
STATUTORY INSTRUMENTS

1994 No. 1984

**The Friendly Societies Act 1992
(Amendment) Regulations 1994**

PART IV

REGULATION OF BUSINESS

Financial resources

Margins of solvency

8. In subsection (1) of section 48 of the 1992 Act (margins of solvency in relation to insurance business of certain societies), in paragraphs (a) and (b) the words “in the United Kingdom” shall cease to have effect.

Adequacy of assets

9. After section 49 of the 1992 Act insert—

“Adequacy of assets and premiums

Adequacy of assets.

49A.—(1) A friendly society to which section 37(2) or (3) above applies which has entered into contracts of insurance shall secure—

- (a) that its liabilities under those contracts, other than liabilities in respect of linked benefits, are covered by assets of appropriate safety, yield and marketability having regard to the classes of business carried on; and
- (b) without prejudice to the generality of paragraph (a) above, that its investments are appropriately diversified and adequately spread and that excessive reliance is not placed on investments of any particular category or description.

(2) A friendly society to which section 37(2) above applies which has entered into a linked long term contract shall secure that, as far as practicable, its liabilities under the contract in respect of linked benefits are covered as follows—

- (a) if those benefits under the contract are linked to the value of units in an undertaking for collective investments in transferable securities or to the value of assets contained in an internal fund, by those units or assets;
- (b) if those benefits under the contract are linked to a share index or other reference value not mentioned in paragraph (a) above, by units which represent that reference value, or by assets of appropriate safety, yield and marketability which correspond, as nearly as may be, to the assets on which that reference value is based.

(3) A friendly society to which section 37(2) above applies which has entered into a linked long term contract shall also secure that its liabilities under the contract in respect of linked benefits are covered by assets of a description prescribed by regulations under section 56 below.

(4) In this section—

“linked benefits”, in relation to a linked long term contract, means benefits payable under the contract which are determined by reference to the value of or the income from property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified);

“linked long term contract” means a contract the effecting of which constitutes the carrying on of insurance business falling within class III in head A in Schedule 2 to this Act.”.

Adequacy of premiums in respect of long term insurance

10. After section 49A of the 1992 Act insert—

“Adequacy of premiums in respect of long term insurance.

49B.—(1) Before entering into a contract the effecting of which constitutes the carrying on of long term business, a friendly society to which section 37(2) above applies shall satisfy itself that the aggregate of—

- (a) the premiums payable under the contract and the income which will be derived from them; and
- (b) any other resources of the society which are available for the purpose,

will be sufficient, on reasonable actuarial assumptions, to meet all commitments arising under or in connection with the contract.

(2) A friendly society to which section 37(2) above applies shall not rely on other resources for the purposes of subsection (1) above in such a way as to jeopardise the solvency of the society in the long term.”.

Criteria of prudent management

Criteria of prudent management

11.—(1) For the eighth criterion in subsection (3) of section 50 of the 1992 Act (the criteria of prudent management) substitute—

“**8.** In the case of a society to which section 37(2) or (3) applies, direction and management which, in addition to satisfying the other requirements as to direction and management, is such as to secure compliance with any obligation imposed on the society by any provision (whether of the law of any part of the United Kingdom or of the law of another EEA State) which—

- (a) gives effect to the general insurance or life Directives; or
- (b) is otherwise applicable to the insurance activities of the society.”.

(2) Regulation 2(2) of the Friendly Societies (Amendment) Regulations 1993(1) (which is superseded by paragraph (1) above) shall cease to have effect.

Powers of Commission

Application to court

12. In subsection (2) of section 52 of the 1992 Act (application to court), for paragraph (c) substitute—

- “(c) that the society is failing to satisfy any obligation to which it is subject by virtue of any provision of the law of any EEA State other than the United Kingdom which—
- (i) gives effect to the general insurance or life Directives; or
 - (ii) is otherwise applicable to the insurance activities of the society in that State;”.

Prohibition on disposal of assets

13. After section 52 of the 1992 Act insert—

“Prohibition on disposal of assets.

52A.—(1) Where the Commission has reason to believe that any of the conditions mentioned in subsection (2) below is satisfied in relation to a friendly society to which section 37(2) or (3) applies, it may apply to the court for an injunction restraining, or in Scotland an interdict prohibiting, the society from disposing of or otherwise dealing with any of its assets to the value of its EC liabilities.

(2) The conditions referred to in subsection (1) above are—

- (a) that the Commission has given (and not revoked) a direction in respect of the society under section 40 above; or
- (b) that the society has failed to satisfy an obligation to which it is or was subject by virtue of section 48, 49, 49A above or Part III of the Friendly Societies (Insurance Business) Regulations 1994(2); or
- (c) that a submission by the society to the Commission of an account or statement specifies, as the amount of any liabilities of the society, an amount appearing to the Commission to have been determined otherwise than in accordance with—
 - (i) valuation regulations; or
 - (ii) where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for friendly societies,

and a court shall not make an order under this section unless it is satisfied that one or more of those conditions are satisfied.

(3) Where a court makes an order under this section, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Commission to perform its functions under this Act.

(4) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

(5) In this section any reference to an EC liability is a reference to a liability of the business carried on by the society in the European Community.”.

Supervision of controllers

14.—(1) After section 55 of the 1992 Act insert—

“Supervision of controllers.

55A.—(1) Schedule 13A to this Act shall have effect for making provision for or in connection with the supervision by the Commission of controllers of friendly societies to which section 37(2) or (3) above applies.

(2) In this Act—

“controller”, in relation to a friendly society to which section 37(2) or (3) of this Act applies, means a person who, either alone or with any associate or associates—

- (a) is entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
- (b) is able to exercise a significant influence over the management of the society by virtue of an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of the society;

“notifiable voting rights”, in relation to a friendly society to which section 37(2) or (3) above applies, means voting rights which, if acquired by any person, will result in his becoming a 10 per cent. controller, a 20 per cent. controller, a 33 per cent. controller, a 50 per cent. controller or a majority controller of the society.

(3) In this section and Schedule 13A to this Act, in relation to a friendly society to which section 37(2) or (3) above applies—

“10 per cent. controller” means a controller in whose case the percentage referred to in paragraph (a) of the definition of “controller” in subsection (2) above is 10 or more but less than 20;

“20 per cent. controller” means a controller in whose case that percentage is 20 or more but less than 33;

“33 per cent. controller” means a controller in whose case that percentage is 33 or more but less than 50;

“50 per cent. controller” means a controller in whose case that percentage is 50;

“majority controller” means a controller in whose case that percentage is more than 50.”.

(2) After Schedule 13 to the 1992 Act insert Schedule 1 to these Regulations (supervision of controllers of friendly societies to which section 37(2) or (3) applies), as Schedule 13A.

Business etc. in other EEA States

Recognition of societies in accordance with insurance Directives

15.—(1) For section 57 of the 1992 Act substitute—

“57 Recognition of societies in accordance with insurance Directives.

57. Schedule 13B to this Act shall have effect for making provision for or in connection with the recognition in other EEA States of friendly societies to which section 37(2) or (3) of this Act applies.”.

(2) After Schedule 13A to that Act insert Schedule 2 to these Regulations (recognition of friendly societies in other EEA States), as Schedule 13B.

(3) If a friendly society to which section 37(2) or (3) of the 1992 Act applies was immediately before the commencement date lawfully carrying on direct insurance business of a class or part of a class in a member State other than the United Kingdom through an overseas branch in that State, it shall be treated for the purposes of that Act as if the requirements of paragraph 1 of Schedule 13B to that Act had been complied with in relation to insurance business of that class or part of a class.

(4) If a friendly society to which section 37(2) or (3) of the 1992 Act applies was immediately before the commencement date lawfully providing insurance of a class or part of a class in a member State other than the United Kingdom through an establishment in another member State, it shall be treated for the purposes of that Act as if the requirements of paragraph 5 of Schedule 13B to that Act had been complied with in relation to insurance of that class or part of a class.

(6) Regulation 4 of the Friendly Societies (Amendment) Regulations 1993 (which is superseded by this regulation) shall cease to have effect.

Notification by Commission of measures taken by it

16. For section 57A of the 1992 Act substitute—

“57A Notification by Commission of measures taken by it.

(1) This section applies where the Commission is considering taking or has taken any measures in relation to a friendly society to which section 37(2) or (3) above applies which—

- (a) carries on insurance business through an overseas branch in an EEA State other than the United Kingdom; or
- (b) provides insurance in an EEA State other than the United Kingdom through an establishment in another EEA State.

(2) The Commission—

- (a) shall, if required by Article 24 of the first life Directive or Article 20 of the first general insurance Directive, or by any other provision of the life or general insurance Directives to do so, notify any supervisory authority of such a State of those measures or proposed measures; and
- (b) may, if it is satisfied that it is expedient to do so, request that authority to take similar measures in relation to the friendly society.

(3) In this section “measure” includes imposing conditions which prohibit the disposals of assets and exercising any power conferred by this Part of the Act.”.

Information

Powers to obtain information and documents etc.

17.—(1) In subsection (4)(a) of section 62 of the 1992 Act (powers to obtain information and documents etc.) after the word “society” insert the words “or, in the case of a society to which section 37(2) or (3) above applies, a controller or manager of the society”.

(2) After subsection (5) of that section insert—

“(5A) Any person authorised by the Commission may, on producing if required evidence of his authority, enter any premises occupied by—

- (a) any body which is a friendly society to which section 37(2) or (3) above applies, or is a subsidiary of, or body jointly controlled by, such a society, and on which a notice has been served under subsection (3) above; or

(b) any person who is or has been a controller, manager, officer, employee or agent of such a society, or of a subsidiary of, or body jointly controlled by, such a society, and on whom a notice has been served under subsection (4) or (5) above, for the purpose of obtaining the information or documents required by the notice and exercising the powers conferred by subsection (3) above.”.

Exceptions from restrictions on disclosure

18. After subsection (7) of section 64 of the 1992 Act (exceptions from restrictions on disclosure) insert—

“(7A) In the case of restricted information which relates to the business or other affairs of a friendly society to which section 37(2) or (3) above applies, no disclosure may be made by virtue of subsection (1), (3), (4) or (7) above unless the disclosure appears to be in accordance with—

- (a) Article 16 of the third general insurance Directive; or
- (b) Article 15 of the third life Directive.”.

Inspections etc.

Investigations on behalf of Commission

19.—(1) After subsection (1) of section 65 of the 1992 Act (investigations on behalf of the Commission) insert—

“(1A) Where a person has notified the Commission under paragraph 1 or 2 of Schedule 13A to this Act of his intention to become a controller of or to acquire notifiable voting rights in a friendly society to which section 37(2) or (3) above applies, the Commission may, if it appears to it desirable to do so, appoint one or more competent persons to investigate and report to it on whether, if that person became such a controller or acquired such voting rights, the criteria of prudent management would be fulfilled with respect to the society.”.

(2) In subsections (2) and (3) of that section, after the words “subsection (1)” insert the words “or (1A)”.

(3) After subsection (3) of that section insert—

“(3A) A person appointed under subsection (1) or (1A) above may enter any premises occupied by a friendly society to which section 37(2) or (3) above applies or any subsidiary of or body jointly controlled by such a society which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required would be removed, tampered with or destroyed.”.

(4) In subsection (5) of that section, after the words “subsection (1)” insert the words “or (1A)”.

(5) After that subsection insert—

“(5A) In relation to a friendly society to which section 37(2) or (3) above applies, any reference in subsection (3) or (5) above to a person who is or has been an officer shall be read as including a reference to a person who is or has been a controller or manager.”.

Inspections: supplementary provision

20. After subsection (10) of section 67 of the 1992 Act (inspections: supplementary provision) insert—

- “(10A) In relation to a friendly society to which section 37(2) or (3) above applies–
- (a) any reference in subsection (1), (2) or (4) above to officers shall be read as including a reference to controllers or managers; and
 - (b) any reference in subsection (3) or (6) above to an officer shall be read as including a reference to a controller or manager.”.