



Insurance Companies Act 1982

1982 CHAPTER 50

PART II

REGULATION OF INSURANCE COMPANIES

Powers of intervention

37 Grounds on which powers are exercisable

- (1) The powers conferred on the Secretary of State by sections 38 to 45 below shall be exercisable in relation to any insurance company to which this Part of this Act applies and shall be exercisable in accordance with the following provisions of this section.
- (2) The powers conferred by sections 38 and 41 to 45 below shall be exercisable on any of the following grounds—
 - (a) that the Secretary of State considers the exercise of the power to be desirable for protecting policy holders or potential policy holders of the company against the risk that the company may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders;
 - (b) that it appears to him—
 - (i) that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed by this Act or by the Insurance Companies Act 1974 ;
 - (ii) that a company of which it is a subsidiary has failed to satisfy an obligation to which it is or was subject by virtue of section 29(7) above or section 24(6) of the Insurance Companies Act 1974 or section 8(6) of the Insurance Companies Amendment Act 1973 ; or
 - (iii) that a subordinate company within the meaning of section 31 above of the company has failed to satisfy an obligation to which it is or was subject by virtue of that section or section 26 above or section 22 or 26 of the Insurance Companies Act 1974 or of section 6 or 10 of the said Act of 1973 ;

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- (c) that it appears to him that the company has furnished misleading or inaccurate information to the Secretary of State under or for the purposes of any provision of this Act or any enactment repealed by this Act or by the Insurance Companies Act 1974 ;
 - (d) that he is not satisfied that adequate arrangements are in force or will be made for the reinsurance of risks against which persons are insured by the company in the course of carrying on business, being risks of a class in the case of which he considers that such arrangements are required;
 - (e) that there exists a ground on which he would be prohibited, by section 7, 8 or 9 above, from issuing an authorisation with respect to the company if it were applied for;
 - (f) that it appears to him that there has been a substantial departure from any proposal or forecast submitted to him by the company in accordance with section 5 above;
 - (g) that the company has ceased to be authorised to effect contracts "of insurance, or contracts of a particular description, in a member State where it has its head office or has in accordance with section 9(2) above made a deposit.
- (3) The powers conferred on the Secretary of State by sections 39 and 40 below shall not be exercisable in relation to an insurance company except—
- (a) where the Secretary of State has given (and not revoked) a direction in respect of the company under section 11 above or section 11 of the Insurance Companies Act 1981 ; or
 - (b) on the ground that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 33, 34 or 35 above or section 26B, 26C or 26D of the Insurance Companies Act 1974 ; or
 - (c) on the ground that a submission by the company to the Secretary of State of an account or statement specifies, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies.
- (4) The power conferred on the Secretary of State by subsections (2) to (4) of section 44 below shall also be exercisable on the ground that he considers the exercise of that power to be desirable in the general interests of persons who are or may become policy holders of insurance companies to which this Part of this Act applies, and references in those subsections to a company include references to any body (whether incorporated or not) which appears to the Secretary of State to be an insurance company to which this Part of this Act applies.
- (5) Any power conferred on the Secretary of State by section 38, 41, 42, 44(1) or 45 below shall also be exercisable, whether or not any of the grounds specified in subsections (2) and (4) above exists, in relation to—
- (a) any body in respect of which the Secretary of State has issued an authorisation;
 - (b) any insurance company to which this Part of this Act applies in the case of which a person has become a controller within the meaning of section 7(4) (c) above,

if that power is exercised before the expiration of the period of five years beginning with the date on which the authorisation was issued or that person became such a

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controller, as the case may be; but no requirement imposed by virtue of this subsection shall continue in force after the expiration of the period of ten years beginning with that date.

- (6) The power conferred on the Secretary of State by section 45. below shall not be exercisable except in a case in which he considers that the purpose mentioned in that section cannot be appropriately achieved by the exercise of the powers conferred by sections 38 to 44 below or by the exercise of those powers alone.
- (7) The Secretary of State shall, when exercising any power conferred by sections 38 to 45 below, state the ground on which he is exercising it or, if he is exercising it by virtue of subsection (5) above, that he is so exercising it; but this subsection shall not apply where the Secretary of State has given notice under section 46. below of the proposed exercise of the power.
- (8) The grounds specified in subsections (2)(b) to (g) and (4) above are without prejudice to the ground specified in subsection (2)(a) above.

38 Requirements about investments

- (1) The Secretary of State may require a company—
 - (a) not to make investments of a specified class or description ;
 - (b) to realise, before the expiration of a specified period (or such longer period as the Secretary of State may allow), the whole or a specified proportion of investments of a specified class or description held by the company when the requirement is imposed.
- (2) A requirement under this section may be framed so as to apply only to investments which are (or, if made, would be) assets representing a fund or funds maintained by the company in respect of its long term business or so as to apply only to other investments.
- (3) A requirement under this section shall not apply to the assets of a company so far as their value exceeds—
 - (a) in the case of a company whose head office is in a member State other than the United Kingdom, or which has in accordance with section 9(2) above made a deposit in such a member State, the amount of the liabilities of the business carried on by the company in the United Kingdom;
 - (b) in any other case, the amount of the liabilities of the company;that value and amount being determined in accordance with any applicable valuation regulations.

39 Maintenance of assets in the United Kingdom

- (1) The Secretary of State may require that assets of a company of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in the United Kingdom.
- (2) The Secretary of State may direct that for the purposes of any requirement under this section assets of a specified class or description shall or shall not be treated as assets maintained in the United Kingdom.
- (3) The Secretary of State may direct that for the purposes of any requirement under this section the domestic liabilities of a company, or such liabilities of any class or

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description, shall be taken to be the net liabilities after deducting any part of them which is reinsured.

- (4) A requirement imposed under this section may be framed so as to come into effect immediately after the day on which it is imposed or so as to come into effect after the expiration of a specified period (or such longer period as the Secretary of State may allow).
- (5) In this section any reference to a domestic liability is a reference to a liability of the business carried on by the company in the United Kingdom.
- (6) Subject to subsection (7) below, in computing the amount of any liabilities for the purposes of this section all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.
- (7) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations; and subsection (6) above shall have effect subject to any such regulations made by virtue of section 90(2) below.

40 Custody of assets

- (1) The Secretary of State may, in the case of a company on which a requirement has been imposed under section 39 above or under section 31 of the Insurance Companies Act 1974, impose an additional requirement that the whole or a specified proportion of the assets to which the requirement under that section applies shall be held by a person approved by him for the purposes of the requirement under this section as trustee for the company.
- (2) Section 39(4) above shall apply also to a requirement under this section.
- (3) Assets of a company held by a person as trustee for a company shall be taken to be held by him in compliance with a requirement imposed under this section if, and only if, they are assets in whose case the company has given him written notice that they are to be held by him in compliance with such a requirement or they are assets into which assets in whose case the company has given him such written notice have, by any transaction or series of transactions, been transposed by him on the instructions of the company.
- (4) No assets held by a person as trustee for a company in compliance with a requirement imposed under this section shall, so long as the requirement is in force, be released except with the consent of the Secretary of State.
- (5) If a mortgage or charge is created by a company at a time when there is in force a requirement imposed on the company by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee for the company in compliance with the requirement, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the company.

41 Limitation of premium income

- (1) The Secretary of State may require a company to take all such steps as are requisite to secure that the aggregate of the premiums—

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- (a) to be received by the company in consideration of the undertaking by it during a specified period of liabilities in the course of carrying on general business or any specified part of such business ; or
 - (b) to be received by it in a specified period in consideration of the undertaking by the company during that period of liabilities in the course of carrying on long term business or any specified part of such business,
- shall not exceed a specified amount.
- (2) A requirement under this section may apply either to the aggregate premiums to be received as mentioned in subsection (1) above or to the aggregate of those premiums after deducting any premiums payable by the company for reinsuring the liabilities in consideration of which the first-mentioned premiums are receivable.

42 Actuarial investigations

- (1) The Secretary of State may require a company which carries on long term business—
- (a) to cause the person who for the time being is its actuary under section 19(1) above or any corresponding enactment previously in force to make an investigation into its financial condition in respect of that business, or any specified part of that business, as at a specified date;
 - (b) to cause an abstract of that person's report of the investigation to be made; and
 - (c) to prepare a statement of its long term business or of that part thereof as at that date.
- (2) For the purposes of any investigation made in pursuance of a requirement under this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.
- (3) The form and contents of any abstract or statement made in pursuance of a requirement under this section shall be the same as for an abstract or statement made under section 18 above and subsection (2) of that section shall apply to an investigation made in pursuance of this section as it applies to an investigation to which subsection (1) (b) of that section relates.
- (4) Five copies of any abstract or statement made in pursuance of a requirement under this section shall be deposited by the company with the Secretary of State on or before such date as he may specify, and one of those copies shall be a copy signed by the persons required to sign copies of abstracts or statements made under the said section 18 which are deposited under section 22 above.

43 Acceleration of information required by accounting provisions

- (1) The Secretary of State may require any documents which under section 22 above are required to be deposited with him by a company within the period specified in that section to be deposited with him on or before a specified date before the end of that period, being a date not earlier than three months before the end of that period and not earlier than one month after the date on which the requirement is imposed.
- (2) The Secretary of State may require any statement which under section 25 above is required to be deposited with him by a company within a period prescribed under that section to be deposited with him on or before a specified date before the end of that period.

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44 Power to obtain information and require production of documents

- (1) The Secretary of State may require a company to furnish him, at specified times or intervals, with information about specified matters being, if he so requires, information verified in a specified manner.
- (2) The Secretary of State may—
 - (a) require a company to produce, at such time and place as he may specify, such books or papers as he may specify; or
 - (b) authorise any person, on producing (if required so to do) evidence of his authority, to require a company to produce to him forthwith any books or papers which that person may specify.
- (3) Where by virtue of subsection (2) above the Secretary of State or a person authorised by him has power to require the production of any books or papers from any company, the Secretary of State or that person shall have the like power to require production of those books or papers from any person who appears to him to be in possession of them; but where any person from whom such production is required claims a lien on books or papers produced by him, the production shall be without prejudice to the lien.
- (4) Any power conferred by or by virtue of subsections (2) and (3) above to require a company or other person to produce books or papers shall include power—
 - (a) if the books or papers are produced—
 - (i) to take copies of them or extracts from them; and
 - (ii) to require that person, or any other person who is a present or past director, controller or auditor of, or is or was at any time employed by, the company in question, to provide an explanation of any of them;
 - (b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (6) In this section "books or papers" includes accounts, deeds, writings and documents.

45 Residual power to impose requirements for protection of policy holders

- (1) The Secretary of State may require a company to take such action as appears to him to be appropriate for the purpose of protecting policy holders or potential policy holders of the company against the risk that the company may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders.
- (2) The power conferred by this section shall not be exercised in such a way as to restrict the company's freedom to dispose of its assets except where it is exercised—
 - (a) after the Secretary of State has given a direction under section 11 above or section 11 of the Insurance Companies Act 1981; or
 - (b) on the ground that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 33, 34 or 35 above or section 26B, 26C or 26D of the Insurance Companies Act 1974; or

- (c) where the ground for intervention arises out of the submission by the company to the Secretary of State of an account or statement specifying, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies.

46 Notice of proposed exercise of powers on ground of unfitness of certain persons

- (1) Before exercising with respect to a company any power or powers conferred by sections 38 to 45 above on the ground that he would be prohibited from issuing an authorisation to the company because of the unfitness of a person for the position held by him (not being that of controller of the company), the Secretary of State shall serve on that person a written notice stating—
 - (a) that the Secretary of State is considering exercising a power or powers conferred by those sections and the ground on which he is considering the exercise of the power or powers ; and
 - (b) that the person on whom the notice is served may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if that person so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (2) Unless the Secretary of State, after considering any representations made in accordance with subsection (1) above by the person served with a notice under that subsection, decides not to exercise the power or powers in relation to which the notice was served, he shall before exercising the power or powers serve on the company a written notice—
 - (a) containing the matters mentioned in paragraphs (a) and (b) of that subsection, taking references to the person there mentioned as references to the company; and
 - (b) specifying the power or powers which he proposes to exercise and, if the power or one of them is that conferred by section 45 above, specifying the manner of its proposed exercise.
- (3) A notice under this section shall give particulars of the ground on which the Secretary of State is considering the exercise of the power or powers in question.
- (4) Where representations are made in accordance with this section the Secretary of State shall take them into consideration before exercising the power or powers in question.
- (5) A requirement imposed on a company in the exercise of any power or powers to which this section applies may be framed so as to come into effect after the expiration of a specified period (or such longer period as the Secretary of State may allow) unless before the expiration of that period the person whose fitness is in question has ceased to hold the position concerned.

47 Rescission, variation and publication of requirements

- (1) The Secretary of State may rescind a requirement imposed under sections 38 to 45 above if it appears to him that it is no longer necessary for the requirement to continue in force, and may from time to time vary any such requirement.

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- (2) No requirement imposed by virtue of subsection (5) of section 37 above shall be varied after the expiration of the period of five years mentioned in that subsection except in a manner which relaxes that requirement.
- (3) Where a requirement is imposed under section 40 above or any such requirement is rescinded or varied the Secretary of State shall forthwith serve—
- (a) except where paragraph (b) below applies, on the registrar of companies or on the registrar of companies in Northern Ireland or on both ;
 - (b) if the requirement is imposed on a registered society, on the appropriate registrar as defined by section 73(1) of the Industrial and Provident Societies Act 1965 in the case of a society registered in Great Britain or on the registrar as defined by section 101(1) of the Industrial and Provident Societies Act (Northern Ireland) 1969 in the case of a society registered in Northern Ireland;
- a written notice stating that fact and, in the case of a notice of the imposition of a requirement, setting out the terms of the requirement, in the case of a notice of the rescission of a requirement, identifying the requirement and, in the case of a notice of a variation of a requirement, identifying the requirement and setting out the terms of the variation.
- (4) A notice served in pursuance of subsection (3) above on the registrar of companies or the registrar of companies in Northern Ireland shall be open to inspection, and a copy thereof may be procured by any person on payment of such fee as the Secretary of State or, in the case of a notice served on the registrar of companies in Northern Ireland, the Department of Commerce for Northern Ireland may direct; and every document purporting to be certified by the registrar of companies or the registrar of companies in Northern Ireland to be a copy of such a notice shall be deemed to be a copy of that notice and shall be received in evidence as if it were the original notice unless some variation between it and the original is proved.
- (5) Section 71(1) of the said Act of 1965 (which empowers the Treasury to make regulations respecting, among other things, the inspection of documents kept by the appropriate registrar under that Act) and section 97(1) of the said Act of 1969 (which confers corresponding powers on the Department of Commerce for Northern Ireland) shall have effect as if the reference to documents so kept included a reference to notices served in pursuance of subsection (3) above on the appropriate registrar or, as the case may be, on the registrar.

48 Power of Secretary of State to bring civil proceedings on behalf of insurance company

- (1) Section 37(1) of the Companies Act 1967 (power of Secretary of State to bring civil proceedings on behalf of body corpora(e)) shall have effect in relation to an insurance company to which this Part of this Act applies (whether or not a body corporate) as if the reference to any information or document obtained under the provisions there mentioned included a reference to any information or document obtained under this Act or any enactment repealed by this Act or by the Insurance Companies Act 1974.
- (2) The Secretary of State may bring civil proceedings in the name and on behalf of an insurance company to which this Part of this Act applies (whether or not a body corporate) under subsection (1) of section 163 of the Companies Act (Northern Ireland) 1960 and that subsection shall have effect in relation to such an insurance company as if the reference to any information or document obtained under the provisions there mentioned included a reference to any information or document

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obtained under this Act or any enactment repealed by this Act or by the Insurance Companies Act 1980 and any reference to the Department of Commerce for Northern Ireland were a reference to the Secretary of State.

- (3) Where under a judgment given or decree pronounced in proceedings brought by virtue of section 37(1) of the said Act of 1967 or section 163(1) of the said Act of 1960 on behalf of an insurance company a sum is recovered in respect of a loss of assets representing a fund or funds maintained by the company in respect of its long term business the court shall direct that the sum shall be treated for the purposes of this Act as assets of that fund or those funds and this Act shall have effect accordingly.