
 STATUTORY INSTRUMENTS

1978 No. 720

INSURANCE

The Insurance Companies (Authorisation and Accounts: General Business) Regulations 1978
Laid before Parliament in draft

Made - - - - 17th May 1978

Coming into Operation 31st July 1978

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the authorisation of the carrying on of insurance business and the regulation of such business and its conduct and in relation to anything supplemental or incidental thereto, in exercise of the powers conferred by that section, hereby makes the following Regulations, a draft of which has been approved by resolution of each House of Parliament:—

Citation and commencement

1. These Regulations may be cited as the Insurance Companies (Authorisation and Accounts: General Business) Regulations 1978 and shall come into operation on 31st July 1978.

Interpretation

2.—(1) In these Regulations—

“the 1974 Act” means the Insurance Companies Act 1974(c);

“authorisation” means an authorisation under section 3(1)(b) of the 1974 Act for the carrying on of general business;

“guarantee fund”, “margin of solvency” and “minimum guarantee fund” have the same meaning as in the solvency regulations;

“general representative” means the general representative appointed and maintained pursuant to regulation 9 below;

“the solvency regulations” means the Insurance Companies (Solvency: General Business) Regulations 1977(d).

(2) In these Regulations, a reference to a class (including a reference to a numbered class) is a reference to a class (or to a numbered class) within the meaning of the Insurance Companies (Classes of General Business) Regulations 1977(e).

(3) Except as provided by paragraphs (1) and (2) above, expressions used in these Regulations have the same meaning as in the 1974 Act.

(a) The European Communities (Designation) (No. 2) Order 1976, S.I. 1976/2141.

(b) 1972 c. 68.

(c) 1974 c. 49.

(d) S.I. 1977/1553.

(e) S.I. 1977/1552.

(4) The Interpretation Act 1889(a) shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

Authorisation: general

3.—(1) An authorisation may relate not only to a class but also to part of a class.

(2) Where an insurance company is permitted by or under section 3 of the 1974 Act to carry on general business of any class or part of a class, an authorisation shall be necessary to enable it to extend that business beyond the class or part of a class in question.

Authorisation: Community applicants

4.—(1) Where the applicant for an authorisation is a body whose head office is in a member State, the Secretary of State shall decide the application within six months after he first receives sufficient information to come to a decision.

(2) The Secretary of State, where he refuses to issue an authorisation to an applicant of the kind mentioned in paragraph (1) above, shall notify the applicant accordingly and shall deliver to the applicant a statement of the reasons for the refusal.

(3) This regulation shall not apply where the applicant is a body that, if authorised, will be—

- (a) an insurance company not subject to Part II of the 1974 Act, or
- (b) an insurance company excluded by Schedule 1 to the solvency regulations from the application of those regulations.

Restrictions on authorisation

5.—(1) The Secretary of State shall not issue an authorisation where the applicant is a body having its head office in the United Kingdom unless—

- (a) the applicant is—
 - (i) an incorporated company limited by shares or by guarantee or unlimited, or
 - (ii) a registered society as defined in section 85(1) of the 1974 Act, or
 - (iii) an undertaking established under public law having as its object the carrying on of general business under conditions equivalent to those applicable to undertakings established under private law, or
 - (iv) a company established by Royal Charter or by an Act of Parliament which was permitted to carry on general business by or under section 3 of the 1974 Act immediately before 31st July 1978 and seeks an authorisation to extend its business pursuant to regulation 3(2) above,
- (b) the applicant's business activities are limited to the carrying on of insurance business (and operations directly arising therefrom) to the exclusion of all other commercial business,
- (c) the applicant has submitted to the Secretary of State a scheme of operations in accordance with regulation 6 below, and

(a) 1889 c. 63.

- (d) the applicant has a margin of solvency at least equal to the minimum guarantee fund.
- (2) The Secretary of State shall not issue an authorisation for business to be carried on through an agency or branch by an applicant that is a body having its head office in a member State other than the United Kingdom unless—
- (a) the applicant has submitted to the Secretary of State a copy of its memorandum and articles of association (or their equivalent) and a list of its directors and managers,
 - (b) the applicant has submitted to the Secretary of State a scheme of operations in accordance with regulation 7 below,
 - (c) the applicant has submitted to the Secretary of State a certificate of the kind described in regulation 8 below, and
 - (d) the applicant has designated a general representative.
- (3) The Secretary of State shall not issue an authorisation for business to be carried on through an agency or branch by an applicant that is a body whose head office is not in a member State unless—
- (a) the applicant is entitled, under the law of the place in which its head office is situated, to effect and carry out contracts of insurance in that place,
 - (b) the applicant has undertaken to keep proper accounts and records in the United Kingdom in respect of the business to be carried on in the United Kingdom,
 - (c) the applicant has designated a general representative,
 - (d) the applicant possesses in the United Kingdom assets equal to at least one-half of the minimum guarantee fund,
 - (e) the applicant has undertaken to maintain a margin of solvency in accordance with regulations 4 and 5 of the solvency regulations, and to keep the assets representing that margin of solvency—
 - (i) up to an amount at least equal to the guarantee fund or to one-half of the minimum guarantee fund, whichever is the greater, within the United Kingdom, and
 - (ii) as to the remainder, within the United Kingdom and the other member States, and
 - (f) the applicant has submitted to the Secretary of State a scheme of operations in accordance with regulation 7 below.
- (4) Where before 30th July 1983—
- (a) a company applies for an authorisation to extend its business pursuant to regulation 3(2) above, and
 - (b) there is in force in respect of the company an order under section 57 of the 1974 Act made by virtue of paragraph 10(c) of Schedule 5 to the solvency regulations,
- paragraph (1)(d) above may be disregarded in relation to the proposed extension.
- (5) This regulation shall not apply where the applicant is a body that, if authorised, will be—
- (a) an insurance company not subject to Part II of the 1974 Act, or

- (b) an insurance company excluded by Schedule 1 to the solvency regulations from the application of those regulations.

Scheme of operations: UK applicants

6.—(1) The scheme of operations to be submitted by an applicant pursuant to regulation 5(1) above shall indicate—

- (a) the nature of the risks which the applicant proposes to cover and the general and special policy conditions which it proposes to use,
 - (b) the tariffs which the applicant proposes to apply for each category of business,
 - (c) the guiding principles as to reinsurance,
 - (d) the items constituting the minimum guarantee fund, and
 - (e) the estimated costs of installing the administrative services and organisation for securing business, and the financial resources intended to cover those costs.
- (2) The scheme shall include for each of the first three financial years—
- (a) estimates relating to expenses of management (other than costs of installation) and in particular to current general expenses and commissions,
 - (b) estimates relating to premiums or contributions and to claims,
 - (c) a forecast balance sheet, and
 - (d) estimates relating to the financial resources intended to cover underwriting liabilities and the margin of solvency.
- (3) Notwithstanding paragraph (1) above—
- (a) the particulars mentioned in paragraph (1)(a) and (b) above may be omitted in relation to class 4, 5, 6, 7 or 12,
 - (b) the particulars mentioned in paragraph (1)(b) above may be omitted in relation to class 14 or 15, and
 - (c) unless in any particular case the Secretary of State otherwise directs, the particulars mentioned in paragraph (1)(a) and (b) above may be omitted in relation to class 11.

Scheme of operations: other applicants

7.—(1) The scheme of operations to be submitted by an applicant pursuant to regulation 5(2) or (3) above shall indicate—

- (a) the nature of the risks which the applicant proposes to cover in the United Kingdom and the general and special policy conditions which it proposes to use,
 - (b) the tariffs which the applicant proposes to apply for each category of business,
 - (c) the guiding principles as to reinsurance,
 - (d) the state of the applicant's margin of solvency, and
 - (e) the estimated costs of installing the administrative services and organisation for securing business, and the financial resources intended to cover those costs.
- (2) In relation to the business to be carried on in the United Kingdom, the scheme shall include for each of the first three financial years—

- (a) estimates relating to expenses of management (other than costs of installation) and in particular to current general expenses and commissions,
 - (b) estimates relating to premiums or contributions and to claims, and
 - (c) a forecast balance sheet.
- (3) Notwithstanding paragraph (1) above—
- (a) the particulars mentioned in paragraph (1)(a) and (b) above may be omitted in relation to class 4, 5, 6, 7 or 12,
 - (b) the particulars mentioned in paragraph (1)(b) above may be omitted in relation to class 14 or 15, and
 - (c) unless in any particular case the Secretary of State otherwise directs, the particulars mentioned in paragraph (1)(a) and (b) above may be omitted in relation to class 11.
- (4) The scheme shall be accompanied by audited balance sheets and audited profit and loss accounts of the applicant—
- (a) for each of the last three financial years, or
 - (b) if the applicant has not been in business for three financial years, for each of the financial years for which it has been in business.
- (5) Where the scheme is submitted by a body having its head office in a member State—
- (a) the Secretary of State shall forward a copy of the scheme to the supervisory authority of the member State in which the body's head office is situated together with the Secretary of State's observations and a request for the opinion of the supervisory authority, and
 - (b) if the opinion of the supervisory authority is not received by the Secretary of State within three months after the receipt by the authority of the Secretary of State's request, the opinion shall be deemed to be favourable.

Certificates

- 8.** The certificate to be produced by an applicant pursuant to regulation 5(2)(c) above shall be a certificate issued by the supervisory authority of the member State where the applicant has its head office—
- (a) stating the classes of general business which the applicant is authorised by that authority to carry on in that member State,
 - (b) declaring that the applicant possesses a margin of solvency at least equal to—
 - (i) the minimum guarantee fund, or
 - (ii) the margin of solvency corresponding to that required by regulation 4(1) of the solvency regulations,whichever is the greater, and
 - (c) specifying the risks which the applicant actually covers and the financial resources intended to cover the costs mentioned in regulation 7(1)(e) above.

General representatives

- 9.**—(1) Every insurance company, so long as it carries on business by virtue of an authorisation to which regulation 5(2) or (3) above applied, shall appoint and maintain a general representative conforming with the require-

ments of paragraphs (2) and (3) below; and whenever the appointment of a general representative comes to an end, the company shall as soon as practicable make a fresh appointment.

(2) The general representative of a company shall have his permanent residence and abode in the United Kingdom and shall have sufficient powers—

- (a) to bind the company in relation to third parties,
- (b) to represent the company in relations with the Secretary of State, and
- (c) to accept service of legal process, notices and other documents on behalf of the company.

(3) If the general representative is a body corporate—

- (a) its head office shall be in the United Kingdom, and
- (b) it shall appoint a natural person having his permanent residence and abode in the United Kingdom by whom the powers mentioned in paragraph (2) above may be exercised on behalf of the general representative.

(4) The general representative of a company shall provide the Secretary of State with an address for service in the United Kingdom; and any document may be served on the company by sending it by post to, or by leaving it at, the address so provided.

(5) An address for service provided on behalf of a company under paragraph (4) above shall remain effective (whether or not the person who provided the address remains the company's general representative) until a fresh address is provided under that paragraph.

(6) Where an insurance company—

- (a) having its head office outside the United Kingdom, and
- (b) not being a company of the kind described in Schedule 1 to the solvency regulations,

carries on through an agency or branch general business that it was permitted by or under section 3 of the 1974 Act to carry on immediately before 31st July 1978, this regulation shall apply as if the business were being carried on by virtue of an authorisation to which regulation 5(2) or (3) above applied.

Modifications of the 1974 Act

10. The 1974 Act is hereby modified in the manner provided in the Schedule to these Regulations.

17th May 1978.

Stanley Clinton Davis,
Parliamentary Under-Secretary of State,
Department of Trade.

SCHEDULE
MODIFICATIONS OF THE 1974 ACT

1. In sections 2 and 3 references to a class shall, in the case of general business, include references to part of a class.

2.—(1) After these Regulations come into operation, the Secretary of State shall not authorise an unincorporated body of persons under section 3(1)(b).

(2) This paragraph shall not apply in relation to—

- (a) long term business, or
- (b) a body having its head office outside the United Kingdom, or
- (c) a body that, if authorised, will be—
 - (i) an insurance company not subject to Part II of the 1974 Act, or
 - (ii) an insurance company excluded by Schedule 1 to the solvency regulations from the application of those regulations.

3.—(1) Sections 5 and 8 shall cease to apply.

(2) This paragraph shall not apply in relation to—

- (a) long term business, or
- (b) a body that, if authorised, will be—
 - (i) an insurance company not subject to Part II of the 1974 Act, or
 - (ii) an insurance company excluded by Schedule 1 to the solvency regulations from the application of those regulations.

4.—(1) In relation to a general representative—

- (a) sections 7(1) and 54 shall apply as if the general representative were a director of the relevant body or, where the general representative is a body corporate, as if both the general representative and the person appointed under regulation 9(3)(b) above were directors of the relevant body, and
- (b) sections 28(1)(e) and 39 shall apply accordingly.

(2) In subparagraph (1) above, the reference to a general representative includes a reference to a prospective general representative designated under regulation 5(2)(d) or (3)(c) above.

5.—(1) Where a body has its head office in a member State other than the United Kingdom, then, except as mentioned in paragraph 4 above—

- (a) section 7(1) shall have effect only in relation to controllers and managers,
- (b) section 7(2) shall have effect only in relation to the persons described in section 7(5) as being included in references to managing directors and chief executives, and
- (c) sections 28(1)(e), 38, 39, 52, 53 and 54 shall have effect accordingly.

(2) This paragraph shall not apply in relation to—

- (a) long term business, or

(b) a body that is or, if authorised, will be—

- (i) an insurance company not subject to Part II of the 1974 Act, or
- (ii) an insurance company excluded by Schedule 1 to the solvency regulations from the application of those regulations.

6.—(1) Where an insurance company having its head office in a member State other than the United Kingdom is authorised to carry on general business—

- (a) sections 17 and 18 shall cease to apply to general business carried on otherwise than in the United Kingdom, and
- (b) section 18(3)(a) shall be taken to require only the signatures—
 - (i) of the general representative or, where the general representative is a body corporate, of the person appointed under regulation 9(3)(b) above, and
 - (ii) of the chief executive as defined in section 7(5) or, if the chief executive as so defined is the general representative (or is the person appointed under regulation 9(3)(b) above) or there is no chief executive as so defined, of a manager as defined in section 7(3).

(2) This paragraph shall not apply in relation to an insurance company excluded by Schedule 1 to the solvency regulations from the application of those regulations.

7.—(1) Where an insurance company whose head office is not in a member State is authorised to carry on general business and sections 13 and 16 have been applied not only to the company's entire general business but also separately to the company's general business in the United Kingdom—

- (a) sections 17 and 18 shall apply in the same way as sections 13 and 16, and
- (b) in respect of the separate treatment of the company's business in the United Kingdom, section 18(3)(a) shall be taken to require only the signatures—
 - (i) of the general representative, or where the general representative is a body corporate, of the person appointed under regulation 9(3)(b) above, and
 - (ii) of the chief executive as defined in section 7(5) or, if the chief executive as so defined is the general representative (or is the person appointed under regulation 9(3)(b) above) or there is no chief executive as so defined, of a manager as defined in section 7(3).

(2) This paragraph shall not apply in relation to an insurance company excluded by Schedule 1 to the solvency regulations from the application of those regulations.

8. The existence of any of the circumstances described in paragraph 9 below shall be regarded as a failure within the meaning of section 28(1)(b)(i).

9. The circumstances referred to in paragraph 8 above are as follows, that is to say—

- (a) that an insurance company has been authorised in a case where

regulation 5(1) above applied and—

- (i) there exists a ground on which the Secretary of State would be prohibited by regulation 5(1)(a) or (b) above from issuing an authorisation to the company if it were applied for, or
 - (ii) the company substantially departs from the scheme of operations submitted under regulation 5(1)(c) above (or, where the scheme has been revised with the consent of the Secretary of State, from the scheme as so revised);
- (b) that an insurance company has been authorised in respect of an agency or branch in a case where regulation 5(2) above applied and—
- (i) the agency or branch substantially departs from the scheme of operations submitted under regulation 5(2)(b) above (or, where the scheme has been revised with the consent of the Secretary of State, from the scheme as so revised), or
 - (ii) the company ceases to comply with regulation 9(1) above, or
 - (iii) the company's authorisation is withdrawn (or the company is no longer permitted to effect contracts of insurance) in the member State where its head office is situated;
- (c) that an insurance company has been authorised in respect of an agency or branch in a case where regulation 5(3) above applied and—
- (i) the agency or branch substantially departs from the scheme of operations submitted under regulation 5(3)(f) above (or, where the scheme has been revised with the consent of the Secretary of State, from the scheme as so revised), or
 - (ii) there exists a ground on which the Secretary of State would be prohibited by regulation 5(3)(a) above from issuing an authorisation to the company if it were applied for, or
 - (iii) the company ceases to comply with regulation 9(1) above or with the undertaking mentioned in regulation 5(3)(e) above in so far as it relates to the place where assets are to be kept.

10.—(1) Where an insurance company—

- (a) having its head office in the United Kingdom, and
- (b) not being a company of the kind described in Schedule 1 to the solvency regulations,

carries on general business that it was permitted to carry on by or under section 3 of the 1974 Act immediately before 31st July 1978, then, subject to subparagraph (2) below, paragraphs 8 and 9(a)(i) above shall apply as if the business were being carried on by virtue of an authorisation to which regulation 5(1) above applied.

(2) In the case of an insurance company established by Royal Charter or by an Act of Parliament, the reference in paragraph 9(a)(i) above to regulation 5(1)(a) above shall be disregarded for the purposes of this paragraph; and this paragraph shall not have effect in any case until 31st July 1979.

11. Where an insurance company—

- (a) having its head office in a member State other than the United Kingdom, and
- (b) not being a company of the kind described in Schedule 1 to the solvency regulations,

carries on through an agency or branch general business that it was permitted to carry on by or under section 3 of the 1974 Act immediately before 31st July 1978, paragraphs 8 and 9(b)(ii) and (iii) above shall apply as if the business were being carried on by virtue of an authorisation to which regulation 5(2) above applied.

12. Where an insurance company—

- (a) not having its head office in a member State, and
- (b) not being a company of the kind described in Schedule 1 to the solvency regulations,

carries on through an agency or branch general business that it was permitted to carry on by or under section 3 of the 1974 Act immediately before 31st July 1978, paragraphs 8 and 9(c)(ii) and (iii) above shall apply as if the business were being carried on by virtue of an authorisation to which regulation 5(3) above applied and, in the case of paragraph 9(c)(iii) above, as if the company had given the relevant undertaking.

13.—(1) Where an insurance company having its head office in a member State is authorised to carry on general business and the Secretary of State imposes on the company a requirement under section 29 that relates to that business, the Secretary of State shall deliver to the company a statement of the reasons for the imposition.

(2) This paragraph shall not apply in relation to an insurance company excluded by Schedule 1 to the solvency regulations from the application of those regulations.

14. Section 38 shall not apply where the relevant power is exercised by virtue of paragraph 9(b)(iii) or (c)(ii) above.

15. The power to make valuation regulations conferred by section 78 shall include power to make regulations with respect to the determination of the value of assets and the amount of liabilities for the purposes of these Regulations.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations give effect to the provisions of EEC Council Directive No. 73/239/EEC (O.J. No. L228, 16.8.73, p3) that require the taking up of the business of direct insurance other than life insurance to be subject to authorisation. The taking up of all kinds of insurance business is regulated by Part 1 of the Insurance Companies Act 1974. That part of the Act will continue to apply without change to life insurance and with only minor modification to business consisting only of reinsurance and to general business carried on by certain mutual and mutual type organisations. The Regulations cover three cases in which authorisations for general business may be issued and make more substantial modifications to the 1974 Act as it applies in these cases. The first case is that of a company having its head office in the United Kingdom; the second case is that of a company having its head office in a member State of the EEC other than the United Kingdom; the third case is that of a company having its head office outside the EEC. In the first case the main responsibility for authorisation is placed on the Secretary of State. In the second case the main responsibility for authorisation will be placed on the supervisory authority in the member State where the relevant company has its head office, and the Secretary of State's responsibility will be limited to authorising the company to carry on business through an agency or branch. In the third case, the Secretary of State's responsibility will also be limited to authorising the company to carry on business through an agency or branch, but he will remain responsible for considering also the state of the company as a whole. Any company authorised to carry on business through an agency or branch must appoint a general representative who will be answerable for its activities. The Schedule to the Regulations makes consequential modifications in the 1974 Act (including modifications to the requirement to deposit annual accounts) and contains transitional provisions to provide for companies that are already permitted to carry on business of the kind to which the Regulations relate.

SI 1978/720
ISBN 0-11-083720-7

