
STATUTORY INSTRUMENTS

1994 No. 1696

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

PART III

AMENDMENTS OF 1986 ACT

Recognition of self-regulating organisations

56.—(1) Paragraph 2 of Schedule 2 to the 1986 Act (requirements for recognition of self-regulating organisation) shall have effect as if it included provision that the rules and practices of the organisation must be such as to secure that no EC company, other than one which has been prohibited under section 65 of that Act from carrying on any investment business, is refused admission to the organisation, or expelled from it, for reasons relating to the undertaking's fitness to carry on any insurance business which is investment business.

(2) Paragraph 3 of that Schedule shall have effect as if it included provision that the rules of the organisation must not include, as respects any EC company—

- (a) provision requiring the institution to have and maintain financial resources in respect of any insurance business carried on by it which is investment business; or
- (b) provision as to any other matter for which, under the third long term insurance Directive, responsibility is reserved to a supervisory authority in the company's home State.

(3) That paragraph shall also have effect as if it included provision that the rules of the organisation must be such as to secure that the exercise of a power falling within paragraph 3(3) of that Schedule as respects any EC company shall be subject to such restrictions as are necessary for the purposes of complying with Article 40 of the third long term insurance Directive.

(4) Paragraph 7 of that Schedule shall have effect as if it included provision that, for the purposes of complying with the third long term insurance Directive, the organisation must be able and willing to co-operate, by the sharing of information and otherwise, with supervisory authorities in other member States.

Authorised insurers

57. Section 22 of the 1986 Act (authorised insurers) shall have effect as if it included provision that an EC company which is authorised in its home State to carry on insurance business which is investment business is an authorised person as respects—

- (a) any insurance business—
 - (i) which it is not precluded by Part I of Schedule 2F to the 1982 Act from carrying on; and
 - (ii) the carrying on of which constitutes the carrying on of investment business in the United Kingdom;
- (b) the provision of any insurance—

- (i) which it is not precluded by Part I of Schedule 2F to the 1982 Act from providing; and
- (ii) provision of which constitutes the carrying on of investment business in the United Kingdom; and
- (c) any other investment business which it is entitled under the law of its home State to carry on.

Conduct of investment business

58.—(1) Section 47A of the 1986 Act⁽¹⁾ (statements of principle) shall have effect as if it included provision that a statement of principle issued under that section shall not include, as respects any EC company, provision as to any matter for which, under the third long term insurance Directive, responsibility is reserved to the supervisory authority in the company's home State.

(2) Section 48 of that Act⁽²⁾ (conduct of business rules) shall have effect as if it included provision that rules under that section shall not include, as respects any EC company, provision as to any matter for which, under that Directive, responsibility is so reserved.

(3) Section 52 of that Act⁽³⁾ (notification regulations) shall have effect as if it included provision that regulations under that section shall not require an EC company to furnish information which is not reasonably required for purposes connected with the exercise of functions under that Act or this Part of these Regulations.

Powers of intervention

59.—(1) Section 64 of the 1986 Act (scope of powers of intervention) shall have effect in relation to an authorised person who is an EC company as if subsection (1)(b) (fitness to carry on investment business) were omitted.

(2) Section 65 of that Act (restriction of business) shall have effect as if it included provision that—

- (a) where it appears to the Board that its power to impose a prohibition under that section is exercisable in relation to an EC company, the Board shall require the company to remedy the situation;
- (b) if the company fails to comply with the requirement under paragraph (a) above within a reasonable time, the Board shall give a notice to that effect to the supervisory authority in the company's home State requesting that authority—
 - (i) to take all appropriate measures for the purpose of ensuring that the company remedies the situation which has given rise to the issue of the notice; and
 - (ii) to inform the Board of the measures it proposes to take or has taken or the reasons for not taking such measures;
- (c) subject to paragraph (d) below, the Board shall not impose a prohibition under that section on the company unless it is satisfied—
 - (i) that the supervisory authority has failed or refused to take measures for the purpose mentioned in sub-paragraph (i) of paragraph (b) above; or
 - (ii) that the measures taken by that authority have proved inadequate for that purpose, and it has informed that authority of its intention to do so;

(1) Section 47A was inserted by the Companies Act 1989 (c. 40), section 192.

(2) Section 48 has been amended by the Companies Act 1989 (c. 40), section 206(1) and Schedule 23, Part I, para 2.

(3) Section 52 has been amended by the Companies Act 1989 (c. 40), section 206(1) and Schedule 23, Part I, para. 5.

- (d) where the Board decides that it should impose a prohibition under that section on an EC company as a matter of urgency in order to protect the interests of investors, the Board may take action—
 - (i) before complying with paragraphs (a) and (b) above; or
 - (ii) where it has complied with those paragraphs, before it is satisfied, and has informed the supervisory authority, as mentioned in paragraph (c) above;
 - (e) where the Board imposes a prohibition under that section on an EC company, the Board shall inform the company in writing of its reasons for doing so.
- (3) In this regulation “the Board” means The Securities and Investments Board.

Information and auditors

60.—(1) Section 104 of the 1986 Act (power to call for information) shall have effect as if references to functions under that Act included references to functions under this Part of these Regulations.

(2) Section 107 of that Act⁽⁴⁾ (appointment of auditors) shall have effect as if the reference in subsection (1)(b) to a member of a recognised self-regulating organisation did not include a reference to an EC company.

Qualifications of designated agency

61. Paragraph 5 of Schedule 7 to the 1986 Act (qualifications of designated agency) shall have effect as if it included provision that, for the purpose of complying with the third long term insurance Directive, the agency must be able and willing to co-operate, by the sharing of information and otherwise, with supervisory authorities in other member States.

Prevention of restrictive practices

62.—(1) Section 119 of the 1986 Act⁽⁵⁾ (recognised self-regulating organisations, investment exchanges and clearing houses) shall have effect as if any reference in subsections (1) and (2) to the protection of investors included a reference to compliance with the third long term insurance Directive.

(2) Section 121 of that Act⁽⁶⁾ (designated agencies) shall have effect as if any reference to the protection of investors included a reference to compliance with the third long term insurance Directive.

Application of 1986 Act to insurance companies

63.—(1) Section 129 of the 1986 Act (application of investment business provisions to regulated insurance companies) shall have effect as if the reference to regulated insurance companies included a reference to EC companies.

(2) In paragraph 2 of Schedule 10 to that Act (regulated insurance companies) shall have effect as if—

- (a) in sub-paragraph (2), the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company; and

⁽⁴⁾ Section 107 has been amended by the Companies Act 1989 (c. 40), section 206(1) and Schedule 23, Part I, para 10.

⁽⁵⁾ Section 119 has been amended by the Companies Act 1989 (c. 40), section 206(1) and Schedule 23, Part I, para 14.

⁽⁶⁾ Section 121 has been amended by the Companies Act 1989 (c. 40), section 206(1) and Schedule 23, Part I, para 15.

- (b) in sub-paragraph (3A)(7), the references to section 81B of that Act were references to paragraph 18 of Schedule 2F to that Act.

Insurance contracts effected in contravention of 1982 Act

64. Section 132 of the 1986 Act (insurance contracts effected in contravention of section 2 of 1982 Act) shall have effect in relation to a contract of insurance which is entered into by a person—

- (a) in the course of carrying on insurance business in contravention of paragraph 1 or 4 of Schedule 2F to the 1982 Act or paragraph 1 of Schedule 2G to that Act; or
- (b) in the course of providing insurance in contravention of paragraph 8, 11, 18, 19 or 23 of the said Schedule 2F or paragraph 5, 9 or 11 of the said Schedule 2G,

as it has effect in relation to a contract of insurance which is entered into by a person in the course of carrying on insurance business in contravention of section 2 of the 1982 Act.

Industrial assurance

65. Section 139(1) of the 1986 Act (industrial assurance) shall have effect as if the reference to carrying on insurance business in contravention of section 2 of the 1982 Act included a reference to carrying on insurance business in contravention of Part I of Schedule 2F to that Act.

Restrictions on disclosure of information

66.—(1) Subject to paragraph (2) below, Part I of Schedule 2B to the 1982 Act (restriction on disclosure of information) shall apply, in place of sections 179 and 180 of the 1986 Act, in relation to any information which—

- (a) was obtained by the Secretary of State or a designated agency for the purposes of, or in the discharge of, functions under that Act or any rules or regulations made under that Act (whether or not by virtue of any requirement to supply it made under those provisions); and
- (b) relates to the business or other affairs of a UK, EC or non-EC company, or any controller, manager, chief executive, general representative, agent or employee of such a company.

(2) Part I of Schedule 2B to the 1982 Act as so applied shall have effect as if—

- (a) any reference to the Secretary of State (except in the Table to paragraph 3(1) and paragraphs 4(2) and 5(3)(b) and (4)(b)) were a reference to the Secretary of State or, as the case may require, the designated agency in question;
- (b) any reference to the 1982 Act were a reference to the 1986 Act; and
- (c) the reference to the 1986 Act in item 1 of that Table were a reference to the 1982 Act.

(3) In subsection (1) of section 180 of the 1986 Act (exceptions from restrictions on disclosure), in paragraph (p), for the words “section 44” substitute the words “section 43A or 44”.

Functions under this Part

67. The functions of The Securities and Investments Board under this Part of these Regulations shall be treated for the purposes of the 1986 Act and the Transfer of Functions (Financial Services) Order 1992(8) as if they were functions under Part VI of that Act which—

- (a) had been functions of the Secretary of State; and

(7) Sub-paragraph (3A) was inserted by [S.I. 1993/174](#), reg 7.

(8) [S.I. 1992/1315](#).

- (b) had been transferred to that Board by the Financial Services Act 1986 (Delegation) Order 1987⁽⁹⁾.