities are under investigation, includes its bankers, accountants, solicitors and auditors and the appropriate actuary;

“the purposes of its supervisory functions”, in relation to the Commission, has the same meaning as in section 62 above.

#### Textual Amendments

- F24** S. 65(1A) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(1)  
 Words in s. 65(2)(3) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(2)  
 S. 65(3A) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(3)  
 Words in s. 65(5) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(4)  
 S. 65(5A) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(5)

#### Commencement Information

- I17** S. 65 wholly in force; s. 65 not in force at Royal Assent see s. 126(2); s. 65 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 65 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

## 66 Inspections and special meetings: general.

(1) In the circumstances mentioned in subsection (2) below, the Commission may—

- (a) appoint one or more competent inspectors to investigate and report on the affairs of a friendly society; or
- (b) call a special meeting of a friendly society to consider its affairs; or
- (c) appoint (whether on the same or on different occasions) an inspector or inspectors and call a special meeting for those purposes;

and, in the circumstances mentioned in subsection (3) below, the investigation or consideration may extend to the affairs of any body corporate which is or at any relevant time has been a subsidiary of or jointly controlled by the society concerned.

(2) The powers conferred by subsection (1) above may be exercised either—

- (a) on the application of the requisite number of members of the society concerned; or

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- (b) where the Commission is of the opinion that an investigation should be held into the affairs of the society, or that the affairs of the society call for consideration by a meeting of its members;
- but paragraph (a) above shall not apply to a registered society with branches (regardless of the number of members) except with the consent of the central body of that society.
- (3) The powers conferred by subsection (1) above may be exercised so as to extend the investigation or consideration to the affairs of a body which is or has been a subsidiary of or jointly controlled by a friendly society either—
- (a) where an application referred to in subsection (2)(a) above so requests; or
- (b) where the Commission is of the opinion that it is necessary for the purposes of the investigation into or consideration of the affairs of the friendly society that the affairs of the subsidiary or other body should also be investigated or considered.
- (4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a subsidiary of or a body jointly controlled by the society under investigation they may, with the consent of the Commission, extend their investigation to the affairs of the subsidiary or other body and make their report accordingly.
- (5) For the purposes of subsections (1) to (3) above the requisite number of members—
- (a) in the case of a friendly society having more than 1,000 members, is 100; and
- (b) in the case of any other friendly society, is one-tenth of the whole number of members of the society.
- (6) Where an application is made as mentioned in subsection (2) above—
- (a) the application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for making the application and are not actuated by malicious, frivolous, vexatious or scandalous motives;
- (b) such notice of the application shall be given to the society concerned and, if the application extends to the affairs of a subsidiary of or body jointly controlled by that society, to that subsidiary or other body, as the Commission may direct;
- (c) the Commission may require the applicants to give security for payment of the costs of the investigation or meeting before the inspector is appointed or the meeting is called subject, in the case of the costs of an investigation, to an amount not exceeding the corresponding Companies Act limit; and
- (d) as regards the expenses of or incidental to the investigation or meeting—
- (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the Commission but without prejudice to its rights to contribution under section 67(10) below;
- (ii) in the case of a meeting, the expenses shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers or former members or officers of the society, in such proportions as the Commission may direct.
- (7) Before exercising its powers under subsection (1) above in a case falling within subsection (2)(b) above, the Commission shall inform the society of the action which it proposes to take and the grounds for that action, and the society shall, within 14

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days of receiving the information, be entitled to give the Commission an explanatory statement in writing by way of a reply.

- (8) Where the Commission proposes to exercise its powers under subsection (1) above in a case falling within subsection (3)(b) above, subsection (7) above shall apply in relation to the subsidiary or jointly controlled body as it applies in relation to the society.
- (9) Inspectors appointed under this section shall, in addition to having the powers which are necessary for or incidental to the discharge of their functions under this section, have the power specified in section 67 below.
- (10) Where a special meeting is called under this section—
- (a) the Commission may—
    - (i) direct at what time and place the meeting is to be held and what matters are to be discussed and determined at the meeting; and
    - (ii) direct which members may attend and vote at the meeting, and may give such other directions as it thinks fit with respect to the call, holding and conduct of the meeting;
  - (b) the Commission may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman;
  - (c) the meeting shall have all the powers of a meeting called according to the rules of the society;
- and the provisions of this subsection and any direction given under it shall have effect notwithstanding anything in the rules of the society.
- (11) In this section “the corresponding Companies Act limit”, in relation to security for the payment of the costs of an investigation, is £5,000 or such other sum as is specified for the time being in an order under section 431(4) of the <sup>M12</sup>Companies Act 1985 or Article 424(4) of the <sup>M13</sup>Companies (Northern Ireland) Order 1986.

#### **Commencement Information**

**I18** S. 66 wholly in force; s. 66 not in force at Royal Assent see s. 126(2); s. 66 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 66 in force for all remaining purposes at 28.4.1993 by 1993/1186, art. 2(2), Sch. 2

#### **Marginal Citations**

**M12** 1985 c. 6.

**M13** S.I. 1986/1032 (N.I. 6).

## **67 Inspections: supplementary provision.**

(1) In this section—

“the body under investigation” means—

- (i) the friendly society whose affairs are the subject of the investigation, or
- (ii) the friendly society, and each subsidiary of or body jointly controlled by the society, whose affairs are so subject,

as the case may be;

“the inspectors” means the person appointed by the Commission under section 66 above to conduct the investigation;

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“the investigation” means the investigation under section 66 above which the inspectors have been appointed to hold;

and references to officers, employees or agents include past, as well as present, officers, employees or agents; and “agents”, in relation to a friendly society or any subsidiary of or body jointly controlled by an incorporated friendly society, includes its bankers, accountants, solicitors and auditors and the appropriate actuary.

- (2) When the inspectors have been appointed, it is the duty of all officers, employees and agents of the body under investigation—
  - (a) to produce to the inspectors all documents and material of or relating to the body under investigation which are in their custody or power;
  - (b) to attend before the inspectors when required to do so; and
  - (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (3) If the inspectors consider that a person other than an officer, employee or agent of the body under investigation is or may be in possession of information concerning its affairs, they may require that person to produce to them any documents or material in his custody or power relating to the body under investigation, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person’s duty to comply with the requirement.
- (4) The inspectors may examine on oath the officers, employees and agents of the body under investigation, and any such person as is mentioned in subsection (3) above, in relation to the affairs of the body under investigation, and may administer an oath accordingly.
- (5) An answer given by a person to a question put to him under the foregoing provisions of this section may be used in evidence against him.
- (6) If an officer, employee or agent of the body under investigation or any such person as is mentioned in subsection (3) above—
  - (a) refuses to produce any document or material which it is his duty under this section to produce; or
  - (b) refuses to attend before the inspectors when required to do so; or
  - (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the body under investigation,the inspectors may certify the refusal in writing to the High Court; and the court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the court.
- (7) The inspectors may, and if so directed by the Commission shall, make interim reports to the Commission, but they may at any time in the course of the investigation, without making an interim report, inform the Commission of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.
- (8) The Commission may, if it thinks fit—
  - (a) send a copy of any report made by the inspectors to the body whose affairs are or were the subject of the investigation;

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- (b) furnish a copy of any such report on request and on payment of the prescribed fee to—
    - (i) any member of the body whose affairs are or were the subject of the investigation;
    - (ii) the auditors of that body;
    - (iii) any person whose conduct is referred to in the report;
    - (iv) any other person whose financial interests appear to the Commission to be affected by matters dealt with in the report, whether as creditor or otherwise; and
  - (c) cause the report to be printed and published.
- (9) A copy of a report of inspectors appointed under section 66 above to hold an investigation under that section, certified by the Commission to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report; and a document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.
- (10) The Commission shall be entitled to be repaid the expenses of the investigation defrayed by it under section 66(6)(d) above as provided in the following paragraph, that is to say—
- (a) by the applicants for the investigation, to such extent (if any) as the Commission may direct;
  - (b) by any body whose affairs were the subject of the investigation, to such extent (if any) as the Commission may direct;
  - (c) by any person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by or before which he was convicted may order;
- and a person liable under any one of paragraphs (a) to (c) above is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

- [<sup>F25</sup>(10A) In relation to a friendly society to which section 37(2) or (3) above applies—
- (a) any reference in subsection (1), (2) or (4) above to officers shall be read as including a reference to controllers or managers; and
  - (b) any reference in subsection (3) or (6) above to an officer shall be read as including a reference to a controller or manager.]

- (11) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, any reference to the High Court shall be read as a reference to the Court of Session or, as the case may be, to the High Court in Northern Ireland.

#### Textual Amendments

**F25** S. 67(10A) inserted (1.9.1994) by S.I. 1994/1984 reg. 20

#### Commencement Information

**I19** S. 67 wholly in force; s. 67 not in force at Royal Assent see s. 126(2); s. 67 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 67 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2



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**[67A** <sup>F26</sup> **Information for members.**

Schedule 13C to this Act shall have effect for requiring friendly societies to which section 37(2) or (3) above applies to furnish members with the information there mentioned.]

**Textual Amendments**

**F26** S. 67A inserted (1.9.1994) by S.I. 1994/1984 reg. 21(1)

**[<sup>F27</sup>67B Statutory notice.**

- (1) Subject to subsection (7) below, unless the requirements of subsection (2) below are fulfilled no friendly society to which section 37(2) above applies shall enter into a contract the effecting of which constitutes—
  - (a) the carrying on of long term business in the United Kingdom; or
  - (b) the provision there of long term insurance.
- (2) The requirements of this subsection are that—
  - (a) the society 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 that contract; or
  - (b) a representative of the society gives such notice to that party at that time.
- (3) Where a statutory notice is sent to the other party to the proposed contract before the time when it is entered into, the society shall, not later than 14 days after the contract has become binding, inform the party in writing that it has done so.
- (4) 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 by regulations made under section 2(2) of the European Communities Act 1972<sup>M14</sup> 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 so prescribed for securing that the notice is easily legible; and
  - (b) has annexed to it a form of notice of cancellation of such description as may be so prescribed for use under section 67C below.
- (5) The Commission may, on the application of a friendly society, alter the requirements in relation to the notice referred to in subsection (4)(a) above so as to adapt those requirements to the circumstances of that society or to any particular kind of contract proposed to be entered into by that society.
- (6) Any society which contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale but, without prejudice to section 67C(2) below, no contract shall be invalidated by reason of the fact that the society has contravened this section in relation to that contract.
- (7) Subsection (1) above does not apply to—
  - (a) a contract the effecting of which by the society constitutes the carrying on of investment business (within the meaning of the Financial Services Act 1986<sup>M15</sup>);
  - (b) a contract the effecting of which by the society constitutes the carrying on of industrial assurance business;

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- (c) a contract the other party to which is habitually resident in a member State other than the United Kingdom;
  - (d) a contract the other party to which is not an individual;
  - (e) a contract of term assurance effected for a period of six months or less; or
  - (f) a contract of reinsurance.
- (8) In sections 67C and 67D below “statutory notice” has the same meaning as in this section.]

#### Textual Amendments

**F27** S. 67B inserted (1.9.1994) by S.I. 1994/1984 reg. 22

#### Marginal Citations

**M14** 1972 c.68.

**M15** 1986 c.60.

### [<sup>F28</sup>67C Right to withdraw from transaction.

- (1) A person who has received a statutory notice in relation to a 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 friendly society.
- (2) A person to whom a friendly society to which section 37(2) above applies ought to have, but has not, sent a statutory notice in relation to a contract may serve a notice of cancellation on the society; but if the society sends him a statutory notice in relation to the contract before he has served a notice of cancellation under this subsection, then without prejudice to his right to serve a notice of cancellation under subsection (1) above, his right to do so under this subsection shall cease.
- (3) A notice of cancellation may, but need not, be in the form annexed to the statutory notice and shall have effect if, however expressed, it indicates the intention of the person serving it to withdraw from the transaction in relation to which the statutory notice was or ought to have been sent.
- (4) Where a person serves a notice of cancellation, then—
  - (a) if at the time when the notice is served the contract has been entered into, the notice shall operate so as to rescind the contract;
  - (b) in any other case, the service of the notice shall operate as a withdrawal of any offer to enter into the contract which is contained in, or implied by, any proposal made to the society by the person serving the notice of cancellation and as notice to the society 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 society or to a person who is the agent of the society for the purpose of receiving that sum) shall be recoverable from the society by the person serving the notice;
  - (b) any sum which the society has paid under the contract shall be recoverable by him from the person serving the notice.

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- (6) Any sum recoverable under subsection (5) above shall be recoverable in any court of competent jurisdiction.]

**Textual Amendments**

**F28** S. 67C inserted (1.9.1994) by S.I. 1994/1984 reg. 23

[<sup>F29</sup>**67D Service of notice of cancellation.**

- (1) For the purposes of section 67C above a notice of cancellation—
- (a) shall be deemed to be served on the society 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 society 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 society or on a person who is the agent of the society 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 Interpretation Act 1978 as relates to the time when service is deemed to have been effected shall not apply to a notice of cancellation.]

**Textual Amendments**

**F29** S. 67D inserted (1.9.1994) by S.I. 1994/1984 reg. 24

**Status:**

Point in time view as at 01/09/1994. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Friendly Societies Act 1992, Part V.