
STATUTORY INSTRUMENTS

1994 No. 1984

FRIENDLY SOCIETIES

The Friendly Societies Act 1992
(Amendment) Regulations 1994

Made - - - - - *21st July 1994*
Laid before Parliament *1st August 1994*
Coming into force - - *1st September 1994*

The Friendly Societies Commission, being a Department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the authorisation of the carrying on by friendly societies of insurance business and the regulation of such business and its conduct and in relation to anything supplemental or incidental to such matters, in exercise of the powers conferred on it by that section and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART I
GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Friendly Societies Act 1992 (Amendment) Regulations 1994, and shall come into force on 1st September 1994.

(2) These Regulations extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the 1992 Act” means the Friendly Societies Act 1992⁽³⁾;

“the commencement date” means 1st September 1994.

(1) S.I. 1992/3197.
(2) 1972 c. 68.
(3) 1992 c. 40.

(2) In these Regulations expressions which are also used in the 1992 Act have the same meanings as in that Act.

PART II

FRIENDLY SOCIETIES COMMISSION

Functions of Commission

3.—(1) At the end of subsection (4) of section 1 of the 1992 Act (Friendly Societies Commission) insert the words “or any provisions of the law of an EEA State other than the United Kingdom which give effect to the general insurance or life Directives”.

(2) After that subsection insert—

“(4A) There shall be conferred on the Commission by virtue of this subsection any functions required to be conferred on it by the general insurance or life Directives.”.

PART III

AUTHORISATION OF FRIENDLY SOCIETIES

Authorisation to carry on business

Grant of authorisation by Commission: general

4. For subsection (4) of section 32 of the 1992 Act (grant of authorisation by Commission: general) substitute—

“(4) Authorisation entitles a friendly society to carry on business anywhere in the United Kingdom unless, in the case of a society which is not one to which section 37(2) or (3) below applies, the terms of its authorisation are at its request expressly restricted to a part of the United Kingdom.”.

Grant of unconditional or conditional authorisation

5. In subsection (2) of section 34 of the 1992 Act (grant of unconditional or conditional authorisation), at the end of paragraph (a) insert the words “and, in the case of a society to which section 37(2) or (3) below applies, each controller of the society is a fit and proper person to be such a controller”.

Powers of Commission in relation to authorised societies

Withdrawal of authorisation in respect of new business

6. In subsection (3) of section 40 of the 1992 Act (withdrawal of authorisation in respect of new business), omit the word “or” at the end of paragraph (f) and after paragraph (g) insert

“or

(h) the society is a society to which section 37(2) or (3) above applies and has not effected any contracts of insurance, or any contracts of insurance of a class (or part of a class), for a period of six months or more.”.

Withdrawal of authorisation to carry on insurance business

7.—(1) In subsection (1) of section 41 of the 1992 Act (withdrawal of authorisation to carry on insurance business), for the words “in the United Kingdom”, in both places where they occur, substitute—

- “(i) in the case of a society to which section 37(2) or (3) above applies, in the European Community;
- (ii) in any other case, in the United Kingdom.”.

(2) In subsection (3) of that section, for the words from “during”, in the first place where it occurs, to “authorisation” substitute—

- “(a) in the case of a society to which section 37(2) or (3) above applies, during the preceding six months;
- (b) in any other case, during a financial year of the society which began and ended during the currency of the authorisation.”.

(3) In sub-paragraph (1) of paragraph 11 of Schedule 13 to that Act (authorisation: supplementary provisions), after paragraph (c) insert—

- “(d) in the case of a direction given in relation to a society to which section 37(2) or (3) above applies which is or has been—
 - (i) carrying on insurance business in an EEA State other than the United Kingdom through an overseas branch in that State, or
 - (ii) providing insurance in an EEA State other than the United Kingdom through an establishment in another EEA State,notify the supervisory authority in that State, or, as the case may be, in each of those States of the direction.”.

PART IV

REGULATION OF BUSINESS

Financial resources

Margins of solvency

8. In subsection (1) of section 48 of the 1992 Act (margins of solvency in relation to insurance business of certain societies), in paragraphs (a) and (b) the words “in the United Kingdom” shall cease to have effect.

Adequacy of assets

9. After section 49 of the 1992 Act insert—

“Adequacy of assets and premiums

Adequacy of assets.

49A.—(1) A friendly society to which section 37(2) or (3) above applies which has entered into contracts of insurance shall secure—

- (a) that its liabilities under those contracts, 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 friendly society to which section 37(2) above applies 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 under the contract 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 under the contract 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, yield and marketability which correspond, as nearly as may be, to the assets on which that reference value is based.
- (3) A friendly society to which section 37(2) above applies 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 56 below.
- (4) In this section—
- “linked benefits”, in relation to a linked long term contract, means benefits payable under the contract 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 the effecting of which constitutes the carrying on of insurance business falling within class III in head A in Schedule 2 to this Act.”.

Adequacy of premiums in respect of long term insurance

10. After section 49A of the 1992 Act insert—

“Adequacy of premiums in respect of long term insurance.

49B.—(1) Before entering into a contract the effecting of which constitutes the carrying on of long term business, a friendly society to which section 37(2) above applies 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 society which are 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 friendly society to which section 37(2) above applies shall not rely on other resources for the purposes of subsection (1) above in such a way as to jeopardise the solvency of the society in the long term.”.

Criteria of prudent management

Criteria of prudent management

11.—(1) For the eighth criterion in subsection (3) of section 50 of the 1992 Act (the criteria of prudent management) substitute—

“**8.** In the case of a society to which section 37(2) or (3) applies, direction and management which, in addition to satisfying the other requirements as to direction and management, is such as to secure compliance with any obligation imposed on the society by any provision (whether of the law of any part of the United Kingdom or of the law of another EEA State) which—

- (a) gives effect to the general insurance or life Directives; or
- (b) is otherwise applicable to the insurance activities of the society.”.

(2) Regulation 2(2) of the Friendly Societies (Amendment) Regulations 1993(4) (which is superseded by paragraph (1) above) shall cease to have effect.

Powers of Commission

Application to court

12. In subsection (2) of section 52 of the 1992 Act (application to court), for paragraph (c) substitute—

- “(c) that the society is failing to satisfy any obligation to which it is subject by virtue of any provision of the law of any EEA State other than the United Kingdom which—
 - (i) gives effect to the general insurance or life Directives; or
 - (ii) is otherwise applicable to the insurance activities of the society in that State;”.

Prohibition on disposal of assets

13. After section 52 of the 1992 Act insert—

“Prohibition on disposal of assets.

52A.—(1) Where the Commission has reason to believe that any of the conditions mentioned in subsection (2) below is satisfied in relation to a friendly society to which section 37(2) or (3) applies, it may apply to the court for an injunction restraining, or in Scotland an interdict prohibiting, the society from disposing of or otherwise dealing with any of its assets to the value of its EC liabilities.

- (2) The conditions referred to in subsection (1) above are—
- (a) that the Commission has given (and not revoked) a direction in respect of the society under section 40 above; or
 - (b) that the society has failed to satisfy an obligation to which it is or was subject by virtue of section 48, 49, 49A above or Part III of the Friendly Societies (Insurance Business) Regulations 1994(5); or

(4) S.I. 1993/2519.

(5) S.I. 1994/1981.

(c) that a submission by the society to the Commission of an account or statement specifies, as the amount of any liabilities of the society, an amount appearing to the Commission to have been determined otherwise than in accordance with—

- (i) valuation regulations; or
- (ii) where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for friendly societies,

and a court shall not make an order under this section unless it is satisfied that one or more of those conditions are satisfied.

(3) Where a court makes an order under this section, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Commission to perform its functions under this Act.

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

(5) In this section any reference to an EC liability is a reference to a liability of the business carried on by the society in the European Community.”.

Supervision of controllers

14.—(1) After section 55 of the 1992 Act insert—

“Supervision of controllers.

55A.—(1) Schedule 13A to this Act shall have effect for making provision for or in connection with the supervision by the Commission of controllers of friendly societies to which section 37(2) or (3) above applies.

(2) In this Act—

“controller”, in relation to a friendly society to which section 37(2) or (3) of this Act applies, means a person who, either alone or with any associate or associates—

- (a) is entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
- (b) is able to exercise a significant influence over the management of the society by virtue of an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of the society;

“notifiable voting rights”, in relation to a friendly society to which section 37(2) or (3) above applies, means voting rights which, if acquired by any person, will result in his becoming a 10 per cent. controller, a 20 per cent. controller, a 33 per cent. controller, a 50 per cent. controller or a majority controller of the society.

(3) In this section and Schedule 13A to this Act, in relation to a friendly society to which section 37(2) or (3) above applies—

“10 per cent. controller” means a controller in whose case the percentage referred to in paragraph (a) of the definition of “controller” in subsection (2) above is 10 or more but less than 20;

“20 per cent. controller” means a controller in whose case that percentage is 20 or more but less than 33;

“33 per cent. controller” means a controller in whose case that percentage is 33 or more but less than 50;

“50 per cent. controller” means a controller in whose case that percentage is 50;

“majority controller” means a controller in whose case that percentage is more than 50.”.

(2) After Schedule 13 to the 1992 Act insert Schedule 1 to these Regulations (supervision of controllers of friendly societies to which section 37(2) or (3) applies), as Schedule 13A.

Business etc. in other EEA States

Recognition of societies in accordance with insurance Directives

15.—(1) For section 57 of the 1992 Act substitute—

“57 Recognition of societies in accordance with insurance Directives.

57. Schedule 13B to this Act shall have effect for making provision for or in connection with the recognition in other EEA States of friendly societies to which section 37(2) or (3) of this Act applies.”.

(2) After Schedule 13A to that Act insert Schedule 2 to these Regulations (recognition of friendly societies in other EEA States), as Schedule 13B.

(3) If a friendly society to which section 37(2) or (3) of the 1992 Act applies was immediately before the commencement date lawfully carrying on direct insurance business of a class or part of a class in a member State other than the United Kingdom through an overseas branch in that State, it shall be treated for the purposes of that Act as if the requirements of paragraph 1 of Schedule 13B to that Act had been complied with in relation to insurance business of that class or part of a class.

(4) If a friendly society to which section 37(2) or (3) of the 1992 Act applies was immediately before the commencement date lawfully providing insurance of a class or part of a class in a member State other than the United Kingdom through an establishment in another member State, it shall be treated for the purposes of that Act as if the requirements of paragraph 5 of Schedule 13B to that Act had been complied with in relation to insurance of that class or part of a class.

(6) Regulation 4 of the Friendly Societies (Amendment) Regulations 1993 (which is superseded by this regulation) shall cease to have effect.

Notification by Commission of measures taken by it

16. For section 57A of the 1992 Act substitute—

“57A Notification by Commission of measures taken by it.

(1) This section applies where the Commission is considering taking or has taken any measures in relation to a friendly society to which section 37(2) or (3) above applies which—

- (a) carries on insurance business through an overseas branch in an EEA State other than the United Kingdom; or
- (b) provides insurance in an EEA State other than the United Kingdom through an establishment in another EEA State.

(2) The Commission—

- (a) shall, if required by Article 24 of the first life Directive or Article 20 of the first general insurance Directive, or by any other provision of the life or general insurance Directives to do so, notify any supervisory authority of such a State of those measures or proposed measures; and
- (b) may, if it is satisfied that it is expedient to do so, request that authority to take similar measures in relation to the friendly society.

(3) In this section “measure” includes imposing conditions which prohibit the disposals of assets and exercising any power conferred by this Part of the Act.”.

Information

Powers to obtain information and documents etc.

17.—(1) In subsection (4)(a) of section 62 of the 1992 Act (powers to obtain information and documents etc.) after the word “society” insert the words “or, in the case of a society to which section 37(2) or (3) above applies, a controller or manager of the society”.

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

“(5A) Any person authorised by the Commission may, on producing if required evidence of his authority, enter any premises occupied by—

- (a) any body which is a friendly society to which section 37(2) or (3) above applies, or is a subsidiary of, or body jointly controlled by, such a society, and on which a notice has been served under subsection (3) above; or
- (b) any person who is or has been a controller, manager, officer, employee or agent of such a society, or of a subsidiary of, or body jointly controlled by, such a society, and on whom a notice has been served under subsection (4) or (5) above,

for the purpose of obtaining the information or documents required by the notice and exercising the powers conferred by subsection (3) above.”.

Exceptions from restrictions on disclosure

18. After subsection (7) of section 64 of the 1992 Act (exceptions from restrictions on disclosure) insert—

“(7A) In the case of restricted information which relates to the business or other affairs of a friendly society to which section 37(2) or (3) above applies, no disclosure may be made by virtue of subsection (1), (3), (4) or (7) above unless the disclosure appears to be in accordance with—

- (a) Article 16 of the third general insurance Directive; or
- (b) Article 15 of the third life Directive.”.

Inspections etc.

Investigations on behalf of Commission

19.—(1) After subsection (1) of section 65 of the 1992 Act (investigations on behalf of the Commission) insert—

“(1A) Where a person has notified the Commission under paragraph 1 or 2 of Schedule 13A to this Act of his intention to become a controller of or to acquire notifiable voting rights in a friendly society to which section 37(2) or (3) above applies, the Commission may, if it appears to it desirable to do so, appoint one or more competent persons to investigate and report to it on whether, if that person became such a controller or acquired such voting rights, the criteria of prudent management would be fulfilled with respect to the society.”.

(2) In subsections (2) and (3) of that section, after the words “subsection (1)” insert the words “or (1A)”.

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

“(3A) A person appointed under subsection (1) or (1A) above may enter any premises occupied by a friendly society to which section 37(2) or (3) above applies or any subsidiary of or body jointly controlled by such a society 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) In subsection (5) of that section, after the words “subsection (1)” insert the words “or (1A)”.

(5) After that subsection insert—

“(5A) In relation to a friendly society to which section 37(2) or (3) above applies, any reference in subsection (3) or (5) above to a person who is or has been an officer shall be read as including a reference to a person who is or has been a controller or manager.”.

Inspections: supplementary provision

20. After subsection (10) of section 67 of the 1992 Act (inspections: supplementary provision) insert—

“(10A) In relation to a friendly society to which section 37(2) or (3) above applies—

- (a) any reference in subsection (1), (2) or (4) above to officers shall be read as including a reference to controllers or managers; and
- (b) any reference in subsection (3) or (6) above to an officer shall be read as including a reference to a controller or manager.”.

PART V

CONDUCT OF BUSINESS

Information for members

21.—(1) After section 67 of the 1992 Act insert—

“Information for members.

67A. Schedule 13C to this Act shall have effect for requiring friendly societies to which section 37(2) or (3) above applies to furnish members with the information there mentioned.”.

(2) After Schedule 13B to the 1992 Act insert Schedule 3 to these Regulations (information for members of friendly societies to which section 37(2) or (3) applies), as Schedule 13C.

Statutory notice

22. After section 67A of the 1992 Act insert—

“Statutory notice.

67B.—(1) Subject to subsection (7) below, unless the requirements of subsection (2) below are fulfilled no friendly society to which section 37(2) above applies shall enter into a contract the effecting of which constitutes—

- (a) the carrying on of long term business in the United Kingdom; or
- (b) the provision there of long term insurance.

(2) The requirements of this subsection are that—

- (a) the society sends by post to the other party to the contract, at or before the time when it is entered into, a statutory notice in relation to that contract; or
 - (b) a representative of the society gives such notice to that party at that time.
- (3) Where a statutory notice is sent to the other party to the proposed contract before the time when it is entered into, the society shall, not later than 14 days after the contract has become binding, inform the party in writing that it has done so.
- (4) For the purposes of this section a statutory notice is a notice which—
- (a) contains such matters (and no others) and is in such form as may be prescribed by regulations made under section 2(2) of the European Communities Act 1972⁽⁶⁾ and complies with such requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) as may be so prescribed for securing that the notice is easily legible; and
 - (b) has annexed to it a form of notice of cancellation of such description as may be so prescribed for use under section 67C below.
- (5) The Commission may, on the application of a friendly society, alter the requirements in relation to the notice referred to in subsection (4)(a) above so as to adapt those requirements to the circumstances of that society or to any particular kind of contract proposed to be entered into by that society.
- (6) Any society which contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale but, without prejudice to section 67C(2) below, no contract shall be invalidated by reason of the fact that the society has contravened this section in relation to that contract.
- (7) Subsection (1) above does not apply to—
- (a) a contract the effecting of which by the society constitutes the carrying on of investment business (within the meaning of the Financial Services Act 1986⁽⁷⁾);
 - (b) a contract the effecting of which by the society constitutes the carrying on of industrial assurance business;
 - (c) a contract the other party to which is habitually resident in a member State other than the United Kingdom;
 - (d) a contract the other party to which is not an individual;
 - (e) a contract of term assurance effected for a period of six months or less; or
 - (f) a contract of reinsurance.
- (8) In sections 67C and 67D below “statutory notice” has the same meaning as in this section.”.

Right to withdraw from transaction

23. After section 67B of the 1992 Act insert—

“Right to withdraw from transac– tion.

67C.—(1) A person who has received a statutory notice in relation to a contract may, before the expiration of the fourteenth day after that on which he is informed in writing that the contract has become binding, serve a notice of cancellation on the friendly society.

(6) 1972 c. 68.

(7) 1986 c. 60.

(2) A person to whom a friendly society to which section 37(2) above applies ought to have, but has not, sent a statutory notice in relation to a contract may serve a notice of cancellation on the society; but if the society sends him a statutory notice in relation to the contract before he has served a notice of cancellation under this subsection, then without prejudice to his right to serve a notice of cancellation under subsection (1) above, his right to do so under this subsection shall cease.

(3) A notice of cancellation may, but need not, be in the form annexed to the statutory notice and shall have effect if, however expressed, it indicates the intention of the person serving it to withdraw from the transaction in relation to which the statutory notice was or ought to have been sent.

(4) Where a person serves a notice of cancellation, then—

- (a) if at the time when the notice is served the contract has been entered into, the notice shall operate so as to rescind the contract;
- (b) in any other case, the service of the notice shall operate as a withdrawal of any offer to enter into the contract which is contained in, or implied by, any proposal made to the society by the person serving the notice of cancellation and as notice to the society that any such offer is withdrawn.

(5) Where a notice of cancellation operates to rescind a contract or as the withdrawal of an offer to enter into a contract—

- (a) any sum which the person serving the notice has paid in connection with the contract (whether by way of premium or otherwise and whether to the society or to a person who is the agent of the society for the purpose of receiving that sum) shall be recoverable from the society by the person serving the notice;
- (b) any sum which the society has paid under the contract shall be recoverable by him from the person serving the notice.

(6) Any sum recoverable under subsection (5) above shall be recoverable in any court of competent jurisdiction.”.

Service of notice of cancellation

24. After section 67C of the 1992 Act insert—

“Service of notice of cancellation.

67D.—(1) For the purposes of section 67C above a notice of cancellation—

- (a) shall be deemed to be served on the society if it is sent by post addressed to any person specified in the statutory notice as a person to whom a notice of cancellation may be sent, and is addressed to that person at an address so specified; and
- (b) where paragraph (a) above applies, shall be deemed to be served on the society at the time when it is posted.

(2) Subsection (1) above shall have effect without prejudice to the service of a notice of cancellation (whether by post or otherwise) in any way in which the notice could be served apart from that subsection, whether the notice is served on the society or on a person who is the agent of the society for the purpose of receiving such a notice.

(3) A notice of cancellation which is sent by post to a person at his proper address, otherwise than in accordance with subsection (1) above, shall be deemed to be served on him at the time when it is posted.

(4) So much of section 7 of the Interpretation Act 1978 as relates to the time when service is deemed to have been effected shall not apply to a notice of cancellation.”.

PART VI

TRANSFERS OF ENGAGEMENTS

Confirmation by Commission

25.—(1) In Schedule 15 to the 1992 Act (amalgamations, transfers of engagements and conversions: supplementary), Part II (confirmation by Commission) shall, subject to subparagraph (2) below, have effect subject to the amendments specified in Schedule 4 to these Regulations.

(2) Where, in the case of any transfer of engagements by a friendly society to which section 37(2) or (3) of the 1992 Act applies, the contents of the statement required by paragraph 1 of Schedule 15 to that Act has been approved by the Commission under paragraph 2(2) of that Schedule before the commencement date, the amendments made by Schedule 4 to these Regulations shall not have effect in relation to that transfer.

(3) Regulation 5 of the Friendly Societies (Amendment) Regulations 1993 (which is superseded by this regulation) shall cease to have effect.

Actuary’s report as to margin of solvency

26.—(1) In subsection (2) of section 87 of the 1992 Act (actuary’s report as to margin of solvency), for paragraph (a) substitute—

- “(a) the fulfilment of any of the engagements to be transferred will constitute—
- (i) in the case of a transferor to which subsection (2) or (3) of section 37 above applies, the carrying on of insurance business in one or more member States, or
 - (ii) in the case of a transferor to which neither of those subsections applies, the carrying on of insurance business in the United Kingdom, and”.

(2) A person who—

- (a) is guilty of an offence under subsection (6) of that section; but
- (b) would not have been subject to the provisions of that subsection if this regulation had not been made,

shall not be liable on summary conviction to imprisonment for a term exceeding three months.

Actuary’s report on transfer of long term business

27. In subsection (1) of section 88 of the 1992 Act (actuary’s report on transfer of long term business), for paragraph (a) substitute—

- “(a) a friendly society (“a transferor society”) proposes to transfer to any person engagements the fulfilment of which will constitute—
- (i) in the case of a society to which subsection (2) or (3) of section 37 above applies, the carrying on of long term business in one of more member States; or
 - (ii) in the case of a society to which neither of those subsections applies, the carrying on of long term business in the United Kingdom; or”.

Issue of certificates by Commission

28. After section 90 of the 1992 Act insert—

“Issue of certificates by Commission.

90A.—(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 to a friendly society to which section 37(2) or (3) above applies 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 such a friendly society all its rights and obligations under such general policies, or general policies of such descriptions, as may be so specified,

the Commission may, if it is satisfied that the transferee possesses (after taking the proposed transfer into account) the margin of solvency required by section 48 above, issue a certificate to that effect.

(2) In this section—

“EC company”, “non-EC company” and “Swiss general insurance company” have the same meanings as in the Insurance Companies Act 1982;

“general policy” means a policy evidencing a contract (other than a contract of reinsurance) the effecting of which by the transferor constituted the carrying on of general business of any class;

“long term policy” means a policy evidencing a contract (other than a contract of reinsurance) the effecting of which by the transferor constituted the carrying on of long term business of any class.”.

PART VII

SUPPLEMENTAL

Insurance business etc.

29.—(1) In subsection (1) of section 117 to the 1992 Act (insurance business etc.), after the definition of “insurance business” insert—

““direct insurance business” means insurance business other than reinsurance business and “direct insurance” shall be construed accordingly;”

(2) In subsection (6) of that section, for the words “member State”, in each place where they occur, substitute the words “member or EEA State”.

(3) After subsection (7) of that section insert—

“(8) In this Act references, in relation to a friendly society to which section 37(2) or (3) above applies, 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”).

(9) In this Act “establishment”, in relation to a friendly society to which section 37(2) or (3) above applies, means the registered office or an overseas branch of the society.

Any permanent presence of such a society in an EEA State other than the United Kingdom shall be regarded for those purposes as a single overseas branch, whether that presence consists of a single office which, or two or more offices each of which—

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

General interpretation

30. In subsection (1) of section 119 of the 1992 Act (general interpretation)—

- (a) after the definition of “contract of insurance” insert—
 - ““controller” has the meaning given by section 55A above;”;
- (b) after the definition of “the criteria of prudent management” insert—
 - ““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽⁸⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁹⁾;
 - “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 Liechtenstein;
 - “EFTA State” means an EEA State which is not a member State;”;
- (c) for the definition of “the general insurance Directives” substitute—
 - ““the general insurance Directives” means the first general insurance Directive, the second general insurance Directive and the third general insurance Directive as amended, and such other Directives as make provision with respect to the business of direct insurance other than life assurance;”;
- (d) for the definition of “the life Directives” substitute—
 - ““the life Directives” means the first life Directive, the second life Directive and the third life Directive as amended, and such other Directives as make provision with respect to the business of direct life assurance;
 - “manager”, in relation to a friendly society to which section 37(2) or (3) above applies, means any person (other than an employee of a society) appointed by the society to manage any part of its insurance business, or any employee of the society (other than a chief executive) who, under the immediate authority of a member of the committee of management or chief executive of the society—
 - (a) exercises managerial functions, or is responsible for maintaining accounts or other records of the society; and
 - (b) is not a person whose functions relate exclusively to business conducted from a place of business which is not in a member State;”;

⁽⁸⁾ O.J. L1, 3.1.94, page 3.

⁽⁹⁾ O.J. L1, 3.1.94, page 572.

- (e) after the definition of “notice” insert—
““notifiable voting rights” has the meaning given by section 55A above;”;
- (f) after the definition of “subsidiary” insert—
““supervisory authority”, in relation to an EEA State other than the United Kingdom, means the authority responsible in that State for supervising insurance companies;
“the third general insurance Directive” means Council Directive 92/49/EEC of 18th June 1992(10) on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC(11) and 88/357/EEC(12);
“the third life Directive” means Council Directive 92/96/EEC of 10th November 1992(13) on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC(14) and 90/619/EEC(15);”.

Meaning of “associate”

31. After section 119 of the 1992 Act insert—

“Meaning of “associate”.

119A.—(1) In this Act “associate”, in relation to any person entitled to exercise or control the exercise of voting power in relation to a friendly society to which section 37(2) or (3) above applies, means—

- (a) the wife or husband or minor son or daughter of that person;
 - (b) any company of which that person is a director;
 - (c) any person who is an employee or partner of that person;
 - (d) 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 under- taking; and
 - (e) if that person has made an agreement or arrangement with any other person under which they undertake to act together in exercising their voting power in relation to the society, that other person.
- (2) In this section—
“minor”, in relation to Scotland, means not having attained the age of sixteen;
“son” includes stepson and “daughter” includes stepdaughter;
“subsidiary undertaking” has the same meaning as in the Insurance Companies Act 1982(16).”.

(10) O.J. L228, 11.8.92, page 1.

(11) O.J. L228, 16.8.73, page 3.

(12) O.J. L172, 4.7.88, page 1.

(13) O.J. L360, 9.12.92, page 1.

(14) O.J. L63. 13.3.79, page 1.

(15) O.J. L330, 29.11.90, page 50.

(16) 1982 c. 50.

Meaning of “main agent”

32. After section 119A of the 1992 Act insert—

“Meaning of “main agent”.

119B.—(1) In this Act “main agent”, in relation to a society to which section 37(2) or (3) above applies, means a person appointed by the society to be its agent in respect of general business in a member State with authority to enter into contracts on behalf of the society in any financial year—

- (a) without limit on the aggregate amount of premiums; or
- (b) with a limit in excess of the 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below.

(2) A person shall not be regarded as falling within subsection (1)(a) above unless—

- (a) the society is of the opinion that the aggregate amount of premiums, on contracts entered into by him on behalf of the society 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) to (6) below, the premium limit for the purposes of subsections (1) and (2) above is the aggregate of the amounts of gross premiums shown in the annual accounts relating to the society’s business last sent to the Commission under section 78 above as receivable in respect of general business in the financial year to which the accounts relate.

(4) If the accounts so sent 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 the financial year and multiplied by twelve.

(5) If no accounts have been sent to the Commission under section 78 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 society’s business in the financial forecast last submitted by the society in accordance with regulations made for the purposes of paragraph 2(2) of Schedule 13 to this Act.

(6) Any reference in subsection (3) or (5) above to the society’s business is a reference to its business in the member State or States in which the agent has authority to enter into contracts on its behalf.”.

In witness whereof the common seal of the Friendly Societies Commission is hereunto fixed, and is authenticated by me, a person authorised under paragraph 13 of Schedule 1 to the Friendly Societies Act 1992, on 21st July 1994.

L.S.

Michael Cook
Secretary to the Commission

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SCHEDULE 1

Regulation 14

[SCHEDULE 13A TO 1992 ACT]
SUPERVISION OF CONTROLLERS OF FRIENDLY
SOCIETIES TO WHICH SECTION 37(2) OR (3) APPLIES

Approval of person proposing to become controller

1.—(1) No person shall become a controller of a friendly society to which section 37(2) or (3) above applies unless—

- (a) he has served on the Commission a notice stating—
 - (i) that he intends to become a controller of the society; and
 - (ii) the details of the voting rights which he proposes to acquire; and
- (b) either the Commission has, before the expiration of the period of three months beginning with the date of service of that notice, notified him that there is no objection to his becoming a controller of the society, or that period has elapsed without the Commission having served on him a notice of objection.

(2) The Commission may serve a notice of objection under sub-paragraph (1) above on the ground—

- (a) that it appears to the Commission that the person concerned is not a fit and proper person to become a controller of the society; or
- (b) that it appears to it that, if that person were to acquire such voting rights, the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.

(3) Before serving such a notice the Commission shall serve on the person proposing to become a controller a preliminary notice stating—

- (a) that the Commission is considering the service on that person of a notice of objection on that ground; and
- (b) that the person may, within the period of one month from the date of service of the preliminary notice, make written representations to the Commission and, if that person so requests, oral representations to an officer of the Commission appointed for the purpose by the Commission.

(4) The Commission shall not be obliged to disclose to any person any particulars of the ground on which he is considering the service on him of a notice of objection.

(5) Where representations are made in accordance with this paragraph the Commission shall take them into consideration before serving the notice of objection.

Approval of acquisition of notifiable voting rights

2.—(1) No person who is a controller of a friendly society to which section 37(2) or (3) above applies shall acquire notifiable voting rights in the society unless—

- (a) he has served on the Commission a notice stating—
 - (i) that he intends to acquire such voting rights; and
 - (ii) the details of the voting rights which he proposes to acquire; and
- (b) either the Commission has, before the expiration of the period of three months beginning with the date of service of that notice, notified him that there is no objection to his proposed

acquisition of the voting rights, or that period has elapsed without the Commission having served on him a notice of objection.

(2) The Commission may serve a notice of objection under sub-paragraph (1) above on the ground—

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

(3) Sub-paragraphs (3) to (5) of paragraph 1 above shall, with the necessary modifications, apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

Provisions supplementing paragraphs 1 and 2

3.—(1) This paragraph applies where a person who proposes—

- (a) to become a controller of a friendly society to which section 37(2) or (3) above applies; or
- (b) to acquire notifiable voting rights in such a society,

has served notice on the Commission under sub-paragraph (1)(a) of paragraph 1 or 2 above (“the relevant paragraph”).

(2) The Commission may by notice require the person serving the notice to provide such additional information or documents as the Commission may reasonably require for the purpose of deciding whether to serve—

- (a) a notice of objection under the relevant paragraph; or
- (b) a notice imposing conditions under paragraph 5 below.

(3) Where additional information or documents are required from any person by a notice under sub-paragraph (2) above, the time between the giving of that notice and the receipt of the information or documents shall be added to the period mentioned in sub-paragraph (1)(b) of the relevant paragraph.

(4) The notice shall be of no effect for the purposes of sub-paragraph (1) of the relevant paragraph if either the notice is withdrawn or—

- (a) in the case of a notice under paragraph 1(1)(a) above, the person by whom it was served does not become a controller of the society; or
- (b) in the case of a notice under paragraph 2(1)(a) above, the person by whom it was served does not acquire the voting rights specified in the notice,

before the end of the period of one year beginning with the date mentioned in sub-paragraph (5) below.

(5) The date referred to in sub-paragraph (4) above is as follows—

- (a) in the case where the Commission has, before the end of the period mentioned in sub-paragraph (1)(b) of the relevant paragraph, given to the person serving the notice such a notification as is mentioned in that provision, the date of that notification;
- (b) in a case where the Commission has, before the end of that period, served a notice imposing conditions on that person in accordance with paragraph 5 below, the date of the service of that notice; and
- (c) in any other case, the date immediately following the end of that period.

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(6) The period mentioned in sub-paragraph (1)(b) of the relevant paragraph shall be deemed not to expire until fourteen days after the end of the period within which representations may be made in accordance with that paragraph.

Notice of objection where requisite notice not given

- 4.—(1) This paragraph applies where a person—
- (a) becomes a controller of a friendly society to which section 37(2) or (3) above applies; or
 - (b) acquires notifiable voting rights in such a society,
- in contravention of sub-paragraph (1)(a) of paragraph 1 or 2 above; and references in this paragraph to the person in breach shall be construed accordingly.
- (2) The Commission—
- (a) may serve the person in breach with a notice of objection at any time within three months after it becomes aware of the contravention; and
 - (b) for the purpose of deciding whether to serve the person in breach with such a notice or with a notice imposing conditions under paragraph 5 below, may require that person by notice to provide such information or documents as the Commission may reasonably require.
- (3) Before serving a notice of objection under sub-paragraph (2) above, the Commission shall serve on the person in breach a preliminary notice—
- (a) stating that the Commission is considering serving a notice of objection on the person in breach; and
 - (b) specifying the matters mentioned in sub-paragraph (5) below as respects which the Commission is not satisfied.
- (4) A person served with a preliminary notice under sub-paragraph (3) above may, within the period of one month from the date of service of that notice—
- (a) make written representations to the Commission; and
 - (b) if that person so requests, oral representations to an officer of the Commission appointed for that purpose by the Commission.
- (5) The Commission shall not serve a notice of objection under sub-paragraph (2) above unless it appears to the Commission—
- (a) that the person in breach is not or may not be a fit and proper person to be a controller of the society or to retain the notifiable voting rights in the society; or
 - (b) that the interests of members and potential members of the society are or may in some other manner be jeopardised by that person's ability to influence the society.
- (6) Where representations are made in accordance with this paragraph the Commission shall take them into consideration before a notice of objection.
- (7) The Commission shall not be obliged to disclose to the person in breach any particulars of the ground on which he is considering the service of a notice of objection.
- (8) The period mentioned in sub-paragraph (2)(a) above shall be deemed not to expire until fourteen days after the end of the period within which representations may be made in accordance with this paragraph.

Notices imposing conditions

- 5.—(1) This paragraph applies where either—

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(a) paragraph 3 above applies and the Commission is entitled to serve a notice of objection under the relevant paragraph; or

(b) paragraph 4 above applies;

and expressions in this paragraph which are also used in paragraph 3 or 4 above have the same meanings as in that paragraph.

(2) If the Commission considers that, if certain conditions were complied with—

(a) by the person serving the notice under sub-paragraph (1)(a) of the relevant paragraph; or

(b) by the person in breach,

the criteria of prudent management would continue to be or, as the case may be, would be fulfilled in respect of the society, it may, instead of serving a notice of objection under the relevant paragraph or paragraph 4 above, serve on that person a notice requiring those conditions to be complied with by that person (“the person concerned”).

(3) Before serving a notice under sub-paragraph (2) above, the Commission shall serve on the person concerned a preliminary notice stating—

(a) that the Commission is considering serving a notice under sub-paragraph (2) above;

(b) the conditions which would be required by such a notice to be complied with by that person;

(c) the criteria of prudent management which it considers would not be fulfilled in respect of the society if neither such a notice nor a notice of objection were served on that person; and

(d) that the person may, within the period of one month from the date of service of the preliminary notice—

(i) make written representations to the Commission; and

(ii) if that person so requests, oral representations to an officer of the Commission appointed for the purpose by the Commission.

(4) Where representations are made in accordance with this paragraph the Commission shall take them into consideration before serving a notice under sub-paragraph (2) above.

(5) The Commission shall not be obliged to disclose to the person concerned any particulars of the ground on which it is considering service on that person of a notice under sub-paragraph (2) above or a notice of objection under the relevant paragraph or, as the case may be, paragraph 4 above.

Objection to existing controller

6.—(1) Where it appears to the Commission, as respects a friendly society to which section 37(2) or (3) above applies, that the criteria of prudent management are not or may not be fulfilled in respect of the society by reason of the ability of a person who is a controller of the society to influence the society, it may serve on that person a notice of objection to that person continuing to be a controller of the society.

(2) Before serving a notice of objection under this paragraph, the Commission shall serve on the person concerned a preliminary notice stating that the Commission is considering serving a notice of objection under this paragraph.

(3) A notice under sub-paragraph (2) above shall—

(a) give particulars of the rights conferred by sub-paragraph (4) below; and

(b) specify the criteria of prudent management which are not or may not be fulfilled in respect of the society.

(4) A person served with a notice under sub-paragraph (2) above may, within the period of one month beginning with the day on which the notice is served—

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- (a) make written representations to the Commission; and
 - (b) if that person so requests, oral representations to an officer of the Commission appointed for the purpose by the Commission.
- (5) Where representations are made in accordance with this paragraph, the Commission shall take them into account in deciding whether to serve a notice of objection.
- (6) The Commission shall not be obliged to disclose to the person concerned or to the society any particulars of the ground on which it is considering the service of a notice of objection.

Restrictions etc. as respects voting rights

- 7.—(1) This paragraph applies where a person—
- (a) has contravened paragraph 1 or 2 above by becoming a controller of a friendly society to which section 37(2) or (3) above applies, or by acquiring notifiable voting rights in such a society;
 - (b) having become such a controller or acquired such voting rights in contravention of paragraph 1 or 2 above, continues to be such a controller or to retain those voting rights after being served with a notice of objection under paragraph 4 above;
 - (c) having been served with a notice imposing conditions under paragraph 5 above, has failed to comply with any of the conditions specified in that notice; or
 - (d) having been served with a notice of objection under paragraph 6 above to his continuing to be such a controller, continues to be such a controller;
- and references in this paragraph to the person in breach shall be construed accordingly.
- (2) The Commission may by notice served on the person in breach direct that—
- (a) no voting rights shall be exercisable by that person;
 - (b) that any vote cast by that person shall be ineffective;
 - (c) that any resolution adopted, in relation to which that person voted, shall be ineffective and treated as void;
 - (d) any appointment of that person as a delegate shall be void;
 - (e) that person may be disqualified from membership of the society.
- (3) A copy of the notice served on the person in breach under sub-paragraph (2) above shall be served on the society to whose voting rights it relates.

Notification of changes of controller

- 8.—(1) A person who becomes or ceases to be—
- (a) a controller of a friendly society to which section 37(2) or (3) above applies; or
 - (b) a 10 per cent. controller, a 20 per cent. controller, a 33 per cent. controller, a 50 per cent. controller or a majority controller of such a society,
- shall, before the expiration of the period of seven days beginning with the day next following that on which he does so, notify the society of that fact.
- (2) If, after ceasing to be a controller of any description mentioned in sub-paragraph (1) above, a person will still be a controller of the society, his notice under that sub-paragraph shall state the percentage of the voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control.

(3) A friendly society to which section 37(2) or (3) above applies shall give notice to the central office of the fact that any person has become or ceased to be—

- (a) a controller of the society; or
- (b) a controller of the society of any description mentioned in sub-paragraph (1) above;

and that notice shall be given before the expiration of the period of one month beginning with the day next following that on which that fact comes to the society's knowledge.

(4) Any notice under this paragraph shall state—

- (a) the person's full name and address;
- (b) the date on which he became, or ceased to be, a controller of the society, or a controller of the society of any description mentioned in sub-paragraph (1) above; and
- (c) in the case of a person becoming such a controller, the date of his birth.

(5) Any person who fails to comply with sub-paragraph (1) or (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) On receipt of a notice under this paragraph, the central office shall record the name of the person to whom the notice relates and the date on which he became or, as the case may be, ceased to be a controller of any description, in the public file of the society.

SCHEDULE 2

Regulation 15

[SCHEDULE 13B TO 1992 ACT]
RECOGNITION IN OTHER EEA STATES OF FRIENDLY
SOCIETIES TO WHICH SECTION 37(2) OR (3) APPLIES

PART I

FRIENDLY SOCIETIES CARRYING ON BUSINESS ETC, IN OTHER MEMBER STATES

Requirements for carrying on insurance business

1.—(1) A friendly society to which section 37(2) or (3) above applies shall not carry on direct insurance business of a class or part of a class through an overseas branch in a member State other than the United Kingdom unless—

- (a) the society is authorised under section 32 above to carry on insurance business of that class or part of a class; and
- (b) the requirements of this paragraph have been complied with in relation to that branch.

(2) The requirements of this paragraph are—

- (a) that the society has given to the Commission a notice containing both the requisite EC details and the requisite UK details;
- (b) that the Commission has given to the supervisory authority in the member State in which the overseas branch is to be established (“the member State of the branch”)—
 - (i) a notice which contains the requisite EC details; and
 - (ii) a certificate in accordance with sub-paragraph (3) below; and

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- (c) that either—
 - (i) that authority has informed the Commission of the conditions which, in the interest of the general good, must be complied with by the society in carrying on insurance business through the branch; or
 - (ii) the period of two months beginning with the day on which the Commission gave that authority the certificate mentioned in paragraph (b) above has elapsed.
- (3) A certificate is in accordance with this sub-paragraph if it—
 - (a) attests that the society has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
 - (i) Articles 16 and 17 of the first general insurance Directive, and
 - (ii) Articles 19 and 20 of the first life Directive; and
 - (b) indicates the classes of insurance business which the society is authorised to carry on in the United Kingdom.
- (4) The Commission shall, within the period of three months beginning with the date on which the society's notice was received—
 - (a) give the notice and certificate referred to in sub-paragraph (2)(b) above; or
 - (b) refuse to give either or both of those documents.
- (5) The Commission shall, within the period of three months referred to in sub-paragraph (4) above, notify the society—
 - (a) that it has given the notice and certificate referred to in sub-paragraph (2)(b) above, stating the date on which it did so; or
 - (b) that it has refused to give either or both those documents, stating the reasons for the refusal.
- (6) The Commission shall not refuse to give the notice referred to in sub-paragraph (2)(b) above unless, having regard to the business to be carried on through the overseas branch, it appears to it that the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.
- (7) Where the supervisory authority in the member State of the branch has informed the Commission as mentioned in paragraph (2)(c)(i) above, the Commission shall forward the information to the society.

2.—(1) A friendly society to which section 37(2) or (3) above applies shall not change the requisite EC details of an overseas branch—

- (a) which has been established by it in a member State other than the United Kingdom (“the member State of the branch”); and
- (b) through which it carries on direct insurance business,

unless the requirements of this paragraph have been complied with in relation to its making of the change.

- (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are—
 - (a) that the society has given a notice to the Commission, and to the supervisory authority in the member State of the branch, stating the details of the proposed change not less than one month before the change is to take place;
 - (b) that the Commission has sent to that authority a notice in accordance with sub-paragraph (4)(a) below; and
 - (c) that either—

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- (i) that authority has informed the society of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the society in carrying on insurance business through the branch; or
- (ii) the period of two months beginning with the day on which the society gave that authority the notice of the proposed change in accordance with paragraph (a) above has elapsed.

(3) In the case of a change occasioned by circumstances beyond the society's control, the requirements of this paragraph are that the society shall as soon as practicable (whether before or after the change) give a notice to the Commission, and to the supervisory authority in the member State of the branch, stating the details of the change.

(4) The Commission shall, as soon as practicable after receiving a notice under sub-paragraph (2) (a) above—

- (a) give notice to the the supervisory authority in the member State of the branch informing it of the proposed change; or
- (b) refuse to give such notice.

(5) The Commission shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the society—

- (a) that it has given the notice referred to in that sub-paragraph, stating the date on which it did so; or
- (b) that it refused to give the notice, stating the reasons for that refusal.

(6) The Commission shall not refuse to give the notice referred to in sub-paragraph (4)(a) above unless, having regard to the proposed change, it appears to it that the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.

3.—(1) A friendly society to which section 37(2) or (3) above applies shall not change the requisite UK details of an overseas branch—

- (a) which has been established by it in a member State other than the United Kingdom; and
- (b) through which it carries on direct insurance business,

unless the requirements of this paragraph have been complied with in relation to its making of the change.

(2) Subject to sub-paragraph (3) below, the requirements of this paragraph are that the society has given a notice to the Commission stating the details of the proposed change not less than one month before the change is to take place.

(3) In the case of a change occasioned by circumstances beyond the society's control, the requirements of this paragraph are that the society shall as soon as practicable (whether before or after the change) give a notice to the Commission stating the details of the change.

Requisite details for purposes of paragraphs 1 to 3

4.—(1) The requisite EC details for the purposes of paragraphs 1 and 2 above are—

- (a) the member State in which the overseas branch is to be or has been established (“the member State of the branch”);
- (b) the address of the branch and confirmation that that address is an address for service on the society's authorised agent;
- (c) the name of the society's authorised agent;

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- (d) the classes and parts of classes of insurance business to be carried on, and the nature of the risks or commitments to be covered, in the member State of the branch;
 - (e) details of the structural organisation of the branch;
 - (f) the guiding principles as to reinsurance of business to be carried on in the member State of the branch, including the society's maximum retention per risk or event after all reinsurance ceded;
 - (g) estimates of the following, namely—
 - (i) the costs of installing administrative services and the organisation for securing business in the member State of the branch; and
 - (ii) the resources available to cover those costs;
 - (h) for each of the first three financial years following the establishment of the branch—
 - (i) estimates of the society's margin of solvency and the margin of solvency required, and a statement showing how both have been calculated;
 - (ii) in the case of a society which intends to carry on long term business, the details mentioned in sub-paragraph (2) below as respects the business to be carried on in the member State of the branch; and
 - (iii) in the case of a society which intends to carry on general business, the details mentioned in sub-paragraph (3) below as respect the business to be so carried on; and
 - (i) in the case of a society which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.
- (2) The details referred to in sub-paragraph (1)(h)(ii) above are—
- (a) a statement showing, on both optimistic and pessimistic bases, for each type of contract or treaty—
 - (i) the number of contracts or treaties expected to be issued;
 - (ii) the total premium income, both gross and net of reinsurance ceded;
 - (iii) the total sums assured or the total amounts payable each year by way of annuity;
 - (b) a statement setting out, on both optimistic and pessimistic bases, detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions; and
 - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (3) The details referred to in sub-paragraph (1)(h)(iii) above are—
- (a) estimates relating to expenses of management (other than costs of installation), and in particular those relating to current general expenses and commissions;
 - (b) estimates relating to premiums or contributions (both gross and net of all reinsurance ceded) and to claims (after all reinsurance recoveries); and
 - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (4) The requisite UK details for the purposes of paragraphs 1 and 3 above are—
- (a) the names of the society's managers and main agents in the member State of the branch;
 - (b) particulars of any association which exists or is proposed to exist between—
 - (i) the committee of management and the controllers (if any) of the society; and
 - (ii) any person who will act as an insurance broker, agent, loss adjuster or reinsurer for the society in the member State of the branch;
 - (c) the names of the principal reinsurers of business to be carried on in the member State of the branch;

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- (d) the sources of business in the member State of the branch (for example, insurance brokers, agents, own employees or direct selling) with the approximate percentage expected from each of those sources;
 - (e) copies or drafts of the following, namely—
 - (i) any separate reinsurance treaties covering business to be written in the member State of the branch;
 - (ii) any standard agreements which the society will enter into with persons who will be sources of business in the member State of the branch;
 - (iii) any agreements which the society will enter into with persons (other than employees of the society) who will manage the business to be carried on in the member State of the branch;
 - (f) in the case of a society which intends to carry on long term business—
 - (i) the technical bases which the appointed actuary proposes to use for each class of business to be carried on in the member State of the branch, including the bases needed for calculating premium rates and mathematical reserves;
 - (ii) a statement by that actuary as to whether he considers that the premium rates that will be used in the member State of the branch are suitable;
 - (iii) a statement by that actuary as to whether he agrees with the information provided under sub-paragraphs (1)(f) and (2)(b) and (c) above; and
 - (iv) the technical bases used to calculate the statements and estimates referred to in sub-paragraph (2) above; and
 - (g) in the case of a society which intends to carry on general business, copies or drafts of any agreements which the society will have with main agents in the member State of the branch.
- (5) In this paragraph “authorised agent” means an agent or employee of the society who has authority—
- (a) to bind the society in its relations with third parties; and
 - (b) to represent the society in its relations with supervisory authorities and courts in the member State of the branch.

Requirements for providing insurance

5.—(1) A friendly society to which section 37(2) or (3) above applies shall not provide insurance of any class or part of a class in a member State other than the United Kingdom unless—

- (a) the society is authorised under section 32 above to carry on insurance of that class or part of a class; and
 - (b) the requirements of this paragraph have been complied with in relation to the provision of the insurance in that member State.
- (2) The requirements of this paragraph are—
- (a) that the society has given to the Commission a notice containing the requisite details; and
 - (b) that the Commission has given to the supervisory authority in the member State in which the insurance is to be provided—
 - (i) a notice which contains the requisite details; and
 - (ii) a certificate in accordance with sub-paragraph (3) below.
- (3) A certificate is in accordance with this sub-paragraph if it—

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- (a) attests that the society has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
 - (i) Articles 16 and 17 of the first general insurance Directive, and
 - (ii) Articles 19 and 20 of the first life Directive; and
 - (b) indicates the classes of insurance business which the society is authorised to carry on in the United Kingdom.
- (4) Where the society intends to provide insurance in more than one member State, the requisite details may be contained in a single notification but must be set out separately in relation to each member State.
- (5) The Commission shall, within the period of one month beginning with the date on which the society's notice was received—
- (a) give the notice and certificate referred to in sub-paragraph (2)(b) above to the supervisory authority in the member State in which the society intends to provide insurance; or
 - (b) refuse to give either or both of those documents.
- (6) The Commission shall, within the period of one month referred to in sub-paragraph (5) above, notify the society—
- (a) that it has given the notice and certificate referred to in sub-paragraph (2)(b) above to the supervisory authority in the member State in which the society intends to provide insurance, stating the date on which it did so; or
 - (b) that it has refused to give either or both of those documents, stating the reasons for the refusal.
- (7) The Commission shall not refuse to give the notice referred to in sub-paragraph (2)(b) above unless, having regard to the insurance to be provided in the member State, it appears to it that the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.
- 6.—(1)** A friendly society to which section 37(2) or (3) above applies shall not change the requisite details of the provision of insurance in a member State other than the United Kingdom unless the requirements of this paragraph have been complied with in relation to its making of the change.
- (2) The requirements of this paragraph are—
- (a) that the society has given a notice to the Commission stating the details of the proposed change;
 - (b) that the Commission has sent to the supervisory authority in the member State in which the insurance is provided a notice in accordance with sub-paragraph (4)(a) below.
- (3) In the case of a change occasioned by circumstances beyond the society's control, the requirements of this paragraph are that the society shall as soon as practicable give a notice to the Commission stating the details of the change.
- (4) The Commission shall, as soon as practicable after receiving a notice under sub-paragraph (2) (a) above either—
- (a) give notice to the supervisory authority in the member State in which the insurance is provided informing it of the proposed change; or
 - (b) refuse to give such notice.
- (5) The Commission shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the society—

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- (a) that it has given the notice referred to in that sub-paragraph, stating the date on which it did so; or
 - (b) that it has refused to give the notice, stating the reasons for the refusal.
- (6) The Commission shall not refuse to give the notice referred to in sub-paragraph (4)(a) above unless, having regard to the proposed change, it appears to it that the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.

Requisite details for purposes of paragraphs 5 and 6

7. The requisite details for the purposes of paragraphs 5 and 6 above are—
- (a) the member State in which the insurance is to be provided;
 - (b) the nature of the risks or commitments which the society proposes to cover in that State; and
 - (c) in the case of a society which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.

Requirement to notify cessation of business etc.

8. A friendly society to which section 37(2) or (3) above applies which has ceased—
- (a) to carry on insurance business through an overseas branch in a member State other than the United Kingdom; or
 - (b) to provide insurance in such a member State,
- shall as soon as practicable notify the Commission in writing that it has done so.

PART II

FRIENDLY SOCIETIES PROVIDING INSURANCE IN EFTA STATES

Notification to Commission

- 9.—(1) Where a friendly society to which section 37(2) or (3) above applies intends to provide insurance in an EFTA State, it shall before doing so notify the Commission of its intention.
- (2) The notification shall indicate—
- (a) the EFTA State in which the insurance is to be provided;
 - (b) the EEA State in which the establishment through which the risks or commitments will be covered is situated (“the EEA State of establishment”); and
 - (c) the nature of the risks or commitments which the society proposes to cover.
- (3) Where the society intends to provide insurance in more than one EFTA State, the information specified above may be contained in a single notification but must be set out separately in relation to each such State.
- (4) Where—
- (a) a friendly society to which section 37(2) or (3) above applies has duly notified the Commission of its intention to provide insurance in an EFTA State; and
 - (b) the society subsequently intends to extend its activities to risks or commitments the nature of which was not indicated in the notification,

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it shall before doing so comply with sub-paragraphs (1) to (3) above in relation to those risks or commitments.

Issue of certificates by Commission

10.—(1) A friendly society to which section 37(2) or (3) above applies which intends to provide insurance in an EFTA State may apply to the Commission for a certificate—

- (a) attesting that the society possesses for its activities as a whole the minimum solvency margin calculated in accordance with the relevant provisions;
- (b) indicating the classes of business which the society is authorised to carry on in the United Kingdom;
- (c) stating that the Commission does not object to the society providing the insurance; and
- (d) attesting that the society’s authorisation to carry on business in the United Kingdom, issued in accordance with Article 7(1) of the relevant Directive, enables the society to carry on business outside the EEA State of establishment.

(2) If it appears to the Commission that a certificate applied for under sub-paragraph (1) above ought to be issued, it shall issue the certificate accordingly.

(3) If the Commission refuses to issue a certificate, it shall inform the society in writing of its decision and of the reasons for it.

(4) In sub-paragraph (1) above “the relevant Directive” and “the relevant provisions” means respectively—

- (a) if the society intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;
- (b) if the society intends to cover commitments, the first life Directive and Articles 19 and 20 of that Directive.

PART III

FRIENDLY SOCIETIES PROVIDING INSURANCE IN THE UNITED KINGDOM THROUGH OVERSEAS BRANCHES IN OTHER EEA STATES

11.—(1) Where a friendly society to which section 37(2) or (3) above applies intends to provide insurance in the United Kingdom, it shall before doing so notify the Commission of its intention.

(2) The notification shall indicate—

- (a) the EEA State in which is situated the overseas branch through which the society intends to provide insurance in the United Kingdom; and
- (b) the nature of the risks or commitments which the society proposes to cover in the United Kingdom.

(3) Where the EEA State in which is situated the overseas branch through which the society intends to provide insurance in the United Kingdom is an EFTA State, the notification shall be accompanied by a certificate, issued by the supervisory authority in that State, which—

- (a) indicates the classes of insurance business which the society has been authorised to undertake through that branch;
- (b) states that the authority does not object to the society providing insurance in the United Kingdom; and

- (c) where the society intends to provide long term insurance in the United Kingdom, confirms that all the commitments which the society intends to cover fall within the classes of insurance business which the society has been authorised to undertake through that branch.
- (4) The society shall notify the Commission in writing if–
 - (a) it changes either of the details notified to the Commission under sub–paragraph (2) above; or
 - (b) it ceases to provide insurance in the United Kingdom.

PART IV SUPPLEMENTAL

Offences

- 12.—(1) A friendly society to which section 37(2) or (3) above applies commits an offence if–
- (a) it carries on insurance business in a member State other than the United Kingdom in contravention of paragraph 1 above;
 - (b) in contravention of paragraph 2 or 3 above, it changes the requisite EC details or, as the case may be, the requisite UK details of an overseas branch established by it in such a member State;
 - (c) it provides insurance in such a member State in contravention of paragraph 5 above;
 - (d) in contravention of paragraph 6 above, it changes the requisite details relating to the provision of insurance in such a member State; or
 - (e) it makes default in complying with, or with a requirement imposed under, any other provision of this Schedule.
- (2) A person commits an offence if he causes or permits to be included in a notification sent to the Commission under paragraph 1, 2, 3, 5 or 6 above a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.
- (3) A person committing an offence under this paragraph shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Interpretation

- 13.—(1) In this Schedule–
- (a) references in Part I to the provision of insurance in a member State other than the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that member State through an establishment in another member State;
 - (b) references in Part II to the provision of insurance in an EFTA State are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that EFTA State through an establishment in another EEA State;
 - (c) references in Part III to the provision of insurance in the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in the United Kingdom–
 - (i) through an establishment in another member State; or

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- (ii) through an establishment in an EFTA State.
- (2) In sub-paragraph (1)(b) and (c)(ii) above—
 - (a) references to a risk are references to a risk falling within head B of Schedule 2 to this Act (general business), other than class 1, so far as it relates to accidents at work; and
 - (b) references to a commitment are references to a commitment falling within head A of Schedule 2 to this Act (long term business), other than class VII.
- (3) In this Schedule “health insurance risks”, in relation to a member State, means risks falling within class 2 of Schedule 2 to this Act (sickness) where—
 - (a) insurance contracts covering those risks serve as a partial or complete alternative to the health cover provided by the statutory social security system in that State; and
 - (b) the law of that State requires such contracts to be operated on a technical basis similar to life assurance in accordance with all the conditions listed in the first sub-paragraph of Article 54(2) of the third general insurance Directive.

SCHEDULE 3

Regulation 21

[SCHEDULE 13C TO 1992 ACT]
 INFORMATION FOR MEMBERS OF FRIENDLY
 SOCIETIES TO WHICH SECTION 37(2) OR (3) APPLIES

Information before contract of long term insurance

- 1.—(1) Subject to sub-paragraph (2) below, this paragraph applies to a contract entered into by a friendly society to which section 37(2) above applies the effecting of which constitutes—
- (a) the carrying on in the United Kingdom of long term business which is not reinsurance business; or
 - (b) the provision there of long term insurance.
- (2) This paragraph 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 sub-paragraph expressions which are also used in the Financial Services Act 1986(17) have the same meanings as in that Act.
- (3) Before entering into a contract to which this paragraph applies, the society shall furnish the other party to the contract in writing with the information required by sub-paragraph (4) below.
- (4) The information required by this sub-paragraph is—
- (a) the name and legal form of the society;
 - (b) a statement that the society’s registered office is the United Kingdom and, where appropriate, the member State in which is situated the overseas branch through which the contract is to be entered into;
 - (c) the address of the society’s registered office and, where appropriate, the address of the overseas branch through which the contract is to be entered into;
 - (d) a definition of each benefit and option;
 - (e) the term of the contract and the means by which it may be terminated;

(17) 1986 c. 60.

- (f) the method of paying premiums and the duration of the payments;
- (g) the method of calculating bonuses and the distribution of bonuses;
- (h) an indication of surrender and paid-up values and the extent to which such values are guaranteed;
- (i) an indication of the premiums for each benefit, whether a main or supplementary benefit;
- (j) in the case of a contract for a unit-linked policy, a definition of the units to which benefits are linked and an indication of the nature of the underlying assets;
- (k) information as to the following, namely—
 - (i) the arrangements with respect to the period within which the other party may cancel the contract;
 - (ii) the tax arrangements applicable to the contract or any policy to be effected by it;
 - (iii) the arrangements for handling any complaints concerning the contract, whether by the other party or any other person who is a life assured or beneficiary; and
 - (iv) any compensation or guarantee arrangements which will be available if the society is unable to meet its liabilities under the contract; and
- (m) whether the parties to the contract are entitled to choose the law applicable to the contract and—
 - (i) if so, the law which the society proposes to choose; and
 - (ii) if not, the law which will be so applicable.

(5) Any information required by sub-paragraph (4) above shall be furnished in English except that, where the other party to the contract so requests, it may instead be furnished in an official language of a member State other than the United Kingdom.

Information during contract of long term insurance

2.—(1) This paragraph applies where a friendly society to which section 37(2) above applies has, on or after 1st September 1994, entered into a contract the effecting of which constitutes—

- (a) the carrying on in the United Kingdom of long term business which is not reinsurance business; or
- (b) the provision there of long term insurance.

(2) If during the term of the contract there is any change in the information required by paragraphs (a) to (j) of paragraph 1(4) above, the society shall inform the other party to the contract in writing of the effect of the change.

(3) If the contract provides for the payment of bonuses, the society shall, at least once in every calendar year except the first, inform the other party to the contract in writing of the amount of any bonus—

- (a) which has become payable under the contract, and
- (b) of which that party has not been previously informed under this sub-paragraph.

(4) There is a sufficient compliance with sub-paragraph (3) above if the society furnishes the other party to the contract with such information as will enable him to determine the amount of any such bonus as is mentioned in that sub-paragraph, or if the society informs that party of—

- (a) the rates of bonus which have been declared since that party was previously informed under this sub-paragraph; and
- (b) the total value of the benefits (including bonuses) which have accrued under the contract.

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(5) In this paragraph “bonus” does not include a bonus the amount of which is specified in the contract.

Information before contract of general insurance

3.—(1) This paragraph applies to a contract entered into by a friendly society to which section 37(3) above applies if—

- (a) the effecting of the contract constitutes—
 - (i) the carrying on in the United Kingdom of general business which is not reinsurance business; or
 - (ii) the provision there of general insurance; and
- (b) the risk which is covered by the contract is situated in the United Kingdom.

(2) Before entering into a contract to which this paragraph applies, the society shall, if the other party to the contract is an individual, inform that party in writing—

- (a) of any arrangements which exist for handling complaints concerning the contract including, where appropriate, the name and address of any body which deals with complaints from any party to the contract;
- (b) that the existence of a complaints body does not affect any right of action which any party to the contract may have against the society; and,
- (c) as to whether the parties to the contract are entitled to choose the law applicable to the contract and—
 - (i) if so, of the law which the society proposes to choose; and
 - (ii) if not, of the law which will be so applicable.

(3) If the information required by sub-paragraph (2) above is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that sub-paragraph if it is also furnished in writing as soon as practicable after that time.

4.—(1) This paragraph applies to a contract entered into by a friendly society to which section 37(3) above applies if the effecting of the contract constitutes the provision in the United Kingdom of general insurance.

(2) Before entering into a contract to which this paragraph applies, the society shall inform the other party to the contract in writing of the member State in which is situated the establishment which will cover the risks; and any document issued to that party by the society shall also contain that information.

(3) If the information required by sub-paragraph (2) above is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that sub-paragraph if it is also furnished in writing as soon as practicable after that time.

(4) Any relevant document issued by the society in relation to a contract to which this paragraph applies shall state the address of the establishment through which the risk is to be covered.

(5) In this paragraph “relevant document”, in relation to a contract to which this section applies, means any proposal, policy, rules or other document which, or statements contained in which, will or may bind the other party to the contract.

Supplemental

5. A friendly society which fails to comply with any provision of this Schedule shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

SCHEDULE 4

Regulation 25

CONFIRMATION BY COMMISSION OF TRANSFERS OF ENGAGEMENTS

Application for confirmation

1.—(1) After sub-paragraph (1) of paragraph 6 of Schedule 15 to the 1992 Act (application for confirmation) insert—

“(1A) Where an application for confirmation of a transfer is made by a friendly society to which section 37(2) or (3) above applies and either—

- (a) as regards any policy included in the proposed transfer, a member State other than the United Kingdom is the State in which the risk or commitment is situated; or
- (b) as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the risk or commitment is situated,

the society shall also, if the Commission so directs publish the notice in two national newspapers in that State.”.

(2) In sub-paragraph (3) of that paragraph, for paragraph (b) substitute—

“(b) stating—

- (i) the addresses of the offices of the society, and
- (ii) where the society is directed in accordance with sub-paragraph (1A) above to publish a notice of the application in two national newspapers in a State other than the United Kingdom, the address of such place in that State as the Commission directs,

at which copies of the report shall be available for inspection for a period of not less than 21 days beginning with the date of the first publication of the notice; and”.

Confirmation: general

2. In paragraph 13 of that Schedule (confirmation: general), after sub-paragraph (2) insert—

“(3) This paragraph and paragraph 14 below do not apply to any transfer of engagements to which paragraph 15 or 15A below applies.”.

Confirmation: general business

3. For paragraph 15 of that Schedule (confirmation: general business) substitute—

“15.—(1) This paragraph applies to any transfer of engagements (other than contracts of reinsurance) where—

- (a) the effecting of the engagements constituted the carrying on of general business;
- (b) the transferor is a friendly society to which section 37(3) above applies; and
- (c) the transferee is—

- (i) a friendly society to which section 37(2) or (3) above applies;
- (ii) a UK company;
- (iii) an EC company;
- (iv) a non-EC company whose head office is in an EFTA State;
- (v) a Swiss general insurance company; or

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- (vi) an insurance company whose margin of solvency is required to be supervised in accordance with Article 25 or 26 of the first general insurance Directive.
- (2) The Commission shall not confirm the transfer unless—
- (a) it is satisfied that the transferee is, or will be immediately after the approval—
 - (i) authorised under section 32 above to carry on, or
 - (ii) authorised under section 3 or 4 of the Insurance Companies Act 1982⁽¹⁸⁾ to carry on, or
 - (iii) authorised in accordance with Article 6 of the first general insurance Directive to carry on in an EEA State other than the United Kingdom, general business of the class or classes to be transferred;
 - (b) it is also satisfied that every policy included in the transfer evidences a contract which was entered into before the date of the application;
 - (c) the relevant authority certifies that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account; and
 - (d) where the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Commission is satisfied—
 - (i) that the supervisory authority in that member State has been consulted about the proposed transfer; and
 - (ii) either that the authority has responded or that the period of three months beginning with the consultation has elapsed.
- (3) Where, as regards any policy (other than an EFTA policy) which is included in the proposed transfer, the risk is situated in a member State other than the United Kingdom, the Commission shall not confirm the transfer unless it is satisfied—
- (a) that the supervisory authority in that member State has been notified of the proposed transfer;
 - (b) either that the authority has consented to the transfer or that the authority has not refused its consent to the transfer within the period of three months beginning with the notification.
- (4) Where the establishment of the transferee to which the policies are to be transferred is situated in the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the risk is situated, the Commission shall not confirm the transfer unless it is satisfied that—
- (a) the transferee either fulfils the conditions in Articles 13 to 16 of the second general insurance Directive in that EEA State; and
 - (b) the supervisory authority in that EEA State agrees to the transfer.
- (5) Where the establishment of the transferee to which the policies are to be transferred is situated in an EEA State other than the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the risk is situated, the Commission shall not confirm the transfer unless—
- (a) where the EEA State in which the establishment is situated is also the State in which the risk is situated, it is satisfied that the supervisory authority in that EEA State agrees to the transfer;

⁽¹⁸⁾ 1982 c. 50.

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- (b) where the United Kingdom is the State in which the risk is situated, it is satisfied that the transferee is not precluded by Schedule 2F to the Insurance Companies Act 1982 from covering the risk; and
 - (c) where an EEA State other than the United Kingdom or the EEA State in which the establishment is situated is the State in which the risk is situated, it is satisfied that—
 - (i) the transferee either fulfils the conditions in Articles 13 to 16 of the second general insurance Directive in the EEA State in which the risk is situated;
 - (ii) the law of that State provides for the possibility of such a transfer; and
 - (iii) the supervisory authority in that State agrees to the transfer.
- (6) In this paragraph “the relevant authority” means—
- (a) if the transferee is a friendly society to which section 37(2) or (3) above applies, the Commission;
 - (b) if the transferee is a United Kingdom company, the Secretary of State;
 - (c) if the transferee is an EC company, the supervisory authority in its home State;
 - (d) if the transferee is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
 - (e) if the transferee is a Swiss general insurance company, the supervisory authority in Switzerland;
 - (f) if the transferee is an insurance company whose margin of solvency is required to be supervised in accordance with Article 25 or 26 of the first general insurance Directive, the Secretary of State or other supervisory authority responsible for the supervision.”.

Confirmation: long term business

4. For paragraph 15A of that Schedule (confirmation: long term business) substitute—

“**15A.**—(1) This paragraph applies to any transfer of engagements (other than contracts of reinsurance) where—

- (a) the effecting of the engagements constituted the carrying on of long term business;
 - (b) the transferor is a friendly society to which section 37(3) above applies; and
 - (c) the transferee is—
 - (i) a friendly society to which section 37(2) or (3) above applies;
 - (ii) a UK company;
 - (iii) an EC company;
 - (iv) a non-EC company whose head office is in an EFTA State; or
 - (v) an insurance company whose margin of solvency is required to be supervised in accordance with Article 29 or 30 of the first life Directive.
- (2) The Commission shall not confirm the transfer unless—
- (a) it is satisfied that the transferee is, or will be immediately after the making of the confirmation—
 - (i) authorised under section 32 above to carry on, or
 - (ii) authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on, or

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- (iii) authorised in accordance with Article 6 of the first life Directive to carry on in an EEA State other than the United Kingdom, long term business of the class or classes to be transferred;
 - (b) the relevant authority certifies that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account; and
 - (c) where the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Commission is satisfied—
 - (i) that the supervisory authority in that member State has been consulted about the proposed scheme; and
 - (ii) either that the authority has responded or that the period of three months beginning with the consultation has elapsed.
- (3) Where, as regards any policy (other than an EFTA policy) which is included in the proposed transfer, a member State other than the United Kingdom, is the State in which the commitment is situated, the Commission shall not confirm the transfer unless it is satisfied—
- (a) that the supervisory authority in that member State has been notified of the proposed scheme; and
 - (b) either that the authority has consented to the scheme or that the authority has not refused its consent to the scheme within the period of three months beginning with the notification.
- (4) Where the establishment of the transferee to which the policies are to be transferred is situated in the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the commitment is situated, the Commission shall not confirm the transfer unless it is satisfied that—
- (a) the transferee either fulfils the conditions in Articles 11, 12, 14 and 16 of the second life Directive in that EEA State; and
 - (b) the supervisory authority in that EEA State agrees to the transfer.
- (5) Where the establishment of the transferee to which the policies are to be transferred is situated in an EEA State other than the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State is the State in which the commitment is situated, the Commission shall not confirm the transfer unless—
- (a) where the EEA State in which the establishment is situated is also the State in which the commitment is situated, it is satisfied that the supervisory authority in that EEA State agrees to the transfer;
 - (b) where the United Kingdom is the State in which the commitment is situated, it is satisfied that the transferee is not precluded by Schedule 2F to the Insurance Companies Act 1982 from covering the commitment; and
 - (c) where an EEA State other than the United Kingdom or the EEA State in which the establishment is situated is the State in which the risk is situated, it is satisfied that—
 - (i) the transferee fulfils the conditions in Articles 11, 12, 14 and 16 of the second life Directive in the EEA State which is the State in which the commitment is situated;
 - (ii) the law of that State provides for the possibility of such a transfer; and
 - (iii) the supervisory authority in that State agrees to the transfer.
- (6) In this paragraph “the relevant authority” means—

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- (a) if the transferee is a friendly society to which section 37(2) or (3) above applies, the Commission;
- (b) if the transferee is a UK company, the Secretary of State;
- (c) if the transferee is an EC company, the supervisory authority in its home State;
- (d) if the transferee is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
- (e) if the transferee is an insurance company whose margin of solvency is required to be supervised in accordance with Article 29 or 30 of the first life Directive, the Secretary of State or other supervisory authority responsible for the supervision.”.

Rights of policy holders

5. After paragraph 16 of that Schedule insert—

“Rights of policy holders

16A.—(1) This paragraph applies where the Commission confirms a transfer in accordance with paragraph 15 above and either—

- (a) as regards any policy included in the transfer, a member State other than the United Kingdom is the member State in which the risk is situated; or
- (b) as regards any EFTA policy included in the transfer, and EEA State other than the United Kingdom is the EEA State in which the risk is situated.

(2) The Commission shall direct that—

- (a) notice of its decision, and of the execution of any instrument giving effect to the transfer, shall be published in the member State or, as the case may be, the EEA State in which the risk is situated; and
- (b) the notice shall specify the period during which the policy holder may exercise any right to cancel the policy;

and the instrument shall not bind the policy holder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.

(3) The law of the member State or, as the case may be, the EEA State in which the risk is situated shall determine—

- (a) whether the policy holder has a right to cancel the policy; and
- (b) the conditions applicable to any such right.”.

6. After paragraph 16A of that Schedule insert—

“16B.—(1) This paragraph applies where the Commission confirms a transfer in accordance with paragraph 15A above and either—

- (a) as regards any policy included in the transfer, a member State other than the United Kingdom is the State in which the commitment is situated; or
- (b) as regards any EFTA policy included in the transfer, an EEA State other than the United Kingdom is the State in which the commitment is situated.

(2) The Commission shall direct that—

- (a) notice of the making of any order, or the execution of any instrument, giving effect to the transfer shall be published in the member State or, as the case may be, the EEA State which is the State in which the commitment is situated; and

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- (b) the notice shall specify the period during which the policy holder may exercise any right to cancel the policy;
- and the instrument or order shall not bind the policy holder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.
- (3) The law of the member State or, as the case may be, the EEA State which is the State in which the commitment is situated shall determine—
 - (a) whether the policy holder has a right to cancel the policy; and
 - (b) the conditions applicable to any such right.”.

Supplemental

7. For paragraph 18 of that Schedule (interpretation) substitute—

- “**18.**—(1) In this Part of this Schedule expressions used which are defined in the Insurance Companies Act 1982 but are not defined for the purposes of this Part of this Schedule have the same meaning as they have for the purposes of that Act.
- (2) In this Part of this Schedule—
 - “policy” means a contract (other than a contract of reinsurance) the effecting of which by a friendly society to which section 37(2) or (3) above applies constituted the carrying on of insurance business of any class;
 - “policy holder” means a member whose contract with such a society is a contract the effecting of which by the society constituted the carrying on of insurance business (other than reinsurance business) of any class;
 - “relevant requirement”, with reference to this Act or the rules of a friendly society, means a requirement of this Part of this Act or of any rules prescribing the procedure to be followed by the society in approving or effecting an amalgamation or transfer of engagements or its conversion into a company.
 - (3) A policy which evidences a contract of direct insurance is an “EFTA policy” for the purposes of this Part of this Schedule if—
 - (a) it covers a risk or commitment in an EFTA State and the transferee is a friendly society to which section 37(2) or (3) above applies, a UK or EC company or a non-EC company whose head office is in an EFTA State; or
 - (b) it covers a risk or commitment situated in a member State and the transferee is a non-EC company whose head office is in an EFTA State.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st September 1994, make amendments to the Friendly Societies Act 1992 (“the 1992 Act”) and revoke regulations 2(2), 4 and 5 of the Friendly Societies (Amendment) Regulations 1993 (S.I.1993/2519).

The Regulations, which apply to societies to which section 37(2) or (3) of the 1992 Act applies ("Directive societies"), give effect to the relevant provisions of—

- (a) the Third Life Directive (that is, Council Directive [92/96/EEC](#) on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives [79/267/EEC](#) and [90/619/EEC](#) (O.J. No. L360, 9.12.92, p.1); and
- (b) the Third Non-Life Directive (that is, Council Directive [92/49/EEC](#) on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives [73/239/EEC](#) and [88/357/EEC](#) (O.J. No. L228, 11.8.92, p.1)).

The Regulations also give further effect to the relevant provisions of the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (O.J. L1, 3.1.94, p.3) as adjusted by the Protocol signed at Brussels on 17th March 1992 (O.J. L1, 3.1.94, p.572) ("the EEA Agreement").

Part I of the Regulations makes provision for the citation, commencement and extent of the Regulations and contains interpretation provisions.

Part II amends section 1 of the 1992 Act to ensure that the Friendly Societies Commission ("the Commission"), which is a statutory body, has all the functions (and powers) required under the Life and Non-Life Directives.

Part III makes changes to the authorisation process. Regulation 4 ensures that the authorisation granted to a Directive society is valid for the whole of the UK. (Any restriction on the authorisation of a Directive society therefore ceases to have effect.) Any Directive society will, by virtue of its authorisation under section 32 of the 1992 Act, be able to establish a branch or provide insurance in another member State without requiring further authorisation in the host member State.

Regulation 5 amends section 34 of the 1992 Act (grant of unconditional or conditional authorisation) to ensure the Commission cannot grant authorisation unless, inter alia, it is satisfied that any controller of a Directive society is a fit and proper person to be such a controller. A definition of controller is set out in section 55A of the 1992 Act inserted by regulation 14.

Regulations 6 and 7 make minor amendments to the Commission's powers to withdraw authorisation to ensure compliance with the Directives.

Part IV makes changes to Part V of the 1992 Act. Regulation 9 inserts section 49A requiring a Directive society to secure the adequacy of assets covering the liabilities of its insurance business. Regulation 10 inserts section 49B requiring such a society to ensure the adequacy of premiums payable under its long term insurance contracts. Minor changes are made to section 48 (margins of solvency), section 50 (criteria of prudent management), section 52 (application to court) to ensure compliance with the Directives and the EEA Agreement. Regulation 13 inserts section 52A which gives the Commission power to obtain, on specified grounds, an injunction (or, in Scotland, an interdict) to prohibit a Directive society from disposing of assets to the value of the liabilities of its business in the European Community. Regulation 14 inserts section 55A and Schedule 13A which provide for supervision of persons who propose to become, become or cease to become controllers of Directive societies.

Regulation 15 substitutes a new provision for section 57 of the 1992 Act which with new Schedule 13B sets out the requirements to be met by a Directive society intending to establish an overseas branch in another member State, or to provide insurance in any member State or EEA State through an establishment in another State. Regulation 15(3) and (4) contain transitional provisions for any Directive society lawfully carrying on business through an overseas branch in another member State or providing insurance in another such State prior to the coming into force of the Regulations — such a society is treated as if it had complied with the new requirements. Regulation 16 substitutes a new provision for section 57A of the 1992 Act which requires the Commission to notify any supervisory authority of another EEA State of any measures it intends to take or has taken in relation to a Directive society in certain circumstances. Regulations 17 to 20 extend the

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powers of the Commission to obtain information including a power to enter certain premises to obtain information. Regulation 18 ensures that the Commission may not disclose confidential information relating to a Directive society unless it is in accordance with the Third Directives to do so.

Part V inserts new sections 67A—67D and Schedule 13C requiring a Directive society to furnish specified information to potential members or members. Regulation 21 inserts section 67A and Schedule 13C requiring a Directive society carrying on insurance business to furnish a potential member with specified information before any contract of long term or general insurance, and to furnish a member with information during the term of contract of long term insurance. Regulation 22 inserts section 67B which requires a Directive society, in certain circumstances, to send a potential member a statutory notice setting out that person's right to cancel a contract of long term insurance within 14 days. (The form of the statutory notice is set out in regulation 52 of the Friendly Societies (Insurance Business) 1992 Regulations (S.I. [1994/1981](#).) There are six exemptions from the requirement to send a statutory notice in section 67B(7) — one of these is where the long term business concerned is also investment business within the meaning of the Financial Services Act [1986 \(c. 60\)](#). Regulations 23 and 24 insert sections 67C and 67D which supplement the member's right to cancel a contract.

Part VI deals with transfers of engagements. Regulations 25 to 28 amend the existing transfer provisions to ensure compliance with the Directives and the EEA Agreement. The main changes are to transfers of engagements concerning members who are resident in another member State or EEA State.

Part VII supplements the new provisions by inserting a series of new definitions in the 1992 Act.

A review of the cost of compliance with these Regulations has been undertaken and the resulting compliance cost assessment may be purchased from the Secretary, Friendly Societies Commission, 15 Great Marlborough Street, London W1V 2AX.