



# Financial Services Act 1986

## 1986 CHAPTER 60

### PART II

#### INSURANCE BUSINESS

#### **129 Application of investment business provisions to regulated insurance companies**

Schedule 10 to this Act shall have effect with respect to the application of the foregoing provisions of this Act to regulated insurance companies, that is to say—

- (a) insurance companies to which Part II of the Insurance Companies Act 1982 applies ; and
- (b) insurance companies which are authorised persons by virtue of section 31 above.

#### **130 Restriction on promotion of contracts of insurance**

- (1) Subject to subsections (2) and (3) below, no person shall—
  - (a) issue or cause to be issued in the United Kingdom an advertisement—
    - (i) inviting any person to enter or offer to enter into a contract of insurance rights under which constitute an investment for the purposes of this Act, or
    - (ii) containing information calculated to lead directly or indirectly to any person doing so; or
  - (b) in the course of a business, advise or procure any person in the United Kingdom to enter into such a contract.
- (2) Subsection (1) above does not apply where the contract of insurance referred to in that subsection is to be with—
  - (a) a body authorised under section 3 or 4 of the Insurance Companies Act 1982 to effect and carry out such contracts of insurance;
  - (b) a body registered under the enactments relating to friendly societies;

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- (c) an insurance company the head office of which is in a member State other than the United Kingdom and which is entitled to carry on there insurance business of the relevant class ;
- (d) an insurance company which has a branch or agency in such a member State and is entitled under the law of that State to carry on there insurance business of the relevant class;

and in this subsection " the relevant class " means the class of insurance business specified in Schedule 1 or 2 to the Insurance Companies Act 1982 into which the effecting and carrying out of the contract in question falls.

- (3) Subsection (1) above also does not apply where—
  - (a) the contract of insurance referred to in that subsection is to be with an insurance company authorised to effect or carry out such contracts of insurance in any country or territory which is for the time being designated for the purposes of this section by an order made by the Secretary of State ; and
  - (b) any conditions imposed by the order designating the country or territory have been satisfied.
- (4) The Secretary of State shall not make an order designating any country or territory for the purposes of this section unless he is satisfied that the law under which insurance companies are authorised and supervised in that country or territory affords adequate protection to policy holders and potential policy holders against the risk that the companies may be unable to meet their liabilities; and, if at any time it appears to him that the law of a country or territory which has been designated under this section does not satisfy that requirement, he may by a further order revoke the order designating that country or territory.
- (5) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subject to subsections (7) and (8) below, any person who contravenes this section shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (7) A person who in the ordinary course of a business other than investment business issues an advertisement to the order of another person shall not be guilty of an offence under this section if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control and that he believed on reasonable grounds after due enquiry that the person to whose order the advertisement was issued was an authorised person.
- (8) A person other than the insurance company with which the contract of insurance is to be made shall not be guilty of an offence under this section if he proves that he believed on reasonable grounds after due enquiry that subsection (2) or (3) above applied in the case of the contravention in question.

### **131 Contracts made after contravention of s. 130**

- (1) Where there has been a contravention of section 130 above, then, subject to subsections (3) and (4) below—

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- (a) the insurance company shall not be entitled to enforce any contract of insurance with which the advertisement, advice or procurement was concerned and which was entered into after the contravention occurred ; and
  - (b) the other party shall be entitled to recover any money or other property paid or transferred by him under the contract, together with compensation for any loss sustained by him as a result of having parted with it.
- (2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as a court may, on the application of either party, determine.
- (3) In a case where the contravention referred to in subsection (1) above was a contravention by the insurance company with which the contract was made, the court may allow the contract to be enforced or money or property paid or transferred under it to be retained if it is satisfied—
- (a) that the person against whom enforcement is sought or who is seeking to recover the money or property was not influenced, or not influenced to any material extent, by the advertisement or, as the case may be, the advice in making his decision to enter into the contract; or
  - (b) that the advertisement or, as the case may be, the advice was not misleading as to the nature of the company with which the contract was to be made or the terms of the contract and fairly stated any risks involved in entering into it.
- (4) In a case where the contravention of section 130 above referred to in subsection (1) above was a contravention by a person other than the insurance company with which the contract was made the court may allow the contract to be enforced or money or property paid or transferred under it to be retained if it is satisfied that at the time the contract was made the company had no reason to believe that any contravention of section 130 above had taken place in relation to the contract.
- (5) Where a person elects not to perform a contract which by virtue of subsection (1) above is unenforceable against him or by virtue of that subsection recovers money paid or other property transferred by him under a contract he shall not be entitled to any benefits under the contract and shall repay any money and return any other property received by him under the contract.
- (6) Where any property transferred under a contract to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the contract.
- (7) A contravention of section 130 above by an authorised person shall be actionable at the suit of any person who suffers loss as a result of the contravention.
- (8) Section 61 above shall have effect in relation to a contravention or proposed contravention of section 130 above as it has effect in relation to a contravention or proposed contravention of section 57 above.

### **132 Insurance contracts effected in contravention of s. 2 of Insurance Companies Act 1982**

- (1) Subject to subsection (3) below, a contract of insurance (not being an agreement to which section 5(1) above applies) which is entered into by a person in the course of carrying on insurance business in contravention of section 2 of the Insurance Companies Act 1982 shall be unenforceable against the other party; and that party shall be entitled to recover any money or other property paid or transferred by him

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under the contract, together with compensation for any loss sustained by him as a result of having parted with it.

- (2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as a court may, on the application of either party, determine.
- (3) A court may allow a contract to which subsection (1) above applies to be enforced or money or property paid or transferred under it to be retained if it is satisfied—
  - (a) that the person carrying on insurance business reasonably believed that his entering into the contract did not constitute a contravention of section 2 of the said Act of 1982; and
  - (b) that it is just and equitable for the contract to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.
- (4) Where a person elects not to perform a contract which by virtue of this section is unenforceable against him or by virtue of this section recovers money or property paid or transferred under a contract he shall not be entitled to any benefits under the contract and shall repay any money and return any other property received by him under the contract.
- (5) Where any property transferred under a contract to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the contract.
- (6) A contravention of section 2 of the said Act of 1982 shall not make a contract of insurance illegal or invalid to any greater extent than is provided in this section; and a contravention of that section in respect of a contract of insurance shall not affect the validity of any re-insurance contract entered into in respect of that contract.

### **133 Misleading statements as to insurance contracts**

- (1) Any person who—
  - (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals any material facts ; or
  - (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a contract of insurance with an insurance company (not being an investment agreement) or to exercise, or refrain from exercising, any rights conferred by such a contract.
- (2) Subsection (1) above does not apply unless—
  - (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom;
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom ; or
  - (c) the contract is or would be entered into or the rights are or would be exercisable in the United Kingdom.
- (3) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both ;
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

### **134    Controllers of insurance companies**

In section 7(4)(c)(ii) of the Insurance Companies Act 1982 (definition of controller by reference to exercise of not less than one-third of voting power) for the words " one-third " there shall be substituted the words " 15 per cent. ".

### **135    Communication by auditor with Secretary of State**

(1) After section 21 of the Insurance Companies Act 1982 there shall be inserted—

#### **“21A Communication by auditor with Secretary of State.**

- (1) No duty to which an auditor of an insurance company to which this Part of this Act applies may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that company and which is relevant to any functions of the Secretary of State under this Act.
  - (2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may make regulations applying to that auditor or class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the regulations made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the regulations.
  - (3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance or regulations may include matters relating to persons other than the company.
  - (4) No regulations shall be made under subsection (2) above unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
  - (5) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in subsection (2) above, the Secretary of State may disqualify him from being the auditor of an insurance company or any class of insurance company to which Part II of this Act applies; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.
  - (6) An insurance company to which this Part of this Act applies shall not appoint as auditor a person disqualified under subsection (5) above.”.
- (2) In section 71(7) of that Act (which lists the provisions of that Act default in complying with which is not an offence) after the words " section 16 " there shall be inserted the

word " 21A ", and in section 97(4) of that Act (which provides that regulations under that Act are to be subject to annulment) after the word " Act" there shall be inserted the words " , except regulations under section 21A(3), ".

### **136 Arrangements to avoid unfairness between separate insurance funds etc.**

(1) After section 31 of the Insurance Companies Act 1982 there shall be inserted—

#### **“31A Arrangements to avoid unfairness between separate insurance funds etc.**

(1) An insurance company to which this Part of this Act applies which carries on long term business in the United Kingdom shall secure that adequate arrangements are in force for securing that transactions affecting assets of the company (other than transactions outside its control) do not operate unfairly between the section 28 fund or funds and the other assets of the company or, in a case where the company has more than one identified fund, between those funds.

(2) In this section—

" the section 28 fund or funds" means the assets representing the fund or funds maintained by the company under section 28(1) (b) above; and

" identified fund ", in relation to a company, means assets representing the company's receipts from a particular part of its long term business which can be identified as such by virtue of accounting or other records maintained by the company.”

(2) In section 71(7) of that Act (which lists the provisions of that Act default in complying with which is not an offence) before the word " or " there shall be inserted the word " 31A ".

### **137 Regulations in respect of linked long term policies**

In section 78(2) of the Insurance Companies Act 1982 (regulations in respect of linked long term policies) after paragraph (a) there shall be inserted—

“(aa) restricting the proportion of those benefits which may be determined by reference to property of a specified description or a specified index ;”.

### **138 Insurance brokers**

(1) Rules made under section 8 of the Insurance Brokers (Registration) Act 1977 may require an applicant for registration or enrolment to state whether he is an authorised person or exempted person under Part I of this Act and, if so, to give particulars of the authorisation or exemption; and an individual shall be treated as satisfying the requirements of section 3(2)(a) of that Act (applicant for registration to satisfy Council as to his character and suitability) if he is an authorised person or a member of a partnership or unincorporated association which is an authorised person.

(2) In drawing up any statement under section 10 of that Act or making any rules under section 11 or 12 of that Act after the coming into force of this section the Insurance Brokers Registration Council shall take proper account of any provisions applicable to,

and powers exercisable in relation to, registered insurance brokers or enrolled bodies corporate under this Act.

(3) In section 12(1) and (2) of that Act (which requires the Council to make professional indemnity rules) for the words " The Council shall " there shall be substituted the words " The Council may ".

(4) In section 15 of that Act (erasure from register and list for unprofessional conduct etc.) after subsection (2) there shall be inserted—

“(2A) The Disciplinary Committee may, if they think fit, direct that the name of a registered insurance broker or enrolled body corporate shall be erased from the register or list if it appears to the Committee that any responsible person has concluded that the broker (or a related person) or the body corporate has contravened or failed to comply with—

- (a) any provision of the Financial Services Act 1986 or any rule or regulation made under it to which he or it is or was subject at the time of the contravention or failure; or
- (b) any rule of any recognised self-regulating organisation or recognised professional body (within the meaning of that Act), to which he is or was subject at that time.

(2B) In subsection (2A) above—

- (a) " responsible person " means a person responsible under the Financial Services Act 1986 or under the rules of any recognised self-regulating organisation or recognised professional body (within the meaning of that Act) for determining whether any contravention of any provision of that Act or rules or regulations made under it or any rules of that organisation or body has occurred ; and
- (b) " related person " means a partnership or unincorporated association of which the broker in question is (or was at the time of the failure or contravention in question) a member or a body corporate of which he is (or was at that time) a director.”

(5) The Insurance Brokers Registration Council shall cooperate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

(6) For the purposes of the said Act of 1977 " authorised insurers " shall include—

- (a) an insurance company the head office of which is in a member State other than the United Kingdom and which is entitled to carry on there insurance business corresponding to that mentioned in the definition of " authorised insurers " in that Act; and
- (b) an insurance company which has a branch or agency in such a member State and is entitled under the law of that State to carry on there insurance business corresponding to that mentioned in that definition.

### **139 Industrial assurance**

(1) In section 5 of the Industrial Assurance Act 1923 (prohibition on issue of illegal policies) the references to policies which are illegal or not within the legal powers of a society or company shall not be construed as applying to any policy issued—

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- (a) in the course of carrying on investment business in contravention of section 3 above; or
  - (b) in the course of carrying on insurance business in contravention of section 2 of the Insurance Companies Act 1982.
- (2) In section 20(4) of the said Act of 1923 the reference to a person employed by a collecting society or industrial assurance company and in section 34 of that Act the references to a person in the regular employment of such a society or company shall include references to an appointed representative of such a society or company but as respects section 34 only if the contract in question is an investment agreement.
- (3) Where it appears to the Industrial Assurance Commissioner that rules made by virtue of section 48(2)(f) (or corresponding rules made by a recognised self-regulating organisation) make arrangements for the settlement of a dispute referred to him under section 32 of the said Act of 1923 or that such rules relate to some of the matters in dispute he may, if he thinks fit, delegate his functions in respect of the dispute so as to enable it to be settled in accordance with the rules.
- (4) If such rules provide that any dispute may be referred to the Industrial Assurance Commissioner he may deal with any dispute referred to him in pursuance of those rules as if it were a dispute referred under section 77 of the Friendly Societies Act 1974 and may delegate his functions in respect of any such dispute to any other person.
- (5) The foregoing provisions of this section shall apply to Northern Ireland with the substitution for the references to sections 5, 20(4), 32 and 34 of the said Act of 1923 and section 77 of the said Act of 1974 of references to Articles 20, 27(2), 36 and 38 of the Industrial Assurance (Northern Ireland) Order 1979 and section 65 of the Friendly Societies Act (Northern Ireland) 1970 and for the references to the Industrial Assurance Commissioner of references to the Industrial Assurance Commissioner for Northern Ireland.