

1990 No. 1159

INSURANCE

**The Insurance Companies (Legal Expenses Insurance)
Regulations 1990**

<i>Made - - - -</i>	<i>29th May 1990</i>
<i>Laid before Parliament</i>	<i>31st May 1990</i>
<i>Coming into force</i>	<i>1st July 1990</i>

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:

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

Citation and commencement

1. These Regulations may be cited as the Insurance Companies (Legal Expenses Insurance) Regulations 1990 and shall come into force on 1st July 1990.

Interpretation

2.—(1) In these Regulations —

(a) “legal expenses insurance business” means insurance business (other than re-insurance business) within general business class 17 in Part I of Schedule 2 to the Insurance Companies Act 1982(c), and “legal expenses insurance contract” and “legal expenses cover” shall be construed accordingly; and

(b) “lawyer” means a person entitled to pursue his professional activities under one of the denominations laid down by Council Directive 77/249/EEC(d).

(2) Expressions used in these Regulations have the same meaning as in the Insurance Companies Act 1982.

Application

3.—(1) Regulations 4 to 9 below apply to all legal expenses insurance business, subject to the following exceptions.

(2) Those regulations do not apply to legal expenses insurance contracts concerning disputes or risks arising out of, or in connection with, the use of sea-going vessels.

(3) Those regulations do not apply to anything done by a person providing civil liability cover for the purpose of defending or representing the insured in an inquiry or proceedings which is at the same time done in the insurer's own interest under such cover.

(4) Those regulations do not apply to legal expenses cover provided by an assistance insurer where that cover is provided under a contract of which the principal object is the provision of assistance for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence and where the costs are incurred outside the state in which the insured normally resides.

In such a case the policy must clearly state that the cover in question is limited to the circumstances referred to in this paragraph and is ancillary to that assistance.

Requirement of separate policy or section

4. Legal expenses cover shall be the subject of either –
- (a) a policy relating to that cover only, or
 - (b) where that cover is provided under a policy relating to one or more other classes of general insurance business, a separate section of the policy relating to that cover only.

Where the cover is included in a separate section, that section shall specify the nature of the legal expenses cover.

Arrangements for avoiding conflicts of interests

5.—(1) An insurance company carrying on legal expenses insurance business shall adopt at least one of the following arrangements.

(2) The company shall ensure that no member of staff who is concerned with the management of claims under legal expenses insurance contracts, or with legal advice in respect of such claims, carries on at the same time any similar activity—

- (a) in relation to another class of general insurance business carried on by the company, or
- (b) in any other insurance company, having financial, commercial or administrative links with the first company, which carries on one or more other classes of general insurance business.

(3) The company shall entrust the management of claims under legal expenses insurance contracts to an undertaking having separate legal personality, which shall be mentioned in the separate policy or section referred to in regulation 4.

If that undertaking has financial, commercial or administrative links with another insurance company which carries on one or more other classes of general insurance business, members of the staff of the undertaking who are concerned with the processing of claims, or with providing legal advice connected with such processing, shall not pursue the same or a similar activity in that other insurance company at the same time.

(4) The company shall, in the policy, afford the insured the right to entrust the defence of his interests, from the moment that he has the right to claim from the insurer under the policy, to a lawyer of his choice or, to the extent that the law of the relevant forum so permits, to any other appropriately qualified person.

Freedom to choose lawyer

6.—(1) Where under a legal expenses insurance contract recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person).

(2) The insured shall also be free to choose a lawyer (or other person having such qualifications as may be necessary) to serve his interests whenever a conflict of interests arises.

(3) The above rights shall be expressly recognised in the policy.

7. Regulation 6 does not apply where –

- (a) the legal expenses cover is limited to risks arising from the use of a road vehicle in the United Kingdom and is connected with a contract to provide assistance in the event of accident or breakdown involving a road vehicle,
- (b) neither the legal expenses insurer nor the assistance insurer carries on any class of liability insurance business, and
- (c) there are arrangements for securing that, where the parties to a dispute are insured in respect of legal expenses by the same insurer, legal advice and representation are provided for each of them by completely independent lawyers.

Arbitration

8.—(1) Any dispute between the insurer and insured arising out of a legal expenses insurance contract may be referred to arbitration.

(2) The policy must mention the right of the insured to have recourse to arbitration.

Notification to insured of his rights

9.—(1) Where a conflict of interests arises or there is disagreement over the settlement of a dispute between the insurer and insured under a legal expenses insurance contract, the insurer shall give written notice to the insured informing him of—

- (a) the right referred to in regulation 6(2), and
- (b) the possibility of having recourse to arbitration in accordance with regulation 8.

(2) Where the management of claims is entrusted to a separate undertaking as mentioned in regulation 5(3), the duty of the insurer is to make arrangements to secure that such notice is given by that undertaking.

Classification of insurance business

10.—(1) Section 1 of the Insurance Companies Act 1982 (classification of insurance business) is amended as follows.

(2) In subsection (4) (contracts whose principal object is within one class of general business but which contain subsidiary provisions within another class), after “not being class 14 or 15” insert “or (except as mentioned in subsection (4A) below) class 17”.

(3) After that subsection insert –

“(4A) Subsection (4) applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within general business class 17 if—

- (a) the principal object of the contract is the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence, or
- (b) those subsidiary provisions concern disputes or risks arising out of, or in connection with, the use of sea-going vessels”.

Enforcement

11. Breach by an insurance company of any of regulations 4 to 9 above shall be treated as a failure by it to satisfy an obligation to which it is subject by virtue of the Insurance Companies Act 1982.

29th May 1990

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2) of the European Communities Act 1972, implement the Legal Expenses Insurance Directive (87/344/EEC). The Regulations impose requirements on legal expenses insurers carrying on legal expenses insurance, designed primarily to avoid possible conflict of interests. In particular such insurers must adopt one of the three arrangements set out in regulation 5 and must, subject to certain exceptions, offer the insured a free choice of lawyer to represent his interests in any enquiry or proceedings or whenever any actual conflict of interests arises (regulation 6).

Subject to certain exceptions, where insurance cover is provided in which legal expenses risks are related and subsidiary to risks in another class of general business, these subsidiary legal expenses risks are no longer required to be regarded as in being within that other class (regulation 10).

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