



Insurance Companies Act 1981

1981 CHAPTER 31

PART II

REGULATION OF INSURANCE COMPANIES

Preliminary

15 Restriction of business to insurance

- (1) An insurance company to which Part II of the 1974 Act applies shall not carry on any activities, in the United Kingdom or elsewhere, otherwise than in connection with or for the purposes of its insurance business.
- (2) For the purposes of subsection (1) above any activities of an insurance company that are excluded from the definition of insurance business by section 34(c)(ii) below shall be treated as carried on in connection with its insurance business.

16 Exclusion of certain companies providing benefits in kind

Part II of the 1974 Act shall not apply to an insurance company whose insurance business is restricted to general business consisting in the effecting and carrying out of contracts of such descriptions as may be prescribed, being contracts under which the benefits provided by the insurer are exclusively or primarily benefits in kind.

Accounts and statements

17 Actuarial investigation of long term business

- (1) Section 14 of the 1974 Act shall be amended as follows.
- (2) In subsection (1)(a) (which requires an actuarial investigation of a company's long term business at least once in every three years) for the words from " three years " to

Status: This is the original version (as it was originally enacted).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

" byelaws " there shall be substituted the words " period of twelve months " , and the words from " including " to " thereof " shall be omitted.

(3) After subsection (1) there shall be inserted—

“(1A) An investigation to which subsection (1)(b) above relates shall include—

- (a) a valuation of the liabilities of the company attributable to its long term business ; and
- (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the company in respect of that business and, where any rights of any long term policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.”.

(4) For subsection (2) there shall be substituted—

“(2) At least once in every period of five years an insurance company to which subsection (1) above applies shall prepare a statement of its long term business at the date to which the accounts of the company are made up for the purposes of an investigation in pursuance of paragraph (a) of that subsection.”.

18 Accounts and records

(1) In section 18(3) of the 1974 Act (signature of documents deposited with Secretary of State) for paragraphs (a) and (b) there shall be substituted the words " by such persons as may be prescribed " .

(2) After section 22 of the 1974 Act there shall be inserted—

“22A Companies from outside the Community.

An insurance company to which this Part of this Act applies whose head office is not in a member State shall keep in the United Kingdom proper accounts and records in respect of insurance business carried on in the United Kingdom.”.

Assets and liabilities of long term business

19 Application of assets

(1) In subsection (1) of section 24 of the 1974 Act (assets of long term business to be applied only for purposes of that business) after the words " long term business " there shall be inserted " (a) " , and at the end there shall be added the words “and

- (b) shall not be transferred so as to be available for other purposes of the company except where the transfer constitutes reimbursement of expenditure borne by other assets (in the same or the last preceding financial year) in discharging liabilities wholly or partly attributable to long term business.”.

(2) After subsection (2) of that section (which authorises the distribution of surpluses of assets over liabilities) there shall be inserted—

“(2A) Subsection (2) above shall not authorise a transfer or other application of assets by reference to an actuarial investigation at any time after the date when

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

the abstract of the actuary's report of the investigation has been deposited with the Secretary of State in accordance with section 18(1) above or section 34(4) below.”.

20 Allocations to policy holders

(1) Section 25 of the 1974 Act shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted—

“(1) Where in the case of an insurance company to which this Part of this Act applies—

- (a) there is an established surplus in which long term policy holders of any category are eligible to participate, and
- (b) an amount has been allocated to policy holders of that category in respect of a previously established surplus in which policy holders of that category were eligible to participate,

the company shall not by virtue of section 24(2) above transfer or otherwise apply assets representing any part of the surplus mentioned in paragraph (a) above unless the company has either allocated to policy holders of that category in respect of that surplus an amount not less than the relevant minimum, or complied with the requirements of subsection (3) below and made to those policy holders any allocation of which notice is given under paragraph (a) of that subsection.

(2) Subject to subsections (6) and (7) below, the relevant minimum is the amount represented by the formula

$$\frac{b \times c}{a} - \frac{c}{200}$$

where—

- a is the last previously established surplus in respect of which an amount was allocated to policy holders of the category in question ;
- b is the amount so allocated ; and
- c is the surplus referred to in subsection (1)(a).”.

(3) In subsection (3)(a) after the words " to make " there shall be inserted the words " no allocation or " .

(4) In subsection (6)—

- (a) for the words " that surplus " there shall be substituted the words " the next established surplus in respect of which an amount is allocated to eligible policy holders generally "; and
- (b) after the words " any surplus " there shall be added the words " in respect of which such an allocation is made "; and
- (c) the words " made in anticipation of it" shall cease to have effect.

(5) After subsection (7) there shall be added—

“(8) For the purposes of subsection (1) above policy holders shall be taken to be eligible to participate in an established surplus in any case where they would be eligible to participate in a later established surplus representing it if it were carried forward unappropriated.”.

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

Financial resources

21 Financial resources

After section 26 of the 1974 Act there shall be inserted—

“26A Margins of solvency.

- (1) Every insurance company to which this Part of this Act applies—
 - (a) whose head office is in the United Kingdom, or
 - (b) whose business in the United Kingdom is restricted to reinsurance,
 shall maintain a margin of solvency of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (2) Subject to subsection (3) below, every insurance company to which this Part of this Act applies whose head office is not in a member State shall maintain—
 - (a) a margin of solvency, and
 - (b) a United Kingdom margin of solvency,
 of such amounts as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (3) Subsection (2) above shall not apply to an insurance company if its business in the United Kingdom is restricted to reinsurance or if section 9(2) of the Insurance Companies Act 1981 applies to it; but an insurance company that has made a deposit in the United Kingdom in accordance with section 9(2)(6) of that Act shall maintain—
 - (a) a margin of solvency, and
 - (b) a Community margin of solvency,
 of such amounts as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (4) An insurance company that fails to comply with subsection (1), (2) or (3) above—
 - (a) shall at the request of the Secretary of State submit to him a plan for the restoration of a sound financial position ;
 - (b) shall propose modifications to the plan (or the plan as previously modified) if the Secretary of State considers it inadequate;
 - (c) shall give effect to any plan accepted by the Secretary of State as adequate.
- (5) For the purposes of this Act—
 - (a) the margin of solvency of an insurance company is the excess of the value of its assets over the amount of its liabilities, that value and amount being determined in accordance with any applicable valuation regulations ;
 - (b) the United Kingdom margin of solvency of an insurance company is its margin of solvency computed by reference to the assets and liabilities of the business carried on by the company in the United Kingdom;
 - (c) the Community margin of solvency of an insurance company is its margin of solvency computed by reference to the assets and liabilities

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

of the business carried on by the company in member States (taken together).

- (6) In the case of an insurance company that carries on both long term and general business, subsections (1), (2) and (3) above shall have effect as if—
- (a) the requirements to maintain a margin of solvency, and
 - (b) where the company carries on both kinds of business in the United Kingdom, the requirement to maintain a United Kingdom margin of solvency, and
 - (c) where the company carries on both kinds of business in member States (taken together), the requirement to maintain a Community margin of solvency,

were requirements to maintain separate margins in respect of the two kinds of business (and accordingly as if the references in subsection (5) to assets and liabilities were references to assets and liabilities relating to the kind of business in question).

26B Failure to maintain minimum margin.

- (1) If—
- (a) the margin of solvency of an insurance company to which section 26A(1) above applies, or
 - (b) the margin of solvency or United Kingdom margin of solvency of an insurance company to which section 26A(2) above applies, or
 - (c) the margin of solvency of Community margin of solvency of an insurance company to which section 26A(3) above applies,

falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section, the company shall at the request of the Secretary of State submit to him a short-term financial scheme.

- (2) An insurance company that has submitted a scheme to the Secretary of State under subsection (1) above shall propose modifications to the scheme (or the scheme as previously modified) if the Secretary of State considers it inadequate, and shall give effect to any scheme accepted by him as adequate.
- (3) Where a company is required by virtue of section 26A(6) above to maintain separate margins in respect of long term and general business, subsection (1) above shall have effect as if any reference to the margin of solvency, the United Kingdom margin of solvency or the Community margin of solvency of the company were a reference to the margin in respect of either of the two kinds of business.

26C Companies supervised in other member States.

- (1) An insurance company to which this Part of this Act applies—
- (a) whose head office is in a member State other than the United Kingdom, or
 - (b) which has in accordance with section 9(2) of the Insurance Companies Act 1981 made a deposit in such a member State,

shall secure that the value of the assets of the business carried on by it in the United Kingdom does not fall below the amount of the liabilities of that

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

business, that value and amount being determined in accordance with any applicable valuation regulations.

- (2) In the case of a company that carries on in the United Kingdom both long term and general business subsection (1) above shall have effect separately in relation to the assets and liabilities of the two kinds of business.

26D Form and situation of assets.

- (1) Regulations may make provision for securing that, in such circumstances and to such extent as may be prescribed, the assets of an insurance company to which this Part of this Act applies shall be maintained in such places as may be prescribed and the nature of the assets shall be appropriate in relation to the currency in which the liabilities of the company are or may be required to be met.
- (2) Regulations made for the purposes specified in subsection (1) above shall not have effect in relation to the assets of an insurance company whose head office is in a member State so far as their value exceeds the amount of the liabilities of the business carried on by the company in the United Kingdom, that value and amount being determined in accordance with any applicable valuation regulations.”.

Intervention by Secretary of State

22 Grounds for intervention

- (1) Notwithstanding anything in section 28 of the 1974 Act (grounds for intervention), the powers conferred on the Secretary of State by sections 31 and 32 of that Act shall not be exercisable in relation to an insurance company except—
- (a) where the Secretary of State has given (and not revoked) a direction in respect of the company under section 11 above; or
 - (b) on the ground that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of section 26B, 26C or 26D of the 1974 Act; or
 - (c) where the ground for intervention arises out of the submission by the company to the Secretary of State of an account or statement specifying, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies.
- (2) In section 28 of the 1974 Act
- (a) in paragraph (b)(i) of subsection (1), at the end, there shall be added the words " or the Insurance Companies Act 1981 ";
 - (b) in paragraph (c) of that subsection, at the end, there shall be added the words " or any provision of the Insurance Companies Act 1981 ";
 - (c) in paragraph (e) of that subsection for the words " section 7 above " there shall be substituted the words " section 7, 8 or 9 of the Insurance Companies Act 1981 "; and
 - (d) after that paragraph there shall be added—

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

- “(f) that it appears to him that there has been a substantial departure from any proposal or forecast submitted to him by the company in accordance with section 5 of the Insurance Companies Act 1981 ;
 - (g) that the company has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in a member State where it has its head office or has in accordance with section 9(2) of the Insurance Companies Act 1981 made a deposit”; and
- (e) subsection (2) shall cease to have effect.

23 Powers of intervention

- (1) Section 29 of the 1974 Act (restrictions on new business) shall cease to have effect.
- (2) At the end of section 30 of the 1974 Act (requirements about investments) there shall be added—
 - “(3) A requirement under this section shall not apply to the assets of a company so far as their value exceeds—
 - (a) in the case of a company whose head office is in a member State other than the United Kingdom, or which has in accordance with section 9(2) of the Insurance Companies Act 1981 made a deposit in such a member State, the amount of the liabilities of the business carried on by the company in the United Kingdom ;
 - (b) in any other case, the amount of the liabilities of the company; that value and amount being determined in accordance with any applicable valuation regulations.”.
- (3) In subsection (5) of section 31 of the 1974 Act (maintenance of assets in the United Kingdom) for the words from " arising " to the end there shall be substituted the words " of the business carried on by the company in the United Kingdom ".
- (4) At the end of section 37 of the 1974 Act (residual power) there shall be added—
 - “(2) The power conferred by this section shall not be exercised in such a way as to restrict the company's freedom to dispose of its assets except where it is exercised—
 - (a) after the Secretary of State has given a direction under section 11 of the Insurance Companies Act 1981; or
 - (b) on the ground that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of section 26B, 26C or 26D above ; or
 - (c) where the ground for intervention arises out of the submission by the company to the Secretary of State of an account or statement specifying, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies.”.

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

24 Entry and search of premises

In section 110(1) of the Companies Act 1967 (search warrants in respect of documents whose production has been required under section 109 of that Act or section 36 of the 1974 Act) the words " or section 36 of the Insurance Companies Act 1974 " shall cease to have effect.

Transfers of business

25 Approval of transfers of general business

- (1) Where it is proposed to execute an instrument by which an insurance company to which Part II of the 1974 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, the transferor may apply to the Secretary of State for his approval of the transfer.
- (2) The Secretary of State shall not determine an application made under subsection (1) above unless he is satisfied that—
 - (a) a notice approved by him for the purpose has been published in the London, Edinburgh and Belfast Gazettes and, if he thinks fit, in two national newspapers which have been so approved; and
 - (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 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 at one or more places in the United Kingdom 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.
- (3) The notice referred to in subsection (2) 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 paragraph (a) above; and the Secretary of State shall not determine the application until after considering any representations made to him before the specified day.
- (4) The Secretary of State shall not approve a transfer on an application under subsection (1) above unless he is satisfied that—
 - (a) every policy included in the transfer evidences a contract which—
 - (i) was entered into before the date of the application ; and
 - (ii) imposes on the insurer obligations the performance of which will constitute the carrying on of insurance business in the United Kingdom; and
 - (b) the transferee is, or immediately after the approval will be, authorised under section 3 or 4 above to carry on in the United Kingdom insurance business of the appropriate class or classes ;

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

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

- (5) On determining an application made under subsection (1) above, the Secretary of State 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 subsection (2) above ;
- and if he refuses the application he shall inform the transferor and the transferee in writing of the reasons for his refusal.
- (6) Any notice or other document authorised or required to be given or served under this section or section 26 below 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.
- (7) In this section " general policy " means a policy evidencing a contract the effecting of which constituted the carrying on of general business ; and for the purposes of this section 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.

26 Effect of approval under section 25

- (1) Subject to subsection (2) below, an instrument giving effect to a transfer approved by the Secretary of State under section 25 above 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) 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.

27 Transfers of long term business

- (1) Section 42 of the 1974 Act (sanction of court for transfer of long term business) shall be amended as follows.
- (2) In subsection (1) after the words " carried on " there shall be inserted the words " in the United Kingdom ".
- (3) In subsection (2) for the word " entertain " there shall be substituted the word " determine ".

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

- (4) In subsection (3)—
- (a) in paragraph (a) for the words " is to be " there shall be substituted the words " has been ";
 - (b) in paragraph (d) for the words from " on which " to the end there shall be substituted the words " of the first publication of a notice in accordance with paragraph (a) above ".
- (5) In subsection (6) for the words " section 3 above " there shall be substituted the words " section 3 or 4 of the Insurance Companies Act 1981 ".
- (6) Subsection (10) shall cease to have effect.

Change of manager, representative etc.

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

- (1) In relation to an insurance company whose head office is in a member State other than the United Kingdom, excluding a company whose business in the United Kingdom is restricted to reinsurance.—
- (a) section 52 of the 1974 Act shall have effect as if the references to a managing director or chief executive were references to a principal United Kingdom executive ;
 - (b) section 53 of that Act shall not apply ;
 - (c) section 54 of that Act shall have effect as if references to a director or manager were references to a principal United Kingdom executive, an employee within section 8(4)(c) above or an authorised United Kingdom representative.
- (2) In relation to any other insurance company whose head office is outside the United Kingdom—
- (a) section 52 of the 1974 Act shall have effect as if the references to a chief executive included references to a principal United Kingdom executive ; and
 - (b) section 54 of that Act shall have effect as if the references to a director included references to a principal United Kingdom executive and to an authorised United Kingdom representative.
- (3) In this section—
- " principal United Kingdom executive " means an officer or employee within section 8(4)(6) or 9(6) above; and
 - " authorised United Kingdom representative" means a representative fulfilling the requirements of section 10 above or an individual representative of the kind described in subsection (5) of that section.

29 Change of main agent

After section 54 of the 1974 Act there shall be inserted—

“54A Duty to notify change of main agent.

- (1) An insurance company to which this Part of this Act applies shall give written notice to the Secretary of State of the fact that any person has become or ceased to be a main agent of the company and, if a main agent is a body corporate or

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

a firm, of the fact that any person has become or ceased to be a director of the body or partner of the firm.

- (2) A notice under this section shall be given before the expiration of the period of fourteen days beginning with the day next following that on which the change comes to the knowledge of the insurance company.”.