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STATUTORY INSTRUMENTS

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**1993 No. 2519**

**The Friendly Societies (Amendment) Regulations 1993**

AMENDMENTS OF 1992 ACT

**Securing compliance with Community obligations**

2.—(1) After section 36 of the 1992 Act there shall be inserted the following section—

**“Directions for deeming conditions to have been imposed.**

**36A.**—(1) Subsection (2) below applies where—

- (a) it appears to the Commission that there has been or is, on the part of an authorised friendly society to which section 37(2) or (3) below applies or its committee of management, a failure to satisfy the 8th criterion in section 50(3) below; and
- (b) the Commission proposes, on that ground, to impose conditions under section 36 above on the society’s authorisation.

(2) If the Commission considers it expedient to do so in order to protect the interests of members of the society, the Commission may direct that, for the period—

- (a) beginning with service of notice of the proposal under paragraph 7(1) or 8(2) of Schedule 13 to this Act, and
- (b) ending with service of the Commission’s decision notice,

the proposed conditions shall be deemed to have been imposed under section 36 above on the society’s authorisation.

(3) In subsection (2) above “the Commission’s decision notice” means—

- (a) in relation to a notice of the proposal under paragraph 7(1) of Schedule 13 to this Act, notice of the Commission’s decision under paragraph 7(5) of that Schedule or notice of an alternative proposal under paragraph 8(2) of that Schedule;
- (b) in relation to a notice of the proposal under paragraph 8(2) of that Schedule, notice of the Commission’s decision under paragraph 8(6) of that Schedule or notice of an alternative proposal under the said paragraph 8(2).

(4) The Commission may revoke a direction under this section if it is satisfied that the direction is no longer needed for the purpose for which it was imposed.

(5) The provisions of this Act (so far as applicable)—

- (a) apply in relation to a decision of the Commission to give a direction under this section as they apply in relation to a decision of the Commission to impose conditions under section 36 above, and
- (b) apply to conditions which, by virtue of such a direction, are deemed to have been imposed under that section as they apply to conditions so imposed.”

(2) After the 7th criterion in subsection (3) of section 50 of that Act (the criteria of prudent management) there shall be inserted the following criterion—

“8. In the case of a society to which section 37(2) or (3) above 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 member State) giving effect to any of the general insurance or life Directives.”

(3) In subsection (5) of that section, for the words “the other 6 criteria” there shall be substituted the words “the other 7 criteria”.

### **Combinations of long term and general business**

3.—(1) In subsection (1) of section 37 of the 1992 Act (restrictions on combinations of business), for the words “Subject to subsection (8) below” there shall be substituted the words “Subject to subsections (1A) and (7A) below”.

(2) After that subsection there shall be inserted the following subsection—

“(1A) Nothing in subsection (1) above shall prevent an authorised friendly society to which subsection (2) or (3) below applies from carrying on, or being authorised to carry on, both long term business and general business of either or both of classes 1 and 2 of Head B of Schedule 2 to this Act.”

(3) For subsection (8) of that section there shall be substituted the following subsections—

“(7A) Where a friendly society to which subsection (2) or (3) above applies was on 15th March 1979 carrying on long term and general business in the United Kingdom, the society may (if authorised to do so) carry on any class (or part of a class) of long term or general business.

(8) Where a friendly society to which subsection (2) or (3) above applies is authorised by virtue of subsection (1A) or (7A) above to carry on long term and general business in the United Kingdom—

- (a) the Commission shall (whether or not other conditions are imposed) impose such conditions on the society’s authorisation as the Commission thinks fit for securing that the society’s long term business and general business are kept separate; and
- (b) those conditions shall, subject to the exceptions mentioned in subsection (9) below, require that the assets representing the funds maintained in respect of the society’s long term business or, as the case may be, its general business are to be generally applicable for the purposes of that business only.”

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

4.—(1) In subsection (9) of section 57 of the 1992 Act (covering of risks situated in another member State), after the words “in this section” there shall be inserted the words “and section 57A below”.

(2) After that section there shall be inserted the following section—

#### **“Covering of commitments situated in another member State.**

57A.—(1) Where a friendly society intends to cover any commitments which are situated in a member State other than the United Kingdom—

- (a) through an establishment in the United Kingdom, or
- (b) through an establishment in a member State other than that in which the commitments will be situated,

it shall before doing so give notice of its intention to the Commission.

- (2) The notice shall indicate—
- (a) the member State in which the insurance is to be provided;
  - (b) the nature of the commitments which the society intends to cover;
  - (c) the member State in which the establishment through which the commitments will be covered is situated.
- (3) Where the society intends to cover commitments situated in more than one member State, the information specified above may be contained in a single notice but must be set out separately for each member State.
- (4) Where a friendly society has duly notified the Commission of its intention to cover commitments situated in another member State where administrative authorisation is required to do so then, if the original notice related—
- (a) only to commitments in respect of which such authorisation is required; or
  - (b) only to commitments in respect of which such authorisation is not required,
- and the society subsequently intends to extend its activities to commitments falling within the other category, it shall before doing so (without prejudice to the generality of the preceding provisions of this section) comply with subsections (1) to (3) above in relation to those commitments.
- (5) A friendly society with the intention mentioned in subsection (1) above may apply to the Commission for a certificate attesting—
- (a) that the society possesses the minimum margin of solvency calculated in accordance with Article 19 of the first life Directive, and
  - (b) that by virtue of this Act and the society's authorisation under section 32 above, issued in accordance with Article 6(1) of that Directive, the society is able to operate outside the member State of establishment.
- (6) A friendly society with the intention mentioned in subsection (1) above in respect of commitments to be covered through an establishment in the United Kingdom may apply to the Commission for a certificate—
- (a) indicating the classes of insurance business which the society is authorised to carry on in the United Kingdom; and
  - (b) stating that the Commission does not object to the society covering the commitments through such an establishment.
- (7) The Commission shall, if it thinks an application under subsection (5) or (6) above ought to be granted, issue the certificate.
- (8) If the Commission refuses such an application it shall give notice to the society of its decision and of the reasons for it.
- (9) In this section—
- “commitment” does not include a commitment represented by insurance business of class VII of Head A of Schedule 2 to this Act;
  - “friendly society” means a friendly society to which section 37(2) above applies.”

### **Transfers of long term business**

5. After paragraph 15 of Schedule 15 to the 1992 Act (amalgamations, transfers of engagements and conversion: supplementary) there shall be inserted the following paragraph—

“**15A.**—(1) This paragraph applies to a transfer by a friendly society to which section 37(2) above applies of engagements (other than contracts of reinsurance) the effecting of which constituted the carrying on of long term business.

(2) The Commission shall not confirm such a transfer if it is to a transferee who is or will be authorised under Part I of the Insurance Companies Act 1982<sup>(1)</sup> to carry on in the United Kingdom insurance business and whose head office is situated in another member State, unless the supervisory authorities of that State certify that the transferee will, after taking the proposed transfer into account, possess the margin of solvency required for compliance with the first life Directive.

(3) The Commission shall not confirm such a transfer in relation to engagements entered into by way of provision of insurance in another member State unless—

- (a) the transferee fulfils or will fulfil the conditions mentioned in Articles 11, 12, 14 and 16 of the second life Directive in the member State in which the commitment is situated; and
- (b) the supervisory authorities of that member State agree to the transfer.

(4) The Commission shall not confirm such a transfer, in relation to engagements which cover commitments situated in the United Kingdom, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—

- (a) the transferee is an insurance company established in another member State which is or will be entitled in accordance with section 81B of the Insurance Companies Act 1982 to provide insurance in the United Kingdom in respect of those commitments through that establishment; and
- (b) the supervisory authorities of the member State of that establishment agree to the transfer.

(5) The Commission shall not confirm such a transfer, in relation to engagements which cover commitments situated in another member State, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—

- (a) the transferee is an insurance company established in another member State and the supervisory authorities of that member State agree to the transfer; and
- (b) where the commitment is not situated in the transferee’s member State of establishment—
  - (i) the transferee fulfils the conditions mentioned in Articles 11, 12, 14 and 16 of the second life Directive in the member State in which the commitment is situated;
  - (ii) the law of that member State provides for the possibility of such a transfer; and
  - (iii) the supervisory authorities of that member State agree to the transfer.”

### **Law applicable to contracts of insurance**

**6.**—(1) For section 101 of the 1992 Act there shall be substituted the following section—

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(1) 1982 c. 50.

**“101 Law applicable to contracts of insurance with friendly societies.**

(1) The law applicable to a contract of insurance made by a friendly society the effecting of which constitutes general business and which covers risks situated in the United Kingdom or another member State shall be determined—

- (a) in the case of a society to which section 37(3) above applies, in accordance with Part I of Schedule 20 to this Act; and
- (b) in any other case, in accordance with that Part of that Schedule as modified by subsection (3) below.

(2) The law applicable to a contract of insurance made by a friendly society the effecting of which constitutes long term business and which covers commitments or risks situated in the United Kingdom or another member State shall be determined—

- (a) in the case of a society to which section 37(2) above applies, in accordance with Part II of Schedule 20 to this Act; and
- (b) in any other case, in accordance with Part I of that Schedule as modified by subsection (3) below.

(3) For the purposes of paragraph (b) of subsections (1) and (2) above, Part I of Schedule 20 to this Act shall be modified as follows—

- (a) the words “or central administration”, in each place where they occur, shall be omitted;
- (b) in paragraph 5(1), for the words from “shall act” to the end there shall be substituted the words “shall apply the general rules of private international law of that part of the United Kingdom concerning contractual obligations”; and
- (c) in paragraph 5(2), for the words “those provisions” there shall be substituted the words “those rules”.

(4) The provisions of this section do not apply in relation to a contract of reinsurance.”

(2) The provisions of Schedule 20 to that Act (law applicable to certain contracts of insurance) shall become Part I of that Schedule under the heading “GENERAL BUSINESS BY SOCIETIES TO WHICH SECTION 37(3) APPLIES”.

(3) In that Part of that Schedule—

- (a) after the words “habitual residence”, in each place where they occur, there shall be inserted the words “or central administration”;
- (b) in paragraphs 3(2), 4(2) and 5(1), for the words “this Schedule” there shall be substituted the words “this Part of this Schedule”;
- (c) in paragraph 5(1), for the words from “shall apply” to the end there shall be substituted the words “shall act in accordance with the provisions of the Contracts (Applicable Law) Act 1990”; and
- (d) in paragraph 5(2), for the words “those rules” there shall be substituted the words “those provisions”.

(4) After that Part of that Schedule there shall be inserted the following Part—

## “Part II

### LONG TERM BUSINESS BY SOCIETIES TO WHICH SECTION 37(2) APPLIES

#### *General rules as to applicable law*

**6.** The law applicable to the contract of insurance is the law of the member State in which the commitment is situated.

However, where the law of that member State so allows, the parties may choose the law of another country.

**7.** Where the person who has entered into the contract of insurance is an individual and has his habitual residence in a member State other than that of which he is a national, the parties may choose the law of the member State of which he is a national.

#### *Mandatory rules*

**8.** Nothing in this Part of this Schedule restricts the application of the rules of a part of the United Kingdom in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

#### *Supplementary provisions*

**9.—(1)** Where a member State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.

**(2)** The provisions of this Part of this Schedule apply to conflicts between the laws of the different parts of the United Kingdom.

**10.—(1)** Subject to the preceding provisions of this Part of this Schedule, a court in a part of the United Kingdom shall act in accordance with the provisions of the Contracts (Applicable Law) Act 1990.

**(2)** In particular, reference shall be made to those provisions to ascertain for the purposes of paragraph 6 above what freedom of choice the parties have under the law of a part of the United Kingdom.”

**(5)** For subsection (1A) of section 2 of the Contracts (Applicable Law) Act 1990<sup>(2)</sup> (conventions to have the force of law) there shall be substituted the following subsection—

“**1A)** The internal law for the purposes of Article 1(3) of the Rome Convention is whichever of the following are applicable, namely—

- (a) the provisions of Schedule 3A to the Insurance Companies Act 1982 (law applicable to certain contracts of insurance with insurance companies), and
- (b) the provisions of Schedule 20 to the Friendly Societies Act 1992<sup>(3)</sup> as applied by subsections (1)(a) and (2)(a) of section 101 of that Act (law applicable to certain contracts of insurance with friendly societies).”

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<sup>(2)</sup> 1990 c. 36; subsection (1A) of section 2 was inserted by regulation 9 of the Insurance Companies (Amendment) Regulations 1993 (S.I.1993/174).

<sup>(3)</sup> 1992 c. 40.

## Interpretation of 1992 Act

7.—(1) In subsection (1) of section 117 of the 1992 Act (insurance business etc.), after the definition of “annual contribution income” there shall be inserted the following definition—

““commitment” means, in relation to a friendly society to which section 37(2) applies, a commitment represented by insurance business of any class of Head A of Schedule 2 to this Act;”

(2) For subsection (6) of that section there shall be substituted the following subsections—

“(6) In relation to a contract of insurance entered into by a person on any date with a friendly society to which section 37(3) above applies the effecting of which constitutes general business, or a contract of insurance entered into by a person on any date with a friendly society to which section 37(2) above applies the effecting of which constitutes long term business, references in this Act to the member State where the risk or commitment is situated shall be construed as follows—

- (a) where that person is an individual, as references to the member State where he has his habitual place of residence on that date; and
- (b) in any other case, as references to the member State where the establishment of that person to which the contract relates is situated on that date.

(7) In relation to any other contract of insurance with a friendly society, references in this Act to the member State where the risk is situated shall be construed as references to the member State where the person who has entered into the contract has his habitual place of residence.”