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STATUTORY INSTRUMENTS

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**1992 No. 2890**

**The Insurance Companies (Amendment) Regulations 1992**

*General*

**Citation, commencement, interpretation and purpose**

1.—(1) These Regulations may be cited as the Insurance Companies (Amendment) Regulations 1992 and shall come into force on the day after the day on which they are made.

(2) In these Regulations—

“the 1982 Act” means the Insurance Companies Act 1982(1);

“the 1986 Act” means the Financial Services Act 1986(2).

(3) These Regulations—

(a) give effect to Council Directive 90/618/EEC(3) amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC(4) and Directive 88/357/EEC(5) which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance;

(b) give further effect to Council Directive 88/357/EEC; and

(c) give effect to Articles 8 and 9 of Council Directive 90/619/EEC(6) amending Council Directive 79/267/EEC(7) which concerns the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance.

*Amendments of 1982 Act*

**Power to defer decision on application for authorisation**

2.—(1) At the beginning of subsection (2) of section 5 of the 1982 Act (submission of proposals etc.) insert the words “Subject to subsection (3) below,”.

(2) After that subsection insert—

“(3) The Secretary of State may defer a decision on an application for an authorisation under section 3 above for such period as may be necessary for the purpose of implementing any decision of the Council or Commission of the Communities under—

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(1) 1982 c. 50.

(2) 1986 c. 60.

(3) O.J. No. L330, 29.11.90, p.44.

(4) O.J. No. L228, 16.8.73, p.3; amended by Council Directives 76/580/EEC (O.J. No. L189, 13.7.76, p.13), 84/641/EEC (O.J. No. L339, 27.12.84, p.21), 87/343/EEC (O.J. No. L185, 4.7.87, p.72) and 87/344/EEC (O.J. No. L185, 4.7.87, p.77), the 1979 Act of Accession (Greece) (O.J. No. L291, 19.11.79, p.17), the 1985 Act of Accession (Portugal and Spain) (O.J. No. L302, 15.11.85, p.23) and Council Directives 88/357/EEC and 90/618/EEC.

(5) O.J. No. L172, 4.7.88, p.1; amended by Directive 90/618/EEC.

(6) O.J. No. L330, 29.11.90, p.50.

(7) O.J. No. L63, 13.3.79, p.1; amended by the 1979 Act of Accession (Greece), the 1985 Act of Accession (Portugal and Spain) and Council Directive 90/619/EEC.

- (a) Article 29b(4) of the first general insurance Directive<sup>(8)</sup>; or
- (b) Article 32b(4) of the first long term insurance Directive<sup>(9)</sup>.”.

### **Approval of transfers of general business**

3. In subsection (4A)(10) of section 51 of the 1982 Act (approval of transfers of general business), for the words from “unless” to the end substitute the words

“unless—

- (a) the supervisory authorities of that State certify that it possesses the necessary margin of solvency after taking the proposed transfer into account; or
- (b) every policy included in the proposed transfer evidences a contract of reinsurance.”.

### **Change of Controller**

4. After subsection (2) of section 61 of the 1982 Act (approval of person proposing to become controller of insurance company where section 60 does not apply) insert—

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

- (a) Article 29b(4) of the first general insurance Directive<sup>(8)</sup>; or
- (b) Article 32b(4) of the first long term insurance Directive<sup>(9)</sup>.”.

### **Notification of change of control**

5. After section 63 of the 1982 Act insert—

#### **“Duty to notify change of control**

**63A.**—(1) A person resident or having its head office in a country or territory other than a member State who becomes the parent undertaking of an insurance company—

- (a) which has its head office in the United Kingdom; and
- (b) to which this Part of this Act applies,

shall before the expiration of the period of fourteen days beginning with the day next following that on which he becomes the parent undertaking notify the Secretary of State in writing of that fact.

(2) Subsection (1) above shall not apply if the insurance company concerned—

- (a) is required to give notice to the Secretary of State in accordance with section 62(2) above; or
- (b) is not authorised to carry on in any member State any insurance business other than reinsurance business.”.

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<sup>(8)</sup> Article 29b(4) was inserted by Council Directive [90/618/EEC](#), Article 4.

<sup>(9)</sup> Article 32b(4) was inserted by Council Directive [90/619/EEC](#), Article 9.

<sup>(10)</sup> Section 51(4A) was inserted by [S.I. 1990/1333](#), reg. 9(1).

<sup>(8)</sup> Article 29b(4) was inserted by Council Directive [90/618/EEC](#), Article 4.

<sup>(9)</sup> Article 32b(4) was inserted by Council Directive [90/619/EEC](#), Article 9.

### **Enforcement of section 63A**

6. In subsection (3)(b) of section 71 of the 1982 Act (offences under Part II), for the words “or 61(1)” substitute the words “, 61(1) or 63A”.

### **Provision of insurance from another member State**

7.—(1) Part IIIA of the 1982 Act(**11**) (provision of insurance from another member State) shall be amended as follows.

(2) In subsection (4) (risks to which Part IIIA applies) of section 81A (introductory provisions)—

- (a) omit the second and third paragraphs, that is to say, those relating to classes 10 and 12; and
- (b) at the end insert the words “and references in this Part to relevant motor vehicle risks are to risks (other than carrier’s liability) falling within class 10 of that Schedule (motor vehicle liability)”.

(3) In subsection (1) of section 81B (provision of insurance in the United Kingdom: documents to be furnished to the Secretary of State), omit the word “and” immediately following paragraph (c) and after paragraph (d) insert “and

(e) in the case of an insurance company which intends to provide insurance to cover relevant motor vehicle risks—

- (i) a notice stating the name and address of the claims representative; and
- (ii) a declaration that the insurance company has become a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946);”.

(4) After that subsection insert—

“(1A) The insurance company shall notify the Secretary of State in writing of—

- (a) any change of address of the company for the purpose of the service of documents; and
- (b) where it provides insurance to cover relevant motor vehicle risks, any change of name or address of the claims representative,

before the expiration of the period of one month beginning with the day on which the change occurred.”.

(5) In subsection (2) of section 81C (information to be given to policyholder), after paragraph (b) insert “and

(c) where the insurance relates to relevant motor vehicle risks, the name and address of the claims representative,”.

(6) After section 81C insert—

#### **“Additional requirements with respect to relevant motor vehicle risks.**

**81CC.**—(1) An insurance company shall not provide insurance in the United Kingdom to cover relevant motor vehicle risks unless—

- (a) it is a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946); and
- (b) it has appointed a claims representative who satisfies the requirements of subsections (2) to (6) below.

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(11) Part IIIA was inserted by [S.I. 1990/1333](#), reg. 10.

(2) The claims representative must be a person who has been designated as the insurance company's claims representative for the purposes of this section.

(3) The claims representative must be authorised—

(a) to act on behalf of the insurance company and to represent, or to instruct others to represent, the insurance company in relation to any matters giving rise to relevant claims;

(b) to pay sums in settlement of relevant claims; and

(c) to accept service on behalf of the insurance company of proceedings in respect of relevant claims;

but the authority must not extend to the settlement of relevant claims.

(4) The claims representative must be authorised to represent the insurance company in any proceedings or enquiry to establish the existence or validity of a policy issued by the insurance company which covers or purports to cover relevant motor vehicle risks.

(5) Without prejudice to subsection (3) above, the claims representative must not act on behalf of the insurance company in the carrying on of its general business in the United Kingdom other than its reinsurance business, if any.

(6) The claims representative must—

(a) in the case of an individual, be resident in the United Kingdom;

(b) in the case of a corporation, have a place of business in the United Kingdom.

(7) In this section “relevant claim” means any claim which may be made against a policy issued by the insurance company to the extent that it covers relevant motor vehicle risks, whether or not submitted to the company and whether by a policyholder or by a third party having rights of action against the company or a policyholder or both.”.

### **Lloyd's underwriters**

8. In Part IV of the 1982 Act (special classes of insurers), after section 83 insert—

**“Lloyd's underwriters— insurance Directives.**

**83A.** The powers conferred on the Secretary of State by sections 38 to 41, 44 and 45 above shall be exercisable in relation to the members of Lloyd's if there is a failure by Lloyd's to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State giving effect to the general insurance Directives.”.

### **Interpretation**

9.—(1) Part V of the 1982 Act (supplementary provisions) shall be amended as follows.

(2) Renumber the section 94A inserted by the Insurance Companies (Amendment) Regulations 1990(12) (law applicable to certain contracts of insurance) as section 94B and transpose that section and the section 94A inserted by the Insurance (Fees) Act 1985(13).

(3) In subsection (1) of section 96 (general interpretation)—

(a) after the definition of “chief executive” insert—

““claims representative” means a person appointed by an insurance company in accordance with section 81CC above;” and

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(12) S.I. 1990/1333, reg. 6(1).

(13) 1985 c. 46.

(b) after the definition of “ordinary long-term business” insert—

““parent undertaking” shall be construed in accordance with section 258 of the Companies Act 1985(14) and Article 266 of the Companies (Northern Ireland) Order 1986(15);”.

(4) After subsection (1) of section 96A(16) (interpretation of expressions derived from general insurance Directives) insert—

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

(1B) In this Act “the first long term insurance Directive” means Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of direct life assurance.”.

(5) In subsection (1)(c) of section 96B(17) (meaning of “large risks”), for the words “classes 8, 9, 13 and 16” substitute “classes 3, 8, 9, 10, 13 and 16”.

#### *Amendment of 1986 Act*

### **Insurance contracts effected in contravention of 1982 Act**

**10.** Section 132 of the 1986 Act (insurance contracts effected in contravention of section 2 of the 1982 Act) shall have effect in relation to a contract of insurance which is entered into by a person in the course of providing insurance in contravention of section 81B or 81G of the 1982 Act(18) as it has effect in relation to a contract of insurance which is entered into by a person in the course of carrying on insurance business in contravention of section 2 of that Act.

#### *Amendments of compulsory insurance enactments*

### **Employers' liability**

**11.—**(1) In section 1(3)(b) of the Employers' Liability (Compulsory Insurance) Act 1969(19) (insurance against liability for employees: interpretation), after the words “Insurance Companies Act 1982” insert the words “, or, being an insurance company the head office of which is in a member State, lawfully carrying on in a member State other than the United Kingdom insurance business of a corresponding class,”.

(2) In Article 5(3)(b) of the Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972(20) (insurance against liability to employees: interpretation), after the words “Insurance Companies Act 1982” insert the words “, or, being an insurance company the head office of which is in a member State, lawfully carrying on in a member State other than the United Kingdom insurance business of a corresponding class,”.

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(14) 1985 c. 6; section 258 was inserted by section 21 of the Companies Act 1989 (c. 40).

(15) S.I. 1986/1032 (N.I.6); Article 266 was inserted by Article 23 of the Companies (Northern Ireland) Order 1990 (S.I.1990/593 (N.I.5)).

(16) Section 96A was inserted by S.I. 1990/1333, reg. 2(1).

(17) Section 96B was inserted by S.I. 1990/1333, reg. 4.

(18) Sections 81B and 81G were inserted by S.I. 1990/1333, reg. 10.

(19) 1969 c. 57; section 1(3)(b) was amended by the Insurance Companies Act 1974 (c. 49), section 88(1) and Schedule 1, by the Insurance Companies Act 1981 (c. 31), section 36(1) and Schedule 4, Part II, paragraph 19, and by the Insurance Companies Act 1982 (c. 50), section 99(2) and Schedule 5, paragraph 8.

(20) S.I. 1972/963 (N.I.6); Article 5(3)(b) was amended by the Insurance Companies Act 1980 (c. 25), section 4(1) and Schedule 3, paragraph 8, by the Insurance Companies Act 1981, section 36(1) and Schedule 4, Part II, paragraph 21, and the Insurance Companies Act 1982, section 99(2) and Schedule 5, paragraph 11.

## Professional indemnity and compensation

**12.**—(1) In section 87(1) of the Solicitors Act 1974(**21**) (general interpretation), omit the definitions of “liability insurance business” and “pecuniary loss insurance business” and for the definition of “authorised insurers” substitute—

““authorised insurer” means a person who—

- (a) is permitted under the Insurance Companies Act 1982 to carry on insurance business of class 13 in Schedule 2 to that Act or, being an insurance company the head office of which is in a member State, is permitted under the law of a member State other than the United Kingdom to carry on insurance business of a corresponding class; or
- (b) is permitted under the Insurance Companies Act 1982 to carry on insurance business of classes 1, 2, 14, 15, 16 and 17 in that Schedule or, being an insurance company the head office of which is in a member State, is permitted under the law of a member State other than the United Kingdom to carry on insurance business of corresponding classes.”.

(2) In subsection (1)(b) and (c) of section 44 of the Solicitors (Scotland) Act 1980(**22**) (professional indemnity: interpretation), for the words “any person permitted under the Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business” substitute the words “an authorised insurer”.

(3) In subsection (5) of that section, after the words “In this section” insert—

““authorised insurer” means a person who—

- (a) is permitted under the Insurance Companies Act 1982 to carry on insurance business of class 13 in Schedule 2 to that Act or, being an insurance company the head office of which is in a member State, is permitted under the law of a member State other than the United Kingdom to carry on insurance business of a corresponding class; or
- (b) is permitted under the Insurance Companies Act 1982 to carry on insurance business of classes 1, 2, 14, 15, 16 and 17 in that Schedule or, being an insurance company the head office of which is in a member State, is permitted under the law of a member State other than the United Kingdom to carry on insurance business of corresponding classes;”.

(4) For subsection (5) of section 21 of the Administration of Justice Act 1985(**23**) (professional indemnity and compensation: interpretation) substitute—

“(5) In subsection (3) “authorised insurer” means a person who—

- (a) is permitted under the Insurance Companies Act 1982 to carry on insurance business of class 13 in Schedule 2 to that Act or, being an insurance company the head office of which is in a member State, is permitted under the law of a member State other than the United Kingdom to carry on insurance business of a corresponding class; or
- (b) is permitted under the Insurance Companies Act 1982 to carry on insurance business of classes 1, 2, 14, 15, 16 and 17 in that Schedule or, being an insurance company the head office of which is in a member State, is permitted under the law of a member State other than the United Kingdom to carry on insurance business of corresponding classes.”.

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(21) 1974 c. 47; section 87(1) was amended by the Insurance Companies Act 1981, section 36(1) and Schedule 4, Part II, paragraph 23, and by the Insurance Companies Act 1982, section 99(2) and Schedule 5, paragraph 15.

(22) 1980 c. 46; section 44(5) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 56 and Schedule 1, Part I, paragraph 22.

(23) 1985 c. 61.

*Information as respects the provision of insurance in other member States*

**Provision of statements and accounts**

13.—(1) Every insurance company—

- (a) to which Part II of the 1982 Act<sup>(24)</sup> applies; and
- (b) which in a financial year provides insurance in a member State other than the United Kingdom through an establishment in the United Kingdom,

shall prepare in respect of insurance so provided by it a statement in Form 82 (analysis of gross premiums receivable by groups of classes) in accordance with the requirements of the Schedule to these Regulations.

(2) Where in any financial year the gross premiums so earned in a member State by an establishment in the United Kingdom exceed 2,500,000 ECU, the company shall also prepare an underwriting account in Form 83 or Form 84 as set out in the Schedule to these Regulations (or both if appropriate).

(3) The forms mentioned in paragraphs (1) and (2) above shall be prepared separately in respect of each member State in which the company provides the insurance.

(4) Where in any financial year a company provides insurance in a member State other than the United Kingdom through an establishment in the United Kingdom and the conditions specified in paragraph (5) below are met, the Secretary of State may by notice in writing direct the company in future to prepare an underwriting account in Form 83 or Form 84 as set out in the Schedule to these Regulations (or both if appropriate) in respect of the provision of insurance in that member State through its establishment in the United Kingdom.

(5) The conditions referred to in paragraph (4) above are that—

- (a) in that financial year the company earned through all its establishments (in the United Kingdom and elsewhere) gross premiums in excess of 2,500,000 ECU in respect of the provision of insurance in the member State concerned, and
- (b) the supervisory authorities of the member State in which insurance is provided or, if the head office of the company is situated in a member State other than the United Kingdom, the supervisory authorities of that member State, ask the Secretary of State that an underwriting account be kept by the company's establishment in the United Kingdom for the operations effected in the member State where the insurance is provided.

(6) The statement and any underwriting account required by this regulation shall be printed, and three copies shall be deposited with the Secretary of State within nine months after the end of the financial year to which they relate; but if in any case it is made to appear to the Secretary of State that the circumstances are such that a longer period than nine months should be allowed, the Secretary of State may extend that period by such period not exceeding three months as he thinks fit.

(7) One of the copies of any document deposited under paragraph (6) above shall be a copy signed by a director, a chief executive, or the secretary of the company.

(8) Where, in accordance with section 81G of the Insurance Companies Act 1982, an insurance company has notified the Secretary of State of its intention to provide insurance in a member State other than the United Kingdom through an establishment in the United Kingdom but in any financial year does not provide insurance in that member State then, subject to paragraph (9) below, the company shall send to the Secretary of State a notification of that fact within nine months after the end of the financial year to which the notification relates, signed by a director, a chief executive, or the secretary of the company.

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(24) 1982 c. 50; relevant amendments to the Act were made by the Insurance Companies (Amendment) Regulations 1990 (S.I. 1990/1333).



(9) Paragraph (8) above shall not apply if the company has, before the beginning of the financial year, informed the Secretary of State that it no longer intends to provide insurance in the member State in question.

(10) The Secretary of State shall consider the documents deposited under paragraph (6) above or the notification given under paragraph (8), and if any such document or notification appears to him to be inaccurate or incomplete in any respect he shall communicate with the company with a view to the correction of any such inaccuracies and the supply of deficiencies.

(11) In this regulation—

- (a) “gross premiums” means premiums after deduction of discounts, refunds, rebates of premium and any taxes or levies that are related to those premiums but before deduction of premiums for reinsurance ceded and before deduction of commission payable by the company;
- (b) references to the provision of insurance in a member State other than the United Kingdom through an establishment in the United Kingdom shall be construed in accordance with Part IIIA of the 1982 Act;
- (c) other expressions bear the same meaning as in that Act and the Insurance Companies (Accounts and Statements) Regulations 1983<sup>(25)</sup>.

### **Default in complying with regulation 13**

**14.**—(1) An insurance company commits an offence if it makes default in complying with regulation 13 above.

(2) A person commits an offence if he causes or permits to be included in a form required by regulation 13 above to be deposited with the Secretary of State a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.

(3) A person committing an offence under this regulation is liable, on summary conviction in England and Wales and Scotland, to a fine not exceeding level 5 on the standard scale and, on summary conviction in Northern Ireland, to a fine not exceeding £2,000.

### **Application of regulations 13 and 14 to Lloyd's**

**15.**—(1) Subject to paragraphs (2) and (3) below, regulations 13 and 14 above apply in relation to Lloyd's as they apply in relation to an insurance company to which Part II of the 1982 Act applies.

(2) The information required in the case of Lloyd's to be included in the statement and underwriting account referred to in regulation 13(6) or the notification referred to in regulation 13(8) is that relating to the members of Lloyd's taken together.

(3) Any such statement, underwriting account or notification shall be signed by the Chairman or a Deputy Chairman, for and on behalf of the Council of Lloyd's.

### *Miscellaneous and supplemental*

### **Minor amendment to Insurance Companies Regulations 1981**

**16.** In regulation 25A of the Insurance Companies Regulations 1981<sup>(26)</sup> (matching: property linked benefits), in paragraph (2) for the words “covered by” substitute the words “determined by reference to”.

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<sup>(25)</sup> S.I. 1983/1811.

<sup>(26)</sup> S.I. 1981/1654, inserted by S.I. 1990/1333.



### **Consequential amendments and transitional provisions**

17.—(1) In consequence of the provision made by regulation 13 above, in the Insurance Companies (Accounts and Statements) Regulations 1983(27), regulation 13A and Schedule 2A shall be omitted.

(2) In respect of a financial year ending on or before 30th November 1992, Form 82, 83 or 84 in the Schedule to these Regulations shall be deemed to have been completed in accordance with that Schedule if it is completed in the form prescribed in Schedule 2A to the Insurance Companies (Accounts and Statements) Regulations 1983 before their amendment by these Regulations.

18th November 1992

*N. Hamilton*  
Parliamentary Under Secretary of State,  
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