



# Policyholders Protection Act 1975

## 1975 CHAPTER 75

### *Duties of the Board in case of companies in liquidation*

#### **5 Application of sections 6 to 11**

- (1) Subject to the following provisions of this section, the functions of the Board under sections 6 to 11 below are exercisable where in the case of any authorised insurance company—
  - (a) a resolution has been passed, in accordance with the provisions of the Companies Act 1948 or (as the case may be) of the Companies Act (Northern Ireland) 1960 for the voluntary winding up of the company, otherwise than merely for the purpose of reconstruction of the company or of amalgamation with another insurance company; or
  - (b) without any such resolution having been passed before hand, an order has been made for the winding up of the company by the court under either of those Acts.
- (2) Sections 6 to 11 shall not apply in a case falling within subsection (1)(d) above (whether or not an order for the winding up of the company by or subject to the supervision of the court has been made since the resolution there mentioned was passed) unless the resolution was passed after 29th October 1974.
- (3) Sections 6 to 11 shall not apply in a case falling within subsection (1)(b) above unless the petition for the winding up of the company by the court was presented after 29th October 1974.
- (4) References in this Act to a company in liquidation are references to an authorised insurance company in whose case—
  - (a) a resolution has been passed as mentioned in subsection (1)(a) above after 29th October 1974; or
  - (b) an order has been made as mentioned in subsection (1)(b) above on a petition presented after that date.
- (5) References in this Act, in relation to a company in liquidation, to the beginning of the liquidation, are references—

- (a) in a case falling within subsection (1)(a) above, to the passing of the resolution ; and
- (b) in a case falling within subsection (1)(b) above, to the making of the order.

## **6 Compulsory insurance policies and securities**

(1) This section applies to any policy which satisfies the requirements of any of the following, that is to say—

- (a) section 1(4A)(d) of the Riding Establishments Act 1964 or any corresponding enactment for the time being in force in Northern Ireland ;
- (b) section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 or Article 5 of the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 ; or
- (c) Part VI of the Road Traffic Act 1972 or Part V of the Road Traffic Act (Northern Ireland) 1970 ;

and to any policy evidencing a contract of insurance effected for the purposes of section 19 of the Nuclear Installations Act 1965.

(2) This section applies to any security in respect of third-party risks given by an authorised insurance company which satisfies the requirements of Part VI of the Road Traffic Act 1972 or Part V of the Road Traffic Act (Northern Ireland) 1970.

(3) In this section " a liability subject to compulsory insurance " means any liability required under any of the enactments mentioned in subsection (1) above to be covered by insurance or (as the case may be) by insurance or by some other provision for securing its discharge.

(4) Subject to sections 9, 13 and 14 below and the following provisions of this section, it shall be the duty of the Board to secure that a sum equal to the full amount of any liability of a company in liquidation towards any policyholder or security holder under the terms of any policy or security to which this section applies is paid to the policyholder or security holder as soon as reasonably practicable after the beginning of the liquidation.

(5) Subsection (4) above does not apply by reference to any liability of a company in liquidation under the terms of a policy to which this section applies arising otherwise than in respect of a liability of the policyholder which is a liability subject to compulsory insurance.

(6) Subject to sections 9, 13 and 14 and subsection (8) below, it shall be the duty of the Board to secure that a sum equal to ninety per cent, of the amount of any liability of a company in liquidation towards a private policyholder under the terms of any policy to which this section applies, being a liability arising otherwise than in respect of a liability of the policyholder which is a liability subject to compulsory insurance, is paid to the policyholder as soon as reasonably practicable after the beginning of the liquidation.

(7) In subsection (6) above " private policyholder " means a policyholder who is either—

- (a) an individual; or
- (b) a partnership or other unincorporated body of persons all of whom are individuals.

(8) The duty of the Board under subsection (4) or (6) above shall not apply—

- (a) in the case of any policy, unless it was a United Kingdom policy at the beginning of the liquidation; or
  - (b) in the case of any security in respect of third-party risks, unless it would have been a United Kingdom policy at the beginning of the liquidation if it had been an insurance policy and the contract governing the security had been a contract of insurance.
- (9) References hereafter in this Act to policies which were United Kingdom policies at any time and to policyholders in respect of such policies shall be construed as including references to—
- (a) securities to which this section applies which would have been United Kingdom policies at the time in question if they had been insurance policies and the contracts governing the securities had been contracts of insurance ; and
  - (b) security holders in respect of such securities.

## **7 Third-party rights against insurance companies in road traffic cases**

Without prejudice to section 6 above, but subject to sections 9, 13 and 14 below, it shall be the duty of the Board to secure that a sum equal to the full amount of any liability of a company in liquidation in respect of a sum payable to a person entitled to the benefit of a judgment under-

- (a) section 149 of the Road Traffic Act 1972 (duty of insurers to satisfy judgment against persons insured or secured against third-party risks); or
- (b) section 83 of the Road Traffic Act (Northern Ireland) 1970 (court orders for recovery from insurers of sums due under unsatisfied judgments against persons insured or secured by them);

is paid to that person as soon as reasonably practicable after the beginning of the liquidation.

## **8 General policies other than compulsory insurance policies**

- (1) This section applies to any general policy other than a policy to which section 6 above applies.
- (2) Subject to sections 9, 13 and 14 below, it shall be the duty of the Board to secure that a sum equal to ninety per cent, of the amount of any liability of a company in liquidation towards a private policyholder under the terms of any policy to which this section applies which was a United Kingdom policy at the beginning of the liquidation is paid to the policyholder as soon as reasonably practicable after the beginning of the liquidation.
- (3) In subsection (2) above " private policyholder " has the same meaning as in section 6(6) above.
- (4) In this Act " general policy " means any policy evidencing a contract the effecting of which constituted the carrying on of general business of any class, not being—
  - (a) a contract the effecting of which constituted the carrying on of marine, aviation and transport insurance business, or
  - (b) a contract of reinsurance.

## **9 Limits on the duties of the Board under sections 6 to 8**

- (1) The Board shall not by virtue of any provision of sections 6 to 8 above be required to secure any sum for a policyholder in respect of a policy of a company in liquidation which was a United Kingdom policy at the beginning of the liquidation or (as the case may be) for a person entitled to the benefit of a judgment by reference to any liability (or any part of any liability) of a company in liquidation which is duplicated by the liability of any other authorised insurance company which is not a company in liquidation.
- (2) A liability of a company towards a policyholder is duplicated by the liability of another company for the purposes of subsection (1) above in so far as that other company is also under a liability, under the terms of any general policy which was a United Kingdom policy at the beginning of the first-mentioned company's liquidation, to make any payment to or on behalf of the policyholder in respect of the matter to which the liability of the first-mentioned company relates.
- (3) A liability of a company in respect of a sum payable under section 149 of the Road Traffic Act 1972 or section 83 of the Road Traffic Act (Northern Ireland) 1970 to a person entitled to the benefit of a judgment is duplicated by the liability of another company for the purposes of subsection (1) above in so far as that other company is also liable under either of those sections to pay any sum to that person in respect of the same judgment.

## **10 Long term policies**

- (1) In this Act "long term policy" means any policy evidencing a contract the effecting of which constituted the carrying on of long term business of either class, not being a contract of reinsurance.
- (2) Subject to sections 13 and 14 below, it shall be the duty of the Board to secure that a sum equal to ninety per cent, of the amount of any liability of a company in liquidation towards any policyholder under the terms of a long term policy which was a United Kingdom policy at the beginning of the liquidation is paid to the policyholder as soon as reasonably practicable after the beginning of the liquidation.

## **11 Special provision for future benefits under long term policies**

- (1) Subject to subsection (2) below, in this section "future benefit", in relation to any long term policy of a company in liquidation, means any benefit provided for under the policy which has not fallen due to be paid by the company before the beginning of the liquidation.
- (2) Any bonus provided for under a policy shall not by virtue of subsection (1) above be treated as a future benefit within the meaning of this section unless it was declared before the beginning of the liquidation.
- (3) Subject to sections 13 and 14 below and to the following provisions of this section, it shall be the duty of the Board, as soon as reasonably practicable after the beginning of the liquidation, to make arrangements in pursuance of subsection (5) below for securing continuity of insurance for every policyholder of a company in liquidation who is a policyholder in respect of a long term policy which was a United Kingdom policy at the beginning of the liquidation.

- (4) Subject to subsection (6) below, the duty of the Board under subsection (3) above to secure continuity of insurance for any policyholder extends only to securing that the policyholder will receive ninety per cent, of any future benefit under his policy, subject to and in accordance with terms corresponding so far as appears to the Board to be reasonable in the circumstances to the terms which would have applied under the policy.
- (5) For the purpose of securing continuity of insurance for any policyholders of a company in liquidation in accordance with subsection (3) above, the Board may take such measures as appear to them to be appropriate—
  - (a) for securing or facilitating the transfer of the long term business of the company, or of any part of that business, to another authorised insurance company; or
  - (b) for securing the issue by another authorised insurance company to the policyholders in question of policies in substitution for their existing policies.
- (6) Where a long term policy of a company in liquidation contains terms relating to matters other than future benefits under the policy the duty of the Board under subsection (3) above to secure continuity of insurance for the policyholder in question extends also to securing that the policy after any transfer of business in which it is included or (as the case may be) any policy issued in substitution for the policy in question contains terms relating to those matters which correspond so far as appears to the Board to be reasonable in the circumstances to the terms first mentioned above.
- (7) During any period while the Board are seeking to make arrangements for securing continuity of insurance for any policyholders of a company in liquidation in accordance with subsection (3) above, it shall be the duty of the Board, subject to sections 13 and 14 and subsection (11) below, to secure that ninety per cent, of any future benefit under a long term policy which would have fallen due to be paid to any of those policyholders during that period is paid to the policyholder in question as soon as reasonably practicable after the time when the benefit in question would have fallen due under the policy (but subject to and in accordance with any other terms which would have applied under the policy).
- (8) Arrangements made by the Board in pursuance of subsection (5) above shall not be required to cover any future benefit under a policy in so far as any sums have been paid to the policyholder in pursuance of subsection (7) above by reference to that benefit.
- (9) Where it appears to the Board that it is not reasonably practicable to secure continuity of insurance for any policyholder of a company in liquidation in accordance with subsection (3) above, it shall be the duty of the Board, subject to sections 13 and 14 and subsection (10) below, to pay to the policyholder a sum equal to ninety per cent, of the value attributed to his policy for the purposes of any claim in respect of his policy in the winding up of the company, as soon as reasonably practicable after any such claim is admitted.
- (10) The Secretary of State may by regulations made by statutory instrument—
  - (a) require the Board, in a case to which subsection (9) above applies, to pay to the policyholder at his option, instead of the sum there mentioned, a sum equal to ninety per cent, of the value of the future benefits under his policy, or of such of those benefits as may be specified by the regulations, determined in such manner as the regulations may provide ;

- (b) make such provision as appears to him to be appropriate with respect to the time within which and the manner in which the Board are to perform any of their functions under this section (including any function conferred on them by virtue of paragraph (a) above).
- (11) Any duty of the Board under subsection (3) or (7) above to take any measures for assisting a policyholder of a company in liquidation shall be subject to compliance on his part with any conditions imposed by the Board with respect to the payment, in any case or in any class or description of case, of sums which would have fallen due from policyholders of a company in liquidation by way of premiums under long term policies if the company had not gone into liquidation.

## **12 Disproportionate benefits under long term policies**

- (1) If it appears to the Board, in the case of any long term policy of a company in liquidation which was a United Kingdom policy at the beginning of the liquidation, that the benefits provided for thereunder are or may be excessive in any respect, having regard to the premiums paid or payable and to any other terms of the policy, the Board shall refer the policy to an independent actuary.
- (2) This subsection applies in any case where an actuary to whom a policy is referred under subsection (1) above makes to the Board a report in writing—
- (a) stating, with respect to any of the benefits provided for under the policy, that in his view the benefit or benefits in question are excessive ; and
  - (b) recommending, accordingly, that for the purposes of sections 10 and 11 above any liability of the company under the policy or any future benefit under the policy should be treated as reduced or (as the case may be) disregarded.
- (3) In any case to which subsection (2) above applies the Board may determine in the light of any recommendation contained in the actuary's report that the liability or benefit to which that recommendation relates shall be treated as reduced or disregarded for the purposes of sections 10 and 11 above; and where the Board so determine the liability or benefit in question shall be treated as reduced or (as the case may be) disregarded accordingly for the purposes of the application of section 10, of any provision of subsections (3) to (7) of section 11, or of any provision of any regulations made under subsection (10) of section 11 above (as the case may require) in relation to the policy in question.
- (4) This subsection applies in any case where—
- (a) a claim has been admitted in the winding up of a company in respect of any policy which is the subject of a report by an actuary under subsection (2) above; and
  - (b) that report indicates, or the actuary makes to the Board a further report in writing indicating, what value would in his view have been attributed to the policy in the winding up if any future benefit under the policy to which any recommendation in the report under subsection (2) above relates had been treated as reduced or disregarded in accordance with the recommendation in determining the claim in respect of the policy in the winding up.
- (5) In any case to which subsection (4) above applies the Board may determine in the light of the value indicated in the actuary's report that the value attributed to the policy in question for the purposes of the claim in respect of the policy in the winding up shall be treated as reduced for the purpose of calculating the sum payable to the

policyholder in accordance with subsection (9) of section 11 above; and where the Board so determine the value so attributed to the policy shall be treated as reduced for that purpose accordingly.

(6) In this section " future benefit" has the same meaning as in section 11 above.