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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.”

## CHAPTER II

### REGULATION OF INSURANCE COMPANIES

#### *Preliminary*

#### **Insurance companies to which Part II applies**

**13.** After subsection (1) of section 15 of the 1982 Act (insurance companies to which Part II applies) insert—

“(1A) Except as otherwise provided by Part I of Schedule 2F to this Act, this Part of this Act (except sections 47A, 47B, 54 to 59 and Schedule 2B) does not apply to an EC company in so far as it is carrying on insurance business 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.”

#### *Financial resources*

#### **Margins of solvency**

**14.—**(1) In subsection (3) of section 32 of the 1982 Act<sup>(4)</sup> (margins of solvency), for the words “Community margin of solvency” substitute the words “EEA margin of solvency”.

(2) In subsections (5) and (6) of that section—

- (a) for the words “Community margin of solvency” substitute the words “EEA margin of solvency”; and
- (b) for the words “in member States (taken together)” substitute the words “in EEA States (taken together)”.

(3) In subsections (1) and (3) of section 33 of that Act (failure to maintain minimum margin), for the words “Community margin of solvency” substitute the words “EEA margin of solvency”.

#### **Companies supervised in other EEA States**

**15.** In subsection (1) of section 34 of the 1982 Act (companies supervised in other member States), for paragraphs (a) and (b) substitute—

- “(a) whose head office is in an EEA State other than the United Kingdom, or
- (b) which has in accordance with section 9(2) above made a deposit in such a State, or”.

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(4) Subsection (3) was amended by [S.I. 1993/3127](#), reg 3(3).

### **Form and situation of assets**

16. In subsection (2) of section 35 of the 1982 Act<sup>(5)</sup> (form and situation of assets), for the words “an insurance company whose head office is in a member State” substitute the words “an insurance company whose head office is in an EFTA State”.

### **Adequacy of assets**

17. After section 35 of the 1982 Act insert—

#### **“Adequacy of assets.**

**35A.**—(1) A UK company shall secure—

- (a) that its liabilities under contracts of insurance entered into by it, other than liabilities in respect of linked benefits, are covered by assets of appropriate safety, yield and marketability having regard to the classes of business carried on; and
- (b) without prejudice to the generality of paragraph (a) above, that its investments are appropriately diversified and adequately spread and that excessive reliance is not placed on investments of any particular category or description.

(2) A UK company which has entered into a linked long term contract shall secure that, as far as practicable, its liabilities under the contract in respect of linked benefits are covered as follows—

- (a) if those benefits are linked to the value of units in an undertaking for collective investments in transferable securities or to the value of assets contained in an internal fund, by those units or assets;
- (b) if those benefits are linked to a share index or other reference value not mentioned in paragraph (a) above, by units which represent that reference value, or by assets of appropriate safety and marketability which correspond, as nearly as may be, to the assets on which that reference value is based.

(3) A UK company which has entered into a linked long term contract shall also secure that its liabilities under the contract in respect of linked benefits are covered by assets of a description prescribed by regulations under section 78 below.

(4) In this section—

‘linked benefits’, in relation to a contract of insurance, means benefits payable to the policy holder which are determined by reference to the value of or the income from property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified);

‘linked long term contract’ means a contract of insurance—

- (a) the effecting of which constitutes the carrying on of long term business; and
- (b) under which linked benefits are payable to the policy holder.”

### **Adequacy of premiums: long term business**

18. After section 35A of the 1982 Act insert—

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

**“Adequacy of premiums: long term business.**

**35B.**—(1) Before entering into a contract of insurance the effecting of which constitutes the carrying on of long term business, a UK company shall satisfy itself that the aggregate of—

- (a) the premiums payable under the contract and the income which will be derived from them; and
  - (b) any other resources of the company which will be available for the purpose,
- will be sufficient, on reasonable actuarial assumptions, to meet all commitments arising under or in connection with the contract.

(2) A UK company shall not rely on other resources for the purposes of subsection (1) above in such a way as to jeopardise the solvency of the company in the long term.”

*Powers of intervention*

**Grounds on which powers of intervention are exercisable**

**19.**—(1) In subsection (2) of section 37 of the 1982 Act (grounds on which powers are exercisable)—

- (a) after paragraph (a) insert—
    - “(aa) that the company is a UK or non-EC company and it appears to him that any of the criteria of sound and prudent management is not or has not been or may not be or may not have been fulfilled with respect to the company;”;
  - (b) in paragraph (b), sub-paragraph (ia)(6) shall cease to have effect; and
  - (c) in paragraph (g), for the words “a member State where it has its head office or” substitute the words “an EFTA State where it has its head office or an EEA State where it”.
- (2) In subsection (3) of that section—
- (a) for the words “sections 39 and 40” substitute the words “sections 39, 40 and 40A”;
  - (b) in paragraph (a) for the words “section 11 above” substitute the words “section 11 or 12A above”; and
  - (c) after paragraph (c) insert
    - “or
    - (d) on the grounds that the company is a UK or non-EC company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 32 or 35A above.”
- (3) After subsection (4) of that section insert—
- “(4A) The powers conferred on the Secretary of State by sections 43A and 44 below shall be exercisable in respect of a UK or non-EC company to obtain information to enable him to perform his functions under this Act.”
- (4) In subsection (5) of that section—
- (a) in paragraph (b), for the words “section 7(4)(c) above” substitute the words “section 96C(1)(c), (d) or (e) below”;
  - (b) after that paragraph insert—

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(6) Sub-paragraph (ia) was inserted by [S.I. 1990/1333](#), reg 8(2) and amended by [S.I.1993/174](#), reg 2(1)(b).



- “(c) any UK company in a case where a person has notified an intention to acquire a notifiable holding in accordance with section 61A(1) below;” and
- (c) after the words “became such a controller” insert the words “or acquired such a holding”.

### **Requirements about investments**

**20.** In subsection (3)(a) of section 38 of the 1982 Act<sup>(7)</sup> (requirements about investments), for the words from “whose head office” to “insurance company” substitute—

- “(i) whose head office is in an EFTA State, or
- (ii) which has in accordance with section 9(2) above made a deposit in an EEA State other than the United Kingdom, or
- (iii) which is a Swiss general insurance company.”.

### **Maintenance of assets in the United Kingdom**

**21.**—(1) For subsection (1) of section 39 of the 1982 Act (maintenance of assets in the United Kingdom) substitute—

- “(1) The Secretary of State may require—
- (a) in the case of a UK company, that assets of the company of a value which at any time is equal to the whole or a specified proportion of the amount of its EC liabilities shall be maintained in the European Community; and
- (b) in the case of an insurance company which is not a UK company, that assets of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in the United Kingdom.”

(2) In subsection (2) of that section, for the words “as assets maintained in the United Kingdom” substitute—

- “(a) in the case of a UK company, as assets maintained in the European Community; and
- (b) in the case of an insurance company which is not a UK company, as assets maintained in the United Kingdom”.

(3) In subsection (3) of that section, for the words “domestic liabilities” substitute the words “EC or domestic liabilities”.

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

- “(5) In this section—
- (a) any reference to an EC liability is a reference to a liability of the business carried on by the company in the European Community; and
- (b) any reference to a domestic liability is a reference to a liability of the business carried on by the company in the United Kingdom.”

### **Prohibition on disposal of assets**

**22.** After section 40 of the 1982 Act insert—

#### **“Prohibition on disposal of assets.**

**40A.**—(1) If on the application of the Secretary of State it appears to the court that any of the grounds set out in section 37(3) above are established in relation to a UK company,

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(7) Subsection (3)(a) was amended by [S.I. 1993/3127](#), reg 3(7).

the court may grant an injunction restraining, or in Scotland an interdict prohibiting, the company from disposing of or otherwise dealing with any of its assets to the value of its EC liabilities.

(2) Where a court makes an order under subsection (1) above, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Secretary of State to perform his functions under this Act.

(3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

(4) In this section “EC liabilities” has the same meaning as in section 39 above.”

### **General investigations**

23. After section 43 of the 1982 Act insert—

#### **“General investigations.**

**43A.**—(1) The Secretary of State may appoint one or more competent persons to make an investigation into and report to the Secretary of State on—

- (a) whether the criteria of sound and prudent management are fulfilled with respect to any insurance company which is a UK or non-EC company ; or
- (b) where a person has notified the Secretary of State under section 60 or 61 below of his intention to become a controller of any such company, whether those criteria would be so fulfilled if that person became such a controller;

and the Secretary of State shall give written notice of any such appointment to the company.

(2) It shall be the duty of every person who is or was a director, manager, controller, agent, actuary, auditor or solicitor of a company which is under investigation—

- (a) to produce to the persons appointed under subsection (1) above, within such time and at such place as they may require, all documents relating to the company which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.

(3) For the purpose of exercising his powers under this section a person appointed under subsection (1) above may enter any premises occupied by a company which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required would be removed, tampered with or destroyed.

(4) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.”

### **Power to obtain information etc.**

**24.**—(1) After subsection (2) of section 44 of the 1982 Act<sup>(8)</sup> (power to obtain information and require production of documents) insert—

“(2A) Subsections (1) and (2) above shall have effect as if any reference to a company included a reference to any person who is or has been a controller, officer, agent or employee of a UK or non-EC company and to any body corporate which is or has been—

- (a) a parent undertaking or subsidiary undertaking of such a company;
- (b) a subsidiary undertaking of a parent undertaking of such a company; or
- (c) a parent undertaking of a subsidiary undertaking of such a company.

(2B) The Secretary of State may require a UK or non-EC company to furnish him, at a specified time, with a report by a specified person, being an actuary or accountant or other person with relevant professional skills, on any matter about which the Secretary of State has required, or could require, the company to provide information under subsection (1) above.”

(2) In subsection (4) of that section, for the words “subsections (2) and (3)” substitute the words “subsections (2), (2A) and (3)”.

(3) After that subsection insert—

“(4A) Any person authorised by the Secretary of State may, on producing if required evidence of his authority, enter any premises occupied by—

- (a) a UK or non-EC company on which a requirement under subsection (1) or (2) above has been imposed; or
- (b) a person on whom or a body on which such a requirement has been imposed by virtue of subsection (2A) above,

for the purpose of obtaining the information or documents required to be furnished or produced and exercising the powers conferred by subsection (4) above.”

### **Residual power to impose requirements for protection of policy holders**

**25.**—(1) For subsection (1) of section 45 of the 1982 Act (residual power to impose requirements for protection of policy holders) substitute—

“(1) The Secretary of State may require a company to take such action as appears to him to be appropriate—

- (a) for the purpose of protecting policy holders or potential policy holders of the company against the risk that the company may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders; or
- (b) in the case of a UK or non-EC company, for the purpose of ensuring that the criteria of sound and prudent management are fulfilled with respect to the company.”

(2) In subsection (2) of that section—

- (a) in paragraph (a), for the words “section 11 above” substitute the words “section 11 or 12A above”; and
- (b) after paragraph (c) insert the words

“or

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<sup>(8)</sup> Subsection (2) was amended by the Companies Act 1989 (c. 40), section 77(2).

- (d) on the grounds that the company is a UK or non-EC company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 32 or 35A above.”

### **Restriction on disclosure of information**

**26.**—(1) For section 47A of the 1982 Act(9) substitute—

**“47A Restriction on disclosure of information.**

**47A.** Schedule 2B to this Act (which, subject to certain exceptions, restricts the disclosure of information obtained under or by virtue of this Act) shall have effect.”

(2) After Schedule 2A to that Act insert Schedule 2 to these Regulations (restriction on disclosure of information), as Schedule 2B.

### **Privilege from disclosure**

**27.** In subsection (1) of section 47B of the 1982 Act(10) (privilege from disclosure), for the words “section 44(2) to (4)” substitute the words “section 43A or 44(2) to (4)”.

### *Transfers of insurance business*

### **Transfers of long term and general business**

**28.**—(1) For sections 49 to 52 of the 1982 Act(11) (transfers of insurance business) substitute—

**“49 Transfers of long term and general general business.**

**49.** Schedule 2C to this Act shall have effect long term and with respect to transfers of business.”

(2) After Schedule 2B to that Act insert Schedule 3 to these Regulations (transfers of insurance business), as Schedule 2C.

(3) This regulation does not apply in any case where an application is made under section 49 or 51 of that Act before 1st July 1994.

### **Issue of certificates by Secretary of State**

**29.** For subsection (1) of section 52A of the 1982 Act(12) (issue of certificates by Secretary of State) substitute—

“(1) Where it is proposed to execute an instrument by which—

(a) an EC company, or a non-EC company whose head office is in an EFTA State, is to transfer—

(i) to a UK company; or

(ii) to a non-EC company whose solvency is supervised by the Secretary of State in accordance with Article 29 or 30 of the first long term insurance Directive or Article 25 or 26 of the first general insurance Directive,

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(9) Section 47A was inserted by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), section 25.

(10) Section 47B was inserted by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), section 25.

(11) Section 49A was inserted by the Friendly Societies Act 1992 (c. 40), section 120(1) and Schedule 21, Part I, para 5(2); section 49B was inserted by S.I. 1993/174, reg 3(3) and renumbered by S.I. 1993/1327, reg 3(1).

(12) Section 52A was inserted by S.I. 1990/1333, reg 9(2) and amended by S.I. 1993/174, reg 3(4) and S.I. 1993/3127, reg 3(9).

all its rights and obligations under such long term or general policies, or long term or general policies of such descriptions, as may be specified in the instrument; or

- (b) a Swiss general insurance company is to transfer to a UK company all its rights and obligations under such general policies, or general policies of such descriptions, as may be so specified,

the Secretary of State may, if he is satisfied that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account, issue a certificate to that effect.”

### **Effect of transfers authorised in other EEA States**

30. After section 52A of the 1982 Act insert—

#### **“Effect of transfers authorised in other EEA States.**

**52B.**—(1) This section applies where—

- (a) an EC company transfers to another body all its rights and obligations under any UK policies and the transfer is authorised in its home State in accordance with—
  - (i) Article 11 of the third long term insurance Directive, or
  - (ii) Article 12 of the third general insurance Directive;
- (b) a non-EC company whose head office is in an EFTA State transfers to another body all its rights and obligations under any UK policies and the transfer is authorised in an EEA State other than the United Kingdom in accordance with—
  - (i) Article 6 of the second long term insurance Directive, or
  - (ii) Article 11 of the second general insurance Directive; or
- (c) a non-EC company whose head office is not in an EFTA State transfers to another body all its rights and obligations under any UK policies and the transfer is authorised in a member State other than the United Kingdom in accordance with—
  - (i) Article 31a of the first long term insurance Directive (as amended by Article 49 of the third long term insurance Directive), or
  - (ii) Article 28a of the first general insurance Directive (as amended by Article 53 of the third general insurance Directive).

(2) If notice of the execution of the instrument giving effect to the transfer is published in such manner as the Secretary of State may from time to time direct, the instrument shall be effectual in law—

- (a) to transfer to the transferee all the transferor’s rights and obligations under the UK policies included in the instrument, and
- (b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,

notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.

(3) Directions under this section may make different provision for different cases or descriptions of case.

(4) A policy which evidences a contract of direct insurance is a UK policy for the purposes of this section if the law applicable to it is the law of any part of the United Kingdom.”

### *Winding up*

#### **Winding up on petition by Secretary of State**

**31.**—(1) In subsection (1) of section 54 of the 1982 Act (winding up on petition by Secretary of State), for paragraph (bb)(13) substitute—

- “(bb) that the company is a UK company and 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;”.

(2) In subsection (2) of that section, for paragraph (bb)(14) substitute—

- “(bb) that the company is a UK company and 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;”.

### *Changes of director, controller or manager etc.*

#### **Approval of proposed managing director or chief executive**

**32.** For subsection (3) of section 60 of the 1982 Act (approval of proposed managing director or chief executive) substitute—

“(3) The Secretary of State may serve a notice of objection under subsection (1) above on the ground—

- (a) that it appears to him that the person proposed to be appointed is not a fit and proper person to be appointed to the position in question; or
- (b) where the insurance company is a UK or non-EC company, that it appears to him that, if that person were appointed, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(3A) Before serving such a notice the Secretary of State shall serve on the company and on the person proposed to be appointed a preliminary notice stating—

- (a) that the Secretary of State is considering the service on the company of a notice of objection on that ground; and
- (b) that the company or that person may, within the period of one month from the date of service of the preliminary notice, make written representations to the Secretary of State and, if the company or 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.”

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(13) Paragraph (bb) was inserted by S.I. 1990/1333, reg 8(3) and amended by S.I. 1993/174, reg 2(1)(c).

(14) Paragraph (bb) was inserted by S.I. 1990/1333, reg 8(3) and amended by S.I. 1993/174, reg 2(1)(c).

### **Approval of proposed controller where section 60 does not apply**

**33.** For subsection (2) of section 61 of the 1982 Act (approval of person proposing to become controller of insurance company where section 60 does not apply) substitute—

“(1A) The Secretary of State may serve a notice of objection under subsection (1) above on the ground—

- (a) that it appears to him that the person concerned is not a fit and proper person to become a controller of the company; or
- (b) where the company is a UK or non-EC company, that it appears to him that, if that person were to become such a controller, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(2) Before serving such a notice the Secretary of State shall serve on the person proposing to become a controller a preliminary notice stating—

- (a) that the Secretary of State is considering the service on that person of a notice of objection on that ground; and
- (b) that that person may, within the period of one month from the date of service of the preliminary 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.”

### **Approval of acquisition of notifiable holding in UK company**

**34.** After section 61 of the 1982 Act insert—

#### **“Approval of acquisition of notifiable holding in UK company.**

**61A.—**(1) No person who is a controller of a UK company shall acquire a notifiable holding in that company, or in another company of which it is a subsidiary undertaking, unless—

- (a) he has served on the Secretary of State a written notice stating—
  - (i) that he intends to acquire such a holding; and
  - (ii) the number of the shares or details of the voting rights which he proposes to acquire; and
- (b) either the Secretary of State has, before the expiration of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his proposed acquisition of the holding, or that period has elapsed without the Secretary of State having served on him a written notice of objection.

(2) The Secretary of State may serve a notice of objection under subsection (1) above on the ground—

- (a) that it appears to him that the person concerned is not a fit and proper person to acquire such a holding; or
- (b) that it appears to him that, if that person were to acquire such a holding, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(3) Subsections (2) to (4) of section 61 above<sup>(15)</sup> shall (with the necessary modifications) apply for the purposes of this section as they apply for the purposes of that section.”

### **Further provisions with respect to controllers of UK companies**

**35.**—(1) After section 61A of the 1982 Act insert—

**“Further provisions with respect to controllers of UK companies.**

**61B.** Schedule 2D to this Act (which makes further provision with respect to persons becoming or continuing to be companies, controllers of UK and persons who are such controllers acquiring or dealing with holdings in such companies) shall have effect.”

(2) After Schedule 2C to the 1982 Act insert Schedule 4 to these Regulations (further provisions with respect to controllers of UK companies), as Schedule 2D.

### **Duty to notify change of director, controller or manager**

**36.**—(1) For subsection (1) of section 62 of the 1982 Act (duty to notify change of director, controller or manager) substitute—

“(1) If, in the case of a company to which this Part of this Act applies, a person becomes or ceases to be—

(a) a controller of the company; or

(b) where the company is a UK company, a 10 per cent.shareholder controller, a 20 per cent.shareholder controller, a 33 per cent.shareholder controller, a 50 per cent.shareholder controller or a majority shareholder controller of the company,

he shall, before the expiration of the period of seven days beginning with the day next following that on which he does so, notify the company in writing of that fact and of such other matters as may be prescribed.

(1A) If, after ceasing to be a shareholder controller of any description mentioned in paragraph (b) of subsection (1) above, a person will still be a shareholder controller of the company, his notice under that subsection shall state the percentage of the shares or voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control.

(1B) A person who becomes a director or manager of an insurance company to which this Part of this Act applies shall, before the expiration of the period of seven days beginning with the day next following that on which he does so, notify the company in writing of such matters as may be prescribed.”

(2) In subsection (2) of that section, for the words “subsection (1)” substitute the words “subsection (1), (1A) or (1B)”.

(3) After that subsection insert—

“(3) In this section ‘share’ has the same meaning as in Part VII of the Companies Act or Part VIII of the Companies (Northern Ireland) Order 1986.”

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(15) Subsection (2A) of section 61 was inserted by [S.I. 1992/2890](#), reg 4.



### **Change of manager etc. of company from outside United Kingdom**

**37.**—(1) In subsection (1) of section 63 of the 1982 Act(**16**) (change of manager etc. of company from outside United Kingdom), for the words from “an insurance company” to “in relation to” substitute the words “a non-EC company whose head office is in an EFTA State or”.

(2) Section 63A of that Act(**17**) (duty to notify change of control) shall cease to have effect.

### *Miscellaneous and supplemental*

### **Documents deposited in Northern Ireland**

**38.** In paragraph (a) of section 66 of the 1982 Act (documents deposited in Northern Ireland), for the words “42(4) or 50(4) above” substitute the words “or 42(4) above or paragraph 5(5) of Schedule 2C to this Act”.

### **Offences under Part II**

**39.**—(1) In subsection (1) of section 71 of the 1982 Act (offences under Part II)—

(a) in paragraph (a), for “62(1)” substitute “or 62(1), (1A) or (1B)”;

(b) in paragraph (b), for the words “section 44” substitute the words “section 43A or 44”; and

(c) in paragraph (c), for sub-paragraph (iv) substitute—

“(iv) any statement sent out under paragraph 2(2)(b) of Schedule 2C to this Act or made available under paragraph 7(1)(c) of that Schedule,”

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

“(2AA) Any person who intentionally obstructs a person exercising rights conferred by section 44(4A) above shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine, and

(b) on summary conviction, to a fine not exceeding the statutory maximum.”

(3) In subsection (3) of that section(**18**), for the words “44, 45, 49(4), 50(4), 61(1) or 63A above” substitute the words “43A, 44, 45, 61(1) or 61A(1) above, paragraph 2(3) or 5(5) of Schedule 2C to this Act or Schedule 2D to this Act”.

(4) In subsection (4) of that section, for “44(1)” substitute “44(1) or (2B)”.

(5) Subsection (4A) of that section(**19**) (which is superseded by regulation 26 above) shall cease to have effect.

(6) In subsection (5) of that section, for “61 or 62(1)” substitute “61, 61A(1) or 62(1), (1A) or (1B)”.

(7) In subsection (7) of that section(**20**), for the words “31A or 51 (other than subsection (2) (c) above” substitute the words “or 31A above or Part II of Schedule 2C to this Act (other than paragraph 7(1)(c))”.

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**(16)** Subsection (1) was amended by [S.I. 1993/3127](#), reg 3(10).

**(17)** Section 63A was inserted by [S.I. 1992/2890](#), reg 5.

**(18)** Subsection (3) was amended by the Fines and Penalties (Northern Ireland) Order 1984 ([S.I. 1984/703 \(N.I.3\)](#)), the Criminal Penalties etc. (Increase) Order (Northern Ireland) 1984 ([S.R. 1984/253](#)) and [S.I. 1992/2890](#), reg 6.

**(19)** Subsection (4A) was inserted by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), section 30 and Schedule 2.

**(20)** Subsection (7) was inserted by the Financial Services Act 1986 (c. 60), sections 135(2) and 136(2).

## CHAPTER III

### CONDUCT OF INSURANCE BUSINESS

#### Information for policy holders of UK insurers and EC companies

40.—(1) After section 72 of the 1982 Act insert—

**“Information for policy holders of UK insurers and EC companies.**

**72A.** Schedule 2E to this Act (which makes provision with respect to information for policy holders of UK insurers and EC companies) shall have effect.”

(2) After Schedule 2D to that Act insert Schedule 5 to these Regulations (information for policy holders of UK insurers and EC companies), as Schedule 2E.

#### Information for policy holders of EFTA companies

41. After section 72A of the 1982 Act insert—

**“Information for policy holders of EFTA companies.**

**72B.—**(1) Subject to subsection (2) below, this section applies to a contract entered into by an EFTA company the effecting of which constitutes the provision of insurance in the United Kingdom.

(2) This section does not apply to a contract entered into by an authorised person the effecting of which constitutes the carrying on in the United Kingdom of investment business; and in this subsection expressions which are also used in the Financial Services Act 1986 have the same meanings as in that Act.

(3) Before entering into a contract to which this section applies, the company shall, unless the contract is for the coverage of large risks only, inform the other party to the contract of the EEA State in which is situated the establishment through which the risk or commitment is to be covered; and any document issued to that party by the company shall also contain that information.

(4) If the information required by subsection (3) above is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that subsection if it is also furnished in writing as soon as practicable after that time.

(5) Any relevant document issued by an EFTA company in relation to a contract to which this section applies shall state—

- (a) the address of the establishment through which the risk or commitment is or is to be covered; and
- (b) where the insurance relates to relevant motor vehicle risks, the name and address of the claims representative.

(6) In this section ‘relevant document’, in relation to a contract to which this section applies, means any proposal, policy or other document which, or statements contained in which, will or may bind the other parties to the contract.

(7) In this Act ‘EFTA company’ means an insurance company—

- (a) whose head office is in an EFTA State;
- (b) which is authorised in accordance with Article 6 of the first general insurance Directive (as extended by the EEA Agreement) or Article 6 of the first long term insurance Directive (as so extended); and

- (c) whose business in the United Kingdom is not restricted to reinsurance business.”

### **Intermediaries in insurance business**

**42.** At the end of subsection (2) of section 74 of the 1982 Act (intermediaries in insurance transactions) insert the words “or an EC or EFTA company entitled to provide in the United Kingdom insurance of such a class”.

### **Statutory notice by insurer in relation to long term policy**

**43.** For subsection (1) of section 75(21) (statutory notice by insurer in relation to long term policy) substitute—

“(1) Subject to subsections (5) and (5A) below, unless the requirements of subsection (1A) below are fulfilled—

- (a) no insurance company which is authorised under section 3 or 4 above and no member of Lloyd’s shall enter into a contract the effecting of which constitutes the carrying on of long term business in the United Kingdom;
- (b) no EC company shall enter into a contract the effecting of which constitutes the carrying on of such business or the provision of long term insurance in the United Kingdom; and
- (c) no EFTA company shall enter into a contract the effecting of which constitutes the provision of such insurance in the United Kingdom.”

### **Linked long term policies and capital redemption**

**44.** In subsection (1)(a) of section 78 of the 1982 Act (linked long term policies), after the words “by companies to which Part II of this Act applies” insert “, by EC companies”.

## CHAPTER IV

### *RECOGNITION IN ACCORDANCE WITH INSURANCE DIRECTIVES*

### **Recognition in the United Kingdom of EC and EFTA companies**

**45.—**(1) For section 81A of the 1982 Act(22) substitute—

## “PART IIIA

### RECOGNITION IN ACCORDANCE WITH INSURANCE DIRECTIVES

#### **81A Recognition in the United Kingdom of EC and EFTA companies.**

**81A.** Schedule 2F to this Act (which makes provision for or in connection with the recognition in the United Kingdom of EC and EFTA companies) shall have effect.”

(2) After Schedule 2E to that Act insert Schedule 6 to these Regulations (recognition in the United Kingdom of EC and EFTA companies), as Schedule 2F.

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(21) Subsection (1) was amended by [S.I. 1993/1327](#), reg 2(1).

(22) Section 81A was inserted by [S.I. 1990/1333](#), reg 10 and amended by [S.I. 1992/2890](#), reg 7, [S.I. 1993/174](#), reg 4 and [S.I. 1993/1327](#), reg 3(2).

## Recognition in other EEA States of UK insurers

46.—(1) For sections 81B to 81J of the 1982 Act(23) substitute—

### “81B Recognition in other EEA States of UK insurers.

**81B.** Schedule 2G to this Act (which makes provision for or in connection with the recognition in other EEA States of UK insurers) shall have effect.”

(2) After Schedule 2F to that Act insert Schedule 7 to these Regulations (recognition in other EEA States of UK insurers), as Schedule 2G.

## CHAPTER V

### SPECIAL CLASSES OF INSURERS

## Industrial assurance business

47. In subsection (5) of section 82 of the 1982 Act (industrial assurance business)—

- (a) for the words “section 49 above” substitute the words “Part I of Schedule 2C to this Act”; and
- (b) for the words “that section and section 50(4) above” substitute the words “that Part of that Schedule”.

## Lloyd’s underwriters

48.—(1) In section 83A of the 1982 Act(24) (Lloyd’s underwriters: insurance Directives)—

- (a) after the words “Secretary of State” insert the words “which are exercisable in relation to UK companies”; and
- (b) for the words from “giving effect” to the end substitute the words
  - “which—
  - (a) gives effect to the general and long term insurance Directives; or
  - (b) is applicable to the insurance activities of Lloyd’s in that State”.

(2) In section 85 of that Act (Lloyd’s underwriters: transfers of business)—

- (a) in subsection (1), for the words “sections 49 to 52 above” substitute the words “Schedule 2C to this Act”;
- (b) in subsection (3), for the words “sections 49 and 50 or sections 51 and 52 above” substitute the words “the provisions of Part I or II of Schedule 2C to this Act” and for paragraph (a) substitute—
  - “(a) references to a ‘UK company’ included references to members of Lloyd’s;”;
  - and
- (c) after subsection (3) insert—
  - “(4) Section 52A above shall apply as if the reference in subsection (1) to a UK company included a reference to members of Lloyd’s.”

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(23) Sections 81B to 81J were inserted by S.I. 1990/1333, reg 10 and amended by S.I. 1992/2890, reg 7 and S.I. 1993/174, reg 4.

(24) Section 83A was inserted by S.I. 1992/2890, reg 8 and amended by S.I. 1993/174, reg 2.

## CHAPTER VI

### SUPPLEMENTARY PROVISIONS

#### Applicable law

**49.** In paragraph 1 of Schedule 3A to the 1982 Act(**25**) (law applicable to certain contracts of insurance), for sub-paragraph (6) substitute—

“(6) Where the risk—

(a) is situated in an EFTA state and falls within class 4, 5, 6, 7, 11 or 12 of Part I of Schedule 2 to this Act; or

(b) is situated in a member State and is a large risk,

the parties to the contract may choose any law.

(7) Where the risk is situated in a member State which has implemented the transitional provisions in Article 27 of the second general insurance Directive, the meaning of ‘large risk’ for the purposes of sub-paragraph (6) above shall be determined in accordance with the law applicable in that State.”

#### General interpretation

**50.**—(1) In subsection (1) of section 96 of the 1982 Act(**26**) (general interpretation)—

(a) after the definition of “annuities on human life” insert—

“‘associate’ shall be construed in accordance with section 96C below;”;

(b) in the definition of “chief executive”, for the words “section 7 above” substitute the words “section 96D below”;

(c) for the definition of “claims representative” substitute—

“‘claims representative’ has the meaning given in section 96F below;”;

(d) in the definition of “controller”, for the words “section 7 above” substitute the words “section 96C below”;

(e) after that definition insert the following definitions—

“‘Community co-insurance operation’ and, in relation to such an operation, ‘leading insurer’ have the same meanings as in Council Directive 78/473/EEC of 30th May 1978(**27**) on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance;”;

(f) after the definition of “court” insert—

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

(g) after the definition of “director” insert—

“‘EC company’ has the meaning given in section 2 above;

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(**28**) as adjusted by the Protocol signed at Brussels on 17th March 1993(**29**);

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(25) Schedule 3A was inserted by [S.I. 1990/1333](#), reg 6(2) and amended by [S.I. 1993/174](#), reg 5(4) and (5).

(26) Section 96 has been amended by [S.I. 1990/1333](#), reg 8(3) and [S.I. 1993/174](#), reg 2(1)(c); and there are other amendments not relevant to these Regulations.

(27) O.J. L151, 7.6.78, page 25.

(28) O.J. L1, 3.1.94, page 3.

(29) O.J. L1, 3.1.94, page 572.

‘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 company’ has the meaning given by section 72B above;

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

(h) after the definition of “holding company” insert—

“‘home State’, in relation to an EC company, means the member State in which the company’s head office is situated;”;

(i) in the definition of “main agent”, for the words “section 7 above” substitute the words “section 96E below”;

(j) in the definition of “manager”, for the words “section 7 above” substitute the words “section 96D below”;

(k) for the definition of “member State of the commitment” substitute—

“‘non-EC company’ has the meaning given in section 5 above;

‘notifiable holding’ means voting rights or shares which, if acquired by any person, will result in his becoming a 10 per cent.shareholder controller, a 20 per cent.shareholder controller, a 33 per cent.shareholder controller, a 50 per cent.shareholder controller or a majority shareholder controller;”;

(l) after the definition of “registrar of companies” insert—

“‘relevant motor vehicle risks’ means risks falling within class 10 of Schedule 2 to this Act (motor vehicle liability), but excluding carrier’s liability;

‘shareholder controller’, ‘10 per cent.shareholder controller’, ‘20 per cent.shareholder controller’, ‘33 per cent.shareholder controller’, ‘50 per cent.shareholder controller’ and ‘majority shareholder controller’ have the meanings given by section 96C below;

‘State of the commitment’, in relation to a commitment entered into at any date, means—

(a) where the policy holder is an individual, the State in which he had his habitual residence at that date;

(b) where the policy holder is not an individual, the State in which the establishment of the policy holder to which the commitment relates was situated at that date,

and ‘member State of the commitment’ shall be construed accordingly;”;

(m) after the definition of “subsidiary” insert—

“‘subsidiary undertaking’ shall be construed in accordance with section 258 of the Companies Act(30) and Article 266 of the Companies (Northern Ireland) Order 1986(31);”;

(n) after the definition of “Swiss general insurance company” insert—

“‘UK company’ has the meaning given in section 5 above;”.

(2) After subsection (4) of that section insert—

“(5) Except as otherwise provided by paragraph 27 of Schedule 2F to this Act, this Act shall apply as if Gibraltar were a member State.”

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(30) 1985 c. 6: section 258 was inserted by the Companies Act 1989 (c. 40), section 21.

(31) S.I. 1986/1032 (N.I.6); Article 266 was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23.

## Interpretation of expressions derived from insurance Directives

**51.**—(1) In subsection (1) of section 96A of the 1982 Act<sup>(32)</sup> (interpretation of expressions derived from insurance Directives), after paragraph (b) insert—

“(c) ‘the third general insurance Directive’ means Council Directive [92/49/EEC](#) of 18 June 1992<sup>(33)</sup> on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives [73/239/EEC](#)<sup>(34)</sup> and [88/357/EEC](#)<sup>(35)</sup>.”

(2) In subsection (1B) of that section, after paragraph (b) insert—

“(c) ‘the third long term insurance Directive’ means Council Directive [92/96/EEC](#) of 10 November 1992<sup>(36)</sup> on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives [79/267/EEC](#)<sup>(37)</sup> and [90/619/EEC](#)<sup>(38)</sup>.”

(3) For subsection (2) of that section substitute—

“(2) In this Act, in relation to an insurance company, ‘establishment’ means the head office or a branch of the company; and references to a company being established in a State mean that the company has its head office or a branch there.

Any permanent presence of an insurance company in a State other than that in which it has its head office shall be regarded as a single branch, whether that presence consists of a single office which, or two or more offices each of which—

- (a) is managed by the company’s own staff;
- (b) is an agency of the company; or
- (c) is managed by a person who is independent but has permanent authority to act for the company in the same way as an agency.”

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

“(3A) In this Act references to the provision of insurance in the United Kingdom or any other EEA State are references to either or both of the following—

- (a) the covering (otherwise than by way of reinsurance) of a risk situated there through an establishment in another EEA State (‘the provision of general insurance’); and
- (b) the covering (otherwise than by way of reinsurance) of a commitment situated there through an establishment in another EEA State (‘the provision of long term insurance’).”

## Meaning of “controller” etc.

**52.** After section 96B of the 1982 Act<sup>(39)</sup> insert—

### “Meaning of ‘controller’ etc.

**96C.**—(1) In this Act ‘controller’, in relation to an insurance company, means—

<sup>(32)</sup> Section 96A was inserted by [S.I. 1990/1333](#), reg 2(1) and amended by [S.I. 1992/2890](#), reg 9(4) and [S.I. 1993/174](#), reg 6(3) to (5).

<sup>(33)</sup> O.J. L228, 11.8.92, page 1.

<sup>(34)</sup> O.J. L228, 16.8.73, page 3.

<sup>(35)</sup> O.J. L172, 4.7.88, page 1.

<sup>(36)</sup> O.J. L360, 9.12.92, page 1.

<sup>(37)</sup> O.J. L63, 13.3.79, page 1.

<sup>(38)</sup> O.J. L330, 29.11.90, page 50.

<sup>(39)</sup> Section 96B was inserted by [S.I. 1990/1333](#), reg 4 and amended by [S.I. 1992/2890](#), reg 9(5).

- (a) a managing director of the company or of a body corporate of which the company is a subsidiary;
  - (b) a chief executive of the company or of a body corporate, being an insurance company, of which the company is a subsidiary;
  - (c) a person in accordance with whose directions or instructions the directors of the company or of a body corporate of which it is a subsidiary are accustomed to act;
  - (d) in the case of UK company, a person who satisfies the requirements of subsection (2) below; or
  - (e) except in the case of a UK company, a person who either alone or with any associate or associates is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any general meeting of the company or of a body corporate of which it is a subsidiary.
- (2) A person satisfies the requirements of this subsection in relation to a UK company if, either alone or with any associate or associates—
- (a) he holds 10 per cent. or more of the shares in the company or another company of which it is a subsidiary undertaking;
  - (b) he is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the company or another company of which it is a subsidiary undertaking; or
  - (c) he is able to exercise a significant influence over the management of the company or another company of which it is such an undertaking by virtue of—
    - (i) a holding of shares in; or
    - (ii) an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of,
 the company or, as the case may be, that other company.
- (3) In this Act—
- ‘shareholder controller’ means a person who is a controller of a UK company by virtue of subsection (2) above;
- ‘10 per cent. shareholder controller’ means a shareholder controller in whose case the percentage referred to in subsection (2) above is 10 or more but less than 20;
- ‘20 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 20 or more but less than 33;
- ‘33 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 33 or more but less than 50;
- ‘50 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 50;
- ‘majority shareholder controller’ means a shareholder controller whose shareholding is such that the UK company is his subsidiary undertaking.
- (4) For the purpose of determining for the purposes of this Act whether any person is a controller of an insurance company or is a shareholder controller, or a shareholder controller of any particular description, of a UK company, ‘associate’ means, subject to subsection (5) below—
- (a) the wife or husband or minor son or daughter of that person;
  - (b) the trustees of any settlement under which that person has a life interest in possession, or, in Scotland, a life interest;



- (c) any company of which that person is a director;
  - (d) any person who is an employee or partner of that person;
  - (e) if that person is a company—
    - (i) any director of that company;
    - (ii) any subsidiary undertaking of that company;
    - (iii) any director or employee of any such subsidiary undertaking; and
  - (f) if that person has made an agreement or arrangement with any other person—
    - (i) with respect to the acquisition, holding or disposal of shares or other interests in the company concerned or another company of which it is a subsidiary undertaking; or
    - (ii) under which they undertake to act together in exercising their voting power in relation to the company concerned or another company of which it is such an undertaking, that other person.
- (5) For the purpose of determining for the purposes of this Act whether any person is a controller of an insurance company other than a UK company, subsection (4) above shall have effect as if—
- (a) paragraphs (b) and (f) were omitted; and
  - (b) in paragraph (e), for the words ‘subsidiary undertaking’, in both places where they occur, there were substituted the word ‘subsidiary’.
- (6) In this section—
- ‘settlement’ includes any disposition or arrangement under which property is held in trust;
  - ‘share’ has the same meaning as in Part VII of the Companies Act or Part VIII of the Companies (Northern Ireland) Order 1986(40);
  - ‘son’ includes stepson and ‘daughter’ includes stepdaughter.
- (7) Any reference in this section to a UK or non-EC company includes a reference to a company which, if any authorisation sought by it were issued, would be such a company.”

### **Meanings of “manager” and “chief executive”**

**53.** After section 96C of the 1982 Act insert—

#### **“Meanings of ‘manager’ and ‘chief executive’.**

**96D.**—(1) In this Act ‘manager’—

- (a) in relation to a UK company, means any person (other than an employee of the company) appointed by the company to manage any part of its business, or any employee of the company (other than a chief executive) who, under the immediate authority of a director or chief executive of the company—
  - (i) exercises managerial functions, or is responsible for maintaining accounts or other records of the company; and
  - (ii) is not a person whose functions relate exclusively to business conducted from a place of business which is not in a member State;

- (b) in relation to an insurance company which is not a UK company, means an employee of the company (other than a chief executive) who, under the immediate authority of a director or chief executive of the company—
  - (i) exercises managerial functions, or is responsible for maintaining accounts or other records of the company; and
  - (ii) is not a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom.

(2) In this Act ‘chief executive’, in relation to an insurance company or body corporate, means an employee of that company or body corporate, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of that company or body corporate.”

### Meaning of “main agent”

54. After section 96D of the 1982 Act insert—

#### “Meaning of ‘main agent’.

96E.—(1) In this Act ‘main agent’—

- (a) in relation to a UK company, means a person appointed by the company to be its agent in respect of general business in one or more member States, with authority to enter into contracts on behalf of the company in any financial year—
  - (i) without limit on the aggregate amount of premiums; or
  - (ii) with a limit in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below;
- (b) in relation to an insurance company which is not a UK company, means, subject to such exceptions as may be prescribed, a person appointed by the company to be its agent in respect of general business in the United Kingdom, with authority to enter into contracts on behalf of the company in any financial year—
  - (i) without limit on the aggregate amount of premiums; or
  - (ii) with a limit in excess of 10 per cent. of that premium limit.

(2) A person shall not be regarded as falling within subsection (1)(a)(i) above in relation to a financial year unless—

- (a) the company is of the opinion that the aggregate amount of premiums, on contracts entered into by him on behalf of the company in that year in respect of general business in the member State or States concerned, will be in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below; or
- (b) the aggregate amount of premiums, on contracts so entered into, actually is in excess of 10 per cent. of that premium limit.

(3) Subject to subsections (4) and (5) below, the premium limit for the purposes of this section is the aggregate of the amounts of gross premiums shown in the annual accounts relating to the company’s business last deposited under section 22 above as receivable in respect of general business in the financial year to which the accounts relate.

(4) If the accounts so deposited relate to a financial year which is not a period of 12 months, the aggregate of the amounts of gross premiums shown in the accounts as receivable in that financial year shall be divided by the number of months in that financial year and multiplied by twelve.

(5) If no accounts have been deposited under section 22 above the aggregate amount of gross premiums shall be the amount or, if more than one amount, the lower or lowest amount, shown in respect of gross premiums relating to the company's business in the financial forecast last submitted by the company in accordance with regulations made for the purposes of section 5(1)(a) above.

(6) Any reference in subsection (3) or (5) above to the company's business is, in the case of an insurance company which is not a UK company, a reference to its business in the United Kingdom."

### **Meaning of "claims representative"**

**55.** After section 96E of the 1982 Act insert—

#### **"Meaning of 'claims representative'.**

**96F.—(1)** In this Act 'claims representative', in relation to an insurance company and an EEA State, means a person who—

- (a) has been designated as the company's representative in that EEA State ('the EEA State concerned'); and
  - (b) satisfies the requirements mentioned in subsections (2) to (5) below.
- (2) The claims representative must be authorised—
- (a) to act on behalf of the company and to represent, or to instruct others to represent, the company in relation to any matters giving rise to relevant claims;
  - (b) to pay sums in settlement of relevant claims;
  - (c) to accept service on behalf of the company of proceedings in respect of relevant claims;

but the authority must not extend to the settlement of relevant claims.

(3) The claims representative must be authorised to represent the company in any proceedings or enquiry to establish the existence or validity of a policy issued by the company which covers or purports to cover relevant motor vehicle risks in the EEA State concerned.

(4) Without prejudice to subsection (2) above, the claims representative must not act on behalf of the company in the carrying on in the EEA State concerned of its general business (other than its reinsurance business, if any).

- (5) The claims representative must—
- (a) in the case of an individual, be resident in the EEA State concerned;
  - (b) in the case of a corporation, have a place of business in that EEA State.

(6) In this section 'relevant claim' means any claim which may be made against a policy issued by the company to the extent that it covers relevant motor vehicle risks situated in the EEA State concerned, whether or not submitted to the company and whether by a policy holder or by a third party having rights of action against the company or a policy holder or by both."