



Friendly Societies Act 1992

1992 CHAPTER 40

PART IV

AUTHORISATION OF FRIENDLY SOCIETIES' BUSINESS

Restriction on carrying on unauthorised business

31 Restriction on carrying on unauthorised insurance or non-insurance business

- (1) Subject to subsections (2) and (3) below, a friendly society shall not carry on in the United Kingdom any insurance business or non-insurance business unless it is authorised by the Commission to do so.
- (2) A friendly society which—
 - (a) carried on, before the commencement of this section—
 - (i) insurance business of any description that did not require to be authorised under the 1987 Regulations; or
 - (ii) non-insurance business of any description; and
 - (b) is not authorised by the Commission to carry on business of that description after that commencement,may carry on without authorisation business of that description consisting of the carrying out of contracts effected by the society before that commencement.
- (3) A friendly society may without authorisation effect an insurance contract, or a contract for non-insurance benefits, in pursuance of a term in a subsisting contract which the society may, by virtue of subsection (2) above, carry out without authorisation.
- (4) A friendly society which carries on any business in contravention of subsection (1) above shall be guilty of an offence and liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Authorisation to carry on business

32 Grant of authorisation by Commission: general

- (1) The Commission may, subject to this Part of this Act, authorise friendly societies to carry on in the United Kingdom any class, or any part of a class, of insurance business and any description of non-insurance business.
- (2) Where, on an application duly made under this section or section 33 below, the Commission determines to grant authorisation to a friendly society, it shall do so in writing in terms specifying—
 - (a) each class of insurance business,
 - (b) in relation to any class of such business the whole of which is not covered, each part of the class, and
 - (c) each description of non-insurance business,the carrying on of which is covered by the authorisation.
- (3) Authorisation may be restricted to industrial assurance business; and a friendly society is not authorised to carry on industrial assurance business unless the terms of its authorisation expressly specify such business.
- (4) Authorisation entitles a friendly society to carry on business anywhere in the United Kingdom unless, at the request of the society, the terms of its authorisation are expressly restricted to a part of the United Kingdom.
- (5) Authorisation may be granted to a friendly society unconditionally or subject to written conditions to be complied with by the society as provided by section 34 below.
- (6) Schedule 13 to this Act shall have effect in relation to the making and determination of applications for authorisation, the imposition of conditions and the withdrawal of authorisation.
- (7) An authorisation granted to a friendly society by the Chief Registrar under regulation 5 or 6 of the 1987 Regulations which is in force immediately before the commencement of section 31 above shall have effect as if it were an authorisation granted by the Commission under this section which authorised the society to carry on insurance business of such classes (or such parts of classes) as correspond to the business specified in the authorisation.
- (8) Where an application for authorisation under the 1987 Regulations has not been decided before the commencement of subsection (1) above, the Chief Registrar shall send to the Commission the information submitted by the society or otherwise received by him in relation to the application; and the application shall be treated as being an application under this section.
- (9) In this Part of this Act “authorisation” (except where the context otherwise requires) means an authorisation which is granted by the Commission under this section or deemed by this section to have been so granted; and “authorise” and “authorised” shall be construed accordingly.

33 Applications from certain existing friendly societies

- (1) A friendly society which—
 - (a) is not authorised and has not made any previous application for authorisation;

Status: This is the original version (as it was originally enacted).

- (b) was, before the commencement of section 32 above, carrying on in the United Kingdom any insurance or non-insurance business; and
- (c) was, immediately before that commencement, neither required to be authorised under the 1987 Regulations nor subject to an order under section 88(1) of the 1974 Act (power of Chief Registrar to suspend business of friendly societies);

may apply under this section for authorisation to continue to carry on any business it was carrying on before that commencement.

(2) If the Commission is satisfied, on an application duly made under this section—

- (a) that it has received adequate information about the society; and
- (b) that there is no reason to believe that the interests of the members of the society require refusal of the application;

it shall, subject to section 37 below, authorise the society to carry on any class (or part of a class) of insurance business, and any description of non-insurance business, which corresponds to any business carried on by the society immediately before the commencement of section 32 above.

34 Grant of unconditional or conditional authorisation

(1) On an application duly made by a friendly society (“the society”), the Commission shall, subject to section 37 below, grant unconditional or conditional authorisation, or refuse to grant authorisation, in accordance with the following provisions of this section.

(2) The Commission shall grant unconditional authorisation if it is satisfied that—

- (a) the chairman of the committee of management, the secretary and the chief executive of the society are each fit and proper persons to hold their respective offices;
- (b) the members of the committee of management, with the secretary and chief executive, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management;
- (c) the society is likely to comply with any requirements of this Act which relate to the business to be covered by the authorisation; and
- (d) the interests of the members of the society will be adequately protected without the imposition of conditions.

(3) Subject to subsection (4) below, if the Commission is not satisfied as mentioned in subsection (2) above, it shall refuse to grant authorisation.

(4) Where the Commission is not satisfied as mentioned in subsection (2)(b), (c) and (d) above but is satisfied that the imposition of conditions will secure—

- (a) the direction of the affairs of the society in accordance with the criteria of prudent management;
- (b) the likelihood of compliance by the society with any requirements of this Act which relate to the business to be covered by the authorisation; and
- (c) the adequate protection of the interests of the members of the society,

it shall grant authorisation subject to such conditions as it thinks fit for securing those objects.

(5) The conditions that may be so imposed may—

Status: This is the original version (as it was originally enacted).

- (a) relate to any class (or part of a class) or description of business in respect of which authorisation is sought;
 - (b) require the society to take steps or to refrain from adopting a particular course of action or to restrict the scope of its business in a particular way;
 - (c) require the society to take steps with regard to the activities of any subsidiary or body jointly controlled by the society.
- (6) Without prejudice to the generality of subsection (5) above, conditions imposed under subsection (4) above may—
- (a) impose limitations on the effecting of contracts of insurance or contracts for non-insurance benefits or the accepting of new members;
 - (b) require the removal of an officer of the society or of any registered branch;
 - (c) where the society has branches, require the society to take steps with regard to the activities of any registered branch.
- (7) Conditions imposed under subsection (4) above—
- (a) may be added to or varied from time to time by agreement between the Commission and the society; and
 - (b) may be revoked at any time by the Commission if it is satisfied that they are no longer needed for the purpose for which they were imposed;
- and, on adding to, varying or revoking any such conditions, the Commission shall (unless it considers it unnecessary to do so by reason of the nature of the changes) send to the secretary of the society a statement of the terms of all the subsisting conditions to which its authorisation is subject.
- (8) Subsections (2) to (7) above apply in relation to applications for authorisation made under section 33 above with the omission—
- (a) of subsection (2)(a) and (b);
 - (b) of the reference to subsection (2)(b) in subsection (4); and
 - (c) of subsection (4)(a).
- (9) Subsections (2) to (7) above apply in relation to a society applying for authorisation to carry on both long term and general business by virtue of section 37(8) below—
- (a) with the substitution, in subsection (2), for the words “unconditional authorisation”, of the words “authorisation subject only to the conditions required by section 37 below”;
 - (b) with the insertion in subsections (2)(d) and (4), after the words “imposition of”, of the word “further”.

35 Extension of current authorisation

- (1) This section applies where an authorised friendly society applies under section 32 above for authorisation to carry on insurance business of a class (or part of a class), or non-insurance business of a description, which is not covered by the society’s current authorisation.
- (2) On such an application, the conditions which the Commission may impose under section 34 above include—
- (a) conditions relating to any business covered by the society’s current authorisation; and

Status: This is the original version (as it was originally enacted).

- (b) where the current authorisation is subject to conditions, conditions which vary the current conditions (whether by adding to, amending or replacing any of them).
- (3) Where the Commission determines to grant authorisation on such an application, it shall be granted in terms including all current terms of the society's authorisation (including any that were otherwise unaffected by the determination); and those terms shall have effect in place of the previously subsisting terms.

36 Imposition of conditions on current authorisation

- (1) If the Commission considers it expedient to do so, it may (in accordance with Part II of Schedule 13 to this Act)—
 - (a) impose conditions on a friendly society's authorisation, or
 - (b) where an authorisation is subject to conditions, impose conditions which vary the current conditions (whether by adding to, amending or replacing any of them);and the conditions that may be so imposed include any condition that might be imposed on the grant of authorisation.
- (2) Without prejudice to the generality of subsection (1) above, conditions so imposed may require—
 - (a) the submission to the Commission of a plan for the restoration of a sound financial position or a short-term financial scheme;
 - (b) modification of the plan or scheme (or the plan or scheme as previously modified) if the Commission considers it inadequate; and
 - (c) the implementation of the plan or scheme if the Commission consider it adequate.
- (3) Subsection (7) of section 34 above applies to conditions imposed under this section as it applies to conditions imposed under that section.

Restrictions on business of certain authorised societies

37 Restriction on combinations of business

- (1) Subject to subsection (8) below, an authorised friendly society to which subsection (2) or (3) below applies may not carry on business falling into more than one of the following categories, namely—
 - (a) long term business;
 - (b) general business; and
 - (c) non-insurance business;and, accordingly, the Commission shall not grant such a society authorisation to do so.
- (2) This subsection applies to a friendly society which carries on long term business—
 - (a) if its rules do not contain provision for calling up additional contributions, for reducing benefits or for claiming assistance from other persons who have undertaken to provide it; or
 - (b) if its annual contribution income from long term business exceeded 500,000 ECU for 3 consecutive years and it is not the subject of a direction under subsection (5) below;

Status: This is the original version (as it was originally enacted).

and, for the purposes of paragraph (b) above, years ending before 1st January 1985 shall be disregarded.

- (3) This subsection applies to a friendly society which carries on general business—
- (a) if its rules do not contain provision for calling up additional contributions or for reducing benefits; or
 - (b) if its annual contribution income from general business in any previous year exceeded 1,000,000 ECU and it is not the subject of a direction under subsection (5) below;

and, for the purposes of paragraph (b) above, years ending before 1st January 1993 shall be disregarded.

- (4) In subsections (2) and (3) above a reference to a year, in relation to annual contribution income, is a reference to any financial year of a society for which, at the relevant time, accounts have been or ought to have been prepared.
- (5) The Commission may, if it is satisfied that it is consistent with the international obligations of the United Kingdom to do so, direct that a friendly society—
- (a) which is, by virtue only of paragraph (b) of subsection (2) above, a society to which that subsection applies; or
 - (b) which is, by virtue only of paragraph (b) of subsection (3) above, a society to which that subsection applies;

shall, unless the direction is revoked, be treated as not being a society to which subsection (2) or, as the case may be, subsection (3) above applies.

- (6) If—
- (a) the Commission has given a direction under subsection (5) above in relation to a society such as is mentioned in subsection (5)(a) above; and
 - (b) the society's annual contribution income from long term business exceeds 500,000 ECU for 3 consecutive years ending after a date specified in the direction,

the Commission shall revoke the direction.

- (7) If—
- (a) the Commission has given a direction in relation to a society such as is mentioned in subsection (5)(b) above; and
 - (b) the society's annual contribution income from general business in a year ending after a date specified in the direction exceeded 1,000,000 ECU,

the Commission shall revoke the direction.

- (8) Where a friendly society to which subsection (2) or (3) above applies was on 15th March 1979 carrying on long term and general business in the United Kingdom—
- (a) the society may (if authorised to do so) carry on any class (or part of a class) of long term or general business which corresponds to business carried on by it on that date; but
 - (b) the Commission shall (whether or not other conditions are imposed) impose such conditions on the society's authorisation as the Commission thinks fit for securing that the society's long term business and general business are kept separate;

and those conditions shall, subject to the exceptions mentioned in subsection (9) below, require that the assets representing the funds maintained in respect of the

society's long term business or, as the case may be, its general business are to be applicable for the purposes of that business only.

- (9) The exceptions mentioned in subsection (8) above are—
- (a) that assets representing funds in respect of long term business may be transferred so as to be available for general business if—
 - (i) they represent the excess of the long term business funds over the society's liabilities in respect of that business; or
 - (ii) the transfer is by way of reimbursement of expenditure borne by other assets in respect of long term business; and
 - (b) that assets representing funds in respect of general business may be transferred so as to be available for long term business if they represent the excess of the general business funds over the society's liabilities in respect of that business.

38 Restriction on commercial business

- (1) An authorised friendly society to which section 37(2) or (3) applies shall not carry on any commercial business otherwise than in connection with or for the purposes of its insurance business.
- (2) Subsection (1) above shall not prevent a friendly society which was on 15th March 1979 carrying on long term business and a savings business in the United Kingdom from continuing to carry on the savings business.
- (3) Subsection (1) above has effect without prejudice to any stricter obligations imposed on friendly societies under this Part; and nothing in this section shall be taken to imply that a friendly society may carry out any activity other than for purposes permitted by this Act (or, in the case of registered societies, the 1974 Act) and the constitution of the society.

Powers of Commission in relation to authorised societies

39 Power to direct application for fresh authorisation

- (1) If, with respect to an authorised friendly society, the Commission has reason to believe—
 - (a) that the society's business is being, or will in the future be, conducted—
 - (i) in a way that may not adequately protect the interests of members of the society; or
 - (ii) so as not to comply with the requirements of this Act which relate to the business for which the society's authorisation was granted; or
 - (b) that by reason of any increase in the volume of its long term or its general business it is appropriate for the society's affairs to be re-examined;it may by notice direct the society to make within such period as is specified in the notice an application under section 32 above for fresh authorisation.
- (2) The period so specified shall not be shorter than 3 nor longer than 6 months beginning with the date of the notice; but the Commission may, on representations being made to it, extend or further extend the period within which the application is to be made.
- (3) A notice under subsection (1) above shall state the grounds on which the Commission decided to give the direction.

Status: This is the original version (as it was originally enacted).

- (4) The business covered by, and the conditions imposed on, a society's fresh authorisation need not be the same as that covered by, or those imposed on, the previous one.
- (5) If the Commission refuses to grant fresh authorisation, it may specify in the notice of its refusal a date for the expiry of the current authorisation; and the authorisation shall expire on that date.
- (6) The making of an application for fresh authorisation shall not preclude the Commission, at any time while the application is pending, from exercising any power under this Part of this Act in relation to the society; but if it gives a direction under section 41 below, the proceedings on the application shall abate.

40 Withdrawal of authorisation in respect of new business

- (1) Subject to the following provisions of this section, the Commission may by notice direct—
 - (a) that a friendly society authorised to carry on insurance business shall, from a date specified in the direction, cease to be authorised to effect contracts of insurance, or contracts of a class (or part of a class) so specified; or
 - (b) that a friendly society authorised to carry on non-insurance business shall, from a date specified in the direction, cease to be authorised to effect contracts for non-insurance benefits, or contracts of a description so specified.
- (2) The Commission shall give such a direction in relation to a friendly society if—
 - (a) in the case of an incorporated society, a special resolution has been passed for its voluntary winding up;
 - (b) an order to wind up the society has been made;
 - (c) an event declared by the rules of the society to be the termination of the society has happened;
 - (d) an instrument of dissolution has been executed as mentioned in section 93(1)(b) of the 1974 Act or a special resolution approving an instrument of dissolution under section 20 above has been passed; or
 - (e) in the case of a registered society, the Commission has made an award under section 95(3) or 95A(1) of the 1974 Act for the dissolution of the society.
- (3) The Commission may give such a direction in relation to a friendly society at the request of the society or if—
 - (a) it appears to the Commission that the society has failed to satisfy an obligation to which it is subject by virtue of the Industrial Assurance Act 1923, the 1974 Act, the Industrial Assurance (Northern Ireland) Order 1979 or this Act;
 - (b) there exists a ground on which the Commission would be prohibited from granting authorisation to the society;
 - (c) it appears to the Commission to be expedient to make the proposed direction in order to protect the interests of members of the society;
 - (d) the authorisation was subject to conditions and it appears to the Commission that the society has not complied with a condition;
 - (e) it appears to the Commission that information furnished to it on behalf of the society or, in connection with an application for authorisation, by or on behalf of an officer of the society is false in a material particular, misleading or inaccurate;

Status: This is the original version (as it was originally enacted).

- (f) it appears to the Commission that a friendly society has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of a country or territory outside the United Kingdom; or
 - (g) the society, having been directed to apply for fresh authorisation under section 39 above, has either failed to make such an application within the period allowed or been refused fresh authorisation covering the effecting of new contracts of any description covered by the society's previous authorisation.
- (4) A direction under this section shall not prevent a friendly society from effecting an insurance contract, or a contract for non-insurance benefits, in pursuance of a term of a subsisting contract of that description.
- (5) A direction under this section or section 41 below—
- (a) shall be given in accordance with Part II of Schedule 13 to this Act, and
 - (b) may not be revoked or varied,
- but has effect without prejudice to the subsequent grant to the society of authorisation to carry on any business to which the direction relates.

41 Withdrawal of authorisation to carry on insurance business

- (1) Where the Commission is satisfied that a friendly society which is authorised to carry on insurance business—
- (a) has ceased to carry on in the United Kingdom any insurance business, or insurance business of any class (or of any part of a class) specified in the society's authorisation; or
 - (b) has not, since the grant of authorisation to carry on insurance business of any class (or part of a class), carried on in the United Kingdom any insurance business or insurance business of that class (or part of a class) and at least twelve months has elapsed since that grant;
- the Commission may by notice direct that the society shall cease to be authorised to carry on insurance business or, as the case may be, insurance business of that class (or part of a class).
- (2) Where the Commission is satisfied that a friendly society which is authorised to carry on non-insurance business—
- (a) has ceased to carry on in the United Kingdom any non-insurance business or non-insurance business of a description specified in the authorisation; or
 - (b) has not, since the grant of authorisation to carry on non-insurance business of any description, carried on in the United Kingdom any non-insurance business or non-insurance business of that description, and at least twelve months has elapsed since that grant;
- the Commission may direct that it shall cease to be authorised to carry on non-insurance business or, as the case may be, non-insurance business of that description.
- (3) For the purposes of this section a friendly society shall be taken to have ceased to carry on business, or business of a particular class or description, if at no time during a financial year of the society which began and ended during the currency of the authorisation did it carry on business or, as the case may be, business of that class or description.

Supplementary

42 Contracts effected in contravention of section 31(1)

- (1) Where a contract of insurance or for non-insurance benefits is entered into between a friendly society and a member in contravention of section 31(1) above the member may, subject to subsection (2) below, elect—
- (a) to enforce the contract; or
 - (b) to recover any money paid by him under the contract, together with compensation for any loss sustained by him as a result of having parted with it; and the compensation so recoverable shall be such as the parties may agree or as any court of competent jurisdiction may, on the application of either party, determine.
- (2) Any such court may allow money paid by a member under a contract to which subsection (1) applies to be retained by the friendly society if it is satisfied—
- (a) that the society reasonably believed that its entering into the contract did not constitute a contravention of section 31(1) above; and
 - (b) that it is just and equitable for the money to be retained.
- (3) A member who recovers the money paid under a contract to which subsection (1) above applies—
- (a) shall not be entitled to any benefits under the contract; and
 - (b) shall repay any money and return any other property received by him under the contract;
- and, where any property so received has passed to a third party, the reference in this subsection to that property shall be construed as a reference to its value at the time at which it was received by the member.
- (4) A contravention of subsection (1) of section 31 above shall not make a contract of insurance or contract for non-insurance benefits illegal or invalid to any greater extent than is provided in this section; and a contravention of that subsection in respect of a contract of insurance shall not affect the validity of any reinsurance contract entered into in respect of that contract.

43 Interpretation of Part IV

In this Part of this Act—

“authorisation” and related expressions shall be construed in accordance with section 32(9) above;

“class”, in relation to insurance business, means a class specified in Schedule 2 to this Act;

“contract for non-insurance benefits” means a contract effected in the course of carrying on any non-insurance business;

“friendly society”, in relation to a registered friendly society with branches, means the central body and the branches of the society;

“industrial assurance business” has the meaning given in section 1(2) of the Industrial Assurance Act 1923 or Article 3(1) of the Industrial Assurance (Northern Ireland) Order 1979;

“the 1987 Regulations” means the Friendly Societies (Long Term Insurance Business) Regulations 1987.