

2008 No. 565

INSURANCE

**The Insurance Accounts Directive (Miscellaneous Insurance
Undertakings) Regulations 2008**

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| <i>Made</i> - - - - | <i>26th February 2008</i> |
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| <i>Coming into force</i> - - | <i>6th April 2008</i> |

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SCHEDULE 1 — MODIFICATION OF THE FRIENDLY AND INDUSTRIAL
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SCHEDULE 2 — MODIFICATION OF THE INDUSTRIAL AND PROVIDENT
SOCIETIES ACT (NORTHERN IRELAND) 1969

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation, and in relation to auditors and the audit of accounts.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

PART 1

INTRODUCTION

Citation, commencement and application

1.—(1) These Regulations may be cited as the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008.

(2) These Regulations come into force on 6th April 2008 and apply in relation to—

- (a) insurance undertakings' financial years beginning on or after that date, and
- (b) auditors appointed in respect of those financial years.

Interpretation

2.—(1) In these Regulations—

“the Companies Accounts Regulations” means the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(c);

“the appropriate audit authority” means—

- (a) the Secretary of State, or
- (b) if the Secretary of State has delegated functions under section 1252 of the Companies Act 2006(d) to a body whose functions include receiving the equivalent notice under section 522 or 523 of that Act, that body;

“the Authority” means the Financial Services Authority(e);

“director” includes, in the case of an undertaking which is not a company, any corresponding officer of that body;

“enactment” includes—

(a) S.I. 2007/193 and S.I. 2007/1679.
(b) 1972 c.68.
(c) S.I. 2008/410.
(d) 2006 c.46.
(e) See the Financial Services and Markets Act 2000 (c.8), section 1.

- (a) an enactment contained in subordinate legislation, other than these Regulations,
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

“friendly society” has the same meaning as in the Financial Services and Markets Act 2000(a);

“industrial and provident society” means a registered society within the meaning of either section 74 of the Industrial and Provident Societies Act 1965(b) or section 101 of the Industrial and Provident Societies Act (Northern Ireland) 1969(c);

“insurance undertaking” shall be construed in accordance with paragraphs (2) and (3).

(2) Subject to paragraph (3), a body incorporated in or formed under the law of any part of the United Kingdom is an insurance undertaking for the purposes of these Regulations if it—

- (a) is incorporated by or registered under any public general Act of Parliament,
- (b) requires permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance without contravening the prohibition imposed by section 19 of that Act, and
- (c) is not required by any enactment to prepare accounts under Part 15 of the Companies Act 2006 (accounts and reports).

(3) Paragraph (2)(b) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(d),
- (c) Schedule 2 to that Act.

(4) A body is not an insurance undertaking for the purposes of these Regulations if it—

- (a) is excluded from the scope of Council Directive 73/239/EEC(e) by Article 3 of that Directive,
- (b) is referred to in Article 3(2) to (6) of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance(f), or
- (c) is a friendly society.

(5) Any reference in these Regulations to the accounts required by or prepared under regulation 3 are references to the annual accounts, the directors’ report and the auditor’s report required by or prepared under paragraph (1) of that regulation.

(6) Any reference in these Regulations to “financial year” in relation to an insurance undertaking means—

- (a) any period in respect of which a profit and loss account, or in the case of an industrial and provident society, an annual return, of that undertaking is required to be made up by or in accordance with its constitution or by any enactment (whether that period is a year or not), or
- (b) failing any such requirement, each period of 12 months beginning with 1st April.

(a) 2000 c.8.

(b) 1965 c.12.

(c) 1969 c.24 (N.I.).

(d) S.I. 2001/544 as amended by S.I. 2001/3544, S.I. 2002/682, S.I. 2002/1310, S.I. 2002/1776, S.I. 2002/1777, S.I. 2003/1475, S.I. 2003/1476, S.I. 2003/2822, S.I. 2004/1610, S.I. 2004/2737, S.I. 2004/3379, S.I. 2005/593, S.I. 2005/1518, S.I. 2005/2114 and S.I. 2006/1969.

(e) O.J. L228, 16.8.1973, p.3.

(f) O.J. L345, 19.12.2002, p.1.

(7) Except as otherwise provided in these Regulations, words and expressions used in the Companies Act 2006 have the same meaning in these Regulations as they have in that Act.

PART 2 ACCOUNTS

Preparation of accounts by insurance undertakings

3.—(1) The directors of an insurance undertaking must in respect of each financial year of the undertaking—

- (a) prepare the like annual accounts and directors' report, and
- (b) cause to be prepared such an auditor's report,

as would be required under the provisions mentioned in paragraph (3) if the undertaking were a company which is an insurance company or the parent company of an insurance group.

(2) The accounts required by this regulation must—

- (a) be prepared within the period of 6 months beginning immediately after the end of the undertaking's financial year,
- (b) state that they are prepared under this regulation, and
- (c) comply with such of the requirements of the provisions mentioned in paragraph (3) as relate to the contents of accounts or reports subject, where the insurance undertaking is unincorporated, to any necessary modifications to take account of that fact.

(3) The provisions referred to in paragraphs (1) and (2) are the following provisions of the Companies Act 2006 and the Companies Accounts Regulations—

- (a) Chapters 4 and 5 of Part 15 of the Companies Act 2006 (accounts and reports),
- (b) sections 433 (name of signatory to be stated in published copies of accounts and reports) and 436 (meaning of "publication" in relation to accounts and reports) of that Act as far as the latter section has effect for the purposes of section 433,
- (c) section 469 of that Act (preparation and filing of accounts in euros),
- (d) sections 475(1) (requirement for audited accounts), 495 (auditor's report on annual accounts), 496 (auditor's report on directors' report), 498 (duties of auditor), 503 (signature of auditor's report) and 505 (names to be stated in published copies of auditor's report) of that Act,
- (e) where Companies Act individual accounts are prepared, Schedule 3 to the Companies Accounts Regulations (insurance companies: Companies Act individual accounts) other than paragraphs 11, 62, 68, 70, 71, 72, 82(2), 83 and 84 and, in paragraph 2(2), the words from "save that none of the following" to the end,
- (f) Schedule 4 to those Regulations (information on related undertakings required whether preparing Companies Act or IAS accounts) other than paragraphs 9 and 12,
- (g) Schedule 5 to those Regulations (information about benefits of directors) other than paragraphs 2, 4 and 5,
- (h) where Companies Act group accounts are prepared, Part 1 of Schedule 6 to the Companies Accounts Regulations (Companies Act group accounts: general rules) (as modified by Part 3 of that Schedule (modifications for insurance groups)) other than paragraphs 13(3) and (4), 14 and 15,
- (i) paragraphs 6 and 7 of Schedule 7 to those Regulations (directors' report).

(4) For the purposes of those provisions as applied to accounts prepared under this regulation, these Regulations are to be regarded as part of the requirements of the Companies Act 2006 and the Companies Accounts Regulations.

(5) Regulations 5 and 6 of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008(a) apply in relation to the accounts required by this regulation as they apply in relation to the annual accounts of a company or group which is not a small or medium-sized company or group.

Publication of accounts

4.—(1) An insurance undertaking must—

- (a) make available the latest accounts and reports prepared under regulation 3 for inspection by any person, without charge and during business hours, at the undertaking's head office in the United Kingdom, and
- (b) supply to any person upon request a copy of those accounts (or such part of those accounts as may be requested) at a price not exceeding the administrative cost of making the copy.

(2) In the case of industrial and provident societies which are insurance undertakings, the obligation in paragraph (1) (b) is subject to the provisions of section 39(5) of the Industrial and Provident Societies Act 1965 or section 48(6) of the Industrial and Provident Societies Act (Northern Ireland) 1969, as the case may be.

Penalties for non-compliance (accounts)

5.—(1) If the directors of an insurance undertaking fail to comply with paragraph (1) of regulation 3 within the period referred to in paragraph (2) of that regulation, an offence is committed by every person who, immediately before the end of that period, was a director of the undertaking.

(2) If accounts and reports which are made available for inspection under regulation 4(1) do not comply with the requirements of regulation 3, an offence is committed by every person who, at the time when the accounts and reports were or the account was first made available for inspection, was a director of the insurance undertaking.

(3) If an insurance undertaking fails to comply with regulation 4(1) an offence is committed by—

- (a) the insurance undertaking, and
- (b) every director of the insurance undertaking who is in default.

(4) Where the affairs of an insurance undertaking are managed by its members, any reference in this regulation to a director of the insurance undertaking shall be read as referring to a member of the undertaking.

(5) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Section 1130 of the Companies Act 2006 (proceedings against unincorporated bodies) applies to an offence under paragraph (3) as it does to an offence under section 519 of that Act (statement by auditor to be deposited with company).

(a) S.I. 2008/489.

PART 3

AUDITORS

Appointment of auditors

6.—(1) Sections 485 (appointment of auditors of private company: general), 486 (appointment of auditors of private company: default power of Secretary of State), 487 (term of office of auditors of private company) and 488 (prevention by members of deemed re-appointment of auditor) of the Companies Act 2006 apply in relation to the appointment of auditors of an insurance undertaking subject—

- (a) where the undertaking concerned is unincorporated, to any necessary modifications to take account of that fact,
- (b) to the modifications made by paragraph (2), and
- (c) to paragraph (3).

(2) The modifications are—

- (a) in section 485(2)(a), the reference to “the time allowed for sending out copies of the company’s annual accounts and reports” is to be construed as a reference to the time allowed under regulation 3(2)(a) of these Regulations for preparing the accounts required by regulation 3;
- (b) in section 485(2)(b), the reference to “the day on which copies of the company’s annual accounts and reports for the previous financial year are sent out under section 423” is to be construed as a reference to the day on which the accounts required by regulation 3 are prepared;
- (c) in section 487(3), the reference to “the provisions of this Part as to removal and resignation of auditors” is to be construed as a reference to provisions in these Regulations, and to any public general Act governing an insurance undertaking, as to removal and resignation of auditors;
- (d) in section 488(3)(c), the reference to “the accounting reference period” is to be construed as a reference to the financial year.

(3) Sections 1121 (liability of officer in default), 1122 (liability of company as officer in default), 1123 (application to bodies other than companies) and 1130 (proceedings against unincorporated bodies) of the Companies Act 2006 apply in relation to an offence committed under section 486(3) of that Act as applied by this regulation.

(4) This regulation does not apply in relation to industrial and provident societies which prepare accounts under the provisions of these Regulations.

Functions of auditor

7.—(1) The following provisions of the Companies Act 2006 apply to the auditor of an insurance undertaking as they apply to an auditor of a company—

- (a) section 495 (auditor’s report on company’s annual accounts);
- (b) section 498 (duties of auditor);
- (c) section 499 (auditor’s general right to information).

(2) The auditor of an insurance undertaking must supply the directors of that undertaking with such information as is necessary to enable the disclosure required by regulation 3(5) to be made.

(3) This regulation does not apply in relation to industrial and provident societies which prepare accounts under the provisions of these Regulations.

Signature of auditor's report

8.—(1) Sections 503 to 506 of the Companies Act 2006 (signature of auditor's report) apply in relation to the auditor's report required by regulation 3(1)(b), subject to—

- (a) any necessary modifications to take account of the fact that the insurance undertaking is unincorporated, and
- (b) the modifications made by paragraph (2).

(2) The modifications are—

- (a) in section 505(1)(b) and section 506(2)(b), the references to the Secretary of State are to be construed as references to the Authority, and
- (b) in section 506(1)(b), the reference to the copy of the report delivered to the registrar under Chapter 10 of Part 15 (filing of accounts and reports) is to be construed as a reference to any copy of the report made available for inspection by, or supplied to, the Authority.

(3) The reference to section 505 of the Companies Act 2006 in regulation 3(3)(d) is to be construed in accordance with this regulation.

Removal of auditors on improper grounds

9.—(1) Where the auditor of an insurance undertaking is removed from office an application may be made to the High Court under this regulation.

(2) The persons who may make such an application are—

- (a) any member of the insurance undertaking who was also a member at the time of the removal, and
- (b) the Authority.

(3) If the court is satisfied that the removal was—

- (a) on grounds of divergence of opinion on accounting treatments or audit procedures, or
- (b) on any other improper grounds,

it may make such order as it thinks fit for giving relief in respect of the removal.

(4) The court may, in particular—

- (a) declare that any resolution of the insurance undertaking removing an auditor, or appointing a new auditor in his place, is void;
- (b) require the directors of the insurance undertaking to re-appoint the dismissed auditor until the next general meeting of the insurance undertaking;
- (c) give directions as to the conduct of the insurance undertaking's affairs in the future.

(5) In the application of this regulation to an insurance undertaking whose principal place of business is in Scotland or Northern Ireland, references to the High Court are to be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.

Duty of auditor to notify appropriate audit authority

10.—(1) Where an auditor of an insurance undertaking ceases for any reason to hold office, he must notify the appropriate audit authority.

(2) The notice must—

- (a) inform the appropriate audit authority that he has ceased to hold office, and
- (b) if the auditor resigns, be accompanied by a copy of any notice of resignation and a statement of the reasons for his resignation.

(3) The auditor must comply with this regulation—

- (a) if he resigns, at the same time as he deposits his notice of resignation at the head office of the insurance undertaking or otherwise informs it of his resignation;

- (b) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

Duty of insurance undertaking to notify appropriate audit authority

11.—(1) Where an auditor of an insurance undertaking ceases to hold office before the end of his term of office, the undertaking must notify the appropriate audit authority.

- (2) The notice must—
 - (a) inform the appropriate audit authority that the auditor has ceased to hold office, and
 - (b) be accompanied by—
 - (i) a statement by the undertaking of the reasons for his ceasing to hold office, or
 - (ii) if the auditor has resigned and he has given the insurance undertaking a statement of the reasons for his resignation, a copy of that statement.
- (3) The insurance undertaking must give notice under this paragraph—
 - (a) if the auditor resigns, not later than the end of the period of 14 days beginning with the date on which the auditor first informs the insurance undertaking of his resignation (whether by notice deposited at its head office or otherwise);
 - (b) in any other case, not later than the end of the period of 14 days beginning with the date on which the auditor ceases to hold office.

Penalties for non-compliance (notification of appropriate audit authority)

12.—(1) If an auditor fails to comply with regulation 10, an offence is committed by—

- (a) the auditor, and
- (b) if the auditor is a firm, every officer of the firm who is in default.

(2) If an insurance undertaking fails to comply with regulation 11, an offence is committed by—

- (a) the insurance undertaking, and
- (b) every director of the insurance undertaking who is in default.

(3) Where the affairs of an insurance undertaking are managed by its members, any reference in this regulation to a director of the insurance undertaking shall be read as referring to a member of the undertaking.

(4) In proceedings for an offence under this section it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(5) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to a fine, and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) Sections 1121 (liability of officer in default), 1122 (liability of company as officer in default), 1123 (application to bodies other than companies) and 1130 (proceedings against unincorporated bodies) of the Companies Act 2006 apply to an offence under paragraphs (1) and (2) as they apply to an offence under section 519 of that Act (statement by auditor to be deposited with company).

PART 4

FINAL PROVISIONS

Summary proceedings: venue and time limit

13. Sections 1127 (summary proceedings: venue) and 1128 (summary proceedings: time limit for proceedings) of the Companies Act 2006 apply in relation to summary proceedings for any offence under these Regulations as they apply in relation to such proceedings for any offence under that Act.

Industrial and provident societies

14.—(1) Schedule 1 to these Regulations makes provision for the modification of the Friendly and Industrial and Provident Societies Act 1968(a) in its application to industrial and provident societies that are insurance undertakings for the purposes of these Regulations.

(2) Schedule 2 makes provision for the modification of the Industrial and Provident Societies (Northern Ireland) Act 1969 in its application to industrial and provident societies that are insurance undertakings for the purposes of these Regulations.

(3) The Industrial and Provident Societies (Group Accounts) Regulations 1969(b) and the Industrial and Provident Societies Act (Group Accounts) Regulations (Northern Ireland) 1969(c) do not apply to industrial and provident societies that are insurance undertakings for the purposes of these Regulations.

(4) Notwithstanding anything in the rules of the society, the committee of an industrial and provident society that is an insurance undertaking for the purposes of these Regulations may by resolution passed before 1st April 2009 make such amendments of the rules of the society as may be consequential on the provisions of these Regulations.

(5) The Authority is not required to register any amendment of the rules of such a society unless such consequential amendments of the rules of the society as are mentioned in paragraph (4) either have been made before the application for registration of that amendment or are to be effected by that amendment.

Consequential amendments

15.—(1) In section 1210 of the Companies Act 2006(d) (meaning of “statutory auditor” etc)—

(a) for subsection (1)(f) substitute—

“(f) a person appointed as auditor of an insurance undertaking for the purposes of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008;” and

(b) omit—

(i) subsection (1)(d), and

(ii) in subsection (3), omit the definition of “industrial and provident society”.

(2) In section 4A(3) of the Friendly and Industrial and Provident Societies Act 1968 (power to disapply obligation to appoint auditor: excluded cases)(e), omit paragraph (d) (but not the word “or” following it).

(a) 1968 c.55.

(b) S.I. 1969/1037.

(c) S.R. 1969/359.

(d) 2006 c.46.

(e) Section 4A was inserted by article 8(1) of S.I. 1996/1738.

(3) In section 38A of the Industrial and Provident Societies (Northern Ireland) Act 1969 (power to disapply obligation to appoint auditor: excluded cases)(a), omit paragraph (c) (but not the word “or” following it).

Revocation

16.—(1) The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993(b) and the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations (Northern Ireland) 1994(c) are revoked.

(2) The regulations specified in paragraph (1) continue to apply to any financial year of an insurance undertaking beginning before 6th April 2008.

26th February 2008

Gareth Thomas
Parliamentary Under Secretary of State for Trade and Consumer Affairs,
Department for Business, Enterprise and Regulatory Reform

(a) 1969 c.24 (N.I.). Section 38A was inserted by paragraph 6 of Schedule 2 to S.I. 1997/2984 (N.I. 22).
(b) S.I. 1993/3245, as amended by article 450 of S.I. 2001/3649, by regulation 8 of S.I. 2004/3379, by regulation 18 of S.I. 2004/3219 and by regulations 2 to 4 of S.I. 2005/1985.
(c) S.R. 1994/429, as amended by S.R. 2006/353.

MODIFICATION OF THE FRIENDLY AND INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1968

1. In its application to industrial and provident societies that are insurance undertakings for the purposes of these Regulations, the Friendly and Industrial and Provident Societies Act 1968 has effect subject to the following modifications.

2. Section 3 (general provisions as to accounts and balance sheets of societies) does not apply.

3. In section 3A (publication of accounts and balance sheets of societies)(a), for subsections (2) to (12), substitute—

“(2) If a society publishes any of its statutory accounts, they must be accompanied by the relevant auditors’ report under the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008.

(3) A society which is required to prepare group accounts for a financial year shall not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.

(4) If a society publishes non-statutory accounts, it shall publish with them a statement indicating—

- (a) that they are not the society’s statutory accounts,
- (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the Authority,
- (c) whether the society’s auditors have made a report under the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008,
- (d) whether any such auditors’ report—
 - (i) was qualified or unqualified, or included a reference to any matters to which the auditors drew attention by way of emphasis without qualifying the report, or
 - (ii) contained a statement under section 498(2) or (3) of the Companies Act 2006 as applied to industrial and provident societies by the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008 (accounting records or returns inadequate, accounts not agreeing with records and returns or failure to obtain necessary information and explanations),

and it shall not publish with the non-statutory accounts any auditors’ report under the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008.

(5) For the purposes of this section a society shall be regarded as publishing a document if it publishes, issues or circulates it or otherwise generally makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

(6) References in this section to a society’s statutory accounts are to its individual or group accounts for a financial year as required to be prepared by the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; and references to the publication by a society of “non-statutory accounts” are to the publication of—

- (a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the society, or

(a) Section 3A was inserted by S.I. 1996/1738, article 9(4).

(b) an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the society and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the society, otherwise than as part of the society's statutory accounts.”.

4. Sections 4 and 4A (appointment of auditors) do not apply.

5. In section 5 (re-appointment and removal of auditors)(a)—

(a) in subsection (1), at the end of paragraph (d) insert—

“, or

(e) he was appointed by the committee, or

(f) the society's rules require actual re-appointment, or

(g) the re-appointment is prevented by the members under section 5A”.

(b) after subsection (2) insert—

“(3) A person who is not automatically re-appointed as auditor by virtue of subsection (1)(e) of this subsection may be re-appointed by the committee for the current year of account and for any subsequent year of account commencing before the next general meeting of the society.

However, he may only be re-appointed for any year of account commencing on or after the date of that general meeting by a resolution of the society at that meeting.”.

6. After section 5, insert—

“Prevention by members of automatic re-appointment of auditor

5A.—(1) An auditor of a society is not automatically re-appointed under section 5 of this Act if the society has received notices under this section from members representing at least the requisite percentage of the total voting rights of all members who would be entitled to vote on a resolution that the auditor should not be re-appointed.

(2) The “requisite percentage” is 5%, or such lower percentage as is specified for this purpose in the society's rules.

(3) A notice under this section—

(a) may be in hard copy or electronic form,

(b) must be authenticated by the person or persons giving it, and

(c) must be received by the society before the end of the year of account immediately preceding the year of account for which the automatic re-appointment would have effect.”.

7. For section 7 (qualified auditors) substitute—

“Qualified auditors

7. References in this Act to a qualified auditor, in relation to a society, are to a person who—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and

(b) is not prohibited from acting as statutory auditor of the society by virtue of section 1214 of that Act (independence requirement).”.

8. Section 8 (restrictions on appointment of auditors) does not apply.

(a) Section 5 was amended by S.I. 1996/1738, article 9(6).

9. In section 9 (auditors' report and rights), only subsection (5) (auditors' rights of access to books and to require information and explanations) applies.

10. Sections 9A to 9C (reporting accountant procedure) do not apply.

11. In section 10 (remuneration of auditors)(a), the following do not apply—

- (a) in subsection (1), the words from “or for the making of a report” to the end;
- (b) in subsection (2), the words “or reporting accountant”;
- (c) subsection (3).

12. In section 11 (annual returns)(b)—

- (a) in subsection (2)(a), for “the revenue account or accounts of the society prepared in accordance with section 3(2) of this Act” substitute “the profit and loss account required to be prepared by section 396 of the Companies Act 2006 as applied by regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008”;
- (b) for subsection (2)(b) substitute—
“(b) shall not contain any other accounts.”;
- (c) subsection (5A) does not apply.

13. In section 13 (group accounts)(c)—

- (a) subsections (1) to (5) do not apply;
- (b) in subsection (6) for “under the last preceding subsection” substitute “on those accounts”.

14. Section 14 (exemption from requirements in respect of group accounts) does not apply.

15. Section 15 (meaning of “subsidiary”) does not apply.

16. In section 18 (offences), the words from “or any direction” to “section 9C(1) of this Act” do not apply.

17. In section 19(2) (regulations), the words “section 4 or” do not apply.

18. In section 21(1) (interpretation)(d)—

- (a) insert at the appropriate place—
““accounts” means the profit and loss account required to be prepared by section 396 of the Companies Act 2006 as applied by regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008;”;
- (b) for the definition of “group accounts” substitute—
““group accounts” means the accounts required to be prepared by section 404 of the Companies Act 2006 as applied by regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008;”;
- (c) the definition of “subsidiary” does not apply.

(a) Section 10(1) was amended by S.I. 1996/1738, article 9(7). Section 10(2) was amended by S.I. 2001/2617, Schedule 3, paragraph 252.

(b) Section 11 was amended by the Friendly Societies Act 1974 (c.46), section 116 and Schedule 11. Section 11(1) was also amended by S.I. 2001/2617, Schedule 3, paragraphs 246 and 253. Section 11(2) was also amended by S.I. 1996/1738, article 9(10).

(c) Section 13(6) was amended by S.I. 2001/2617, Schedule 3, paragraphs 246 and 255(c).

(d) Section 21(1) was amended by the Friendly Societies Act 1974, section 116(4), and Schedule 11; by S.I. 2001/3649, article 185; and by S.I. 2001/2617, Schedule 3, paragraphs 246, 260.

**MODIFICATION OF THE INDUSTRIAL AND PROVIDENT
SOCIETIES ACT (NORTHERN IRELAND) 1969**

1. In its application to industrial and provident societies that are insurance undertakings for the purposes of these Regulations the Industrial and Provident Societies Act (Northern Ireland) 1969 shall have effect subject to the following modifications.

2. Section 37 (general provisions as to accounts and balance sheets of societies) does not apply.

3. In section 37A (publication of accounts and balance sheets of registered societies)(a), for subsections (2) to (12) substitute—

“(2) If a society publishes any of its statutory accounts, they must be accompanied by the relevant auditors’ report under the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008.

(3) A society which is required to prepare group accounts for a financial year shall not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.

(4) If a society publishes non-statutory accounts, it shall publish with them a statement indicating—

- (a) that they are not the society’s statutory accounts,
- (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the registrar,
- (c) whether the society’s auditors have made a report under the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008,
- (d) whether any such auditors’ report—
 - (i) was qualified or unqualified, or included a reference to any matters to which the auditors drew attention by way of emphasis without qualifying the report, or
 - (ii) contained a statement under section 498(2) or (3) of the Companies Act 2006 as applied to industrial and provident societies by the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008 (accounting records or returns inadequate, accounts not agreeing with records and returns or failure to obtain necessary information and explanations),

and it shall not publish with the non-statutory accounts any auditors’ report under the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008.

(5) For the purposes of this section a society shall be regarded as publishing a document if it publishes, issues or circulates it or otherwise generally makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

(6) References in this section to a society’s statutory accounts are to its individual or group accounts for a financial year as required to be prepared by the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008; and references to the publication by a society of “non-statutory accounts” are to the publication of—

- (a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the society, or

(a) Section 37A was inserted by S.I. 1997/2984 (N.I. 22), Schedule 2, paragraph 5.

(b) an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the society and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the society, otherwise than as part of the society's statutory accounts.”.

4. Sections 38 and 38A (appointment of auditors) do not apply.

5. In section 39 (re-appointment and removal of auditors)(a)—

(a) in subsection (1), at the end of paragraph (d) insert—

“, or

(e) he was appointed by the committee, or

(f) the society's rules require actual re-appointment, or

(g) the re-appointment is prevented by the members under section 39A”.

(b) after subsection (2) insert—

“(3) A person who is not automatically re-appointed as auditor by virtue of subsection (1)(e) of this subsection may be re-appointed by the committee for the current year of account and for any subsequent year of account commencing before the next general meeting of the society.

However, he may only be re-appointed for any year of account commencing on or after the date of that general meeting by a resolution of the society at that meeting.”.

6. After section 39, insert—

“Prevention by members of automatic re-appointment of auditor

39A.—(1) An auditor of a society is not automatically re-appointed under section 39 of this Act if the society has received notices under this section from members representing at least the requisite percentage of the total voting rights of all members who would be entitled to vote on a resolution that the auditor should not be re-appointed.

(2) The “requisite percentage” is 5%, or such lower percentage as is specified for this purpose in the society's rules.

(3) A notice under this section—

(a) may be in hard copy or electronic form,

(b) must be authenticated by the person or persons giving it, and

(c) must be received by the society before the end of the year of account immediately preceding the year of account for which the automatic re-appointment would have effect.”.

7. For section 41 (qualified auditors) substitute—

“Qualified auditors

41. References in this Act to a qualified auditor, in relation to a society, are to a person who—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and

(b) is not prohibited from acting as statutory auditor of the society by virtue of section 1214 of that Act (independence requirement).”.

8. Section 42 (restrictions on appointment of auditors) does not apply.

(a) Section 39 was amended by S.I. 1997/2984 (N.I. 22), Schedule 2, paragraph 7.

9. In section 43 (auditors' report and rights), only subsection (5) (auditors' rights of access to books and to require information and explanations) applies.

10. Sections 43A to 43C (reporting accountant procedure) do not apply.

11. In section 44 (remuneration of auditors)(a), the following do not apply—

- (a) in subsection (1), the words from “or for the making of a report” to the end;
- (b) in subsection (2), the words “or reporting accountant”;
- (c) subsection (3).

12. In section 45 (group accounts)—

- (a) subsections (1) to (5) do not apply;
- (b) in subsection (6) for “under subsection (5)” substitute “on those accounts”.

13. Section 46 (exemption from requirements in respect of group accounts) does not apply.

14. Section 47 (meaning of “subsidiary”) does not apply.

15. In section 48 (annual returns)(b)—

- (a) in subsection (1), for paragraphs (a) and (b) substitute “the documents mentioned in subsection (1B)”;
- (b) subsection (1A) does not apply;
- (c) in subsection (2) (a), for “the revenue account or accounts of the society prepared in accordance with section 37(2)” substitute “the profit and loss account required to be prepared by section 396 of the Companies Act 2006 as applied by regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008”; and
- (d) for subsection (2)(b) substitute—
 - “(b) shall not contain any other accounts.”;
- (e) subsection (6A) does not apply.

16. In section 101 (interpretation)—

- (a) insert at the appropriate place—
 - ““accounts” means the profit and loss account required to be prepared by section 396 of the Companies Act 2006 as applied by regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008;”;
- (b) for the definition of “group accounts” substitute—
 - ““group accounts” means the accounts required to be prepared by section 404 of the Companies Act 2006 as applied by regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008;”;
- (c) the definition of “subsidiary” does not apply.

(a) Section 44 was amended by S.I. 1997/2984 (N.I. 22), Schedule 2, paragraph 9.
(b) Section 48 was amended by S.I. 1997/2984 (N.I. 22), Schedule 2, paragraph 11.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972. They apply to the insurance undertakings specified in regulation 2(2) to (4) which are incorporated in or formed under the law of any part of the United Kingdom. They replace the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993 (S.I. 1993/3245) (“the 1993 Regulations”) which applied to such undertakings incorporated in or formed under the law of Great Britain, and the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations (Northern Ireland) 1994 (S.R. 1994/429) (“the 1994 Regulations”) which applied to such undertakings formed or incorporated under the law of Northern Ireland.

The Regulations continue the implementation of Council Directive 91/674/EEC (O.J. L374, 31.12.1991, p.7) on the annual accounts and consolidated accounts of insurance undertakings. They also implement, in part, Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (O.J. L157, 9.6.2006, p.87) (“the Audit Directive”).

The Regulations come into force on 6th April 2008 and apply to financial years of the insurance undertakings to which they relate beginning on or after that date and auditors appointed in respect of those financial years (regulation 1(2)).

Regulation 2(2) to (4) re-enacts the provisions of the 1993 and 1994 Regulations defining the insurance undertakings which are subject to the accounting requirements of these Regulations.

Regulation 3 re-enacts the requirements of the 1993 and 1994 Regulations that insurance undertakings prepare accounts and directors’ reports, and cause to be prepared auditors’ reports, as if they were insurance companies or parent companies of insurance groups (within the meaning of the Companies Act 2006). The accounts are to comply with the provisions set out in regulation 3(3) and are to be prepared within the period of 6 months from the end of the relevant financial year, which is a reduction of the period for such preparation from 7 months as provided for in the 1993 and 1994 Regulations. This reflects the new time limit in section 442(2)(b) of the Companies Act 2006.

Regulation 3(5) applies the relevant provisions of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 to insurance undertakings. This implements Article 49 of the Audit Directive on the disclosure of auditor remuneration.

Regulation 4 re-enacts the requirements of the 1993 and 1994 Regulations relating to publication of the accounts. Regulation 5 re-enacts the penalties for non-compliance with the provisions of regulations 3 and 4.

Regulation 6 implements Article 37 of the Audit Directive, which requires the auditor to be appointed by the general meeting of shareholders or members of the audited entity. It does so by applying sections 485 to 488 of the Companies Act 2006. Regulation 7 imposes equivalent functions on auditors to those imposed by the Companies Act 2006, and Regulation 8 implements Article 28.1 of the Audit Directive on signature of the auditor’s report.

Regulation 9 implements Article 38.1 of the Audit Directive, which requires Member States to ensure that auditors may be dismissed only where there are proper grounds. It creates a new right to apply to the High Court, which may be exercised by a member of the insurance undertaking or by the Financial Services Authority.

Regulations 10 and 11 implement Article 38.2 of the Audit Directive, which requires Member States to ensure that the audited entity and the auditor inform the authorities responsible for public oversight of the resignation or dismissal of the auditor. Regulation 12 contains penalties for non-compliance with regulations 10 and 11.

Regulation 14 and Schedules 1 and 2 modify the Friendly and Industrial and Provident Societies Act 1968 and the Industrial and Provident Societies (Northern Ireland) Act 1969 and regulation 15

makes consequential amendments to these enactments. Regulation 15 also makes a consequential amendment to section 1210 of the Companies Act 2006.

Regulation 16 revokes the 1993 and 1994 Regulations and makes transitional provision for the continued application of those regulations after revocation in respect of financial years beginning before 6th April 2008.

A transposition note has been prepared which sets out how Directive 2006/43 is to be transposed into UK law. An Impact Assessment of the effect that the implementation of Directive 2006/43 will have on the costs of business, charities or voluntary bodies has also been prepared. Both are available from the Department for Business, Enterprise and Regulatory Reform, Corporate Law and Governance Directorate, 1 Victoria Street, London, SW1H 0ET. They are also available electronically at www.berr.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament. Otherwise, an Impact Assessment has not been produced for these Regulations as they have only a negligible impact on the costs of business, charities or voluntary bodies.

STATUTORY INSTRUMENTS

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INSURANCE

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