
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Insurance Companies Act 1982 (“the 1982 Act”), the Financial Services Act 1986 (“the 1986 Act”), the Employers’ Liability (Compulsory Insurance) Act 1969, the Employer’s Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972, the Solicitors Act 1974, the Solicitors (Scotland) Act 1980, the Administration of Justice Act 1985, the Insurance Companies (Accounts and Statements) Regulations 1983 (“the 1983 Regulations”) and the Insurance Companies Regulations 1981 (“the 1981 Regulations”). The main purpose of the amendments is to implement Council Directive [90/618/EEC](#) (O.J. No. L330, 29.11.90, p.44) relating to non-life insurance, and particularly motor vehicle liability insurance, and provisions concerning relations with non-EC countries contained in Articles 8 and 9 of Council Directive [90/619/EEC](#) relating to life assurance (O.J. No. L330, 29.11.90, p.50). Council Directive [73/239/EEC](#) (O.J. No. L228, 16.8.73, p.3) created a supervisory regime for direct non-life “establishment” business (ie general insurance business carried on by insurers through an establishment in a member State). Directive [88/357/EEC](#) (O.J. No. L172, 4.7.88, p.1) made provision for the regulation of insurers who provide direct non-life insurance to cover risks in a member State on a “services” basis, ie otherwise than through an establishment in that State. Directive [90/618/EEC](#) extends the provision for the regulation of insurers who provide direct non-life insurance on a services basis to those providing motor liability insurance on a services basis. It makes provision for those insurers to join and participate in the funding of the national insurers’ bureau and guarantee scheme in the member State where the insurance is provided, and to appoint a locally resident representative to deal with claims. In addition, the Directive contains provisions whereby the Council or Commission of the European Communities may require member States to limit or suspend decisions on applications for authorisation to carry on direct non-life insurance business if the applicant is a subsidiary of a company incorporated outside the EC and to prevent the acquisition of shareholdings in insurance companies incorporated in the EC which would cause such a company to become the subsidiary of a company incorporated outside the EC. These provisions are designed to ensure that EC insurance companies have the opportunity to compete on equal terms with domestic companies in non-EC countries. Similar provisions are contained in Directive [90/619/EEC](#) in respect of life assurance.

The provisions to implement Directive [90/618/EEC](#) and Articles 8 and 9 of Directive [90/619/EEC](#) are contained in regulations 2, 4 to 7, 9 (in part) and 13 to 15 (in part). Regulations 3, 8, 9 (in part), 10 to 12, 13 to 15 (in part), 16 and 17 give further effect to Directive [88/357/EEC](#) (originally implemented by the Insurance Companies (Amendment) Regulations 1990, [S.I. 1990/1333](#)), notably in respect of compulsory insurance.

Regulation 1 makes provision for the citation and commencement of the Regulations, it describes their purpose as referred to above and defines the 1982 Act and the 1986 Act.

Regulation 2 inserts into section 5 of the 1982 Act a provision which allows the Secretary of State to defer a decision regarding the granting of authorisation to a company which is the subsidiary of a company incorporated outside the EC for the purpose of implementing a direction of the Council or Commission of the European Communities.

Regulation 3 amends section 51(4A) of the 1982 Act to clarify that the subsection does not apply to transfers of reinsurance contracts.

Regulation 4 inserts into section 61 of the 1982 Act a provision which allows the Secretary of State to serve a notice of objection under that section in order to implement a direction of the Council or

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Commission of the European Communities where a company incorporated outside the EC is seeking to acquire as its subsidiary an insurance company incorporated in the United Kingdom.

Regulation 5 inserts a new section 63A into the 1982 Act which requires any controller of an insurance company which has its head office in the United Kingdom to notify the Secretary of State if he increases his shareholding in that company so as to become the parent undertaking of that company.

Regulation 6 extends the penalties in section 71(3) of the 1982 Act to any person who fails to comply with section 63A.

Regulation 7 amends Part IIIA of the 1982 Act as follows.

- (a) It amends section 81A to extend the risks to which Part IIIA applies to include those risks falling within general business classes 10 (motor vehicle liability) and 12 (liability for ships) that were previously excluded, that is to say, motor vehicle liability risks other than carrier's liability and risks situated in certain member States relating to motorboats and boats, and by inserting a definition of "relevant motor vehicle risks".
- (b) It inserts into section 81B a provision to require a company proposing to provide insurance in the United Kingdom to cover relevant motor vehicle risks to furnish the Secretary of State with a declaration that the company has become a member of the Motor Insurers' Bureau ("MIB") and a notice stating the name and address of its claims representative, and also inserts a provision which requires companies to notify the Secretary of State of any change in that name and address or in the address of the company for the service of documents.
- (c) It amends section 81C to require a company providing insurance in the United Kingdom to cover relevant motor vehicle risks to inform the policyholder of the name and address of the claims representative.
- (d) It inserts a new section 81CC which prohibits a company from providing insurance in the United Kingdom to cover relevant motor vehicle risks unless it is a member of the MIB and has appointed a claims representative, and which defines the obligations of that representative.

Regulation 8 inserts a new section 83A into the 1982 Act which extends the Secretary of State's powers of intervention contained in Part II of that Act to members of Lloyd's if Lloyd's fails to satisfy obligations imposed on it by the laws of other member States giving effect to the general insurance Directives.

Regulation 9 renumbers section 94A of the 1982 Act concerning the law applicable to certain contracts of insurance. It inserts new interpretation provisions in sections 96 and 96A of the 1982 Act and amends section 96B so that the definition of "large risks" covers general business classes 3 (land vehicles) and 10 (motor vehicle liability).

Regulation 10 extends section 132 of the 1986 Act to apply to contracts entered into in contravention of section 81B or 81G of the 1982 Act.

Regulations 11 and 12 amend the Employers' Liability (Compulsory Insurance) Act 1969, the Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972, the Solicitors Act 1974, the Solicitors (Scotland) Act 1980 and the Administration of Justice Act 1985 to permit insurance companies in other member States to provide certain compulsory insurances in the United Kingdom on a services basis.

Regulation 13 requires an insurance company which provides insurance in another member State through an establishment in the United Kingdom to submit returns to the Secretary of State, namely an analysis of gross premiums and, in specified circumstances, an underwriting account. The forms to be used for this purpose are specified in the Schedule. These returns supersede those required by regulation 13A of the 1983 Regulations.

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Regulation 14 makes it an offence for an insurance company to make default in complying with regulation 13 and for any person to supply false information.

Regulation 15 applies regulations 13 and 14 to Lloyd's.

Regulation 16 makes a minor amendment to regulation 25A of the 1981 Regulations concerning the matching of liabilities for property linked benefits.

Regulation 17 revokes regulation 13A of the 1983 Regulations and Schedule 2A to those Regulations and provides transitional arrangements.