



# Insurance Companies Act 1982 (repealed)

## 1982 CHAPTER 50

### PART II

#### REGULATION OF INSURANCE COMPANIES

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

- C1** Pt. II (ss. 15-71) restricted (1.1.1993) by S.I. 1992/3218, **reg65**  
Pt. II (ss. 15-71) extended (24.12.1996) by S.I. 1996/3011, **reg. 3(1)(b), 10(1)**

##### *Preliminary*

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

- (1) Subject to the provisions of this section, this Part of this Act applies to all insurance companies, whether established within or outside the United Kingdom, which carry on insurance business within the United Kingdom.
- (2) This Part of this Act does not apply to any insurance company which is registered under the enactments relating to friendly societies.
- (3) Where a trade union or an employers' association carries on insurance business, this Part of this Act does not apply to it as an insurance company if the insurance business 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>F1</sup> respectively assigned by section 1 and section 122(1) of the Trade Union and Labour Relations (Consolidation) Act 1992].

- (4) This Part of this Act does not apply to a member of Lloyd's who carries on insurance business of any class provided that he complies with the requirements set out in section 83 below and applicable to business of that class.

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- (5) This Part of this Act does not apply to a person by reason only that he carries on general business of class 14, 15, 16 [F<sup>2</sup>, 17 or 18] in the course of carrying on, and for the purposes of, banking business.
- (6) This Part of this Act does 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.

#### **Textual Amendments**

- F1** Words in s. 15(3) substituted (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\), s. 300\(2\), 302, Sch. 2 para.31](#)
- F2** Words substituted by [S.I. 1987/2130, reg. 2\(a\)](#)

### **16 Restriction of business to Insurance.**

- (1) An insurance company to which this Part of this 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 95(c) (ii) below shall be treated as carried on in connection with its insurance business.

#### *Accounts and statements*

### **17 Annual accounts and balance sheets.**

- (1) Every insurance company to which this Part of this Act applies shall, with respect to each financial year of the company, prepare a revenue account for the year, a balance sheet as at the end of the year and a profit and loss account for the year or, in the case of a company not trading for profit, an income and expenditure account for the year.
- (2) The contents of the documents required by subsection (1) above to be prepared shall be such as may be prescribed, but regulations may provide for enabling information required to be given by such documents to be given instead in a note thereon or statement or report annexed thereto or may require there to be given in such a note, statement or report such information in addition to that given in the documents as may be prescribed.
- (3) Regulation may, as respects such matters stated in such documents as aforesaid or in statements or reports annexed thereto as may be prescribed, require there to be given by such persons as may be prescribed and to be annexed to the documents certificates of such matters as may be prescribed.
- (4) If a form is prescribed—
  - (a) for any such document as aforesaid or,
  - (b) as that in which information authorised or required to be given in a statement or report annexed to any such document is to be given or,
  - (c) for a certificate to be so annexed,

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the document shall be prepared, the information shall be given or, as the case may be, the certificate shall be framed, in that form.

## **18 Periodic actuarial investigation of company with long term business.**

- (1) Every insurance company to which this Part of this Act applies which carries on long term business—
  - (a) shall, once in every period of twelve months, cause an investigation to be made into its financial condition in respect of that business by the person who for the time being is its actuary under section 19(1) below or any corresponding enactment previously in force; and
  - (b) when such an investigation has been made, or when at any other time an investigation into the financial condition of the company in respect of its long term business has been made with a view to the distribution of profits, or the results of which are made public, shall cause an abstract of the actuary's report of the investigation to be made.
- (2) 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.
- (3) 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.
- (4) For the purposes of any investigation to which this section applies the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.
- (5) The form and contents of any abstract or statement under this section shall be such as may be prescribed.

## **19 Appointment of actuary by company with long term business.**

- (1) Every insurance company to which this Part of this Act applies shall within one month of beginning to carry on long term business appoint an actuary as an actuary to the company; and whenever an appointment under this section or any corresponding enactment previously in force comes to an end the company shall as soon as practicable make a fresh appointment.
- (2) A company making an appointment under this section shall within fourteen days serve on the Secretary of State a written notice stating that fact and the name and qualifications of the person appointed; and if an appointment under this section or any corresponding enactment previously in force comes to an end the company shall within fourteen days serve on the Secretary of State a written notice stating that fact and the name of the person concerned.

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## **20 Annual statements by company with prescribed class of insurance business.**

Classes of insurance business may be prescribed for the purposes of this section, and every insurance company to which this Part of this Act applies which carries on such business of a prescribed class shall annually prepare the prescribed statement of business of that class, being, if a form is prescribed for the statement, a statement in the prescribed form.

## **21 Audit of accounts.**

- (1) The accounts and balance sheets of every insurance company to which this Part of this Act applies shall be audited in the prescribed manner by a person of the prescribed description, and regulations made for the purposes of this section may apply to such companies [<sup>F3</sup>the provisions relating to the audit of the accounts of companies under the Companies Acts], subject to such adaptations and modifications as may appear necessary or expedient.
- (2) In subsection (1) above the reference to accounts and balance sheets shall include a reference to any statement or report annexed thereto giving information authorised or required by virtue of section 17(2) above to be given in a statement or report so annexed.

### **Textual Amendments**

**F3** Words in s. 21(1) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, Sch. para. 47

## **[<sup>F4</sup>21A Communication by auditor with Secretary of State.**

- (1) No duty to which an auditor of an insurance company to which this Part of this Act applies may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that company and which is relevant to any functions of the Secretary of State under this Act.
- (2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may make regulations applying to that auditor or class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the regulations made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the regulations.
- (3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance or regulations may include matters relating to persons other than the company.
- (4) No regulations shall be made under subsection (2) above unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (5) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in subsection (2) above, the Secretary of State may disqualify him from being the auditor of an insurance company or any class of insurance company to which

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Part II of this Act applies; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.

- (6) An insurance company to which this Part of this Act applies shall not appoint as auditor a person disqualified under subsection (5) above.]

#### Textual Amendments

F4 S. 21A inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 135(1)

## 22 Deposit of accounts etc. with Secretary of State.

- (1) Every account, balance sheet, abstract or statement required by sections 17, 18 and 20 above and any report of the auditor of the company made in pursuance of section 21 above shall be printed, and five copies shall be deposited with the Secretary of State within six months after the close of the period to which the account, balance sheet, abstract, statement or report relates; but if in any case it is made to appear to the Secretary of State that the circumstances are such that a longer period than six months should be allowed, the Secretary of State may extend that period by such period not exceeding three months as he thinks fit.
- (2) There shall be deposited with the Secretary of State, at the same time as the documents mentioned in subsection (1) above, five printed copies of a statement of the names and the connection with the company of any persons who, during the period to which those documents relate—
- (a) were authorised by the company to issue, or to the knowledge of the company have issued, any such invitation in relation to the company as is mentioned in subsection (1)(a) of section 74 below; and
  - (b) were connected with the company as provided by regulations under that section.
- (3) One of the copies of any document deposited under subsection (1) or (2) above except an auditor's report shall be a copy signed by such persons as may be prescribed.
- (4) One of the copies of any auditor's report deposited under subsection (1) above shall be a copy signed by the auditor.
- (5) The Secretary of State shall consider the documents deposited under subsections (1) and (2) above, and if any such document appears to him to be inaccurate or incomplete in any respect he shall communicate with the company with a view to the correction of any such inaccuracies and the supply of deficiencies.
- (6) There shall be deposited with every revenue account and balance sheet of a company any report on the affairs of the company submitted to the shareholders or policy holders of the company in respect of the financial year to which the account and balance sheet relate.
- (7) In this section any reference to an account or balance sheet includes a reference to any statement or report annexed thereto giving information authorised or required by virtue of subsection (2) of section 17 above to be so given and any certificate so annexed by virtue of subsection (3) of that section.

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## **23 Right of shareholders and policy holders to receive copies of deposited documents.**

- (1) Subject to subsection (2) below, an insurance company shall forward by post or otherwise to any shareholder or policy holder who applies for one—
  - (a) a printed copy of any of the documents last deposited by the company under subsection (1) or (2) of section 22 above;
  - (b) a copy of any document supplied to the Secretary of State under subsection (5) of that section which relates to any of those documents;
  - (c) a copy of any report deposited with any of those documents under subsection (6) of that section.
- (2) If, in the opinion of the Secretary of State, the disclosure of information contained in—
  - (a) a statement or report annexed to a document prepared in pursuance of section 17(1) above by an insurance company; or
  - (b) a statement prepared in pursuance of section 20 above by such a company,
 would be harmful to the business of the company or of any of its subsidiaries, the Secretary of State may dispense the company from complying with the obligation imposed by subsection (1) above to forward a copy of the document containing the information to a shareholder or policy holder who applies for it.

## **24 Deposit of accounts etc. by registered society.**

- (1) A registered society shall, in addition to depositing with the Secretary of State, as required by section 22 above, five copies of each document to which subsections (1) and (2) of that section apply, deposit, within the time limited by virtue of that section for depositing them, a copy with the appropriate registrar in the case of a society registered in Great Britain or with the registrar in the case of a society registered in Northern Ireland, being a copy signed by the like persons as those by whom the copies deposited under that section are required to be signed.
- (2) Subsection (6) of the said section 22 shall have effect in relation to the deposit by virtue of this section of accounts and balance sheets as it has effect in relation to the deposit by virtue of that section of accounts and balance sheets.
- (3) Section 71(1) of the <sup>M1</sup>Industrial and Provident Societies Act 1965 (which empowers the Treasury to make regulations respecting, among other things, the inspection of documents kept by the appropriate registrar under that Act) and section 97(1) of the <sup>M2</sup>Industrial and Provident Societies Act (Northern Ireland) 1969 (which confers corresponding powers on the Department of Commerce for Northern Ireland) shall have effect as if the reference to documents kept by the appropriate registrar under that Act of 1965 or, as the case may be, by the registrar under that Act of 1969 included a reference to documents deposited in pursuance of this section.
- (4) In this section
 

“appropriate registrar” has the meaning given in section 73(1) of the said Act of 1965 and

“registrar” has the meaning given by section 101(1) of the said Act of 1969.

### **Marginal Citations**

**M1** 1965 c. 12.

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M2 1969 c. 24. (N.I.)

## 25 Periodic statements by company with prescribed class of business.

- (1) Every insurance company to which this Part of this Act applies which carries on business of a class or description prescribed for the purposes of this section shall prepare, at such intervals and for such periods as may be prescribed, a statement of its business of that class or description.
- (2) The form and contents of any statement under this section shall be such as may be prescribed.
- (3) Regulations may, as respects such matters contained in a statement under this section as may be prescribed, require there to be given by such persons as may be prescribed and to be annexed to the statement certificates of such matters and in such form as may be prescribed.
- (4) Five copies of any statement made under this section (with any certificate annexed thereto in pursuance of subsection (3) above) shall be deposited by the company with the Secretary of State within such period as may be prescribed, and one of those copies shall be a copy signed by the persons required to sign copies of statements made under section 20 above which are deposited under section 22 above.
- (5) The whole or any part of any document deposited under subsection (4) above may be deposited by the Secretary of State with the registrar of companies or with the registrar of companies in Northern Ireland or with both and may be published by the Secretary of State in such ways as he thinks appropriate.

## 26 Statements of transactions of prescribed class or description.

- (1) Classes or descriptions of agreements or arrangements appearing to the Secretary of State as likely to be undesirable in the interests of policy holders may be prescribed for the purposes of this section, and every insurance company to which this Part of this Act applies or subordinate company within the meaning of section 31 below of any such company which enters into an agreement or arrangement of a class or description so prescribed shall, within such period as may be prescribed, furnish the Secretary of State with a statement containing such particulars of that agreement or arrangement as may be prescribed.
- (2) Different classes or descriptions of agreements or arrangements may be prescribed for the purposes of this section in relation to companies of different classes or descriptions.
- (3) The whole or any part of any statement furnished to the Secretary of State under this section may be deposited by him with the registrar of companies or with the registrar of companies in Northern Ireland or with both and may be published by the Secretary of State in such ways as he thinks appropriate.

## 27 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.

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*Assets and liabilities attributable to long term business*

**28 Separation of assets and liabilities attributable to long term business.**

- (1) Where an insurance company to which this Part of this Act applies carries on ordinary long-term insurance business or industrial assurance business or both of those kinds of insurance business—
  - (a) the company shall maintain an account in respect of that business or, as the case may be, each of those kinds of business; and
  - (b) the receipts of that business or, as the case may be, of each of those kinds of business shall be entered in the account maintained for that business and shall be carried to and form a separate insurance fund with an appropriate name.
- (2) An insurance company to which this Part of this Act applies which carries on ordinary long-term insurance business or industrial assurance business or both of those kinds of business shall maintain such accounting and other records as are necessary for identifying—
  - (a) the assets representing the fund or funds maintained by the company under subsection (1)(b) above (but without necessarily distinguishing between the funds if more than one); and
  - (b) the liabilities attributable to that business or, as the case may be, each of those kinds of business.

**29 Application of assets of company with long term business.**

- (1) Subject to subsections (2) and (4) and section 55(3) below, the assets representing the fund or funds maintained by an insurance company in respect of its long term business—
  - (a) shall be applicable only for the purposes of that business, 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) Where the value of the assets mentioned in subsection (1) above is shown, by an investigation to which section 18 above applies or which is made in pursuance of a requirement imposed under section 42 below, to exceed the amount of the liabilities attributable to the company's long term business the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.
- (3) 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 the abstract of the actuary's report of the investigation has been deposited with the Secretary of State in accordance with section 22(1) above or section 42(4) below.
- (4) Nothing in subsection (1) above shall preclude an insurance company from exchanging, at fair market value, assets representing a fund maintained by the company in respect of its long term business for other assets of the company.
- (5) Any mortgage or charge (including—
  - (a) a charge imposed by a court on the application of a judgment creditor,
  - (b) in Scotland, a charge imposed by way of diligence, and



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(c) a charge imposed by the Enforcement of Judgments Office in Northern Ireland)

shall be void to the extent to which it contravenes subsection (1) above.

(6) Money from a fund maintained by a company in respect of its long term business may not be used for the purposes of any other business of the company notwithstanding any arrangement for its subsequent repayment out of the receipts of that other business.

(7) No insurance company to which this Part of this Act applies, and no company of which any such insurance company is a subsidiary, shall declare a dividend at any time when the value of the assets representing the fund or funds maintained by the insurance company in respect of its long term business, as determined in accordance with any applicable valuation regulations, is less than the amount of the liabilities attributable to that business as so determined.

### 30 Allocations to policy holders.

- (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 29(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

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

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).

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- (3) The requirements of this subsection are that the company—
- (a) has served on the Secretary of State a written notice stating that it proposes to make no allocation or an allocation of an amount (specifying it) which is smaller than the relevant minimum; and
  - (b) has published a statement approved by the Secretary of State in the London, Edinburgh and Belfast Gazettes and in such other ways as he may have directed,
- and that a period of not less than fifty-six days has elapsed since the date, or the last date, on which the company has published the statement mentioned in paragraph (b) above as required by or under that paragraph.
- (4) In this section “established surplus” means an excess of assets representing the whole or a particular part of the fund or funds maintained by the company in respect of its long term business over the liabilities, or a particular part of the liabilities, of the company attributable to that business as shown by an investigation to which section 18 above applies or which is made in pursuance of a requirement imposed under section 42 below.
- (5) For the purposes of this section an amount is allocated to policy holders if, and only if—
- (a) bonus payments are made to them; or
  - (b) reversionary bonuses are declared in their favour or a reduction is made in the premiums payable by them;
- and the amount of the allocation is, in a case within paragraph (a) above, the amount of the payments and, in a case within paragraph (b) above, the amount of the liabilities assumed by the company in consequence of the declaration or reduction.
- (6) For the purposes of this section the amount of any bonus payments made in anticipation of an established surplus shall be treated as an amount allocated in respect of the next established surplus in respect of which an amount is allocated to eligible policy holders generally; and for the purposes of sub-section (2) above the amount of any surplus in respect of which such an allocation is made shall be treated as increased by the amount of any such payments.
- (7) Subsection (1) above shall not authorise the application for purposes other than those mentioned in section 29(1) above of assets representing any part of the surplus mentioned in sub-section (1)(a) above which the company has decided to carry forward unappropriated; and for the purposes of subsection (2) above the amount of any surplus shall be treated as reduced by any part thereof which the company has decided to carry forward as aforesaid.
- (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.

### **31 Restriction on transactions with connected persons.**

- (1) Neither an insurance company to which this Part of this Act applies which carries on long term business nor a subordinate company of any such insurance company shall enter into a transaction to which this section applies—

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- (a) at a time when the aggregate of the value of the assets and the amount of the liabilities attributable to such transactions already entered into by the insurance company and its subordinate companies exceeds the prescribed percentage of the total amount standing to the credit of the insurance company's long term funds; or
  - (b) at any other time when the aggregate of the value of those assets and the amount of those liabilities would exceed that percentage if the transaction were entered into.
- (2) This section applies to any transaction entered into by any such insurance company as is mentioned in subsection (1) above (whether or not itself a subordinate company of another company), being a transaction under which—
- (a) a person connected with the insurance company will owe it money; or
  - (b) the insurance company acquires shares in a company which is a person connected with it; or
  - (c) the insurance company undertakes a liability to meet an obligation of a person connected with it or to help such a person to meet an obligation,
- if the right to receive the money would constitute a long term asset of the insurance company, the acquisition is made out of its long term funds or the liability would fall to be discharged out of those funds, as the case may be.
- (3) Without prejudice to subsection (2) above, this section applies to any transaction entered into by a subordinate company of any such insurance company as is mentioned in sub-section (1) above, being a transaction under which—
- (a) the insurance company or a person connected with it will owe money to the subordinate company (not being money owed by the insurance company which can be properly paid out of its long term funds); or
  - (b) the subordinate company acquires shares in the insurance company or in a company which is a person connected with the insurance company; or
  - (c) the subordinate company undertakes a liability to meet an obligation of the insurance company or of a person connected with that company or to help the insurance company or such a person to meet an obligation;
- but where the subordinate company is itself such an insurance company as is mentioned in subsection (1) above this section shall not by virtue of this subsection apply to any such transaction if the right to receive the money would constitute a long term asset of the subordinate company, the acquisition is made out of its long term funds or the liability would fall to be discharged out of those funds, as the case may be.

- (4) In this section

“subordinate company”, in relation to any such insurance company as is mentioned in subsection (1) above, means—

- (a) a company having equity share capital some or all of which is held by the insurance company as part of its long term assets where the share capital so held by the insurance company—
  - (i) amounts to more than half in nominal value of that share capital; and
  - (ii) confers on the insurance company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company;

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- (b) a company having equity share capital some or all of which is held by another company which is itself a subordinate company of the insurance company where the share capital held by that other company—
- (i) amounts to more than half in nominal value of that share capital; and
  - (ii) confers on that other company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company;

and for the purposes of this subsection share capital held for any person by a nominee shall (except where that person is concerned only in a fiduciary capacity) be treated as held by that person, and share capital held by a person in a fiduciary capacity or by way of security shall be treated as not held by that person.

- (5) For the purposes of this section a person is connected with any such insurance company as is mentioned in subsection (1) above if that person is not a subordinate company of the insurance company but—
- (a) controls, or is a partner of a person who controls, the insurance company; or
  - (b) being a company, is controlled by the insurance company or by another person who also controls the insurance company; or
  - (c) is a director of the insurance company or the wife or husband or a minor son or daughter of such a director;

and for the purposes of this subsection a person controls a company if he is a controller of it within the meaning of section 7(4)(c) above.

- (6) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.

- (7) In this section—

“company” (except in the expression

“insurance company”) includes any body corporate;

“equity share capital” means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

“liability” includes a contingent liability;

“long term assets” and

“long term funds”, in relation to an insurance company, mean respectively assets representing the fund or funds maintained by the company in respect of its long term business and that fund or those funds;

“the prescribed percentage” means 5 per cent. or such greater percentage as may from time to time be prescribed for the purposes of this section by regulations;

“share” has the same meaning as in the [<sup>F5</sup>Companies Act] or the [<sup>F6</sup>Companies (Northern Ireland) Order 1986];

“son” includes step-son,

“daughter” includes step-daughter, and

[<sup>F7</sup> “minor”, in relation to Scotland, includes pupil] and, (without prejudice to section 39(6) of the <sup>M3</sup>Adoption Act 1976 and section 39(4) of the <sup>M4</sup>Adoption (Scotland) Act 1978) in relation to Northern Ireland,

“son” includes step-son and adopted son and

“daughter” includes step-daughter and adopted daughter.

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- (8) This section shall not be construed as making any transaction unenforceable as between the parties thereto or as otherwise making unenforceable any rights or liabilities in respect of property.

#### Textual Amendments

- F5** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F6** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)
- F7** Definition of "minor" in s. 31(7) 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))

#### Marginal Citations

- M3** 1976 c. 36.
- M4** 1978 c. 28.

### [<sup>F8</sup>31A Arrangement to avoid unfairness between separate insurance funds etc.

- (1) An insurance company to which this Part of this Act applies which carries on long term business in the United Kingdom shall secure that adequate arrangements are in force for securing that transactions affecting assets of the company (other than transactions outside its control) do not operate unfairly between the section 28 fund or funds and the other assets of the company or, in a case where the company has more than one identified fund, between those funds.
- (2) In this section—
- “the section 28 fund or funds” means the assets representing the fund or funds maintained by the company under section 28(1)(b) above; and
- “identified fund”, in relation to a company, means assets representing the company’s receipts from a particular part of its long term business which can be identified as such by virtue of accounting or other records by the company.]

#### Textual Amendments

- F8** [S. 31A](#) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 136(1)

### *Financial resources*

## 32 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

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- (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 re-insurance or if section 9(2) above applies to it; but an insurance company that has made a deposit in the United Kingdom in accordance with section 9(2)(b) above 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 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).

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

**C2** S. 32 modified by S.I. 1983/224, reg. 3(1)

**C3** S. 32(5) modified by S.I. 1990/1181, regs. 3(2), 4

**33 Failure to maintain minimum margin.**

- (1) If—

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- (a) the margin of solvency of an insurance company to which section 32(1) above applies, or
  - (b) the margin of solvency or United Kingdom margin of solvency of an insurance company to which section 32(2) above applies, or
  - (c) the margin of solvency or Community margin of solvency of an insurance company to which section 32(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 32(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.

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

C4 S. 33 modified by S.I. 1983/224, reg. 3(1)

### 34 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) above 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 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.

VALID FROM 30/04/1996

#### **[<sup>F9</sup>34A General business: equalisation reserve.**

- (1) Every insurance company to which this section applies which carries on general business of a prescribed description shall maintain, in accordance with regulations made for the purposes of this section, a reserve (in this section referred to as an “equalisation reserve”) in respect of its general business of that description.
- (2) Subject to subsection (3) below, this section applies to any insurance company to which this Part of this Act applies—

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- (a) whose head office is in the United Kingdom;
  - (b) whose business in the United Kingdom is restricted to reinsurance; or
  - (c) whose head office is not in a member State.
- (3) This section does not apply to an insurance company of a description prescribed for the purposes of this subsection.
- (4) Without prejudice to the generality of subsection (1) above, regulations made for the purposes of this section may make provision—
- (a) as to the circumstances in which, and times at which, amounts are to be placed to, or taken from, an equalisation reserve;
  - (b) as to the determination of the amounts to be so placed or taken; and
  - (c) as to such other matters incidental to the maintenance of an equalisation reserve as the Secretary of State considers expedient.]

#### Textual Amendments

**F9** S. 34A inserted (30.4.1996) by 1995 c. 29, s. 1(1); S.I. 1996/945, art. 2

### 35 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 are maintained in such places as may be prescribed and the nature of the assets is 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.

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

**C5** S. 35 modified by S.I. 1983/224, reg. 3(3)

VALID FROM 01/07/1994

### [35A <sup>F10</sup> Adequacy of assets.

- (1) A UK company shall secure—
- (a) that its liabilities under contracts of insurance entered into by it, other than liabilities in respect of linked benefits, are covered by assets of appropriate safety, yield and marketability having regard to the classes of business carried on; and
  - (b) without prejudice to the generality of paragraph (a) above, that its investments are appropriately diversified and adequately spread and that



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excessive reliance is not placed on investments of any particular category or description.

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

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

(3) A UK company which has entered into a linked long term contract shall also secure that [ its liabilities under the contract in respect of linked benefits under the contract in respect of linked benefits as are not covered by contracts of reinsurance] are covered by assets of a description prescribed by regulations under section 78 below.

(4) In this section—

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

'linked long term contract' means a contract of insurance —

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

#### Textual Amendments

**F10** S. 35A inserted (1.7.1994) by S.I. 1994/1696, reg. 17

VALID FROM 01/07/1994

#### [<sup>F11</sup>35B Adequacy of premiums: long term business.

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

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

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

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### Textual Amendments

**F11** S. 35B inserted (1.7.1994) by S.I. 1994/1696, reg. 18

### *Liabilities of unlimited amount*

#### **36 Avoidance of contracts for unlimited amounts.**

A contract entered into after the coming into force of this section by an insurance company to which this Part of this Act applies shall be void if—

- (a) it is a contract under which the company undertakes a liability the amount, or maximum amount, of which is uncertain at the time when the contract is entered into; and
- (b) it is not a contract of insurance or a contract of a class or description exempted by regulations from the operation of this section.

### *Powers of intervention*

#### **37 Grounds on which powers are exercisable.**

- (1) The powers conferred on the Secretary of State by sections 38 to 45 below shall be exercisable in relation to any insurance company to which this Part of this Act applies and shall be exercisable in accordance with the following provisions of this section.
- (2) The powers conferred by sections 38 and 41 to 45 below shall be exercisable on any of the following grounds—
  - (a) that the Secretary of State considers the exercise of the power to be desirable for protecting policy holders or potential policy holders of the company against the risk that the company may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders;
  - (b) that it appears to him—
    - (i) that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed by this Act or by the Insurance Companies Act 1974;
    - [<sup>F12</sup>(ia) that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State giving effect to the general insurance Directives;]
    - (ii) that a company of which it is a subsidiary has failed to satisfy an obligation to which it is or was subject by virtue of section 29(7) above or section 24(6) of the <sup>M5</sup>Insurance Companies Act 1974 or section 8(6) of the <sup>M6</sup>Insurance Companies Amendment Act 1973; or
    - (iii) that a subordinate company within the meaning of section 31 above of the company has failed to satisfy an obligation to which it is or was subject by virtue of that section or section 26 above or section 22 or 26 of the <sup>M7</sup>Insurance Companies Act 1974 or of section 6 or 10 of the said Act of 1973;
  - (c) that it appears to him that the company has furnished misleading or inaccurate information to the Secretary of State under or for the purposes of any provision

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- of this Act or any enactment repealed by this Act or by the Insurance Companies Act 1974;
- (d) that he is not satisfied that adequate arrangements are in force or will be made for the reinsurance of risks against which persons are insured by the company in the course of carrying on business, being risks of a class in the case of which he considers that such arrangements are required;
  - (e) that there exists a ground on which he would be prohibited, by section 7, 8 or 9 above, from issuing an authorisation with respect to the company if it were applied for;
  - (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 above;
  - (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) above made a deposit.
- (3) The powers conferred on the Secretary of State by sections 39 and 40 below 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 section 11 of the <sup>M8</sup>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 or was subject by virtue of section 33, 34 or 35 above or section 26B, 26C or 26D of the Insurance Companies Act 1974; or
  - (c) on the ground that a submission by the company to the Secretary of State of an account or statement specifies, 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.
- (4) The power conferred on the Secretary of State by sub-sections (2) to (4) of section 44 below shall also be exercisable on the ground that he considers the exercise of that power to be desirable in the general interests of persons who are or may become policy holders of insurance companies to which this Part of this Act applies, and references in those subsections to a company include references to any body (whether incorporated or not) which appears to the Secretary of State to be an insurance company to which this Part of this Act applies.
- (5) Any power conferred on the Secretary of State by section 38, 41, 42, 44(1) or 45 below shall also be exercisable, whether or not any of the grounds specified in subsections (2) and (4) above exists, in relation to—
- (a) any body in respect of which the Secretary of State has issued an authorisation;
  - (b) any insurance company to which this Part of this Act applies in the case of which a person has become a controller within the meaning of section 7(4) (c) above,

if that power is exercised before the expiration of the period of five years beginning with the date on which the authorisation was issued or that person became such a controller, as the case may be; but no requirement imposed by virtue of this sub-section

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shall continue in force after the expiration of the period of ten years beginning with that date.

- (6) The power conferred on the Secretary of State by section 45 below shall not be exercisable except in a case in which he considers that the purpose mentioned in that section cannot be appropriately achieved by the exercise of the powers conferred by sections 38 to 44 below or by the exercise of those powers alone.
- (7) The Secretary of State shall, when exercising any power conferred by sections 38 to 45 below, state the ground on which he is exercising it or, if he is exercising it by virtue of subsection (5) above, that he is so exercising it; but this subsection shall not apply where the Secretary of State has given notice under section 46 below of the proposed exercise of the power.
- (8) The grounds specified in subsections (2)(b) to (g) and (4) above are without prejudice to the ground specified in sub-section (2)(a) above.

#### Textual Amendments

**F12** S. 37(2)(b)(ia) inserted by S.I. 1990/1333, reg. 8(2)

#### Marginal Citations

**M5** 1974 c. 49.

**M6** 1973 c. 58.

**M7** 1974 c. 49.

**M8** 1981 c. 31.

### 38 Requirements about investments.

- (1) The Secretary of State may require a company—
  - (a) not to make investments of a specified class or description;
  - (b) to realise, before the expiration of a specified period (or such longer period as the Secretary of State may allow), the whole or a specified proportion of investments of a specified class or description held by the company when the requirement is imposed.
- (2) A requirement under this section may be framed so as to apply only to investments which are (or, if made, would be) assets representing a fund or funds maintained by the company in respect of its long term business or so as to apply only to other investments.
- (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) above 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.

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

- (1) The Secretary of State may require that assets of a company of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in the United Kingdom.
- (2) The Secretary of State may direct that for the purposes of any requirement under this section assets of a specified class or description shall or shall not be treated as assets maintained in the United Kingdom.
- (3) The Secretary of State may direct that for the purposes of any requirement under this section the domestic liabilities of a company, or such liabilities of any class or description, shall be taken to be the net liabilities after deducting any part of them which is reinsured.
- (4) A requirement imposed under this section may be framed so as to come into effect immediately after the day on which it is imposed or so as to come into effect after the expiration of a specified period (or such longer period as the Secretary of State may allow).
- (5) In this section any reference to a domestic liability is a reference to a liability of the business carried on by the company in the United Kingdom.
- (6) Subject to subsection (7) below, in computing the amount of any liabilities for the purposes of this section all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.
- (7) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations; and subsection (6) above shall have effect subject to any such regulations made by virtue of section 90(2) below.

### **40 Custody of assets.**

- (1) The Secretary of State may, in the case of a company on which a requirement has been imposed under section 39 above or under section 31 of the <sup>M9</sup>Insurance Companies Act 1974, impose an additional requirement that the whole or a specified proportion of the assets to which the requirement under that section applies shall be held by a person approved by him for the purposes of the requirement under this section as trustee for the company.
- (2) Section 39(4) above shall apply also to a requirement under this section.
- (3) Assets of a company held by a person as trustee for a company shall be taken to be held by him in compliance with a requirement imposed under this section if, and only if, they are assets in whose case the company has given him written notice that they are to be held by him in compliance with such a requirement or they are assets into which assets in whose case the company has given him such written notice have, by any transaction or series of transactions, been transposed by him on the instructions of the company.
- (4) No assets held by a person as trustee for a company in compliance with a requirement imposed under this section shall, so long as the requirement is in force, be released except with the consent of the Secretary of State.

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- (5) If a mortgage or charge is created by a company at a time when there is in force a requirement imposed on the company by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee for the company in compliance with the requirement, the mortgage or charge shall, to the extent it confers such a security, be void against the liquidator and any creditor of the company.

#### Marginal Citations

M9 1974 c. 49.

VALID FROM 01/07/1994

#### [<sup>F13</sup>40A Prohibition on disposal of assets.

- (1) If on the application of the Secretary of State it appears to the court that any of the grounds set out in section 37(3) above are established in relation to a UK company, the court may grant an injunction restraining, or in Scotland an interdict prohibiting, the company from disposing of or otherwise dealing with any of its assets to the value of its EC liabilities.
- (2) Where a court makes an order under subsection (1) above, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Secretary of State to perform his functions under this Act.
- (3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (4) In this section “EC liabilities” has the same meaning as in section 39 above.]

#### Textual Amendments

F13 S. 40A inserted (1.7.1994) by S.I. 1994/1696, reg. 22

#### 41 Limitation of premium income.

- (1) The Secretary of State may require a company to take all such steps as are requisite to secure that the aggregate of the premiums—
  - (a) to be received by the company in consideration of the undertaking by it during a specified period of liabilities in the course of carrying on general business or any specified part of such business; or
  - (b) to be received by it in a specified period in consideration of the undertaking by the company during that period of liabilities in the course of carrying on long term business or any specified part of such business.
 shall not exceed a specified amount.
- (2) A requirement under this section may apply either to the aggregate premiums to be received as mentioned in subsection (1) above or to the aggregate of those premiums

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after deducting any premiums payable by the company for reinsuring the liabilities in consideration of which the first-mentioned premiums are receivable.

#### **42 Actuarial investigations.**

- (1) The Secretary of State may require a company which carries on long term business—
  - (a) to cause the person who for the time being is its actuary under section 19(1) above or any corresponding enactment previously in force to make an investigation into its financial condition in respect of that business, or any specified part of that business, as at a specified date;
  - (b) to cause an abstract of that person's report of the investigation to be made; and
  - (c) to prepare a statement of its long term business or of that part thereof as at that date.
- (2) For the purposes of any investigation made in pursuance of a requirement under this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.
- (3) The form and contents of any abstract or statement made in pursuance of a requirement under this section shall be the same as for an abstract or statement made under section 18 above and subsection (2) of that section shall apply to an investigation made in pursuance of this section as it applies to an investigation to which subsection (1) (b) of that section relates.
- (4) Five copies of any abstract or statement made in pursuance of a requirement under this section shall be deposited by the company with the Secretary of State on or before such date as he may specify, and one of those copies shall be a copy signed by the persons required to sign copies of abstracts or statements made under the said section 18 which are deposited under section 22 above.

#### **43 Acceleration of information required by accounting provisions.**

- (1) The Secretary of State may require any documents which under section 22 above are required to be deposited with him by a company within the period specified in that section to be deposited with him on or before a specified date before the end of that period, being a date not earlier than three months before the end of that period and not earlier than one month after the date on which the requirement is imposed.
- (2) The Secretary of State may require any statement which under section 25 above is required to be deposited with him by a company within a period prescribed under that section to be deposited with him on or before a specified date before the end of that period.

VALID FROM 01/07/1994

#### **[<sup>F14</sup>43A General investigations.**

- (1) The Secretary of State may appoint one or more competent persons to make an investigation into and report to the Secretary of State on—
  - (a) whether the criteria of sound and prudent management are fulfilled with respect to any insurance company which is a UK or non-EC company ; or

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- (b) where a person has notified the Secretary of State under section 60 or 61 below of his intention to become a controller of any such company, whether those criteria would be so fulfilled if that person became such a controller; and the Secretary of State shall give written notice of any such appointment to the company.
- (2) It shall be the duty of every person who is or was a director, manager, controller, agent, actuary, auditor or solicitor of a company which is under investigation—
- (a) to produce to the persons appointed under subsection (1) above, within such time and at such place as they may require, all documents relating to the company which are in his custody or power;
  - (b) to attend before the persons so appointed at such time and place as they may require; and
  - (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;
- and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.
- (3) For the purpose of exercising his powers under this section a person appointed under subsection (1) above may enter any premises occupied by a company which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required would be removed, tampered with or destroyed.
- (4) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.
- (5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.]

#### Textual Amendments

F14 S. 43A inserted (1.7.1994) by S.I. 1994/1696, reg. 23

#### 44 Power to obtain information and require production of documents.

- (1) The Secretary of State may require a company to furnish him, at specified times or intervals, with information about specified matters being, if he so requires, information verified in a specified manner.
- (2) The Secretary of State may—
  - (a) require a company to produce, at such time and place as he may specify, such [F15 documents] as he may specify; or
  - (b) authorise any person, on producing (if required so to do) evidence of his authority, to require a company to produce to him forthwith any [F15 documents] which that person may specify.
- (3) Where by virtue of subsection (2) above the Secretary of State or a person authorised by him has power to require the production of any [F15 documents] from any company, the Secretary of State or that person shall have the like power to require production of those [F15 documents] from any person who appears to him to be in possession of



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them; but where any person from whom such production is required claims a lien on [F15 documents] produced by him, the production shall be without prejudice to the lien.

(4) Any power conferred by or by virtue of subsections (2) and (3) above to require a company or other person to produce [F15 documents] shall include power—

- (a) if the [F15 documents] are produced—
  - (i) to take copies of them or extracts from them; and
  - (ii) to require that person, or any other person who is a present or past director, controller or auditor of, or is or was at any time employed by, the company in question, to provide an explanation of any of them;
- (b) if the [F15 documents] are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

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

[F16(6) In this section “document” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.]

#### Textual Amendments

**F15** Word substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 77\(2\)](#)

**F16** [S. 44\(6\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 77\(2\)](#)

#### [F17]44A Entry and search of premises.

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person authorised to exercise powers under section 44 above, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under section 44(2) to (4) above and which have not been produced in compliance with the requirement.

(2) A justice of the peace may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person authorised to exercise powers under section 44 above—

- (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
- (b) that the Secretary of State or, as the case may be, the authorised person has power to require the production of the documents under section 44(2) to (4) above, and
- (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—

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- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of any such documents; and
  - (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) f in the case of a warrant under subsection (2) the justice of the peace is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in subsection (3) to be taken in relation to such documents.
- (5) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (7) In the application of this section to Scotland for the references to a justice of the peace substitute references to a justice of the peace or a sheriff, and for the references to information on oath substitute references to evidence on oath.
- (8) In this section “document” includes information recorded in any form.]

#### Textual Amendments

F17 S. 44A inserted by Companies Act 1989 (c. 40, SIF 27), s. 77(3)

#### 45 Residual power to impose requirements for protection of policy holders.

- (1) The Secretary of State may require a company to take such action as appears to him to be appropriate for the purpose of protecting policy holders or potential policy holders of the company against the risk that the company may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders.
- (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 above or section 11 of the <sup>M10</sup>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 or was subject by virtue of section 33, 34 or 35 above or section 26B, 26C or 26D of the <sup>M11</sup>Insurance Companies Act 1974; or

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- (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.

#### Marginal Citations

M10 1981 c. 31.

M11 1974 c. 49.

#### 46 Notice of proposed exercise of powers on ground of unfitness of certain persons.

- (1) Before exercising with respect to a company any power or powers conferred by sections 38 to 45 above on the ground that he would be prohibited from issuing an authorisation to the company because of the unfitness of a person for the position held by him (not being that of controller of the company), the Secretary of State shall serve on that person a written notice stating—
  - (a) that the Secretary of State is considering exercising a power or powers by those sections and the ground on which he is considering the exercise of the power or powers; 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 appointed for the purpose by the Secretary of State.
- (2) Unless the Secretary of State, after considering any representations made in accordance with subsection (1) above by the person served with a notice under that subsection, decides not to exercise the power or powers in relation to which the notice was served, he shall before exercising the power or powers serve on the company a written notice—
  - (a) containing the matters mentioned in paragraphs (a) and (b) of that subsection, taking references to the person there mentioned as references to the company; and
  - (b) specifying the power or powers which he proposes to exercise and, if the power or one of them is that conferred by section 45 above, specifying the manner of its proposed exercise.
- (3) A notice under this section shall give particulars of the ground on which the Secretary of State is considering the exercise of the power or powers in question.
- (4) Where representations are made in accordance with this section the Secretary of State shall take them into consideration before exercising the power or powers in question.
- (5) A requirement imposed on a company in the exercise of any power or powers to which this section applies may be framed so as to come into effect after the expiration of a specified period (or such longer period as the Secretary of State may allow) unless before the expiration of that period the person whose fitness is in question has ceased to hold the position concerned.

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#### 47 Rescission, variation and publication of requirements.

- (1) The Secretary of State may rescind a requirement imposed under sections 38 to 45 above if it appears to him that it is no longer necessary for the requirement to continue in force, and may from time to time vary any such requirement.
- (2) No requirement imposed by virtue of subsection (5) of section 37 above shall be varied after the expiration of the period of five years mentioned in that subsection except in a manner which relaxes that requirement.
- (3) Where a requirement is imposed under section 40 above or any such requirement is rescinded or varied the Secretary of State shall forthwith serve—
  - (a) except where paragraph (b) below applies, on the registrar of companies or on the registrar of companies in Northern Ireland or on both;
  - (b) if the requirement is imposed on a registered society, on the appropriate registrar as defined by section 73(1) of the <sup>M12</sup>Industrial and Provident Societies Act 1965 in the case of a society registered in Great Britain or on the registrar as defined by section 101(1) of the <sup>M13</sup>Industrial and Provident Societies Act (Northern Ireland) 1969 in the case of a society registered in Northern Ireland;

a written notice stating that fact and, in the case of a notice of the imposition of a requirement, setting out the terms of the requirement, in the case of a notice of the rescission of a requirement, identifying the requirement and, in the case of a notice of a variation of a requirement, identifying the requirement and setting out the terms of the variation.
- (4) A notice served in pursuance of subsection (3) above on the registrar of companies or the registrar of companies in Northern Ireland shall be open to inspection, and a copy thereof may be procured by any person on payment of such fee as the Secretary of State or, in the case of a notice served on the registrar of companies in Northern Ireland, the Department of Commerce for Northern Ireland may direct; and every document purporting to be certified by the registrar of companies or the registrar of companies in Northern Ireland to be a copy of such a notice shall be deemed to be a copy of that notice and shall be received in evidence as if it were the original notice unless some variation between it and the original is proved.
- (5) Section 71(1) of the said Act of 1965 (which empowers the Treasury to make regulations respecting, among other things, the inspection of documents kept by the appropriate registrar under that Act) and section 97(1) of the said Act of 1969 (which confers corresponding powers on the Department of Commerce for Northern Ireland) shall have effect as if the reference to documents so kept included a reference to notices served in pursuance of subsection (3) above on the appropriate registrar or, as the case may be, on the registrar.

#### Marginal Citations

**M12** 1965 c. 12.

**M13** 1969 c. 24

#### 47A <sup>F18</sup> Security of information

- <sup>F19</sup>(1) Subject to the following provisions of this section, no information relating to the business or other affairs of any person which has been obtained under section 44(2) to

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- (4) [<sup>F20</sup>or 44A] above shall be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.
- (2) Subsection (1) above shall not preclude the disclosure of information to any person who is a competent authority for the purposes of section 449 of the Companies Act 1985.
- (2A) Subsection (1) above shall not preclude the disclosure of information as mentioned in any of the paragraphs except (m) of subsection (1) of section 180 of the Financial Services Act 1986 or in subsection (3) or (4) of that section or as mentioned in section 449(1) of the Companies Act 1985.
- (2B) Subsection (1) above shall not preclude the disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it.
- (3) <sup>F21</sup>]

#### Textual Amendments

- F18** Ss. 47A, 47B inserted by Companies Consolidation(Consequential Provisions) #Act 1985 (c. 9, SIF 27), s. 25
- F19** S. 47A(1)(2)(2A)(2B) substituted for s. 47A(1)(2) by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 6**
- F20** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 77(4)
- F21** S. 47A(3) repealed by S.I. 1986/1035 (N.I. 9), art. 24, **Sch. 2**

#### [<sup>F22</sup>47B Privilege from disclosure.

- (1) A requirement imposed under section 44(2) to (4) above shall not compel the production by any person of a document which he would in an action in the High Court or, in Scotland, in the Court of Session be entitled to refuse to produce on grounds of legal professional privilege or authorise the taking of possession of any such document which is in his possession.

(2<sup>F23</sup>]

#### Textual Amendments

- F22** Ss. 47A, 47B inserted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 25
- F23** S. 47B(2) repealed by S.I. 1986/1035 (N.I. 9), art. 24, **Sch. 2**

#### 48 Power of Secretary of State to bring civil proceedings on behalf of insurance company.

- (1) [<sup>F24</sup>Section 438(1) of the Companies Act] (power of Secretary of State to bring civil proceedings on behalf of body corporate) shall have effect in relation to an insurance company to which this Part of this Act applies (whether or not a body corporate) as if the reference to any information or document obtained under the provisions there mentioned included a reference to any information or document obtained under this Act or any enactment repealed by this Act or by the <sup>M14</sup>Insurance Companies Act 1974.

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- (2) The Secretary of State may bring civil proceedings in the name and on behalf of an insurance company to which this Part of the Act applies (whether or not a body corporate) under <sup>F25</sup>Article 431(1) of the Companies (Northern Ireland) Order 1986] and that subsection shall have effect in relation to such an insurance company as if the reference to any information or document obtained under the provisions there mentioned included a reference to any information or document obtained under this Act or any enactment repealed by this Act or by the <sup>M15</sup>Insurance Companies Act 1980 and any reference to the Department of Commerce for Northern Ireland were a reference to the Secretary of State.
- (3) Where under a judgment given or decree pronounced in proceedings brought by virtue of <sup>F26</sup>section 438(1) of the Companies Act] or <sup>F27</sup>Article 431(1) of the said Order of 1986] on behalf of an insurance company a sum is recovered in respect of a loss of assets representing a fund or funds maintained by the company in respect of its long term business the court shall direct that the sum shall be treated for the purposes of this Act as assets of that fund or those funds and this Act shall have effect accordingly.

#### Textual Amendments

**F24** Words substituted by [Companies Consolidated \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

**F25** Words expressed to be substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)

**F26** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

**F27** Words substituted by [S.I. 1986/1035](#), (N.I. 9), art. 23, Sch. 1 Pt. II

#### Marginal Citations

**M14** [1974 c. 49](#).

**M15** [1980 c. 25](#).

### *Transfers of long term business*

#### **49 Sanction of court for transfer of long term business.**

- (1) <sup>F28</sup>Subject to section 49A below], where it is proposed to carry out a scheme under which the whole or part of the long term business carried on in the United Kingdom by an insurance company to which this Part of this Act applies (“the transferor company”) is to be transferred to another body whether incorporated or not (“the transferee company”) the transferor company or transferee company may apply to the court, by petition, for an order sanctioning the scheme.
- <sup>F29</sup>(1A) If any such scheme involves a compromise or arrangement falling within section 427A(1) of the Companies Act or Article 420A(1) of the Companies (Northern Ireland) Order 1986 (application of provisions about compromises and arrangements to mergers and divisions of public companies), the following provisions, namely—
- (a) sections 425 to 427 of that Act, or
  - (b) Articles 418 to 420 of that Order,
- shall have effect, as regards that compromise or arrangement, as provided by section 427A(1) or Article 420A(1) (as the case may be), but without prejudice to the operation of the provisions of this section in relation to the scheme.]

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- (2) The court shall not determine an application under this section unless the petition is accompanied by a report on the terms of the scheme by an independent actuary and the court is satisfied that the requirements of subsection (3) below have been complied with.
- (3) The said requirements are—
- (a) that a notice has been published in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed, in two national newspapers stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in paragraph (d) below will be available as required by that paragraph;
  - (b) except where the court has otherwise directed, that a statement—
    - (i) setting out the terms of the scheme; and
    - (ii) containing a summary of the report mentioned in subsection (2) above sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term policy holders of the companies concerned,has been sent to each of those policy holders and to every member of those companies;
  - (c) that a copy of the petition, of the report mentioned in subsection (2) above and of any statement sent out under paragraph (b) above has been served on the Secretary of State and that a period of not less than twenty-one days has elapsed since the date of service;
  - (d) that copies of the petition and of the report mentioned in subsection (2) above have been open to inspection at offices in the United Kingdom of the companies concerned for a period of not less than twenty-one days beginning with the date of the first publication of a notice in accordance with paragraph (a) above.
- [<sup>F30</sup>(e) in the case of any such scheme as is mentioned in subsection (1A) above, that copies of the documents listed in paragraph 6(1) of Schedule 15A to the Companies Act or in paragraph 6(1) of Schedule 15A to the Companies (Northern Ireland) Order 1986 had been served on the Secretary of State by the beginning of the period referred to in paragraph 3(e) of that Schedule.]
- (4) Each of the companies concerned shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the petition and of the report mentioned in subsection (2) above to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.
- (5) On any petition under this section—
- (a) the Secretary of State, and
  - (b) any person (including any employee of the transferor company or the transferee company) who alleges that he would be adversely affected by the carrying out of the scheme,
- shall be entitled to be heard.
- (6) The court shall not make an order sanctioning the scheme unless it is satisfied that the transferee company is, or immediately after the making of the order will be, authorised under section 3 or 4 above to carry on long term business of the class or classes to be transferred under the scheme.

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- (7) No such transfer as is mentioned in subsection (1) above shall be carried out unless the scheme relating to the transfer has been sanctioned by the court in accordance with this section; [<sup>F31</sup>and, except in the case of any such scheme as is mentioned in subsection (1A) above, no order shall be made under any of the provisions specified in paragraph (a) or (b) of that subsection] in respect of so much of any compromise or arrangement as involves any such transfer.
- (8) In this section “the court” means the High Court of Justice in England except that it means—
- (a) the Court of Session if the transferor company and the transferee company are both registered or both have their head offices in Scotland; and
  - (b) the High Court of Justice in Northern Ireland if the transferor company and the transferee company are both registered or both have their head offices in Northern Ireland; and
  - (c) either the High Court of Justice in England or the Court of Session if either the transferor company or the transferee company is registered or has its head office in Scotland; and
  - (d) either the High Court of Justice in England or the High Court of Justice in Northern Ireland if either the transferor company or the transferee company is registered or has its head office in Northern Ireland; and
  - (e) either the Court of Session or the High Court of Justice in Northern Ireland if the transferor company or the transferee company is registered or has its head office in Scotland and the other such company is registered or has its head office in Northern Ireland.

#### Textual Amendments

- F28** Words in s. 49(1) inserted (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 120(1), [Sch. 21 para 6\(1\)](#); S.I. 1993/16, art. 2, [Sch. 3](#)
- F29** S. 49(1A) inserted by S.I. 1987/2118, [reg. 2\(2\)](#)
- F30** S. 49(3)(e) added by S.I. 1987/2118, [reg. 2\(3\)](#)
- F31** Words substituted by S.I. 1987/2118, [reg. 2\(4\)](#)

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

- C6** S. 49 modified by S.I. 1990/1207, [reg. 2\(1\)](#)

### [<sup>F33</sup>49A <sup>F32</sup>Transfer of long term business to friendly society.

- (1) Section 49 above applies, with the following adaptations, to a transfer of business to an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992.
- (2) In subsection (3)(c) (service of documents), after the words “the Secretary of State” there shall be inserted the words “and on the Friendly Societies Commission”.
- (3) In subsection (5) (persons entitled to be heard on petition), in paragraph (a) after the words “the Secretary of State” there shall be inserted the words “and the Friendly Societies Commission”.
- (4) In subsection (6) (requirement that transferee company be authorised to carry on long term business), for the words “authorised under section 3 or 4 above” there shall be substituted the words “authorised under Part IV of the Friendly Societies Act 1992.”]



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### Textual Amendments

**F32** S. 49A inserted (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\)](#) s. 120(1), Sch. 21 para. 6(2); S.I. 1993/16, art. 2, [Sch.3](#)

**F33** S. 49 substituted for ss. 49-52 (1.7.1994) by S.I. 1994/1696, [reg. 28\(1\)\(3\)](#)

VALID FROM 20/05/1993

### **[[<sup>F34F35</sup>49B] Modifications of section 49 in certain cases.**

- (1) This section applies where—
  - (a) it is proposed to carry out a scheme under which the whole or part of any long term business (other than reinsurance) carried on in the United Kingdom by an insurance company to which this Part of this Act applies (“the transferor company”) is to be transferred to another insurance company (“the transferee company”);
  - (b) all of the policies comprised in the business proposed to be transferred were written in the course of the provision of services in a member State other than the United Kingdom; and
  - (c) the head office of the transferee company is situated in a member State.
- (2) In any case where this section applies, section 49 above shall have effect as if—
  - (a) in paragraph (a) of subsection (3), for the words “in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed, in two national newspapers” there were substituted the words “in two national newspapers in the United Kingdom, and in such publications or in such manner in the member State of the commitment as the court has directed,”;
  - (b) in paragraph (d) of that subsection, for the words “at offices in the United Kingdom of the companies concerned” there were substituted the words “at offices in the United Kingdom of the transferor company and at such place in the member State of the commitment as the court has directed”: and
  - (c) for the provisions of subsections (6) to (6B) there were substituted the following provisions of this section.
- (3) Where the establishment of the transferee company to which the policies are to be transferred is situated in the United Kingdom, the court shall not make an order sanctioning the scheme unless it is satisfied that—
  - (a) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the member State of the commitment;
  - (b) the supervisory authorities of that member State agree to the transfer; and
  - (c) the transferee company is, or immediately after the making of the order will be, authorised under section 3 or 4 above to carry on long term business of the class or classes to be transferred under the scheme.
- (4) Where the establishment of the transferee company to which the policies are to be transferred is situated in a member State other than the United Kingdom, the court shall not make an order sanctioning the scheme unless—

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- (a) it is satisfied that the supervisory authorities of the member State where the establishment of the transferee company to which the policies are to be transferred is situated agree to the transfer; and
  - (b) where the member State of the commitment is not the member State in which the establishment is situated, it is also satisfied that—
    - (i) the establishment fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the member State of the commitment;
    - (ii) the law of that member State provides for the possibility of such a transfer; and
    - (iii) the supervisory authorities of that member State agree to the transfer.
- (5) Where the head office of the transferee company is situated in a member State other than the United Kingdom, the court shall not make an order sanctioning the scheme unless the supervisory authorities of that member State certify that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account.
- (6) Where the court makes an order sanctioning the scheme, it shall direct that—
- (a) notice of the making of any order, or the execution of any instrument, giving effect to the transfer shall be published in the member State of the commitment; and
  - (b) the notice shall specify a period during which any policy holder affected may cancel the policy;
- and such an instrument or order shall not bind such a policy holder if either such a notice is not so published or the policy holder cancels the policy during the period so specified.]

#### Textual Amendments

**F34** S. 49 substituted for ss. 49-52 (1.7.1994) by S.I. 1994/1696, reg. 28(1)(3)

**F35** S. 49A inserted (subsequently renumbered 49B)(20.5.1993) by S.I. 1993/174, reg. 3(3)

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

**C7** S. 49A renumbered 49B (20.5.1993) by S.I. 1993/1327, reg. 3(1)

### <sup>F36</sup>50 Provisions supplementary to section 49.

- (1) Where the court makes an order under section 49 above sanctioning a scheme the court may, either by that order or by any subsequent order, make provision for all or any of the following matters—
- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
  - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person;
  - (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
  - (d) the dissolution, without winding up, of the transferor company;

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- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.
- (2) Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.
- (3) For the purposes of any provision requiring the delivery of an instrument of transfer as a condition for the registration of a transfer of any property (including in particular section [F37 183(1)] of the [F38 Companies Act], section 56(4) of the [M16 Finance Act 1946, [F39 Article 193(1) and (2)] of the [F40 Companies (Northern Ireland) Order 1986] and section 27(4) of the [M17 Finance (No. 2) Act (Northern Ireland) 1946] an order which by virtue of this section operates to transfer any property shall be treated as an instrument of transfer.
- (4) Where a scheme is sanctioned by an order of the court under section 49 above the transferee company shall, within ten days from the date on which the order is made or such longer period as the Secretary of State may allow, deposit two office copies of the order with the Secretary of State.
- (5) In this section “property” includes property, rights and powers of every description, “liabilities” includes duties and “shares” and “debentures” have the same meaning as in the [F38 Companies Act] or the [F40 Companies (Northern Ireland) Order 1986]

#### Textual Amendments

- F36** S. 49 substituted for ss. 49-52 (1.7.1994) by S.I. 1994/1696, **reg. 28(1)(3)**
- F37** Figure substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F38** Words substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F39** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F40** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**

#### Marginal Citations

- M16** 1946 c. 64.
- M17** 1946 c. 17 (N.I.)

### *Transfers of general business*

#### **51 Approval of transfers of general business.**

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

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- (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.
- [<sup>F41</sup>(4A) Without prejudice to the generality of subsection (4) above, the Secretary of State shall not approve a transfer on an application under subsection (1) above to an insurance company whose head office is situated in another member State [<sup>F42</sup>unless—
- (a) the supervisory authorities of that State certify that it possesses the necessary margin of solvency after taking the proposed transfer into account; or
  - (b) every policy included in the proposed transfer evidences a contract of reinsurance.]
- (4B) Notwithstanding the provisions of subsection (4)(a)(ii) and (b) above, the Secretary of State may approve a transfer on an application under subsection (1) above to an insurance company established in another member State, where he is satisfied that—
- (a) the transfer relates to policies covering risks situated in the United Kingdom,
  - (b) the transferee is entitled in accordance with section 81B below to provide insurance in the United Kingdom in respect of those risks through that establishment, and
  - (c) the supervisory authorities of the member State of that establishment agree to the transfer.]

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- (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 52 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.

#### Textual Amendments

**F41** S. 51(4A)(4B) inserted by S.I. 1990/1333, reg. 9(1)

**F42** Words in s. 51(4A) substituted (19.11.1992) by S.I. 1992/2890, reg.3

#### <sup>F43</sup>52 Effect of approval under section 51.

- (1) Subject to subsection (2) below, an instrument giving effect to a transfer approved by the Secretary of State under section 51 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.

#### Textual Amendments

**F43** S. 49 substituted for ss. 49-52 (1.7.1994) by S.I. 1994/1696, reg. 28(1)(3)

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#### [<sup>F44</sup>52A Issue of certificates by Secretary of State.

- (1) Where it is proposed to execute an instrument by which an insurance company established in another member State is to transfer to an insurance company whose head office is situated in the United Kingdom all its rights and obligations under such general policies, or general policies of such descriptions, as may be specified in the instrument, the Secretary of State may, if he is satisfied that the latter insurance company possesses the necessary margins of solvency after taking the proposed transfer into account, issue a certificate to that effect.
- (2) In this section “general policy” means a policy evidencing a contract the effecting of which constituted the carrying on of general business, other than reinsurance.]

#### Textual Amendments

F44 S. 52A inserted by S.I. 1990/1333, reg. 9(2)

VALID FROM 01/07/1994

#### [<sup>F45</sup>52B Effect of transfers authorised in other EEA States.

- (1) This section applies where—
  - (a) an EC company transfers to another body all its rights and obligations under any UK policies and the transfer is authorised in its home State in accordance with—
    - (i) Article 11 of the third long term insurance Directive, or
    - (ii) Article 12 of the third general insurance Directive;
  - (b) a non-EC company whose head office is in an EFTA State transfers to another body all its rights and obligations under any UK policies and the transfer is authorised in an EEA State other than the United Kingdom in accordance with—
    - (i) Article 6 of the second long term insurance Directive, or
    - (ii) Article 11 of the second general insurance Directive; or
  - (c) a non-EC company whose head office is not in an EFTA State transfers to another body all its rights and obligations under any UK policies and the transfer is authorised in a member State other than the United Kingdom in accordance with—
    - (i) Article 31a of the first long term insurance Directive (as amended by Article 49 of the third long term insurance Directive), or
    - (ii) Article 28a of the first general insurance Directive (as amended by Article 53 of the third general insurance Directive).
- (2) If notice of the execution of the instrument giving effect to the transfer is published in such manner as the Secretary of State may from time to time direct, the instrument shall be effectual in law—
  - (a) to transfer to the transferee all the transferor’s rights and obligations under the UK policies included in the instrument, and
  - (b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,

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

- (3) Directions under this section may make different provision for different cases or descriptions of case.
- (4) A policy which evidences a contract of direct insurance is a UK policy for the purposes of this section if the law applicable to it is the law of any part of the United Kingdom.]

#### Textual Amendments

F45 S. 52B inserted (1.7.1994) by S.I. 1994/1696, reg. 30

### Winding up

#### 53 Winding up of insurance companies under Companies Acts.

The court may order the winding up, in accordance with the [<sup>F46</sup>Insolvency Act 1986] or, as the case may be, the [<sup>F47</sup>Insolvency (Northern Ireland) Order 1989], of an insurance company to which this Part of this Act applies and the provisions of [<sup>F48</sup>the][<sup>F46</sup>that Act of 1986] or, as the case may be, [<sup>F49</sup>that Order of 1989] shall apply accordingly subject to the modification that the company may be ordered to be wound up on the petition of ten or more policy holders owning policies of an aggregate value of not less than £10,000.

Such a petition shall not be presented except by leave of the court, and leave shall not be granted until a prima facie case has been established to the satisfaction of the court and until security for costs for such amount as the court may think reasonable has been given.

#### Textual Amendments

F46 Words inserted by [Insolvency Act 1986 \(c. 45, SIF 66\), s. 439\(2\), Sch. 14](#)

F47 Words in s. 53 substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), [Sch. 9 para. 33\(a\)](#); S.R. 1991/411, [art. 2](#)

F48 Word substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\), s. 30, Sch. 2](#)

F49 Words in s. 53 substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), [Sch. 9 para. 33\(b\)](#); S.R. 1991/411, [art.2](#)

#### 54 Winding up on petition of Secretary of State.

- (1) The Secretary of State may present a petition for the winding up, in accordance with [<sup>F50</sup>Part IV or V of the Insolvency Act 1986], of an insurance company to which this Part of this Act applies, being a company which may be wound up by the court under the provisions of that Act, on the ground—
  - (a) that the company is unable to pay its debts within the meaning of sections [<sup>F50</sup>123 or sections 222 to 224] of that Act;

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- (b) that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed by this Act or by the <sup>M18</sup>Insurance Companies Act 1974; or
  - <sup>F51</sup>(bb) that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State giving effect to the general insurance Directives;
  - (c) that the company, being under the obligation imposed by <sup>F52</sup>sections 221 and 222 of the Companies Act] with respect to the keeping of accounting records, has failed to satisfy that obligation or to produce records kept in satisfaction of that obligation and that the Secretary of State is unable to ascertain its financial position.
- (2) The Secretary of State may present a petition for the winding up, in accordance with the <sup>F53</sup>Part V or VI of the Insolvency (Northern Ireland) Order 1989], of an insurance company to which this Part of this Act applies, being a company which may be wound up by the court under the provisions of that Act, on the ground—
- (a) that the company is unable to pay its debts within the meaning of <sup>F54</sup><sup>F55</sup>Article 103 or Articles 186 to 188] of that Order]
  - (b) that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed by this Act or by the <sup>M19</sup>Insurance Companies Act 1980; or
  - <sup>F56</sup>(bb) that the company has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of another member State giving effect to the general insurance Directives;
  - (c) that the company, being under an obligation imposed by <sup>F57</sup>Articles 229 to 231 of the<sup>F58</sup>Part V or VI of the Insolvency (Northern Ireland) Order 1989] with respect to the keeping of accounting records, has failed to satisfy that obligation or to produce records kept in satisfaction of that obligation and that the Secretary of State is unable to ascertain its financial position;
- and <sup>F59</sup>Article 433 of the said Order of 1986] shall have effect in relation to such an insurance company as if any reference to the Department of Commerce for Northern Ireland were a reference to the Secretary of State.
- (3) In any proceedings on a petition to wind up an insurance company presented by the Secretary of State under subsection (1) of (2) above, evidence that the company was insolvent—
- (a) at the close of the period to which—
    - (i) the accounts and balance sheet of the company last deposited under section 22 above; or
    - (ii) any statement of the company last deposited under section 25 above, relate; or
  - (b) at any date or time specified in a requirement under section 42 or 44 above, shall be evidence that the company continues to be unable to pay its debts, unless the contrary is proved.
- (4) If, in the case of an insurance company to which this Part of this Act applies, being a company which may be wound up by the court under the provisions of the <sup>F60</sup>Insolvency Act 1986] or, as the case may be, the <sup>F61</sup>Insolvency (Northern Ireland) Order 1989], it appears to the Secretary of State that it is expedient in the public interest that the company should be wound up, he may, unless the company is already being



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wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up.

- (5) Where a petition for the winding up of an insurance company to which this Part of this Act applies is presented by a person other than the Secretary of State, a copy of the petition shall be served on him and he shall be entitled to be heard on the petition.

#### Textual Amendments

- F50** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)
- F51** [S. 54\(1\)\(bb\)](#) inserted by [S.I. 1990/1333](#), [reg. 8\(3\)](#)
- F52** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F53** Words in [s. 54\(2\)](#) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 34\(a\)\(i\)](#); [S.R. 1991/411](#), [art.2](#)
- F54** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)
- F55** Words in [s. 54\(2\)\(a\)](#) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 34\(a\)\(ii\)](#); [S.R. 1991/411](#), [art.2](#)
- F56** [S. 54\(2\)\(bb\)](#) inserted by [S.I. 1990/1333](#), [reg. 8\(3\)](#)
- F57** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)
- F58** Words in [s. 54\(2\)\(c\)](#) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 34\(a\)\(i\)](#); [S.R. 1991/411](#), [art. 2](#)
- F59** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)
- F60** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)
- F61** Words in [s. 54\(4\)](#) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 34\(b\)\(i\)](#); [S.R. 1991/411](#), [art.2](#)

#### Marginal Citations

- M18** 1974 c. 49.
- M19** 1980 c. 25.

## 55 Winding up of insurance companies with long term business.

- (1) No insurance company to which this Part of this Act applies which is an unincorporated body and carries on long term business shall be made the subject of bankruptcy proceedings or, in Scotland, sequestration proceedings.
- (2) No insurance company to which this Part of this Act applies which carries on long term business shall be wound up voluntarily.
- (3) Section 29(1) above shall not have effect in relation to the winding up of a company to which section 28(1) above applies but, subject to subsection (4) below and to rules made by virtue of section 59(2) below, in any such winding up—
- the assets representing the fund or funds maintained by the company in respect of its long term business shall be available only for meeting the liabilities of the company attributable to that business;
  - the other assets of the company shall be available only for meeting the liabilities of the company attributable to its other business.
- (4) Where the value of the assets mentioned in either paragraph of subsection (3) above exceeds the amount of the liabilities mentioned in that paragraph the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.

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- (5) In relation to the assets falling within either paragraph of subsection (3) above the creditors mentioned in [F62section 168(2) of the Insolvency Act 1986] or, as the case may be, [F63Article 143(2) of the Insolvency (Northern Ireland) Order 1989] shall be only those who are creditors in respect of liabilities falling within that paragraph; and any general meetings of creditors summoned for the purposes of that section shall accordingly be separate general meetings of the creditors in respect of the liabilities falling within each paragraph.
- (6) Where under section [F64212 of the Insolvency Act 1986] or [F65Article 176 of the Insolvency (Northern Ireland) Order 1989] (defalcations of directors etc. disclosed in course of winding up) a court orders any money or property to be repaid or restored to a company or any sum to be contributed to its assets then, if and so far as the wrongful act which is the reason for the making of the order related to assets representing a fund or funds maintained by the company in respect of its long term business, the court shall include in the order a direction that the money, property or contribution shall be treated for the purposes of this Act as assets of that fund or those funds and this Act shall have effect accordingly.

#### Textual Amendments

- F62** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)
- F63** Words s. 55(5) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 35\(a\)](#); [S.R. 1991/411](#), [art.2](#)
- F64** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)
- F65** Words in s. 55(6) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 35\(b\)](#); [S.R. 1991/411](#), [art.2](#)

## 56 Continuation of long term business of insurance companies in liquidation.

- (1) This section has effect in relation to the winding up of an insurance company to which this Part of this Act applies, being a company carrying on long term business.
- (2) The liquidator shall, unless the court otherwise orders, carry on the long term business of the company with a view to its being transferred as a going concern to another insurance company, whether an existing company or a company formed for that purpose; and, in carrying on that business as aforesaid, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.
- (3) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the company attributable to its long term business require the appointment of a special manager of the company's long term business, he may apply to the court, and the court may on such application appoint a special manager of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.
- (4) [F66Section 177(5) of the Insolvency Act 1986] or, in the case of a special manager appointed in proceedings in Northern Ireland, [F67Article 151(5) of the Insolvency (Northern Ireland) Order 1989] (special manager to give security and receive remuneration) shall apply to a special manager appointed under subsection (3) above as they apply to a special manager appointed under [F66section 177 of the said Act of 1986] or, as the case may be, [F68Article 151 of the said Order of 1989]

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- (5) The court may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by the company in the course of carrying on its long term business.
- (6) The court may, on the application of the liquidator, a special manager appointed under subsection (3) above or the Secretary of State, appoint an independent actuary to investigate the long term business of the company and to report to the liquidator, the special manager or the Secretary of State, as the case may be, on the desirability or otherwise of that business being continued and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.
- (7) Notwithstanding [<sup>F69</sup>section 167 of, and Schedule 4 to, the Insolvency Act 1986] or, as the case may be, [<sup>F70</sup>Article 142 of, and Schedule 2 to, the Insolvency (Northern Ireland) Order 1989] (which requires a liquidator to obtain the sanction of the court or [<sup>F71</sup>a specified committee] for the bringing of legal proceedings in the name of and on behalf of the company) the liquidator may without any such sanction make an application in the name of and on behalf of the company under section 49 above.
- (8) In this section “the court” means the court having jurisdiction to wind up the company.

#### Textual Amendments

- F66** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\), s. 439\(2\), Sch. 14](#)
- F67** Words in s. 56(4) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), [Sch. 9 para. 36\(a\)\(i\)](#); S.R. 1991/411, [art. 2](#)
- F68** Words in s. 56(4) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), [Sch. 9 para. 36\(a\)\(ii\)](#); S.R. 1991/411, [art. 2](#)
- F69** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\), s. 439\(2\), Sch. 14](#)
- F70** Words in s. 56(7) substituted (N.I.) (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), [Sch. 9 para. 36\(b\)\(i\)](#); S.R. 1991/411, [art. 2](#)
- F71** Words in s. 56(7) substituted (N.I.) by [Insolvency Act 1985 \(c. 65, SIF 66\), s. 235\(1\), Sch. 8 para. 37\(3\)\(b\)](#) and S.I. 1989/2405 (N.I. 19), art. 381(2), [Sch. 9 para. 36\(b\)\(ii\)](#); S.R. 1991/411, [art. 2](#)

## 57 Subsidiary companies.

- (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to an insurance company to which this Part of this Act applies under an arrangement in pursuance of which the first-mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which the transfer was made (in this section called the principal company), then, if the principal company is being wound up by [<sup>F72</sup>or under the supervision of] the court, the court shall, subject to the provisions of this section, order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the court necessary, with a view to the companies being wound up as if they were one company.
- (2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the court, be the commencement of the winding up of the subsidiary company

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- (3) In adjusting the rights and liabilities of the members of the several companies between themselves, the court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.
- (4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the court shall not direct the subsidiary company to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the court is of the opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.
- (5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.
- (6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

#### Textual Amendments

**F72** Words repealed (E.W.S.) by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), [Sch. 10 Pt. II](#) and [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 437, [Sch. 11 para. 7](#)

## 58 Reduction of contracts as alternative to winding up.

In the case of an insurance company which has been proved to be unable to pay its debts, the court may, if it thinks fit, reduce the amount of the contracts of the company on such terms and subject to such conditions as the court thinks just, in place of making a winding up order.

## 59 Winding up rules.

- (1) Rules may be made under [\[<sup>F73</sup>section\]\[<sup>F74</sup>411 of the Insolvency Act 1986\]](#) or [\[<sup>F75</sup>Article 359 of the Insolvency \(Northern Ireland\) Order 1989\]](#) (general rules about winding up) for determining the amount of the liabilities of an insurance company to policy holders of any class or description for the purpose of proof in a winding up and generally for carrying into effect the provisions of this Part of this Act with respect to the winding up of insurance companies.
- (2) Without prejudice to the generality of subsection (1) above, rules under [\[<sup>F76</sup>section\]\[<sup>F77</sup>411 of the Insolvency Act 1986\]](#) or, as the case may be, [\[<sup>F78</sup>Article 359 of the said Order of 1989\]](#) may make provision for all or any of the following matters—
  - (a) the identification of the assets and liabilities falling within either paragraph of subsection (3) of section 55 above;
  - (b) the apportionment between the assets falling within paragraphs (a) and (b) of that subsection of the costs, charges and expenses of the winding up and of any

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debts of the company having priority under [<sup>F77</sup>sections 175 and 176 of, and Schedule 6 to, the Insolvency Act 1986], or, as the case may be, [<sup>F79</sup>Articles 149 and 150 of, and Schedule 4 to, the Insolvency (Northern Ireland) Order 1989];

- (c) the determination of the amount of liabilities of any description falling within either paragraph of that subsection for the purpose of establishing whether or not there is any such excess in respect of that paragraph as is mentioned in subsection (4) of section 55 above;
- (d) the application of assets within paragraph (a) of the said subsection (3) for meeting the liabilities within that paragraph;
- (e) the application of assets representing any such excess as is mentioned in the said subsection (4).

#### Textual Amendments

- F73** Word substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1), [Sch. 8 para. 37\(4\)\(a\)](#)
- F74** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)
- F75** Words s. 59(1) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 37\(a\)](#); [S.R. 1991/411](#), [art.2](#)
- F76** Word substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1), [Sch. 8 para. 37\(4\)\(b\)](#)
- F77** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)
- F78** Words in s. 59(2) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 37\(b\)\(i\)](#); [S.R. 1991/411](#), [art.2](#)
- F79** Words s. 59(2)(b) substituted (N.I.) (1.10.1991) by [S.I. 1989/2405 \(N.I. 19\)](#), art. 381(2), [Sch. 9 para. 37\(b\)\(ii\)](#); [S.R. 1991/411](#), [art.2](#)

*Changes of director, controller or manager etc.*

## 60 Approval of proposed managing director or chief executive of insurance company.

- (1) No insurance company to which this Part of this Act applies shall appoint a person as managing director or chief executive of the companies unless—
  - (a) the company has served on the Secretary of State a written notice stating that it proposes to appoint that person to that position and containing such particulars as may be prescribed; and
  - (b) either the Secretary of State has, before the expiration of the period of three months beginning with the date of service of that notice, notified the company in writing that there is no objection to that person being appointed to that position or that period has elapsed without the Secretary of State having served on the company a written notice of objection.
- (2) A notice served by a company under subsection (1)(a) above shall contain a statement signed by the person proposed to be appointed that it is served with his knowledge and consent.
- (3) The Secretary of State may serve a notice of objection under subsection (1) above on the ground that it appears to him that the person proposed to be appointed is not a fit and proper person to be appointed to the position in question, but before serving such a notice the Secretary of State shall serve on the company and on that person a preliminary written notice stating—

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- (a) that the Secretary of State is considering the service on the company of a notice of objection on that ground; and
  - (b) that the company and that person may, within the period of one month from the date of service of the preliminary notice, make written representations to the Secretary of State and, if the company or that person so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (4) The Secretary of State shall not be obliged to disclose to the company or to the person proposed to be appointed any particulars of the ground on which he is considering the service on the company of a notice of objection.
- (5) Where representations are made in accordance with this section the Secretary of State shall take them into consideration before serving the notice of objection.
- 61 Approval of person proposing to become controller of insurance company where section 60 does not apply.**
- (1) No person shall become a controller of an insurance company to which this Part of this Act applies otherwise than by virtue of an appointment in relation to which section 60 above has effect unless—
- (a) he has served on the Secretary of State a written notice stating that he intends to become a controller of that company and containing such particulars as may be prescribed; and
  - (b) either the Secretary of State has, before the expiration of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming a controller of the company or that period has elapsed without the Secretary of State having served on him a written notice of objection.
- (2) The Secretary of State may serve a notice of objection under subsection (1) above on the ground that it appears to him that the person concerned is not a fit and proper person to be a controller of the company, but before serving such a notice the Secretary of State shall serve on that person a preliminary written notice stating—
- (a) that the Secretary of State is considering the service on him of a notice of objection on that ground; and
  - (b) that that person may, within the period of one month from the date of service of the preliminary notice, make written representations to the Secretary of State and, if that person so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- [<sup>F80</sup>(2A) The Secretary of State may serve a notice of objection under subsection (1) above 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 <sup>F81</sup>; or
  - (b) Article 32b(4) of the first long term insurance Directive <sup>F82</sup>.]

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

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

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### Textual Amendments

- F80** S. 61(2A) inserted (19.11.1992) by S.I. 1992/2890, [reg. 4](#)
- F81** Article 29b(4) was inserted by Council Directive 90/618/EEC, Article 4.
- F82** Article 32b(4) was inserted by Council Directive 90/619/EEC, Article 9.

VALID FROM 01/07/1994

### [<sup>F83</sup>61A Approval of acquisition of notifiable holding in UK company.

- (1) No person who is a controller of a UK company shall acquire a notifiable holding in that company, or in another company of which it is a subsidiary undertaking, unless—
- (a) he has served on the Secretary of State a written notice stating—
    - (i) that he intends to acquire such a holding; and
    - (ii) the number of the shares or details of the voting rights which he proposes to acquire; and
  - (b) either the Secretary of State has, before the expiration of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his proposed acquisition of the holding, or that period has elapsed without the Secretary of State having served on him a written notice of objection.
- (2) The Secretary of State may serve a notice of objection under subsection (1) above on the ground—
- (a) that it appears to him that the person concerned is not a fit and proper person to acquire such a holding; or
  - (b) that it appears to him that, if that person were to acquire such a holding, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.
- (3) Subsections (2) to (4) of section 61 above shall (with the necessary modifications) apply for the purposes of this section as they apply for the purposes of that section.]

### Textual Amendments

- F83** S. 61A inserted (1.7.1994) by S.I. 1994/1696, [reg. 34](#)

VALID FROM 01/07/1994

### [<sup>F84</sup>61B Further provisions with respect to controllers of UK companies.

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

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### Textual Amendments

**F84** S. 61B inserted (1.7.1994) by S.I. 1994/1696, reg. 35(1)

## 62 Duty to notify change of director, controller or manager.

- (1) A person who becomes or ceases to be a controller of an insurance company to which this Part of this Act applies shall, before the expiration of the period of seven days beginning with the day next following that on which he does so, notify the insurance company in writing of that fact and of such other matters as may be prescribed; and a person who becomes a director or manager of any such insurance company shall, before the expiration of the period of seven days beginning with the day next following that on which he does so, notify the insurance company in writing of such matters as may be prescribed.
- (2) 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 director, controller or manager of the company and of any matter of which any such person is required to notify the company under subsection (1) above; and that notice shall be given before the expiration of the period of fourteen days beginning with the day next following that on which that fact or matter comes to the company's knowledge.

## 63 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 60 above shall have effect as if the references to a managing director or chief executive were references to a principal United Kingdom executive;
  - (b) section 61 above shall not apply;
  - (c) section 62 above 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 60 above shall have effect as if the references to a chief executive included references to a principal United Kingdom executive; and
  - (b) section 62 above 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)(b) 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.



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**[63A** <sup>F85</sup>**Duty to notify change of control**

- (1) A person resident or having its head office in a country or territory other than a member State who becomes the parent undertaking of an insurance company—
  - (a) which has its head office in the United Kingdom; and
  - (b) to which this Part of this Act applies,shall before the expiration of the period of fourteen days beginning with the day next following that on which he becomes the parent undertaking notify the Secretary of State in writing of that fact.
- (2) Subsection (1) above shall not apply if the insurance company concerned—
  - (a) is required to give notice to the Secretary of State in accordance with section 62(2) above; or
  - (b) is not authorised to carry on in any member State any insurance business other than reinsurance business.]

**Textual Amendments**

**F85** S. 63A inserted (19.11.1992) by S.I. 1992/2890, reg.5

**64 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 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.

*Miscellaneous*

**65 Documents deposited with Secretary of State.**

- (1) The Secretary of State shall deposit with the registrar of companies one copy of—
  - (a) any document deposited with the Secretary of State under section 22 above, including any document obtained under subsection (5) of that section;
  - (b) any document deposited with him under section 42(4) or 50(4) above.
- (2) Subject to subsection (3) below, any document deposited under this section or section 25(5) or 26(3) above with the registrar of companies shall be open to inspection and copies thereof may be procured by any person on payment of such fees as the Secretary of State may direct.
- (3) Subsection (2) above shall not apply to any document if it is a copy of a document in respect of which a dispensation has been granted under section 23(2) above.
- (4) Every document deposited with the Secretary of State under this Part of this Act and certified by the registrar of companies to be a document so deposited shall be deemed to be a document so deposited; and every document purporting to be certified by the registrar of companies to be a copy of a document so deposited shall be deemed to be

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a copy of that document and shall be received in evidence as if it were the original document unless some variation between it and the original is proved.

## 66 Documents deposited in Northern Ireland.

Any insurance company which is required to prepare and deliver accounts under [<sup>F86</sup>Articles 235 and 249 or Article 649 of the Companies (Northern Ireland) Order 1986] shall deposit with the registrar of companies in Northern Ireland one copy of—

- (a) any document deposited with the Secretary of State under section 22(1), 22(2), 22(6), 42(4) or 50(4) above;
- (b) any document supplied by the company to the Secretary of State under section 22(5) above.

### Textual Amendments

**F86** Words substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)

## 67 Power to treat certain business as or as not being ordinary long-term insurance business.

- (1) The Secretary of State may, on the application or with the consent of an insurance company to which this Part of this Act applies, by order direct that for the purposes of the application to the company of all or any of the provisions to which this section applies—
  - (a) business of a kind specified in the order, not being ordinary long-term insurance business, shall be treated as being such business; or
  - (b) ordinary long-term insurance business of a kind so specified shall be treated as not being such business.
- (2) An order under subsection (1)(b) above may direct that the business specified in the order shall be treated as falling within a specified class of business.
- (3) An order under this section may be subject to conditions and may be varied or revoked at any time by the Secretary of State.
- (4) The provisions to which this section applies are sections 17 to 20, 25, 28 to 31, 42, 55, 56 and 59(2) of this Act and section 21 of the <sup>M20</sup>Policyholders Protection Act 1975 and Schedule 3 to that Act.

### Marginal Citations

**M20** 1975 c. 75.

## 68 Power to modify Part II in relation to particular companies.

- (1) The Secretary of State may, on the application or with the consent of an insurance company to which this Part of this Act applies, by order direct that all or any of the provisions to which this section applies shall not apply to the company or shall apply to it with such modifications as may be specified in the order.
- (2) An order under this section may be subject to conditions.

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- (3) An order under this section may be revoked at any time by the Secretary of State; and the Secretary of State may at any time vary any such order on the application or with the consent of the company to which it applies.
- (4) The provisions to which this section applies are sections 16 to 22, 23(1) and 25 to 36 of this Act, the provisions of regulations made for the purposes of any of those sections and the provisions of any valuation regulations.
- (5) In relation to section 31 above, subsection (1) above shall have effect as if the reference to an insurance company to which this Part of this Act applies included a reference to any subordinate company within the meaning of that section of any such insurance company.

## **69 Power to alter insurance company's financial year.**

The Secretary of State may extend or shorten, for the purposes of this Part of this Act, the duration of any financial year of an insurance company to which this Part of this Act applies.

## **70 Service of notices.**

- (1) Any notice which is by this Part of this Act required to be sent to any policy holder may be addressed and sent to the person to whom notices respecting that policy are usually sent, and any notice so addressed and sent shall be deemed to be notice to the holder of the policy.
- (2) Where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any notice which is by this Part of this Act required to be sent to policy holders shall also be sent to that person at the address specified by him in his notice.
- (3) Any notice to be served on any person by the Secretary of State under section 46, 60 or 61 above may be served by post, and a letter containing that 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.

## **71 Offences under Part II.**

- (1) Any person who—
  - (a) makes default in complying with sections 28 to 30 or 62(1) above; or
  - (b) in purported compliance with a requirement imposed under section 44 above furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular; or
  - (c) causes or permits to be included in—
    - (i) any document copies of which are, by section 22 of this Act, required to be deposited with the Secretary of State;
    - (ii) any notice, statement or certificate served or furnished under or by virtue of section 19(2) or 26(1) above;
    - (iii) any document deposited with the Secretary of State under section 25(4) or 42(4) above;
    - (iv) any statement sent out under section 49(3)(b) above or made available under section 51(2)(c) above,

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a statement which he knows to be false in a material particular or recklessly causes or permits to be so included any statement which is false in a material particular,

shall be guilty of an offence.

- (2) Any person guilty of an offence under subsection (1) above 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>F87</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>M21</sup>Magistrates' Courts Act 1980;
    - (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>M22</sup>Criminal Procedure (Scotland) Act 1975;
    - <sup>F88</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.]

<sup>F89</sup>(2A) A person who intentionally obstructs the exercise of any rights conferred by a warrant issued under section 44A above or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) of that section is guilty of an offence and liable—

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

- (3) Subject to the following provisions of this section—
- (a) any insurance company which makes default in complying with, or with a requirement imposed under, any provision of this Part of this Act, being a default for which no penalty is provided by the foregoing provisions of this section; and
  - (b) any other person who makes default in complying with, or with a requirement imposed under, section 26, 29(7), 31, 38, 39, 40, 41, 44, 45, 49(4), 50(4) <sup>F90</sup>, 61(1) or 63A] above,

shall be guilty of an offence and liable, on summary conviction in England and Wales and Scotland to a fine not exceeding level 5 on the standard scale and, on summary conviction in Northern Ireland to a fine not exceeding £400.

- (4) Where a person continues to make default in complying with—
- (a) section 22(1) or (2), 24(1), 25(4) or 42(4) above; or
  - (b) a requirement imposed under section 43 or 44(1) above,
- after being convicted of that default he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £40 for each day on which the default so continues.

<sup>F91</sup>(0) A person who publishes or discloses any information or document in contravention of section 47A above shall be guilty of an offence under section 449 of the Companies Act <sup>F92</sup>or Article 442 of the Companies (Northern Ireland) Order 1986] and liable accordingly.]

- (5) A person shall not be guilty of an offence by reason of his default in complying with section 61 or 62(1) above if he proves that he did not know that the acts or

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circumstances by virtue of which he became or ceased to be a controller of the body in question were such as to have that effect.

- (6) Where a person is charged with an offence in respect of his default in complying with a requirement imposed under section 44(2) or (3) above to produce any [<sup>F93</sup>documents] it shall be a defence to prove that they were not in his possession or control and that it was not reasonably practicable for him to comply with the requirement.
- (7) An insurance company shall not be guilty of an offence by reason of its default in complying with section 16 [<sup>F94</sup>21A][<sup>F95</sup>31A] or 51 (other than subsection (2)(c) above.

#### Textual Amendments

- F87** Words repealed by S.I. 1984/703 (N.I. 3), art. 19(1)(2), **Sch. 6 para. 31(a)**, Sch. 7
- F88** S. 71(2)(b)(iii) substituted for words after sub-paragraph (ii) by S.I. 1984/703 (N.I. 3), art. 19(1), **Sch. 6 para. 31(b)**
- F89** S. 71(2A) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 77(5)**
- F90** Words in s. 71(3)(b) substituted (19.11.1992) by S.I. 1992/2890, **reg.6**
- F91** S. 71(4A) inserted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, **Sch. 2**
- F92** Words inserted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F93** Word substituted by Companies Act 1989 (c. 40, SIF 27), **s. 77(6)**
- F94** "21A" inserted by Financial Services Act 1986 (c. 60, SIF 69), **s. 135(2)**
- F95** "31A" inserted by Financial Services Act 1986 (c. 60, SIF 69), **s. 136(2)**

#### Marginal Citations

- M21** 1980 c. 43.
- M22** 1975 c. 21.

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