
Status: This is the original version (as it was originally enacted).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

SCHEDULES

SIXTH SCHEDULE

Section 45.

PROVISIONS AS TO POLICIES OF INSURANCE, SECURITIES AND DEPOSITS

Rights and remedies under or in respect of policies and securities

- 1 (1) Where a certificate of insurance has been delivered in connection with a policy of insurance, so much of the policy as purports to restrict, or attach conditions to, the insurance of any person insured thereby shall, subject to the provisions of, this paragraph, be of no effect as respects any such liability as is required to be covered by a policy under Part IV of this Act:

Provided that nothing in this paragraph shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of a person which is covered by the policy by virtue only of this paragraph, shall be recoverable by the insurer from that person.

- (2) Nothing in this paragraph shall affect any provision in a policy being a provision which—
- (a) restricts the insurance—
 - (i) by limiting the period of the insurance, or
 - (ii) by limiting the loss or damage insured against to loss or damage caused to persons or property in the United Kingdom, or
 - (iii) in the case of any aircraft, by specifying as the amount up to which the insurer undertakes to indemnify the insured against liability incurred by him by way of damages in respect of loss or damage caused on any one occasion to persons or property on land or water by, or by a person in, or an article or person falling from, that aircraft while in flight, taking off or landing, an amount not less than the total limit of liability appropriate to that aircraft, or
 - (iv) in the case of any aircraft, by specifying as the amount up to which the insurer undertakes to indemnify the insured against liability incurred by him by way of damages in respect of loss of, or damage to, property on land or water caused on any one occasion by, or by a person in, or an article or person falling from, that aircraft while in flight, taking off or landing, an amount not less than the limit of liability for property claims appropriate to that aircraft, or
 - (v) by providing that the insurer shall not be liable to pay any claim under the policy if, at the time of the happening of the event which was the cause of the loss or damage giving rise to the claim, a licence to fly was not in force in respect of the aircraft in connection with which the claim is made, or

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

- (b) provides that the insurer shall not be liable to pay any claim in respect of loss or damage which is caused or contributed to by conditions of war, riot or civil commotion.
 - (3) For the purposes of this paragraph, a provision in a policy which enables one party or either party to determine the insurance shall be deemed to be a provision restricting the insurance by limiting the period thereof, if, but only if, the provision requires the giving to the other party of at least seven clear days' notice in writing of the cancellation of the insurance.
 - (4) In this paragraph the expression " licence to fly" means a written authority permitting the aircraft to fly, issued in accordance with an Order in Council under section eight of this Act.
- 2 (1) If, after a certificate of insurance has been delivered in connection with a policy of insurance, a judgment in respect of any such liability as is required to be covered by a policy under Part IV of this Act (being a liability covered by the terms of the policy) is obtained against a person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this paragraph, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any amount payable by way of interest on that sum by virtue of any enactment relating to interest on judgments.

In the application of this sub-paragraph to Scotland, the words " by virtue of any enactment relating to interest or judgments " shall be omitted.

- (2) No sum shall be payable by an insurer under the foregoing provisions of this paragraph—
 - (a) in respect of any judgment, unless before, or within seven days after, the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
 - (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
 - (c) in connection with any liability, if both—
 - (i) the policy was cancelled by mutual consent or by virtue of any provision contained therein, and the cancellation took effect before the happening of the event which was the cause of the loss or damage giving rise to the liability, and
 - (ii) a written notice of the cancellation stating the time at which it takes effect was, not less than seven clear days before the date of the happening of the said event, served by the insurer on the Minister.

Any notice to be served for the purposes of this sub-paragraph on the Minister shall be deemed to be duly served if it is sent by registered post in a letter addressed to the Secretary of the Ministry of Civil Aviation, London.

- (3) No sum shall be payable by an insurer under the foregoing provisions of this paragraph, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, in a case

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

where he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in the policy:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this sub-paragraph as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before, or within seven days after, the commencement of that action, he has given notice thereof to the person who is the plaintiff in the said proceedings, specifying the non-disclosure or false representation on which the insurer proposes to rely; and any person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party to the action.

- (4) Nothing in this paragraph shall, in relation to any particular policy of insurance, require the insurer to pay any sum in excess of the amount for which, apart from this paragraph, he is liable under the policy or would be liable under the policy if it had not been cancelled or avoided; and where, by reason of two or more judgments against a person insured by the policy having been obtained in respect of loss or damage, caused on any one occasion, several claims under this paragraph are made against, or apprehended by, the insurer in relation to any aircraft, he may make application to the High Court, and thereupon the court may determine the maximum liability of the insurer in respect of the claims and also, if need be, his liability in respect of such of those claims as are for loss of or damage to property and may distribute the amount of his liability among the several claims on the following principles:—
- (a) if the claims are solely in respect of loss of life or personal injury or solely in respect of loss of, or damage to, property, the amount of the liability shall be distributed rateably;
 - (b) if there are claims both in respect of loss of life or personal injury and in respect of loss of, or damage to, property, one-half of the insurer's total maximum liability shall be appropriated, so far as necessary, to meeting claims for loss of life or personal injury and shall be distributed rateably among them, and the other half shall be distributed rateably among all the claims, including claims in respect of loss of life or personal injury if and so far as they exceed the aforesaid appropriation:

Provided that for the purposes of this sub-paragraph so much only of a claim shall be taken into account as represents the amount of damages awarded under the judgment in respect of which the claim is made, and interest on that amount.

- (5) Where an application is made to the court under the last foregoing sub-paragraph, the court may stay any proceedings pending in any other court in relation to the same matter, and may give such directions as the court thinks proper for the joining of persons interested as parties to the proceedings, for the exclusion of claims which are not brought before the court within a certain time, and for requiring security from the insurer.
- (6) If an insurer becomes liable under this paragraph to pay, in respect of any liability of a person insured by a policy, an amount for which the insurer would not, apart from the provisions of this paragraph, be liable, he shall be entitled to recover the said amount from that person.
- (7) References in the foregoing provisions of this paragraph to a person insured by a policy shall, unless the context otherwise requires, be construed as including references to his estate, and except in Scotland the said provisions shall, in relation

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

to a claim established against the estate of a deceased person in proceedings for the administration of that estate, have effect—

- (a) as if the final determination in those proceedings that the claim is established were a judgment obtained against the estate of the deceased in proceedings brought by the claimant as plaintiff, and
- (b) as if the making of the claim in the administration proceedings were the commencement of the proceedings in which the judgment was given.

(8) In this paragraph the expression " liability covered by the terms of the policy " means a liability which is covered by the policy, or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.

3 Where a certificate of insurance has been delivered in connection with a policy of insurance, the happening, in relation to a person insured by the policy, of any such event as is mentioned in subsection (1) or subsection (2) of section one of the Third Parties (Rights against Insurers) Act, 1930, shall, notwithstanding anything in that Act, not affect any such liability of that person as is required to be covered by a policy under Part IV of this Act, but nothing in this paragraph shall affect any rights against the insurer conferred by that Act on the person to whom the liability was incurred.

4 (1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy of insurance under Part IV of this Act shall, on demand by or on behalf of the person making the claim, state whether or not, at the time of the event which was the cause of the loss or damage giving rise to the claim, he, or (if the claim is made against him as representing the estate of a deceased person) the deceased, was insured in respect of that liability by any policy having effect for the purposes of Part IV of this Act, or would have been so insured if the insurer had not avoided or cancelled the policy, and, if he or the deceased, as the case may be, was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in connection with the policy.

(2) If any person fails, without reasonable excuse, to comply with this paragraph, or wilfully makes any false statement in reply to such a demand as aforesaid, he shall be liable on summary conviction to a fine not exceeding, in the case of a first offence, twenty pounds or, in the case of a second or subsequent offence, fifty pounds, or to imprisonment for a term not exceeding four months.

5 (1) Where a certificate of insurance has been delivered in connection with a policy of insurance, and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person to whom the certificate was delivered shall, within seven days from the taking effect of the cancellation, surrender the certificate to the insurer or, if it has been lost or destroyed, send a written notice to that effect by post to the insurer.

Where a notice is sent to an insurer in pursuance of the foregoing provisions of this paragraph, the person sending the notice shall, if within seven days after the receipt thereof he is requested by the insurer so to do, make a statutory declaration to the effect that the certificate of insurance to which the notice relates has been lost or destroyed, as the case may be.

(2) If any person fails to comply with this paragraph, he shall be liable on summary conviction to a fine not exceeding, in the case of a first offence, twenty pounds or,

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

in the case of a second or subsequent offence, fifty pounds, or to imprisonment for a term not exceeding four months.

- (3) Any reference in this paragraph to a certificate of insurance shall, in relation to a policy in connection with which more than one such certificate is issued, be construed as a reference to all the certificates, and shall, where any copy of such a certificate has been issued, be construed as including a reference to that copy.

- 6 The foregoing provisions of this Schedule shall apply in relation to securities having effect for the purposes of Part IV of this Act, as they apply in relation to policies of insurance; and, in relation to any security having effect for the purposes of Part IV of this Act, references in the said provisions to being insured, to a certificate of insurance, to an insurer and to a person insured shall be construed respectively as references to the having in force of the security, to the certificate of security, to the giver of the security and to a person whose liability is covered by the security.

Deposits

- 7 (1) No part of any sum which, for the purpose of any provision of section forty-three of this Act, has been deposited by any person with the Accountant-General of the Supreme Court shall, so long as any liabilities incurred by that person, being such liabilities as are required to be covered by a policy of insurance under Part IV of this Act, have not been discharged or otherwise provided for, be applicable in discharge of any other liabilities incurred by him.
- (2) Any rules made by the Board of Trade under section two of the Assurance Companies Act, 1909, which apply to deposits made by insurers carrying on aircraft insurance business, shall with such modifications and adaptations as may be prescribed by rules made by the Minister after consultation with the Lord Chancellor, apply to deposits made under section forty-three of this Act with the Accountant-General of the Supreme Court and the Minister, after the like consultations, may make such rules with respect to the said deposits as the Board of Trade might have made under the said section two if the Assurance Companies Act, 1946, had not passed.

Supplementary Provisions

- 8 (1) The Minister may make regulations—
- (a) for prescribing the forms of certificates of insurance and certificates of security to be used for the purposes of Part IV of this Act, and the particulars to be contained in such certificates ;
 - (b) as to applications for, and the issue of, such certificates of insurance and certificates of security, as to the issue of copies of any such certificates which are lost or destroyed, and as to the keeping of records and documents and the furnishing of particulars, and the giving of information with respect thereto, to the Minister or a chief officer of police;
 - (c) as to the carrying of documents in aircraft, and as to the production of such documents on demand to such persons as may be specified in the regulations;
 - (d) for prescribing (without prejudice to any Order in Council made under Part IV of this Act) that the provisions of Part IV of this Act which relate to insurance, securities and deposits in respect of third party risks shall, in relation to any such class of aircraft registered outside the United Kingdom as may be specified in the regulations, have effect subject to such modifications, adaptations and exceptions as may be so specified; and

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

- (e) generally for carrying into effect the said provisions of Part IV of this Act.
- (2) If any person contravenes or fails to comply with any regulations made by the Minister under this paragraph, that person shall be liable on summary conviction to such fine, not exceeding twenty pounds, as may be prescribed by the regulations.
- (3) Any statutory instrument containing regulations made by the Minister under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this paragraph the expression " chief officer of police " has the same meaning as in the Police Pensions Act, 1921.