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STATUTORY INSTRUMENTS

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**1996 No. 942**

**INSURANCE**

**The Insurance Companies (Amendment) Regulations 1996**

<i>Made</i>	- - - -	<i>24th March 1996</i>
<i>Laid before Parliament</i>		<i>28th March 1996</i>
<i>Coming into force</i>	- -	<i>30th April 1996</i>

The Secretary of State, in exercise of his powers under sections 78, 90, 96(1) and 97 of the Insurance Companies Act 1982(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

**Citation and commencement**

1.—(1) These Regulations may be cited as the Insurance Companies (Amendment) Regulations 1996 and shall come into force on 30th April 1996.

(2) In these Regulations the “1994 Regulations” means the Insurance Companies Regulations 1994(2).

**Valuation**

2. For paragraph (3) of regulation 23 of the 1994 Regulations (valuation), substitute—

“(3) Notwithstanding regulation 60(2) below, where a company has issued cumulative preference shares, liabilities in respect of such shares may be left out of account, in aggregate up to 50 per cent. of the required margin of solvency save that liabilities in respect of shares which are redeemable for the purposes of section 159 of the Companies Act 1985(3) may be left out of account, in aggregate only up to 25 per cent. of the required margin of solvency.”.

**Interpretation: Part VIII**

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

(2) Omit the definitions of “equity share” and “equity share capital”.

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(1) 1982 c. 50.

(2) S.I.1994/1516; as amended by S.I. 1994/3133 and S.I. 1995/3248.

(3) 1985 c. 6.

- (3) After the definition of “equivalent securities”(4), insert—  
 ““exposure” in relation to assets means an amount determined in accordance with regulation 57(5) of, and paragraph 5 of Schedule 12(6) to, these Regulations;  
 “exposure” in relation to a counterparty means an amount determined in accordance with regulation 57 of, and paragraphs 13 to 15 of Schedule 12 to, these Regulations;.”
- (4) After the definition of “industrial and provident society”, insert—  
 ““initial margin”, in respect of a derivative contract or a contract or asset having the effect of a derivative contract, means assets which, before or at the time the contract is entered into, are transferred by the insurance company subject to a condition that such assets (or where the assets transferred are securities, equivalent securities) will be returned to the company on completion of that contract;.”
- (5) After the definition of “option”, insert—  
 ““permitted asset exposure limit” has the meaning set out in paragraph 3 of Schedule 12 to these Regulations;  
 “permitted counterparty exposure limit” has the meaning set out in paragraph 4 of Schedule 12 to these Regulations;.”
- (6) After the definition of “Treasury Bills”, insert—  
 ““variation margin” means—  
 (a) in respect of a derivative contract, or a contract having the effect of a derivative contract, assets (other than assets transferred by way of initial margin) which, at the relevant date, have been transferred by, to, or for the benefit of the company in pursuance of a condition in that contract or a related contract; and  
 (b) in respect of an asset having the effect of a derivative contract, assets which, at the relevant date, have been transferred by, to, or for the benefit of, the company in pursuance of a contractual right conferred, or obligation imposed, by the holding of the asset having the effect of a derivative contract;.”
- (7) In sub-paragraph (a) of paragraph (3)(7), for the words from “and the lower of” to “these Regulations)” substitute—  
 ““and the sum of the aggregate amount available under all letters of credit established for the benefit of the company with the same counterparty, the aggregate amount of all guarantees issued for the benefit of the company by that counterparty and the amount of any exposure of the company to that counterparty does not exceed the permitted counterparty exposure limit for that counterparty.”.”
- (8) In sub-paragraph (b)(ii) of paragraph (3), replace the full stop by “; and” and insert—  
 “(iii) where the assets give rise to exposure to a counterparty, the exposure of the company to that counterparty, when added to the aggregate amount available under all letters of credit established for the benefit of the company with that counterparty, and to the aggregate amount of all guarantees issued for the benefit of the company by that counterparty, does not exceed the permitted counterparty exposure limit for that counterparty.”.
- (9) For paragraph (4) substitute—  
 “(4) For the purposes of paragraph (3) above—

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(4) The definition of “equivalent securities” was inserted by S.I. 1995/3248, reg. 2(8).

(5) Regulation 57 was substituted by S.I. 1995/3248, reg.12.

(6) Schedule 12 was substituted by S.I. 1995/3248, reg.20 and Schedule 2.

(7) Paragraph (3) was substituted by S.I. 1995/3248, reg.3.

- (a) the aggregate amount available under letters of credit established with a counterparty shall be taken not to exceed the sum of the aggregate amount of all debts and the aggregate value of all obligations in respect of which those letters of credit were established; and
- (b) the aggregate amount of guarantees issued by a counterparty shall be taken not to exceed the sum of the aggregate amount of all debts and the aggregate value of all obligations so guaranteed; and
- (c) assets which are securing any other debt owed to (or obligation to be fulfilled for the benefit of) the company shall be treated as if they were assets of the company.”.

**Assets sold to or purchased from an approved credit institution or an approved investment firm subject to an agreement for resale or repurchase.**

4.—(1) Regulation 47A of the 1994 Regulations<sup>(8)</sup> (assets sold to or purchased from an approved credit institution or an approved investment firm subject to an agreement for resale or repurchase) shall be amended as follows.

(2) In sub-paragraph (b)(i) of paragraph (3), for the words “listed securities”, substitute “securities (other than approved securities)”.

(3) In sub-paragraph (b)(ii) of paragraph (3), omit the words “cause the company to”.

(4) In sub-paragraph (b)(i) of paragraph 4, omit the words “cause the company to”.

(5) After paragraph (4) insert—

“(4A) For the purposes of this regulation, where the company has received consideration in respect of any other sale of the kind described in paragraph (1) above, in addition to any other exposure to assets or to a counterparty—

- (i) if such consideration takes the form of a letter of credit established with, or a guarantee provided by, an approved credit institution, it shall be considered to give rise to exposure to that institution by the amount of the consideration; and
- (ii) if such consideration takes the form of a charge over securities, it shall be considered to give rise to exposure to securities of the same description and to the issuer of those securities by the amount of the consideration; and
- (iii) if such consideration takes the form of cash deposited with another party for the benefit of the company, or a charge over cash deposited with another party, it shall be considered to give rise to exposure to that party by the amount of the consideration.”.

(6) In the first line of paragraph (5), for the words “paragraph (4) above”, substitute “this regulation”.

**Debts and other rights**

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

(2) For paragraph (10), substitute—

“(10) The value of any right to recover assets transferred by way of initial margin shall be determined—

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<sup>(8)</sup> Regulation 47A was inserted by S.I. 1995/3248, reg.5.

<sup>(9)</sup> Regulation 48 was amended by S.I. 1995/3248, reg.6.

- (a) where the initial margin was a payment in cash, as if there were a debt owed to the insurance company for that amount, and
  - (b) where the initial margin took the form of a transfer of securities, as if there were a debt owed to the insurance company of an amount equal to the value of such securities as determined in accordance with this Part of these Regulations.”.
- (3) After paragraph ( 10) insert—
- “(11) The value of any rights arising under a derivative contract to which regulation 55 below does not apply, or under a contract or asset having the effect of a derivative contract to which regulation 55 below does not apply, shall be the value of any right to recover assets transferred by way of initial margin together with the value of any other unconditional right to receive a specified amount.
- (12) This regulation shall not apply to any rights (other than debts due) in respect of—
- (a) investments in dependants;
  - (b) securities or beneficial interests in a limited partnership;
  - (c) units or other beneficial interests in a collective investment scheme;
  - (d) a derivative contract, except as provided under paragraphs (10) or (11) above; or
  - (e) a contract or asset which has the effect of a derivative contract except as provided under paragraphs (10) or (11) above or under regulation 56(4) or 56(5) below.”.

### **Securities and beneficial interests in limited partnerships**

**6.—**(1) Regulation 51 of the 1994 Regulations(**10**) (securities and beneficial interests in limited partnerships) shall be amended as follows.

- (2) For paragraph (1), substitute—
- “(1) Subject to paragraph (1A) below, this regulation applies to the valuation of investments comprising securities and beneficial interests in limited partnerships and, for the purposes of paragraph (5) below, investments includes loans.”.
- (3) After paragraph (1), insert—
- “(1A) This regulation shall not apply to the valuation of securities which are—
- (a) derivative contracts;
  - (b) investments in dependants;
  - (c) units or other beneficial interests in collective investment schemes, except as provided in regulation 52(2) below; or
  - (d) contracts or assets having the effect of derivative contracts, except as provided in regulation 56(4) below.”.
- (4) In paragraph (4)(b), for the words “not greater” substitute “equal to or greater”.

### **Beneficial interests in collective investment schemes**

**7.—**(1) Regulation 52 of the 1994 Regulations(**11**) (beneficial interests in collective investment schemes) shall be amended as follows.

- (2) Renumber regulation 52, “52(1)”.
- (3) In the renumbered regulation 52(1), for the words “The value of any holding of units, or other beneficial interest, in a collective investment scheme shall be, in the case of”, substitute—

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(10) Regulation 51 was substituted by S.I. 1995/3248, reg.7.

(11) Regulation 52 was substituted by S.I. 1995/3248, reg. 8.

“Subject to paragraph (3) below, this regulation applies to holdings of units or other beneficial interests in.”

(4) In the renumbered regulation 52(1), replace “; and” at the end of sub-paragraph (c)(iii) by a full stop and omit sub-paragraph (c)(iv) and the words from “the price at which” to the end of the paragraph.

(5) After paragraph (1) insert—

“(2) The value of units or other beneficial interests in a collective investment scheme to which this regulation applies shall be—

(a) where the issuer can be required to purchase the units or other beneficial interests from the holder upon the holder giving notice of one month or less, the price at which the issuer would have purchased the units or other beneficial interests on the relevant date or the most recent date before the relevant date on which it could have been required to make such a purchase; and

(b) where the issuer cannot be required to purchase the units or other beneficial interests as set out in sub-paragraph (a) above, a value determined in accordance with regulation 51 above.

(3) Other than as provided in regulation 56(4) below, this regulation shall not apply to units or other beneficial interests in a collective investment scheme which has the effect of a derivative contract.”

#### **Derivative contracts**

**8.** For paragraph (1) of regulation 55(**12**) (derivative contracts), substitute—

“(1) The value of rights (other than rights to recover assets transferred by way of initial margin) under a derivative contract to which this regulation applies shall be—

(a) in the case of a listed derivative contract, the market value; and

(b) in the case of an unlisted derivative contract, the amount which would reasonably be paid by way of consideration for closing out that contract

in either case taking into account the market value of any assets which, at the relevant date, have been transferred by way of variation margin.”

#### **Contracts and assets having the effect of derivative contracts**

**9.—**(1) Regulation 56 of the 1994 Regulations(**13**) (contracts and assets having the effect of derivative contracts) shall be amended as follows.

(2) In paragraph (1)(a), for the words “in the value of property of any description or fluctuations in an index of the value of property of any description;” substitute—

“in—

(i) the value of property of any description;

(ii) an index of the value of property of any description;

(iii) income from property of any description; or

(iv) an index of income from property of any description;”

(3) In paragraph (2), for the words “paragraph (a) of regulation 52”, substitute “regulation 52(1)(a)”.

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(12) Regulation 55 was substituted by S.I. 1995/3248, reg.10.

(13) Regulation 56 was substituted by S.I. 1995/3248, reg. 11.

(4) For paragraph (4), substitute—

“(4) Rights in respect of a contract or asset which has the effect of a derivative contract to which regulation 55 above applies shall—

- (a) where the asset is a security, be valued in accordance with regulation 51 above;
- (b) where the asset comprises units or other beneficial interests in a collective investment scheme, be valued in accordance with regulation 52 above; and
- (c) where the asset is a debt or other right, be valued in accordance with regulation 48 above.”.

(5) For paragraph (5), substitute—

“(5) Rights in respect of a contract or asset having the effect of a derivative contract to which regulation 55 does not apply shall have a value determined in accordance with regulation 48(11) above.”.

(6) After paragraph (5) insert—

“(6) For the purposes of determining whether a contract or asset has the effect of a derivative contract to which regulation 55 applies, it shall be deemed to have the effect of a derivative contract which is listed or transacted with an approved counterparty if it is itself listed or so transacted.”.

### **Long term and general business**

**10.** In paragraph (2) of regulation 60 (long term and general business), for the words “but save as” to the end of the paragraph substitute—

“including all liabilities in respect of cumulative preference share capital but excluding other liabilities in respect of share capital.”.

### **Provision for adverse changes**

**11.**—(1) Regulation 61 of the 1994 Regulations(**14**) (provision for adverse changes) shall be amended as follows.

(2) In paragraph (1), after the words “an obligation”, insert “to which this regulation applies”.

(3) For paragraph (3), substitute—

“(3) For the purposes of this regulation—

“linked assets” has the meaning given in regulation 44(1) above;

“property linked liabilities” has the meaning given in paragraph 2 of Schedule 12 to these Regulations; and

“the amount of its excess assets” means the difference between the aggregate value of its assets (other than linked assets to the extent that they are held to match property linked liabilities), determined in accordance with Part VIII of these Regulations, and the amount of its liabilities (other than property linked liabilities or liabilities for which provision is made in accordance with this regulation).”.

(4) After paragraph (3), insert—

“(4) Subject to paragraph (5) below, this regulation applies to an obligation—

- (a) under a contract relating to investments of the kinds mentioned in item C under the heading “Assets” in paragraph 9 of Part I of Schedule 9A to the Companies Act 1985 (whether such contract constitutes an asset or liability of the company);

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(14) Regulation 61 was substituted by S.I. 1995/3248, reg.15.

(b) undertaken for the purposes of, or in connection with the making of, investments of the kind mentioned in sub-paragraph (a) above; or

(c) under a contract providing for the purchase, sale or exchange of currency.

(5) This regulation shall not apply to a contract to the extent that it relates to, or is for the purposes of the making of an investment in, or is in connection with the making of an investment in, a building which is to be occupied by the company and used by the company for the conduct of its business.”.

### Schedule 3

**12.**—(1) Paragraph 1 of Schedule 3 to the 1994 Regulations (general business solvency margin first method of calculation) shall be amended as follows.

(2) After the definition of “gross premiums” insert—

““incepted” refers to the time when the liability to risk of a company under a contract of insurance commenced and, for this purpose, a contract providing continuous cover shall be deemed to commence on each anniversary date of the contract;”

(3) For the definition of “receivable” substitute—

““receivable” in relation to an insurance company, a financial year and a premium means due to the company in respect of contracts of insurance incepted during that financial year, whether or not the premium is received during that financial year.”.

### Schedule 10

**13.**—(1) Schedule 10 to the 1994 Regulations(**15**) (permitted links) shall be amended as follows.

(2) For paragraph 1, substitute—

“**1.** Listed securities which are readily realisable, not being securities which are—

(a) approved securities;

(b) loans or deposits of the kinds mentioned in paragraphs 4 and 7 below;

(b) units or other beneficial interests in a collective investment fund; or

(d) derivative contracts.”.

(3) For paragraph 2, substitute—

“**2.** Unlisted securities which are readily realisable, not being securities which are—

(a) approved securities;

(b) loans or deposits of the kinds mentioned in paragraphs 4 and 7 below;

(b) units or other beneficial interests in a collective investment fund; or

(d) derivative contracts.”.

(4) In paragraph 15(1)(b), for the words “the reference in regulation 55(7)(a)(i)”, substitute “the references in regulation 55”.

(5) After paragraph 15 insert—

“**15A.** In this Schedule—

“collective investment fund” includes a collective investment scheme; and

“readily realisable”, in respect of an investment, has the meaning set out in paragraph 2 of Schedule 12 to these Regulations.”.

(6) In paragraph 16(a), after the words “fluctuations in the value of” insert “or fluctuations in the income from,”

(7) In paragraph 16(b), for the words “unless these securities are realisable in the short term without any diminution in value”, substitute “in excess of 10 per cent. of the aggregate property linked benefits under the contract”.

## **Schedule 12**

**14.**—(1) Schedule 12 of the 1994 Regulations shall be amended as follows.

(2) For the definition of “index linked liabilities” in paragraph 2 of Part I, substitute

““index linked liabilities” means insurance liabilities in respect of index linked benefits.”

(3) In the definition of “long term business amount” in paragraph 2 of Part I, after the words “insurance liabilities”, insert “in respect of long-term business”.

(4) For the definition of “property linked liabilities” in paragraph 2 of Part I, substitute

““property linked liabilities” means insurance liabilities in respect of property linked benefits;.”

(5) In the definition of “readily realisable” in paragraph 2 of Part I, for the words “not more” substitute “an amount equal to or greater”.

(6) In paragraph 4(b) of Part I, for the words “in sub-paragraph (d)” substitute “in sub-paragraph (e)”.

(7) In paragraph 4(c)(ii) of Part I after the word “amount”, insert “or such lower amount as the company may decide”.

(8) In paragraph 7(c) of Part I, after the word “counterparty”, insert “and it is prudent to assume that such disposal will take place”.

(9) In paragraph 9(c) of Part I, after the word “counterparty”, insert “and it is prudent to assume that such disposal will take place”.

(10) After paragraph 9 of Part I, insert—

### **“Adjustments in respect of initial margins**

**9A.** The figure arrived at under paragraphs 5 to 9 above in respect of assets of each description shall be increased by an amount representing the value of any assets of that description which have been transferred by the company by way of initial margin.”.

(11) In paragraph 10 of Part I, for the words “paragraphs 6 to 9 above”, substitute “paragraphs 5 to 9A above”.

(12) In paragraph 13 of Part I, for the words “paragraph (c) of regulation 52” substitute “regulation 52(1)(c)”.

(13) For paragraph 14 of Part I, substitute—

“**14.** Where an insurance company has rights in respect of an obligation to be fulfilled by a counterparty and—

(a) the obligation is a secured obligation which—

(i) is secured by cash deposited with, or a letter of credit established with, or securities issued by, or a guarantee provided by, an approved credit institution or an approved financial institution; and

(ii) is due to be fulfilled within 12 months of the relevant date; or



(b) the obligation is a secured obligation which is secured by listed securities which are readily realisable or by approved securities which in either case—

(i) have been deposited with an approved credit institution, an approved financial institution or an approved investment firm; and

(ii) are beneficially owned by the counterparty but will not be available for the benefit of creditors generally in the event of the winding-up of the counterparty,

the aggregation required by paragraph 13 above need not include the value of such rights.”.

(14) In paragraph 16 of Part I, after the words “counterparty exposure”, in the third line, insert “limit” and for the words from “it shall only be required” to the end of the paragraph substitute—

“it shall make the deduction required under regulation 57(1)(b) above only in respect of the circumstances leading to the greatest excess exposure.”.

(15) For paragraph 17 of Part I, substitute—

“17. Where there is exposure to a counterparty of the type mentioned in paragraph 4(c) (ii) above, 40 per cent. of the business amount shall be deducted from the aggregate of such exposures. The amount so arrived at shall be the excess concentration with a number of counterparties. Where this amount is negative it shall be taken to be zero. For the purposes of this paragraph—

(a) exposure to a counterparty shall be taken into account only up to the level of the permitted counterparty exposure limit for that counterparty; and

(b) exposure to a counterparty shall not be taken into account if it does not exceed 5 per cent. of the business amount; and

(b) exposure to a counterparty shall not be taken into account if the corresponding permitted counterparty exposure limit does not exceed 5 per cent. of the business amount.”.

(16) In paragraph 1 of Part II, after the words “number of pieces of land”, insert “(or an interest in such pieces of land)”.

(17) After paragraph 1 of Part II, insert—

“1A. A reversionary interest or a remainder not falling within paragraph 1 above.

1%.”

(18) In paragraph 11 of Part II, after the words “secured debt securities”, insert “, debt securities (other than hybrid securities) issued by a regulated institution” and for the words “paragraph (c) of regulation 52”, substitute “regulation 52 (l)(c)”.

(19) In paragraph 12 of Part II, for the words “the descriptions in paragraph 11 above”, substitute “any of the descriptions in paragraphs 1A and 11 above”.

### **Transitional provision**

15. Where an insurance company, pursuant to regulation 21 of the Insurance Companies (Amendment) Regulations 1995(16), applies the provisions of the 1994 Regulations as if the provisions of the Insurance Companies (Amendment) Regulations 1995 had not been made, it shall, until 1st July 1996, apply the 1994 Regulations as if the provisions of these Regulations had not been made.

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

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Department of Trade and Industry  
24th March 1996

*Anthony Nelson*  
Minister for Trade,

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## EXPLANATORY NOTE

(This Note does not form part of the Regulations)

These Regulations make amendments to Parts IV, VIII and IX of and Schedules 3, 10 and 12 to the Insurance Companies Regulations 1994. They concern the treatment of assets and liabilities of a UK-authorized insurance company for the purposes of the Insurance Companies Act 1982, the determination of a minimum margin of solvency and the methods by which benefits payable to policyholders under linked long-term contracts of insurance may be determined.

**Regulation 1** provides for citation and commencement.

**Regulations 2 and 10** redraft respectively regulations 23 and 60 (of the 1994 Regulations) concerning the treatment of cumulative preference share capital.

**Regulation 3** updates the provisions for interpretation of Part VIII, largely as a consequence of the changes to that Part.

**Regulation 4** amends regulation 47A concerning certain sale and repurchase transactions.

**Regulation 5** amends regulation 48 to provide explicitly for the treatment of “initial margin” and makes certain other amendments to improve the clarity of the regulation. The amendments to regulation 55, introduced by **regulation 8**, are linked to these changes.

**Regulation 7** extends the range of collective investment schemes which may be valued under regulation 52. The amendments to regulation 51 (dealing mainly with valuation of securities) introduced by **regulation 6** are largely consequential on this change.

**Regulation 9** amends the definition of a “contract or asset having the effect of a derivative contract” in regulation 56 and makes other drafting changes to improve the clarity of the regulation.

**Regulation 11** amends the definition and scope of the “provision for adverse changes” required under regulation 61.

**Regulation 12** amends a definition used in Schedule 3 for the purposes of determining the margin of solvency required (under the 1982 Act) to be maintained by a company.

**Regulation 13** makes minor changes to the rules concerning the reference values which may be used for the determination of policyholder benefits under linked long-term contracts.

**Regulation 14** makes changes of detail to the rules for the calculation of the extent to which certain assets can be taken into account, required under regulation 57.

**Regulation 15** contains a transitional provision.

### *Compliance Costs*

Compliance Cost Assessments were prepared in respect of the Insurance Companies (Third 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 Directorate of the Department of Trade and Industry, Room 5.C.53, 1 Victoria Street, London SW1H 0ET. 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.