



Insurance Companies Act 1982 (repealed)

1982 CHAPTER 50

PART II

REGULATION OF INSURANCE COMPANIES

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;
 - [^{F1}(aa) that the company is a UK or non-EC company and it appears to him that any of the criteria of sound and prudent management is not or has not been or may not be or may not have been fulfilled with respect to the company;]
 - (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the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed by this Act or by the Insurance Companies Act 1974;
 - [^{F2}(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 [^{F3}general or long term 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)

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- above or section 24(6) of the ^{M1}Insurance Companies Act 1974 or section 8(6) of the ^{M2}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 ^{M3}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information to the Secretary of State under or for the purposes of any provision of this Act or any enactment repealed by this Act or by the Insurance Companies Act 1974;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 [^{F4}an EFTA State where it has its head office or an EEA State where it] has in accordance with section 9(2) above made a deposit.
- [^{F5}(h) that the company is a Swiss general insurance company which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.]
- (3) The powers conferred on the Secretary of State by [^{F6}sections 39, 40 and 40A]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 [^{F7}section 11 or 12A above] or section 11 of the ^{M4}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. [^{F8}or
- (d) on the grounds that the company is a UK or non-EC company and 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 32 or 35A above.]
- (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

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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.

[^{F9}(4A) The powers conferred on the Secretary of State by sections 43A and 44 below shall be exercisable in respect of a UK or non-EC company to obtain information to enable him to perform his functions under this Act.]

(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 [^{F10}section 96C(1)(c), (d) or (e) below],

[^{F11}(c) any UK company in a case where a person has notified an intention to acquire a notifiable holding in accordance with section 61A(1) below,]

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 [^{F12}or acquired such a holding], as the case may be; but no requirement imposed by virtue of this sub-section 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

- F1** S. 37(2)(aa) inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(1)(a)**
- F2** S. 37(2)(b)(ia) ceased to have effect (1.7.1994) by virtue of S.I. 1994/1696, **reg. 19(1)(b)**
- F3** Words in s. 37(2)(b)(ia) substituted (20.5.1993) by S.I. 1993/174, **reg. 2(1)(b)**
- F4** Words in s. 37(2)(g) substituted (1.7.1994) by S.I. 1994/1696, **reg. 19(c)**
- F5** S. 37(2)(h) inserted (5.1.1994) by S.I. 1993/3127, **reg. 3(6)**
- F6** Words in s. 37(3) substituted (1.7.1994) by S.I. 1994/1696, **reg. 19(2)(a)**
- F7** Words in s. 37(3)(a) substituted (1.7.1994) by S.I. 1994/1696, **reg. 19(2)(b)**
- F8** S. 37(3)(d) and preceding word “or” inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(2)(c)**
- F9** S. 37(4A) inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(3)**
- F10** Words in s. 37(5)(b) substituted (1.7.1994) by S.I. 1994/1696, **reg. 19(4)(a)**
- F11** S. 37(5)(c) inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(4)(b)**
- F12** Words in s. 37(5) inserted (1.7.1994) by S.I. 1994/1696, **reg. 19(4)(c)**

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Marginal Citations

- M1** 1974 c. 49.
M2 1973 c. 58.
M3 1974 c. 49.
M4 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
 - [^{F13}(i) whose head office is in an EFTA State, or
 - (ii) which has in accordance with section 9(2) above made a deposit in an EEA State other than the United Kingdom, or
 - (iii) which is a Swiss general insurance company,]
 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.

Textual Amendments

- F13** S. 38(3)(a)(i)(ii)(iii) substituted for words in s. 38(a) (1.7.1994) by S.I. 1994/1696, reg. 20

39 Maintenance of assets in the United Kingdom.

- [^{F14}(1) The Secretary of State may require—
- (a) in the case of a UK company, that assets of the company of a value which at any time is equal to the whole or a specified proportion of the amount of its EC liabilities shall be maintained in the European Community; and
 - (b) in the case of an insurance company which is not a UK company, that assets 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

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- [^{F15}(a) in the case of a UK company, as assets maintained in the European Community; and
- (b) in the case of an insurance company which is not a UK company, 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 [^{F16}EC or 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).
- [^{F17}(5) In this section—
- (a) any reference to an EC liability is a reference to a liability of the business carried on by the company in the European Community; and
- (b) 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.

Textual Amendments

- F14** S. 39(1)(a)(b) substituted for s. 39(1) (1.7.1994) by S.I. 1994/1696, reg. 21(1)
- F15** S. 39(2)(a)(b) substituted for words in s. 39(2) (1.7.1994) by S.I. 1994/1696, reg. 21(2)
- F16** Words in s. 39(3) substituted (1.7.1994) by S.I. 1994/1696, reg. 21(3)
- F17** S. 39(5) substituted (1.7.1994) by S.I. 1994/1696, reg. 21(4)

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 ^{M5}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

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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.
- (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

M5 1974 c. 49.

[^{F18} 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

F18 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.

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- (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 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.

[^{F19}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

F19 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 [^{F20}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 [^{F20}documents] which that person may specify.
- [^{F21}^{F21}(2A) Subsections (1) and (2) above shall have effect as if any reference to a company included a reference to any person who is or has been a controller, officer, agent or employee of a UK or non-EC company and to any body corporate which is or has been—

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- (a) a parent undertaking or subsidiary undertaking of such a company;
 - (b) a subsidiary undertaking of a parent undertaking of such a company; or
 - (c) a parent undertaking of a subsidiary undertaking of such a company.
- ^{F21}(2B) The Secretary of State may require a UK or non-EC company to furnish him, at a specified time, with a report by a specified person, being an actuary or accountant or other person with relevant professional skills, on any matter about which the Secretary of State has required, or could require, the company to provide information under subsection (1) above.]
- (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 [^{F20}documents] from any company, the Secretary of State or that person shall have the like power to require production of those [^{F20}documents] from any person who appears to him to be in possession of them; but where any person from whom such production is required claims a lien on [^{F20}documents] produced by him, the production shall be without prejudice to the lien.
- (4) Any power conferred by or by virtue of [^{F22}subsections (2), (2A) and (3)]above to require a company or other person to produce [^{F20}documents] shall include power—
- (a) if the [^{F20}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 [^{F20}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.
- ^{F23}(4A) Any person authorised by the Secretary of State may, on producing if required evidence of his authority, enter any premises occupied by—
- (a) a UK or non-EC company on which a requirement under subsection (1) or (2) above has been imposed; or
 - (b) a person on whom or a body on which such a requirement has been imposed by virtue of subsection (2A) above,
- for the purpose of obtaining the information or documents required to be furnished or produced and exercising the powers conferred by subsection (4) above.]
- (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.
- ^{F24}(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

- F20** Word substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 77\(2\)](#)
- F21** [S. 44\(2A\)\(2B\)](#) inserted (1.7.1994) by [S.I. 1994/1696](#), [reg. 24\(1\)](#)
- F22** Words in [s. 44\(4\)](#) substituted (1.7.1994) by [S.I. 1994/1696](#), [reg. 24\(2\)](#)
- F23** [S. 44\(4A\)](#) inserted (1.7.1994) by [S.I. 1994/1696](#), [reg. 24\(3\)](#)
- F24** [S. 44\(6\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 77\(2\)](#)

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[^{F25}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—
 - (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) If 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.

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(8) In this section “document” includes information recorded in any form.]

Textual Amendments

F25 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.

[^{F26}(1) The Secretary of State may require a company to take such action as appears to him to be appropriate—

- (a) 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; or
- (b) in the case of a UK or non-EC company, for the purpose of ensuring that the criteria of sound and prudent management are fulfilled with respect to the company.]

(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 [^{F27}section 11 or 12A above] or section 11 of the ^{M6}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 ^{M7}Insurance Companies Act 1974; or
- (c) where the ground for intervention arises out of the submission by the company to the Secretary of State of an account or statement specifying, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies [^{F28}or

^{F28}(d) on the grounds that the company is a UK or non-EC company and 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 32 or 35A above.]

Textual Amendments

F26 S. 45(1) substituted (1.7.1994) by S.I. 1994/1696, reg. 25(1)

F27 Words in s. 45(2)(a) substituted (1.7.1994) by S.I. 1994/1696, reg. 25(2)(a)

F28 S. 45(2)(d) and preceding word “or” inserted (1.7.1994) by S.I. 1994/1696, reg. 25(2)(b)

Marginal Citations

M6 1981 c. 31.

M7 1974 c. 49.

Status: Point in time view as at 01/04/1996.

Changes to legislation: Insurance Companies Act 1982 (repealed), Cross Heading: Powers of intervention is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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.

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;

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- (b) if the requirement is imposed on a registered society, on the appropriate registrar as defined by section 73(1) of the ^{M8}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 ^{M9}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

- M8** 1965 c. 12.
M9 1969 c. 24

[^{F29}47A Restriction on disclosure of information.

Schedule 2B to this Act (which, subject to certain exceptions, restricts the disclosure of information obtained under or by virtue of this Act) shall have effect.]

Textual Amendments

- F29** S. 47(A) substituted (1.7.1994) by S.I. 1994/1696, reg. 26(1)

[^{F30}47B Privilege from disclosure.

- (1) A requirement imposed under [^{F31}section 43A or 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.

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Changes to legislation: Insurance Companies Act 1982 (repealed), Cross Heading: Powers of intervention is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2^{F32}]

Textual Amendments

- F30** Ss. 47A, 47B inserted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 25
- F31** Words in s. 47B(1) substituted (1.7.1994) by [S.I. 1994/1696](#), reg. 27
- F32** 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) [^{F33}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 ^{M10}Insurance Companies Act 1974.
- (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 [^{F34}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 ^{M11}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 [^{F35}section 438(1) of the Companies Act] or [^{F36}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

- F33** Words substituted by [Companies Consolidated \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F34** Words expressed to be substituted by [S.I. 1986/1035 \(N.I. 9\)](#), art. 23, [Sch. 1 Pt. II](#)
- F35** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F36** Words substituted by [S.I. 1986/1035](#), (N.I. 9), art. 23, [Sch. 1 Pt. II](#)

Marginal Citations

- M10** 1974 c. 49.
- M11** 1980 c. 25.

Status:

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