
STATUTORY INSTRUMENTS

1994 No. 3132

INSURANCE

The Insurance Companies (Amendment) Regulations 1994

Made - - - - *7th December 1994*
Laid before Parliament *8th December 1994*
Coming into force - - *30th December 1994*

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to compulsory insurance in respect of, and other means of providing for, civil liability in relation to motor vehicles and trailers, the transfer of insurance contracts other than contracts of life assurance from one insurance undertaking to another, and in relation to the authorisation of the carrying on of insurance business and the regulation of such business and its conduct, the specification of insurers who may effect insurance required under or by virtue of any enactment, and the transfer of contracts of life assurance from one insurance undertaking to another and in relation to anything supplemental or incidental to those matters, in exercise of his powers under the said section 2(2) and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Insurance Companies (Amendment) Regulations 1994 and shall come into force on 30th December 1994.

(2) These Regulations extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the 1982 Act” means the Insurance Companies Act 1982⁽³⁾;

“the commencement date” means 30th December 1994.

(2) In these Regulations expressions which are used in the 1982 Act have the same meanings as in that Act.

(1) [S.I.1972/1811](#); [S.I.1975/427](#); [S.I.1976/2141](#); [S.I.1982/847](#); [S.I.1990/600](#).

(2) [1972 c. 68](#).

(3) [1982 c. 50](#).

AMENDMENTS OF THE 1982 ACT

Extended meaning of “member State” for purposes of Act

3.—(1) After subsection (6) of section 2 of the 1982 Act (restriction on carrying on insurance business) insert—

“(7) In relation to any time before it becomes a member State, each of the following, namely, Austria, Iceland, Norway and Sweden, shall be treated as if it were a member State for all purposes of this Act.

(8) In relation to any time before it becomes a member State, Finland shall be treated as if it were a member State for all purposes of this Act relating to the carrying on of long term business or the provision of long term insurance.”

(2) In subsection (1) of section 96 of that Act (general interpretation), after the definitions of “margin of solvency” and related expressions insert—

“‘member State’ shall be construed in accordance with section 2(7) and (8) above;”.

Insurance companies to which Part II of Act applies

4. For subsections (1) and (1A)(4) of section 15 of the 1982 Act (insurance companies to which Part II applies) substitute—

“(1) Subject to the provisions of this section, this Part of this Act applies to—

- (a) all insurance companies, whether established within or outside the United Kingdom, which carry on insurance business within the United Kingdom; and
- (b) all UK companies which carry on business in a member State other than the United Kingdom.

(1A) Except as otherwise provided by Part I of Schedule 2F to this Act, this Part of this Act except—

- (a) sections 47A, 47B, 52A, 52B, 54 to 59 and Schedule 2B; and
- (b) section 49 and Schedule 2C so far as relating to the transfer of policies which evidence contracts of reinsurance,

does not apply to an EC company in so far as it is carrying on insurance business through a branch in respect of which such of the requirements of Part I of Schedule 2F to this Act as are applicable have been complied with.”

Restriction on transactions with connected persons

5.—(1) In subsection (5) of section 31 of the 1982 Act (restriction on transactions with connected persons), omit the words from “and for the purposes of this subsection” to the end.

(2) After that subsection insert—

“(5A) For the purposes of subsection (5) above a person controls a company if he is—

- (a) a person in accordance with whose directions or instructions the directors of the insurance company or of a body corporate of which it is a subsidiary are accustomed to act; or
- (b) person who either alone or with any associate or associates is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any

(4) Subsection (1A) was inserted by [S.I.1994/1696](#), reg.13.

general meeting of the insurance company or of a body corporate of which it is a subsidiary;

and for the purposes of this subsection ‘associate’ shall be construed in accordance with section 96C(4) below as it has effect for the purpose of determining for the purposes of this Act whether any person is a controller of an insurance company other than a UK company.”

Adequacy of assets

6.—(1) In subsection (3) of section 35A of the 1982 Act⁽⁵⁾ (adequacy of assets), for the words “its liabilities under the contract in respect of linked benefits” substitute the words “such of its liabilities under the contract in respect of linked benefits as are not covered by contracts of reinsurance”.

(2) In subsection (4) of that section, in the definition of “linked long term contract”, after the word “means” insert the words “(subject to subsection (5) below)”.

(3) After that subsection insert—

“(5) In subsection (3) above ‘linked long term contract’ does not include a contract the effecting of which constitutes the carrying on of long term business of class VII(a).”

Transfers of insurance business

7.—(1) In paragraph 2(2)(a) of Schedule 2C to the 1982 Act⁽⁶⁾ (transfers of insurance business), for the words from “published” to the end of sub-paragraph (i) substitute the words

“published in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed—

(i) in two national newspapers in the United Kingdom;”.

(2) In paragraph 3(4) of that Schedule, for paragraph (b) substitute—

“(b) where the United Kingdom is the State of the commitment the Secretary of State certifies that—

(i) the transferee company is not precluded by Schedule 2F to this Act from covering the commitment; and

(ii) the supervisory authority in the EEA State in which the establishment is situated agrees to the transfer;”.

(3) In paragraph 7(1)(a) of that Schedule, for the words from “published” to the end of sub-paragraph (i) substitute the words

“published in the London, Edinburgh and Belfast Gazettes and, if he thinks fit—

(i) in two national newspapers in the United Kingdom which have been so approved;”.

(4) In paragraph 8(1) of that Schedule, omit the word “and” immediately before paragraph (d) and after that paragraph insert and

“(e) in the opinion of the Secretary of State the circumstances of the case justify the giving of his approval”.

(5) In paragraph 8(4) of that Schedule, omit the words “other than the United Kingdom”, in the second place where they occur, and for paragraph (b) substitute—

“(b) where the United Kingdom is the State in which the risk is situated, he is satisfied that—

(5) Section 35A was inserted by [S.I.1994/1696](#), reg.17.

(6) Schedule 2C was inserted by [S.I.1994/1696](#), reg.28 and Schedule 3.

- (i) the transferee is not precluded by Schedule 2F to this Act from covering the risk; and
- (ii) the supervisory authority in the EEA State in which the establishment is situated agrees to the transfer;”.

(6) In paragraph 8(5) of that Schedule, for the words from “the transferee is” to the end substitute—

- “(a) the transferee is, or will be immediately after the approval—
 - (i) authorised under section 3 or 4 above to carry on; or
 - (ii) an EC company which is not precluded by Part I of Schedule 2F to this Act from carrying on,
 - general business of the class or classes to be transferred by the instrument; and
- (b) every policy included in the transfer evidences a contract which was entered into before the date of the application,

and in his opinion the transferee’s financial resources and the other circumstances of the case justify the giving of his approval.”

(7) In subsection (1) of section 52A of that Act(7) (issue of certificates by the Secretary of State), after paragraph insert—

- “(aa) a company which is authorised in accordance with Article 27 of the first long term insurance Directive, or Article 23 of the first general insurance Directive, is to transfer to a UK company all its rights and obligations under such long term or general policies, or long term or general policies of such descriptions, as may be so specified; or”.

(8) In section 52B of that Act(8) (effect of transfers authorised in other EEA States)—

- (a) in subsection (1)(c), for the words “a non-EC company whose head office is not in an EFTA state” substitute the words “a company which is authorised in accordance with Article 27 of the first long term insurance Directive, or Article 23 of the first general insurance Directive.”; and
- (b) in subsection (4), omit the word “direct”.

Information for policy holders of UK insurers and EC companies

8.—(1) In paragraph 1(1) of Schedule 2E to the 1982 Act(9) (information for policy holders of UK insurers and EC companies), after the words “Subject to sub-paragraph (2)” insert the words “and paragraph 5”.

(2) At the beginning of paragraph 2(1) of that Schedule insert the words “Subject to paragraph 5 below.”.

(3) After paragraph 4 of that Schedule insert—

“General

5.—(1) In the case of a contract involving two or more other parties, this Schedule shall have effect as if a separate contract were being or had been entered into by the insurer with each of those parties.

(7) Section 52A was inserted by [S.I.1990/1333](#), reg 9(2) and amended by [S.I.1993/174](#), reg.3(4), [S.I.1993/3127](#), reg.3(9) and [S.I. 1994/1696](#), reg.29.

(8) Section 52B was inserted by [S.I.1994/1696](#), reg.30.

(9) Schedule 2E was inserted by [S.I.1994/1696](#), reg.40 and Schedule 5.

(2) Paragraphs 1 and 2 of this Schedule shall not apply in relation to a contract unless the other party to the contract is habitually resident in the United Kingdom at the time when the contract is entered into.

(3) In this paragraph ‘other party’, in relation to a contract, means a party to the contract other than the insurer.”

Statutory notice by insurer in relation to long term policy

9.—(1) For subsection (1) of section 75 of the 1982 Act(**10**) (statutory notice by insurer in relation to long term policy) substitute—

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

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

(2) In subsection (5B)(**11**) of that section, for paragraph (a) substitute—

“(a) the insurer is a UK, EC or EFTA company or a member of Lloyd’s;”.

Minor amendments of Act

10.—(1) In subsection (2)(ab)(**12**) of section 11 of the 1982 Act (withdrawal of authorisation in respect of new business) and subsection (2A)(a)(**13**) of section 12 of that Act (notices of withdrawal under section 11), for the words “is or has not been” substitute the words “is not or has not been”.

(2) In paragraph 1(4)(a) of Schedule 2B to that Act(**14**) (restriction on disclosure of information), after the word “company” insert the words “or any member of Lloyd’s”.

(3) In subsection (1) of section 96 of that Act (general interpretation), in the definitions of “margin of solvency” and related expressions, for the words “Community margin of solvency” substitute the words “EEA margin of solvency”.

(4) In subsection (3)(d) of section 96A of that Act(**15**) (interpretation of expressions derived from insurance Directives—

- (a) at the end of sub-paragraph (i) insert the words “at the date when the contract is entered into”; and
- (b) at the end of sub-paragraph (ii) insert the words “at that date”.

(10) Subsection (1) was amended by [S.I.1993/1327](#), reg.2(1) and S.I. [1994/1696](#), reg.43.

(11) Subsection (5B) was inserted by [S.I.1993/1327](#), reg.2(3).

(12) Subsection (2)(ab) was inserted by [S.I.1994/1696](#), reg.10.

(13) Subsection (2A)(a) was inserted by [S.I.1994/1696](#), reg.10.

(14) Schedule 2B was inserted by [S.I.1994/1696](#), reg.26 and Schedule 2.

(15) Section 96A was inserted by [S.I.1990/1333](#), reg.2(1) and amended by [S.I.1992/2890](#), reg.9(4), [S.I.1993/174](#), reg.6(3) to (5) and S.I. [1994/1696](#), reg.51.

MISCELLANEOUS AND SUPPLEMENTAL

Amendment of Banking Act 1987

11. In section 84(1) of the Banking Act 1987⁽¹⁶⁾ (disclosure of information obtained under that Act), in Entry No.4 of the Table, in the first column, for the words from the beginning to “Insurance Companies Act 1982” substitute the words “A person authorised to exercise powers under section 43A or 44 of the Insurance Companies Act 1982”.

Amendments of Third Insurance Directives Regulations

12.—(1) In regulation 69 of the Insurance Companies (Third Insurance Directives) Regulations 1994⁽¹⁷⁾ (transitional provisions: EC companies), after paragraph (2) insert—

“(3) Where a State becomes a member State on a date after the commencement date, paragraphs (1) and (2) above shall have effect in relation to an insurance company whose head office is in that State as if any reference to the commencement date were a reference to that later date.”

(2) In regulation 70 of those Regulations (transitional provisions: UK insurers), after paragraph (2) insert—

“(3) Where a State becomes a member State on a date after the commencement date, paragraphs (1) and (2) above shall have effect in relation to a UK company which, or a member of Lloyd’s who, immediately before that later date is lawfully carrying on insurance business, or lawfully providing insurance, of a class or part of a class in that State as if—

- (a) any reference to a member State other than the United Kingdom were a reference to that State; and
- (b) any reference to the commencement date were a reference to that later date.”

(3) For regulation 71 of those Regulations substitute—

“Transitory provision

71.—(1) This regulation applies if in any member State (‘the defaulting State’) the third general insurance Directive and the third long term insurance Directive are not fully or substantially implemented—

- (a) on or before the commencement date; or
- (b) in the case of a State to which paragraph (3) of regulation 69 above applies, the later date mentioned in that paragraph.

(2) Until such date (‘the transitional date’) as those Directives are fully or substantially implemented in the defaulting State, the 1982 Act shall have effect in relation to an insurance company whose head office is in that State as if that State were an EFTA State rather than a member State.

(3) Paragraph 2 of Schedule 2E to the 1982 Act shall have effect in relation to an insurance company whose head office is in the defaulting State as if the reference in sub-paragraph (1) to the commencement date were a reference to the transitional date.

(4) Paragraphs (1) and (2) of regulation 69 above shall have effect in relation to an insurance company whose head office is in the defaulting State as if any reference to the commencement date, or to the later date mentioned in paragraph (3) of that regulation, were a reference to the transitional date.”

⁽¹⁶⁾ 1987 c. 22; section 84(1) was amended by S.I.1994/1696, Schedule 8, para 14(1).

⁽¹⁷⁾ S.I.1994/1696.

Transitional provisions: EC companies

13.—(1) If—

- (a) an insurance company which on the commencement date becomes an EC company for all purposes of the 1982 Act was immediately before that date lawfully carrying on insurance business of any class or part of a class in the United Kingdom; or
- (b) an insurance company which on that date becomes an EC company for all long term purposes of that Act was immediately before that date lawfully carrying on long term business of any class or part of a class in the United Kingdom,

the company shall be treated for those purposes as if the requirements of paragraph 1 or, as the case may require, paragraph 4 of Schedule 2F to that Act (recognition in the United Kingdom of EC and EFTA companies) had been complied with in relation to insurance business or long term business of that class or part of a class.

(2) If—

- (a) an insurance company which on the commencement date becomes an EC company for all purposes of the 1982 Act was immediately before that date lawfully providing insurance of any class or part of a class in the United Kingdom; or
- (b) an insurance company which on that date becomes an EC company for all long term purposes of that Act was immediately before that date lawfully providing long term insurance of any class or part of a class in the United Kingdom,

the company shall be treated for those purposes as if the requirements of paragraph 8 of Schedule 2F to that Act had been complied with in relation to insurance or long term insurance of that class or part of a class.

(3) Paragraph 2 of Schedule 2E to the 1982 Act (information for policy holders of UK insurers and EC companies) shall have effect in relation to an insurance company which falls within paragraph (1) or (2) above as if the reference in sub-paragraph (1) to 1st July 1994 were a reference to the commencement date.

(4) In this regulation and regulation 15 below—

- (a) “long term purposes” means purposes relating to the carrying on of long term business or the provision of long term insurance; and
- (b) references to an insurance company becoming an EC company are references to it becoming such a company by virtue of section 2(7) or (8) of the 1982 Act.

Transitional provisions: UK insurers

14.—(1) If—

- (a) a UK company or a member of Lloyd’s was immediately before the commencement date lawfully carrying on insurance business of a class or part of a class in Austria, Iceland, Norway or Sweden; or
- (b) such a company or member was immediately before that date lawfully carrying on long term business of a class or part of a class in Finland,

the company or member shall be treated for the purposes of the 1982 Act as if the requirements of paragraph 1 of Schedule 2G to that Act (recognition in other EEA States of UK insurers) had been complied with in relation to insurance business or long term business of that class or part of a class.

(2) If—

- (a) a UK company or a member of Lloyd’s was immediately before the commencement date lawfully providing insurance of a class or part of a class in Austria, Iceland, Norway or Sweden; or

- (b) such a company or member was immediately before that date lawfully providing long term insurance of a class or part of a class in Finland,

the company or member shall be treated for the purposes of the 1982 Act as if the requirements of paragraph 5 of Schedule 2G to that Act had been complied with in relation to insurance or long term insurance of that class or part of a class.

Transitory provision

15.—(1) This regulation applies if—

- (a) in Austria, Iceland, Norway or Sweden, the third general insurance Directive and the third long term insurance Directive are not fully or substantially implemented on or before the commencement date; or
- (b) in Finland, the third long term insurance Directive is not fully or substantially implemented on or before that date.

(2) Until such date (“the transitional date”) as those Directives are or, as the case may be, that Directive is fully or substantially implemented in the State concerned (“the defaulting State”), the 1982 Act shall have effect in relation to an insurance company—

- (a) whose head office is in that State; and
- (b) which, apart from this paragraph, would on the commencement date become an EC company for all purposes or, as the case may be, all long term purposes of that Act,

as if the provision made as regards that State by section 2(7) or (8) of that Act had not been made.

(3) Regulation 13 above shall have effect in relation to an insurance company—

- (a) whose head office is in the defaulting State; and
- (b) which on the transitional date becomes an EC company for all purposes or, as the case may be, all long term purposes of the 1982 Act,

as if any reference to the commencement date were a reference to the transitional date.

7th December 1994

Jonathan Evans
Parliamentary Under-Secretary of State,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Insurance Companies Act 1982 (“the 1982 Act”), the Banking Act 1987 and the Insurance Companies (Third Insurance Directives) Regulations 1994 ([S. I.1994/1696](#)) (“the Third Insurance Directives Regulations”).

The primary purpose of these Regulations is to implement the Agreement on the European Economic Area (Cm 2073) as regards the application of Council Directive [92/49/EEC](#) (O. J. No. L228, 11.8.92, p.1) and Council Directive [92/96/EEC](#) (O. J. No. L360, 9.12.92, p.1) to Austria, Iceland, Norway and Sweden, and, in the case of Directive [92/96/EEC](#), to Finland. In accordance with a Decision of the Joint Committee of the European Economic Area (O. J. No. L160, 28.6.94, p.1), these Directives have applied to these States with effect from 1 July 1994.

One of the principal purposes of the Directives was to introduce for direct insurance business the principle of home State control. Under this system each member State has been required to assume sole responsibility for the authorisation and supervision of the business carried on throughout the EC by undertakings having their head office in that State. The Directives also provided for further harmonisation of member States' rules concerning the authorisation and regulation of insurance undertakings. The Directives were given effect in the United Kingdom by the Third Insurance Directives Regulations together with the Insurance Companies (Accounts and Statements) (Amendment) Regulations 1994 ([S. I.1994/1515](#)) and certain provisions of the Insurance Companies Regulations 1994 ([S. I.1994/1516](#)).

The Decision of the Joint Committee did not extend Council Directive [92/49/EEC](#) to Finland. In the case of Finnish general insurance companies, their branches in member States will continue to be regulated by those States. Similarly, the Finnish branches of general business insurers with their head offices in a member State will continue to be regulated by the Finnish insurance supervisory authority. The provisions of Council Directive [88/357/EEC](#) (O. J. No. L172, 4.7.88, p.1) under which insurers may provide general insurance in one member State from an establishment in another member State will continue to apply.

The Regulations also make a number of minor amendments to the 1982 Act, the Third Insurance Directives Regulations and the Banking Act 1987.

Regulation 1 contains provisions for the citation and commencement of the Regulations.

Regulation 2 contains interpretation provisions.

Regulation 3 extends the meaning of the expression “member State” for the purposes of the 1982 Act to include Austria, Norway, Iceland and Sweden and, in relation to long term insurance business only, Finland.

Regulation 4 amends section 15 of the 1982 Act so that Part II of the Act applies to UK companies which carry on insurance business in other member States but not in the United Kingdom.

Regulation 5 amends the provision in section 31 of the 1982 Act which determines, for the purposes of that section, whether a person controls a company. This is a consequence of regulation 7(2) of the Third Insurance Directives Regulations (which provides that the definition of “controller” in section 7(4) of the 1982 Act shall cease to have effect).

Regulation 6 amends section 35A of the 1982 Act as it applies to the assets of insurance companies covering liabilities arising under linked long term insurance contracts. It enables such liabilities to be

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

covered by reinsurance and excludes from the scope of section 35A(3) certain contracts to manage the investments of pension funds.

Regulation 7 makes a number of amendments to provisions of the 1982 Act which apply to transfers of insurance business, in particular those relating to the publication of details of proposed transfers (Schedule 2C, paragraphs 2(2)(a) and 7(1)(a)), the issue of certificates of solvency by the Secretary of State (section 52A), and the effect of transfers authorised in other EEA States (section 52B).

Regulation 8 amends Schedule 2E to the 1982 Act, which is concerned with the information to be provided to policy holders. The application of paragraphs 1 and 2 of that Schedule is limited to long term contracts entered into by policy holders who are habitually resident in the United Kingdom.

Regulation 9 amends section 75 of the 1982 Act so that a United Kingdom policy holder who concludes a contract of long term insurance with a branch of a UK insurer established in another member State is entitled to the same cancellation rights as if the contract had been concluded with the head office of the insurer in the United Kingdom.

Regulations 10 and 11 make minor amendments to various other provisions of the 1982 Act and to the Banking Act 1987.

Regulations 12 to 15 contain transitional and transitory provisions, both in respect of the Third Insurance Directives and the accession of new member States after the commencement of these Regulations.

Compliance costs

Compliance Cost Assessments were prepared in respect of the Third Insurance Directives Regulations, the Insurance Companies (Accounts and Statements) (Amendment) Regulations 1994 and the Insurance Companies Regulations 1994 and placed in the Libraries of both Houses of Parliament. Copies are available also from the Insurance Division of the Department of Trade and Industry, Room 817, 10-18 Victoria Street, London SW1H 0NN. Those assessments concluded that the cost impact of the Regulations was broadly neutral. These Regulations will not impose any new burdens on business, and a further Compliance Cost Assessment has not been prepared.