



# Insurance Companies Act 1982 (repealed)

## 1982 CHAPTER 50

### PART I

#### RESTRICTION ON CARRYING ON INSURANCE BUSINESS

##### *Preliminary*

#### **1 Classification.**

- (1) For the purposes of this Act insurance business is divided into long term business and general business; and—

“long term business” means insurance business of any of the classes specified in Schedule 1 to this Act, and

“general business” means insurance business of any of the classes specified in Part I of Schedule 2 to this Act.

- (2) For the purposes of this Act the effecting and carrying out of a contract whose principal object is within one class of insurance business, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of insurance business of the first-mentioned class, and no other, if subsection (3) or (4) below applies to the contract.

- (3) This subsection applies to a contract whose principal object is within any class of long term business but which contains subsidiary provisions within general business class 1 or 2 if the insurer is authorised under section 3 or 4 below to carry on long term business class I.

- (4) This subsection applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes, not being class 14 or 15 <sup>[F1]</sup> or (except as mentioned in subsection (4A) below) class 17.]

- [F2(4A) Subsection (4) applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within general business class 17 if—

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- (a) the principal object of the contract is the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence, or
- (b) those subsidiary provisions concern disputes or risks arising out of, or in connection with, the use of sea-going vessels]

#### Textual Amendments

- F1** Words inserted by S.I. 1990/1159, reg. 10(2)  
**F2** S. 1(4A) inserted by S.I. 1990/1159, reg. 10(3)

## 2 Restriction on carrying on insurance business.

- (1) Subject to the following provisions of this section, no person shall carry on any insurance business in the United Kingdom unless authorised to do so under section 3 or 4 below.
- [<sup>F3</sup>(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) Subsection (1) above shall not apply to insurance business (other than industrial assurance business) carried on—
- (a) by a member of Lloyd’s, or
  - (b) by a body registered under the enactments relating to friendly societies; or
  - (c) by a trade union or employers’ association where the insurance business carried on by the union or association is limited to the provision for its members of provident benefits or strike benefits.
- In this subsection “trade union” and “employers’ association” have (throughout the United Kingdom) the meanings [<sup>F4</sup>respectively assigned by section 1 and section 122(1) of the Trade Union and Labour Relations (Consolidation) Act 1992].
- (3) Subsection (1) above shall not apply to industrial assurance business carried on by a friendly society registered under the enactments relating to such societies.
- (4) Subsection (1) above shall not apply to general business of class 14, 15, 16 [<sup>F5</sup>, 17 or 18] if it is carried on solely in the course of carrying on, and for the purposes of, banking business.
- (5) Subsection (1) above shall not apply to general business consisting in the effecting and carrying out, by an insurance company that carries on no other insurance business, 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.
- [<sup>F6</sup>(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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#### Textual Amendments

- F3** S. 2(1A) inserted (1.7.1994) by S.I. 1994/1696, **reg. 4(1)**
- F4** Words in s. 2(2) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para. 31**
- F5** Words substituted by S.I. 1987/2130, **reg. 2(a)**
- F6** S. 2(6) inserted (1.7.1994) by S.I. 1994/1696, **reg. 4(2)**

#### Modifications etc. (not altering text)

- C1** S. 2 restricted (1.1.1993) by S.I. 1992/3218, **reg. 5(1)(d)**

### *Authorised insurance companies*

## **3 Authorisation by Secretary of State.**

- (1) The Secretary of State may authorise a body to carry on in the United Kingdom such of the classes of insurance business specified in Schedule 1 or 2 to this Act, or such parts of those classes, as may be specified in the authorisation.
- (2) An authorisation under this section may be restricted to industrial assurance business or to reinsurance business; and a body may not carry on industrial assurance business by virtue of an authorisation under this section unless the authorisation expressly extends to such business.
- (3) An authorisation under this section may identify classes or parts of classes of general business by referring to the appropriate groups specified in Part II of Schedule 2 to this Act.
- (4) On the issue to a body of an authorisation under this section, any previous authorisation of that body under this section or section 4 below shall lapse.

#### Modifications etc. (not altering text)

- C2** S. 3 restricted by Financial Services Act 1986 (c. 60, SIF 69), s. 129, **Sch. 10 para. 10(1)**  
s. 3: power to exclude conferred by Financial Services Act 1986 (c. 60, SIF 69), **s. 184(5)**  
s. 3 modified (24.12.1996) by S.I. 1996/3011, **regs. 3(1)(a), 10(1)**

## **4 Existing insurance companies.**

- (1) A body that was, immediately before the commencement of this Act, authorised under section 3 or 4 of the <sup>MI</sup>Insurance Companies Act 1981 to carry on in the United Kingdom insurance business of a class specified in Schedule 1 or 2 to that Act (or a part of such a class) is authorised to carry on there insurance business of the class identified by the same number in Schedule 1 or 2 to this Act (or that part of such a class).
- (2) A body may not carry on industrial assurance business by virtue of this section unless—
  - (a) it was carrying on such business immediately before 1st January 1982, or
  - (b) it was immediately before the commencement of this Act authorised to carry on such business under section 3 of the Insurance Companies Act 1981.

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**Modifications etc. (not altering text)**

**C3** S. 4: power to exclude conferred by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 184(5)

**Marginal Citations**

**M1** 1981 c. 31.

*Applications for authorisation*

**5 Submission of proposals etc.**

- (1) The Secretary of State shall not issue an authorisation under section 3 above unless—
- (a) the applicant has submitted to him such proposals as to the manner in which it proposes to carry on business, such financial forecasts and such other information as may be required by or in accordance with regulations under this Act, and
  - (b) he is satisfied on the basis of that and any other information received by him that the application ought to be granted.
- [<sup>F7</sup>(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) [<sup>F8</sup>Subject to subsection (3) below,] the Secretary of State shall decide an application for an authorisation under section 3 above within six months of receiving the information referred to in subsection (1)(a) above; and if he refuses to issue the authorisation he shall inform the applicant in writing of the reasons for the refusal.
- [<sup>F9</sup>(3) The Secretary of State may defer a decision on an application for an authorisation under section 3 above for such period as may be necessary for the purpose of implementing any decision of the Council or Commission of the Communities under—
- (a) Article 29b(4) of the first general insurance Directive; or
  - (b) Article 32b(4) of the first long term insurance Directive.]

[<sup>F10</sup>(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;

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'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.

<sup>F10</sup>(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.]

#### Textual Amendments

- F7** S. 5(1A) inserted (1.7.1994) by S.I. 1994/1696, **reg. 5(1)**
- F8** Words in s. 5(2) inserted (19.11.1992) by S.I. 1992/2890, **reg. 2(1)**
- F9** S. 5(3) inserted (19.11.1992) by S.I. 1992/2890, **reg. 2(2)**
- F10** S. 5(4)(5) inserted (1.7.1994) by S.I. 1994/1696, **reg. 5(2)**

#### [<sup>F11</sup>6] **Combination of long term and general business.**

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.]

#### Textual Amendments

- F11** S. 6 substituted (1.7.1994) by S.I. 1994/1696, **reg. 6**

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## 7 United Kingdom applicants.

- (1) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom unless the applicant is—
- (a) a company as defined in section [<sup>F12</sup>735] of the [<sup>F13</sup>Companies Act] or [<sup>F14</sup>Article 3] of the [<sup>F15</sup>Companies (Northern Ireland) Order 1986], or
  - (b) a registered society, or
  - (c) a body corporate established by royal charter or Act of Parliament and already authorised under section 3 or 4 above to carry on insurance business (though not to the extent proposed in the application).
- (2) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom if it has an issued share capital any part of which was issued after the commencement of this section but is not fully paid up.
- (3) The Secretary of State shall not issue an authorisation under section 3 above to an applicant
- <sup>F16</sup>(a) whose head office is in the United Kingdom; and
  - (b) which is not an applicant to which section 5(1A) above applies,]
- if it appears to the Secretary of State that any director, controller, manager or main agent of the applicant is not a fit and proper person to hold the position held by him.
- <sup>F17</sup>(4) In this section
- “controller”, in relation to the applicant, means—
- (a) a managing director of the applicant or of a body corporate of which the applicant is a subsidiary;
  - (b) a chief executive of the applicant or of a body corporate, being an insurance company, of which the applicant is a subsidiary;
  - (c) a person—
    - (i) in accordance with whose directions or instructions the directors of the applicant or of a body corporate of which it is a subsidiary are accustomed to act, or
    - (ii) who either alone or with any associate or associates is entitled to exercise, or control the exercise of, [<sup>F18</sup>one-third][<sup>F18</sup>15 per cent] or more of the voting power at any general meeting of the applicant or of a body corporate of which it is a subsidiary.
- <sup>F17</sup>(5) In this section
- “manager”, in relation to the applicant, means an employee of the applicant (other than a chief executive) who, under the immediate authority of a director or chief executive of the applicant—
- (a) exercises managerial functions, or
  - (b) is responsible for maintaining accounts or other records of the applicant,
- not being a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom.
- <sup>F17</sup>(6) In this section
- “main agent”, in relation to the applicant, means, subject to such exceptions as may be prescribed, a person appointed by the applicant to be its agent in respect of general business in the United Kingdom, with authority to enter into contracts on behalf of the applicant in any financial year—

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- (a) without limit on the aggregate amount of premiums; or
- (b) with a limit in excess of 10 per cent. of the premium limit as determined in accordance with Schedule 3 to this Act.

<sup>F17</sup>(7) In this section

“chief executive”, in relation to the applicant or a body corporate of which it is a subsidiary, means an employee of the applicant or that 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 the applicant or that body corporate.

<sup>F17</sup>(8) In this section

“associate”, in relation to any person, means—

- (a) the wife or husband or minor son or daughter of that person;
- (b) any company of which that person is a director;
- (c) any person who is an employee or partner of that person;
- (d) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary of that company;
  - (iii) any director or employee of any such subsidiary;

and for the purposes of this subsection

“son” includes step-son,

“daughter” includes step-daughter and

[<sup>F19</sup> “minor”, in relation to Scotland, includes pupil.]]

#### Textual Amendments

- F12** Figure substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, **Sch. 2**
- F13** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, **Sch. 2**
- F14** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, **Sch. 1 Pt. II**
- F15** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, **Sch. 1 Pt. II**
- F16** [S. 7\(3\)\(a\)\(b\)](#) substituted for words “whose head office is in the United Kingdom”(1.7.1994) by [S.I. 1994/1696, reg. 7\(1\)](#)
- F17** [S. 7\(4\)-\(8\)](#) ceased to have effect (1.7.1994) by virtue of [S.I. 1994/1696, reg. 7\(2\)](#)
- F18** “15 per cent” substituted (12.1.1987 for the purpose mentioned in [1986/2246, Sch. 2](#) but otherwise (*prosp.*)) for “one-third” by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 134 (which said s. 134 ceased to have effect (1.7.1994) by virtue of [S.I. 1994/1696, reg. 68, Sch. 8 para. 12](#))
- F19** Definition of “minor” in s. 7(8) repealed (S.) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), s. 10(2), **Sch. 2** (with savings s. 1(3))

#### Modifications etc. (not altering text)

- C4** Definition of “chief executive” in s. 7 applied (15.5.1991) by [Standard Life Assurance Company Act 1991 \(c. iii\)](#), s. 14(1), **Sch. reg. 1** (1); appointed day (15.5.1991) as published in the London Gazette on 19.4.1991

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## 8 Applicants from other member States.

- (1) The Secretary of State shall not issue an authorisation under section 3 above to an [<sup>F20</sup>applicant to which this section applies] unless the applicant has a representative fulfilling the requirements of section 10 below.
- (2) The Secretary of State shall not issue an authorisation under section 3 above to an [<sup>F20</sup>applicant to which this section applies] if it appears to the Secretary of State that any relevant executive or main agent of the applicant is not a fit and proper person to hold the position held by him.
- (3) Where an [<sup>F20</sup>applicant to which this section applies] seeks an authorisation under section 3 above restricted to reinsurance business—
  - (a) the Secretary of State shall not issue the authorisation unless he is satisfied that the applicant is a body corporate entitled under the law of that State to carry on insurance business there; and
  - (b) subsection (2) above shall have effect as if the reference to any relevant executive were a reference to any person who is a director, controller or manager of the applicant or a person within paragraph (a) or (b) of subsection (4) below.

[<sup>F21</sup> An applicant is one to which this section applies if—

- (3A) (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.]]

### (4) In this section

“relevant executive” in relation to the applicant means a person who is—

- (a) the representative referred to in subsection (1) above or the individual representative referred to in section 10(5) below;
- (b) an officer or employee of the applicant who, either alone or jointly with others, is responsible for the conduct of the whole of the insurance business carried on by the applicant in the United Kingdom, not being a person who—
  - (i) is also responsible for the conduct of insurance business carried on by the applicant elsewhere, and
  - (ii) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in the United Kingdom; or
- (c) an employee of the applicant who, under the immediate authority of a director or of an officer or employee within paragraph (b) above,—
  - (i) exercises managerial functions, or
  - (ii) is responsible for maintaining accounts or other records of the applicant, not being a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom;

[<sup>F22</sup>and

“controller”

“manager”

“main agent” have the same meaning as in section 7 above].



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### Textual Amendments

- F20** Words in s. 8(1)(2)(3) substituted (1.7.1994) by S.I. 1994/1696, reg. 8(1)  
**F21** S. 8(3A) substituted (1.7.1994) by S.I. 1994/1696, reg. 8(2)  
**F22** Words in s. 8(4) ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, reg. 8(3)

## 9 Applicants from outside the Community.

(1) The Secretary of State shall not issue an authorisation under section 3 above in respect of long term or general business to an applicant [<sup>F23</sup>to which this section applies] unless he is satisfied—

- (a) that the applicant is a body corporate entitled under the law of the place where its head office is situated to carry on long term or, as the case may be, general business there;
- (b) that the applicant has in the United Kingdom assets of such value as may be prescribed; and
- (c) that the applicant has made a deposit of such amount and with such person as may be prescribed;

but subject to subsection (2) and (3) below.

(2) Where the applicant seeks to carry on insurance business in the United Kingdom and one or more other [<sup>F24</sup>EEA States], the Secretary of State and the supervisory authority in the other State or States concerned may agree that this subsection shall apply to the applicant; and in that event—

- (a) paragraph (b) of subsection (1) above shall have effect as if the reference to the United Kingdom were a reference to the [<sup>F24</sup>EEA States] concerned taken together; and
- (b) paragraph (c) of that subsection shall have effect as if the reference to such person as may be prescribed were a reference to such person as may be agreed between the Secretary of State and the other supervisory authority or authorities concerned.

(3) Paragraph (c) of subsection (1) above shall not apply where the authorisation sought is one restricted to reinsurance.

(4) The Secretary of State shall not issue an authorisation under section 3 above to an applicant [<sup>F25</sup>to which this section applies] unless the applicant has a representative fulfilling the requirements of section 10 below.

(5) The Secretary of State shall not issue an authorisation under section 3 above [<sup>F25</sup>which is restricted to reinsurance business to an applicant to which this section applies] if it appears to the Secretary of State that—

- (a) the representative of the applicant referred to in subsection (4) above or the individual representative referred to in section 10(5) below, or
- (b) any director, controller or manager of the applicant, or
- (c) a main agent of the applicant,

is not a fit and proper person to hold the position held by him.

[<sup>F26</sup>(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.]

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- (6) <sup>F27</sup>In this section
- “controller”,
- “manager” and
- “main agent” have the same meanings as in section 7 above, except that] for the purposes of this section the controllers of the applicant shall be taken to include any officer or employee who, either alone or jointly with others, is responsible for the conduct of the whole of the insurance business carried on by the applicant in the United Kingdom, not being a person who—
- (a) is also responsible for the conduct of insurance business carried on by it elsewhere; and
- (b) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in the United Kingdom.
- (7) Regulations under this Act may make such provision as to deposits under this section as appears to the Secretary of State to be necessary or expedient, including provision for the deposits of securities instead of money, and, in relation to deposits with the Accountant General of the Supreme Court, provision applying (with or without modification) any of the provisions of the rules for the time being in force under section 38(7) of the <sup>M2</sup>Administration of Justice Act 1982.

#### Textual Amendments

- F23** Words in s. 9(1)(4) substituted (1.7.1994) by S.I. 1994/1696, **reg. 9(1)**
- F24** Words in s. 9(2) substituted (1.7.1994) by S.I. 1994/1696, **reg. 9(2)**
- F25** Words in s. 9(5) substituted (1.7.1994) by S.I. 1994/1696, **reg. 9(3)**
- F26** S. 9(5A) substituted (1.7.1994) by S.I. 1994/1696, **reg. 9(4)**
- F27** Words in s. 9(6) ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, **reg. 9(5)**

#### Modifications etc. (not altering text)

- C5** S. 9(b) modified (1.7.1994) by S.I. 1994/1516, **reg. 6(b)**

#### Marginal Citations

- M2** 1982 c. 53.

## 10 General representatives.

- (1) The requirements referred to in sections 8(1) and 9(4) above are those set out in the following provisions of this section.
- (2) The representative must be a person resident in the United Kingdom who has been designated as the applicant’s representative for the purposes of this section.
- (3) The representative must be authorised to act generally, and to accept service of any document, on behalf of the applicant.
- (4) The representative must not be an auditor, or a partner or employee of an auditor, of the accounts of any business carried on by the applicant.
- (5) If the representative is not an individual, it must be a company as defined in section <sup>F28</sup>735] of the <sup>F29</sup>Companies Act] or <sup>F30</sup>Article 3] of the <sup>F31</sup>Companies (Northern Ireland) Order 1986] with its head office in the United Kingdom and must itself have an individual representative resident in the United Kingdom who is authorised to act

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generally, and to accept service of any document, on behalf of the company in its capacity as representative of the applicant.

#### Textual Amendments

- F28** Figure substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F29** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F30** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)
- F31** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)

#### *Withdrawal of authorisation*

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

- (1) The Secretary of State may, at the request of the company or on any grounds set out in subsection (2) below, direct that an insurance company authorised under section 3 or 4 above to carry on insurance business shall cease to be authorised to effect contracts of insurance, or contracts of any description specified in the direction.
- (2) The grounds referred to in subsection (1) above are—
- (a) 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 this Act [<sup>F32</sup>or the Financial Services Act 1986 or, if it is a member of a recognised self-regulating organisation within the meaning of that Act, an obligation to which it is subject by virtue of the rules of that organisation];
  - [<sup>F33</sup>(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.]
  - (b) that there exists a ground on which he would be prohibited by section 7, 8 or 9 above from issuing an authorisation to the company;
  - (c) 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 where it has in accordance with section 9(2) above made a deposit.
  - [<sup>F34</sup>(d) that the company is a Swiss general insurance company which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.]
- (3) After giving a direction under this section otherwise than at the request of the company concerned the Secretary of State shall inform the company concerned of his reasons for giving the direction.

*Status: Point in time view as at 01/07/1994.*

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- (4) A direction under this section shall not prevent a company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.
- [<sup>F35</sup>(5) Where a direction under this section has been given in respect of—
- (a) a company which has its head office, or has in accordance with section 9(2) above made a deposit, in a member State other than the United Kingdom; or
  - (b) a Swiss general insurance company, the Secretary of State may revoke or vary the direction if after consultation with the supervisory authority in that member State or, as the case may be, in Switzerland he considers it appropriate to do so.]
- (6) Subject to subsection (5) above a direction given under this section in respect of any insurance company 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.
- [<sup>F36</sup>(7) In this Act “Swiss general insurance company” means an insurance company—
- (a) whose head office is in Switzerland;
  - (b) which is authorised under section 3 or 4 above to carry on general business; and
  - (c) whose authorisation is not restricted to reinsurance business.]

#### Textual Amendments

- F32** Words inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 129, **Sch. 10 para. 7(1)**
- F33** [S. 11\(2\)\(aa\)\(ab\)](#) substituted for [11\(2\)\(aa\)](#) (1.7.1994) by [S.I. 1994/1696](#), **reg. 10(1)**
- F34** [S. 11\(2\)\(d\)](#) inserted (5.1.1994) by [S.I. 1993/3127](#), **reg. 2(4)**
- F35** [S. 11\(5\)](#) substituted (5.1.1994) by [S.I. 1993/3127](#), **reg. 2(5)**
- F36** [S. 11\(7\)](#) inserted (5.1.1994) by [S.I. 1993/3127](#), **reg. 2(6)**

#### Modifications etc. (not altering text)

- C6** [S. 11](#) applied by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), ss. 98(4), 129, **Sch. 10 para. 9**

## 12 Notices of withdrawal under section 11.

- (1) Before giving a direction under section 11 above otherwise than at the request of the company concerned the Secretary of State shall serve on the company a written notice stating—
- (a) that he is considering giving a direction and 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 appointed for the purpose by the Secretary of State.
- (2) Before giving a direction under section 11 above in respect of a company [<sup>F37</sup>on either of the grounds set out in subsection (2A) below], the Secretary of State shall serve on the person whose fitness is in question a written notice stating—
- (a) that he is considering giving a direction on that ground; and

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- (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 appointed for the purpose by the Secretary of State.

[<sup>F38</sup>(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.]
- (3) Subject to subsection (4) below, the Secretary of State shall consider any representations made in response to a notice under subsection (2) above before serving a notice under subsection (1) above.
  - (4) Subsection (3) above shall not apply where the position held by the person on whom the notice under subsection (2) above is served, and whose fitness for that position is in question, is controller of a company.
  - (5) A notice under subsection (1) or (2) above shall give particulars of the ground on which the Secretary of State is considering giving a direction.
  - (6) Where representations are to be made in response to a notice under subsection (1) or (2) above, the Secretary of State shall take them into consideration before giving a direction.
  - (7) Any notice to be served on a person under subsection (1) or (2) above may be served by post, and a letter containing the notice 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.
  - (8) After giving a direction under section 11 above the Secretary of State shall publish notice of it in the London, Edinburgh and Belfast Gazettes and in such other ways as appear to him expedient for notifying the public.

#### Textual Amendments

**F37** Words in s. 12(2) substituted (1.7.1994) by S.I. 1994/1696, reg. 10(2)

**F38** S. 12(2A) inserted (1.7.1994) by S.I. 1994/1696, reg. 10(3)

#### [<sup>F39</sup>12A Suspension of authorisation in urgent cases.

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

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- (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.]

**Textual Amendments**

**F39** S. 12A inserted (1.7.1994) by S.I. 1994/1696, reg. 11

**[13 Final withdrawal of authorisation.**

- [ Where—
- <sup>F40</sup>(1) (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.

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<sup>F40</sup>(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.]

(2A) The Secretary of State may direct that an insurance company shall cease to be authorised to carry on business which is insurance business by virtue of section 95(c)(ii) of this Act if it appears to him that the company has failed to satisfy an obligation to which it is subject by virtue of the Financial Services Act 1986 or, if it is a member of a recognised self-regulating organisation within the meaning of that Act, an obligation to which it is subject by virtue of the rules of that organisation.

(2B) Subsections (3), (5) and (6) of section 11 and subsections (1) and (5) to (8) of section 12 above shall apply to a direction under subsection (2A) above as they apply to a direction under section 11.]

(3) A direction under this section is without prejudice to the subsequent issue of an authorisation to carry on insurance business of a class to which the direction relates.

#### Textual Amendments

**F40** S. 13(1)(2) substituted (1.7.1994) by S.I. 1994/1696, reg. 12

#### Modifications etc. (not altering text)

**C7** S. 13 amended (1.1.1993) by S.I. 1992/3218, reg. 64

### Offences

#### 14 Offences under Part I.

- (1) A person who carries on business in contravention of this Part of this Act shall be guilty of an offence.
- (2) A person who for the purpose of obtaining the issue of an authorisation furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular shall be guilty of an offence.
- (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 two years, or to a fine, or to both;
  - (b) on summary conviction—
    - (i) in England and Wales . . . <sup>F41</sup>, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 32 of the <sup>M3</sup>Magistrates' Courts Act 1980;

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- (ii) in Scotland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 289B of the<sup>M4</sup>Criminal Procedure (Scotland) Act 1975;
- [<sup>F42</sup>(iii) in Northern Ireland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of Article 4 of the Fines and Penalties (Northern Ireland) Order 1984.]

#### Textual Amendments

**F41** Words repealed by S.I. 1984/703 (N.I. 3), art. 19(1)(2), **Sch. 6 para. 30(a)**, Sch. 7

**F42** S. 14(3)(b)(iii) substituted for words by S.I. 1984/703 (N.I. 3), art. 19(1), **Sch. 6 para. 30(b)**

#### Marginal Citations

**M3** 1980 c. 43.

**M4** 1975 c. 21.



**Status:**

Point in time view as at 01/07/1994.

**Changes to legislation:**

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