
STATUTORY INSTRUMENTS

1994 No. 3133

INSURANCE

**The Insurance Companies
(Amendment No. 2) Regulations 1994**

Made - - - - *7th December 1994*
Laid before Parliament *8th December 1994*
Coming into force - - *31st December 1994*

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the authorisation of the carrying on of insurance business and the regulation of such business and its conduct, in exercise of the powers conferred by that section and by sections 5(1)(a), 17, 18, 20, 21, 32(1), (2) and (3), 33(1), 35(1), 62(1B), 78(1), (2) and (5), 90, 96(1) and 97 of the Insurance Companies Act 1982⁽³⁾, hereby makes the following Regulations:—

Citation and commencement

1.—(1) These Regulations may be cited as the Insurance Companies (Amendment No. 2) Regulations 1994 and shall come into force on 31st December 1994.

(2) The Insurance Companies Regulations 1994⁽⁴⁾ (“the 1994 Regulations”) and the Insurance Companies (Accounts and Statements) Regulations 1983⁽⁵⁾ (“the 1983 Regulations”) shall have effect subject to the following amendments.

AMENDMENTS OF THE 1994 REGULATIONS

Interpretation: general

2. In paragraph (1) of regulation 2 of the 1994 Regulations (interpretation: general), for the definition of “the Act” substitute—

““the Act” means the Insurance Companies Act 1982 and includes amendments made to that Act by the Insurance Companies (Amendment) Regulations 1994⁽⁶⁾”

(1) 1982 c. 50.
(2) S.I. 1994/1516.
(3) S.I. 1983/1811.
(4) S.I. 1994/3132.
(5) O.J. No. L386, 30.12.89, p.14.
(6) O.J. No. L375, p.3: Directive last amended by Directive [88/220/EEC](#) (O.J. No. L100, 19.4.88 p.31).

Localisation

3. In paragraphs (1) and (2) of regulation 31 of the 1994 Regulations (localisation), for the words “the European Community” wherever they occur substitute “any member State.”

Exclusions from regulations 27 to 31

4. In regulation 32(1)(a) of the 1994 Regulations (exclusions from regulations 27 to 31), for the words “European Community” substitute the words “member States”.

Particulars of changes of director, controller or manager etc.

5.—(1) Regulation 34 of, and Schedule 6 to, the 1994 Regulations (particulars of changes of director, controller or manager etc.) shall be amended as follows.

(2) In regulation 34, for the words “and 62(1) of the Act” substitute “62(1) and 62(1B) of the Act”.

(3) In paragraphs 4 and 7 of Schedule 6, for “62(1)” substitute “62(1B)”.

(4) In paragraph 10 of Schedule 6, for the words “or 62(1) of the Act” substitute “, 62(1) or 62(1B) of the Act”.

Linked contracts

6.—(1) Regulation 43 of the 1994 Regulations (linked contracts) shall be amended as follows.

(2) In paragraph (4)(a), omit the words “or fluctuations in” and after the words “property of any description” insert the words “or by reference to fluctuations in, or in an index of, property of any description, by reference”.

(3) Omit paragraph (4)(b).

(4) In paragraph (4)(c), after the words “to which Part II of the Act applies” insert the words “which fall within sub-paragraph 3(b) above”.

(5) In paragraph (4)(d), after the words “contracts entered into by an EC company” insert the words “which fall within sub-paragraph 3(b) above”.

(6) After paragraph (8) add—

“(9) Until 1st September 1995, paragraph 1 of Schedule 10 shall have effect as if listed securities included all debentures in respect of which there has been granted and not withdrawn a listing on any stock exchange in an EEA State which is a stock exchange within the meaning of the law of that EEA State and “unlisted securities” shall be construed accordingly.”

Interpretation: Part VIII

7.—(1) Regulation 44 of the 1994 Regulations (interpretation: Part VIII) shall be amended as follows.

(2) In paragraph (1), in the definition of “approved securities”, after the words “debentures issued” in sub-paragraph (c) insert “prior to 31st December 1994”.

(3) In paragraph (1), in the definition of “listed”, for the words “a member State” substitute “an EEA State”.

(4) In paragraph (1), omit the definition of “regulated subordinated debt”.

(5) In paragraph (1), after the definition of “stock lending transaction” insert—

““subordinated debt” means any debt which, on a winding up of the debtor, ranks for payment after the claims of general creditors and is not to be repaid until the claims of all the general creditors outstanding at the time have been settled;”.

(6) In paragraph (3)(b), after the words “an approved credit institution” insert “and the amount of the guarantee when added to the aggregate exposure (as defined in regulation 57(3)) to the approved credit institution does not exceed the maximum admissible value prescribed by regulation 57 of, and Schedule 12 to, these Regulations”.

Valuation of assets and liabilities of dependants for the purposes of regulation 46

8. In paragraph (2)(b) of regulation 47 of the 1994 Regulations (valuation of assets and liabilities of dependants for the purposes of regulation 46), for the word “paragraphs” substitute “sub-paragraphs”.

Debts and other rights

9.—(1) Regulation 48 of the 1994 Regulations (debts and other rights) shall be amended as follows.

(2) For paragraph (1) substitute—

“(1) The value of any secured debt due, or to become due, to an insurance company, other than a debt to which regulation 46(4) above or paragraphs (2), (3) or (6) of this regulation applies, shall be—

(a) in the case of any such debt which is due, or will become due, within twelve months of the relevant date (including any debt which would become due within that period if the company were to exercise any right to which it is entitled to require payment of the same), the amount which can reasonably be expected to be recovered in respect of that debt (due account being taken of the nature and quality of the security and the terms and conditions for payment thereof); and

(b) in the case of any other such debt, the amount which would reasonably be paid by way of consideration for an immediate assignment of the debt (due account being taken of the nature and quality of the security and the terms and conditions for payment thereof).”

(3) For sub-paragraph (c) of paragraph (6) substitute—

“(d) from a company of which it is a dependant where such debt is subordinated debt, or”

(4) In paragraph (8), after the words “shall apply to a debt” insert the words “(save in so far as the debt represents an unconditional right to a specified amount)”.

(5) After paragraph (10) insert—

“(11) Nothing in this regulation shall apply to listed investments.”

Listed investments

10. In regulation 53 of the 1994 Regulations (listed investments), after paragraph (3) add—

“(4) The value of any listed debenture which (wholly or in part) has the effect of a derivative contract to which regulation 55(3) below does not apply shall not exceed an amount which would reasonably be paid by way of consideration for an immediate assignment of the unconditional right (if any) to receive a specified amount under the terms of the debenture.”

Derivative contracts

11. In sub-paragraph (iv) of paragraph (4)(a) of Regulation 55 of the 1994 Regulations (derivative contracts), after the words “an index” insert the words “of such assets” and after sub-paragraph (iv) insert—

“(v) a national index of retail prices published by or under the authority of a government of a state belonging to Zone A as defined in Council Directive 89/647/EEC of 18 December 1989(7) on a solvency ratio for credit institutions; or”.

Assets to be taken into account only to a specified extent

12.—(1) Regulation 57 of the 1994 Regulations (assets to be taken into account only to a specified extent) shall be amended as follows.

(2) For paragraphs (1) to (8) substitute—

“(1) Assets of an insurance company shall only be taken into account to the extent that its aggregate exposure to assets of a particular description does not exceed the maximum admissible value for assets of that description. Where its aggregate exposure to assets of a particular description exceeds the maximum admissible value for assets of that description, assets shall be left out of account in accordance with paragraph (8C) below.

(2) The “aggregate exposure” of an insurance company to assets of a particular description shall mean an amount in respect of such assets actually held by the company (if any) calculated in accordance with paragraph (4) below adjusted in accordance with paragraphs (5) to (8B) below.

(3) The “maximum admissible value” means—

- (a) for a company carrying on general business, whether or not also carrying on long term business, in the case of general business assets of a description specified in Part I of Schedule 12, an amount equal to the percentage of the general business amount specified in Schedule 12 for assets of that description;
- (b) for a company carrying on only long term business, for all assets of a description specified in Part I of Schedule 12, an amount equal to the percentage of the long term business amount specified in Schedule 12 for assets of that description;
- (c) for a company carrying on general business and long term business, in the case of long term business assets of a description specified in Part I of Schedule 12, an amount equal to the percentage of the long term business amount specified in Schedule 12 for assets of that description; and
- (d) for any company, in the case of assets of any other description, no value.

(4) The amount referred to in paragraph (2) above and paragraphs (5) to (7) and (8E) below is—

- (a) where the assets held are of a description for the valuation of which provision is made in this Part of these Regulations, the value of such assets; or
- (b) where the assets held are of a description for the valuation of which no provision is made in this Part of these Regulations, an amount which would reasonably be paid by way of consideration for an immediate assignment or transfer of such assets.

(5) Where assets of a particular description have been transferred by the company to another party pursuant to a stock lending transaction, the aggregate exposure to such assets shall be increased by an amount in respect of the assets transferred, calculated in accordance with paragraph (4) above.

(7) This instruction was inserted by S.I. 1994/1515, reg. 15(5)(g).

(6) Where the company is party to a contract which (wholly or in part) is or has the equivalent effect to a futures contract which—

- (a) provides for the acquisition of assets of a particular description by the company; or
- (b) is listed and provides for the disposal of assets of a particular description by the company; or
- (c) is not listed but provides for the disposal of assets of a particular description by the company to an approved counterparty within one year of the relevant date,

then, for the purposes of calculating its aggregate exposure, at the relevant date the company shall be deemed to have acquired or disposed of such assets and the aggregate exposure to assets of that description shall be increased or decreased accordingly by an amount calculated in accordance with paragraph (4) above.

(7) Where the company is party to a contract which (wholly or in part) is or has the equivalent effect to an option which—

- (a) provides for the acquisition of assets of a particular description by the company; or
- (b) is listed and provides for the disposal of assets of a particular description by the company; or
- (c) is not listed but provides for the disposal of assets of a particular description by the company to an approved counterparty within one year of the relevant date,

and it is prudent at the relevant date to assume that such option will be exercised then, for the purpose of calculating its aggregate exposure, at the relevant date the company shall be deemed to have acquired or disposed of such assets and the aggregate exposure to assets of that description shall be increased or decreased accordingly by an amount calculated in accordance with paragraph (4) above.

(8) Where the company is party to a contract which (wholly or in part) is or has the equivalent effect to a contract for differences, the value of which depends to a significant extent upon fluctuations in the value of, or income from, either assets for the valuation of which no provision is made in this Part of these Regulations or assets of a particular description, for the purpose of calculating its aggregate exposure, the company shall be deemed to have achieved the effect of such contract for differences by entering into appropriate options or futures contracts in respect of those assets and such options or futures contracts shall be dealt with in accordance with paragraphs (6) and (7) above.

(8A) Where the company—

- (a) has rights under a contract which (wholly or in part) is or has the equivalent effect to a derivative contract; and
- (b) would reasonably expect to receive by way of consideration for an immediate transfer or assignment thereof or for closing out that contract, an amount in excess of the value of those rights when determined in accordance with this Part of these Regulations,

the aggregate exposure of the company to assets of descriptions deemed to have been acquired or disposed of pursuant to that contract by virtue of paragraphs (6) to (8) above shall be reduced by the amount of that excess, such amount being apportioned between those descriptions of assets in a reasonable manner, having regard to the terms of the contract.

(8B) Where the company—

- (a) is party to a contract which falls within paragraph (8E) below; and
- (b) is required to make a deduction pursuant to that paragraph,

the aggregate exposure to assets of descriptions deemed to have been acquired or disposed of pursuant to that contract by virtue of paragraphs (6) to (8) above shall be reduced by

the amount of that deduction, such amount being apportioned between those descriptions of assets in a reasonable manner, having regard to the terms of the contract.

(8C) Where the aggregate exposure to assets of a particular description exceeds the maximum admissible value for assets of that description, then assets to the amount of the excess shall be left out of account—

- (a) by leaving out of account assets of that description held by the company to an amount sufficient to eliminate the excess; and
- (b) where the company does not hold sufficient assets of that description, by making a deduction, sufficient to eliminate the excess, from the aggregate value of the assets of the company taken into account.

(8D) For the purposes of determining whether, in pursuance of paragraphs 6, 8, 9, 10, 12, 13 and 14 of Schedule 12, assets should be left out of account by reason that the aggregate exposure exceeds the maximum admissible value, account may be taken of any amount which has already been left out of account in respect of assets of any of the descriptions in those paragraphs.

(8E) Where the company is party to a contract which (wholly or in part) is or has the equivalent effect to a derivative contract for the valuation of which provision is not made in this Part of these Regulations, in addition to assets left out of account by virtue of paragraph (1) above, a deduction, equal to the amount, calculated in accordance with paragraph (4) above, of cash or other assets as shall at the relevant date have been paid or transferred to the company in respect of that contract, shall be made from the aggregate value of the assets of the company taken into account.”

(3) In paragraph (13), omit the words “(not being a dependant of the insurance company)”.

(4) After paragraph (13) insert—

“(13A) Until 1st September 1995, paragraphs 4 and 10 of Schedule 12 shall have effect as if “listed debentures” included all debentures in respect of which there has been granted and not withdrawn a listing on any stock exchange in an EEA State which is a stock exchange within the meaning of the law of that EEA State and “unlisted debentures” shall be construed accordingly.”

(5) In paragraph (15), omit the word “or” in sub-paragraph (c), replace the full stop in sub-paragraph (d) with a semi-colon and add—

- “(e) shares in or debts due or to become due from a dependant falling within regulation 46;
or
- (f) holdings in a unit trust scheme falling within Council Directive 611/EEC of 20 December 1985(8) on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities.”

Expenses

13. In paragraph (1) of regulation 71 of the 1994 Regulations (expenses), omit the word “existing”.

Insurance statistics: EFTA States and EFTA companies

14. In regulation 80 of the 1994 Regulations (insurance statistics EFTA States and EFTA companies), for the words “calendar year”, wherever they occur, substitute “financial year”.

(8) This instruction was inserted by S.I. 1994/1515, reg. 15(8).

Permitted links

- 15.**—(1) Schedule 10 to the 1994 Regulations (permitted links) shall be amended as follows.
- (2) In paragraph 5, for sub-paragraph (b) substitute—
- “(b) Units in a collective investment fund which satisfies the following conditions—
- (i) the property of the fund comprises property of any of the descriptions in paragraphs 1 to 4 and 5(a) above or paragraphs 6 to 10 below; and
- (ii) the units are readily realisable at a price which represents the net value per unit of the assets and liabilities of the fund; and
- (iii) the price at which the units may be bought and sold is published regularly.”and omit sub-paragraph (c).
- (3) In sub-paragraph (a) of paragraph 14 add—
- “(a) a national index of retail prices published by or under the authority of a government of a state belonging to Zone A as defined in Council Directive [89/647/EEC](#) of 18 December 1989 on a solvency ratio for crediting institutions; or”.
- (4) For sub-paragraph (b) of paragraph 14 substitute—
- “(b) an index which is—
- (i) based on constituents, each of which is property falling within paragraphs 1 to 8 or 10 above; and
- (ii) in respect of which a derivative contract is listed.”.
- (5) In sub-paragraph (a) of paragraph 16, after the words “or the income from” omit the comma and insert the word “or” and after the words “in the value of property” insert a comma.
- (6) At the end of sub-paragraph (b) of paragraph 16, substitute a semi-colon for the full stop and add—
- “(c) property of the description in paragraph 5(b) above unless the contract under which the benefits are payable has been marketed in accordance with any legal restrictions which apply to the marketing of the units in the collective investment fund;
- (d) property of any of the descriptions in Part I of this Schedule which (wholly or in part) has the equivalent effect to a derivative contract other than a permitted derivative contract.”

Assets to be taken into account only to a specified extent

- 16.** In paragraph 6 of Schedule 12 to the 1994 Regulations (assets to be taken into account only to a specified extent), for the words “paragraph (4)” substitute “paragraphs 4 and 5”.

Insurance statistics: other member States

- 17.** In line 11 of Form 92 in Schedule 16 to the 1994 Regulations (insurance statistics: other member States), for the words “premiums earned” substitute the words “premiums written”, in line 12 for the words “claims incurred” substitute the words “claims paid”; omit notes 2 and 3 to Form 92 and renumber note 4 as note 2.

AMENDMENTS OF THE 1983 REGULATIONS

Interpretation

- 18.** In paragraph (1) of regulation 3 of the 1983 Regulations (interpretation), for the definition of “the Act” substitute—

““the Act” means the Insurance Companies Act 1982 and includes amendments made to that Act by the Insurance Companies (Amendment) Regulations 1994.”

Balance sheet and profit and loss account

19. In Form 13 in Schedule 1 to the 1983 Regulations (balance sheet and profit and loss account), in Instruction 6(a), for the words “the value of assets left out of account pursuant to regulation 57(2)(b)” substitute “the deductions pursuant to regulation 57(8C)(b) and (8E)”.

20.—(1) Form 15 in Schedule 1 to the 1983 Regulations shall be amended as follows.

(2) In line 45, for the entry “Recommended dividend” substitute the entry “Dividends”.

(3) In line 46, for the entry “Cumulative preference share dividend accrued” substitute the entry “Cumulative preference shares”.

(4) For Instruction 2(b) substitute—

“(2) The entry at line 46 shall exclude liabilities in respect of cumulative preference shares, to the extent that such liabilities are left out of account in accordance with regulation 23(3) of the Insurance Companies Regulations 1994.”

Certificate by appointed actuary

21. For sub-paragraph (iv) of paragraph 9(a) of Schedule 6 to the 1983 Regulations⁽⁹⁾ (certificate by appointed actuary) substitute—

“(iv) and shall list the professional guidance notes which have been complied with; and”.

Department of Trade and Industry
7th December 1994

Jonathan Evans
Parliamentary Under-Secretary of State,

⁽⁹⁾ Sub-paragraph 9(a)(iv) was added by [S.I. 1993/946](#), reg. 2

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Insurance Companies Regulations 1994 (“the 1994 Regulations”) and the Insurance Companies (Accounts and Statements) Regulations 1983 (“the 1983 Regulations”). They make amendments consequential to the amendments made to the Insurance Companies Act 1982 by the Insurance Companies (Amendment) Regulations 1994 which implement the Agreement on the European Economic Area as regards the application of Council Directive 92/49/EEC (O.J. No. L228, 11.8.92, p.1) and Council Directive 92/96/EEC (O.J. No. L360, 9.12.92, p.1) to Austria, Iceland, Norway and Sweden, and, in the case of Directive 92/96 EEC, to Finland and other unrelated amendments.

Regulation 1 makes provision for the citation and commencement of the Regulations.

Regulation 2 amends the general interpretation provisions of the 1994 Regulations.

Regulation 3 and Regulation 4 substitute references to member States for the words “European Community” in provisions governing localisation of assets and exclusions from the matching and localisation rules, following the extended meaning given to member State by the Insurance Companies (Amendment) Regulations 1994.

Regulation 5 amends a provision in the 1994 Regulations governing prescribed particulars of change of control by inserting a reference to section 62(1B) of the Act.

Regulation 6 makes a number of amendments to the provisions in Regulation 43 of the 1994 Regulations which prescribes the assets to which benefits payable under linked contracts may be linked.

Regulation 7 makes amendments to the definitions for the purposes of Part VIII of the 1994 Regulations.

Regulation 8 corrects a minor drafting error in regulation 47(2)(b) of the 1994 Regulations.

Regulation 9 revises the provisions for the valuation of secured debts owed to insurance companies.

Regulation 10 introduces new provisions for the valuation of a listed investment.

Regulation 11 amends the provisions of regulations 55 of the 1994 Regulations which deals with derivative contracts. In particular it expands the definition of an approved derivative contract.

Regulations 12 and 16 amends regulation 57 of, and Schedule 12 to, the 1994 Regulations dealing with the extent to which assets of an insurance company can be taken into account for the purposes set out in regulation 45. Regulation 57 has been restructured and there are additional provisions with regard to derivative contracts.

Regulation 13 amends regulation 71 of the 1994 Regulations concerning the provision for expenses.

Regulation 14 amends regulation 80 of the 1994 Regulations concerning the provision of insurance statistics for EFTA States and EFTA companies by providing statistical information to be given in respect of financial years.

Regulation 15 revises Schedule 10 of the 1994 Regulations dealing with permitted links. It adds to the categories of property which may be permitted links and amends the conditions under which certain property may be permitted links.

Regulation 17 revises Schedule 16 of the 1994 Regulations dealing with insurance statistics by providing for information to be provided on the basis of premiums written and claims paid.

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

Regulation 18 makes an amendment to the interpretation provisions of the 1983 Regulations.

Regulations 19 and 20 amend the form of the balance sheet and profit and loss account in Form 15 to Schedule 1 of the 1983 Regulations.

Regulation 21 makes an amendment to the form of the certificate to be provided by the appointed actuary.

Compliance costs

Compliance Cost Assessments were prepared in respect of the Insurance Companies (Third Insurance Directives) Regulations 1994, the Insurance Companies Regulations 1994 and the Insurance Companies (Accounts and Statements) (Amendment) Regulations 1994 and placed in the Libraries of both Houses of Parliament. Copies are also available from the Insurance Division of the Department of Trade and Industry, Room 817, 10-18 Victoria Street, London SW1H 0NN. These assessments concluded that the cost impact of the Regulations was broadly neutral. These Regulations will not impose any new burden on business, and a further Compliance Cost Assessment has not been prepared.