



Insurance Companies Act 1974

1974 CHAPTER 49

PART V

SUPPLEMENTARY PROVISIONS

Valuation regulations

78 Power to make valuation regulations

- (1) Regulations may be made with respect to the determination of the value of assets and the amount of liabilities in any case in which the value or amount is required by any provision of this Act to be determined in accordance with valuation regulations.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent.
- (3) Regulations under this section may make different provision in relation to different cases or circumstances.

Criminal proceedings

79 Criminal liability of directors

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

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- (2) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

80 Criminal proceedings against unincorporated bodies

- (1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body shall be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to file service of documents shall have effect as if that body were a corporation.
- (2) A fine imposed on an unincorporated body on its conviction of an offence under this Act shall be paid out of the funds of that body.
- (3) Section 33 of the Criminal Justice Act 1925 and Schedule 2 to the Magistrates' Courts Act 1952 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated body is charged in England or Wales with an offence under this Act in like manner as they have effect in the case of a corporation so charged.
- (4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated body, section 40 of the Criminal Justice (Scotland) Act 1949 (proceedings on indictment against bodies corporate) shall have effect as if that body were a body corporate.

81 Restriction on institution of prosecutions

Proceedings in respect of an offence under this Act shall not, in England or Wales, be instituted except by or with the consent of the Secretary of State, the Industrial Assurance Commissioner or the Director of Public Prosecutions.

82 Summary proceedings

- (1) Summary proceedings for any offence under this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.
- (2) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, an information relating to an offence under this Act which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within three years after the commission of the offence and within twelve months after the date on which evidence sufficient, in the opinion of the Director of Public Prosecutions, the Secretary of State or the Industrial Assurance Commissioner, as the case may be, to justify the proceedings comes to his knowledge.
- (3) Summary proceedings in Scotland for an offence under this Act shall not be commenced after the expiration of three years from the commission of the offence but, subject to the foregoing limitation and notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954, such proceedings may be commenced at any time within twelve months after the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge or, where such evidence was reported to him by the Secretary of State or the Industrial Assurance Commissioner, within twelve months after the date on which it came to the

knowledge of the Secretary of State or Commissioner; and subsection (2) of the said section 23 shall apply for the purpose of this subsection as it applies for the purpose of that section.

- (4) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Secretary of State or the Industrial Assurance Commissioner, as the case may be, as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence.

Interpretation

83 Definitions of classes of insurance business

- (1) In this Act "industrial assurance business" has the meaning given in section 1(2) of the Industrial Assurance Act 1923.
- (2) In this Act "ordinary long-term insurance business" means business of any of the following kinds, namely,—
- (a) effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life;
 - (b) effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or of disease of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and
 - (c) effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future, not being such contracts as fall within either of the foregoing paragraphs;
- but does not include industrial assurance business.
- (3) In this Act "liability insurance business" means the business of effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, not being risks arising out of, or in connection with the use of, motor vehicles or out of, or in connection with the the use of, vessels or aircraft or risks incidental to the construction, repair or docking of vessels or aircraft.
- (4) In this Act " marine, aviation and transport insurance business " means, subject to subsection (9) below, the business of effecting and carrying out contracts of insurance—
- (a) upon vessels or aircraft, or upon the machinery, tackle, furniture or equipment of vessels or aircraft;
 - (b) upon goods, merchandise or property of any description whatever on board of vessels or aircraft;
 - (c) upon the freight of, or any other interest in or relating to, vessels or aircraft;
 - (d) against damage arising out of, or in connection with, the use of vessels or aircraft, including third-party risks;

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- (e) against risks incidental to the construction, repair or docking of vessels, including third-party risks;
 - (f) against transit risks (whether the transit is by sea, inland water, land or air, or partly one and partly another), including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance; or
 - (g) against any other risks insurance against which is customarily undertaken in conjunction with, or as incidental to, the undertaking of such business as falls within this definition by virtue of any of the foregoing paragraphs.
- (5) In this Act " motor vehicle insurance business " means, subject to subsection (9) below, the business of effecting and carrying out contracts of insurance against loss of, or damage to, or arising out of or in connection with the use of, motor vehicles, inclusive of third-party risks but exclusive of transit risks.
- (6) In this Act " pecuniary loss insurance business " means the business of effecting and carrying out contracts of insurance against any of the following risks, namely,—
- (a) risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due;
 - (b) risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;
 - (c) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reductions of the scope of businesses so carried on;
 - (d) risks of loss to the persons insured attributable to then incurring unforeseen expense; and
 - (e) risks neither falling within any of the foregoing paragraphs nor being of a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.
- (7) In this Act " personal accident insurance business " means the business of effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or of disease of a specified class, not being contracts falling within subsection (2)(b) above.
- (8) In this Act " property insurance business " means the business of effecting and carrying out contracts of insurance against risks of loss of, or damage to, material property, not being risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business or motor vehicle insurance business.
- (9) In subsections (3) and (4) above "vessels or aircraft" includes hovercraft to which this Act applies; but the business of effecting and carrying out contracts of insurance against loss of, or damage to, or arising out of or in connection with the use of, such hovercraft (inclusive of third-party risks but exclusive of transit risks), if carried on by a person who at the same time carries on motor vehicle insurance business but does not otherwise carry on marine, aviation and transport insurance business, shall be taken for the purposes of this Act to be motor vehicle insurance business.

84 Insurance business of one class incidental to insurance business of different class

- (1) For the purposes of this Act, a person shall not be taken to carry on liability insurance business by reason only of the incidental inclusion, in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes property insurance business, of provision whereby he assumes liability against the risk of the person insured incurring liabilities to third parties.
- (2) For the purposes of this Act, a person shall not be taken to carry on marine, aviation and transport insurance business by reason only of the incidental inclusion, in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes insurance business of some other class, of provision whereby he assumes a liability of a kind whose assumption by itself in a contract of insurance would make that contract such a one as is mentioned in section 83(4) above.
- (3) For the purposes of this Act, a person shall not be taken to carry on motor vehicle insurance business by reason only of the fact that goods, merchandise or property upon which a contract of insurance is effected by him (being goods, merchandise or property on board of a vessel or aircraft or of a hovercraft to which this Act applies) consist of, or include, motor vehicles.
- (4) For the purposes of this Act, a person shall not be taken to carry on ordinary long-term insurance business by reason only of the incidental inclusion in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, of provision whereby he assumes liability against the happening of personal accidents (whether fatal or not).
- (5) For the purposes of this Act, a person shall not be taken to carry on pecuniary loss insurance business by reason only of the incidental inclusion, in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, of provision whereby he assumes liability against such risks as are mentioned in section 83(6)(c) and (d) above.
- (6) For the purposes of this Act, a person shall not be taken to carry on personal accident insurance business by reason only of the incidental inclusion, in a contract of insurance whose principal object is to insure a person against risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, of provision whereby he assumes liability against the happening of personal accidents (whether fatal or not).

85 General interpretation

- (1) In this Act, unless the context otherwise requires—
 - "actuary" means an actuary possessing the prescribed qualifications;
 - "annuities on human life" does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and

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maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons;

" authorisation " means an authorisation under section 3(1)(b) above;

" body corporate " does not include a corporation sole or a Scottish firm but includes a body incorporated outside Great Britain;

" capital redemption business " means such business as, by virtue of paragraph (c) of subsection (2) of section 83 above falls within the definition in that subsection of ordinary long-term insurance business ;

" chief executive " has the meaning given in section 7 above;

" contract of insurance ", except in sections 83 and 84, includes a contract to pay an annuity on human life;

" controller " has the meaning given in section 7 above;

" court " means the High Court of Justice in England or, in the case of an insurance company registered or having its head office in Scotland, the Court of Session;

" deed of settlement ", in relation to an insurance company, includes any instrument constituting the company;

" director " includes any person occupying the position of director by whatever name called ;

" financial year " means, subject to section 59 above, each period of twelve months at the end of which the balance of the accounts of the insurance company is struck or, if no such balance is struck, the calendar year;

" former Companies Acts " means the Companies Act 1929 and any enactment repealed by that Act or by the Companies (Consolidation) Act 1908 ;

" general business " has the meaning given in section 1 (2) above;

" hovercraft to which this Act applies " means a hovercraft, other than a hovertrain, which is used—

- (a) wholly or partly on or over the sea or navigable waters; or
- (b) on or over land to which the public have access or non-navigable waters to which the public have access; or
- (c) elsewhere for the carriage of passengers for reward;

and for the purposes of this definition "navigable waters " means any waters which are in fact navigable by ships or vessels, whether or not the tide ebbs and flows there and whether or not there is a public right of navigation in those waters;

" hover train " means a hovercraft which is at all times guided by tracks, rails or guides fixed to the ground;

" industrial assurance business " has the meaning given in section 1(2) of the Industrial Assurance Act 1923 ;

" insolvent " means, in relation to an insurance company at any relevant date, that if proceedings had been taken for the winding up of the company the court could, in accordance with the provisions of sections 222 and 223 or section 399 of the Companies Act 1948, hold or have held that the company was at that date unable to pay its debts ;

" insurance company " means a person or body of persons (whether incorporated or not) carrying on insurance business;

" liability insurance business " has the meaning given in section 83(3) above ;

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" life policy " means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life ;

" long term business " has the meaning given in section 1(2) above;

" long term policy holder " means a policy holder in respect of a policy the effecting of which by the insurer constituted the carrying on of long term business;

" manager ", except in section 48, has the meaning given in section 7 above;

" marine, aviation and transport insurance business " has the meaning given in section 83(4) above ;

" mortgage ", in relation to Scotland, means a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970;

" motor vehicle insurance business " has the meaning given in section 83(5) above ;

" ordinary long-term insurance business " has the meaning given in section 83(2) above ;

" pecuniary loss insurance business " has the meaning given in section 83(6) above ;

" personal accident insurance business " has the meaning given in section 83(7) above ;

" policy "—

- (a) in relation to ordinary long-term insurance business and industrial assurance business, includes an instrument evidencing a contract to pay an annuity upon human life;
- (b) in relation to insurance business of any other class includes any policy under which there is for the time being an existing liability already accrued or under which a liability may accrue; and
- (c) in relation to capital redemption business, includes any policy, bond, certificate, receipt or other instrument evidencing the contract with the company;

" policy holder " means the person who for the time being is the legal holder of the policy for securing the contract with the insurance company or, in relation to capital redemption business, means the person who for the time being is the legal holder of the policy, bond, certificate, receipt or other instrument evidencing the contract with the company, and—

- (a) in relation to such ordinary long-term insurance business or industrial assurance business as consists in the granting of annuities upon human life, includes an annuitant; and
- (b) in relation to insurance business of any kind other than such as is mentioned in the foregoing paragraph or capital redemption business, includes a person to whom, under a policy, a sum is due or a periodic payment is payable ;

" prescribed " means prescribed by regulations under this Act;

" property insurance business " has the meaning given in section 83(8) above;

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" registered society " means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or any corresponding enactment or Measure in force in Northern Ireland ;

" registrar of companies " has the meaning given in section 455 of the Companies Act 1948 ;

" subsidiary ", except in section 49, shall be construed in accordance with section 154 of the Companies Act 1948;

" underwriter " includes any person named in a policy or other contract of insurance as liable to pay or contribute towards the payment of the sum secured by the policy or contract;

" valuation regulations " means regulations under section 78 above.

- (2) References in this Act to a fund or funds maintained in respect of long term business are references to a fund or funds maintained under section 23(1)(b) above and in sections 41(2) and 47(6) above include references to a fund or funds maintained under section 3(1) of the Insurance Companies Act 1958.
- (3) A person shall not be deemed to be within the meaning of any provision of this Act a person in accordance with whose directions or instructions the directors of a company or other body corporate or any of them are accustomed to act by reason only that the directors of the company or body act on advice given by him in a professional capacity.
- (4) Except where the context otherwise requires, references in this Act to any other enactment are references to that enactment as amended by or under any subsequent enactment.

Supplementary

86 Regulations and orders

- (1) The Secretary of State may make regulations under this Act for any purpose for which regulations are authorised or required to be made thereunder.
- (2) Any power conferred by this Act to make regulations and the power to make orders under sections 10 and 58 above shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order shall be made under section 10 or 58 above unless a draft of it has been approved by resolution of each House of Parliament.

87 Annual report by Secretary of State

The Secretary of State shall cause a general annual report of matters within this Act to be laid before Parliament.

88 Consequential amendments, repeals and savings

- (1) The enactments specified in Schedule 1 to this Act shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Act.

- (2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) In so far as any instrument made or other thing done (or by virtue of section 36(4) of the Insurance Companies Act 1958 or section 54(5), (6) or (7) of the Insurance Companies Amendment Act 1973 having effect as if made or done) under an enactment repealed by this Act could have been made or done under a corresponding enactment in this Act, it shall not be invalidated by the repeal effected by this section but shall have effect as if it had been made or done under that corresponding enactment.
- (4) Without prejudice to subsection (1) above, any enactment or other document whatsoever referring to any enactment repealed by this Act shall be construed as referring (or including a reference) to the corresponding enactment in this Act.
- (5) Without prejudice to the generality of subsection (4) above, any enactment or document whatsoever referring to an assurance company within the meaning of the Assurance Companies Act 1909 shall be construed as referring (or as including a reference) to an insurance company to which Part II of this Act applies.
- (6) The foregoing provisions of this section are without prejudice to section 38 of the Interpretation Act 1889 (effect of repeals).

89 Transitory provisions relating to coming into force of Insurance Companies Amendment Act 1973

- (1) The repeal by the Insurance Companies Amendment Act 1973 of sections 65, 68 and 80 and subsection (1)(f) of section 109 of the Companies Act 1967 shall not affect—
 - (a) any requirement or direction imposed or given under any of those sections before 25th July 1973 ;
 - (b) the giving of a direction under the said section 68 in any case in which a notice has been served under subsection (3) of that section before that date; or
 - (c) the exercise by an officer of any powers under the said section 109 in a case in which he has been authorised before that date to exercise them ;and the said Act of 1967 shall have effect in relation to any such requirement, direction or powers as if the said Act of 1973 and this Act had not been passed.
- (2) The provisions of this Act, so far as re-enacting provisions of the said Act of 1973 relating to winding up, shall not affect any winding up commenced before the date on which the first rules made by virtue of section 30(5) of the said Act of 1973 or section 51(2) above come into operation.
- (3) In relation to any amalgamation or transfer in respect of which proceedings under section 11 of the Insurance Companies Act 1958 were begun before 25th January 1974, the said Act of 1958 and the Act of 1967 shall continue to have effect as if the said Act of 1973 and this Act had not been passed.
- (4) In relation to any offence committed before 25th July 1973 sections 11(3)(b) and 61(2)(b) above shall have effect as if they contained provisions corresponding to sections 60(4)(b) and 84(2)(b) of the said Act of 1967 respectively, and sections 61(3), 71(2) and 76(2) above shall have effect as if for "£400" there were substituted " £200 ".
- (5) If no regulations under section 11 of the said Act of 1973 have come into operation before the expiration of the period mentioned in section 90(2) below (in this section

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referred to as "the commencement of this Act") section 27 above shall not take effect until the first regulations under the said section 11 or 27 come into operation.

- (6) If no rules under section 30(5) of the said Act of 1973 have come into operation before the commencement of this Act the repeal of section 17(2) and (3) of, and Schedules 3 and 4 to, the said Act of 1958 shall not take effect until the first rules under the said section 30(5) or under section 51(2) above come into operation.
- (7) If no regulations made for the purposes of sections 33 to 35 of the said Act of 1973 have come into operation before the commencement of this Act sections 52 to 54 above and the repeal of sections 82 and 83 of the said Act of 1967 shall not take effect until the date on which the first regulations made for the purposes of the said sections 33 to 35 or 52 to 54 come into operation ; and so long as the said sections 82 and 83 continue in force the said Act of 1967 shall have effect in relation to them as if the said Act of 1973 and this Act had not been passed.
- (8) If no regulations under section 44(5) of the said Act of 1973 have come into operation before the commencement of this Act sections 65 to 67 above shall not take effect until the first regulations under the said section 44(5) or under section 65(5) above come into operation.

90 Short title, commencement and extent

- (1) This Act may be cited as the Insurance Companies Act 1974.
- (2) Subject to section 89 above, this Act shall come into operation at the expiration of the period of one month beginning with the date on which it is passed.
- (3) This Act shall not extend to Northern Ireland.