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STATUTORY INSTRUMENTS

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**1994 No. 1696**

**INSURANCE**

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

*Made* - - - - - *27th June 1994*  
*Coming into force* - - - *1st July 1994*

Whereas the Secretary of State is designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> 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;

And whereas a draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 2(2) of and paragraph 2(2) of Schedule 2 to that Act;

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

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**PART I**  
**GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Insurance Companies (Third Insurance Directives) Regulations 1994 and shall come into force on 1st July 1994.

(2) These Regulations extend to Northern Ireland.

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(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.

## Interpretation

2.—(1) In these Regulations—

“the 1982 Act” means the Insurance Companies Act 1982<sup>(3)</sup>;

“the 1986 Act” means the Financial Services Act 1986<sup>(4)</sup>;

“the commencement date” means 1st July 1994.

(2) In these Regulations expressions which are also used in the 1982 Act or the 1986 Act have the same meanings as in that Act.

## PART II

### AMENDMENTS OF 1982 ACT

#### CHAPTER I

#### *RESTRICTION ON CARRYING ON INSURANCE BUSINESS*

##### *Preliminary*

### Classification of long term business

3. At the end of Schedule 1 to the 1982 Act (classes of long term business) insert—

“VIII	Collective insurance etc.	Effecting and carrying out contracts of a kind referred to in Article 1(2)(e) of the first long term insurance Directive.
IX	Social insurance	Effecting and carrying out contracts of a kind referred to in Article 1(3) of the first long term insurance Directive.”

### Restriction on carrying on insurance business

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

“(1A) Subsection (1) above shall not apply to insurance business carried on by an EC company through a branch in respect of which such of the requirements of Part I of Schedule 2F to this Act as are applicable have been complied with.”

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

“(6) In this Act ‘EC company’ means an insurance company—

(a) which is incorporated in or formed under the law of a member State other than the United Kingdom;

(b) whose head office is in that member State; and

(c) which is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.”

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<sup>(3)</sup> 1982 c. 50; as amended by the European Economic Area Act 1993 (c. 51).

<sup>(4)</sup> 1986 c. 60.

### *Applications for authorisation*

#### **Sound and prudent management: criteria which must be fulfilled**

5.—(1) After subsection (1) of section 5 of the 1982 Act (submission of proposals etc.) insert—

“(1A) The Secretary of State shall not issue an authorisation under section 3 above to an applicant which is a UK or non-EC company if it appears to him that the criteria of sound and prudent management are not or will not be fulfilled with respect to the applicant.”

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

“(4) In this Act—

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

‘EEA State’ means a State which is a Contracting Party to the EEA Agreement but, until the EEA Agreement comes into force in relation to Liechtenstein, does not include the State of Liechtenstein;

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

‘non-EC company’ means an insurance company—

- (a) whose head office is not in a member State;
- (b) which is authorised under section 3 or 4 above; and
- (c) whose business in the United Kingdom is not restricted to reinsurance business;

‘UK company’ means an insurance company—

- (a) which is incorporated in the United Kingdom;
- (b) whose head office is in the United Kingdom;
- (c) which is authorised under section 3 or 4 above;
- (d) whose business is not restricted to business to which subsection (5) below applies; and
- (e) which is not excluded from each Directive mentioned in that subsection by Article 3 of that Directive;

and any reference in this Part to an applicant or body which is a UK or non-EC company includes a reference to an applicant or body which would be such a company if the authorisation sought by it were issued.

(5) This subsection applies to—

- (a) reinsurance business;
- (b) business which is excluded from the first long term insurance Directive by Article 2(2) or (3) of that Directive;
- (c) business which is excluded from the first general insurance Directive by Article 2(2)(b) of that Directive; and
- (d) business which is exempted from the authorisation requirements contained in this Part of this Act by subsections (2) to (5) of section 2 above.”

(3) After Schedule 2 to the 1982 Act insert Schedule 1 to these Regulations (criteria of sound and prudent management), as Schedule 2A.

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

6. For section 6 of the 1982 Act substitute—

**“6 Combination of long term and general business.**

6. The Secretary of State shall not under section 3 above authorise a body to carry on both long term business and general business unless—

- (a) the long term business is restricted to reinsurance; or
- (b) the body is at the time the authorisation is issued already lawfully carrying on in the United Kingdom, otherwise than under paragraph (c) below, both long term business and general business (in neither case restricted to reinsurance); or
- (c) in the case of a body which is a UK company, the general business is restricted to Group 1 of Part II to Schedule 2 to this Act (accident and health) or to any class or part of a class of insurance within that group.”

**United Kingdom applicants**

7.—(1) In subsection (3) of section 7 of the 1982 Act (United Kingdom applicants), for the words “whose head office is in the United Kingdom” substitute—

- “(a) whose head office is in the United Kingdom; and
- (b) which is not an applicant to which section 5(1A) above applies.”

(2) Subsections (4) to (8) of that section and Schedule 3 to that Act (which are superseded by regulations 50 and 52 to 54 below) shall cease to have effect.

**Applicants from other EEA States etc.**

8.—(1) In subsections (1), (2) and (3) of section 8 of the 1982 Act (applicants from other member States), for the words “applicant whose head office is in a member State other than the United Kingdom” substitute the words “applicant to which this section applies”.

(2) For subsection (3A) of that section(5) substitute—

- “(3A) An applicant is one to which this section applies if—
- (a) its head office is in a member State other than the United Kingdom and it is not an EC company; or
- (b) its head office is in an EFTA State; or
- (c) its head office is in Switzerland and the authorisation sought by it is an authorisation to carry on general business which is not restricted to reinsurance business.”

(3) In subsection (4) of that section, the words “and ‘controller’, ‘manager’ and ‘main agent’ have the same meanings as in section 7 above” (which are superseded by regulation 50 below) shall cease to have effect.

**Applicants from non-EEA States etc.**

9.—(1) In subsections (1) and (4) of section 9 of the 1982 Act (applicants from outside the Community), for the words “whose head office is not in a member State” substitute the words “to which this section applies”.

(2) In subsection (2) of that section, for the words “member States”, in both places where they occur, substitute the words “EEA States”.

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

(3) In subsection (5) of that section, for the words “to an applicant whose head office is not in a member State” substitute the words “which is restricted to reinsurance business to an applicant to which this section applies”.

(4) For subsection (5A) of that section(6) substitute—

“(5A) An applicant is one to which this section applies if—

- (a) its head office is not in an EEA State; and
- (b) it is not an applicant to which section 8 above applies.”

(5) In subsection (6) of that section, the words from “In this section” to “except that” (which are superseded by regulation 50 below) shall cease to have effect.

### *Withdrawal of authorisation*

#### **Withdrawal of authorisation in respect of new business**

**10.**—(1) For paragraph (aa) of subsection (2) of section 11 of the 1982 Act(7) (withdrawal of authorisation in respect of new business) substitute—

“(aa) that the company is a UK company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another EEA State which—

- (i) gives effect to the general or long term insurance Directives; or
- (ii) is otherwise applicable to the insurance activities of the company in that State;

(ab) that the company is a UK or non-EC company and it appears to the Secretary of State that any of the criteria of sound and prudent management is or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the company.”

(2) In subsection (2) of section 12 of that Act (notices of withdrawal under section 11), for the words from “on the ground” to “company” substitute the words “on either of the grounds set out in subsection (2A) below”.

(3) After that subsection insert—

“(2A) The grounds referred to in subsection (2) above are—

- (a) that the company is a UK or non-EC company and it appears to the Secretary of State that the second or third criterion of sound and prudent management is or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the company; and
- (b) that there exists a ground on which the Secretary of State would be prohibited by section 7(3), 8(2) or 9(5) above from issuing an authorisation to the company.”

#### **Suspension of authorisation in urgent cases**

**11.** After section 12 of the 1982 Act insert—

“**Suspension of authorisation in urgent cases.**

**12A.**—(1) Where, in the case of a UK or non-EC company, it appears to the Secretary of State—

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

(7) Paragraph (aa) was inserted by [S.I. 1990/1333](#), reg 8(1) and amended by [S.I. 1993/174](#), reg 2.

- (a) that one of the grounds in section 11(2) above exists in relation to the company:  
and
  - (b) that the authorisation should be suspended as a matter of urgency,
- the Secretary of State may direct that the company shall forthwith cease to be authorised to effect contracts of insurance, or contracts of any description specified in the direction.
- (2) A direction under this section—
    - (a) shall not prevent a company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance; and
    - (b) unless confirmed by the Secretary of State under subsection (6) below, shall cease to have effect at the end of the relevant period.
  - (3) Where the Secretary of State gives a direction under this section, he shall forthwith serve on the company a written notice stating—
    - (a) the ground on which the direction is given; and
    - (b) that the company may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if the company so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.
  - (4) Where the Secretary of State gives a direction under this section on the ground set out in section 11(2)(ab) above, the Secretary of State shall forthwith serve on any person whose fitness is in question a written notice stating—
    - (a) the ground for giving the direction; and
    - (b) that the person on whom the notice is served may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.
  - (5) The Secretary of State shall consider any representations made in response to a notice under subsection (3) or (4) above before confirming a direction under this section.
  - (6) At any time before the end of the relevant period, the Secretary of State may confirm a direction under this section by a written notice served on the company.
  - (7) Where a direction under this section is so confirmed, it may not be revoked or varied; but if the Secretary of State subsequently issues to the company under section 3 above an authorisation to carry on insurance business of a class to which the direction relates, the direction shall cease to have effect in relation to such business.
  - (8) In this section ‘the relevant period’, in relation to a direction under this section, means the period of two months beginning with the date on which the direction is given.”

### **Final withdrawal of authorisation**

**12.** For subsections (1) and (2) of section 13 of the 1982 Act (final withdrawal of authorisation) substitute—

- “(1) Where—
- (a) a UK company ceases to carry on insurance business or insurance business of any class in the European Community; or
  - (b) an insurance company which is not a UK company ceases to carry on insurance business or insurance business of any class in the United Kingdom,

the Secretary of State may direct that it shall cease to be authorised under section 3 or 4 above to carry on insurance business or insurance business of that class.

(2) If—

- (a) a body authorised under section 3 above to carry on insurance business of any class has not at any time carried on insurance business of that class, and at least twelve months have elapsed since the issue of the authorisation; or
- (b) a body authorised under section 4 above to carry on insurance business of any class has not at any time since the commencement of this Act carried on business of that class,

the Secretary of State may direct that the body shall cease to be authorised to carry on business of that class.”

## CHAPTER II

### REGULATION OF INSURANCE COMPANIES

#### *Preliminary*

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

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

“(1A) Except as otherwise provided by Part I of Schedule 2F to this Act, this Part of this Act (except sections 47A, 47B, 54 to 59 and Schedule 2B) does not apply to an EC company in so far as it is carrying on insurance business through a branch in respect of which such of the requirements of Part I of Schedule 2F to this Act as are applicable have been complied with.”

#### *Financial resources*

#### **Margins of solvency**

**14.**—(1) In subsection (3) of section 32 of the 1982 Act<sup>(8)</sup> (margins of solvency), for the words “Community margin of solvency” substitute the words “EEA margin of solvency”.

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

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

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

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

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

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

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<sup>(8)</sup> Subsection (3) was amended by [S.I. 1993/3127](#), reg 3(3).

### Form and situation of assets

16. In subsection (2) of section 35 of the 1982 Act<sup>(9)</sup> (form and situation of assets), for the words “an insurance company whose head office is in a member State” substitute the words “an insurance company whose head office is in an EFTA State”.

### Adequacy of assets

17. After section 35 of the 1982 Act insert—

**“Adequacy of assets.**

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

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

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

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

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

(4) In this section—

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

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

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

### Adequacy of premiums: long term business

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

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



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

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

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

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

*Powers of intervention*

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

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

- (a) after paragraph (a) insert—
    - “(aa) that the company is a UK or non-EC company and it appears to him that any of the criteria of sound and prudent management is not or has not been or may not be or may not have been fulfilled with respect to the company;”;
  - (b) in paragraph (b), sub-paragraph (ia)(10) shall cease to have effect; and
  - (c) in paragraph (g), for the words “a member State where it has its head office or” substitute the words “an EFTA State where it has its head office or an EEA State where it”.
- (2) In subsection (3) of that section—
- (a) for the words “sections 39 and 40” substitute the words “sections 39, 40 and 40A”;
  - (b) in paragraph (a) for the words “section 11 above” substitute the words “section 11 or 12A above”; and
  - (c) after paragraph (c) insert
    - “or
    - (d) on the grounds that the company is a UK or non-EC company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 32 or 35A above.”
- (3) After subsection (4) of that section insert—
- “(4A) The powers conferred on the Secretary of State by sections 43A and 44 below shall be exercisable in respect of a UK or non-EC company to obtain information to enable him to perform his functions under this Act.”
- (4) In subsection (5) of that section—
- (a) in paragraph (b), for the words “section 7(4)(c) above” substitute the words “section 96C(1)(c), (d) or (e) below”;
  - (b) after that paragraph insert—

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

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

### **Requirements about investments**

**20.** In subsection (3)(a) of section 38 of the 1982 Act(**11**) (requirements about investments), for the words from “whose head office” to “insurance company” substitute—

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

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

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

“(1) The Secretary of State may require—

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

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

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

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

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

“(5) In this section—

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

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

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

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

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

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

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

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

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

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

### **General investigations**

23. After section 43 of the 1982 Act insert—

#### **“General investigations.**

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

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

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

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

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

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

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

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

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

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

**24.**—(1) After subsection (2) of section 44 of the 1982 Act<sup>(12)</sup> (power to obtain information and require production of documents) insert—

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

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

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

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

(3) After that subsection insert—

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

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

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

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

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

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

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

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

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

“or

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<sup>(12)</sup> Subsection (2) was amended by the Companies Act 1989 (c. 40), section 77(2).

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

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

**26.**—(1) For section 47A of the 1982 Act(**13**) substitute—

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

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

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

### **Privilege from disclosure**

**27.** In subsection (1) of section 47B of the 1982 Act(**14**) (privilege from disclosure), for the words “section 44(2) to (4)” substitute the words “section 43A or 44(2) to (4)”.

### *Transfers of insurance business*

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

**28.**—(1) For sections 49 to 52 of the 1982 Act(**15**) (transfers of insurance business) substitute—

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

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

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

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

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

**29.** For subsection (1) of section 52A of the 1982 Act(**16**) (issue of certificates by Secretary of State) substitute—

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

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

(i) to a UK company; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Winding up*

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

**31.**—(1) In subsection (1) of section 54 of the 1982 Act (winding up on petition by Secretary of State), for paragraph (bb)(17) substitute—

- “(bb) that the company is a UK company and has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another EEA State which—
- (i) gives effect to the general or long term insurance Directives; or
  - (ii) is otherwise applicable to the insurance activities of the company in that State;”.

(2) In subsection (2) of that section, for paragraph (bb)(18) substitute—

- “(bb) that the company is a UK company and has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another EEA State which—
- (i) gives effect to the general or long term insurance Directives; or
  - (ii) is otherwise applicable to the insurance activities of the company in that State;”.

*Changes of director, controller or manager etc.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



(3) Subsections (2) to (4) of section 61 above<sup>(19)</sup> shall (with the necessary modifications) apply for the purposes of this section as they apply for the purposes of that section.”

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

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

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

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

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

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

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

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

(a) a controller of the company; or

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

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

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

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

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

(3) After that subsection insert—

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

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<sup>(19)</sup> Subsection (2A) of section 61 was inserted by S.I. 1992/2890, reg 4.

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

**37.**—(1) In subsection (1) of section 63 of the 1982 Act(**20**) (change of manager etc. of company from outside United Kingdom), for the words from “an insurance company” to “in relation to” substitute the words “a non-EC company whose head office is in an EFTA State or”.

(2) Section 63A of that Act(**21**) (duty to notify change of control) shall cease to have effect.

### *Miscellaneous and supplemental*

### Documents deposited in Northern Ireland

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

### Offences under Part II

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

- (a) in paragraph (a), for “62(1)” substitute “or 62(1), (1A) or (1B)”;
- (b) in paragraph (b), for the words “section 44” substitute the words “section 43A or 44”; and
- (c) in paragraph (c), for sub-paragraph (iv) substitute—

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

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

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

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

(3) In subsection (3) of that section(**22**), for the words “44, 45, 49(4), 50(4), 61(1) or 63A above” substitute the words “43A, 44, 45, 61(1) or 61A(1) above, paragraph 2(3) or 5(5) of Schedule 2C to this Act or Schedule 2D to this Act”.

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

(5) Subsection (4A) of that section(**23**) (which is superseded by regulation 26 above) shall cease to have effect.

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

(7) In subsection (7) of that section(**24**), for the words “31A or 51 (other than subsection (2) (c) above” substitute the words “or 31A above or Part II of Schedule 2C to this Act (other than paragraph 7(1)(c))”.

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

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

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

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

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

CHAPTER III  
*CONDUCT OF INSURANCE BUSINESS*

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

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

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

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

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

**Information for policy holders of EFTA companies**

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

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

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

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

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

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

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

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

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

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

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

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

### **Intermediaries in insurance business**

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

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

**43.** For subsection (1) of section 75(25) (statutory notice by insurer in relation to long term policy) substitute—

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

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

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

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

## CHAPTER IV

### *RECOGNITION IN ACCORDANCE WITH INSURANCE DIRECTIVES*

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

**45.—**(1) For section 81A of the 1982 Act(26) substitute—

## “PART IIIA

### RECOGNITION IN ACCORDANCE WITH INSURANCE DIRECTIVES

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

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

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

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

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

## Recognition in other EEA States of UK insurers

46.—(1) For sections 81B to 81J of the 1982 Act(27) substitute—

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

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

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

## CHAPTER V

### SPECIAL CLASSES OF INSURERS

## Industrial assurance business

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

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

## Lloyd’s underwriters

48.—(1) In section 83A of the 1982 Act(28) (Lloyd’s underwriters: insurance Directives)—

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

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

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

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

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

## CHAPTER VI

## SUPPLEMENTARY PROVISIONS

**Applicable law**

**49.** In paragraph 1 of Schedule 3A to the 1982 Act<sup>(29)</sup> (law applicable to certain contracts of insurance), for sub-paragraph (6) substitute—

“(6) Where the risk—

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

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

the parties to the contract may choose any law.

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

**General interpretation**

**50.**—(1) In subsection (1) of section 96 of the 1982 Act<sup>(30)</sup> (general interpretation)—

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

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

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

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

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

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

(e) after that definition insert the following definitions—

“‘Community co-insurance operation’ and, in relation to such an operation, ‘leading insurer’ have the same meanings as in Council Directive 78/473/EEC of 30th May 1978<sup>(31)</sup> on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance;”;

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

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

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

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

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(32)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(33)</sup>;

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<sup>(29)</sup> Schedule 3A was inserted by [S.I. 1990/1333](#), reg 6(2) and amended by [S.I. 1993/174](#), reg 5(4) and (5).

<sup>(30)</sup> Section 96 has been amended by [S.I. 1990/1333](#), reg 8(3) and [S.I. 1993/174](#), reg 2(1)(c); and there are other amendments not relevant to these Regulations.

<sup>(31)</sup> O.J. L151, 7.6.78, page 25.

<sup>(32)</sup> O.J. L1, 3.1.94, page 3.

<sup>(33)</sup> O.J. L1, 3.1.94, page 572.

- ‘EEA State’ means a State which is a Contracting Party to the EEA Agreement but, until the EEA Agreement comes into force in relation to Liechtenstein, does not include the State of Liechtenstein;
- ‘EFTA company’ has the meaning given by section 72B above;
- ‘EFTA State’ means an EEA State which is not a member State;”;
- (h) after the definition of “holding company” insert—
- “‘home State’, in relation to an EC company, means the member State in which the company’s head office is situated;”;
- (i) in the definition of “main agent”, for the words “section 7 above” substitute the words “section 96E below”;
- (j) in the definition of “manager”, for the words “section 7 above” substitute the words “section 96D below”;
- (k) for the definition of “member State of the commitment” substitute—
- “‘non-EC company’ has the meaning given in section 5 above;
- ‘notifiable holding’ means voting rights or shares which, if acquired by any person, will result in his becoming a 10 per cent.shareholder controller, a 20 per cent.shareholder controller, a 33 per cent.shareholder controller, a 50 per cent.shareholder controller or a majority shareholder controller;”;
- (l) after the definition of “registrar of companies” insert—
- “‘relevant motor vehicle risks’ means risks falling within class 10 of Schedule 2 to this Act (motor vehicle liability), but excluding carrier’s liability;
- ‘shareholder controller’, ‘10 per cent.shareholder controller’, ‘20 per cent.shareholder controller’, ‘33 per cent.shareholder controller’, ‘50 per cent.shareholder controller’ and ‘majority shareholder controller’ have the meanings given by section 96C below;
- ‘State of the commitment’, in relation to a commitment entered into at any date, means—
- (a) where the policy holder is an individual, the State in which he had his habitual residence at that date;
- (b) where the policy holder is not an individual, the State in which the establishment of the policy holder to which the commitment relates was situated at that date,
- and ‘member State of the commitment’ shall be construed accordingly;”;
- (m) after the definition of “subsidiary” insert—
- “‘subsidiary undertaking’ shall be construed in accordance with section 258 of the Companies Act(34) and Article 266 of the Companies (Northern Ireland) Order 1986(35);”;
- (n) after the definition of “Swiss general insurance company” insert—
- “‘UK company’ has the meaning given in section 5 above;”.
- (2) After subsection (4) of that section insert—
- “(5) Except as otherwise provided by paragraph 27 of Schedule 2F to this Act, this Act shall apply as if Gibraltar were a member State.”

(34) 1985 c. 6: section 258 was inserted by the Companies Act 1989 (c. 40), section 21.

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

### Interpretation of expressions derived from insurance Directives

**51.**—(1) In subsection (1) of section 96A of the 1982 Act<sup>(36)</sup> (interpretation of expressions derived from insurance Directives), after paragraph (b) insert—

“(c) ‘the third general insurance Directive’ means Council Directive [92/49/EEC](#) of 18 June 1992<sup>(37)</sup> on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives [73/239/EEC](#)<sup>(38)</sup> and [88/357/EEC](#)<sup>(39)</sup>.”

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

“(c) ‘the third long term insurance Directive’ means Council Directive [92/96/EEC](#) of 10 November 1992<sup>(40)</sup> on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives [79/267 EEC](#)<sup>(41)</sup> and [90/619/EEC](#)<sup>(42)</sup>.”

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

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

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

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

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

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

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

### Meaning of “controller” etc.

**52.** After section 96B of the 1982 Act<sup>(43)</sup> insert—

#### “Meaning of ‘controller’ etc.

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

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<sup>(36)</sup> Section 96A was inserted by [S.I. 1990/1333](#), reg 2(1) and amended by [S.I. 1992/2890](#), reg 9(4) and [S.I. 1993/174](#), reg 6(3) to (5).

<sup>(37)</sup> O.J. L228, 11.8.92, page 1.

<sup>(38)</sup> O.J. L228, 16.8.73, page 3.

<sup>(39)</sup> O.J. L172, 4.7.88, page 1.

<sup>(40)</sup> O.J. L360, 9.12.92, page 1.

<sup>(41)</sup> O.J. L63, 13.3.79, page 1.

<sup>(42)</sup> O.J. L330, 29.11.90, page 50.

<sup>(43)</sup> Section 96B was inserted by [S.I. 1990/1333](#), reg 4 and amended by [S.I. 1992/2890](#), reg 9(5).



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

- (c) any company of which that person is a director;
  - (d) any person who is an employee or partner of that person;
  - (e) if that person is a company—
    - (i) any director of that company;
    - (ii) any subsidiary undertaking of that company;
    - (iii) any director or employee of any such subsidiary undertaking; and
  - (f) if that person has made an agreement or arrangement with any other person—
    - (i) with respect to the acquisition, holding or disposal of shares or other interests in the company concerned or another company of which it is a subsidiary undertaking; or
    - (ii) under which they undertake to act together in exercising their voting power in relation to the company concerned or another company of which it is such an undertaking, that other person.
- (5) For the purpose of determining for the purposes of this Act whether any person is a controller of an insurance company other than a UK company, subsection (4) above shall have effect as if—
- (a) paragraphs (b) and (f) were omitted; and
  - (b) in paragraph (e), for the words ‘subsidiary undertaking’, in both places where they occur, there were substituted the word ‘subsidiary’.
- (6) In this section—
- ‘settlement’ includes any disposition or arrangement under which property is held in trust;
  - ‘share’ has the same meaning as in Part VII of the Companies Act or Part VIII of the Companies (Northern Ireland) Order 1986(44);
  - ‘son’ includes stepson and ‘daughter’ includes stepdaughter.
- (7) Any reference in this section to a UK or non-EC company includes a reference to a company which, if any authorisation sought by it were issued, would be such a company.”

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

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

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

**96D.**—(1) In this Act ‘manager’—

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

- (b) in relation to an insurance company which is not a UK company, means an employee of the company (other than a chief executive) who, under the immediate authority of a director or chief executive of the company—
  - (i) exercises managerial functions, or is responsible for maintaining accounts or other records of the company; and
  - (ii) is not a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom.
- (2) In this Act ‘chief executive’, in relation to an insurance company or body corporate, means an employee of that company or body corporate, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of that company or body corporate.”

### Meaning of “main agent”

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

#### “Meaning of ‘main agent’.

- 96E.—(1) In this Act ‘main agent’—
- (a) in relation to a UK company, means a person appointed by the company to be its agent in respect of general business in one or more member States, with authority to enter into contracts on behalf of the company in any financial year—
    - (i) without limit on the aggregate amount of premiums; or
    - (ii) with a limit in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below;
  - (b) in relation to an insurance company which is not a UK company, means, subject to such exceptions as may be prescribed, a person appointed by the company to be its agent in respect of general business in the United Kingdom, with authority to enter into contracts on behalf of the company in any financial year—
    - (i) without limit on the aggregate amount of premiums; or
    - (ii) with a limit in excess of 10 per cent. of that premium limit.
- (2) A person shall not be regarded as falling within subsection (1)(a)(i) above in relation to a financial year unless—
- (a) the company is of the opinion that the aggregate amount of premiums, on contracts entered into by him on behalf of the company in that year in respect of general business in the member State or States concerned, will be in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below; or
  - (b) the aggregate amount of premiums, on contracts so entered into, actually is in excess of 10 per cent. of that premium limit.
- (3) Subject to subsections (4) and (5) below, the premium limit for the purposes of this section is the aggregate of the amounts of gross premiums shown in the annual accounts relating to the company’s business last deposited under section 22 above as receivable in respect of general business in the financial year to which the accounts relate.
- (4) If the accounts so deposited relate to a financial year which is not a period of 12 months, the aggregate of the amounts of gross premiums shown in the accounts as receivable in that financial year shall be divided by the number of months in that financial year and multiplied by twelve.

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

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

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

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

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

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

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

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

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

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

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

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

## PART III

### AMENDMENTS OF 1986 ACT

#### **Recognition of self-regulating organisations**

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

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

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

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

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

#### **Authorised insurers**

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

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

### Conduct of investment business

**58.**—(1) Section 47A of the 1986 Act(**45**) (statements of principle) shall have effect as if it included provision that a statement of principle issued under that section shall not include, as respects any EC company, provision as to any matter for which, under the third long term insurance Directive, responsibility is reserved to the supervisory authority in the company's home State.

(2) Section 48 of that Act(**46**) (conduct of business rules) shall have effect as if it included provision that rules under that section shall not include, as respects any EC company, provision as to any matter for which, under that Directive, responsibility is so reserved.

(3) Section 52 of that Act(**47**) (notification regulations) shall have effect as if it included provision that regulations under that section shall not require an EC company to furnish information which is not reasonably required for purposes connected with the exercise of functions under that Act or this Part of these Regulations.

### Powers of intervention

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

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

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

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

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

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

(3) In this regulation “the Board” means The Securities and Investments Board.

### **Information and auditors**

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

(2) Section 107 of that Act(**48**) (appointment of auditors) shall have effect as if the reference in subsection (1)(b) to a member of a recognised self-regulating organisation did not include a reference to an EC company.

### **Qualifications of designated agency**

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

### **Prevention of restrictive practices**

**62.**—(1) Section 119 of the 1986 Act(**49**) (recognised self-regulating organisations, investment exchanges and clearing houses) shall have effect as if any reference in subsections (1) and (2) to the protection of investors included a reference to compliance with the third long term insurance Directive.

(2) Section 121 of that Act(**50**) (designated agencies) shall have effect as if any reference to the protection of investors included a reference to compliance with the third long term insurance Directive.

### **Application of 1986 Act to insurance companies**

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

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

- (a) in sub-paragraph (2), the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company; and
- (b) in sub-paragraph (3A)(**51**), the references to section 81B of that Act were references to paragraph 18 of Schedule 2F to that Act.

### **Insurance contracts effected in contravention of 1982 Act**

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

- (a) in the course of carrying on insurance business in contravention of paragraph 1 or 4 of Schedule 2F to the 1982 Act or paragraph 1 of Schedule 2G to that Act; or

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

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

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

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

(b) in the course of providing insurance in contravention of paragraph 8, 11, 18, 19 or 23 of the said Schedule 2F or paragraph 5, 9 or 11 of the said Schedule 2G,  
as it has effect in relation to a contract of insurance which is entered into by a person in the course of carrying on insurance business in contravention of section 2 of the 1982 Act.

### **Industrial assurance**

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

### **Restrictions on disclosure of information**

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

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

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

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

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

### **Functions under this Part**

**67.** The functions of The Securities and Investments Board under this Part of these Regulations shall be treated for the purposes of the 1986 Act and the Transfer of Functions (Financial Services) Order 1992(**52**) as if they were functions under Part VI of that Act which—

- (a) had been functions of the Secretary of State; and
- (b) had been transferred to that Board by the Financial Services Act 1986 (Delegation) Order 1987(**53**).

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(52) S.I. 1992/1315.

(53) S.I. 1987/942.



## PART IV SUPPLEMENTAL

### Minor and consequential amendments and saving

**68.**—(1) The provisions mentioned in Schedule 8 to these Regulations shall have effect subject to the amendments there specified, being minor amendments or amendments consequential on the provisions of these Regulations.

(2) For the purposes of that Schedule an EC company—

- (a) lawfully carries on insurance business, or insurance business of any description, in the United Kingdom if it does so through a branch in respect of which such of the requirements of Part I of Schedule 2F to the 1982 Act as are applicable have been complied with; and
- (b) lawfully provides insurance, or insurance of any description, in the United Kingdom if such of those requirements as are applicable have been complied with in respect of the insurance.

(3) Nothing in regulations 7 and 52 above shall affect the operation of paragraph 9 of Part II of the Schedule to the Building Societies (Designation of Qualifying Bodies) (No.3) Order 1993<sup>(54)</sup>.

### Transitional provisions: EC companies

**69.**—(1) If an insurance company which immediately after the commencement date is an EC company was immediately before that date lawfully carrying on insurance business of any class or part of a class in the United Kingdom, it shall be treated for the purposes of the 1982 Act as if the requirements of paragraph 1 or, as the case may require, paragraph 4 of Schedule 2F to that Act had been complied with in relation to insurance business of that class or part of a class.

(2) If an insurance company which immediately after the commencement date is an EC company was immediately before that date lawfully providing insurance of any class or part of a class in the United Kingdom, it shall be treated for the purposes of the 1982 Act as if the requirements of paragraph 8 of Schedule 2F to that Act had been complied with in relation to insurance of that class or part of a class.

### Transitional provisions: UK insurers

**70.**—(1) If—

- (a) an insurance company which immediately after the commencement date is a UK company, or
- (b) a member of Lloyd's,

was immediately before that date lawfully carrying on insurance business of a class or part of a class in a member State other than the United Kingdom, it shall be treated for the purposes of the 1982 Act as if the requirements of paragraph 1 of Schedule 2G to that Act had been complied with in relation to insurance business of that class or part of a class.

(2) If—

- (a) an insurance company which immediately after the commencement date is a UK company, or
- (b) a member of Lloyd's,

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<sup>(54)</sup> S.I. 1993/2706.

was immediately before that date lawfully providing insurance of a class or part of a class in a member State other than the United Kingdom, it 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 of that class or part of a class.

### **Transitory provision**

71.—(1) This paragraph 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 on or before the commencement date.

(2) Until such date (“the transitional date”) as those Directives are fully or substantially implemented in the defaulting State, the 1982 Act and the 1986 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) 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 were a reference to the transitional date.

27th June 1994

*Neil Hamilton*  
Parliamentary Under-Secretary of State,  
Department of Trade and Industry

SCHEDULE 1

Regulation 5.

“[SCHEDULE 2A  
TO 1982 ACT]

CRITERIA OF SOUND AND PRUDENT MANAGEMENT

*Integrity and skill*

1. The business of the insurance company is carried on with integrity, due care and the professional skills appropriate to the nature and scale of its activities.
2. Each director, controller, manager or main agent of the insurance company is a fit and proper person to hold that position.
3. In the case of a non-EC company whose head office is not in an EFTA State—
  - (a) the representative referred to in section 9(4) above; or
  - (b) where that representative is not an individual, the individual representative referred to in section 10(5) above,is a fit and proper person to hold that position.

*Direction and management of the insurance company*

4. The insurance company is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold.

*Business to be conducted in a sound and prudent manner*

5. The insurance company conducts its business in a sound and prudent manner.
  - (1) The insurance company shall not be regarded as conducting its business in a sound and prudent manner unless it maintains—
    - (a) adequate accounting and other records of its business; and
    - (b) adequate systems of control of its business and records.
  - (2) Accounting and other records and systems of control shall not be regarded as adequate unless they are such as—
    - (a) to enable the business of the company to be prudently managed; and
    - (b) to enable the company to comply with the obligations imposed on it by or under this Act and, in the case of a UK company, enactments in other EEA States which apply to its insurance business.
  - (3) In determining whether any systems of control are adequate the Secretary of State shall have regard to the functions and responsibilities for those systems which are held by the persons who are responsible for the direction and management of the company and to whom paragraph 2 above applies.
7. The insurance company shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the interests of policy holders and potential policy holders.
8. The insurance company shall not be regarded as conducting its business in a sound and prudent manner if—

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- (a) it fails to satisfy an obligation to which it is subject by virtue of this Act; or
  - (b) in the case of a UK company, it fails to satisfy an obligation to which it is subject by virtue of any provision of the law of another EEA State which applies to its insurance business in that State.
9. The insurance company shall not be regarded as conducting its business in a sound and prudent manner if it fails to supervise the activities of a subsidiary undertaking—
- (a) with due care and diligence; and
  - (b) without detriment to the company’s business.”

SCHEDULE 2

Regulation 26.

“[SCHEDULE 2B  
TO 1982 ACT]

RESTRICTION ON DISCLOSURE OF INFORMATION

PART I

INFORMATION RELATING TO UK, EC AND NON-EC COMPANIES

*Restriction on disclosure*

- (1) Subject to the following provisions of this Part of this Schedule, information which—
- (a) is restricted information for the purposes of this paragraph; and
  - (b) relates to the business or other affairs of a relevant person,
- shall not be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.
- (2) Subject to sub-paragraph (3) below, information is restricted information for the purposes of this paragraph if it was obtained by the Secretary of State for the purposes of, or in the discharge of, functions under this Act or any rules or regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).
- (3) Information is not restricted information for the purposes of this paragraph if—
- (a) it has been made available to the public from other sources, or
  - (b) it is information in the form of a summary or is information so framed as not to enable information relating to any particular person to be ascertained from it.
- (4) The following are relevant persons for the purposes of this paragraph, namely—
- (a) any UK, EC or non-EC company; and
  - (b) any controller, manager, chief executive, general representative, agent or employee of such a company.
- (5) Any person who discloses information in contravention of this paragraph shall be guilty of an offence and liable—
- (a) on conviction or indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

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- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

*Disclosure for facilitating discharge of functions by Secretary of State*

2. Paragraph 1 above does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Secretary of State to discharge his functions under this Act or any rules or regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).

*Disclosure for facilitating discharge of functions by other regulatory authorities*

(1) Paragraph 1 above does not preclude the disclosure by the Secretary of State to any person specified in the first column of the following Table if the Secretary of State considers that the disclosure would enable or assist that person to discharge the functions specified in relation to him in the second column of that Table.

TABLE

Person	Functions
1 The Secretary of State.	Functions under the Companies Act, the Company Securities (Insider Dealing) Act 1985 <sup>(55)</sup> , the Insolvency Act 1986 <sup>(56)</sup> , the Company Directors Disqualification Act 1986 <sup>(57)</sup> , the Financial Services Act 1986 <sup>(58)</sup> , or Part II, III or VII of the Companies Act 1989 <sup>(59)</sup> .
2 The Treasury.	Functions under the Financial Services Act 1986 or under Part III or VII of the Companies Act 1989.
3 An inspector appointed under Part XIV of the Companies Act or section 94 or 177 of the Financial Services Act 1986.	Functions under that Part or that section.
4 A person authorised to exercise powers under section 43A or 44 above, section 447 of the Companies Act, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989.	Functions under that section.
5 The Friendly Societies Commission, the Registrar of Friendly Societies for Northern Ireland and the Assistant Registrar of Friendly Societies for Scotland.	Functions under the enactments relating to friendly societies or under the Financial Services Act 1986.
6 The Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland.	Functions under the enactments relating to industrial assurance.

<sup>(55)</sup> 1985 c. 8.

<sup>(56)</sup> 1986 c. 45.

<sup>(57)</sup> 1986 c. 46.

<sup>(58)</sup> 1986 c. 60.

<sup>(59)</sup> 1989 c. 40.

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Person	Functions
<b>7</b> The Building Societies Commission.	Functions under the Building Societies Act 1986 <b>(60)</b> and protecting the interests of the shareholders and depositors of building societies.
<b>8</b> The Director General of Fair Trading.	Functions under the Fair Trading Act 1973 <b>(61)</b> except Part II, the Consumer Credit Act 1974 <b>(62)</b> , the Restrictive Trade Practices Act 1976 <b>(63)</b> , the Estate Agents Act 1979 <b>(64)</b> , the Competition Act 1980 <b>(65)</b> or the Control of Misleading Advertisements Regulations 1988 <b>(66)</b> .
<b>9</b> A designated agency (within the meaning of the Financial Services Act 1986).	Functions under that Act or Part VII of the Companies Act 1989.
<b>10</b> A transferee body (within the meaning of the Financial Services Act 1986) or the competent authority (within the meaning of that Act).	Functions under that Act.
<b>11</b> Any of the following (within the meaning of the Financial Services Act 1986), namely, a recognised self-regulating organisation, a recognised investment exchange, a recognised professional body and a recognised clearing house.	Functions in its capacity as a recognised self-regulating organisation, recognised investment exchange, recognised professional body or a recognised clearing house.
<b>12</b> The Department of Economic Development in Northern Ireland.	Functions under enactments relating to companies or insolvency.
<b>13</b> An inspector appointed by the Department of Economic Development in Northern Ireland under enactments relating to companies or insolvency.	Functions under those enactments.
<b>14</b> A person authorised to exercise powers under Article 440 of the Companies (Northern Ireland) Order 1986 <b>(67)</b> or section 84 of the Companies Act 1989 <b>(68)</b> .	Functions under that Article or section.
<b>15</b> An official receiver.	Functions under enactments relating to insolvency.
<b>16</b> The Panel on Take-overs and Mergers.	All functions.
<b>17</b> The Bank of England.	All functions.
<b>18</b> A body administering a scheme under section 54 of the Financial Services Act 1986.	Functions under the scheme.
<b>19</b> A body established by order under section 46 of the Companies Act 1989.	Functions under Part II of that Act.

**(60)** 1986 c. 53.

**(61)** 1973 c. 41.

**(62)** 1974 c. 39.

**(63)** 1976 c. 34.

**(64)** 1979 c. 38.

**(65)** 1980 c. 21.

**(66)** S.I. 1988/915.

**(67)** S.I. 1986/1032 (N.I.6).

**(68)** 1989 c. 40.

Person	Functions
<b>20</b> A supervisory body (as defined in section 30 of the Companies Act 1989) or a qualifying body (as defined in section 32 of that Act).	Functions under that Act.
<b>21</b> The Occupational Pensions Board.	Functions in respect of insurance companies or other credit and financial institutions.
<b>22</b> The Council of Lloyd's, the Committee of Lloyd's or the Disciplinary Committee or Appeal Tribunal established under the Lloyd's Act 1982 <sup>(69)</sup> .	Functions under the Lloyd's Acts 1871 to 1982 and functions under bye-laws made under those Acts.
<b>23</b> The Tribunal under the Prevention of Fraud (Investments) Act 1958 <sup>(70)</sup> .	Functions under that Act.
<b>24</b> The Monopolies and Mergers Commission.	Functions under the Fair Trading Act 1973 and the Competition Act 1980.
<b>25</b> An auditor appointed under rules made under section 107 of the Financial Services Act 1986 or a person approved under section 108 of that Act.	All functions.

(2) Paragraph 1 above does not preclude the disclosure by any person specified in the first column of the Table in sub-paragraph (1) above of information obtained by him by virtue of that sub-paragraph if he makes the disclosure—

- (a) with the consent of the Secretary of State; and
- (b) for the purpose of enabling or assisting him to discharge any functions specified in relation to him in the second column of that Table;

and before deciding whether to give consent to such a disclosure by any person the Secretary of State shall take account of any representations made by that person as to the desirability of or the necessity for the disclosure.

(3) Paragraph 1 above does not preclude—

- (a) the disclosure of information to the Treasury; or
- (b) the disclosure of information to the Secretary of State for purposes other than those specified in relation to him in sub-paragraph (1) above,

if (in either case) disclosure is in accordance with Article 16(6) of the third general insurance Directive, or Article 15(6) of the third long term insurance Directive.

(4) Paragraph 1 above does not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority not specified in the first column of the Table in sub-paragraph (1) above to discharge any functions if disclosure is in accordance with Article 16 of the third general insurance Directive, or Article 15 of the third long term insurance Directive.

(5) Paragraph 1 above does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside the United Kingdom to exercise functions corresponding to those of—

- (a) the Bank of England;
- (b) the Secretary of State under this Act or the Financial Services Act 1986;
- (c) the designated agency under that Act or rules or regulations made under that Act; or
- (d) the competent authority under Part IV of that Act.

<sup>(69)</sup> 1982 c.xiv.

<sup>(70)</sup> 1958 c. 45.

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(6) Sub-paragraph (5) above does not apply in relation to disclosure to an authority which is not an authority in another member State unless the Secretary of State is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this Part of this Schedule.

(7) Information which is disclosed to a person in pursuance of sub-paragraph (1) or (2) above shall not be used otherwise than for the purpose mentioned in that sub-paragraph.

(8) Any person who uses information in contravention of sub-paragraph (7) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(9) Any reference in this paragraph to enabling or assisting any person to discharge or exercise any functions is a reference to enabling or assisting that person to discharge or exercise those functions in relation to—

- (a) a financial market; or
- (b) persons carrying on the business of banking or insurance, Consumer Credit Act businesses or the business of providing other financial services;

and in this sub-paragraph “Consumer Credit Act business” has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992(71).

#### *Other permitted disclosures*

(1) Paragraph 1 above does not preclude the disclosure of information—

- (a) for the purpose of enabling or assisting the Deposit Protection Board to discharge its functions under the Banking Act 1987(72);
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
- (c) for the purpose of enabling or assisting the Council of the Stock Exchange to discharge its functions in relation to insurance companies;
- (d) with a view to the institution of, or otherwise for the purposes of, proceedings under section 6, 7 or 8 of the Company Directors Disqualification Act 1986(73) in respect of a director or former director of an insurance company;
- (e) with a view to the institution of, or otherwise for the purposes of, any civil proceedings arising under or by virtue of the Financial Services Act 1986 or proceedings before the Financial Services Tribunal, if those proceedings relate to an insurance company;
- (f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by an auditor or actuary of his professional duties;
- (g) in pursuance of a Community obligation.

(2) Paragraph 1 above does not preclude the disclosure by the Secretary of State to the Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland, the Lord Advocate, a procurator fiscal or a constable of—

- (a) information obtained by virtue of section 43A, 44 or 44A above; or
- (b) information in the possession of the Secretary of State as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

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(71) S.I. 1992/3218.

(72) 1987 c. 22.

(73) 1986 c. 46.



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*Information supplied by a supervisory authority*

- (1) Paragraph 1 above applies also to information which—
  - (a) has been supplied to the Secretary of State for the purposes of any relevant functions by a supervisory authority in a member State other than the United Kingdom; or
  - (b) has been obtained for those purposes by the Secretary of State, or by a person acting on his behalf, in another member State.
- (2) Subject to sub-paragraphs (3) and (4) below, information supplied or obtained as mentioned in sub-paragraph (1)(a) or (b) above shall not be disclosed except as provided by paragraph 1 above or—
  - (a) for the purpose of enabling or assisting the Secretary of State to discharge any relevant functions; or
  - (b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Act or otherwise.
- (3) Information supplied as mentioned in sub-paragraph (1)(a) above may be disclosed—
  - (a) to a relevant recipient, if the supervisory authority which supplied the information consents to its disclosure and the case is one in which information to which paragraph 1 above applies could be so disclosed by virtue of paragraph 3(1) above; or
  - (b) to the Treasury or the Secretary of State, if that authority consents to its disclosure and the case is one in which information to which paragraph 1 above applies could be so disclosed by virtue of paragraph 3(3) above.
- (4) Information obtained as mentioned in sub-paragraph (1)(b) above may be disclosed—
  - (a) to a relevant recipient, if the supervisory authority in the member State concerned consents to its disclosure and the case is one in which information to which paragraph 1 above applies could be so disclosed by virtue of paragraph 3(1) above; or
  - (b) to the Treasury or the Secretary of State, if that authority consents to its disclosure and the case is one in which information to which paragraph 1 above applies could be so disclosed by virtue of paragraph 3(3) above.
- (5) In this paragraph—

“relevant functions”, in relation to the Secretary of State, means his functions under this Act;  
“relevant recipient” means a person specified in any of entries 1 to 7, 12, 13 and 17 in the Table in paragraph 3(1) above.

## PART II

### INFORMATION RELATING TO OTHER PERSONS

*Restriction on disclosure*

- (1) Subject to paragraph 7 below, no information which—
  - (a) has been obtained under section 44(2) to (4)(74) or 44A(75) above; and
  - (b) relates to the business or other affairs of a person who is not a relevant person for the purposes of paragraph 1 above,

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(74) Subsections (2) to (4) have been amended by the Companies Act 1989 (c. 40), section 77(2).

(75) Section 44A was inserted by the Companies Act 1989 (c. 40), section 77(3).

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shall be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.

(2) A person who discloses any information in contravention of this paragraph shall be guilty of an offence under section 449 of the Companies Act or Article 442 of the Companies (Northern Ireland) Order 1986 and liable accordingly.

#### *Permitted disclosures*

(1) Paragraph 6 above does not preclude the disclosure of information to any person who is a competent authority for the purposes of section 449 of the Companies Act or Article 442(1)(a) to (e) of the Companies (Northern Ireland) Order 1986.

(2) Paragraph 6 above does not preclude the disclosure of information as mentioned in any of the paragraphs except (m) of subsection (1) of section 180 of the Financial Services Act 1986 or in subsection (3) or (4) of that section or as mentioned in section 449(1) of the Companies Act or Article 442 of that Order.

(3) Paragraph 6 above does not preclude the disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it.”

### SCHEDULE 3

Regulation 28.

#### “[SCHEDULE 2C TO 1982 ACT]

### TRANSFERS OF INSURANCE BUSINESS

#### PART I

### TRANSFERS OF LONG TERM BUSINESS

#### *Sanction of court required*

(1) Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on by an insurance company to which this Part of this Act applies (“the transferor company”) is to be transferred to another body whether incorporated or not (“the transferee company”) and—

- (a) where the transferor company is a UK company, the business proposed to be transferred is business carried on in one or more member States;
- (b) where that company is not a UK company, the business proposed to be transferred is business carried on in the United Kingdom,

the transferor company or the transferee company may apply to the court, by petition, for an order sanctioning the scheme.

(2) If any such scheme involves a compromise or arrangement falling within section 427A(1) of the Companies Act(76) or Article 420A(1) of the Companies (Northern Ireland) Order 1986(77)

(76) Section 427A was inserted by S.I. 1987/1991, reg 2(a) and Schedule, Part I and amended by the Companies Act 1989 (c. 40), section 114(2).

(application of provisions about compromises and arrangements to mergers and divisions of public companies), the following provisions, namely—

- (a) sections 425 to 427 of that Act, or
- (b) Articles 418 to 420 of that Order,

shall have effect, as regards that compromise or arrangement, as provided by section 427A(1) or Article 420A(1) (as the case may be), but without prejudice to the operation of the provisions of this Part of this Schedule in relation to the scheme.

(3) No such transfer as is mentioned in sub-paragraph (1) above shall be carried out unless the scheme relating to the transfer has been sanctioned by the court in accordance with this Part of this Schedule; and, except in the case of any such scheme as is mentioned in sub-paragraph (2) above, no order shall be made under any of the provisions specified in paragraph (a) or (b) of that sub-paragraph in respect of so much of any compromise or arrangement as involves any such transfer.

(4) In this Part of this Schedule—

“the court” means the High Court of Justice in England except that it means—

- (a) the Court of Session if the transferor company and the transferee company are both registered or both have their head offices in Scotland;
- (b) the High Court of Justice in Northern Ireland if the transferor company and the transferee company are both registered or both have their head offices in Northern Ireland;
- (c) either the High Court of Justice in England or the Court of Session if either the transferor company or the transferee company is registered or has its head office in Scotland;
- (d) either the High Court of Justice in England or the High Court of Justice in Northern Ireland if either the transferor company or the transferee company is registered or has its head office in Northern Ireland; and
- (e) either the Court of Session or the High Court of Justice in Northern Ireland if the transferor company or the transferee company is registered or has its head office in Scotland and the other such company is registered or has its head office in Northern Ireland;

“direct insurance” means insurance other than reinsurance.

#### *Procedure with respect to applications*

(1) The court shall not determine an application under paragraph 1 above unless the petition is accompanied by a report on the terms of the scheme by an independent actuary and the court is satisfied that the requirements of sub-paragraph (2) below have been complied with.

(2) The said requirements are—

- (a) that a notice stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in paragraph (d) below will be available as required by that paragraph has been published—
  - (i) in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed, in two national newspapers in the United Kingdom;
  - (ii) where the transferor company is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, in two national newspapers in that member State; and

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(77) S.I. 1986/1032 (N.I.6); Article 420A was inserted by S.R. 1987/422, reg 3 and Schedule, Part I.

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- (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment, in two national newspapers in that EEA State;
  - (b) except where the court has otherwise directed, that a statement—
    - (i) setting out the terms of the scheme; and
    - (ii) containing a summary of the report mentioned in sub-paragraph (1) above sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term policy holders of the companies concerned, has been sent to each of those policy holders and to every member of those companies;
  - (c) that a copy of the petition, of the report mentioned in sub-paragraph (1) above and of any statement sent out under paragraph (b) above has been served on the Secretary of State and that a period of not less than twenty-one days has elapsed since the date of service;
  - (d) that copies of the petition and of the report mentioned in sub-paragraph (1) above have been open to inspection—
    - (i) at offices in the United Kingdom of the companies concerned;
    - (ii) where the transferor company is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, at such place in that member State as the court has directed; and
    - (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment, at such place in that EEA State as the court has directed,
 for a period of not less than twenty-one days beginning with the date of the first publication of a notice in accordance with paragraph (a) above;
  - (e) in the case of any such scheme as is mentioned in paragraph 1(2) above, that copies of the documents listed in paragraph 6(1) of Schedule 15B to the Companies Act(78) or in paragraph 6(1) of Schedule 15B to the Companies (Northern Ireland) Order 1986(79) had been served on the Secretary of State by the beginning of the period referred to in paragraph 3(e) of that Schedule.
- (3) Each of the companies concerned shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the petition and of the report mentioned in sub-paragraph (1) above to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.
- (4) On any petition under paragraph 1 above, the following shall be entitled to be heard, namely—
- (a) the Secretary of State, and
  - (b) any person (including any employee of the transferor company or the transferee company) who alleges that he would be adversely affected by the carrying out of the scheme.
- (5) 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 commitment situated in an EFTA State and the transferee company is a UK or EC company or a non-EC company whose head office is in an EFTA State; or
  - (b) it covers a commitment situated in a member State and the transferor company or the transferee company is a non-EC company whose head office is in an EFTA State.

(78) Schedule 15B was inserted by S.I. 1987/1991, reg 2(c) and Schedule, Part II and amended and renumbered by the Companies Act 1989 (c. 40), sections 23 and 114(2) and Schedule 10, Part I, para 22.

(79) Schedule 15B was inserted by S.R. 1987/442, reg 3(c) and renumbered by the Companies (No.2) (Northern Ireland) Order 1990 (N.I.10), Article 49(2).

(6) Where the transferee company is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992(80), sub-paragraphs (2)(c) and (e) and (4)(a) above shall have effect as if the reference to the Secretary of State included a reference to the Friendly Societies Commission.

#### *Determination of applications*

(1) Where the transferor company is a UK or non-EC company and any policy included in the proposed transfer evidences a contract of direct insurance, the court shall not make an order sanctioning the scheme unless—

- (a) it is satisfied that the transferee company is, or will be immediately after the making of the order—
  - (i) authorised under section 3 or 4 above to carry on, or
  - (ii) authorised in accordance with Article 6 of the first long-term insurance Directive to carry on in an EEA State other than the United Kingdom, long term business of the class or classes to be transferred under the scheme;
- (b) the relevant authority certifies that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account; and
- (c) where the transferor company is a UK company and the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Secretary of State certifies—
  - (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.

(2) Where sub-paragraph (1) above applies and, as regards any policy (other than an EFTA policy) which is included in the proposed transfer and evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, the court shall not make an order sanctioning the scheme unless the Secretary of State certifies—

- (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.

(3) Where sub-paragraph (1) above applies, the establishment of the transferee company 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 of the commitment, the court shall not make an order sanctioning the scheme unless the Secretary of State certifies that—

- (a) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in that EEA State; and
- (b) the supervisory authority in that EEA State agrees to the transfer.

(4) Where sub-paragraph (1) above applies, the establishment of the transferee company 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 of the commitment, the court shall not make an order sanctioning the scheme unless—

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(80) 1992 c. 40.

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- (a) where the EEA State in which the establishment is situated is also the State of the commitment, the Secretary of State certifies that the supervisory authority in that EEA State agrees to the transfer;
  - (b) where the United Kingdom is the State of the commitment, the Secretary of State certifies that the transferee company is not precluded by Schedule 2F to this Act 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 of the commitment, the Secretary of State certifies that—
    - (i) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the EEA State which is the State of the commitment;
    - (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.
- (5) Where the transferor company is not a UK or non-EC company or any policy included in the proposed transfer evidences a contract of reinsurance, the court shall not make an order sanctioning the scheme unless it is satisfied that the transferee company is, or will be immediately after the making of the order—

- (a) authorised under section 3 or 4 above to carry on, or
- (b) an EC company which is not precluded by Part I of Schedule 2F to this Act from carrying on,

long term business of the class or classes to be transferred under the scheme.

- (6) In this paragraph “the relevant authority” means—
- (a) if the transferee company is a UK company, the Secretary of State;
  - (b) if the transferee company is an EC company, the supervisory authority in its home State;
  - (c) if the transferee company is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
  - (d) if the transferee company does not fall within paragraphs (a) to (c) above, the Secretary of State or other authority which, in accordance with Article 29 or 30 of the first long term insurance Directive, is responsible for supervising the company’s margin of solvency.
- (7) Where the transferee company is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992—
- (a) sub-paragraphs (1)(a) and (5)(a) above shall have effect as if the reference to section 3 or 4 above were a reference to that Part of that Act; and
  - (b) sub-paragraph (1)(b) above shall have effect as if the relevant authority for the purposes of this paragraph were the Friendly Societies Commission.

#### *Rights of policy holders*

- (1) This paragraph applies where the court makes an order under this Part of this Schedule sanctioning a scheme and either—
- (a) the transferor company is a UK or non-EC company and, as regards any policy included in the transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment; or
  - (b) as regards any EFTA policy included in the transfer, an EEA State other than the United Kingdom is the State of the commitment.

- (2) The court 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 of the commitment; and
  - (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 of the commitment shall determine—
- (a) whether the policy holder has a right to cancel the policy; and
  - (b) the conditions applicable to any such right.

#### *Supplementary provisions*

(1) Where the court makes an order under this Part of this Schedule sanctioning a scheme the court may, either by that order or by any subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding up, of the transferor company;
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

(2) Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.

(3) Where the transferor company is a UK or non-EC company, it is immaterial for the purposes of sub-paragraphs (1)(a), (c) and (e) and (2) above that the law applicable to any of the contracts of direct insurance included in the transfer is the law of an EEA State other than the United Kingdom.

(4) For the purposes of any provision requiring the delivery of an instrument of transfer as a condition for the registration of a transfer of any property, including in particular—

- (a) section 183(1) of the Companies Act and section 56(4) of the Finance Act 1946<sup>(81)</sup>; and
- (b) Article 193(1) and (2) of the Companies (Northern Ireland) Order 1986 and section 27(4) of the Finance (No 2) Act (Northern Ireland) 1946<sup>(82)</sup>,

an order which by virtue of this paragraph operates to transfer any property shall be treated as an instrument of transfer.

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<sup>(81)</sup> 1946 c. 64.

<sup>(82)</sup> 1946 c. 17 (N.I.).

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(5) Where a scheme is sanctioned by an order of the court under this Part of this Schedule, the transferee company shall, within ten days from the date on which the order is made or such longer period as the Secretary of State may allow, deposit two office copies of the order with the Secretary of State.

(6) In this paragraph “property” includes property, rights and powers of every description, “liabilities” includes duties and “shares” and “debentures” have the same meaning as in the Companies Act or the Companies (Northern Ireland) Order 1986.

## PART II

### TRANSFERS OF GENERAL BUSINESS

#### *Approval of Secretary of State required*

(1) Where it is proposed to execute an instrument by which an insurance company to which this Part of this Act applies (“the transferor”) is to transfer to another body (“the transferee”) all its rights and obligations under such general policies, or general policies of such descriptions as may be specified in the instrument, and—

- (a) where the transferor is a UK company, the performance by it of the obligations proposed to be transferred constitutes the carrying on of insurance business in one or more member States; or
- (b) where the transferor is not a UK company, the performance by it of the obligations proposed to be transferred constitutes the carrying on of insurance business in the United Kingdom,

the transferor may apply to the Secretary of State for his approval of the transfer.

(2) Any notice or other document authorised or required to be given or served under this Part of this Schedule may, without prejudice to any other method of service, be served by post; and a letter containing the notice or other document shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in the United Kingdom.

(3) In this Part of this Schedule—

“direct insurance” means insurance other than reinsurance;

“general policy” means a policy evidencing a contract the effecting of which constitutes the carrying on of general business.

#### *Procedure with respect to applications*

(1) The Secretary of State shall not determine an application made under paragraph 6 above unless he is satisfied that—

- (a) a notice approved by him for the purpose has been published—
  - (i) in the London, Edinburgh and Belfast Gazettes and, if he thinks fit, in two national newspapers in the United Kingdom which have been so approved;
  - (ii) where the transferor is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, the risk is situated in a member State which is not the United Kingdom, in two national newspapers in that member State; and



- (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the EEA State in which the risk is situated, in two national newspapers in that EEA State;
  - (b) except in so far as he has otherwise directed, a copy of the notice has been sent to every affected policy holder and every other person who claims an interest in a policy included in the proposed transfer and has given written notice of his claim to the transferor; and
  - (c) copies of a statement setting out particulars of the transfer and approved by him for the purpose have been available for inspection—
    - (i) at one or more places in the United Kingdom;
    - (ii) where the transferor is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, the risk is situated in a member State which is not the United Kingdom, at one or more places in that member State; and
    - (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the EEA State in which the risk is situated, at one or more places in that EEA State,
- for a period of not less than thirty days beginning with the date of the first publication of the notice in accordance with paragraph (a) above.
- (2) The notice referred to in sub-paragraph (1) above shall include a statement that written representations concerning the transfer may be sent to the Secretary of State before a specified day, which shall not be earlier than sixty days after the day of the first publication of the notice in accordance with sub-paragraph (1)(a) above; and the Secretary of State shall not determine the application until after considering any representations made to him before the specified day.
- (3) For the purposes of this paragraph a policy holder is an “affected policy holder” in relation to a proposed transfer if—
- (a) his policy is included in the transfer, or
  - (b) his policy is with the transferor and the Secretary of State has certified, after consulting the transferor, that in the opinion of the Secretary of State the policy holder’s rights and obligations under the policy will or may be materially affected by the transfer.
- (4) 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 situated in an EFTA State and the transferee is a UK or EC company or a non-EC company whose head office is in an EFTA State; or
  - (b) it covers a risk situated in a member State and the transferor company or the transferee is a non-EC company whose head office is in an EFTA State.
- (5) Where the transferor is a UK or non-EC company and the transferee is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992, sub-paragraph (1)(b) shall have effect as if the reference to every affected policy holder included a reference to the Friendly Societies Commission.

#### *Determination of applications*

- (1) Where the transferor is a UK or non-EC company and any policy included in the proposed transfer evidences a contract of direct insurance, the Secretary of State shall not approve the transfer unless—
- (a) he is satisfied that the transferee is, or will be immediately after the approval—
    - (i) authorised under section 3 or 4 above to carry on, or

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- (ii) 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 by the instrument;
  - (b) he 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 transferor is a UK company and the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Secretary of State 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.
- (2) Where sub-paragraph (1) above applies and, as regards any policy (other than an EFTA policy) which is included in the proposed transfer and evidences a contract of direct insurance, the risk is situated in a member State other than the United Kingdom, the Secretary of State shall not approve the transfer unless he 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.
- (3) Where sub-paragraph (1) above applies, 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 Secretary of State shall not approve the transfer unless he 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 or will be participating, by virtue of the transfer of that policy, in a Community co-insurance operation otherwise than as the leading insurer; and
  - (b) the supervisory authority in that EEA State agrees to the transfer.
- (4) Where sub-paragraph (1) above applies, 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 Secretary of State shall not approve the transfer unless—
- (a) where the EEA State in which the establishment is situated is also the State in which the risk is situated, he 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 risk is situated, he is satisfied that the transferee is not precluded by Schedule 2F to this Act 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, he 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 or will be participating, by virtue of the transfer of that policy, in a Community co-insurance operation otherwise than as the leading insurer;

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- (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.

(5) Where the transferor company is not a UK or non-EC company or any policy included in the proposed transfer evidences a contract of reinsurance, the Secretary of State shall not approve the transfer on an application under paragraph 6 above unless he is satisfied that the transferee is, or will be immediately after the approval—

- (a) authorised under section 3 or 4 above to carry on, or
- (b) 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.

(6) Where the Secretary of State determines an application under paragraph 6 above, he shall—

- (a) publish a notice of his decision in the London, Edinburgh and Belfast Gazettes and in such other manner as he may think fit, and
- (b) send a copy of that notice to the transferor, the transferee and every person who made representations in accordance with the notice referred to in paragraph 7(1) above;

and if he refuses the application he shall inform the transferor and the transferee in writing of the reasons for his refusal.

(7) In this paragraph “the relevant authority” means—

- (a) if the transferee is a UK company, the Secretary of State;
- (b) if the transferee is an EC company, the supervisory authority in its home State;
- (c) if the transferee is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
- (d) if the transferee is a Swiss general insurance company, the supervisory authority in Switzerland;
- (e) if the transferee does not fall within paragraphs (a) to (d) above, the Secretary of State or other authority which, in accordance with Article 25 or 26 of the first general insurance Directive, is responsible for supervising the transferee’s margin of solvency.

(8) Where the transferor is a UK or non-EC company and the transferee is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992—

- (a) sub-paragraphs (1)(a) and (5)(a) above shall have effect as if the reference to section 3 or 4 above were a reference to that Part of that Act; and
- (b) sub-paragraph (1)(c) above shall have effect as if the relevant authority for the purposes of this paragraph were the Friendly Societies Commission.

#### *Rights of policy holders*

(1) This paragraph applies where the Secretary of State approves an application made under paragraph 6 above and either—

- (a) the transferor is a UK or non-EC company and, as regards any policy included in the transfer which evidences a contract of direct insurance, 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, an EEA State other than the United Kingdom is the EEA State in which the risk is situated.

(2) The Secretary of State shall direct that—

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- (a) notice of his 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.

#### *Effect of approval of Secretary of State*

(1) Subject to paragraph 9(2) above, an instrument giving effect to a transfer approved by the Secretary of State under this Part of this Schedule shall be effectual in law—

- (a) to transfer to the transferee all the transferor's rights and obligations under the policies included in the instrument, and
- (b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations, notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.

(2) Where the transferor is a UK or non-EC company, it is immaterial for the purposes of subparagraph (1) above that the law applicable to any of the contracts of direct insurance included in the transfer is the law of an EEA State other than the United Kingdom.

(3) Except in so far as the Secretary of State may otherwise direct, a policy holder whose policy is included in such an instrument shall not be bound by it unless he has been given written notice of its execution by the transferor or the transferee.”

#### SCHEDULE 4

Regulation 35.

“[SCHEDULE 2D  
TO 1982 ACT]

#### FURTHER PROVISIONS WITH RESPECT TO CONTROLLERS OF UK COMPANIES

##### *Provisions supplementing sections 60 to 61A*

- (1) This paragraph applies where—
  - (a) a UK company which proposes to appoint a person as managing director or chief executive of the company;
  - (b) a person who proposes to become a controller of such a company; or
  - (c) a person who is a controller of such a company and who proposes to acquire a notifiable holding in the company,

has served notice on the Secretary of State under subsection (1)(a) of section 60, 61 or 61A above (“the relevant section”).

(2) The Secretary of State may by notice in writing require the person serving the notice or, in a case falling within sub-paragraph (1)(a) above, the person proposed to be appointed to provide such additional information or documents as the Secretary of State may reasonably require for the purpose of deciding whether to serve—

- (a) a notice of objection under the relevant section; or
- (b) a notice imposing conditions under paragraph 3 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 subsection (1)(b) of the relevant section.

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

- (a) in the case of a notice under section 60(1)(a) above, the person proposed to be appointed as managing director or chief executive of the company is not so appointed;
- (b) in the case of notice under section 61(1)(a) above, the person by whom it was served does not become a controller of the company; or
- (c) in the case of notice under section 61A(1)(a) above, the person by whom it was served does not acquire the holding 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 a case where the Secretary of State has, before the end of the period mentioned in subsection (1)(b) of the relevant section, 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 Secretary of State has, before the end of that period, served a notice imposing conditions on that person in accordance with paragraph 3 below, the date of the service of that notice; and
- (c) in any other case, the date immediately following the end of that period.

(6) The period mentioned in subsection (1)(b) of the relevant section 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 section.

*Notice of objection where requisite notice not given*

(1) This paragraph applies where—

- (a) a UK company appoints a person as managing director or chief executive of the company;
- (b) a person becomes a controller of such a company otherwise than by virtue of an appointment in relation to which section 60 above has effect; or
- (c) a person who is a controller of such a company acquires a notifiable holding in the company,

in contravention of subsection (1)(a) of section 60, 61 or 61A above; and references in this paragraph to the person in breach shall be construed accordingly.

(2) The Secretary of State—

- (a) may serve the person in breach with a notice of objection at any time within three months after he becomes aware of the contravention; and

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- (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 3 below, may require that person by notice in writing to provide such information or documents as the Secretary of State may reasonably require.
- (3) Before serving a notice of objection under sub-paragraph (2) above, the Secretary of State shall serve on the person in breach and, in a case falling within sub-paragraph (1)(a) above, on the person appointed as managing director or chief executive a preliminary written notice—
  - (a) stating that he 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 he 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 Secretary of State; and
  - (b) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for that purpose by the Secretary of State.
- (5) The Secretary of State shall not serve a notice of objection under sub-paragraph (2) above unless it appears to him—
  - (a) that the person appointed is or may not be a fit and proper person to be the managing director or chief executive of the company or, as the case may be, that the person in breach is not or may not be a fit and proper person to be a controller of the company or to retain the notifiable holding in the company; or
  - (b) that the interests of policy holders and potential policy holders of the company are or may in some other manner be jeopardised by that person's ability to influence the company.
- (6) Where representations are made in accordance with this paragraph the Secretary of State shall take them into consideration before serving a notice of objection.
- (7) The Secretary of State 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.
- (9) After a notice of objection has been served on a company in relation to a person who is a managing director or chief executive, the company shall forthwith remove that person from that office.

*Notices imposing conditions*

- (1) This paragraph applies where either—
  - (a) paragraph 1 above applies and the Secretary of State is entitled to serve a notice of objection under the relevant section; or
  - (b) paragraph 2 above applies;and in this paragraph expressions which are also used in paragraph 1 or 2 above have the same meanings as in that paragraph.
- (2) If, in a case falling within sub-paragraph (1)(a) above, the Secretary of State considers that, if certain conditions were complied with—
  - (a) by the person serving the notice under subsection (1)(a) of the relevant section; or

- (b) where the notice is under section 60(1)(a) above, by the person proposed to be appointed as managing director or chief executive,

the criteria of sound and prudent management would continue to be or, as the case may be, would be fulfilled in respect of the company, he may, instead of serving a notice of objection under the relevant section, serve a notice requiring the conditions in question to be complied with by that person (“the person concerned”).

A notice under this sub-paragraph shall be served—

- (a) on the person concerned, and
- (b) where that person is proposed to be appointed as managing director or chief executive, on the company.

(3) If, in a case falling within sub-paragraph (1)(b) above, the Secretary of State considers that, if certain conditions were complied with—

- (a) by the person in breach; or
- (b) where the contravention is of section 60(1)(a) above, by the person appointed as managing director or chief executive,

the criteria of sound and prudent management would continue to be or, as the case may be, would be fulfilled in respect of the company, he may, instead of serving a notice of objection under paragraph 2 above, serve a notice requiring the conditions in question to be complied with by that person (“the person concerned”).

A notice under this sub-paragraph shall be served—

- (a) on the person concerned, and
- (b) where that person has been appointed as managing director or chief executive, on the company.

(4) Before serving a notice under sub-paragraph (2) or (3) above, the Secretary of State shall serve on the person concerned and, where that person is proposed to be or has been appointed as managing director or chief executive, on the company a preliminary written notice stating—

- (a) that the Secretary of State is considering serving a notice under that sub-paragraph;
- (b) the conditions which would be required by such a notice to be complied with by the person concerned;
- (c) the criteria of sound and prudent management which he considers would not be fulfilled in respect of the company if he served neither such a notice nor a notice of objection under subsection (1)(a) of the relevant section or, as the case may be, paragraph 2 above; and
- (d) that the person on whom the preliminary notice is served may, within the period of one month from the date of service of that notice—
  - (i) make written representations to the Secretary of State; and
  - (ii) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.

(5) Where representations are made in accordance with this paragraph the Secretary of State shall take them into consideration before serving a notice under sub-paragraph (2) or (3) above.

(6) The Secretary of State shall not be obliged to disclose—

- (a) to the person concerned; or
- (b) where that person is proposed to be or has been appointed as managing director or chief executive, to the company,

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any particulars of the ground on which he is considering the service of a notice under sub-paragraph (2) or (3) above or a notice of objection under the relevant section or, as the case may be, paragraph 2 above.

*Objection to existing controller*

(1) Where it appears to the Secretary of State that the criteria of sound and prudent management are not or may not be fulfilled in respect of a UK company by reason of the ability of a person who is a controller of the company to influence the company, he may—

- (a) where that person is the managing director or chief executive, serve on the company; and
- (b) in any other case, serve on that person,

a written notice of objection to that person continuing to be a controller of the company.

(2) Before serving a notice of objection under this paragraph, the Secretary of State shall serve—

- (a) on the person concerned; and
- (b) where that person is the managing director or chief executive, on the company, a preliminary written notice stating that the Secretary of State 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 sound and prudent management which are not or may not be fulfilled in respect of the company.

(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—

- (a) make written representations to the Secretary of State; and
- (b) if that person so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.

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

(6) The Secretary of State shall not be obliged to disclose to the person concerned or to the company any particulars of the ground on which he is considering the service of a notice of objection.

(7) After a notice of objection has been served on a company in relation to a person who is a managing director or chief executive, the company shall forthwith remove that person from that office.

*Restrictions etc. as respects shareholdings*

(1) This paragraph applies where a person—

- (a) has contravened section 61 or 61A above by becoming a shareholder controller of a UK company, or by acquiring a notifiable holding in such a company;
- (b) having become such a controller or acquired such a holding in contravention of section 61 or 61A above, continues to be such a controller or to retain that holding after being served with a notice of objection under paragraph 2 above;
- (c) having been served with a notice imposing conditions under paragraph 3 above in a case where—



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- (i) a notice of objection to his becoming such a controller or acquiring such a holding would otherwise have been served under section 61 or 61A above, or
  - (ii) a notice of objection to his continuing to be such a controller or retaining such a holding would otherwise have been served under paragraph 2 above,
- has failed to comply with any of the conditions specified in the notice under paragraph 3 above; or
- (d) having been served with a notice of objection under paragraph 4 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 Secretary of State may by notice in writing served on the person in breach direct that any specified shares to which this paragraph applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of or agreement to transfer the shares, or (in the case of unissued shares) any transfer of or agreement to transfer the right to be issued with the shares, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of the shares or in pursuance of any offer made to the holder of the shares;
- (d) except in a liquidation, no payment shall be made of any sums due from the company in respect of the shares, whether by way of a repayment of capital or otherwise.

(3) The court may, on the application of the Secretary of State, by order direct that any specified shares to which this paragraph applies—

- (a) shall be sold; and
- (b) if they are for the time being subject to any restrictions under sub-paragraph (2) above, shall cease to be subject to those restrictions.

(4) Where an order has been made under sub-paragraph (3) above the court may, on the application of the Secretary of State, make such further order relating to the sale or transfer of the shares as it thinks fit.

(5) Where the shares are sold in pursuance of an order under this section—

- (a) the net proceeds of the sale shall be paid into court for the benefit of persons beneficially interested in them; and
- (b) any such person may apply to the court for the whole or any part of the proceeds to be paid to him.

(6) This paragraph applies to—

- (a) all shares in the company which—
  - (i) are held by the person in breach; and
  - (ii) were not so held immediately before he became a shareholder controller of the company or, as the case may be, acquired a notifiable holding in the company; and
- (b) where the person in breach became such a controller or acquired such a holding as a result of the acquisition by him of shares or voting rights in another company, all shares in that company which—
  - (i) are held by him; and
  - (ii) were not so held immediately before he became such a controller or acquired such a holding.

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(7) Sub-paragraph (6) above shall have effect as if references to the person in breach acquiring a notifiable holding in the company were—

- (a) in a case falling within paragraph (a), (b) or (c)(ii) of sub-paragraph (1) above, references to his doing so in contravention of section 61 or 61A above; and
- (b) in a case falling within paragraph (c)(i) of sub-paragraph (1) above, references to his doing so after the service of the notice imposing conditions under paragraph 3 above.

(8) A copy of the notice served on the person in breach under sub-paragraph (2) above shall be served on the company to whose shares or voting rights it relates.

(9) The jurisdiction conferred by this paragraph shall be exercisable by the High Court and the Court of Session.”

## SCHEDULE 5

Regulation 40.

“[SCHEDULE 2E  
TO 1982 ACT]

### INFORMATION FOR POLICY HOLDERS OF UK INSURERS AND EC COMPANIES

#### *Information before contract of long term insurance*

(1) Subject to sub-paragraph (2) below, this paragraph applies to a contract entered into by a UK or EC company or a member of Lloyd’s 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<sup>(83)</sup> have the same meanings as in that Act.

(3) Before entering into a contract to which this paragraph applies, the company or member (“the insurer”) shall furnish the other party to the contract in writing with the information required by sub-paragraph (4) below and—

- (a) in the case of a company, the information required by sub-paragraph (5) below; and
- (b) in the case of a member, the information required by sub-paragraph (6) below.

(4) The information required by this sub-paragraph is—

- (a) a definition of each benefit and option;
- (b) the term of the contract and the means by which it may be terminated;
- (c) the method of paying premiums and the duration of the payments;
- (d) the method of calculating bonuses and the distribution of bonuses;
- (e) an indication of surrender and paid-up values and the extent to which such values are guaranteed;
- (f) an indication of the premiums for each benefit, whether a main or supplementary benefit;

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<sup>(83)</sup> 1986 c. 60.

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- (g) 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;
  - (h) information as to the following, namely—
    - (i) the arrangements with respect to the period within which the policy holder may cancel the contract;
    - (ii) the tax arrangements applicable to the policy to be effected by the contract;
    - (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 insurer is unable to meet its liabilities under the contract; and
  - (i) whether the parties to the contract are entitled to choose the law applicable to the contract and—
    - (i) if so, the law which the insurer proposes to choose; and
    - (ii) if not, the law which will be so applicable.
- (5) The information required by this sub-paragraph is—
- (a) the name and legal form of the company;
  - (b) the company's home State and, where appropriate, the member State of the branch through which the contract is to be entered into; and
  - (c) the address of the company's head office and, where appropriate, the address of the branch through which the contract is to be entered into.
- (6) The information required by this sub-paragraph is—
- (a) the name or number of the syndicate which is to enter into the contract and a statement that it is a syndicate of members of Lloyd's;
  - (b) a statement that the syndicate's home State is the United Kingdom and, where appropriate, the member State of the branch through which the contract is to be entered into; and
  - (c) the address of the syndicate in the United Kingdom and, where appropriate, the address of the branch through which the contract is to be entered into.
- (7) Any information required by sub-paragraph (4), (5) or (6) 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*

- (1) This paragraph applies where a UK or EC company or a member of Lloyd's has, on or after 1st July 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—
- (a) any change in the information mentioned in paragraphs (a) to (g) of sub-paragraph (4) of paragraph 1 above; or
  - (b) in the case of a company, any change in the information mentioned in sub-paragraph (5) of that paragraph; or
  - (c) in the case of a member, any change in the information mentioned in sub-paragraph (6) of that paragraph,

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the company or member (“the insurer”) 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 insurer 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 insurer 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 insurer informs that party of—

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

(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*

(1) This paragraph applies to a contract entered into by a UK or EC company or a member of Lloyd’s 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 covered by the contract is situated in the United Kingdom.

(2) Before entering into a contract to which this paragraph applies, the company or member (“the insurer”) shall, if the other party (or one of the other parties) 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 insurer; 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 insurer 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.

(1) Subject to sub-paragraph (2) below, this paragraph applies to a contract to which paragraph 3 above applies.

(2) This paragraph does not apply to a contract entered into by a UK company or a member of Lloyd's unless the effecting of the contract constitutes the provision of general insurance in the United Kingdom.

(3) Before entering into a contract to which this paragraph applies, the UK or EC company or the member of Lloyd's ("the insurer") shall, unless the contract is for the coverage of large risks only, 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 insurer shall also contain that information.

(4) If the information required by sub-paragraph (3) 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.

(5) Any relevant document issued by the insurer in relation to a contract to which this paragraph applies shall state—

- (a) the address of the establishment through which the risk is to be covered; and
- (b) where the contract relates to relevant motor vehicle risks and the effecting of the contract constitutes the provision of insurance in the United Kingdom, the name and address of the claims representative.

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

## SCHEDULE 6

Regulation 45.

“[SCHEDULE 2F  
TO 1982 ACT]

### RECOGNITION IN THE UNITED KINGDOM OF EC AND EFTA COMPANIES

#### PART I

#### EC COMPANIES CARRYING ON BUSINESS ETC. IN THE UNITED KINGDOM

##### *Requirements for carrying on direct insurance business*

(1) An EC company shall not carry on direct insurance business of a class or part of a class through a branch in the United Kingdom unless—

- (a) the company is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive 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 respect of that branch.

(2) The requirements of this paragraph are—

- (a) that the supervisory authority in the company's home State has sent to the Secretary of State—
  - (i) a notice which contains the requisite details; and
  - (ii) a certificate in accordance with sub-paragraph (3) below; and

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- (b) that either—
  - (i) the Secretary of State has informed that authority of the conditions which, in the interest of the general good, must be complied with by the company in carrying on insurance business through the branch; or
  - (ii) the period of two months beginning with the day on which the Secretary of State received the notice and certificate mentioned in paragraph (a) above has elapsed.
- (3) A certificate given in respect of the company by the supervisory authority in its home State is in accordance with this sub-paragraph if it—
  - (a) attests that the company 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 18, 19 and 20 of the first long term insurance Directive; and
  - (b) indicates the classes of business which the company is authorised to carry on in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.
- (4) The Secretary of State shall as soon as practicable—
  - (a) acknowledge receipt of the documents sent by the supervisory authority in the company's home State; and
  - (b) where necessary, send a copy of those documents and a note of the date of their receipt to every other authority which he knows is a connected UK authority.
- (5) Any connected UK authority which receives any documents under sub-paragraph (4)(b) above shall, within one month of the date on which they were received, inform the Secretary of State in writing of such provisions of the Acts, rules and regulations applying to insurance companies which the authority regulates as, having regard to the insurance business mentioned in the documents, it considers appropriate.
  - (1) An EC company shall not change the requisite details of a branch—
    - (a) which has been established by it in 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—
    - (a) that the company has given a notice to the Secretary of State, and to the supervisory authority in its home State, stating the details of the proposed change not less than one month before the change is to take place;
    - (b) that the Secretary of State has received from that authority a notice stating that it has approved the proposed change; and
    - (c) that either—
      - (i) the Secretary of State has informed that authority of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the company in carrying on insurance business through the branch; or
      - (ii) the period of two months beginning with the day on which the company gave the Secretary of State the notice under paragraph (a) above has elapsed.
  - (3) In the case of a change occasioned by circumstances beyond the company's control, the requirements of this paragraph are that the company shall as soon as practicable (whether before or

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after the change) give a notice to the Secretary of State, and to the supervisory authority in its home State, stating the details of the change.

- (4) The Secretary of State shall as soon as practicable—
  - (a) acknowledge receipt of the documents sent under sub-paragraph (2) or (3) above;
  - (b) send a copy of those documents, and a note of the date of their receipt, to every other authority which he knows is a connected UK authority; and
  - (c) in the case of a notice under sub-paragraph (3) above, inform the supervisory authority in the home State of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the company in carrying on insurance business through the branch.

*Requisite details for purposes of paragraphs 1 and 2*

3. The requisite details for the purposes of paragraphs 1 and 2 above are—
  - (a) the name of the company;
  - (b) the address of the branch in the United Kingdom and confirmation that it is an address for service on the company's authorised agent;
  - (c) the name of the company's authorised agent;
  - (d) a scheme of operations prepared in accordance with such requirements as may be imposed by the supervisory authority in its home State; and
  - (e) in the case of a company which intends to cover relevant motor vehicle risks, confirmation that the company has become a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946).

*Requirements for carrying on reinsurance business*

(1) An EC company shall not carry on reinsurance business of any description through a branch in the United Kingdom unless—

- (a) the company is entitled under the law of its home State to carry on business of that description; and
  - (b) the requirements of this paragraph have been complied with in respect of that branch.
- (2) The requirements of this paragraph are—
- (a) that the company has served on the Secretary of State—
    - (i) a written notice stating its intention to carry on reinsurance business and containing the requisite details; and
    - (ii) a statement from the supervisory authority in its home State stating the classes of business which the company carries on and declaring that the company has the required margin of solvency or minimum guarantee fund; and
  - (b) that either—
    - (i) the Secretary of State has informed the company that it may begin to carry on the reinsurance business; or
    - (ii) the period of three months beginning with the date of service of that notice has expired.

(1) An EC company shall not change the requisite details of a branch—

- (a) which has been established by it in the United Kingdom; and

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(b) through which it carries on reinsurance 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 company has given a notice to the Secretary of State 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 company's control, the requirements of this paragraph are that the company shall as soon as practicable (whether before or after the change) give a notice to the Secretary of State stating the details of the change.

*Requisite details for purposes of paragraphs 4 and 5*

6. The requisite details for the purposes of paragraphs 4 and 5 above are—
- (a) the name of the company;
  - (b) the address of the branch in the United Kingdom and confirmation that it is an address for service on the company's authorised agent;
  - (c) the name of the company's authorised agent;
  - (d) a scheme of operations containing particulars of the reinsurance business to be carried on through the branch.

*Power of Secretary of State where notice given under paragraph 4 or 5*

(1) This paragraph applies where the Secretary of State receives from an EC company a notice given in accordance with paragraph 4 or 5 above.

(2) The Secretary of State may, before the end of the period of three months beginning with the day on which he receives the notice, direct that Part II of this Act shall apply to the company.

(3) Before giving a direction under sub-paragraph (2) above, the Secretary of State shall serve on the company a written notice stating—

- (a) that he is considering giving a direction and particulars of the ground on which he is considering it; and
- (b) that the company may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if the company so requests, oral representations to an officer of the Department of Trade and Industry appointed for the purpose by the Secretary of State.

(4) Where representations are made in response to a notice under sub-paragraph (3) above, the Secretary of State shall take them into account before giving a direction.

*Requirements for providing insurance*

(1) An EC company shall not provide insurance of a class or part of a class in the United Kingdom unless the company is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive to carry on insurance business of that class or part of a class and either—

- (a) the requirements of this paragraph have been complied with in respect of that insurance; or
- (b) the insurance is provided by the company participating in a Community co-insurance operation otherwise than as the leading insurer.

(2) The requirements of this paragraph are—



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- (a) that the supervisory authority in the company's home State has sent to the Secretary of State a notice containing the requisite details and a certificate in accordance with sub-paragraph (3) below; and
  - (b) that the company has been notified by that authority that it has sent such a notice to the Secretary of State.
- (3) A certificate is in accordance with this sub-paragraph if it—
- (a) attests that the company 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 18, 19 and 20 of the first long term insurance Directive; and
  - (b) indicates the classes of business which the company is authorised to carry on in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.
- (1) An EC company shall not change the requisite details relating to the provision of insurance in the United Kingdom 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 company has given a notice to the supervisory authority in its home State stating the details of the proposed change; and
  - (b) that that authority has passed to the Secretary of State the information contained in that notice.
- (3) In the case of a change occasioned by circumstances beyond the company's control, the requirements of this paragraph are that the company shall, as soon as practicable, give a notice to the supervisory authority in its home State stating the details of the change.

*Requisite details for purposes of paragraphs 8 and 9*

- 10.** The requisite details for the purposes of paragraph 8 and 9 are—
- (a) the name and address of the company;
  - (b) the nature of the risks or commitments which the company proposes to cover in the United Kingdom; and
  - (c) in the case of a company which intends to cover relevant motor vehicle risks—
    - (i) the name and address of the claims representative, and
    - (ii) confirmation that the company has become a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946).

*Additional requirements for covering relevant motor vehicle risks*

- 11.** An EC company shall not provide insurance in the United Kingdom to cover relevant motor vehicle risks unless—
- (a) it is a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946); and
  - (b) either it has appointed a claims representative or the insurance is provided by it participating in a Community co-insurance operation otherwise than as the leading insurer.

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#### *Power to prevent disposal of assets*

(1) The powers conferred on the Secretary of State by section 40A above shall be exercisable in relation to an EC company if the supervisory authority in the company's home State has, in accordance with Article 20(5) of the first general insurance Directive or Article 24(5) of the first long term insurance Directive, requested the Secretary of State to prohibit the free disposal of assets of that company and has confirmed—

- (a) that the company has failed to comply with the requirements of Article 15 of the first general insurance Directive or Article 17 of the first long term insurance Directive;
- (b) that the solvency margin of the company has fallen below the minimum required by Article 16(3) of the first general insurance Directive or Article 19 of the first long term insurance Directive; or
- (c) that the solvency margin of the company has fallen below the guarantee fund as defined in Article 17 of the first general insurance Directive or Article 20 of the first long term insurance Directive.

(2) Those powers shall also be so exercisable if the Secretary of State is notified by that authority that the company's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term insurance Directive.

#### *Powers to obtain information*

(1) Subject to sub-paragraph (2) below, the powers conferred by section 44 above on the Secretary of State or persons authorised by him shall be exercisable in respect of an EC company if either—

- (a) the following requirements are fulfilled, namely—
  - (i) the supervisory authority in the company's home State has made a written request to the Secretary of State to obtain information from the company; and
  - (ii) the Secretary of State is satisfied that the information to be acquired is necessary to enable that supervisory authority to perform its obligations under Article 19 of the first general insurance Directive or Article 23 of the first long term insurance Directive; or
- (b) the Secretary of State considers the exercise of those powers in respect of that company to be necessary to enable him to perform his functions under this Act.

(2) The Secretary of State shall not exercise the powers conferred by subsection (2A), (2B) or (4A) of section 44 above in respect of an EC company unless the requirements of sub-paragraph (1)(a) above are fulfilled.

(1) The powers conferred by section 44 above on the Secretary of State shall be exercisable in respect of an EC company by a person authorised by the supervisory authority in the company's home State if—

- (a) the information to be requested by that person is necessary to enable the authority to perform its obligations in respect of the company under Article 19 of the first general insurance Directive or Article 23 of the first long term insurance Directive; and
- (b) the authority has notified the Secretary of State in writing of that person's intention to exercise those powers.

(2) An officer or agent of the Secretary of State may accompany a person so authorised while he is acting in the exercise of those powers.

*Residual power to protect policy holders*

15. The Secretary of State may exercise his powers under section 45 above in relation to an EC company if the supervisory authority in the company's home State—

- (a) has informed the Secretary of State that the company's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term Directive; and
- (b) in accordance with that Article, has requested the Secretary of State to take measures in the United Kingdom to safeguard the interests of policy holders of the company.

*Powers of intervention*

(1) Where it appears to the Secretary of State that an EC company has failed to comply with any provision of law applicable to its insurance activities in the United Kingdom, he may require it to take such steps as he may specify to comply with that provision.

(2) If the company fails to comply with a requirement under sub-paragraph (1) above, the Secretary of State shall notify the supervisory authority in the home State.

(3) If, after the Secretary of State has taken the action mentioned in sub-paragraphs (1) and (2) above, the company persists in contravening the provision in question, the Secretary of State may, after informing the supervisory authority of the home State, direct the company to cease to carry on insurance business or provide insurance, or to cease to carry on insurance business or provide insurance of any specified description, in the United Kingdom.

(4) The Secretary of State may exercise his powers under sub-paragraph (3) above without the conditions there mentioned being fulfilled if he considers that those powers should be exercised as a matter of urgency.

(5) After giving a direction under this paragraph, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.

(6) A direction under this paragraph does not prevent the company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

(7) A requirement or direction under this paragraph may be varied or revoked by the Secretary of State.

*Power to withdraw recognition*

(1) This paragraph applies where—

- (a) an EC company is carrying on insurance business or providing insurance in the United Kingdom; and
- (b) the Secretary of State is notified by the supervisory authority in the home State that the company's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term insurance Directive.

(2) The Secretary of State may direct the company to cease to carry on insurance business or provide insurance, or to cease to carry on insurance business or provide insurance of a specified description, in the United Kingdom through all, or any specified, establishments.

(3) Where the Secretary of State receives notification under sub-paragraph (1) above he shall forthwith inform the connected UK authorities of its receipt.

(4) After giving such a direction, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.

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(5) A direction under this paragraph does not prevent the company from effecting or carrying out a contract of insurance in pursuance of a term of a subsisting contract of insurance.

## PART II

### EFTA COMPANIES PROVIDING INSURANCE IN UNITED KINGDOM

#### *Documents to be furnished to the Secretary of State*

(1) An EFTA company which intends to provide insurance in the United Kingdom shall send to the Secretary of State—

- (a) a certificate, issued by the supervisory authority in the EFTA State in which the company's head office is situated, which attests—
  - (i) that the company possesses for its activities as a whole the minimum solvency margin calculated in accordance with the relevant provisions; and
  - (ii) that the company's authorisation in accordance with Article 7(1) of the relevant Directive enables the company to operate outside the EEA State in which the establishment through which the insurance will be provided is situated ("the EEA State of establishment");
- (b) a certificate, issued by the supervisory authority in the EEA State of establishment, which—
  - (i) indicates the classes of insurance business which the company has been authorised to undertake through that establishment;
  - (ii) states that the authority does not object to the company providing insurance in the United Kingdom; and
  - (iii) where the company intends to provide long term insurance in the United Kingdom, confirms that all the commitments which the company intends to cover fall within the classes of insurance business which the company has been authorised to undertake through that establishment;
- (c) a statement by the company of the nature of the risks or commitments which it proposes to cover in the United Kingdom;
- (d) a notice stating the address of the company for the purpose of service of documents under this Schedule; and
- (e) in the case of a company which intends to provide insurance to cover relevant motor vehicle risks—
  - (i) a notice stating the name and address of the claims representative; and
  - (ii) a declaration that the company has become a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946);

and the company shall not provide insurance in the United Kingdom before the date certified as that on which those documents were received by the Secretary of State.

(2) Where an EFTA company wishes to provide insurance in the United Kingdom in respect of risks or commitments other than those mentioned in the statement given in accordance with subparagraph (1)(c) above, it shall give written notice to the Secretary of State amending that statement; and it shall not provide insurance in the United Kingdom in respect of such risks or commitments before the date certified as that on which written notice of the amendment was received by the Secretary of State.

(3) An EFTA company providing insurance in the United Kingdom shall notify the Secretary of State in writing of—

- (a) any change of address of the company for the purpose of the service of documents; and
- (b) where it provides insurance to cover relevant motor vehicle risks, any change of name or address of the claims representative.

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

- (a) if the company intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;
- (b) if the company intends to cover commitments, the first long term insurance Directive and Articles 18, 19 and 20 of that Directive.

(5) Any insurance which is provided by the company participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

*Additional requirements with respect to relevant motor vehicle risks*

**19.** An EFTA company shall not provide insurance in the United Kingdom to cover relevant motor vehicle risks unless—

- (a) it is a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946); and
- (b) either it has appointed a claims representative or the insurance is provided by it participating in a Community co-insurance operation otherwise than as the leading insurer.

*Powers of intervention*

(1) Where it appears to the Secretary of State that an EFTA company providing insurance in the United Kingdom has failed to comply with any provision of this Act, he may require it to take such steps as he may specify to comply with that provision.

(2) If the company fails to comply with a requirement under sub-paragraph (1) above, the Secretary of State shall notify the supervisory authority in the EEA State in which the establishment through which the insurance is provided is situated.

(3) If the company persists in contravening a provision which has been the subject of a requirement under sub-paragraph (1) above, the Secretary of State may, after informing that supervisory authority, direct the company to cease to provide insurance, or insurance of any specified description, in the United Kingdom.

(4) After giving such a direction, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.

(5) A direction under this paragraph does not prevent the company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

(6) A requirement or direction under this paragraph may be varied or revoked by the Secretary of State.

*Power to require information*

**21.** The Secretary of State may, for the purpose of facilitating the exercise by him of his functions under paragraph 20 above, require an EFTA company providing insurance in the United Kingdom

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to furnish him, at specified times or intervals with information about such matters as he may specify being, if he so requires, information verified in a specified manner.

#### *Withdrawal of authorisation*

(1) Where an EFTA company is providing insurance in the United Kingdom and the Secretary of State is notified by the supervisory authority in the EEA State in which the establishment through which the insurance is provided, or the company's head office, is situated that the authorisation of the company has been withdrawn in accordance with—

- (a) Article 22 of the first general insurance Directive, or
- (b) Article 26 of the first long term insurance Directive,

he may direct the company to cease to provide insurance, or insurance of any specified description, in the United Kingdom through all, or any specified, establishments.

(2) After giving such a direction, the Secretary of State shall by notice in writing inform the company of his reasons for doing so.

(3) A direction under this paragraph does not prevent the company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

### PART III

#### EFTA COMPANIES PROVIDING INSURANCE THROUGH ESTABLISHMENTS IN THE UNITED KINGDOM

##### *Notification to Secretary of State*

(1) Where an EFTA company intends to provide insurance through an establishment in the United Kingdom, it shall before doing so notify the Secretary of State of its intention.

(2) The notification shall indicate—

- (a) the EEA State in which the insurance is to be provided, and
- (b) the nature of the risks or commitments which the company proposes to cover.

(3) Where the company intends to provide insurance in more than one EEA 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 company has duly notified the Secretary of State of its intention to provide insurance in an EEA State where administrative authorisation is required for the provision of insurance, then, if the original notification related—

- (a) only to risks or commitments in respect of which such authorisation is required, or
- (b) only to risks or commitments in respect of which such authorisation is not required,

and the company subsequently intends to extend its activities to risks falling within the other category, it shall before doing so comply with sub-paragraphs (1) to (3) above in relation to those risks or commitments.

(5) Any insurance which is provided by the company participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

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

- (1) An EFTA company which intends to provide insurance through an establishment in the United Kingdom may apply to the Secretary of State for a certificate—
  - (a) indicating the classes of insurance which the company is authorised to carry on in the United Kingdom, and
  - (b) stating that the Secretary of State does not object to the company providing the insurance.
- (2) If it appears to the Secretary of State that a certificate applied for under sub-paragraph (1) above ought to be issued, he shall issue the certificate accordingly.
- (3) If the Secretary of State refuses to issue a certificate, he shall inform the company in writing of his decision and of the reasons for it.

## PART IV SUPPLEMENTAL

### *Offences*

- (1) An EC company commits an offence if—
  - (a) it carries on insurance business in the United Kingdom in contravention of paragraph 1 or 4 above;
  - (b) in contravention of paragraph 2 or 5 above, it changes the requisite details of a branch established by it in the United Kingdom;
  - (c) it provides insurance in the United Kingdom in contravention of paragraph 8 or 11 above;
  - (d) in contravention of paragraph 9 above, it changes the requisite details relating to the provision of insurance in the United Kingdom; or
  - (e) it makes default in complying with, or with a requirement imposed under, any other provision of Part I of this Schedule.
- (2) An EFTA company commits an offence if—
  - (a) it provides insurance in the United Kingdom in contravention of paragraph 18 or 19 above; or
  - (b) it makes default in complying with, or with a requirement imposed under, any other provision of Part II or III of this Schedule.
- (3) A person commits an offence if—
  - (a) in purported compliance with a requirement under paragraph 13, 14 or 21 above, he furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular; or
  - (b) he causes or permits to be included in a document required by paragraph 1, 2, 4, 8, 9 or 18 above to be sent to the Secretary of State 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.
- (4) A person committing an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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*Interpretation etc.*

(1) In this Schedule—

“authorised agent”, in relation to an EC company, means an agent or employee of the company who has authority—

- (a) to bind the company in its relations with third parties; and
- (b) to represent the company in its relations with the supervisory authorities and courts in the United Kingdom;

“connected UK authority”, in relation to an EC company, means an authority in the United Kingdom which has regulatory functions in relation to the insurance business which the company proposes to carry on, or the insurance which it intends to provide, in the United Kingdom;

“direct insurance business” means insurance business other than reinsurance business.

(2) In this Schedule—

- (a) references in Part I 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 through an establishment in another member State;
- (b) references in Part II 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 through an establishment in another EEA State;
- (c) references in Part III to the provision of insurance through an establishment in the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in another EEA State through an establishment in the United Kingdom.

(3) In sub-paragraph 2(b) and (c) above—

- (a) references to a risk do not include a risk falling within any of the following classes of Schedule 2 to this Act (general business), namely—
  - class 1, so far as it relates to accidents at work;
  - classes 9 and 13, so far as they relate to the compulsory insurance of building works;
  - class 13, so far as it relates to nuclear civil liability and pharmaceutical product liability; and
- (b) references to a commitment do not include a commitment falling within any of classes VII, VIII and IX of Schedule 1 to this Act (long term insurance).

(4) An EC or EFTA company shall not be regarded for the purposes of Parts I and II of this Act as carrying on insurance business in the United Kingdom by reason only of the fact that it provides insurance in the United Kingdom.

*Gibraltar*

(1) Except in its application to a Gibraltar company, this Schedule shall apply as if Gibraltar were part of the United Kingdom.

(2) In this paragraph and paragraphs 28 and 29 below “Gibraltar company” means an insurance company whose head office is in Gibraltar.

(1) Where, in the case of an EC company which is not a Gibraltar company, Gibraltar requirements corresponding to those of paragraph 1 above have been complied with in respect of



a branch, the requirements of that paragraph, and those of paragraph 2 above, shall not apply in respect of that branch.

(2) Where, in the case of an EC company which is not a Gibraltar company, Gibraltar requirements corresponding to those of paragraph 4 above have been complied with in respect of a branch, the requirements of that paragraph, and those of paragraph 5 above, shall not apply in respect of that branch.

(3) Where, in the case of an EC company which is not a Gibraltar company, Gibraltar requirements corresponding to those of paragraph 8 have been complied with in respect of the provision of any insurance, the requirements of that paragraph, and those of paragraph 9 above, shall not apply in respect of the provision of that insurance.

(4) Where, in the case of an EFTA company, Gibraltar requirements corresponding to those of paragraph 18 have been complied with in respect of the provision of any insurance, the requirements of that paragraph shall not apply in respect of the provision of that insurance.

(5) In this paragraph “Gibraltar requirements” means requirements imposed under any provision of the law of Gibraltar.

(1) Where, in the case of an EC company which is not a Gibraltar company—

- (a) the requirements of paragraph 1 or 4 above are complied with in respect of a branch; and
- (b) the requisite details for the purposes of that paragraph indicate that the company intends to carry on insurance business in Gibraltar,

the Secretary of State shall send to the supervisory authority in Gibraltar a notice which contains those details.

(2) Where, in the case of an EC company which is not a Gibraltar company—

- (a) the requirements of paragraph 2 or 5 above are complied with in respect of a branch; and
- (b) the changes in requisite details for the purposes of that paragraph indicate that the company intends to carry on insurance business in Gibraltar,

the Secretary of State shall send to the supervisory authority in Gibraltar a notice which contains details of the changes.

(3) Where, in the case of an EC company which is not a Gibraltar company, the requirements of paragraph 8 above are complied with in respect of the provision of any insurance, the Secretary of State shall send to the supervisory authority in Gibraltar a notice which contains the requisite details for the purposes of that paragraph.

(4) Where, in the case of an EFTA company, the requirements of paragraph 18 above are complied with in respect of the provision of any insurance, the Secretary of State shall send to the supervisory authority in Gibraltar a notice which contains the requisite details for the purposes of that paragraph.”

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SCHEDULE 7

Regulation 46.

“[SCHEDULE 2G  
TO 1982 ACT]

RECOGNITION IN OTHER EEA STATES OF UK INSURERS

PART I

UK INSURERS CARRYING ON BUSINESS ETC. IN OTHER MEMBER STATES

*Requirements for carrying on direct insurance business*

- (1) A UK insurer shall not carry on direct insurance business of a class or part of a class through a branch in a member State other than the United Kingdom unless—
  - (a) the insurer is authorised under section 3 or 4 of this Act to carry on insurance business of that class or part of a class or is a member of Lloyd's; and
  - (b) the requirements of this paragraph have been complied with in respect of that branch.
- (2) The requirements of this paragraph are—
  - (a) that the insurer has given to the Secretary of State a notice containing the requisite EC details and, in the case of a company, the requisite UK details;
  - (b) that the Secretary of State has given to the supervisory authority of the member State in which the 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
  - (c) that either—
    - (i) that authority has informed the Secretary of State of the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or
    - (ii) the period of two months beginning with the day on which the Secretary of State 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 insurer 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 18, 19 and 20 of the first long term insurance Directive; and
  - (b) indicates the classes of insurance business which the insurer is authorised to carry on in the United Kingdom.
- (4) The Secretary of State shall, within the period of three months beginning with the date on which the insurer’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 Secretary of State shall, within the period of three months referred to in sub-paragraph(4) above, notify the insurer—

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- (a) that he has given the notice and certificate referred to in sub-paragraph (2)(b) above, stating the date on which he did so; or
- (b) that he has refused to give either or both of those documents, stating the reasons for the refusal.

(6) In the case of a UK company, the Secretary of State 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 branch, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(7) Where the supervisory authority of the member State of the branch has informed the Secretary of State as mentioned in sub-paragraph (2)(c)(i) above, he shall forward the information to the insurer.

- (1) A UK insurer shall not change the requisite EC details of a 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 insurer has given a notice to the Secretary of State, 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 Secretary of State has sent to that authority a notice in accordance with sub-paragraph (4)(a) below; and
  - (c) that either—
    - (i) that authority has informed the insurer of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or
    - (ii) the period of two months beginning with the day on which the insurer 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 insurer’s control, the requirements of this paragraph are that the insurer shall as soon as practicable (whether before or after the change) give a notice to the Secretary of State, and to the supervisory authority in the member State of the branch, stating the details of the change.

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

- (a) give notice to 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 Secretary of State shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the insurer—

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

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(6) In the case of a UK company, the Secretary of State 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 him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(1) A UK company shall not change the requisite UK details of a 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 company has given a notice to the Secretary of State stating the details of the proposed change at least one month before the change is effected.

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

*Requisite details for purposes of paragraphs 1 to 3*

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

- (a) the member State in which the branch is to be or has been established (“the member State of the branch”);
- (b) the address of the branch and confirmation that it is an address for service on the insurer's authorised agent;
- (c) the name of the insurer's authorised agent and, in the case of a member of Lloyd's, confirmation that the authorised agent has power to accept service of proceedings on behalf of Lloyd's;
- (d) the classes or parts of classes of business to be carried on, and 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 insurer'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;
  - (ii) the resources available to cover those costs; and
  - (iii) if risks within class 18 of Schedule 2 to this Act are to be covered, the resources available for providing assistance;
- (h) for each of the first three financial years following the establishment of the branch—
  - (i) estimates of the insurer's margin of solvency and the margin of solvency required, and a statement showing how both have been calculated;
  - (ii) in the case of an insurer 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 an insurer which intends to carry on general business, the details mentioned in sub-paragraph (3) below as respects the business to be so carried on;
  - (i) in the case of an insurer which intends to cover relevant motor vehicle risks, confirmation that it has become a member of the national bureau and the national guarantee fund in the member State of the branch; and
  - (j) in the case of an insurer 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 company'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 directors and the controllers of the company; and
    - (ii) any person who will act as an insurance broker, agent, loss adjuster or reinsurer for the company 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;
  - (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 company will enter into with brokers or agents in the member State of the branch;
    - (iii) any agreements which the company will enter into with persons (other than employees of the company) who will manage the business to be carried on in the member State of the branch;
  - (f) in the case of a company which intends to carry on long term business—

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- (i) the technical bases which the actuary appointed in accordance with section 19 above 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 the actuary so appointed as to whether he considers that the premium rates which 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 company which intends to carry on general business, copies or drafts of any agreements which the company 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 insurer who has authority—
- (a) to bind the insurer in its relations with third parties; and
  - (b) to represent the insurer in its relations with supervisory authorities and courts in the member State of the branch.

#### *Requirements for providing insurance*

- (1) A UK insurer shall not provide insurance of any class or part of a class in a member State other than the United Kingdom unless the insurer is authorised under section 3 or 4 above to carry on insurance of that class or part of a class or is a member of Lloyd’s and either—
- (a) the requirements of this paragraph have been complied with in relation to the provision of the insurance in that member State; or
  - (b) the insurance is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer.
- (2) The requirements of this paragraph are—
- (a) that the insurer has given to the Secretary of State a notice containing the requisite details; and
  - (b) that the Secretary of State 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—
- (a) attests that the insurer 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 18, 19 and 20 of the first long term insurance Directive; and
  - (b) indicates the classes of insurance business which the insurer is authorised to carry on in the United Kingdom.
- (4) Where the insurer 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.

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(5) The Secretary of State shall, within the period of one month beginning with the date on which the insurer'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 insurer intends to provide insurance; or
- (b) refuse to give either or both of those documents.

(6) The Secretary of State shall, within the period of one month referred to in sub-paragraph (5) above, notify the insurer—

- (a) that he 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 insurer intends to provide insurance, stating the date on which he did so; or
- (b) that he has refused to give either or both those documents, stating the reasons for the refusal.

(7) In the case of a UK company, the Secretary of State 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 him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(1) A UK insurer 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 insurer has given a notice to the Secretary of State stating the details of the proposed change;
- (b) that the Secretary of State 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 insurer's control, the requirements of this paragraph are that the insurer shall as soon as practicable give a notice to the Secretary of State stating the details of the change.

(4) The Secretary of State 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 Secretary of State shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the insurer—

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

(6) In the case of a UK company, the Secretary of State 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 him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

*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;

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- (b) the nature of the risks or commitments which the insurer proposes to cover in that State;
- (c) in the case of an insurer which intends to provide insurance to cover relevant motor vehicle risks—
  - (i) a notice stating the name and address of the claims representative; and
  - (ii) a declaration that the insurer has become a member of the national bureau and the national guarantee fund in that State; and
- (d) in the case of an insurer 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 insurance business etc.*

- (1) A UK insurer which has ceased—
  - (a) to carry on direct insurance business through a 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 Secretary of State in writing that it has done so.
- (2) Any insurance which is provided by the insurer participating in a Community co-insuranceoperation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

## PART II

### UK INSURERS PROVIDING INSURANCE IN EFTA STATES

*Notification to Secretary of State*

- (1) Where a UK insurer intends to provide insurance in an EFTA State, it shall before doing so notify the Secretary of State in writing 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 is situated the establishment through which the insurance will be provided (“the EEA State of establishment”), and
  - (c) the nature of the risks or commitments which the insurer proposes to cover.
- (3) Where the insurer 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 UK insurer has duly notified the Secretary of State of its intention to provide insurance in an EFTA State where administrative authorisation is required for the provision of insurance, then, if the original notification related—
  - (a) only to risks or commitments in respect of which such authorisation is required, or
  - (b) only to risks or commitments in respect of which such authorisation is not required,and the insurer subsequently intends to extend its activities to risks falling within the other category, it shall before doing so comply with sub-paragraphs (1) to (3) above in relation to those risks or commitments.



(5) Any insurance which is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

*Issue of certificates by Secretary of State*

(1) A UK insurer which intends to provide insurance in an EFTA State may apply to the Secretary of State for a certificate—

- (a) attesting that the insurer 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 insurer is authorised to carry on in the United Kingdom;
- (c) stating that the Secretary of State does not object to the insurer providing the insurance; and
- (d) in the case of a company, attesting that the company's authorisation to carry on business in the United Kingdom, issued in accordance with Article 7(1) of the relevant Directive, enables the company to carry on business outside the EEA State of establishment.

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

(3) If the Secretary of State refuses to issue a certificate, he shall inform the company in writing of his decision and of the reasons for it.

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

- (a) if the company intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;
- (b) if the company intends to cover commitments, the first long term insurance Directive and Articles 18, 19 and 20 of that Directive.

### PART III

#### UK INSURERS PROVIDING INSURANCE IN THE UNITED KINGDOM THROUGH BRANCHES IN OTHER EEA STATES

(1) Where a UK insurer intends to provide insurance in the United Kingdom, it shall before doing so notify the Secretary of State in writing of its intention.

(2) The notification shall indicate—

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

(3) Where the EEA State in which is situated the branch through which the company 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 company has been authorised to undertake through that branch;
- (b) states that the authority does not object to the company providing insurance in the United Kingdom; and

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- (c) where the company intends to provide long term insurance in the United Kingdom, confirms that all the commitments which the company intends to cover fall within the classes of insurance business which the company has been authorised to undertake through that branch.
- (4) The insurer shall notify the Secretary of State in writing if—
  - (a) it changes either of the details notified to the Secretary of State under sub-paragraph (2) above; or
  - (b) it ceases to provide insurance in the United Kingdom.
- (5) Any insurance which is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

## PART IV

### SUPPLEMENTAL Offences

- (1) A UK insurer 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 a 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 Secretary of State 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 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Interpretation*

- (1) In this Schedule—
  - “direct insurance business” means insurance business other than reinsurance business;
  - “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;
  - “national bureau”, in relation to a member State, means a professional organisation—

- (a) which has been constituted in that State in accordance with Recommendation No 5 adopted on 25th January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe; and
- (b) which groups together insurance undertakings which in that State are authorised to conduct the business of motor vehicle liability insurance;

“national guarantee fund”, in relation to a member State, means a body—

- (a) which has been set up or authorised in that State in accordance with Article 1(4) of Council Directive 84/5/EEC(84); and
- (b) which provides compensation for damage to property or personal injuries caused by unidentified vehicles or vehicles for which the insurance obligation provided for in Article 1(1) of that Directive has not been satisfied;

“UK insurer” means a UK company or a member of Lloyd's.

(2) 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
  - (ii) through an establishment in an EFTA State.

(3) In sub-paragraph 2(b) and (c)(ii) above—

- (a) references to a risk do not include a risk falling within any of the following classes of Schedule 2 to this Act (general business), namely—
  - class 1, so far as it relates to accidents at work;
  - classes 9 and 13, so far as they relate to the compulsory insurance of building works;
  - class 13, so far as it relates to nuclear civil liability and pharmaceutical product liability; and
- (b) references to a commitment do not include a commitment falling within any of classes VII, VIII and IX of Schedule 1 to this Act (long term insurance).”

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(84) O.J. L8, 11.1.84, page 17.

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## SCHEDULE 8

Regulation 68.

## MINOR AND CONSEQUENTIAL AMENDMENTS

## PART I

## PRIMARY LEGISLATION

*Judicial Pensions Act (Northern Ireland) 1951 (c. 20 (N.I.))*

**1.**—(1) Section 11A(2) of the Judicial Pensions Act (Northern Ireland) 1951(**85**) (voluntary contributions) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

(2) In Schedule 2A to the Judicial Pensions Act (Northern Ireland) 1951(**86**) (transfer of accrued benefits), paragraph 1 shall have effect as if the reference to an insurance company authorised under section 3 or 4 of the 1982 Act (or any similar previous enactment) to carry on ordinary long term insurance business included a reference to an EC company which is lawfully carrying on ordinary long term insurance business, or providing ordinary long term insurance, in the United Kingdom.

*County Courts Act (Northern Ireland) 1959 (c. 25 (N.I.))*

**2.**—(1) Section 127A(2) of the County Courts Act (Northern Ireland) 1959(**87**) (voluntary contributions) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

(2) In Schedule 2A to the County Courts Act (Northern Ireland) 1959(**88**) (transfer of accrued benefits), paragraph 1 shall have effect as if the reference to an insurance company authorised under section 3 or 4 of the 1982 Act (or any similar previous enactment) to carry on ordinary long term insurance business included a reference to an EC company which is lawfully carrying on ordinary long term insurance business, or providing ordinary long term insurance, in the United Kingdom.

*Resident Magistrates' Pensions Act (Northern Ireland) 1960 (c. 2 (N.I.))*

**3.**—(1) Section 9A(2) of the Resident Magistrates' Pensions Act (Northern Ireland) 1960(**89**) (voluntary contributions) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

(2) In Schedule 3 to the Resident Magistrates' Pensions Act (Northern Ireland) 1960(**90**) (transfer of accrued benefits), paragraph 1 shall have effect as if the reference to an insurance company authorised under section 3 or 4 of the 1982 Act (or any similar previous enactment) to carry on

**(85)** Section 11A was inserted by the Judicial Pensions (Northern Ireland) Order 1991 (S.I. 1991/2630 (N.I.24)), Article 6.

**(86)** Schedule 2A was inserted by the Judicial Pensions (Northern Ireland) Order 1991 (S.I. 1991/2630 (N.I.24)), Article 5 and Schedule 2.

**(87)** Section 127A was inserted by the Judicial Pensions (Northern Ireland) Order 1991 (S.I. 1991/2630 (N.I.24)), Article 6.

**(88)** Schedule 2A was inserted by the Judicial Pensions (Northern Ireland) Order 1991 (S.I. 1991/2630 (N.I.24)), Article 5 and Schedule 2.

**(89)** Section 9A was inserted by the Judicial Pensions (Northern Ireland) Order 1991 (S.I. 1991/2630 (N.I.24)), Article 6.

**(90)** Schedule 3 was inserted by the Judicial Pensions (Northern Ireland) Order 1991 (S.I. 1991/2630 (N.I.24)), Article 5 and Schedule 2.

ordinary long term insurance business included a reference to an EC company which is lawfully carrying on ordinary long term insurance business, or providing ordinary long term insurance, in the United Kingdom.

*Solicitors Act 1974 (c. 47)*

4. Section 23(2) of the Solicitors Act 1974(91) (unqualified person not to prepare papers for probate etc.) shall have effect as if the reference to an insurance company authorised under section 3 or 4 of the 1982 Act included a reference to an EC company lawfully carrying on insurance business in the United Kingdom.

*Policyholders Protection Act 1975 (c. 75)*

5.—(1) Section 3(2) of the Policyholders Protection Act 1975(92) (authorised insurance companies) shall have effect as if the reference to being authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on insurance business of any class in the United Kingdom included a reference to being an EC company which is lawfully carrying on insurance business of any class in the United Kingdom.

(2) After subsection (2) of section 21 of that Act (levies on authorised insurance companies)insert—

“(2A) The Board may, with the consent of the Secretary of State, waive (in whole or in part) any levy imposed under subsection (1) or (2) above on an EC company if it considers it appropriate to do so, having regard to the extent to which provision is made for the indemnification of qualifying policyholders—

- (a) under the law of the member State in which the head office of the EC company is situated; or
- (b) by virtue of any arrangements which are in force in that State.

(2B) In subsection (2A) above—

‘EC company’ has the same meaning as in the Insurance Companies Act 1982;

‘qualifying policyholder’ means a policyholder who is eligible for the assistance or protection of the Board in accordance with any provision of sections 6 to 16 above.”

*Housing (Northern Ireland) Order 1981 (S.I. 1981/156 (N.I.3))*

6. In Schedule 10 to the Housing (Northern Ireland) Order 1981 (institutions recognised for purposes of Article 153), paragraph 5 shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Judicial Pensions Act 1981 (c. 20)*

7.—(1) Section 33A(2) of the Judicial Pensions Act 1981(93) (voluntary contributions) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

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(91) Section 23 was substituted by the Courts and Legal Services Act 1990 (c. 41), section 54.

(92) Section 3(2) has been amended by the Insurance Companies Act 1980 (c. 25), section 4 and Schedules 3 and 5, the Insurance Companies Act 1981 (c. 31), section 36 and Schedule 4 and the Insurance Companies Act 1982 (c. 50), section 99(2) and Schedule 5.

(93) Section 33A was inserted by the Courts and Legal Services Act 1990 (c. 41), section 82(1).

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(2) In Schedule 1A to the Judicial Pensions Act 1981(94) (transfer of accrued benefits), paragraph 1 shall have effect as if the reference to an insurance company authorised under section 3 or 4 of the 1982 Act (or any similar previous enactment) to carry on ordinary long term insurance business included a reference to an EC company which is lawfully carrying on ordinary long term insurance business, or providing ordinary long term insurance, in the United Kingdom.

*Data Protection Act 1984 (c. 35)*

8. Section 30 of the Data Protection Act 1984 (exemption for regulation of financial services etc.) shall have effect as if the reference in subsection (1) to prejudicing the proper discharge of statutory functions to which that section applies included a reference to contravening—

- (a) Article 16 of Council Directive 92/49/EEC of 18 June 1992; or
- (b) Article 15 of Council Directive 92/96/EEC of 10 November 1992.

*Companies Act 1985 (c. 6)*

9.—(1) The following provisions of the Companies Act 1985, namely—

- (a) section 246(4)(95) (exemptions for small and medium-sized companies);
- (b) section 248(2)(96) (exemptions for small and medium-sized groups); and
- (c) section 450(1)(97) (punishment for destroying, mutilating etc. company documents),

shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company lawfully carrying on insurance business in the United Kingdom.

(2) In subsection (1) of section 449 of the Companies Act 1985 (provision for security of information obtained), in paragraph (cc)(98), for the words “under section 44” substitute the words “or appointed under section 43A or 44”.

(3) In subsection (3) of section 451A of that Act(99) (disclosure of information by Secretary of State or inspector), in paragraph (b), for the words “under section 44” substitute the words “or appointed under section 43A or 44”.

(4) In subsection (3) of section 452 of that Act(100) (privileged information), for the words “section 44(2) to (4)” substitute the words “section 43A or 44(2) to (4)”.

(5) In subsection (1) of section 460 of that Act (order on application of Secretary of State), for the words “section 44(2) to (6)” substitute the words “section 43A or 44(2) to (6)”.

(6) In the case of an EC company, section 720 of that Act (certain companies to publish periodical statement) does not apply if the company complies with provisions of law of its home State as to the accounts and balance sheet to be prepared annually and deposited with the supervisory authority in that State by such a company.

(94) Schedule 1A was inserted by the Courts and Legal Services Act 1990 (c. 41), section 81 and Schedule 23.

(95) Section 246 was inserted by the Companies Act 1989 (c. 40), section 13(1).

(96) Section 248 was inserted by the Companies Act 1989 (c. 40), section 13(3).

(97) Section 450(1) was amended by the Companies Act 1989 (c. 40), section 66.

(98) Paragraph (cc) of section 449(1) was inserted by the Companies Act 1989 (c. 40), section 65.

(99) Section 451A was inserted by the Financial Services Act 1986 (c. 60), section 182 and Schedule 13, para 10 and amended by the Companies Act 1989 (c. 40), section 68.

(100) Section 452 was amended by the Companies Act 1989 (c. 40), section 69.

*Housing Act 1985 (c. 68)*

**10.** Section 622 of the Housing Act 1985 (minor definitions: general) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Housing Associations Act 1985 (c. 69)*

**11.** Section 106(1) of the Housing Associations Act 1985 (minor definitions: general) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Financial Services Act 1986 (c. 60)*

**12.** Section 134 of the Financial Services Act 1986 (which is superseded by regulations 50 and 52 above) shall cease to have effect.

*Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6))*

**13.—**(1) The following provisions of the Companies (Northern Ireland) Order 1986, namely—

- (a) Article 254(4)(**101**) (exemptions for small and medium-sized companies);
- (b) Article 256(2)(**102**) (exemption for small and medium-sized groups); and
- (c) Article 443(1)(**103**) (punishment for destroying, mutilating etc. company documents),

shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business in the United Kingdom.

(2) In paragraphs (1)(cc) and (3)(c) of Article 442 of that Order(**104**) (provision for security of information obtained), for the words “under section 44” substitute the words “or appointed under section 43A or 44”.

(3) In paragraph (3)(b) of Article 444A of that Order(**105**) (disclosure of information by Department or inspector), for the words “under section 44” substitute the words “or appointed under section 43A or 44”.

(4) In paragraph (3) of Article 445 of that Order(**106**) (privileged information), for the words “section 42(2) to (4)” substitute the words “section 43A or 44(2) to (4)”.

(5) In paragraph (1)(a) of Article 453 of that Order (order on application of Department), for the words “section 42(2) to (6)” substitute the words “section 43A or 44(2) to (6)”.

(6) In the case of an EC company, Article 669 of that Order (certain companies to publish periodical statement) does not apply if the company complies with provisions of law of its home State as to the accounts and balance sheet to be prepared annually and deposited with the supervisory authority in that State by such a company.

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(**101**) Article 254 was substituted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 15(1).

(**102**) Article 256 was substituted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 15(3).

(**103**) Article 443 was amended by the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I.10)), Article 14.

(**104**) Article 442 was amended by the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I.10)), Article 13.

(**105**) Article 444A was substituted by the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I.10)), Article 16.

(**106**) Article 445 was amended by the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I.10)), Article 17.

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*Banking Act 1987 (c. 22)*

**14.**—(1) In subsection (1) of section 84 of the Banking Act 1987(**107**) (disclosure for facilitating discharge of functions by other supervisory authorities), in entry No.4 in the Table, for the words “authorised by the Secretary of State under section 44” substitute the words “appointed or authorised by the Secretary of State under section 43A or 44”.

(2) In Schedule 2 to the Banking Act 1987 (exempted persons), paragraph 8 shall have effect as if the reference to an institution which is for the time being authorised under section 3 or 4 of the 1982 Act to carry on insurance business of a class specified in Schedule 1 or 2 to that Act included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Housing (Scotland) Act 1987 (c. 26)*

**15.** Section 338 of the Housing (Scotland) Act 1987 (interpretation) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Criminal Justice Act 1987 (c. 38)*

**16.** In subsection (6) of section 3 of the Criminal Justice Act 1987 (disclosure of information), in paragraph (k), for the words “section 44(2)” substitute the words “section 43A or 44(2)”.

*Criminal Justice (Scotland) Act 1987 (c. 41)*

**17.** In subsection (5) of section 54 of the Criminal Justice (Scotland) Act 1987 (disclosure of information), in paragraph (l), for the words “section 44(2)” substitute the words “section 43A or 44(2)”.

*Companies Act 1989 (c. 40)*

**18.** In subsection (4) of section 87 of the Companies Act 1989 (exceptions from restrictions on disclosure), in the third entry in the Table, for the words “under section 44” substitute the words “or appointed under section 43A or 44”.

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)*

**19.** Subsection (2) of section 19 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (executory services by recognised financial institutions) shall have effect as if the reference to an insurance company which is authorised under section 3 or 4 of the 1982 Act included a reference to an EC company which is lawfully carrying on insurance business in the United Kingdom.

*Courts and Legal Services Act 1990 (c. 41)*

- 20.** The following provisions of the Courts and Legal Services Act 1990, namely—
- (a) section 37(8) (authorisation of practitioners); and
  - (b) section 48(4) (investigations on behalf of the Board),

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(107) Subsection (1) was amended by [S.I. 1987/1292](#), Article 2 and [S.I. 1992/3218](#), reg 39(1).



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shall have effect as if the reference to an insurance company which is authorised under section 3 or 4 of the 1982 Act included a reference to an EC company which is lawfully carrying on insurance business in the United Kingdom.

*Northern Ireland (Emergency Provisions) Act 1991 (c. 24)*

**21.** In paragraph 6(2)(k) of Schedule 5 to the Northern Ireland (Emergency Provisions) Act 1991 (restriction on disclosure of information), for the words “section 44(2)” substitute the words “section 43A or 44(2)”.

*Judicial Pensions and Retirement Act 1993 (c. 8)*

**22.—(1)** Section 10(4) of the Judicial Pensions and Retirement Act 1993 (additional benefits from voluntary contributions) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

(2) In Schedule 2 to the Judicial Pensions and Retirement Act 1993 (transfer of accrued benefits), paragraph 1 shall have effect as if the reference to an insurance company authorised under section 3 or 4 of the 1982 Act (or any similar previous enactment) to carry on ordinary long term insurance business included a reference to an EC company which is lawfully carrying on ordinary long term insurance business, or providing ordinary long term insurance, in the United Kingdom.

## PART II

### SUBORDINATE LEGISLATION

*Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (S.I. 1975/1023)*

**23.—(1)** In Part III of Schedule 1 to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (regulated occupations), paragraph 3 shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company lawfully carrying on insurance business in the United Kingdom.

(2) In Part IV of that Schedule (interpretation), the definition of “insurance company” shall have effect as if the reference to section 7 of the 1982 Act were a reference to sections 96C and 96D of that Act.

*British Railways Board (Winding up of Closed Pension Funds) Order 1978 (S.I. 1978/1358)*

**24.** Article 1 of the British Railways Board (Winding up of Closed Pension Funds) Order 1978 (commencement, citation and interpretation) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies and which is authorised by or under section 3 or 4 of that Act to carry on ordinary long term insurance business included a reference to an EC company which is lawfully carrying on ordinary long term insurance business, or providing ordinary long term insurance, in the United Kingdom.

*Rehabilitation of Offenders Act 1974 (Exceptions) Order (Northern Ireland) 1979 (S.R. 1979/195)*

**25.** In Part III of Schedule 1 to the Rehabilitation of Offenders Act 1974 (Exceptions) Order (Northern Ireland) 1979 (regulated occupations), paragraph 2 shall have effect as if the reference

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to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company lawfully carrying on insurance business in the United Kingdom.

*Mortgage Indemnities (Recognised Bodies) Order 1984 (S.I. 1984/1555)*

**26.** Schedule 2 to the Mortgage Indemnities (Recognised Bodies) Order 1984 shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Building Societies (Mobile Home Loans) Order 1986 (S.I. 1986/1877)*

**27.** Article 2 of the Building Societies (Mobile Home Loans) Order 1986 (interpretation) shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Local Authorities (Recognised Bodies for Heritable Securities Indemnities)M (Scotland) Order 1987 (S.I. 1987/1388 (S.104))*

**28.** In Schedule 2 to the Local Authorities (Recognised Bodies for Heritable Securities Indemnities) (Scotland) Order 1987 (classes or descriptions of bodies designated for the purposes of section 31 of the Tenants' Rights, etc.(Scotland) Act 1980), paragraph 1 shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Housing Corporation (Recognised Bodies for Heritable Securities Indemnities) (Scotland) Order 1987 (S.I. 1987/1389 (S.105))*

**29.** In Schedule 2 to the Housing Corporation (Recognised Bodies for Heritable Securities Indemnities) (Scotland) Order 1987 (classes or descriptions of bodies designated for the purposes of section 86 of the Housing Associations Act 1985), paragraph 1 shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies included a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Local Government Superannuation (Scotland) Regulations 1987 (S.I.1987/1850 (S.128))*

**30.** In Schedule 7A to the Local Government Superannuation (Scotland) Regulations 1987(**108**) (additional voluntary contributions), paragraph 11 shall have effect as if the reference to a person authorised under section 3 or 4 of the 1982 Act to carry on long term business and acting through a branch or agency in the United Kingdom included a reference to an EC company which is lawfully carrying on long term insurance business, or providing long term insurance, in the United Kingdom.

*Banking Act 1987 (Advertisements) Regulations 1988 (S.I. 1988/645)*

**31.** Regulation 2(3) of the Banking Act 1987 (Advertisements) Regulations 1988 (application of regulations) shall have effect as if the reference to a body authorised under section 3 or 4 of the 1982 Act to carry on insurance business of a class specified in Schedule 1 or 2 to that Act included

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(108) Schedule 7A was inserted by S.I. 1989/802 (S.80), reg 43 and Schedule 1.

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a reference to an EC company which is lawfully carrying on insurance business, or providing insurance, in the United Kingdom.

*Insurance Companies (Transfer of Long Term Business) Regulations 1990 (S.I. 1990/1207)*

**32.** The Insurance Companies (Transfer of Long Term Business) Regulations 1990 (which are superseded by regulation 28 above) shall cease to have effect.

*Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1992 (S.I.1992/2649)*

**33.** Regulation 9 of the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1992 (investment of contributions) shall have effect as if the reference to a body authorised under section 3 or 4 of the 1982 Act to carry on long term business included a reference to an EC company which is lawfully carrying on ordinary long term insurance business, or providing ordinary long term insurance, in the United Kingdom.

*Insurance Companies (Amendment) Regulations 1992 (S.I. 1992/2890)*

**34.** In the Insurance Companies (Amendment) Regulations 1992, regulation 10 (which is superseded by regulation 64 above) shall cease to have effect.

*Local Government (Superannuation) Regulations (Northern Ireland) 1992 (S.R. 1992/547)*

**35.** In Schedule 6 to the Local Government (Superannuation) Regulations (Northern Ireland) 1992 (further additional contributions), paragraph 10 shall have effect as if the reference to a person authorised under section 3 or 4 of the 1982 Act to carry on long term business and acting through a branch or agency in the United Kingdom included a reference to an EC company which is lawfully carrying on long term business, or providing long term insurance, in the United Kingdom.

*Money Laundering Regulations 1993 (S.I. 1993/1933)*

**36.** In regulation 16(6) of the Money Laundering Regulations 1993 (persons subject to duty to report evidence of money laundering), after paragraph (f) insert—

“(fa) a person appointed under section 43A of the Insurance Companies Act 1982;”.

*Parliamentary Pensions (Additional Voluntary Contributions Scheme) Regulations 1993 (S.I.1993/3252)*

**37.** The following provisions of the Parliamentary Pensions (Additional Voluntary Contributions Scheme) Regulations 1993, namely—

- (a) regulation 6(2) (investment of contributions); and
- (b) regulation 9(2) (purchase of pensions),

shall have effect as if the reference to an insurance company to which Part II of the 1982 Act applies and which is authorised under section 3 or 4 of that Act to carry on ordinary long term insurance business included a reference to an EC company which is lawfully carrying on ordinary long term insurance business in the United Kingdom.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on 1st July 1994, make amendments to the Insurance Companies Act 1982 (“the 1982 Act”) and the Financial Services Act 1986 (“the 1986 Act”).

### The Directives

The Regulations give effect to provisions of 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](#) (OJ No.L228, 11.8.92, p.1); and of 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](#) (OJ No.L360, 9.12.92, p.1) (“the Directives”). One of the principal purposes of the Directives is to introduce for direct insurance business the principle, which has already been adopted in the banking sector, of home State control. Under this system each member State assumes 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 provide for further harmonisation of member States' rules concerning the authorisation and regulation of insurance undertakings.

### Part I

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

### Part II

Part II of the Regulations contains amendments to the 1982 Act. Chapter I amends Part I of the Act, which is concerned with the authorisation of insurance business. It extends the list of classes of long term business in Schedule 1 to the Act (regulation 3). It inserts into the Act the definition of “EC company” and excludes from the authorisation requirement under section 2 of the Act insurance business carried on in the United Kingdom by such companies which meet specified conditions (regulation 4). It also inserts into the Act the definitions of “UK company” and “non-EC company” and introduces the requirement that the Secretary of State shall not authorise such companies under section 3 of the Act if it appears to him that the criteria of sound and prudent management-set out in Schedule 1-may not be fulfilled (regulation 5). It amends the restriction on the extent to which companies may be authorised to carry on both long term and general insurance business, as it applies in respect of the combination of long term and accident and health insurance business (regulation 6), and the provisions of the Act concerning the withdrawal of authorisation (regulations 10 and 12). It also provides the Secretary of State with a new power to suspend the authorisation of a UK or non-EC company where it appears to him that this should be done as a matter of urgency (regulation 11).

Chapter II amends Part II of the 1982 Act, which is concerned with the regulation of insurance business. Except in certain specified circumstances, this Part of the Act no longer applies to EC companies (regulation 13). The principal changes relate to:

- the adequacy of the assets by which UK companies cover the liabilities of their insurance business and the adequacy of the premiums payable under their long term business contracts (regulations 17 and 18),

- the grounds on which powers of intervention under the Act are exercisable (regulation 19),
- the power of the Secretary of State to require a company to maintain within the United Kingdom assets to a specified value (regulation 21),
- new powers which enable the Secretary of State to obtain, on specified grounds, an injunction to prohibit a UK company from disposing of assets to the value of the liabilities of its business in the EC (regulation 22) and to appoint persons to carry out investigations to assist him in carrying out certain of his functions under the Act (regulation 23),
- the power of the Secretary of State to obtain information and to impose requirements for the protection of policyholders (regulations 24 and 25),
- restrictions on the disclosure of information relating to individual insurance undertakings except in specified circumstances and for specified purposes (regulations 26 and 27 and Schedule 2),
- the transfer from one insurance undertaking to another of rights and obligations under contracts of insurance (regulations 28 to 30 and Schedule 3),
- the grounds on which the Secretary of State may petition for the winding up of a UK company (regulation 30),
- the approval of proposed managing directors, chief executives and controllers of UK or non-EC companies and of the acquisition by existing controllers of holdings in UK companies, including new powers enabling the Secretary of State to seek further information before deciding whether to serve a notice of objection in such cases, to make the giving of approval subject to compliance with such conditions as he may impose, to serve a notice of objection where the requisite notice has not been given, and in respect of existing controllers of such companies, and, where a person has become or continues to be a controller of, or obtained or retained a holding in, a UK company in breach of the provisions of the Act, to impose specified restrictions in respect of shares in the company held by that person or to apply to the court for an order directing that such shares shall be sold (regulations 32 to 35 and Schedule 4), and
- the duty to notify changes of directors, controllers and managers (regulations 36 and 37).

Chapter III amends Part III of the 1982 Act, which is concerned with the conduct of insurance business. The changes relate to the information and statutory notices to be provided to policy holders and potential policy holders (regulations 40 to 43 and Schedule 5) and the conduct of linked long term insurance business (regulation 44).

Chapter IV replaces the whole of Part IIIA of the 1982 Act, with the provisions of Schedules 6 and 7 relating to the recognition in the United Kingdom of companies having their head office in one of the other States of the European Economic Area and to the recognition of United Kingdom insurers in such States (regulations 45 and 46). Schedule 6 contains a new Schedule 2F to the Act which sets out procedural requirements in respect of EC companies which propose to carry on direct insurance or reinsurance business or to provide insurance in the United Kingdom and in respect of companies which have their head office in an EFTA State which propose to provide insurance in the United Kingdom, including the information to be provided and in respect of changes to that information. It also specifies the Secretary of State's powers of intervention in respect of such companies. Schedule 7 contains a new Schedule 2G to the Act which sets out procedural requirements in respect of United Kingdom insurers which propose to carry on direct insurance business or to provide insurance in another member State, including the information to be provided and the criteria to be fulfilled by the insurer and in respect of changes to that information. It also sets out procedural requirements in respect of United Kingdom insurers which propose to provide insurance in an EFTA State, or to provide insurance in the United Kingdom through a branch in another State of the European Economic Area.

Chapter V amends Part IV of the 1982 Act, which is concerned with special classes of insurers. The changes relate to proposed transfers of industrial assurance business (regulation 47) and the powers

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of the Secretary of State in relation to, and transfers of insurance business to or from, Lloyd's underwriters (regulation 48).

Chapter VI amends Schedule 3A to the 1982 Act, which is concerned with the law applicable to certain insurance contracts (regulation 49) and inserts new and amended interpretation provisions into the Act (regulations 50 to 55).

### **Part III**

Part III of the Regulations amends the 1986 Act. The principal changes relate to:

- the rules of self-regulating organisations as they apply to EC companies (regulation 56),
- the automatic recognition of such companies as authorised persons under the 1986 Act (regulation 57),
- the conduct of investment business by such companies (regulation 58),
- the powers of intervention in respect of such companies (regulation 59),
- an extension of the power of the Securities and Investments Board to obtain information from authorised persons and certain specified recognised bodies where this information is required for the exercise of the Board's functions under Part III of the Regulations, and provision that the requirement to appoint an auditor shall no longer apply to EC companies (regulation 60),
- a new requirement for designated agencies to co-operate with supervisory authorities in other member States for the purpose of complying with the Directives (regulation 61),
- a modification of the provisions of the Act which prevent restrictive practices being adopted by designated agencies and certain other bodies (regulation 62),
- an extension of the provisions of the 1986 Act concerning contracts effected in contravention of section 2 of the 1982 Act so that they apply to contracts effected in contravention of Part IIIA of the 1982 Act as inserted by the Regulations (regulation 64), and
- restrictions on disclosure of information obtained by the Secretary of State or a designated agency for the exercise of his or its functions (regulation 66).

### **Part IV**

Part IV of the Regulations and Schedule 8 contain minor and consequential amendments and transitional and transitory provisions (regulations 68 to 71).