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STATUTORY INSTRUMENTS

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**1994 No. 1696**

**The Insurance Companies (Third  
Insurance Directives) Regulations 1994**

**PART II**

**AMENDMENTS OF 1982 ACT**

**CHAPTER I**

*RESTRICTION ON CARRYING ON INSURANCE BUSINESS*

*Preliminary*

**Classification of long term business**

3. At the end of Schedule 1 to the 1982 Act (classes of long term business) insert—

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“VIII	Collective insurance etc.	Effecting and carrying out contracts of a kind referred to in Article 1(2)(e) of the first long term insurance Directive.
IX	Social insurance	Effecting and carrying out contracts of a kind referred to in Article 1(3) of the first long term insurance Directive.”

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**Restriction on carrying on insurance business**

4.—(1) After subsection (1) of section 2 of the 1982 Act (restriction on carrying on insurance business) insert—

“(1A) Subsection (1) above shall not apply to insurance business carried on by an EC company through a branch in respect of which such of the requirements of Part I of Schedule 2F to this Act as are applicable have been complied with.”

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

“(6) In this Act ‘EC company’ means an insurance company—

- (a) which is incorporated in or formed under the law of a member State other than the United Kingdom;
- (b) whose head office is in that member State; and
- (c) which is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.”

*Applications for authorisation*

**Sound and prudent management: criteria which must be fulfilled**

5.—(1) After subsection (1) of section 5 of the 1982 Act (submission of proposals etc.) insert—

“(1A) The Secretary of State shall not issue an authorisation under section 3 above to an applicant which is a UK or non-EC company if it appears to him that the criteria of sound and prudent management are not or will not be fulfilled with respect to the applicant.”

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

“(4) In this Act—

‘criteria of sound and prudent management’ means the criteria set out in Schedule 2A to this Act;

‘EEA State’ means a State which is a Contracting Party to the EEA Agreement but, until the EEA Agreement comes into force in relation to Liechtenstein, does not include the State of Liechtenstein;

‘EFTA State’ means an EEA State which is not a member State;

‘non-EC company’ means an insurance company—

- (a) whose head office is not in a member State;
- (b) which is authorised under section 3 or 4 above; and
- (c) whose business in the United Kingdom is not restricted to reinsurance business;

‘UK company’ means an insurance company—

- (a) which is incorporated in the United Kingdom;
- (b) whose head office is in the United Kingdom;
- (c) which is authorised under section 3 or 4 above;
- (d) whose business is not restricted to business to which subsection (5) below applies; and
- (e) which is not excluded from each Directive mentioned in that subsection by Article 3 of that Directive;

and any reference in this Part to an applicant or body which is a UK or non-EC company includes a reference to an applicant or body which would be such a company if the authorisation sought by it were issued.

(5) This subsection applies to—

- (a) reinsurance business;
- (b) business which is excluded from the first long term insurance Directive by Article 2(2) or (3) of that Directive;
- (c) business which is excluded from the first general insurance Directive by Article 2(2)(b) of that Directive; and
- (d) business which is exempted from the authorisation requirements contained in this Part of this Act by subsections (2) to (5) of section 2 above.”

(3) After Schedule 2 to the 1982 Act insert Schedule 1 to these Regulations (criteria of sound and prudent management), as Schedule 2A.

**Combination of long term and general business**

6. For section 6 of the 1982 Act substitute—

**“6 Combination of long term and general business.**

6. The Secretary of State shall not under section 3 above authorise a body to carry on both long term business and general business unless—

- (a) the long term business is restricted to reinsurance; or
- (b) the body is at the time the authorisation is issued already lawfully carrying on in the United Kingdom, otherwise than under paragraph (c) below, both long term business and general business (in neither case restricted to reinsurance); or
- (c) in the case of a body which is a UK company, the general business is restricted to Group 1 of Part II to Schedule 2 to this Act (accident and health) or to any class or part of a class of insurance within that group.”

**United Kingdom applicants**

7.—(1) In subsection (3) of section 7 of the 1982 Act (United Kingdom applicants), for the words “whose head office is in the United Kingdom” substitute—

- “(a) whose head office is in the United Kingdom; and
- (b) which is not an applicant to which section 5(1A) above applies.”

(2) Subsections (4) to (8) of that section and Schedule 3 to that Act (which are superseded by regulations 50 and 52 to 54 below) shall cease to have effect.

**Applicants from other EEA States etc.**

8.—(1) In subsections (1), (2) and (3) of section 8 of the 1982 Act (applicants from other member States), for the words “applicant whose head office is in a member State other than the United Kingdom” substitute the words “applicant to which this section applies”.

(2) For subsection (3A) of that section<sup>(1)</sup> substitute—

- “(3A) An applicant is one to which this section applies if—
- (a) its head office is in a member State other than the United Kingdom and it is not an EC company; or
- (b) its head office is in an EFTA State; or
- (c) its head office is in Switzerland and the authorisation sought by it is an authorisation to carry on general business which is not restricted to reinsurance business.”

(3) In subsection (4) of that section, the words “and ‘controller’, ‘manager’ and ‘main agent’ have the same meanings as in section 7 above” (which are superseded by regulation 50 below) shall cease to have effect.

**Applicants from non-EEA States etc.**

9.—(1) In subsections (1) and (4) of section 9 of the 1982 Act (applicants from outside the Community), for the words “whose head office is not in a member State” substitute the words “to which this section applies”.

(2) In subsection (2) of that section, for the words “member States”, in both places where they occur, substitute the words “EEA States”.

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(1) Subsection (3A) was inserted by [S.I. 1993/3127](#), reg 2(2).

(3) In subsection (5) of that section, for the words “to an applicant whose head office is not in a member State” substitute the words “which is restricted to reinsurance business to an applicant to which this section applies”.

(4) For subsection (5A) of that section(2) substitute—

“(5A) An applicant is one to which this section applies if—

- (a) its head office is not in an EEA State; and
- (b) it is not an applicant to which section 8 above applies.”

(5) In subsection (6) of that section, the words from “In this section” to “except that” (which are superseded by regulation 50 below) shall cease to have effect.

### *Withdrawal of authorisation*

#### **Withdrawal of authorisation in respect of new business**

**10.**—(1) For paragraph (aa) of subsection (2) of section 11 of the 1982 Act(3) (withdrawal of authorisation in respect of new business) substitute—

“(aa) that the company is a UK company and 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 EEA State which—

- (i) gives effect to the general or long term insurance Directives; or
- (ii) is otherwise applicable to the insurance activities of the company in that State;

(ab) that the company is a UK or non-EC company and it appears to the Secretary of State that any of the criteria of sound and prudent management is or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the company.”

(2) In subsection (2) of section 12 of that Act (notices of withdrawal under section 11), for the words from “on the ground” to “company” substitute the words “on either of the grounds set out in subsection (2A) below”.

(3) After that subsection insert—

“(2A) The grounds referred to in subsection (2) above are—

- (a) that the company is a UK or non-EC company and it appears to the Secretary of State that the second or third criterion of sound and prudent management is or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the company; and
- (b) that there exists a ground on which the Secretary of State would be prohibited by section 7(3), 8(2) or 9(5) above from issuing an authorisation to the company.”

#### **Suspension of authorisation in urgent cases**

**11.** After section 12 of the 1982 Act insert—

“**Suspension of authorisation in urgent cases.**

**12A.**—(1) Where, in the case of a UK or non-EC company, it appears to the Secretary of State—

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(2) Subsection (5A) was inserted by [S.I. 1993/3127](#), reg. 2(3).

(3) Paragraph (aa) was inserted by [S.I. 1990/1333](#), reg 8(1) and amended by [S.I. 1993/174](#), reg 2.

- (a) that one of the grounds in section 11(2) above exists in relation to the company:  
and
  - (b) that the authorisation should be suspended as a matter of urgency,
- the Secretary of State may direct that the company shall forthwith cease to be authorised to effect contracts of insurance, or contracts of any description specified in the direction.
- (2) A direction under this section—
    - (a) shall not prevent a company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance; and
    - (b) unless confirmed by the Secretary of State under subsection (6) below, shall cease to have effect at the end of the relevant period.
  - (3) Where the Secretary of State gives a direction under this section, he shall forthwith serve on the company a written notice stating—
    - (a) the ground on which the direction is given; and
    - (b) that the company 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 the company so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.
  - (4) Where the Secretary of State gives a direction under this section on the ground set out in section 11(2)(ab) above, the Secretary of State shall forthwith serve on any person whose fitness is in question a written notice stating—
    - (a) the ground for giving the direction; 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 and Industry appointed for the purpose by the Secretary of State.
  - (5) The Secretary of State shall consider any representations made in response to a notice under subsection (3) or (4) above before confirming a direction under this section.
  - (6) At any time before the end of the relevant period, the Secretary of State may confirm a direction under this section by a written notice served on the company.
  - (7) Where a direction under this section is so confirmed, it may not be revoked or varied; but if the Secretary of State subsequently issues to the company under section 3 above an authorisation to carry on insurance business of a class to which the direction relates, the direction shall cease to have effect in relation to such business.
  - (8) In this section ‘the relevant period’, in relation to a direction under this section, means the period of two months beginning with the date on which the direction is given.”

### **Final withdrawal of authorisation**

**12.** For subsections (1) and (2) of section 13 of the 1982 Act (final withdrawal of authorisation) substitute—

- “(1) Where—
  - (a) a UK company ceases to carry on insurance business or insurance business of any class in the European Community; or
  - (b) an insurance company which is not a UK company ceases to carry on insurance business or insurance business of any class in the United Kingdom,

the Secretary of State may direct that it shall cease to be authorised under section 3 or 4 above to carry on insurance business or insurance business of that class.

(2) If—

- (a) a body authorised under section 3 above to carry on insurance business of any class has not at any time carried on insurance business of that class, and at least twelve months have elapsed since the issue of the authorisation; or
- (b) a body authorised under section 4 above to carry on insurance business of any class has not at any time since the commencement of this Act carried on business of that class,

the Secretary of State may direct that the body shall cease to be authorised to carry on business of that class.”