

1990 No. 1333

INSURANCE

The Insurance Companies (Amendment) Regulations
1990

Made - - - - 30th June 1990

Coming into force - 1st July 1990

Whereas the Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the authorisation of the carrying on of insurance business and the regulation of such business and its conduct and in relation to the transfer of insurance contracts other than contracts of life assurance from one insurance undertaking to another;

And whereas a draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 2(2) of and paragraph 2(2) of Schedule 2 to that Act;

Now, therefore, the Secretary of State in exercise of the powers conferred on him by section 2(2) of that Act and of all other powers enabling him in that behalf hereby makes the following Regulations:-

Citation, commencement and purpose

1.—(1) These Regulations may be cited as the Insurance Companies (Amendment) Regulations 1990 and shall come into force on the day after the day on which they are made.

(2) These Regulations give effect to Council Directive 88/357/EEC of 22 June 1988(c) on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC(d).

(a) S.I. 1975/427, 1976/2141.

(b) 1972 c.68.

(c) O.J. No. L172, 4.7.88, p. 1.

(d) O.J. No. L228, 16.8.73, p. 3, amended by Council Directives 76/580/EEC (O.J. No. L189, 13.7.76, p. 13), 84/641/EEC (O.J. No. L339, 27.12.84, p. 21), 87/343/EEC (O.J. No. L185, 4.7.87, p. 72) and 87/344/EEC (O.J. No. L185, 4.7.87, p. 77), the 1979 Act of Accession (Greece) (O.J. No. L291, 19.11.79, p. 17), the 1985 Act of Accession (Portugal and Spain) (O.J. No. L302, 15.11.85, p. 23) and Council Directive 88/357/EEC.

Interpretation

2.—(1) In Part V of the Insurance Companies Act 1982(a) (supplementary provisions), after section 96 (general interpretation) insert—

“Interpretation of expressions derived from general insurance Directives.

96A.—(1) In this Act—

- (a) “the first general insurance Directive” means Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;
- (b) “the second general insurance Directive” means Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC;

and “the general insurance Directives” means those Directives as amended and such other Directives as make provision with respect to the business of direct insurance other than life assurance.

(2) In this Act, in relation to an insurance company carrying on general business (other than reinsurance), “establishment” means the head office or a branch or agency of the company; and references to a company being established in a particular member State mean that the company has its head office or a branch or agency there.

Any permanent presence of such a company in a member State shall be regarded as a branch or agency, even if that presence consists merely of an office managed by the company’s own staff or by a person who is independent but has permanent authority to act for the company in the same way as an agency.

(3) References in this Act to the member State where the risk is situated are—

- (a) where the insurance relates to buildings or to buildings and their contents (in so far as the contents are covered by the same policy), to the member State in which the property is situated;
- (b) where the insurance relates to vehicles of any type, to the member State of registration;
- (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the member State where the policy holder took out the policy;
- (d) in a case not covered by paragraphs (a) to (c)—
 - (i) where the policy holder is an individual, to the member State where he has his habitual residence;
 - (ii) otherwise, to the member State where the establishment of the policy holder to which the policy relates is situated.

(4) In this Act the “ECU” means the unit of account of that name defined in Council Regulation (EEC) No. 3180/78(b) as amended.

The exchange rates as between the ECU and the currencies of the member States to be applied for each year beginning on 31st December shall be the rates applicable on the last day of the preceding October for which rates for the currencies of all the member States were published in the Official Journal of the Communities.”.

(2) In regulation 2 of the Insurance Companies Regulations 1981(c) (interpretation: general), in paragraph (1) at the appropriate place insert—

(a) 1982 c.50.

(b) O.J. No. L379, 30.12.78, p. 1, amended by Council Regulation (EEC) No. 1971/89 (O.J. No. L189, 4.7.89, p. 1).

(c) S.I. 1981/1654, to which there have been amendments not relevant to these Regulations.

““unit of account” means the unit of account known as the ECU;”;
and for paragraph (2) substitute—

“(2) For the purposes of these Regulations, other than regulation 25C, the rate of conversion from the ECU to the pound sterling shall be subject to a minimum of 41.66 pence per ECU.”.

(3) In regulation 3 of the Insurance Companies (Accounts and Statements) Regulations 1983(a) (interpretation), for paragraph (5) substitute—

“(5) For the purposes of these Regulations, other than regulation 13A, the rate of conversion from the ECU to the pound sterling shall be subject to a minimum of 41.66 pence per ECU.”.

Meaning of general and special policy conditions

3. In regulation 29 of the Insurance Companies Regulations 1981 (authorisation: submission of information), after paragraph (3) insert—

“(4) References in Schedule 5 to general and special policy conditions do not include specific conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.”.

Meaning of “large risks”

4. In Part V of the Insurance Companies Act 1982, after the section inserted by regulation 2 above insert—

“Meaning of
“large risks”.

96B.—(1) In this Act “large risks” means—

- (a) risks falling within classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 2;
- (b) risks falling within classes 14 and 15 of that Part which relate to a business carried on by the policy holder;
- (c) risks falling within classes 8, 9, 13 and 16 of that Part where the policy holder carries on a business in respect of which the condition specified in subsection (2) below is met.

(2) The condition referred to in subsection (1)(c) is that at least two of the three following criteria were exceeded in the most recent financial year for which the information is available:

First stage: until 31st December 1992—

balance sheet total: 12.4 million ECU

net turnover: 24 million ECU

number of employees: 500;

Second stage: from 1st January 1993—

balance sheet total: 6.2 million ECU

net turnover: 12.8 million ECU

number of employees: 250.

(3) For the purposes of subsection (2) as it applies to a company within the meaning of section 735(1) of the Companies Act 1985(b) or Article 3 of the Companies (Northern Ireland) Order 1986(c)—

- (a) “balance sheet total” has the meaning given by section 247(5) of that Act or Article 255(5) of that Order,
- (b) “net turnover” has the meaning given to “turnover” by section 262(1) of that Act or Article 270(1) of that Order, and
- (c) “number of employees” has the meaning given by section 247(6) of that Act or Article 255(6) of that Order;

and for a financial year which is a company’s financial year but not in

(a) S.I. 1983/1811, to which there have been amendments not relevant to these Regulations.
(b) 1985 c.6; sections 247 and 262 were inserted by sections 13 and 22 of the Companies Act 1989 (c.40).
(c) S.I. 1986/1032 (N.I. 6); Articles 255 and 270 were inserted by Articles 15 and 24 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)).

fact a year, the net turnover of the company shall be proportionately adjusted.

(4) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive 83/349/EEC^(a)) are drawn up, the question whether the condition in subsection (2) is met shall be determined by reference to those accounts.

(5) For the purposes of subsection (1)(c) as it applies where the policy holder is a professional association, joint venture or temporary grouping, the question whether the condition in subsection (2) is met shall be determined by reference to the aggregate of the relevant figures for all the members of the professional association, joint venture or temporary grouping.

(6) In this section "business" includes a trade or profession and, for the purposes of subsection (1)(c), any activity of a professional association, joint venture or temporary grouping."

Matching of assets and liabilities

5.—(1) In the Insurance Companies Regulations 1981, for regulation 25 (matching of assets and liabilities) substitute—

"Matching: general requirement

25.—(1) Where the liabilities of an insurance company in any particular currency exceed 5 per cent of the company's total liabilities, the company shall hold sufficient assets in that currency to cover at least 80 per cent of the company's liabilities in that currency.

(2) Where an insurance company carries on both long term and general business, the requirements of paragraph (1) apply to the assets and liabilities of each kind of business separately.

(3) For the purposes of this regulation—

"assets", except in the case of assets of the kind referred to in regulation 38(2) below, means assets valued in accordance with Part V of these Regulations; and "liabilities" means provision by an insurer to cover liabilities arising under or in connection with contracts of insurance (not being liabilities relating to insurance business excluded by regulation 27 below).

(4) For the purposes of this regulation references to assets in a currency shall be construed as references to assets expressed in or capable of being realised (without exchange risk) in that currency; and an asset is capable of being realised (without exchange risk) in a currency if it is reasonably capable of being realised in that currency without risk that changes in exchange rates would reduce the cover of liabilities in that currency.

(5) The provisions of this regulation have effect subject to the following regulations."

(2) After that regulation insert—

"Matching: property linked benefits

25A.—(1) In so far as the liabilities for property linked benefits are covered by assets which determine the benefits payable under a linked long term contract, regulation 25 above does not apply.

(2) In so far as the liabilities for property linked benefits are covered by assets in a currency other than that in which the insurer's obligations to the policy holder are expressed, those liabilities shall for the purposes of regulation 25 be deemed to be liabilities in the first-mentioned currency.

(3) In this regulation "property linked benefits" has the meaning given by regulation 37(1) below.

(a) O.J. No. L193, 18.7.83, p. 1.

Matching: currency of general business liabilities

25B.—(1) The currency of an insurance company's general business liabilities shall, for the purposes of regulation 25 above, be determined as follows.

(2) Where the contract of insurance expresses any liability in terms of a particular currency, that liability shall be regarded as a liability in that currency.

(3) Where the liabilities are not so expressed, they shall be regarded as liabilities in the currency of the country in which the risk is situated or, if the company on reasonable grounds so determines, in the currency in which the premium payable under the contract is expressed.

(4) However, the company may regard its liabilities as liabilities in the currency which it will use in accordance with past experience or, in the absence of such experience, in the currency of the country in which it is established—

(a) for contracts covering risks falling within general business classes 4, 5, 6, 7, 11, 12 and 13 (producer's liability only),

(b) for contracts covering risks falling within any other general business class where, in accordance with the nature of the risks, the company's liabilities are liabilities in a currency other than that determined in accordance with paragraph (2) or (3).

(5) Where a claim has been notified to an insurance company and the company's liability in respect of that claim is payable in a currency other than one which would result from the application of the above provisions, the liability shall be regarded as a liability in the currency in which the company is actually obliged to pay it.

(6) Where a claim is assessed in a currency which is known to the company in advance but which is different from a currency determined in accordance with the above provisions, the company may regard its liabilities as liabilities in that currency.

Matching: exception for certain general business liabilities

25C.—(1) The requirements of regulation 25 above have effect subject to the following provisions as regards a company's general business.

(2) The company need not cover the liabilities of its general business by assets in a particular currency if those assets would amount to 7 per cent or less of the remainder of its assets in other currencies.

This paragraph is subject to paragraphs (3) and (4) below.

(3) During the periods specified below, paragraph (2) has effect in relation to liabilities required to be covered by assets in Greek drachmas, Irish pounds or Portuguese escudos as if the following amounts, if less than the percentage mentioned in that paragraph, were substituted for that percentage—

Until 31st December 1992: 1 million ECU

From 1st January 1993 until 31st December 1998: 2 million ECU.

(4) During the period until 31st December 1996, paragraph (2) has effect in relation to liabilities required to be covered by assets in Belgian francs, Luxembourg francs or Spanish pesetas as if the amount of 2 million ECU, if less than the percentage mentioned in that paragraph, were substituted for that percentage.”.

(3) For regulation 27 of the Insurance Companies Regulations 1981 (exclusions from requirements as to the matching and localisation of assets), substitute—

“Exclusions from regulations 25 and 26

27.—(1) Nothing in regulation 25 or 26 above shall apply to—

(a) insurance business carried on outside the United Kingdom, or

(b) reinsurance business (unless it is facultative reinsurance written by an insurer who also carries on insurance business that is not reinsurance).

(2) Nothing in regulation 26 above shall apply to insurance business of groups 3 and 4 (within the meaning of Part II of Schedule 2 to the Insurance Companies Act 1982).”.

Law applicable to certain contracts of insurance

6.—(1) In Part V of the Insurance Companies Act 1982 (supplementary provisions), after section 94 insert—

“Law applicable to certain contracts of insurance

Law
applicable to
certain
contracts of
insurance.

94A.—(1) The law applicable to a contract of insurance the effecting of which constitutes general business, and which covers risks situated in the United Kingdom or another member State, shall be determined in accordance with the provisions of Schedule 3A to this Act.

(2) Those provisions do not apply in relation to a contract of reinsurance.”.

(2) After Schedule 3 to the Insurance Companies Act 1982 insert—

“SCHEDULE 3A

LAW APPLICABLE TO CERTAIN CONTRACTS OF INSURANCE

General rules as to applicable law

1.—(1) Where the policy holder has his habitual residence or central administration within the territory of the member State where the risk is situated, the law applicable to the contract is the law of that member State.

However, where the law of that member State so allows, the parties may choose the law of another country.

(2) Where the policy holder does not have his habitual residence or central administration within the territory of the member State where the risk is situated, the parties to the contract may choose to apply either—

- (a) the law of the member State where the risk is situated, or
- (b) the law of the country in which the policy holder has his habitual residence or central administration.

(3) Where the policy holder carries on a business and the contract covers two or more risks relating to his business which are situated in different member States, the freedom of choice of the law applicable to the contract extends to the laws of those member States and of the country in which he has his habitual residence or central administration.

In this sub-paragraph “business” includes a trade or profession.

(4) Where the member States referred to in sub-paragraph (2) or (3) grant greater freedom of choice of the law applicable to the contract, the parties may take advantage of that freedom.

(5) Notwithstanding sub-paragraphs (1) to (3), when the risks covered by the contract are limited to events occurring in a member State other than the member State where the risk is situated, the parties may always choose the law of the former State.

(6) For risks classified under classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 2, the parties to the contract may choose any law.

Applicable law in the absence of choice

2.—(1) The choice referred to in paragraph 1 must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.

(2) If that is not so, or if no choice has been made, the contract shall be governed by the law of the country (from amongst those considered in the relevant sub-paragraphs) with which it is most closely connected.

(3) Nevertheless, a severable part of the contract which has a closer connection with another country (from amongst those considered in the relevant sub-paragraphs) may by way of exception be governed by the law of that other country.

(4) A contract is rebuttably presumed to be most closely connected with the member State where the risk is situated.

Mandatory rules

3.—(1) The fact that in the cases referred to in paragraph 1 the parties have chosen a law does not, where all the other elements relevant to the situation at the time of the choice are connected with one member State only, prejudice the application of the mandatory rules of the law of that member State, which means the rules from which the law of that member State allows no derogation by means of a contract.

(2) Nothing in this Schedule restricts the application of the rules of a part of the United Kingdom in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

Supplementary provisions

4.—(1) Where a member State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.

(2) The provisions of this Schedule apply to conflicts between the laws of the different parts of the United Kingdom.

5.—(1) Subject to the preceding provisions of this Schedule, a court in a part of the United Kingdom shall apply the general rules of private international law of that part of the United Kingdom concerning contractual obligations.

(2) In particular, reference shall be made to those rules—

- (a) to ascertain for the purposes of paragraph 1(1) and (4) what freedom of choice the parties have under the law of a part of the United Kingdom; and
- (b) to determine whether the mandatory rules of another member State should be applied in accordance with paragraph 3(1) where the law otherwise applicable is the law of a part of the United Kingdom.”

Information to be included in application for authorisation

7. In Schedule 5 to the Insurance Companies Regulations 1981 (information to be submitted: general business), in Parts I, II and III for paragraph 14 (information as to conditions and tariffs: exceptions) substitute—

“14. Notwithstanding paragraph 12 or 13 above, the general and special policy or treaty conditions which the company proposes to use and the tariffs which it proposes to apply for each category of business may be omitted—

- (a) in the case of direct business, in relation to large risks, and
- (b) in the case of reinsurance, in relation to general business class 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 or 16.”

Grounds for exercise of supervisory powers

8.—(1) In section 11(2) of the Insurance Companies Act 1982(a) (withdrawal of authorisation in respect of new business: grounds), after paragraph (a) insert—

“(aa) that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State giving effect to the general insurance Directives;”

(2) In section 37(2) of the Insurance Companies Act 1982 (powers of intervention: grounds for exercise), in paragraph (b) (failure to satisfy obligations) after sub-paragraph (i) insert—

“(ia) that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State giving effect to the general insurance Directives;”

(3) In section 54(1) and (2) of the Insurance Companies Act 1982(b) (winding up on

(a) Section 11(2)(a) was amended by the Financial Services Act 1986 (c.60), Schedule 10, paragraph 7.

(b) Section 54 was amended by the Companies Consolidation (Consequential Provisions) Act 1985 (c.9), Schedule 2, by the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9)), Schedule 1 and by the Insolvency Act 1986 (c.45), Schedule 14.

petition of Secretary of State under the Insolvency Act 1986 or corresponding Northern Ireland provisions), after paragraph (b) insert—

“(bb) that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State giving effect to the general insurance Directives;”.

Transfer of business

9.—(1) In section 51 of the Insurance Companies Act 1982 (approval of transfers of general business), after subsection (4) (conditions for approval) insert—

“(4A) Without prejudice to the generality of subsection (4) above, the Secretary of State shall not approve a transfer on an application under subsection (1) above to an insurance company whose head office is situated in another member State unless the supervisory authorities of that State certify that it possesses the necessary margin of solvency after taking the proposed transfer into account.

(4B) Notwithstanding the provisions of subsection (4)(a)(ii) and (b) above, the Secretary of State may approve a transfer on an application under subsection (1) above to an insurance company established in another member State, where he is satisfied that—

- (a) the transfer relates to policies covering risks situated in the United Kingdom,
- (b) the transferee is entitled in accordance with section 81B below to provide insurance in the United Kingdom in respect of those risks through that establishment, and
- (c) the supervisory authorities of the member State of that establishment agree to the transfer.”.

(2) After section 52 of the Insurance Companies Act 1982 insert—

“Issue of certificates by Secretary of State. 52A.—(1) Where it is proposed to execute an instrument by which an insurance company established in another member State is to transfer to an insurance company whose head office is situated in the United Kingdom all its rights and obligations under such general policies, or general policies of such descriptions, as may be specified in the instrument, the Secretary of State may, if he is satisfied that the latter insurance company possesses the necessary margin of solvency after taking the proposed transfer into account, issue a certificate to that effect.

(2) In this section “general policy” means a policy evidencing a contract the effecting of which constituted the carrying on of general business, other than reinsurance.”.

Provision of insurance from another member State

10. In the Insurance Companies Act 1982, after Part III insert—

“PART IIIA

PROVISION OF INSURANCE FROM ANOTHER MEMBER STATE

Introduction

Introductory provisions.

81A.—(1) References in this Part to the provision of insurance in a member State are to the covering of a risk situated there through an establishment in another member State.

(2) The member State in which the establishment is situated is referred to as the “member State of establishment”.

(3) In this Part—

- (a) references to an insurance company are to a company which has been authorised in accordance with Article 6 of the first general insurance Directive; and**
- (b) references to the covering of a risk are to the covering (otherwise than by way of reinsurance) of a risk to which this Part applies.**

(4) This Part applies to risks falling within Schedule 2 to this Act (general business), other than—

- class 1, so far as it relates to accidents at work;**
- class 10, except for carrier's liability;**
- class 12, so far as it relates to motorboats and boats where in the member State in which the risk is situated the insurance of motorboats and boats was on 30th June 1988 subject to the same requirements as land motor vehicles;**
- class 13, so far as it relates to nuclear civil liability and pharmaceutical product liability;**
- classes 9 and 13, so far as they relate to the compulsory insurance of building works.**

(5) An insurance company shall not be regarded for the purposes of Parts I and II of this Act as carrying on insurance business in the United Kingdom by reason only of the fact that it provides insurance in the United Kingdom.

Provision of insurance in the United Kingdom

Documents
to be
furnished to
the Secretary
of State.

81B.—(1) An insurance company which intends to provide insurance in the United Kingdom shall send to the Secretary of State—

- (a) a certificate issued by the competent authorities of the member State in which the company's head office is situated attesting—**
 - (i) that the company possesses for its activities as a whole the minimum solvency margin calculated in accordance with Articles 16 and 17 of the first general insurance Directive, and**
 - (ii) that the company's authorisation in accordance with Article 7(1) of that Directive enables the company to operate outside its member State of establishment,**
- (b) a certificate issued by the competent authorities of the member State of the establishment through which the company intends to provide insurance in the United Kingdom, which—**
 - (i) indicates the classes of insurance business which the company has been authorised to undertake through that establishment, and**
 - (ii) states that the authorities do not object to the company providing insurance in the United Kingdom,**
- (c) a statement by the company of the nature of the risks which it proposes to cover in the United Kingdom, and**
- (d) a notice stating the address of the company for the purpose of the service of documents under this Part;**

and the company shall not provide insurance in the United Kingdom before the date certified as that on which those documents were received by the Secretary of State.

(2) Where an insurance company wishes to provide insurance in the United Kingdom in respect of risks other than those mentioned in the statement given in accordance with subsection (1)(c), it shall give

written notice to the Secretary of State amending that statement; and it shall not provide insurance in the United Kingdom in respect of such risks before the date certified as that on which written notice of the amendment was received by the Secretary of State.

Information to be given to policy holder.

81C.—(1) Before entering into a contract for the provision of insurance in the United Kingdom, the insurance company shall inform the policy holder of the member State in which the establishment is situated through which the risk is to be covered; and any document issued to the policy holder by the company shall also contain that information.

The requirements of this subsection do not apply where the contract is for the coverage of large risks only.

(2) An insurance company providing insurance in the United Kingdom shall ensure that—

- (a) the address of the establishment through which the risk is or is to be covered, and
- (b) the address of the company's head office,

are stated on any policy or other document under the terms of which insurance is granted, and on the insurance proposal if statements in the proposal bind the proposer.

Powers of intervention.

81D.—(1) Where it appears to the Secretary of State that an insurance company providing insurance in the United Kingdom has failed to comply with any provision of this Act, he may require it to take such steps as he may specify to comply with that provision.

(2) If the company fails to comply with a requirement under subsection (1), the Secretary of State shall notify the competent authorities of the member State of establishment.

(3) If such a company persists in contravening a provision of this Act which has been the subject of a requirement under subsection (1), the Secretary of State may, after informing the competent authorities of the member State of establishment, direct the company to cease to provide insurance, or insurance of any specified description, in the United Kingdom.

(4) After giving such a direction, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.

(5) A direction under this section does not prevent the company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

(6) A requirement or direction under this section may be varied or revoked by the Secretary of State.

Power to require information.

81E. The Secretary of State may, for the purpose of facilitating the exercise by him of his functions under section 81D, require an insurance company providing insurance in the United Kingdom to furnish him, at specified times or intervals, with information about such matters as he may specify being, if he so requires, information verified in a specified manner.

Withdrawal of authorisation.

81F.—(1) Where an insurance company is providing insurance in the United Kingdom and the Secretary of State is notified by the competent authorities of the member State of establishment, or of the company's head office, that the authorisation of the company has been withdrawn in accordance with Article 22 of the first general insurance Directive, he may direct the company to cease to provide insurance, or insurance of any specified description, in the United Kingdom through all, or any specified, establishments.

(2) After giving such a direction, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.

(3) A direction under this section does not prevent the company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

Provision of insurance in another member State

Notification to Secretary of State.

81G.—(1) Where an insurance company intends to provide insurance in a member State other than the United Kingdom and—

- (a) its head office is situated in the United Kingdom, or
- (b) the insurance is to be provided through an establishment in the United Kingdom,

it shall before doing so notify the Secretary of State of its intention.

(2) The notification shall indicate—

- (a) the member State in which the insurance is to be provided,
- (b) the nature of the risks which the company proposes to cover, and
- (c) where the company's head office is situated in the United Kingdom, the member State in which the establishment through which the risks will be covered is situated.

(3) Where the company intends to provide insurance in more than one member State, the information specified above may be contained in a single notification but must be set out separately in relation to each member State.

(4) Where a company has duly notified the Secretary of State of its intention to provide insurance in another member State where administrative authorisation is required for the provision of insurance, then, if the original notification related—

- (a) only to risks in respect of which such authorisation is required, or
- (b) only to risks in respect of which such authorisation is not required,

and the company subsequently intends to extend its activities to risks falling within the other category, it shall before doing so comply with subsections (1) to (3) above in relation to those risks.

Issue of certificates by Secretary of State.

81H.—(1) An insurance company whose head office is situated in the United Kingdom and which intends to provide insurance in another member State may apply to the Secretary of State for a certificate attesting—

- (a) that the company possesses for its activities as a whole the minimum solvency margin calculated in accordance with Articles 16 and 17 of the first general insurance Directive, and
- (b) that the company's authorisation to carry on business in the United Kingdom, issued in accordance with Article 7(1) of that Directive, enables the company to operate outside the member State of establishment.

(2) An insurance company which intends to provide insurance in another member State through an establishment in the United Kingdom may apply to the Secretary of State for a certificate—

- (a) indicating the classes of insurance business which the company has been authorised to carry on in the United Kingdom, and
- (b) stating that the Secretary of State does not object to the company providing the insurance.

(3) If it appears to the Secretary of State that a certificate applied for under subsection (1) or (2) ought to be issued, he shall issue the certificate accordingly.

(4) If the Secretary of State refuses to issue a certificate, he shall inform the company in writing of his decision and of the reasons for it.

Provisions as to transfer of business.

81I.—(1) The Secretary of State shall not approve a transfer on an application under section 51(1) above (transfer of general business to another company in the United Kingdom) relating to policies written by way of provision of insurance in another member State unless—

- (a) the transferee fulfils the conditions in Articles 13 to 16 of the second general insurance Directive in the member State where the risk is situated, and
- (b) the supervisory authorities of that member State agree to the transfer.

(2) The Secretary of State may approve a transfer on an application under section 51(1) above notwithstanding the provisions of paragraphs (a)(ii) and (b) of subsection (4) of that section (which require the transferee to be carrying on insurance business in the United Kingdom and to be authorised under section 3 or 4 above) where he is satisfied that—

- (a) the transfer relates to policies covering risks situated in another member State,
- (b) the transferee is an insurance company established in another member State and the supervisory authorities of that member State agree to the transfer, and
- (c) where the risk is not situated in the transferee's member State of establishment—
 - (i) the transferee fulfils the conditions in Articles 13 to 16 of the second general insurance Directive in the member State where the risk is situated,
 - (ii) the law of that member State provides for the possibility of such a transfer, and
 - (iii) the supervisory authorities of that member State agree to the transfer.

(3) An instrument giving effect to any such transfer as is mentioned in subsection (1) or (2) above shall not bind a policy holder whose policy is included in the instrument unless notice of the execution of the instrument has been published, in a manner directed by the Secretary of State, in the member State in which the risk is situated.

Supplementary provisions

Offences under Part IIIA.

81J.—(1) An insurance company commits an offence if it—

- (a) provides insurance in the United Kingdom in contravention of section 81B, or
- (b) makes default in complying with, or with a requirement imposed under, any other provision of this Part.

(2) A person commits an offence if—

- (a) in purported compliance with a requirement under section 81E he furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular, or
- (b) he causes or permits to be included in—
 - (i) a document required by section 81B to be sent to the Secretary of State, or

(ii) a notification sent to the Secretary of State under section 81G,

a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.

(3) A person committing an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

Additional information on provision of insurance in another member State

11.—(1) In the Insurance Companies (Accounts and Statements) Regulations 1983, after regulation 13 insert—

“Additional information on general business (provision of insurance in another member State)

13A.—(1) Every company which provides insurance in another member State (within the meaning of Part IIIA of the Act) through an establishment in the United Kingdom shall prepare in respect of those operations Form EC(P) (analysis of gross premiums receivable by groups of classes) in accordance with the requirements of Schedule 2A below.

(2) Where in any financial year the gross premiums so earned in a member State by an establishment in the United Kingdom exceed 2,500,000 ECU, the company shall also prepare an underwriting account in Form EC(A) or Form EC(B) as set out in Schedule 2A below (or both if appropriate).

(3) The forms mentioned in paragraphs (1) and (2) above shall be prepared separately in respect of each member State in which the company provides the insurance.

(4) Where in any financial year a company provides insurance in another member State through an establishment in the United Kingdom and the conditions specified in paragraph (5) below are met, the Secretary of State may by notice in writing direct the company in future to prepare an underwriting account in Form EC(A) or Form EC(B) as set out in Schedule 2A below (or both if appropriate) in respect of the provision of insurance in that member State through its establishment in the United Kingdom.

(5) The conditions referred to in paragraph (4) above are that—

(a) in that financial year the company earned through all its establishments (in the United Kingdom and elsewhere) gross premiums in excess of 2,500,000 ECU in respect of the provision of insurance in the member State concerned, and

(b) the supervisory authorities of the member State in which insurance is provided or, if the head office of the company is situated in a member State other than the United Kingdom, the supervisory authorities of that member State, ask the Secretary of State that an underwriting account be kept by the company's establishment in the United Kingdom for the operations effected in the member State where the insurance is provided.”.

(2) After Schedule 2 to the Insurance Companies (Accounts and Statements) Regulations 1983, insert Schedule 2A as set out in the Schedule to these Regulations.

Community co-insurance

12. In Schedule 9 to the Insurance Companies Regulations 1981 (relevant co-insurance operations), in paragraph 2 (relevant classes of general business), after the entry relating to class 13 insert—

“class 14 (credit),
class 15 (suretyship),”.

John Redwood
Parliamentary Under-Secretary of State,
Department of Trade and Industry

30th June 1990

SCHEDULE

Regulation 11

[SCHEDULE 2A TO THE INSURANCE COMPANIES (ACCOUNTS AND STATEMENTS) REGULATIONS 1983]

GENERAL BUSINESS: ANALYSIS OF GROSS PREMIUMS AND UNDERWRITING ACCOUNT

Returns under Insurance Companies Legislation

Form EC(P)

General business: Analysis of gross premiums receivable for provision of direct insurance

Name of Company:

Financial year ended:

Member State in which risk is situated:

Units: £000

Groups of Classes		Gross Premiums Receivable
Accident and Sickness (Classes 1 and 2)	1	
Fire and other damage to property (Classes 8 and 9)	2	
Aviation, Marine and Transport (Classes 3, 4, 5, 6, 7, 11 and 12)	3	
General liability (Class 13)	4	
Credit and Suretyship (Classes 14 and 15)	5	
Other classes (Classes 16, 17 and 18)	6	

General Business: Underwriting account for provision of direct insurance

Name of Company:

Financial year ended:

Member State in which risk is situated:

Units : £000

		Groups of Classes					
		Accident and Sickness 1	Fire and other damage to property 2	Aviation Marine and Transport 3	General Liability 4	Credit and Suretyship 5	Other classes 6
Total gross premiums earned in the financial year	11						
Total cost of gross claims incurred in the financial year	12						
Total cost of gross commission attributable to premiums shown at line 11	13						
Gross underwriting result (11 - 12 - 13)	14						

Notes:

1 Gross premiums earned equals gross premiums written in the financial year plus gross premiums unearned brought forward less gross premiums unearned carried forward.

2 Gross claims incurred equals gross claims paid in the financial year plus gross claims outstanding carried forward less gross claims outstanding brought forward, and includes directly attributable expenses.

3 Gross commission attributable equals gross commission in the financial year plus gross commission brought forward less gross commission carried forward.

General Business (three year accounting): Underwriting account for provision of direct insurance

Name of Company:

Financial year ended:

Member State in which risk is situated:

Units : £000

Groups of classes	Cumulative amounts receivable or payable in the financial year and earlier years		Risks allocated to:		
			Second year preceding the financial year 1	First year preceding the financial year 2	The financial year 3
Accident and sickness	Gross premiums receivable	11			
	Gross claims paid plus fund carried forward	12			
	Gross commission payable relating to premiums shown at line 11	13			
	Gross underwriting result (11 - 12 - 13)	14			
Fire and other damage to property	Gross premiums receivable	11			
	Gross claims paid plus fund carried forward	12			
	Gross commission payable relating to premiums shown at line 11	13			
	Gross underwriting result (11 - 12 - 13)	14			
Aviation Marine and Transport	Gross premiums receivable	11			
	Gross claims paid plus fund carried forward	12			
	Gross commission payable relating to premiums shown at line 11	13			
	Gross underwriting result (11 - 12 - 13)	14			

General Business (three year accounting): Underwriting account for provision of direct insurance

Name of Company:

Financial year ended:

Member State in which risk is situated:

Units : £000

Groups of classes	Cumulative amounts receivable or payable in the financial year and earlier years		Risks allocated to:		
			Second year preceding the financial year 1	First year preceding the financial year 2	The financial year 3
General Liability	Gross premiums receivable	11			
	Gross claims paid plus fund carried forward	12			
	Gross commission payable relating to premiums shown at line 11	13			
	Gross underwriting result (11 - 12 - 13)	14			
Credit and Suretyship	Gross premiums receivable	11			
	Gross claims paid plus fund carried forward	12			
	Gross commission payable relating to premiums shown at line 11	13			
	Gross underwriting result (11 - 12 - 13)	14			
Other classes	Gross premiums receivable	11			
	Gross claims paid plus fund carried forward	12			
	Gross commission payable relating to premiums shown at line 11	13			
	Gross underwriting result (11 - 12 - 13)	14			

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Insurance Companies Act 1982 ("the 1982 Act"), the Insurance Companies Regulations 1981 ("the 1981 Regulations") and the Insurance Companies (Accounts and Statements) Regulations 1983 ("the 1983 Regulations"). The purpose of the amendments is to implement Council Directive 88/357/EEC (O.J. No. L172, 4.7.88, p. 1) relating to non-life insurance. Council Directive 73/239/EEC (O.J. No. L228, 16.8.73, p. 3) created a supervisory regime for direct non-life "establishment" business (ie general insurance business carried on by insurers through an establishment in a member State). Directive 88/357/EEC introduces changes to that regime and makes new provision for the regulation of insurers who provide direct non-life insurance to cover risks in a member State on a "services" basis, ie otherwise than through an establishment in that State.

Regulation 1 makes provision for the citation and commencement of the Regulations and describes their purpose as referred to above.

Regulation 2 inserts a *new section 96A* in the 1982 Act, which defines the Directives and certain expressions deriving from them, in particular references to an insurance company's establishment, the member State where the risk is situated, and the ECU.

Regulation 3 amends regulation 29 of the 1981 Regulations (which prescribes the information to be submitted under section 5(1) of the 1982 Act on an application for authorisation under section 3) by excluding from the particulars of general and special policy conditions required by Schedule 5 specific conditions designed to meet in an individual case the particular circumstances of the risk to be covered.

Regulation 4 inserts a *new section 96B* in the 1982 Act, which defines the meaning of "large risks", for which, in certain respects, separate provision is made.

Regulation 5 amends, in relation to general business, regulation 25 of the 1981 Regulations (matching), in particular by providing that a company need not normally cover its general business liabilities by assets in a particular currency if those assets would amount to 7 per cent or less of the remainder of its assets in other currencies.

Regulation 6 amends Part V of the 1982 Act by inserting a *new section 94A* and a *new Schedule 3A* containing new rules governing the law applicable to contracts of direct general business insurance covering risks situated in the Community. Where a contract has a connection with more than one country (including the different parts of the United Kingdom) the rules will determine the law of which country is to govern the contract.

Regulation 7 amends Schedule 5 to the 1981 Regulations (information to be submitted with applications for authorisation) as regards particulars concerning the nature of the commitments which are to be taken on, policy or treaty conditions and tariffs.

Regulation 8 amends sections 11(2), 37(2) and 54(1) and (2) of the 1982 Act by extending the grounds on which the Secretary of State may withdraw a company's authorisation, exercise powers of intervention or present a winding-up petition, to cases where an insurance company has failed to satisfy an obligation to which it is subject under the law of another member State.

Regulation 9 amends section 51 of the 1982 Act (transfers of general business) by requiring that, before the Secretary of State approves a transfer to a company whose head office is in another member State, the supervisory authorities of that State must have issued a certificate that the company possesses the necessary margin of solvency after taking the proposed transfer into account. It makes provision to enable a transfer of policies covering risks situated in the United Kingdom to an insurance company established in another member State. It also inserts *new section 52A* which provides for the issue of certificates by the Secretary of State in cases where an insurance company's head office is situated in the United Kingdom.

Regulation 10 introduces a new Part IIIA into the 1982 Act to regulate the provision of direct general business insurance in one member State through an establishment of an insurance company situated in another member State and having its head office within the Community. Part IIIA—

- (a) requires a company intending to provide such insurance in the United Kingdom to notify the Secretary of State by furnishing him with specified certificates and other documents (*new section 81B*);
- (b) requires that in such a case before entering into a contract to provide insurance in the United Kingdom (other than a contract for the coverage of “large risks”), a company shall provide specified information to the policy holder, and in addition (whether the contract is for the coverage of “large risks” or other risks) requires that further specified information concerning the insurance company shall be included in the insurance policy and any other document under the terms of which insurance cover is granted (*new section 81C*);
- (c) confers powers on the Secretary of State to intervene in respect of an insurance company which fails to comply with any provision of the Act (*new section 81D*), to require information (*new section 81E*) and to direct a company to cease to provide insurance in the United Kingdom if its authorisation has been withdrawn (*new section 81F*);
- (d) requires an insurance company which intends to provide general business insurance in another member State and either has its head office in the United Kingdom or intends to provide the insurance through an establishment in the United Kingdom, to notify the Secretary of State of its intention by furnishing him with specified information (*new section 81G*); and enables the Secretary of State to issue certificates corresponding to those referred to in paragraph (a) above (*new section 81H*);
- (e) requires that before the Secretary of State approves under section 51 of the 1982 Act a transfer to another company in the United Kingdom of general business policies written by way of the provision of insurance in another member State, he must be satisfied that the transferee fulfils specified conditions in the member State where the risk is situated and that the supervisory authorities of that member State agree to the transfer (*new section 81I(1)*);
- (f) enables the Secretary of State to approve under that section a transfer to an insurance company established in another member State of policies written by way of the provision of insurance in another member State, subject to specified conditions, notably that the relevant supervisory authorities agree to the transfer (*new section 81I(2)*);
- (g) requires notice of a transfer approved under the provisions referred to in paragraphs (e) and (f) to be published in a specified manner in the member State in which the risk is situated (*new section 81I(3)*);
- (h) makes it an offence for an insurance company to provide insurance in the United Kingdom in contravention of new section 81B or to make default in complying with any other provision of the Act and for any person to supply false information pursuant to specified requirements (*new section 81J*).

Regulation 11 amends the 1983 Regulations by requiring an insurance company which provides insurance in another member State through an establishment in the United Kingdom to prepare additional information to be submitted to the Secretary of State by virtue of regulation 16 of those Regulations in respect of those operations, namely an analysis of gross premiums and, in specified circumstances, an underwriting account. The forms to be used for this purpose are specified in the *Schedule*.

Regulation 12 amends Schedule 9 to the 1981 Regulations (which defines relevant co-insurance operations for the purposes of determining the amount of liabilities arising in respect of such operations) by extending its application to class 14 (credit) and class 15 (suretyship).