



# Friendly Societies Act 1992

## 1992 CHAPTER 40

### PART I

#### THE FRIENDLY SOCIETIES COMMISSION

#### [1] **The Friendly Societies Commission.**

- (1) For the purposes of this Act and the 1974 Act there shall be established a body of Commissioners to be called the Friendly Societies Commission (in this Act referred to as “the Commission”).
- (2) The Commission shall consist of not less than 4 and not more than 10 members to be appointed by the Treasury and the Treasury shall appoint one member to be the chairman, and another member to be the deputy chairman, of the Commission.
- (3) Any appointment under subsection (2) above may be on either a full-time or a part-time basis.
- (4) The general functions of the Commission shall be—
  - (a) to promote the protection by each friendly society of its funds;
  - (b) to promote the financial stability of friendly societies generally;
  - (c) to secure that the purposes of each friendly society are in conformity with this Act and any other enactment regulating the purposes of friendly societies;
  - (d) to administer the system of regulation of the activities of friendly societies; and
  - (e) to advise and make recommendations to the Treasury and other government departments on any matter relating to friendly societies,

and the Commission shall have the other functions conferred on it by or under this Act or any other Act [<sup>F1</sup>or any provisions of the law of an EEA State other than the United Kingdom which give effect to the general insurance or life Directives]].

[<sup>F1</sup>(4A) There shall be conferred on the Commission by virtue of this subsection any functions required to be conferred on it by the general insurance or life Directives.]

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- (5) The Commission shall have power to do anything which is calculated to facilitate the discharge of its functions, or is incidental or conducive to their discharge.
- (6) The functions of the Commission, and of its officers and employees, shall be performed on behalf of the Crown.
- (7) The Treasury may by order transfer some or all of the functions of the Commission to such other person or body as the order may specify.
- (8) Without prejudice to the generality of section 121(3) below, an order under this section may in consequence of the transfer—
  - (a) amend any enactment or instrument;
  - (b) direct that the Commission shall cease to exist on a day specified in the order.
- (9) Schedule 1 to this Act shall have effect with respect to the Commission.

#### Textual Amendments

- F1** Words in s. 1(4) inserted (1.9.1994) by S.I. 1994/1984 reg. 3(1)  
S. 1(4A) added (1.9.1994) by S.I. 1994/1984 reg. 3(2)

#### Commencement Information

- II** Ss. 1-4 wholly in force at 8.6.1992 see s. 126(2) and S.I. 1992/1325, art. 2(a).

## [2] Financial provision for Commission.

- (1) There shall be charged on friendly societies such a general charge towards the expenses of the Commission and such fees in respect of the exercise of its functions as are authorised under this section.
- (2) The Treasury may, by regulations, make provision for—
  - (a) a general charge to be levied on friendly societies with respect to each accounting year of the Commission and to be paid at such rate computed by reference to such criteria, at such time and in such manner as may be prescribed by the regulations; and
  - (b) fees of such amounts as may be so prescribed to be paid by friendly societies in respect of the exercise of the Commission's functions in relation to them.
- (3) The provision to be made from time to time under subsection (2) above, by way of the general charge and fees, shall be such as to produce an annual revenue of the Commission sufficient to meet its expenses properly chargeable to revenue account, taking one year with another.
- (4) Regulations under subsection (2) above may include provision for any fees payable by societies to be reduced or for payment of any fees to be waived by the Commission in circumstances determined by or under the regulations.
- (5) The amounts received by the Commission under this section shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Commission, and in so far as not so applied, shall be paid into the Consolidated Fund.

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- (6) In this Part of this Act “accounting year”, in relation to the Commission, means the period of 12 months ending with 31st March in any year, except that the Commission’s first accounting year shall end on 31st March 1993.

**Commencement Information**

**I2** Ss. 1-4 wholly in force at 8.6.1992 see s. 126(2) and S.I. 1992/1325, art. 2(a).

**3 Accounts of Commission and audit.**

- (1) The Commission shall keep proper accounts and proper accounting records and shall prepare in respect of each accounting year a statement of accounts in such form as the Treasury may direct.
- (2) The statement of the accounts required by subsection (1) above may be combined with the statement of the accounts of the Chief Registrar which he is required to prepare as regards his functions.
- (3) The Commission shall send to the Treasury and to the Comptroller and Auditor General, before the end of the period of seven months after the end of each accounting year, a copy of the statement of accounts for that year.
- (4) The Comptroller and Auditor General shall examine, certify and report on every statement of accounts received by him from the Commission and shall lay a copy of the statement and of his report thereon before each House of Parliament.

**Commencement Information**

**I3** Ss. 1-4 wholly in force at 8.6.1992 see s. 126(2) and S.I. 1992/1325, art. 2(a).

**4 Annual and other reports.**

- (1) It shall be the duty of the Commission to lay before the Treasury and before Parliament as soon as possible after the end of each accounting year a report on the discharge of its functions during that year.
- (2) The Commission may lay before Parliament from time to time such other reports relating to the discharge of its functions, whether in relation to friendly societies generally or a particular friendly society, as it thinks fit.]

**Commencement Information**

**I4** Ss. 1-4 wholly in force at 8.6.1992 see s. 126(2) and S.I. 1992/1325, art. 2(a).

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## PART II

### INCORPORATED FRIENDLY SOCIETIES

#### *Constitution and purposes of incorporated friendly societies*

#### **5 Establishment of incorporated friendly societies.**

- (1) This Part of this Act has effect—
  - (a) to enable societies to be established in accordance with this Act and to be registered and incorporated under it; and
  - (b) to enable friendly societies registered under the 1974 Act to be registered and incorporated under this Act.
- (2) A society may be established under this Act if under its proposed memorandum—
  - (a) its purposes are to include the carrying on of one or more activities falling within Head A, B, C or D of Schedule 2 to this Act;
  - (b) any such activity—
    - (i) is to be carried on by the society with a view to the provision, for its members and such persons connected with its members as may be prescribed in its rules, of insurance or other benefits; and
    - (ii) is to be funded by voluntary subscriptions from members of the society, with or without donations; and
  - (c) any other purposes which it is to have are within the permitted capacity of incorporated friendly societies under this Act.
- (3) A society established under this Act is incorporated as from the date of its registration under this Act by the central office.
- (4) The Commission may by order made with the consent of the Treasury vary Schedule 2 to this Act by adding to or deleting, or by varying the description of, any activity for the time being specified in it.
- (5) No such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (6) Schedule 3 to this Act shall have effect in relation to—
  - (a) the procedure for registration of societies as societies incorporated under this Act (in this Act referred to as “incorporated friendly societies”);
  - (b) the memorandum of the purposes and extent of the powers of, and the rules for the regulation of, such societies,
  - (c) the name and registered office of such societies,
 and certain incidents of membership of incorporated friendly societies.
- (7) In this Part of this Act references to the permitted capacity of incorporated friendly societies under this Act are to the capacity to carry on all the activities mentioned in section 7(2) below.

#### **6 Incorporation of registered friendly societies.**

- (1) A registered friendly society may be registered and incorporated under this Act if—

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- (a) the conditions mentioned in section 5(2) above are satisfied by reference to the society's proposed memorandum; and
  - (b) the society complies with the requirements in Schedule 3 to this Act which are applicable to its registration under this Act;
- and such a society is so incorporated as from the date of its registration by the central office.
- (2) On the incorporation of a registered friendly society all property held immediately before incorporation by any person in trust for the society shall become by virtue of this subsection the property of the society after incorporation.
  - (3) After its incorporation the society shall continue to be entitled to all rights and subject to all liabilities to which it was entitled or subject immediately before incorporation.
  - (4) On the incorporation of a registered society with registered or unregistered branches—
    - (a) all property held immediately before incorporation by any person in trust for any branch of the society, and
    - (b) all rights and liabilities to which any such branch was then entitled or subject, shall, subject to subsection (5) below, become by virtue of this subsection property, rights and liabilities of the society.
  - (5) A registered friendly society may (in accordance with paragraph 2 of Schedule 4 to this Act) make a scheme identifying any property, rights or liabilities of any branch of the society which are not to be transferred to the society on its incorporation; and any such property, rights or liabilities shall be excluded from transfer under subsection (4) above.
  - (6) On the incorporation of a registered friendly society, its registration under the 1974 Act and that of any registered branch of the society shall be cancelled by the central office.
  - (7) Schedule 4 to this Act shall have effect for supplementing this section.

## **7 Purposes and powers of an incorporated friendly society.**

- (1) The purposes of an incorporated friendly society shall be those provided for by the society's memorandum.
- (2) The purposes for which an incorporated friendly society may exist are—
  - (a) the carrying on, subject to section 5(2)(b) above, of—
    - (i) any business of any description falling within a class specified in Head A or B or within Head C of Schedule 2 to this Act, or
    - (ii) any activity falling within Head D of that Schedule; and
  - (b) the carrying on, in addition to any business or activity falling within paragraph (a) above, of any of the following, namely—
    - (i) social or benevolent activities in accordance with section 10 below;
    - (ii) group insurance business in accordance with section 11 below;
    - (iii) reinsurance, in accordance with section 12 below, of risks insured by other friendly societies;
    - (iv) control or joint control of bodies corporate in accordance with section 13 below;

and the memorandum of an incorporated friendly society may also confer on the society power to do anything falling within Schedule 5 to this Act.

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- (3) The memorandum of an incorporated friendly society may confer on it any other power specified in this Part of this Act, but no such power may be exercised except for carrying out the society's purposes.
- (4) An incorporated friendly society shall, subject to the provisions of this Act, its memorandum and its rules, have any other power which is incidental or conducive to the carrying out of its purposes or for doing anything falling within Schedule 5 to this Act.
- (5) Nothing in this Act shall be taken as preventing an incorporated friendly society from providing in its rules—
  - (a) for such system of representation of the members in the making of decisions by the society as the society may think fit;
  - (b) for the division of the society's members into groups under the control of the society and bound to contribute to the funds of the society but, subject to that, having funds and property of their own vested in trustees and administered by themselves or through their own trustees, officers or committees (and in accordance with their own rules);
  - (c) for the delegation of authority to any such group (or to its committee or any of its officers) to act, within such limits as the society may set, on the society's behalf;

but no such group may do anything on its own account which does not fall <sup>[F2]</sup>within section 10 below or] within Head D of Schedule 2 or within Schedule 5 to this Act.
- (6) Schedule 6 to this Act shall have effect in relation to the making of contracts and execution of documents by incorporated friendly societies.

#### **Textual Amendments**

**F2** Words in s. 7(5) inserted (1.8.1996) by S.I. 1996/1188 art. 3

### **8 Effect of the memorandum of an incorporated society.**

- (1) The provisions of the memorandum of an incorporated friendly society are binding upon—
  - (a) each of the members and officers of the society,
  - (b) all persons claiming on account of a member or under its rules,

and all such members, officers and persons (but no others) shall be taken to have notice of the provisions of the memorandum.
- (2) A person not of a description mentioned in subsection (1)(a) or (b) above who is a party to a transaction with an incorporated friendly society which is within the permitted capacity of such societies under this Act is not bound to enquire as to whether the transaction is within the capacity of the society in question.
- (3) Subsection (4) below applies to any act of an incorporated society which is within the permitted capacity of such societies under this Act but is beyond the capacity of the society in question.
- (4) In favour of a person who—
  - (a) is not a person mentioned in subsection (1) above;

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- (b) gives valuable consideration for the act; and
    - (c) does not know that the act is beyond the capacity of the society,
- any act to which this subsection applies is deemed to be one which is within the capacity of the society to enter into, notwithstanding the provisions of the memorandum.
- (5) Where an incorporated friendly society purports to transfer or grant an interest in property, the fact that the act was beyond the capacity of the society does not affect the title of a person who in good faith subsequently acquires the property or an interest in it for valuable consideration and without actual notice of the circumstances affecting the validity of the society's act.
  - (6) Subsection (4) above does not affect—
    - (a) the right of a member of an incorporated friendly society to bring proceedings to restrain the doing of an act (other than an act done in fulfilment of a legal obligation arising from a previous act of the society) which is beyond the capacity of the society;
    - (b) the duty of the committee of management to observe any limitation on their powers flowing from the society's memorandum; or
    - (c) any liability incurred by any person by reason of the society acting beyond its capacity.
  - (7) Relief from any liability mentioned in subsection (6)(c) above must be agreed to by special resolution.
  - (8) In any proceedings arising out of subsection (4) above, the burden of proving that a person knew that an act was beyond the capacity of the society in question lies on the person making the allegation.
  - (9) In this section “transaction” includes any act.

## **9 Effect of the rules of an incorporated society.**

- (1) The provisions of the rules of an incorporated friendly society are binding upon—
  - (a) each of the members and officers of the society,
  - (b) all persons claiming on account of a member or under its rules,and all such members, officers and persons (but no others) shall be taken to have notice of the provisions of the rules.
- (2) A party to a transaction with an incorporated friendly society who is not of a description mentioned in subsection (1)(a) or (b) above is not bound to enquire as to any limitation on the powers of the committee of management to bind the society.
- (3) Subsection (4) below applies in relation to any act of an incorporated friendly society which is, or is deemed by section 8(4) above to be, within the capacity of the society and is decided upon by the committee of management acting beyond their powers under the constitution of the society.
- (4) In favour of a person who—
  - (a) is not a person mentioned in subsection (1) above;
  - (b) gives valuable consideration for an act to which this subsection applies; and
  - (c) does not know that the act is beyond the powers of the committee of management;

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the power of the committee of management to bind the society shall be deemed free of any limitation in the society's constitution.

- (5) Where an incorporated friendly society purports to transfer or grant an interest in property, the fact that the committee of management acted beyond their powers under the society's constitution does not affect the title of a person who in good faith subsequently acquires the property or an interest in it for valuable consideration and without actual notice of the circumstances (if any) affecting the validity of the society's act.
- (6) Subsection (4) above does not affect—
  - (a) the right of a member of an incorporated friendly society to bring proceedings to restrain the doing of an act (other than an act done in fulfilment of a legal obligation arising from a previous act of the society) which is beyond the powers of the committee of management;
  - (b) the duty of the committee of management to act within their powers under the constitution of the society;
  - (c) any liability incurred by any person by reason of the committee of management exceeding their powers.
- (7) Action by the committee of management of an incorporated friendly society which is beyond their powers under the society's constitution but is within its capacity may be ratified by the society in general meeting in such manner as its rules may provide; but relief from any liability mentioned in subsection (6)(c) above must be agreed to by special resolution separate from any resolution ratifying the committee's action.
- (8) In this section—
  - (a) references to limitations on the committee's powers under the constitution of the society include limitations deriving from a resolution of the society in general meeting or any agreement between the members of the society; and
  - (b) "transaction" includes any act.
- (9) In any proceedings arising out of subsection (4) above, the burden of proving that a person knew that an act was beyond the powers of the committee of management lies on the person making the allegation.
- (10) This section shall not affect the application, in relation to an incorporated friendly society, of any rule of law relating to the validity of acts which are within the capacity of a body corporate but may have been affected by defects arising from its internal management under its constitution.

## **10 Social and benevolent activities.**

- (1) An incorporated friendly society may include among its purposes the carrying on of any social or benevolent activity which is not inconsistent with the other purposes of the society.
- (2) For the purposes of this section "benevolent activity" means the making of donations, the raising of funds or any other activity carried on for a charitable purpose or for any other benevolent purpose.



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## 11 Group insurance.

- (1) An incorporated friendly society may include among its purposes the carrying on of any group insurance business.
- (2) In this Act “group insurance business” means business (carried on in accordance with the society’s rules) which—
  - (a) is of a description falling within Head A, or class 2 of Head B, of Schedule 2 to this Act; and
  - (b) is carried on as the business of providing benefits, in pursuance of a contract with a qualifying person, for or in respect of the members of a group scheme.
- (3) For the purposes of this section—

“group scheme” means a scheme or other arrangement under which benefits are to be provided for or in respect of persons who are members of the scheme and who qualify for membership by virtue of—

  - (a) being employees of a particular employer, or
  - (b) being members of some other group of persons of a description prescribed in regulations under subsection (7) below;

“qualifying person” means a person who has established or is otherwise responsible for the operation of a group scheme or a trustee of such a scheme; and

“member”, in relation to a group scheme, includes any person for or in respect of whom benefits are to be provided under the scheme, whatever the terms in which such persons are described in the scheme.
- (3) Group insurance business may be carried on by an incorporated friendly society whether or not members of the group scheme are, or are required by the society to be, members of the society.
- (4) Where an incorporated friendly society carries on any group insurance business and the rules of the society so provide, any qualifying person with whom the society contracts (or his nominee) may be accorded the rights of a member of the society (including any right to vote) for the purpose of participating in the affairs of the society in the interests of the members of the group scheme with which he is concerned.
- (5) A person who is accorded the rights of a member of a society by virtue of subsection (4) above shall, for the purposes of any power conferred on the Commission by this Act which is exercisable in the interests of members of the society, be treated as if he were a member of the society.
- (6) The rules of an incorporated friendly society may not prevent a person from being a member of the society in his private capacity by reason only of the fact that he has been accorded the rights of a member by virtue of subsection (4) above.
- (7) The Commission may make regulations specifying the manner in which group insurance business may be carried on by incorporated friendly societies; and such regulations may in particular include limitations or requirements relating to—
  - (a) the contracts in pursuance of which group insurance business may be carried on; or
  - (b) the persons with whom, or the groups of persons for whose benefit, such contracts may be made.

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## 12 Reinsurance.

- (1) An incorporated friendly society may include among its purposes the carrying on of any reinsurance business to which subsection (2) below applies to such extent or in such circumstances as may from time to time be approved by the appropriate actuary.
- (2) This subsection applies to business consisting of the effecting and carrying out of contracts of reinsurance of risks which—
  - (a) are insured or to be insured by any other friendly society (whether incorporated or not); and
  - (b) are of a class or part of a class of insurance business which the society carrying on the reinsurance business itself carries on.
- (3) An incorporated friendly society which carries on any insurance business may provide in its rules for the reinsurance to such extent as may from time to time be approved by the appropriate actuary of any risks against which persons are or are to be insured by the society.

## 13 Control of subsidiaries and other bodies corporate.

- (1) Subject to the following provisions of this section, an incorporated friendly society may include among its purposes any of the following activities—
  - (a) forming subsidiaries;
  - (b) taking part with others in forming bodies corporate to be jointly controlled by it;
  - (c) otherwise acquiring, or keeping, control or joint control of bodies corporate.
- (2) An incorporated friendly society may form or take part in forming or may otherwise acquire control or joint control of the following bodies corporate (referred to as “qualifying bodies”) but no others—
  - (a) companies whose objects are limited to the carrying on of any one or more of the activities specified in Schedule 7 to this Act; and
  - (b) bodies formed in another member State whose purposes are limited to the carrying on of any one or more of those activities in another member State.
- (3) A company or other body corporate is not a qualifying body if its objects or purposes enable it to form or take part in forming or otherwise to acquire control or joint control of bodies corporate.
- (4) An incorporated friendly society may not take part in forming or acquire control of a body corporate jointly with any person other than another incorporated friendly society without the consent of the Commission.
- (5) The Commission may give consent without conditions or subject to such conditions as it thinks fit.
- (6) Any alteration of the memorandum of an incorporated friendly society to include among its purposes and powers the carrying on of any activity such as is mentioned in subsection (1) above must be adopted by a special resolution of the society in general meeting; and any amendment of a provision in its memorandum which permits it to do so must also be so adopted.
- (7) A registered friendly society may not include in a memorandum adopted for the purposes of paragraph 2(1)(c) of Schedule 3 to this Act any provision enabling it on

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incorporation to carry on any activity such as is mentioned in subsection (1) above unless its inclusion has been authorised by a special resolution of the society in general meeting.

(8) The Commission may by order made with the consent of the Treasury vary Schedule 7 to this Act by adding to or deleting from it any activity or by varying the description of any activity for the time being specified in it.

(9) For the purposes of this Act—

(a) an incorporated friendly society has control of a body corporate if the society—

(i) holds a majority of the voting rights in it; or

(ii) is a member of it and has the right to appoint or remove a majority of its board of directors; or

(iii) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it;

(b) a body corporate is a subsidiary of an incorporated friendly society if the society has control of it.

(c) an incorporated friendly society has joint control of a body corporate if, in pursuance of an agreement or other arrangement between them, the society and another person—

(i) hold a majority of the voting rights in that body; or

(ii) are members of it and together have the right to appoint or remove a majority of its board of directors; or

(iii) are members of it and alone control, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it;

(d) a body corporate is a body jointly controlled by an incorporated friendly society if the society has joint control of it;

and a society acquires joint control whenever any of the conditions mentioned in paragraph (c) above are satisfied with respect to a body corporate, notwithstanding that it may already be a subsidiary of the society.

(10) Schedule 8 to this Act shall have effect for supplementing this section.

(11) In this section “company” means a company within the meaning of the <sup>M1</sup>Companies Act 1985 or the <sup>M2</sup>Companies (Northern Ireland) Order 1986.

#### Marginal Citations

**M1** 1985 c. 6.

**M2** S.I. 1986/1032 (N.I.6).

### *Powers of incorporated friendly societies*

## **14 Investment of funds.**

(1) An incorporated friendly society may invest its funds—

(a) in the purchase of land, or in the erection of offices or other buildings thereon;

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- (b) upon any other security expressly directed by the rules of the society, other than personal security (but without prejudice to any provision of this Act relating to loans); or
  - (c) in any other investment of a kind which trustees are for the time being by law authorised to make.
- (2) An incorporated friendly society which falls within subsection (3) or (4) below may also invest the funds of the society in any other manner authorised by its constitution.
- (3) An incorporated friendly society falls within this subsection if—
  - (a) it is a society to which section 48 below applies; and
  - (b) it maintains the margin of solvency which it is required to maintain by virtue of that section.
- (4) An incorporated friendly society falls within this subsection if—
  - (a) it carries on insurance business in the United Kingdom;
  - (b) section 48 below does not apply to it; and
  - (c) it maintains 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.
- (5) Once a society falls within subsection (3) or (4) above, it shall be treated as continuing to do so for the purposes of subsection (2) above unless the Commission serves a notice under subsection (6) below on it.
- (6) Where it appears to the Commission that an incorporated friendly society has ceased to fall within subsection (3) or (4) above, it shall serve on the society a notice stating that fact.
- (7) The powers of investment of a society on which a notice is served under subsection (6) above shall accordingly, until the notice is revoked under subsection (10) below, be limited to investment falling within subsection (1) above.
- (8) A notice under subsection (6) above may direct a society to dispose of an investment which it could not have acquired except under subsection (2) above.
- (9) Subject to subsection (8) above, a society may retain any investment which it could only have acquired under subsection (2) above.
- (10) The Commission may, by a subsequent notice to the society, revoke a notice under this section at any time when it appears to it that the society again falls within subsection (3) or (4) above.
- (11) On serving a notice under subsection (6) or (10) above on a society the Commission shall send a copy of it to the central office.
- (12) The central office shall keep a copy of such a notice in the public file of the society.

## **15 Holding of land for purposes other than investment.**

An incorporated friendly society may acquire and hold land—

- (a) for the purpose of carrying on any of its activities; or
- (b) for the purpose of enabling a subsidiary of the society, or a body jointly controlled by it, to conduct its business;

and may dispose of, or otherwise deal with, any land so held by it.

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## **16 Assistance to subsidiaries and jointly controlled bodies.**

- (1) An incorporated friendly society may provide its subsidiaries or bodies which it jointly controls with any of the following services—
  - (a) loans of money, with or without security and whether or not at interest;
  - (b) the use of services or property, whether or not for payment;
  - (c) grants of money, whether or not repayable; and
  - (d) guarantees of the discharge of their liabilities.
- (2) An incorporated friendly society may make payments towards the discharge of the liabilities of any of its subsidiaries.

## **17 Loans to assured members.**

- (1) An incorporated friendly society may advance to a member of at least one full year's standing any sum not exceeding one half of the amount of an assurance of his life, on the written security of himself and two satisfactory sureties or, in Scotland, cautioners for repayment.
- (2) The amount so advanced, with all interest on it, may be deducted from the sum assured, without prejudice in the meantime to the operation of the security.
- (3) A person's membership of a registered friendly society before the society's incorporation is to be taken into account in calculating his standing for the purposes of this section.

### *Benefit terms*

## **18 Terms on which benefits are available.**

- (1) The terms on which an incorporated friendly society provides any benefit shall be—
  - (a) specified in its rules; or
  - (b) determined in a manner specified in its rules.
- (2) If the terms on which a benefit is provided are not specified in the society's rules, the society—
  - (a) shall make copies of them available free of charge to members of the society at every office of the society; and
  - (b) shall send, free of charge, copies of them to any member of the society who demands them.
- (3) If, on demand made of it under subsection (2) above, a society fails, in accordance with that subsection, to make available or, as the case may be, within 7 days of the demand, to send to a person a copy of the terms on which a benefit is provided, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Schedule 9 to this Act shall have effect in relation to nominations by members of incorporated friendly societies and related matters.

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### *Dissolution and winding up*

## **19 Modes of dissolution and winding up.**

- (1) An incorporated friendly society—
  - (a) may be dissolved by consent of the members; or
  - (b) may be wound up voluntarily or by the court,
 in accordance with this Part of this Act; and an incorporated friendly society may not, except where it is dissolved by virtue of section 85(4), 86(5) or 90(9) below, be dissolved or wound up in any other manner.
- (2) An incorporated friendly society which is in the course of dissolution by consent, or is being wound up voluntarily, may be wound up by the court.

## **20 Dissolution by consent.**

- (1) An incorporated friendly society may be dissolved by an instrument of dissolution.
- (2) An instrument of dissolution shall only have effect if it is approved by special resolution.
- (3) An instrument of dissolution shall set out—
  - (a) the liabilities and assets of the society in detail;
  - (b) the number of members, and the nature of their interests in the society;
  - (c) the claims of creditors, and the provision to be made for their payment;
  - (d) the intended appropriation or division of the funds and property of the society;
  - (e) the names of one or more persons to be appointed as trustees for the purposes of the dissolution, and their remuneration.
- (4) An instrument of dissolution may be altered, but the alteration shall only have effect if it is approved by special resolution.
- (5) The provisions of this Act shall continue to apply in relation to an incorporated friendly society as if the trustees appointed under the instrument of dissolution were the committee of management of the society.
- (6) The trustees shall—
  - (a) within 15 days of the passing of a special resolution approving an instrument of dissolution, give notice to the central office of the fact and the date of commencement of the dissolution, enclosing a copy of the instrument; and
  - (b) within 15 days of the passing of a special resolution approving an alteration of such an instrument, give notice to the central office of the fact, enclosing a copy of the altered instrument;
 and if the trustees fail to comply with this subsection, they shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) An instrument of dissolution or an alteration to such an instrument shall be binding on all members of the society as from the date on which the copy of the instrument or altered instrument, as the case may be, is placed on the public file of the society under subsection (12) below.

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- (8) The trustees shall, within 28 days from the termination of the dissolution, give notice to the central office of the fact and the date of the termination, enclosing an account and balance sheet signed and certified by them as correct, and showing—
  - (a) the assets and liabilities of the society at the commencement of the dissolution; and
  - (b) the way in which those assets and liabilities have been applied and discharged.
- (9) If the trustees fail to comply with subsection (8) above they shall each be guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 2 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.
- (10) Except with the consent of the Commission, no instrument of dissolution or alteration to such an instrument shall be of any effect if the purpose of the proposed dissolution or alteration is to effect or facilitate the transfer of the society's engagements to any other friendly society or to a company.
- (11) Any provision in a resolution or document that members of an incorporated friendly society proposed to be dissolved shall accept membership of some other body in or towards satisfaction of their rights in the dissolution shall be conclusive evidence of such purpose as is mentioned in subsection (10) above.
- (12) The central office shall keep in the public file of the society any notice or other document received by it under subsection (6) or (8) above and shall record in that file the date on which the notice or document is placed in it.

## **21 Voluntary winding up.**

- (1) An incorporated friendly society may be wound up voluntarily under the applicable winding up legislation if it resolves by special resolution that it be wound up voluntarily.
- (2) A copy of any special resolution passed for the voluntary winding up of an incorporated friendly society shall be sent by the society to the central office within 15 days after it is passed; and the central office shall keep the copy in the public file of the society.
- (3) A copy of any such resolution shall be annexed to every copy of the memorandum or of the rules issued after the passing of the resolution.
- (4) If an incorporated friendly society fails to comply with subsection (2) or (3) above, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) For the purposes of this section, a liquidator of the society shall be treated as an officer of it.

## **22 Winding up by court: grounds and petitioners.**

- (1) An incorporated friendly society may be wound up under the applicable winding up legislation by the court on any of the following grounds, that is to say, if—
  - (a) the society has by special resolution resolved that it be wound up by the court;

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- (b) the number of members is reduced below 7;
  - (c) the number of members of the committee of management is reduced below 2;
  - (d) the society has not commenced business within a year from its incorporation or has suspended its business for a whole year;
  - (e) the society exists for an illegal purpose;
  - (f) the society is unable to pay its debts; or
  - (g) the court is of the opinion that it is just and equitable that the society should be wound up.
- (2) Except as provided by subsection (3) below or the applicable winding up legislation, a petition for the winding up of an incorporated friendly society may be presented by—
- (a) the Commission;
  - (b) the society or its committee of management;
  - (c) any creditor or creditors (including any contingent or any prospective creditor); or
  - (d) any contributory or contributories,
- or by all or any of those parties, together or separately.
- (3) A contributory may not present a petition unless the number of members is reduced below 7 or he has been a contributory for at least six months before the winding up.
- (4) In this section “contributory” has the meaning assigned to it by paragraph 9 of Schedule 10 to this Act.

## **23 Application of winding up legislation to incorporated friendly societies.**

- (1) In this section “the companies winding up legislation” means the enactments applicable in relation to England and Wales, Scotland and Northern Ireland which are specified in paragraph 1 of Schedule 10 to this Act (including any enactment which creates an offence by any person arising out of acts or omissions occurring before the commencement of the winding up).
- (2) In its application to the winding up of an incorporated friendly society, by virtue of section 21(1) or 22(1) above, the companies winding up legislation shall have effect with the modifications effected by Parts I to III of Schedule 10 to this Act; and the supplementary provisions of Part IV of that Schedule also have effect in relation to such a winding up and in relation to a dissolution by consent.
- (3) In section 21 and 22 above “the applicable winding up legislation” means the companies winding up legislation as so modified.

## **24 Continuation of long term business.**

- (1) This section has effect in relation to the winding up of an incorporated friendly society which carries on long term business (including any reinsurance business).
- (2) The liquidator shall, unless the court otherwise orders, carry on the long term business of the society with a view to its being transferred as a going concern under this Act; and, in carrying on that business, 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.



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- (3) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the society attributable to its long term business require the appointment of a special manager of the society'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) Section 177(5) of the <sup>M3</sup>Insolvency Act 1986 or, as the case may be, Article 151 of the <sup>M4</sup>Insolvency (Northern Ireland) Order 1989 shall apply to a special manager appointed under subsection (3) above as it applies to a special manager appointed under that section or that Article.
- (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 society 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 Commission appoint an independent actuary to investigate the long term business of the society and to report to the liquidator, the special manager or the Commission, 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.

#### Marginal Citations

**M3** 1986 c. 45.

**M4** S.I.1989/2405 (N.I.19).

## 25 Power of court to declare dissolution void.

- (1) Where an incorporated friendly society has been dissolved under section 20 above or following a winding up, the court may, at any time within 12 years after the date on which the society was dissolved, make an order under this section declaring the dissolution to have been void.
- (2) An order under this section may be made, on such terms as the court thinks fit, on an application by the trustees under section 20 above or the liquidator, as the case may be, or by any other person appearing to the court to be interested.
- (3) When an order under this section is made, such proceedings may be taken as might have been taken if the society had not been dissolved.
- (4) The person on whose application the order is made shall, within 7 days of its being so made, or such further time as the court may allow, furnish the central office with a copy of the order; and the central office shall keep the copy in the public file of the society.
- (5) If a person fails to comply with subsection (4) above, he shall be guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.
- (6) In this section “the court” means—

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- (a) in relation to a society whose registered office is in England and Wales, the High Court;
- (b) in relation to a society whose registered office is in Scotland, the Court of Session; and
- (c) in relation to a society whose registered office is in Northern Ireland, the High Court in Northern Ireland.

## **26 Cancellation of registration.**

- (1) Where the central office is satisfied that an incorporated friendly society has been dissolved under section 20 above or following a winding up, the central office shall cancel the society's registration under this Act.
- (2) Where the central office is satisfied, with respect to an incorporated friendly society—
  - (a) that a certificate of incorporation has been obtained for the society by fraud or mistake; or
  - (b) that the society has ceased to exist,  
<sup>[<sup>F3</sup>or</sup>
  - (c) in the case of a society to which section 37(2) or (3) below applies, that the principal place of business of the society is outside the United Kingdom,]
 the central office may cancel the registration of the society.
- (3) Without prejudice to subsection (2) above, the central office may, if it thinks fit, cancel the registration of an incorporated friendly society at the request of the society, evidenced in such manner as the central office may direct.
- (4) Before cancelling the registration of an incorporated friendly society under subsection (2) above, the central office shall give to the society not less than two months' previous notice, specifying briefly the grounds of the proposed cancellation.
- (5) Where the registration of an incorporated friendly society is cancelled under subsection (2) above, the society may appeal—
  - (a) where the registered office of the society is situated in England and Wales, to the High Court;
  - (b) where that office is situated in Scotland, to the Court of Session; or
  - (c) where that office is situated in Northern Ireland, to the High Court in Northern Ireland;
 and on any such appeal the court may, if it thinks it just to do so, set aside the cancellation.
- (6) Where the registration of a society is cancelled under subsection (2) or (3) above, then, subject to the right of appeal under subsection (5) above, the society, so far as it continues to exist, shall cease to be a society incorporated under this Act.
- (7) Subsection (6) above shall not affect any liability actually incurred by an incorporated friendly society; and any such liability may be enforced against the society as if the cancellation had not taken place.
- (8) Any cancellation of the registration of an incorporated friendly society under this section shall be effected in writing signed by the central office.
- (9) As soon as practicable after the cancellation of the registration of an incorporated friendly society under this section the central office shall cause notice thereof to

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be published in the London Gazette, the Edinburgh Gazette or the Belfast Gazette according to the situation of the society's registered office, and if it thinks fit, in one or more newspapers.

#### Textual Amendments

- F3** S. 26(2)(c) and the word "or" immediately preceding it inserted (18.7.1996) by S.I. 1996/1669, reg. 14(1)

## PART III

### MANAGEMENT AND ADMINISTRATION

#### *Committee of management and other officers*

#### **27 Committee of management.**

- (1) Every friendly society shall have a committee of management with at least 2 members.
- (2) The committee of management shall appoint one of its members to be chairman of the committee.
- (3) Members of the committee of management shall (unless co-opted on to the committee) be elected to office in accordance with the rules of the society.
- (4) The committee of management may co-opt as a member of the committee (whether as an additional member or to fill any vacancy) any person—
  - (a) who appears to the committee to be fit and proper to be a member, and
  - (b) who has not failed, having been nominated at an election held within the preceding 12 months, to be elected as a member of the committee;and such a person may be co-opted notwithstanding that he is not a member of the society.
- (5) Part I of Schedule 11 to this Act shall have effect in relation to committees of management and Part II shall have effect with regard to dealings with members of committees of management of friendly societies and registered branches.

#### Commencement Information

- I5** S. 27 wholly in force; s. 27 not in force at Royal Assent see s. 126(2); s. 27 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 27(5) in force to the extent specified for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 27 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

#### **28 Chief executive and secretary.**

- (1) Every friendly society shall have a chief executive and a secretary.
- (2) The chief executive of a friendly society shall be a person appointed by the committee of management who (whether alone or jointly with one or more other persons) is

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responsible under the immediate authority of the committee for the conduct of the business of the society.

- (3) The secretary of a friendly society shall be appointed by the committee of management or, if the rules of the society so provide, elected to office in accordance with the rules.
- (4) The committee of management of a friendly society shall take all reasonable steps to secure that the person appointed as chief executive has the requisite knowledge and experience to discharge the functions of his office.
- (5) The offices of chief executive and secretary may be held by the same person.
- (6) Anything required or authorised to be done by or to the secretary or chief executive of a friendly society may, if the office is vacant or there is for any other reason no secretary or chief executive capable of acting, be done by or to—
  - (a) any assistant or deputy secretary or assistant or deputy chief executive, as the case may be; or
  - (b) if there is no assistant or deputy capable of acting, any member of the society's staff who is authorised generally or specially for that purpose by the committee of management.

#### Commencement Information

- 16** S. 28 wholly in force; s. 28 not in force at Royal Assent see s. 126(2); s. 28 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 28 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

## 29 Notification of officers to central office.

- (1) Where a person becomes or ceases to be a member of the committee of management of a friendly society, the society shall within one month give notice of that fact, including the information specified in subsection (2) below, to the central office.
- (2) The notice shall state the person's full name and address and the date on which he became, or ceased to be, a member of the committee and, in the case of a person becoming a member, the date of his birth.
- (3) Where a person becomes or ceases to be the chief executive or the secretary of a friendly society, the society shall within one month give notice of that fact to the central office, stating the person's full name and address and the date on which he became, or ceased to be, chief executive or secretary.
- (4) If a friendly society fails to comply with subsection (1) or (3) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) On receipt of a notice under this section, the central office shall record the name of the person to whom the notice relates and the date on which he began to hold, or, as the case may be, ceased to hold office, in the public file of the society.

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#### Commencement Information

- 17** S. 29 wholly in force; s. 29 not in force at Royal Assent see s. 126(2); s. 29 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 29 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

#### *Meetings and resolutions*

### **30 Meetings and resolutions.**

Schedule 12 to this Act shall have effect with respect to meetings and resolutions of friendly societies and registered branches.

#### Commencement Information

- 18** S. 30 wholly in force; s. 30 not in force at Royal Assent see s. 126(2); s. 30 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 30 in force to the extent specified for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 30 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

## **PART IV**

### **AUTHORISATION OF FRIENDLY SOCIETIES' BUSINESS**

#### *Restriction on carrying on unauthorised business*

### **31 Restriction on carrying on unauthorised insurance or non-insurance business.**

- (1) Subject to subsections (2) and (3) below, a friendly society shall not carry on in the United Kingdom any insurance business or non-insurance business unless it is authorised by the Commission to do so.
- (2) A friendly society which—
  - (a) carried on, before the commencement of this section—
    - (i) insurance business of any description that did not require to be authorised under the 1987 Regulations; or
    - (ii) non-insurance business of any description; and
  - (b) is not authorised by the Commission to carry on business of that description after that commencement,may carry on without authorisation business of that description consisting of the carrying out of contracts effected by the society before that commencement.
- (3) A friendly society may without authorisation effect an insurance contract, or a contract for non-insurance benefits, in pursuance of a term in a subsisting contract which the society may, by virtue of subsection (2) above, carry out without authorisation.
- (4) A friendly society which carries on any business in contravention of subsection (1) above shall be guilty of an offence and liable—

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

#### **Commencement Information**

**I9** S. 31 wholly in force 1.4.1995; s. 31 not in force at Royal Assent see s.126(2); s. 31 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 31 in force for certain purposes at 1.1.1994 by S.I. 1993/2213, art. 2(2)(3); s. 31 in force for certain purposes at 1.7.1994 by S.I. 1993/2213, art. 2(4); s. 31 in force for certain purposes at 1.1.1995 by S.I. 1993/3226, art. 2(2); S. 31 in force for certain purposes at 1.11.1994 and for all remaining purposes at 1.4.1995 by S.I. 1994/2543 arts. 2(1), (2)

#### *Authorisation to carry on business*

### **32 Grant of authorisation by Commission: general.**

- (1) The Commission may, subject to this Part of this Act, authorise friendly societies to carry on in the United Kingdom any class, or any part of a class, of insurance business and any description of non-insurance business.
- (2) Where, on an application duly made under this section or section 33 below, the Commission determines to grant authorisation to a friendly society, it shall do so in writing in terms specifying—
  - (a) each class of insurance business,
  - (b) in relation to any class of such business the whole of which is not covered, each part of the class, and
  - (c) each description of non-insurance business, the carrying on of which is covered by the authorisation.
- (3) Authorisation may be restricted to industrial assurance business; and a friendly society is not authorised to carry on industrial assurance business unless the terms of its authorisation expressly specify such business.
- [<sup>F4</sup>(4) Authorisation entitles a friendly society to carry on business anywhere in the United Kingdom unless, in the case of a society which is not one to which section 37(2) or (3) below applies, the terms of its authorisation are at its request expressly restricted to a part of the United Kingdom.]
- (5) Authorisation may be granted to a friendly society unconditionally or subject to written conditions to be complied with by the society as provided by section 34 below.
- (6) Schedule 13 to this Act shall have effect in relation to the making and determination of applications for authorisation, the imposition of conditions and the withdrawal of authorisation.
- (7) An authorisation granted to a friendly society by the Chief Registrar under regulation 5 or 6 of the 1987 Regulations which is in force immediately before the commencement of section 31 above shall have effect as if it were an authorisation granted by the Commission under this section which authorised the society to carry on insurance business of such classes (or such parts of classes) as correspond to the business specified in the authorisation.

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(8) Where an application for authorisation under the 1987 Regulations has not been decided before the commencement of subsection (1) above, the Chief Registrar shall send to the Commission the information submitted by the society or otherwise received by him in relation to the application; and the application shall be treated as being an application under this section.

(9) In this Part of this Act “authorisation” (except where the context otherwise requires) means an authorisation which is granted by the Commission under this section or deemed by this section to have been so granted; and “authorise” and “authorised” shall be construed accordingly.

#### Textual Amendments

**F4** S. 32(4) substituted (1.9.1994) by S.I. 1994/1984 reg. 4

#### Commencement Information

**I10** S. 32 wholly in force; s. 32 not in force at Royal Assent see s. 126(2); s. 32 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 32(1)-(6)(8)-(9) in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 32(7) in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### 33 Applications from certain existing friendly societies.

(1) A friendly society which—

- (a) is not authorised and has not made any previous application for authorisation;
- (b) was, before the commencement of section 32 above, carrying on in the United Kingdom any insurance or non-insurance business; and
- (c) was, immediately before that commencement, neither required to be authorised under the 1987 Regulations nor subject to an order under section [F578(1) of the 1970 Act] (power of Chief Registrar to suspend business of friendly societies);

may apply under this section for authorisation to continue to carry on any business it was carrying on before that commencement.

(2) If the Commission is satisfied, on an application duly made under this section—

- (a) that it has received adequate information about the society; and
- (b) that there is no reason to believe that the interests of the members of the society require refusal of the application;

it shall, subject to section 37 below, authorise the society to carry on any class (or part of a class) of insurance business, and any description of non-insurance business, which corresponds to any business carried on by the society immediately before the commencement of section 32 above.

#### Textual Amendments

**F5** Words in s. 33(1)(c) substituted (1.1.1994) by S.I. 1993/3226, art. 3, Sch.3

**Status:** Point in time view as at 14/04/2000. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Friendly Societies Act 1992 is up to date with all changes known to be in force on or before 19 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)

#### Commencement Information

- I11** S. 33 wholly in force; s. 33 not in force at Royal Assent see s. 126(2); s. 33 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 33 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

### 34 Grant of unconditional or conditional authorisation.

- (1) On an application duly made by a friendly society (“the society”), the Commission shall, subject to section 37 below, grant unconditional or conditional authorisation, or refuse to grant authorisation, in accordance with the following provisions of this section.

[<sup>F6</sup>(1A) The Commission shall refuse to grant authorisation to a society which is or, if authorisation were granted, would be a society to which section 37(2) or (3) below applies if it appears to the Commission that the principal place of business of the society is outside the United Kingdom.

<sup>F6</sup>(1B) The Commission shall also refuse to grant authorisation to a society which is or, if authorisation were granted, would be a society to which section 37(2) or (3) below applies if it appears to the Commission that—

- (a) the society is an undertaking which is closely linked with any person; and
- (b) the society’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its functions under this Act in relation to the society;

and in this subsection “non-EEA laws” means laws of a country or territory outside the European Economic Area and “non-EEA administrative provisions” shall be construed accordingly.]

- (2) [<sup>F6</sup>Subject to subsections (1A) and (1B) above,]The Commission shall grant unconditional authorisation if it is satisfied that—

- (a) the chairman of the committee of management, the secretary and the chief executive of the society are each fit and proper persons to hold their respective offices [<sup>F7</sup>and, in the case of a society to which section 37(2) or (3) below applies, each controller of the society is a fit and proper person to be such a controller];
- (b) the members of the committee of management, with the secretary and chief executive, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management;
- (c) the society is likely to comply with any requirements of this Act which relate to the business to be covered by the authorisation; and
- (d) the interests of the members of the society will be adequately protected without the imposition of conditions.

- (3) Subject to subsection (4) below, if the Commission is not satisfied as mentioned in subsection (2) above, it shall refuse to grant authorisation.

- (4) [<sup>F6</sup>Subject to subsections (1A) and (1B) above,]Where the Commission is not satisfied as mentioned in subsection (2)(b), (c) and (d) above but is satisfied that the imposition of conditions will secure—

- (a) the direction of the affairs of the society in accordance with the criteria of prudent management;



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- (b) the likelihood of compliance by the society with any requirements of this Act which relate to the business to be covered by the authorisation; and
  - (c) the adequate protection of the interests of the members of the society,it shall grant authorisation subject to such conditions as it thinks fit for securing those objects.
- (5) The conditions that may be so imposed may—
  - (a) relate to any class (or part of a class) or description of business in respect of which authorisation is sought;
  - (b) require the society to take steps or to refrain from adopting a particular course of action or to restrict the scope of its business in a particular way;
  - (c) require the society to take steps with regard to the activities of any subsidiary or body jointly controlled by the society.
- (6) Without prejudice to the generality of subsection (5) above, conditions imposed under subsection (4) above may—
  - (a) impose limitations on the effecting of contracts of insurance or contracts for non-insurance benefits or the accepting of new members;
  - (b) require the removal of an officer of the society or of any registered branch;
  - (c) where the society has branches, require the society to take steps with regard to the activities of any registered branch.
- (7) Conditions imposed under subsection (4) above—
  - (a) may be added to or varied from time to time by agreement between the Commission and the society; and
  - (b) may be revoked at any time by the Commission if it is satisfied that they are no longer needed for the purpose for which they were imposed;and, on adding to, varying or revoking any such conditions, the Commission shall (unless it considers it unnecessary to do so by reason of the nature of the changes) send to the secretary of the society a statement of the terms of all the subsisting conditions to which its authorisation is subject.
- (8) [<sup>F8</sup>Subsections (1A) to (7) above]above apply in relation to applications for authorisation made under section 33 above with the omission—
  - (a) of subsection (2)(a) and (b);
  - (b) of the reference to subsection (2)(b) in subsection (4); and
  - (c) of subsection (4)(a).
- (9) [<sup>F8</sup>Subsections (1A) to (7) above] above apply in relation to a society applying for authorisation to carry on both long term and general business by virtue of section 37(8) below—
  - (a) with the substitution, in subsection (2), for the words “unconditional authorisation”, of the words “ authorisation subject only to the conditions required by section 37 below ”;
  - (b) with the insertion in subsections (2)(d) and (4), after the words “imposition of”, of the word “ further ”.

#### Textual Amendments

- F6** S. 34(1A)(1B) inserted (18.7.1996) by S.I. 1996/1669, reg. 15(1)  
Words in s. 34(2)(4) inserted (18.7.1996) by S.I.1996/1669, reg. 15(1)

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- F7** Words in s. 34(2)(a) inserted (1.9.1994) by S.I. 1994/1984 reg. (5)  
**F8** Words in s. 34(8) substituted (18.7.1996) by S.I. 1996/1669, reg. 15(2)  
 Words in s. 34(9) substituted (18.7.1996) by S.I. 1996/1669, reg. 15(2)

#### Commencement Information

- I12** S. 34 wholly in force; s. 34 not in force at Royal Assent see s. 126(2); s. 34 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 34 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

### 35 Extension of current authorisation.

- (1) This section applies where an authorised friendly society applies under section 32 above for authorisation to carry on insurance business of a class (or part of a class), or non-insurance business of a description, which is not covered by the society's current authorisation.
- (2) On such an application, the conditions which the Commission may impose under section 34 above include—
  - (a) conditions relating to any business covered by the society's current authorisation; and
  - (b) where the current authorisation is subject to conditions, conditions which vary the current conditions (whether by adding to, amending or replacing any of them).
- (3) Where the Commission determines to grant authorisation on such an application, it shall be granted in terms including all current terms of the society's authorisation (including any that were otherwise unaffected by the determination); and those terms shall have effect in place of the previously subsisting terms.

#### Commencement Information

- I13** S. 35 wholly in force; s. 35 not in force at Royal Assent see s. 126(2); s. 35 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 35 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

### 36 Imposition of conditions on current authorisation.

- (1) If the Commission considers it expedient to do so, it may (in accordance with Part II of Schedule 13 to this Act)—
  - (a) impose conditions on a friendly society's authorisation, or
  - (b) where an authorisation is subject to conditions, impose conditions which vary the current conditions (whether by adding to, amending or replacing any of them);
 and the conditions that may be so imposed include any condition that might be imposed on the grant of authorisation.
- (2) Without prejudice to the generality of subsection (1) above, conditions so imposed may require—
  - (a) the submission to the Commission of a plan for the restoration of a sound financial position or a short-term financial scheme;

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- (b) modification of the plan or scheme (or the plan or scheme as previously modified) if the Commission considers it inadequate; and
  - (c) the implementation of the plan or scheme if the Commission consider it adequate.
- (3) Subsection (7) of section 34 above applies to conditions imposed under this section as it applies to conditions imposed under that section.

#### Commencement Information

**I14** S. 36 wholly in force; s. 36 not in force at Royal Assent see s. 126(2); s. 36 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 36 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

#### [<sup>F9</sup>36A Directions for deeming conditions to have been imposed.

- (1) Subsection (2) below applies where—
- (a) it appears to the Commission that there has been or is, on the part of an authorised friendly society to which section 37(2) or (3) below applies or its committee of management, a failure to satisfy the 8th criterion in section 50(3) below; and
  - (b) the Commission proposes, on that ground, to impose conditions under section 36 above on the society's authorisation.
- (2) If the Commission considers it expedient to do so in order to protect the interests of members of the society, the Commission may direct that, for the period—
- (a) beginning with service of notice of the proposal under paragraph 7(1) or 8(2) of Schedule 13 to this Act, and
  - (b) ending with service of the Commission's decision notice,
- the proposed conditions shall be deemed to have been imposed under section 36 above on the society's authorisation.
- (3) In subsection (2) above "the Commission's decision notice" means—
- (a) in relation to a notice of the proposal under paragraph 7(1) of Schedule 13 to this Act, notice of the Commission's decision under paragraph 7(5) of that Schedule or notice of an alternative proposal under paragraph 8(2) of that Schedule;
  - (b) in relation to a notice of the proposal under paragraph 8(2) of that Schedule, notice of the Commission's decision under paragraph 8(6) of that Schedule or notice of an alternative proposal under the said paragraph 8(2).
- (4) The Commission may revoke a direction under this section if it is satisfied that the direction is no longer needed for the purpose for which it was imposed.
- (5) The provisions of this Act (so far as applicable)—
- (a) apply in relation to a decision of the Commission to give a direction under this section as they apply in relation to a decision of the Commission to impose conditions under section 36 above, and
  - (b) apply to conditions which, by virtue of such a direction, are deemed to have been imposed under that section as they apply to conditions so imposed.]

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#### Textual Amendments

F9 S. 36A inserted (1.1.1994) by S.I. 1993/2519, reg. 2(1)

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

C1 S.36A(2) excluded (20.7.2001) by S.I. 2001/2636, art. 45(3)

### *Restrictions on business of certain authorised societies*

#### 37 Restriction on combinations of business.

- (1) [<sup>F10</sup>Subject to subsections (1A) and (7A) below], an authorised friendly society to which subsection (2) or (3) below applies may not carry on business falling into more than one of the following categories, namely—
- (a) long term business;
  - (b) general business; and
  - (c) non-insurance business;

and, accordingly, the Commission shall not grant such a society authorisation to do so.

[<sup>F11</sup>(1A) Nothing in subsection (1) above shall prevent an authorised friendly society to which subsection (2) or (3) below applies from carrying on, or being authorised to carry on, both long term business and general business of either or both of classes 1 and 2 of Head B of Schedule 2 to this Act.]

- (2) This subsection applies to a friendly society which carries on long term business—
- (a) if its rules do not contain provision for calling up additional contributions, for reducing benefits or for claiming assistance from other persons who have undertaken to provide it; or
  - (b) if its annual contribution income from long term business exceeded 500,000 ECU for 3 consecutive years and it is not the subject of a direction under subsection (5) below;

and, for the purposes of paragraph (b) above, years ending before 1st January 1985 shall be disregarded.

- (3) This subsection applies to a friendly society which carries on general business—
- (a) if its rules do not contain provision for calling up additional contributions or for reducing benefits; or
  - (b) if its annual contribution income from general business in any previous year exceeded 1,000,000 ECU and it is not the subject of a direction under subsection (5) below;

and, for the purposes of paragraph (b) above, years ending before 1st January 1993 shall be disregarded.

- (4) In subsections (2) and (3) above a reference to a year, in relation to annual contribution income, is a reference to any financial year of a society for which, at the relevant time, accounts have been or ought to have been prepared.

- (5) The Commission may, if it is satisfied that it is consistent with the international obligations of the United Kingdom to do so, direct that a friendly society—

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- (a) which is, by virtue only of paragraph (b) of subsection (2) above, a society to which that subsection applies; or
- (b) which is, by virtue only of paragraph (b) of subsection (3) above, a society to which that subsection applies;

shall, unless the direction is revoked, be treated as not being a society to which subsection (2) or, as the case may be, subsection (3) above applies.

(6) If—

- (a) the Commission has given a direction under subsection (5) above in relation to a society such as is mentioned in subsection (5)(a) above; and
- (b) the society's annual contribution income from long term business exceeds 500,000 ECU for 3 consecutive years ending after a date specified in the direction,

the Commission shall revoke the direction.

(7) If—

- (a) the Commission has given a direction in relation to a society such as is mentioned in subsection (5)(b) above; and
- (b) the society's annual contribution income from general business in a year ending after a date specified in the direction exceeded 1,000,000 ECU,

the Commission shall revoke the direction.

[<sup>F12</sup>(7A) Where a friendly society to which subsection (2) or (3) above applies was on 15th March 1979 carrying on long term and general business in the United Kingdom, the society may (if authorised to do so) carry on any class (or part of a class) of long term or general business.

(8) Where a friendly society to which subsection (2) or (3) above applies is authorised by virtue of subsection (1A) or (7A) above to carry on long term and general business in the United Kingdom—

- (a) the Commission shall (whether or not other conditions are imposed) impose such conditions on the society's authorisation as the Commission thinks fit for securing that the society's long term business and general business are kept separate; and
- (b) those conditions shall, subject to the exceptions mentioned in subsection (9) below, require that the assets representing the funds maintained in respect of the society's long term business or, as the case may be, its general business are to be generally applicable for the purposes of that business only.]

(9) The exceptions mentioned in subsection (8) above are—

- (a) that assets representing funds in respect of long term business may be transferred so as to be available for general business if—
  - (i) they represent the excess of the long term business funds over the society's liabilities in respect of that business; or
  - (ii) the transfer is by way of reimbursement of expenditure borne by other assets in respect of long term business; and
- (b) that assets representing funds in respect of general business may be transferred so as to be available for long term business if they represent the excess of the general business funds over the society's liabilities in respect of that business.

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#### Textual Amendments

- F10** Words in s. 37(1) substituted (1.1.1994) by S.I. 1993/2519, reg. 3(1)  
**F11** S. 37(1A) inserted (1.1.1994) by S.I. 1993/2519, reg. 3(2)  
**F12** S. 37(7A)(8) substituted (1.1.1994) for s. 37(8) by S.I. 1993/2519, reg. 3(3)

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

- C2** S. 37(4) excluded (1.5.1993) by S.I. 1993/932, reg. 7

#### Commencement Information

- I15** S. 37 wholly in force; s. 37 not in force at Royal Assent see s. 126(2); s. 37 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 37 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

### 38 Restriction on commercial business.

- (1) An authorised friendly society to which section 37(2) or (3) applies shall not carry on any commercial business otherwise than in connection with or for the purposes of its insurance business.
- (2) Subsection (1) above shall not prevent a friendly society which was on 15th March 1979 carrying on long term business and a savings business in the United Kingdom from continuing to carry on the savings business.
- (3) Subsection (1) above has effect without prejudice to any stricter obligations imposed on friendly societies under this Part; and nothing in this section shall be taken to imply that a friendly society may carry out any activity other than for purposes permitted by this Act (or, in the case of registered societies, the 1974 Act) and the constitution of the society.

#### Commencement Information

- I16** S. 38 wholly in force; s. 38 not in force at Royal Assent see s. 126(2); s. 38 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 38 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

#### *Powers of Commission in relation to authorised societies*

### 39 Power to direct application for fresh authorisation.

- (1) If, with respect to an authorised friendly society, the Commission has reason to believe—
  - (a) that the society's business is being, or will in the future be, conducted—
    - (i) in a way that may not adequately protect the interests of members of the society; or
    - (ii) so as not to comply with the requirements of this Act which relate to the business for which the society's authorisation was granted; or
  - (b) that by reason of any increase in the volume of its long term or its general business it is appropriate for the society's affairs to be re-examined;

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it may by notice direct the society to make within such period as is specified in the notice an application under section 32 above for fresh authorisation.

- (2) The period so specified shall not be shorter than 3 nor longer than 6 months beginning with the date of the notice; but the Commission may, on representations being made to it, extend or further extend the period within which the application is to be made.
- (3) A notice under subsection (1) above shall state the grounds on which the Commission decided to give the direction.
- (4) The business covered by, and the conditions imposed on, a society's fresh authorisation need not be the same as that covered by, or those imposed on, the previous one.
- (5) If the Commission refuses to grant fresh authorisation, it may specify in the notice of its refusal a date for the expiry of the current authorisation; and the authorisation shall expire on that date.
- (6) The making of an application for fresh authorisation shall not preclude the Commission, at any time while the application is pending, from exercising any power under this Part of this Act in relation to the society; but if it gives a direction under section 41 below, the proceedings on the application shall abate.

#### Commencement Information

**I17** S. 39 wholly in force; s. 39 not in force at Royal Assent see s. 126(2); s. 39 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 39 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

#### 40 Withdrawal of authorisation in respect of new business.

- (1) Subject to the following provisions of this section, the Commission may by notice direct—
  - (a) that a friendly society authorised to carry on insurance business shall, from a date specified in the direction, cease to be authorised to effect contracts of insurance, or contracts of a class (or part of a class) so specified; or
  - (b) that a friendly society authorised to carry on non-insurance business shall, from a date specified in the direction, cease to be authorised to effect contracts for non-insurance benefits, or contracts of a description so specified.
- (2) The Commission shall give such a direction in relation to a friendly society if—
  - (a) in the case of an incorporated society, a special resolution has been passed for its voluntary winding up;
  - (b) an order to wind up the society has been made;
  - (c) an event declared by the rules of the society to be the termination of the society has happened;
  - (d) an instrument of dissolution has been executed as mentioned in section 93(1) (b) of the 1974 Act or a special resolution approving an instrument of dissolution under section 20 above has been passed; or
  - (e) in the case of a registered society, the Commission has made an award under section 95(3) or 95A(1) of the 1974 Act for the dissolution of the society.
- (3) The Commission may give such a direction in relation to a friendly society at the request of the society or if—

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- (a) it appears to the Commission that the society has failed to satisfy an obligation to which it is subject by virtue of the <sup>M5</sup>Industrial Assurance Act 1923, the 1974 Act, the <sup>M6</sup>Industrial Assurance (Northern Ireland) Order 1979 or this Act;
  - (b) there exists a ground on which the Commission would be prohibited from granting authorisation to the society;
  - (c) it appears to the Commission to be expedient to make the proposed direction in order to protect the interests of members of the society;
  - (d) the authorisation was subject to conditions and it appears to the Commission that the society has not complied with a condition;
  - (e) it appears to the Commission that information furnished to it on behalf of the society or, in connection with an application for authorisation, by or on behalf of an officer of the society is false in a material particular, misleading or inaccurate;
  - (f) it appears to the Commission that a friendly society has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of a country or territory outside the United Kingdom, <sup>F13</sup> . . .
  - (g) the society, having been directed to apply for fresh authorisation under section 39 above, has either failed to make such an application within the period allowed or been refused fresh authorisation covering the effecting of new contracts of any description covered by the society's previous authorisation [<sup>F14F13</sup>or
  - <sup>F14</sup>(h) the society is a society to which section 37(2) or (3) above applies and has not effected any contracts of insurance, or any contracts of insurance of a class (or part of a class), for a period of six months or more.]
- (4) A direction under this section shall not prevent a friendly society from effecting an insurance contract, or a contract for non-insurance benefits, in pursuance of a term of a subsisting contract of that description.
- (5) A direction under this section or section 41 below—
- (a) shall be given in accordance with Part II of Schedule 13 to this Act, and
  - (b) may not be revoked or varied,
- but has effect without prejudice to the subsequent grant to the society of authorisation to carry on any business to which the direction relates.

#### Textual Amendments

**F13** Word in [S. 40\(3\)\(f\)](#) omitted (1.9.1994) by virtue of [S.I. 1994/1984](#) reg. 6

**F14** [S. 40\(3\)\(h\)](#) and the word “or” immediately preceding it inserted (1.9.1994) by [S.I. 1994/1984](#), [reg. 6](#)

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

**C3** [S. 40\(5\)\(b\)](#) excluded (20.7.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 46(3)

#### Commencement Information

**I18** [S. 40](#) wholly in force; [s. 40](#) not in force at Royal Assent see [s. 126\(2\)](#); [s. 40](#) in force for certain purposes at 13.1.1993 by [S.I. 1993/16](#), [art. 2](#), [Sch. 1](#); [s. 40](#) in force for all remaining purposes at 13.9.1993 by [S.I. 1993/2213](#), [art. 2\(1\)](#), [Sch. 2](#)

#### Marginal Citations

**M5** 1923 c.8.



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**M6** S.I. 1979/1574 (N.I.13)

#### **41 Withdrawal of authorisation to carry on insurance business.**

(1) Where the Commission is satisfied that a friendly society which is authorised to carry on insurance business—

(a) has ceased to carry on  
[<sup>F15</sup>(i) in the case of a society to which section 37(2) or (3) above applies,  
in the [<sup>F16</sup>EEA States];

(ii) in any other case, in the United Kingdom,]

any insurance business, or insurance business of any class (or of any part of a class) specified in the society's authorisation; or

(b) has not, since the grant of authorisation to carry on insurance business of any class (or part of a class), carried on

[<sup>F15</sup>(i) in the case of a society to which section 37(2) or (3) above applies,  
in the [<sup>F16</sup>EEA States];

(ii) in any other case, in the United Kingdom,]

any insurance business or insurance business of that class (or part of a class) and at least twelve months has elapsed since that grant;

the Commission may by notice direct that the society shall cease to be authorised to carry on insurance business or, as the case may be, insurance business of that class (or part of a class).

(2) Where the Commission is satisfied that a friendly society which is authorised to carry on non-insurance business—

(a) has ceased to carry on in the United Kingdom any non-insurance business or non-insurance business of a description specified in the authorisation; or

(b) has not, since the grant of authorisation to carry on non-insurance business of any description, carried on in the United Kingdom any non-insurance business or non-insurance business of that description, and at least twelve months has elapsed since that grant;

the Commission may direct that it shall cease to be authorised to carry on non-insurance business or, as the case may be, non-insurance business of that description.

(3) For the purposes of this section a friendly society shall be taken to have ceased to carry on business, or business of a particular class or description, if at no time

[<sup>F17</sup>(a) in the case of a society to which section 37(2) or (3) above applies, during the preceding six months;

(b) in any other case, during a financial year of the society which began and ended during the currency of the authorisation,]

did it carry on business or, as the case may be, business of that class or description.

#### **Textual Amendments**

**F15** S. 41(1) words substituted (1.9.1994) by S.I. 1994/1984 reg. 7(1)

**F16** Words in s. 41(1)(a)(i) substituted (1.1.1998) by S.I. 1997/2849 reg. 4

Words in s. 41(1)(b)(i) substituted (1.1.1998) by S.I. 1997/2849 reg. 4

**F17** S. 41(3) words substituted (1.9.1994) by 1994/1984 reg. 7(2)

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#### **Commencement Information**

**I19** S. 41 wholly in force; s. 41 not in force at Royal Assent see s. 126(2); s. 41 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 41 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

### *Supplementary*

#### **42 Contracts effected in contravention of section 31(1).**

- (1) Where a contract of insurance or for non-insurance benefits is entered into between a friendly society and a member in contravention of section 31(1) above the member may, subject to subsection (2) below, elect—
  - (a) to enforce the contract; or
  - (b) to recover any money paid by him under the contract, together with compensation for any loss sustained by him as a result of having parted with it; and the compensation so recoverable shall be such as the parties may agree or as any court of competent jurisdiction may, on the application of either party, determine.
- (2) Any such court may allow money paid by a member under a contract to which subsection (1) applies to be retained by the friendly society if it is satisfied—
  - (a) that the society reasonably believed that its entering into the contract did not constitute a contravention of section 31(1) above; and
  - (b) that it is just and equitable for the money to be retained.
- (3) A member who recovers the money paid under a contract to which subsection (1) above applies—
  - (a) shall not be entitled to any benefits under the contract; and
  - (b) shall repay any money and return any other property received by him under the contract;
 and, where any property so received has passed to a third party, the reference in this subsection to that property shall be construed as a reference to its value at the time at which it was received by the member.
- (4) A contravention of subsection (1) of section 31 above shall not make a contract of insurance or contract for non-insurance benefits illegal or invalid to any greater extent than is provided in this section; and a contravention of that subsection in respect of a contract of insurance shall not affect the validity of any reinsurance contract entered into in respect of that contract.

#### **Commencement Information**

**I20** S. 42 wholly in force; s. 42 not in force at Royal Assent see s. 126(2); s. 42 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 42 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

#### **43 Interpretation of Part IV.**

In this Part of this Act—

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“authorisation” and related expressions shall be construed in accordance with section 32(9) above;

“class”, in relation to insurance business, means a class specified in Schedule 2 to this Act;

“contract for non-insurance benefits” means a contract effected in the course of carrying on any non-insurance business;

“friendly society”, in relation to a registered friendly society with branches, means the central body and the branches of the society;

“industrial assurance business” has the meaning given in section 1(2) of the <sup>M7</sup>Industrial Assurance Act 1923 or Article 3(1) of the <sup>M8</sup>Industrial Assurance (Northern Ireland) Order 1979;

“the 1987 Regulations” means the <sup>M9</sup>Friendly Societies (Long Term Insurance Business) Regulations 1987.

#### Commencement Information

**I21** S. 43 wholly in force; s. 43 not in force at Royal Assent see s. 126(2); s. 43 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 43. in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

#### Marginal Citations

**M7** 1923 c.8.

**M8** S.I. 1979/1514 (N.I.13).

**M9** S.I.1987/2132.

## PART V

### REGULATION OF FRIENDLY SOCIETIES’ BUSINESS

#### *Preliminary*

#### **44 Appointment of actuary by societies with long term business.**

- (1) Subject to subsection (3) below, every friendly society which carries on long term business in the United Kingdom shall not later than the end of the relevant period appoint an actuary as actuary to the society; and whenever an appointment under this section comes to an end, the society shall as soon as practicable make a fresh appointment.
- (2) In subsection (1) above “the relevant period” means—
  - (a) if the society is carrying on long term business on the day when this section comes into force, the period of one month beginning with that day; and
  - (b) if it is not carrying on long term business on that day, the period of one month beginning with the day on which it begins to carry on such business.
- (3) The Commission may direct that a friendly society shall not be subject to the duty imposed by subsection (1) above if it considers it inappropriate that the society should be subject to it.

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- (4) A society making an appointment under this section shall serve on the Commission a notice stating that fact and the name and qualifications of the person appointed and that he has accepted the appointment.
- (5) If an appointment under this section comes to an end, the society shall serve on the Commission a notice stating that fact and the name of the person concerned.
- (6) A notice under subsection (4) above shall be served not later than the end of the period of 14 days commencing with the day on which the appointment is accepted.
- (7) A notice under subsection (5) above shall be served not later than the end of the period of 14 days commencing with the day on which the appointment comes to an end.
- (8) No person is qualified for appointment under this section unless he possesses qualifications prescribed by the Commission in regulations.

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

**C4** S. 44(2)(a) excluded (1.1.1994) by S.I. 1993/3084, **reg.10**

**Commencement Information**

**I22** S. 44 wholly in force; s. 44 not in force at Royal Assent see s. 126(2); s. 44 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 44(8) in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), **Sch. 2**; s. 44 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), **Sch. 5**

**45 Valuation of assets and liabilities.**

- (1) Any determination of the value of any assets or the amount of any liabilities of a friendly society which is required for the purposes of any provision of this Part of this Act shall be made in accordance with regulations made by the Commission with the consent of the Treasury.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or taken into account only to a specified extent.

**Commencement Information**

**I23** S. 45 wholly in force; s. 45 not in force at Royal Assent see s. 126(2); s. 45 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 45 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), **Sch. 2**

*Actuarial investigations*

**46 Annual investigation into condition of certain societies.**

- (1) A friendly society which is authorised under section 32 above to carry on long term business and which—
  - (a) is a society to which subsection 37(2) above applies; or

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- (b) is a society of a description prescribed by regulations,  
shall, once in every period of 12 months, cause an investigation to be made by the appropriate actuary into the financial condition of the society in respect of its long term business.
- (2) The first investigation into a society's financial condition under this section shall be—
  - (a) in the case of a friendly society to which section 37(2) above applies which—
    - (i) is a registered friendly society that was authorised under the <sup>M10</sup>Friendly Societies (Long Term Insurance Business) Regulations 1987; or
    - (ii) is an incorporated friendly society which was formerly a registered friendly society so authorised,  
an investigation into its condition at a date not later than 12 months after the date to which the accounts of the society were made up for the purposes of the last investigation under regulation 11 of those regulations;
  - (b) in the case of any other friendly society to which section 37(2) above applies, an investigation into its condition at a date not later than 12 months after the date on which it became such a society or the commencement of this section, whichever is later; and
  - (c) in the case of a friendly society which is of a description prescribed in regulations under subsection (1)(b) above, an investigation into its condition at a date not later than 12 months after it became such a society or the coming into operation of the regulations, whichever is later.
- (3) When such an investigation has been made, the society shall—
  - (a) cause an abstract of the actuary's report of the investigation to be made; and
  - (b) send three copies of that abstract to the Commission within the period of 6 months beginning with the date to which the accounts of the society were made up for the purposes of the investigation or such further period (not exceeding 3 months) as the Commission may by notice to the society direct;  
and one of those copies shall be signed by such persons as may be prescribed by regulations.
- (4) The Commission shall consider the abstract, and if it appears to the Commission to be inaccurate or incomplete in any respect, it shall communicate with the society with a view to the correction of any such inaccuracies and the supply of deficiencies.
- (5) An investigation under this section shall include—
  - (a) a valuation of the liabilities of the society 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 society 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.
- <sup>F18</sup>(6) .....
- (7) The form and contents of any abstract <sup>F18</sup> . . . under this section shall be such as the Commission may direct; and a direction under this subsection may be given to societies of a specified description or to a specified society.

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- (8) Regulations under this section shall be made by the Commission with the consent of the Treasury.

**Textual Amendments**

- F18** S. 46(6) repealed (1.8.1996) by S.I. 1996/1188 art. 4(a)  
 Words in s. 46(7) repealed (1.8.1996) by S.I. 1996/1188 art. 4(b)

**Commencement Information**

- I24** S. 46 wholly in force; s. 46 not in force at Royal Assent see s. 126(2); s. 46 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 46(1)(3)(8) in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 46 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

**Marginal Citations**

- M10** S.I.1987/2132.

**47 Triennial investigations into condition of certain societies.**

- (1) Subject to the following provisions of this section, a friendly society which—
- (a) is not a society to which section 46 above applies and carries on insurance business; or
  - (b) is a society to which that section applies and carries on general business;
- shall, at least once in every period of 3 years, cause an investigation to be made by the appropriate actuary into the financial condition of the society in respect of its insurance business.
- (2) Where an investigation under this section is carried out, the society shall cause an abstract of the actuary's report to be made and sent to the Commission within 6 months of the date to which the accounts of the society were made up for the purposes of that investigation or such further period (not exceeding 6 months) as the Commission may by notice to the society direct.
- (3) The first investigation into a society's financial condition under this section shall be—
- (a) in the case of a registered friendly society, or an incorporated friendly society which was formerly a registered friendly society, an investigation into its condition at a date not later than 3 years after—
    - (i) the commencement of this section; or
    - (ii) the date as at which its assets and liabilities were last valued under section [F1934 of the 1970 Act],
 whichever is earlier; or
  - (b) in the case of any other incorporated friendly society, an investigation into its condition at a date not later than 3 years after the date on which it is registered.
- (4) Subject to subsection (5) below, a friendly society shall send to the Commission, not later than 6 months after each anniversary of the date to which the accounts of the society were made up for the purposes of the last investigation into its financial condition under this section—

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- (a) a certificate given by the appropriate actuary that there has been no material change in its financial condition in respect of its insurance business since it sent the last abstract under subsection (2) above; or
  - (b) a statement by the appropriate actuary that he is unable to give such a certificate.
- (5) A society is not under the duty imposed by subsection (4) above if, before a date by which a certificate or statement must be sent, a further investigation under this section has been carried out and the requisite abstract has been sent to the Commission.
- (6) If a society sends the Commission a statement under subsection (4)(b) above, it shall be the society's duty to cause an investigation to be carried out under this section; and in such a case—
  - (a) the date to which the society's accounts are made up for the purposes of the investigation shall be the latest anniversary of the date to which its accounts were made up for the purposes of the last investigation under this section; and
  - (b) the abstract required by subsection (2) above shall be sent to the Commission within 6 months of the date by which that statement was required to be sent under subsection (4) above.
- (7) An investigation under this section into the financial condition of a society which falls within subsection (1)(a) above shall include—
  - (a) a valuation of the liabilities of the society attributable to its insurance business; and
  - (c) a determination of any excess over the liabilities so attributable of the assets representing the fund or funds maintained by the society in respect of its insurance 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.
- (8) An investigation under this section into the financial condition of a society falling within subsection (1)(b) above shall include—
  - (a) a valuation of the liabilities of the society attributable to its general business; and
  - (b) a determination of any excess over the liabilities so attributable of the assets representing the fund or funds maintained by the society in respect of that business.
- (9) The form and contents of any abstract under this section shall be such as the Commission may direct; and such a direction may be given to societies of a specified description or to a specified society.
- (10) The Commission may dispense with the requirements of subsections (1) to (6) above in respect of societies to whose purposes, or the nature or scale of whose insurance business, it may deem those provisions inapplicable.
- (11) The Commission may dispense with the requirements of subsections (1) to (6) above in respect of any particular insurance business of a society if, in the Commission's opinion, those provisions are inapplicable to that business because of its nature or scale or the manner in which it is carried on.
- (12) In relation to any society on which a partial exemption is conferred under subsection (11) above, subsections (1) to (8) above shall have effect as if—

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- (a) references to the financial condition of the society excluded its condition in relation to the business to which the partial exemption relates; and
  - (b) subsections (7) and (8) referred only to the assets and liabilities other than those attributable to that business.
- (13) The Commission may direct that this section shall have effect, in relation to societies of a specified description or to a specified society, as if for any reference to 3 years there were substituted a reference to 5 years.
- (14) A direction under subsection (12) or (13) above may make such transitional provision as the Commission considers appropriate.

#### Textual Amendments

**F19** Words in s. 47(3)(a)(ii) substituted (1.1.1994) by S.I. 1993/3226, art. 3, Sch.3

#### Commencement Information

**I25** S. 47 wholly in force; s. 47 not in force at Royal Assent see s. 126(2); s. 47 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 47 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### *Margins of solvency*

#### **48 Margins of solvency in relation to insurance business of certain societies.**

- (1) This section applies to a friendly society which—
- (a) carries on long term business<sup>F20</sup> . . . and falls within subsection (2) of section 37 above;
  - (b) carries on general business<sup>F20</sup> . . . and falls within subsection (3) of that section; or
  - (c) not being a society to which either of those subsections applies, carries on insurance business in the United Kingdom and is of any such description as may be prescribed by regulations.
- (2) A society to which this section applies shall maintain a margin of solvency in respect of its insurance business of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (3) If such a society fails to comply with a requirement to maintain a margin of solvency, the society—
- (a) shall at the request of the Commission submit to it 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 Commission considers it inadequate;
  - (c) shall give effect to any plan accepted by the Commission as adequate.
- (4) Where a friendly society carries on both long term and general business, subsection (2) above shall have effect as if the requirement to maintain a margin of solvency were a requirement to maintain separate margins in respect of each of those two kinds of business.



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- (5) For the purposes of this Act a margin of solvency, in relation to a friendly society, is the excess of the value of the society's assets over the amount of its liabilities.
- (6) Regulations under this section may—
- (a) make different provision with respect to societies of different descriptions;
  - (b) prescribe different margins of solvency with respect to different descriptions of business carried on by societies;
  - (c) prescribe the descriptions of assets or liabilities that are to be taken into account in determining whether a margin of solvency is being maintained; and
  - (d) prescribe different criteria for determining whether a margin of solvency is being maintained by reference to the different descriptions of long term or general business which may be carried on by societies.
- (7) Regulations under this section shall be made by the Commission with the consent of the Treasury.

#### Textual Amendments

- F20** Words in s. 48(1)(a) ceased to have effect (1.9.1994) by virtue of S.I. 1994/1984 reg. 8  
Words in s. 48(1)(b) ceased to have effect (1.9.1994) by virtue of S.I. 1994/1984 reg. 8

#### Commencement Information

- I26** S. 48 wholly in force; s. 48 not in force at Royal Assent see s. 126(2); s. 48 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 48(1)(2)(6)(7) in force for certain purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 4; s. 48 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

## 49 Failure to maintain prescribed margin of solvency.

- (1) If the margin of solvency maintained by a friendly society in respect of its insurance business falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section by the Commission with the consent of the Treasury, the society shall at the request of the Commission submit to it a short-term financial scheme.
- (2) A friendly society that has submitted a scheme to the Commission under subsection (1) above shall propose modifications to the scheme (or the scheme as previously modified) if the Commission considers it inadequate, and shall give effect to any scheme accepted by it as adequate.
- (3) Where a friendly society carries on both long term and general business, subsection (1) above shall have effect as if the reference to the margin of solvency maintained by the society were a reference to the margin of solvency maintained in respect of each of those two kinds of business.

#### Commencement Information

- I27** S. 49 wholly in force; s. 49 not in force at Royal Assent see s. 126(2); s. 49 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 49(1) in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 49 in force to the extent not already in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

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### [<sup>F21</sup>Adequacy of assets and premiums]

#### Textual Amendments

**F21** Cross heading inserted (1.9.1994) by [S.I. 1994/1984](#) reg. 9

#### [49A <sup>F22</sup> Adequacy of assets.

- (1) A friendly society to which section 37(2) or (3) above applies which has entered into contracts of insurance shall secure–
  - (a) that its liabilities under those contracts, 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 excessive reliance is not placed on investments of any particular category or description.
- (2) A friendly society to which section 37(2) above applies 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 under the contract are linked to the value of units in an undertaking for collective investments in transfer– able securities or to the value of assets contained in an internal fund, by those units or assets;
  - (b) if those benefits under the contract 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, yield and marketability which correspond, as nearly as may be, to the assets on which that reference value is based.
- (3) A friendly society to which section 37(2) above applies which has entered into a linked long term contract shall also secure that its liabilities under the contract in respect of linked benefits are covered by assets of a description prescribed by regulations under section 56 below.
- (4) In this section–

“linked benefits”, in relation to a linked long term contract, means benefits payable under the contract 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 the effecting of which constitutes the carrying on of insurance business falling within class III in head A in Schedule 2 to this Act.]

#### Textual Amendments

**F22** [S. 49A](#) inserted (1.9.1994) by [S.I. 1994/1984](#) reg. 9

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[<sup>F23</sup>**49B Adequacy of premiums in respect of long term insurance.**

- (1) Before entering into a contract the effecting of which constitutes the carrying on of long term business, a friendly society to which section 37(2) above applies 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 society which are 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 friendly society to which section 37(2) above applies shall not rely on other resources for the purposes of subsection (1) above in such a way as to jeopardise the solvency of the society in the long term.]

**Textual Amendments**

**F23** S. 49B inserted (1.9.1994) by S.I. 1994/1984 reg. 10

*Criteria of prudent management*

**50 The criteria of prudent management.**

- (1) If it appears to the Commission—
  - (a) that there has been or is, on the part of a friendly society or its committee of management, a failure to satisfy any one or more of the following criteria of prudent management; or
  - (b) that the society's officers do not have the capacity and intention to conduct its affairs so as to satisfy those criteria,it shall be entitled to assume for the purposes of its relevant prudential powers that it is expedient to exercise the powers in order to protect the interests of members of the society.
- (2) The prudential powers relevant for the purposes of this section are its powers—
  - (a) under section 34 above to impose conditions on a society's authorisation;
  - (b) under section 40 above to give a direction by virtue of subsection (3)(c);
  - (c) under section 51 below to make an order forbidding the acceptance of new members;
  - (d) under section 53 below, to give a direction;
  - (e) under section 90 below, to order a transfer of the society's engagements.
- (3) For the purposes of this Act, the criteria of prudent management are—
  - (1) Maintenance of any margin of solvency required by section 48 above.
  - (2) Maintenance of liquid assets sufficient to meet the liabilities of the society as they become due.
  - (3) Maintenance of the requisite accounting records and systems of control of business and of inspection and report.
  - (4) Direction and management—

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- (a) by a sufficient number of persons who are fit and proper to be members of the committee of management or, as the case may be, other officers, in their respective positions,
- (b) conducted by them, with prudence and integrity, in the interests of the members of the society.
- (5) In relation to insurance business, direction and management which, in addition to satisfying the other requirements as to direction and management, is such as to fulfil the reasonable expectations of members of the society as to the conduct of such business.
- (6) Conduct of the society's activities with adequate professional skills.
- (7) Supervision of the activities—
  - (a) of any subsidiary of the society or of any body of which the society has joint control; and
  - (b) of any registered branch of the society;
 with due care and diligence in the interests of the members of the society and without detriment to the conduct of the society's activities.
- [<sup>F24</sup>(8) In the case of a society to which section 37(2) or (3) applies, direction and management which, in addition to satisfying the other requirements as to direction and management, is such as to secure compliance with any obligation imposed on the society by any provision (whether of the law of any part of the United Kingdom or of the law of another EEA State) which—
  - (a) gives effect to the general insurance or life Directives; or
  - (b) is otherwise applicable to the insurance activities of the society.]
- (4) Nothing in this section implies that it is improper for a determination for any purpose of the Commission's relevant prudential powers to take account of factors other than the criteria in subsection (3) above.
- (5) In considering whether a society has satisfied the 7th criterion in subsection (3) above, the Commission shall have regard to the extent to which the operation of the subsidiary, jointly controlled body or registered branch is undertaken in accordance with [<sup>F25</sup>the other 7 criteria] in that subsection so far as they are relevant.
- (6) A failure to satisfy any of the first 3 criteria in subsection (3) above shall be treated, for the purposes of this section, as a failure on the part of a society's committee of management prudently to conduct the affairs of the society.
- (7) A failure on the part of an authorised friendly society to comply with any conditions to which its authorisation under section 32 above is subject shall be treated, for the purposes of this section, as a failure on the part of the society's committee of management prudently to conduct the affairs of the society.
- (8) Any carrying on by a friendly society of an activity beyond its powers shall be treated, for the purposes of this section, as a failure on the part of the society's committee of management prudently to conduct the affairs of the society.
- (9) Any carrying on of activities which are beyond its powers—
  - (a) by a subsidiary of, or a body jointly controlled by, an incorporated friendly society; or
  - (b) by a registered branch of a registered friendly society,

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shall be treated for the purposes of this section as a failure on the part of the society's committee of management to supervise the activities of the subsidiary, jointly controlled body or registered branch with due care and diligence.

(10) The following provisions apply for the interpretation of the list of criteria in subsection (3) above in their application to a friendly society, that is to say—

“activities” includes activities the society proposes to carry on;

“requisite”, with reference to accounting records and systems of control, means such as are required by section 68 below; and

“sufficient” with reference to the number of members of a committee of management or of other officers, means sufficient having regard to the range and scale of the society's business.

#### Textual Amendments

**F24** S. 50(3): eighth criterion substituted (1.9.1994) by S.I. 1994/1984 reg. 11(1)

**F25** Words in s. 50(5) substituted (1.1.1994) by S.I. 1993/2519, reg. 2(3)

#### Commencement Information

**I28** S. 50 wholly in force; s. 50 not in force at Royal Assent see s. 126(2); s. 50 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 50 in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2

### *Powers of Commission*

#### **51 Power to forbid acceptance of new members.**

- (1) Subject to the provisions of this section, if the Commission considers it expedient to do so in the interests of the members or potential members of a friendly society, it may give the society a direction forbidding it to accept any new members.
- (2) If the Commission proposes to give such a direction, it shall serve on the society a notice stating that it proposes to give a direction.
- (3) A notice under subsection (2) above shall specify the grounds for the proposed direction.
- (4) The Commission shall consider any representations made by the society within such period (not being less than one month) from the date on which the society is served with the notice as the Commission may allow and, if the society so requests, shall afford to it an opportunity of being heard by the Commission within that period.
- (5) The Commission may not give a direction unless all the grounds for giving it are those, or among those, which were specified in the notice served on the society under subsection (2) above.
- (6) On giving a direction, the Commission shall—
  - (a) serve notice of it on the society, specifying the grounds for making it;
  - (b) publish notice of it in one or more of the London, Edinburgh and Belfast Gazettes and in any such other ways as it considers appropriate; and
  - (c) send a copy of it to the central office.

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- (7) A society which contravenes a direction given to it under this section shall be guilty of an offence and shall be liable—
- (a) on conviction on indictment, to a fine; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (8) The central office shall keep a copy of a direction given to a friendly society under this section in the public file of the society.

#### Commencement Information

**I29** S. 51 wholly in force; s. 51 not in force at Royal Assent see s. 126(2); s. 51 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 51 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

## 52 Applications to court.

- (1) Where the Commission has reason to believe that any of the conditions mentioned in subsection (2) below is satisfied, it may present a petition to the High Court for the winding up of the society under the applicable winding up legislation.
- (2) The conditions referred to in subsection (1) above are—
- (a) that a friendly society is carrying on activities that are not activities which such a society is permitted by this Act or the 1974 Act to carry on;
  - (b) that the society is not carrying on any activity falling within Schedule 2 to this Act;
  - [<sup>F26</sup>(c) that the society is failing to satisfy any obligation to which it is subject by virtue of any provision of the law of any EEA State other than the United Kingdom which—
    - (i) gives effect to the general insurance or life Directives; or
    - (ii) is otherwise applicable to the insurance activities of the society in that State;]
    - (d) that a subsidiary of an incorporated friendly society or a body jointly controlled by such a society is carrying on activities other than those mentioned in Schedule 7 to this Act;
 and a court shall not make an order for the winding up of a society by virtue of this section unless it is satisfied that one or more of those conditions is satisfied.
- (3) Where the Commission has reason to believe that any of the conditions mentioned in subsection (4) below is satisfied, it may make an application to the High Court for an order under subsection (5) below.
- (4) The conditions referred to in subsection (3) above are—
- (a) any of the conditions mentioned in subsection (2) above; or
  - (b) that an incorporated friendly society has taken part in forming or has acquired control of a body corporate jointly with any person other than another incorporated friendly society without the consent of the Commission;
- and a court shall not make an order under subsection (5) below unless it is satisfied that one or both of the conditions mentioned in this subsection is satisfied.
- (5) An order under this subsection is an order directing the society to modify its business as directed in the order or to take such other steps as may be so directed or, where

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the condition mentioned in subsection (4)(b) above is satisfied, an order directing the society to cease jointly controlling the body corporate.

- (6) Where a court makes an order under subsection (5) above, the Commission shall send a copy of it to the central office and the central office shall keep the copy in the public file of the society.
- (7) The power to present a petition or to make an application for an order under subsection (5) above is available to the Commission whether or not it has previously presented a petition or made an application for such an order, as the case may be.
- (8) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, references to the High Court shall be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.
- (9) In this section “the applicable winding up legislation”, in relation to an incorporated friendly society, has the same meaning as in section 23 above and, in relation to a registered friendly society, means Part V of the <sup>M11</sup>Insolvency Act 1986 or (where the society’s registered office is in Northern Ireland) Part VI of the <sup>M12</sup>Insolvency (Northern Ireland) Order 1989.

#### Textual Amendments

**F26** S. 52(2)(c) substituted (1.9.1994) by S.I. 1994/1984 reg. 12

#### Commencement Information

**I30** S. 52 wholly in force; s. 52 not in force at Royal Assent see s. 126(2); s. 52 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 52 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

#### Marginal Citations

**M11** 1986 c.45.

**M12** S.I. 1989/2405 (N.I. 19).

### [<sup>F27</sup>52A Prohibition on disposal of assets.

- (1) Where the Commission has reason to believe that any of the conditions mentioned in subsection (2) below is satisfied in relation to a friendly society to which section 37(2) or (3) applies, it may apply to the court for an injunction restraining, or in Scotland an interdict prohibiting, the society from disposing of or otherwise dealing with any of its assets to the value of its EC liabilities.
- (2) The conditions referred to in subsection (1) above are—
  - (a) that the Commission has given (and not revoked) a direction in respect of the society under section 40 above; or
  - (b) that the society has failed to satisfy an obligation to which it is or was subject by virtue of section 48, 49, 49A above or Part III of the Friendly Societies (Insurance Business) Regulations 1994 <sup>F28</sup>; or
  - (c) that a submission by the society to the Commission of an account or statement specifies, as the amount of any liabilities of the society, an amount appearing to the Commission to have been determined otherwise than in accordance with—
    - (i) valuation regulations; or

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- (ii) where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for friendly societies,

and a court shall not make an order under this section unless it is satisfied that one or more of those conditions are satisfied.

- (3) Where a court makes an order under this section, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Commission to perform its functions under this Act.
- (4) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (5) In this section any reference to an EC liability is a reference to a liability of the business carried on by the society in the [F29EEA States].]

#### Textual Amendments

**F27** S. 52A added (1.9.1994) by S.I. 1994/1984 reg. 13

**F28** S.I. 1994/1981.

**F29** S. 52A(5) words substituted (1.1.1998) by S.I. 1997/2849 reg. 4

### 53 Residual power to impose requirements for protection of members.

- (1) If the Commission considers it expedient to do so in order to protect the interests of members of a friendly society which does not require authorisation under section 32 above, it may direct the society to take such action as appears to the Commission to be appropriate, having regard to any risk—
- (a) that the society may be unable to meet its liabilities; or
  - (b) that it will not be managed in the interests of its members.
- (2) The power conferred by this section shall not be exercised in such a way as to restrict the society's freedom to dispose of its assets except where the ground for intervention arises out of the submission by the society to the Commission of an account or statement specifying, as the amount of any liabilities of the society, an amount appearing to the Commission to have been determined otherwise than in accordance with—
- (a) valuation regulations; or
  - (b) where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for friendly societies.

#### Commencement Information

**I31** S. 53 wholly in force; s. 53 not in force at Royal Assent see s. 126(2); s. 53 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 53 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2



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## 54 Supervision of activities of subsidiaries etc.

- (1) In this section “friendly society group” means an incorporated friendly society, subsidiaries of that society and bodies jointly controlled by it.
- (2) If it appears to the Commission that the activities of subsidiaries of an incorporated friendly society or bodies jointly controlled by it are or may become disproportionate to those of the friendly society group as a whole, it may direct the society—
  - (a) to take or refrain from taking steps specified in the direction with a view to securing that the activities in question cease to be or do not become disproportionate; or
  - (b) to take steps so specified with a view to securing—
    - (i) that it ceases to have control or joint control of any subsidiary or jointly controlled body in question; or
    - (ii) that any such subsidiary or jointly controlled body is wound up.
- (3) If it appears to the Commission that any activity of a subsidiary of an incorporated friendly society or of a body jointly controlled by such a society is unsuitable for a member of a friendly society group, it may direct the society—
  - (a) to take steps specified in the direction with a view to securing that that activity ceases; or
  - (b) to take steps so specified with a view to securing—
    - (i) that it ceases to have control or joint control of the subsidiary or jointly controlled body; or
    - (ii) that the subsidiary or jointly controlled body is wound up.
- (4) A direction under this section may specify when the society is to comply with it and may do so by reference to a date, the end of a period or the happening of an event.
- (5) A society given a direction under this section must—
  - (a) comply with the direction; or
  - (b) convert itself into a company in accordance with Part VIII of this Act.
- (6) The Commission may by notice to the society vary or revoke a direction under this section.
- (7) If a society requests the Commission to notify it as to whether in the opinion of the Commission it has complied with a direction under this section, the Commission shall comply with the request.
- (8) The Commission may issue to incorporated friendly societies (or to any description of such societies) such general guidance as it thinks appropriate as to circumstances in which a direction under this section is or is not likely to be given.
- (9) The Commission shall send to the central office a copy—
  - (a) of a direction under this section;
  - (b) of a notice under subsection (6) above; or
  - (c) of a notification under subsection (7) above;and the central office shall keep a copy in the public file of the society.

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#### Commencement Information

**I32** S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 126(2); s. 54 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 54 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

### 55 Supervision of group insurance business.

- (1) This section applies where a friendly society carries on any group insurance business providing benefits for or in respect of a group of persons who are not members of the society.
- (2) If it appears to the Commission that the business so carried on is or may become disproportionate to the other activities of the society (including any group insurance business carried on for the provision of benefits for or in respect of persons who are members of the society), it may direct the society to take or refrain from taking steps specified in the direction with a view to securing that the group business in question ceases to be or does not become disproportionate.
- (3) Subsections (4) to (9) of section 54 above shall apply in relation to a direction under this section as they apply to a direction under that section.

#### Commencement Information

**I33** S. 55 wholly in force; s. 55 not in force at Royal Assent see s. 126(2); s. 55 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 55 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### [55A] <sup>F30</sup> Supervision of controllers.

- (1) Schedule 13A to this Act shall have effect for making provision for or in connection with the supervision by the Commission of controllers of friendly societies to which section 37(2) or (3) above applies.
- (2) In this Act–
  - “controller”, in relation to a friendly society to which section 37(2) or (3) of this Act applies, means a person who, either alone or with any associate or associates–
    - (a) is entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
    - (b) is able to exercise a significant influence over the management of the society by virtue of an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of the society;
  - “notifiable voting rights”, in relation to a friendly society to which section 37(2) or (3) above applies, means voting rights which, if acquired by any person, will result in his becoming a 10 per cent. controller, a 20 per cent. controller, a 33 per cent. controller, a 50 per cent. controller or a majority controller of the society.
- (3) In this section and Schedule 13A to this Act, in relation to a friendly society to which section 37(2) or (3) above applies–

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“10 per cent. controller” means a controller in whose case the percentage referred to in paragraph (a) of the definition of “controller” in subsection (2) above is 10 or more but less than 20;

“20 per cent. controller” means a controller in whose case that percentage is 20 or more but less than 33;

“33 per cent. controller” means a controller in whose case that percentage is 33 or more but less than 50;

“50 per cent. controller” means a controller in whose case that percentage is 50;

“majority controller” means a controller in whose case that percentage is more than 50.]

#### Textual Amendments

**F30** S. 55A added (1.9.1994) by S.I. 1994//1984 reg. 14(1)

## 56 Linked long-term insurance contracts.

- (1) Regulations may be made by the Commission, with the consent of the Treasury, as respects the matters specified in subsection (2) below, in relation to contracts made by friendly societies the effecting of which constitutes the carrying on of insurance business falling within class III in head A in Schedule 2 to this Act.
- (2) Regulations under this section may make provision for—
  - (a) restricting the descriptions of property or the indices of the value of property by reference to which benefits under the contracts may be determined;
  - (b) restricting the proportion of those benefits which may be determined by reference to property of a specified description or a specified index;
  - (c) regulating the manner in which and the frequency with which property of any description is to be valued for the purpose of determining those benefits and the times at which reference is to be made for that purpose to any index of the value of property;
  - (d) requiring friendly societies that enter into such contracts to appoint valuers for carrying out valuations of property of any description for the purpose of determining benefits under the contracts (being valuers who comply with the prescribed requirement as to qualifications and independence from the society) and to furnish the Commission with the prescribed information in relation to such appointments;
  - (e) requiring societies that enter into such contracts to furnish in such manner and at such times or intervals as may be prescribed such information relating to the value of the benefits under the contracts as may be prescribed, whether by sending notices to their members, depositing statements with the Commission, publication in the press or otherwise;
  - (f) requiring societies that enter into such contracts to furnish to the Commission in such manner and at such times or intervals as may be prescribed, such information certified in such manner as may be prescribed with respect to so much of their business as is concerned with the contracts or with any class or description of the contracts, and enabling the Commission to publish such information in such ways as it thinks appropriate.

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- (3) Regulations made for the purposes of subsection (2)(e) above may, in relation to notices required to be sent to members of friendly societies, impose requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) for securing that such notices are easily legible.
- (4) The Commission may, on the application of any friendly society, alter the requirements of regulations under this section so as to adapt those requirements to the circumstances of that society or to any particular kind of contract entered into or proposed to be entered into by that society.
- (5) Regulations under this section may, to such extent as may be specified in them, apply in relation to contracts entered into before the coming into operation of the regulations, including contracts entered into before the passing of this Act.
- (6) In this section “prescribed” means prescribed by regulations under this section.

#### **Commencement Information**

**I34** S. 56 wholly in force; s. 56 not in force at Royal Assent see s. 126(2); s. 56 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 56 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

#### *Covering of risks situated in another member State*

#### **[<sup>F31</sup>57 Recognition of societies in accordance with insurance Directives.**

Schedule 13B to this Act shall have effect for making provision for or in connection with the recognition in other EEA States of friendly societies to which section 37(2) or (3) of this Act applies.]

- (2) After Schedule 13A to that Act insert Schedule 2 to these Regulations (recognition of friendly societies in other EEA States), as Schedule 13B.
- (3) If a friendly society to which section 37(2) or (3) of the 1992 Act applies was immediately before the commencement date lawfully carrying on direct insurance business of a class or part of a class in a member State other than the United Kingdom through an overseas branch in that State, it shall be treated for the purposes of that Act as if the requirements of paragraph 1 of Schedule 13B to that Act had been complied with in relation to insurance business of that class or part of a class.
- (4) If a friendly society to which section 37(2) or (3) of the 1992 Act applies was immediately before the commencement date lawfully providing insurance of a class or part of a class in a member State other than the United Kingdom through an establishment in another member State, it shall be treated for the purposes of that Act as if the requirements of paragraph 5 of Schedule 13B to that Act had been complied with in relation to insurance of that class or part of a class.
- (6) Regulation 4 of the Friendly Societies (Amendment) Regulations 1993 (which is superseded by this regulation) shall cease to have effect.

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#### Textual Amendments

**F31** S. 57 substituted (1.9.1994) by S.I. 1994/1984 reg. 15(1)

### [57A] <sup>F32</sup> Notification by Commission of measures taken by it.

- (1) This section applies where the Commission is considering taking or has taken any measures in relation to a friendly society to which section 37(2) or (3) above applies which—
- (a) carries on insurance business through an overseas branch in an EEA State other than the United Kingdom; or
  - (b) provides insurance in an EEA State other than the United Kingdom through an establishment in another EEA State.
- (2) The Commission—
- (a) shall, if required by Article 24 of the first life Directive or Article 20 of the first general insurance Directive, or by any other provision of the life or general insurance Directives to do so, notify any supervisory authority of such a State of those measures or proposed measures; and
  - (b) may, if it is satisfied that it is expedient to do so, request that authority to take similar measures in relation to the friendly society.
- (3) In this section “measure” includes imposing conditions which prohibit the disposals of assets and exercising any power conferred by this Part of the Act.]

#### Textual Amendments

**F32** S. 57A substituted (1.9.1994) by S.I. 1994/1984 reg. 16

### *Appeals*

### <sup>F33</sup> 58 Rights of appeal.

- (1) A friendly society which is aggrieved by a decision of the Commission—
- (a) to refuse to grant authorisation under section 32 above,
  - (b) to impose conditions, or as to the conditions imposed, under section 34 or 36 above,
  - (c) to withdraw authorisation under section 40 or 41 above,
  - (d) to give a direction under section 51 above; or
  - (e) to give a direction to the society, or as to the steps specified in a direction, under section 54 or 55 above,
- may appeal against the decision to a tribunal constituted in accordance with section 59 below.
- (2) Any person in relation to whom the Commission, in deciding to refuse to grant authorisation, to impose conditions or to withdraw authorisation—
- (a) makes a determination that he is not a fit and proper person to hold or, as the case may be, to remain in an office in the society in question, or
  - (b) imposes a requirement that he be removed from an office in the society,

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may appeal against the decision so far as it relates to that determination or requirement.

- (3) The withdrawal of a society's authorisation shall not have effect—
  - (a) until the end of the period within which an appeal can be brought against the Commission's decision to withdraw that authorisation; and
  - (b) if such an appeal is brought, until it is determined or withdrawn.
- (4) Where the Commission decides to refuse to grant authorisation to a society on an application made in pursuance of a direction under section 39 above, the society's authorisation shall not expire under subsection (5) of that section—
  - (a) until the end of the period within which an appeal can be brought against the decision not to grant authorisation; and
  - (b) if such an appeal is brought, until it is determined or withdrawn.
- (5) A direction under section 51, 54 or 55 above shall not have any effect until—
  - (a) the end of the period within which an appeal can be brought against the Commission's decision to give the direction or as to any steps specified in the direction; and
  - (b) if such an appeal is brought, until it is determined or withdrawn.
- (6) Subject to any order of the tribunal made under section 59(6) below, an appeal under subsection (1)(b) or (2) above shall not affect the operation, pending the determination of the appeal, of any condition which is the subject of the appeal.
- (7) Subject to subsection (8) below, no determination of an appeal brought by any person under subsection (2) above shall affect any decision of the Commission on the ground of (or on grounds including) the determination made in relation to that person or, as the case may be, the failure of the society to comply with the requirement imposed in relation to that person.
- (8) The tribunal may revoke a decision of the Commission to impose a condition which is the subject of an appeal under subsection (2) above in so far as it seeks to prevent the person making the appeal from holding, or continuing to hold, office in the society.

#### Textual Amendments

**F33** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

VALID FROM 17/08/2001

#### <sup>F34</sup>58A Notices, hearings and appeals.

- (1) If the Authority proposes—
  - (a) to give a direction to a society under section 54 or section 55, or to vary such a direction other than at the request of the society, or
  - (b) to give a direction in relation to a society under section 90,
 it must give the society a warning notice.
- (2) The warning notice must set out the terms of the direction which the Authority proposes to give and, in the case of a proposal to give a direction under section 54 or

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55, any provisions which the Authority proposes to include in the direction by virtue of section 54(4) (including that provision as applied by section 55(3)).

- (3) If the Authority decides—
  - (a) to give a direction to a society under section 54 or section 55, or to vary such a direction other than at the request of the society, or
  - (b) to give a direction in relation to a society under section 90,it must give the society a decision notice.
- (4) The decision notice must set out the terms of the direction which the Authority has decided to give and, in the case of a decision to give a direction under section 54 or 55, any provisions to be included in the direction by virtue of section 54(4) (including that provision as applied by section 55(3)).
- (5) A society to whom a decision notice is given under this section may refer the matter to the Financial Services and Markets Tribunal.
- (6) Part XXVI of the Financial Services and Markets Act 2000 (notices) is to be treated as applying in respect of warning notices and decision notices given under this section as it applies in respect of warning notices and decision notices given under that Act, subject to subsection (8) below.
- (7) The provisions of Part IX of the Financial Services and Markets Act 2000 (hearings and appeals) are to be treated as applying in respect of references to the Financial Services and Markets Tribunal made under this section as they apply in respect of references made to that Tribunal under that Act.
- (8) In the application of Part XXVI of that Act in respect of warning notices and decision notices given under this section—
  - (a) section 388(1)(e)(i) (which requires a decision notice to indicate any right given under that Act to refer a decision to the Tribunal) is to be read as if, for the words “this Act”, there were substituted “the Friendly Societies Act 1992”;
  - (b) section 388(2) (which makes provision for the type of action to which a decision notice may relate if it was preceded by a warning notice) is to be read as if, for the word “Part”, there were substituted “section”;
  - (c) section 390(4) (which provides for the content of a final notice about an order) is to be read as if—
    - (i) for the words “an order” there were substituted “a direction”, and
    - (ii) for the words “the order”, in both places where they appear, there were substituted “the direction”; and
  - (d) section 392 (application of sections 393 (third party rights) and 394 (access to Authority material)) is to be read as if—
    - (i) paragraph (a) of that section contained a reference to a warning notice given under subsection (1) above, and
    - (ii) paragraph (b) of that section contained a reference to a decision notice given under subsection (3) above.]

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### Textual Amendments

**F34** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

### <sup>F35</sup>59 Determination of appeals.

(1) Where an appeal is brought under section 58 above, a tribunal to determine the appeal shall be constituted in accordance with subsection (2) below.

(2) The tribunal shall consist of—

- (a) a chairman appointed by the Lord Chancellor or, where the society concerned has its registered office in Scotland, by the Lord Chancellor in consultation with the Lord Advocate; and
- (b) two other members appointed by the Treasury.

(3) The chairman shall be a person who—

- (a) has a seven year general qualification, within the meaning of the <sup>M13</sup>Courts and Legal Services Act 1990;
- (b) is an advocate or solicitor in Scotland of at least seven years' standing; or
- (c) is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years' standing;

and the other two members shall be persons appearing to the Treasury to have experience of accountancy, the business of insurance or the business of friendly societies.

[<sup>F36</sup>(3A) A person shall not be appointed after the day on which he attains the age of 70 to be the chairman of a tribunal under this section.]

(4) Subject to subsection (5) below, on any appeal against a decision of the Commission the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(5) In the case of an appeal against a decision to give a direction under section 54 or 55 above—

- (a) the tribunal shall, on the evidence adduced before it, reconsider the decision to give the direction and the steps specified in the direction (according to the extent of the appeal);
- (b) if the tribunal determines that such a direction should not be given, it shall reverse the decision; and
- (c) if the tribunal determines that those steps should not be so specified, it may give the Commission such guidance as it thinks fit as to what the appropriate steps might be.

(6) The tribunal may, on the application of the friendly society concerned, order that the operation of any condition which is the subject of an appeal by the society be suspended pending the determination of the appeal.

(7) The tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except by directing the Commission—



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- (a) in the case of an appeal against a decision to refuse to grant authorisation, to determine conditions to which the grant of authorisation is to be subject;
  - (b) in the case of an appeal against the imposition of conditions or as to the conditions imposed by the decision, to determine conditions or different conditions subject to which the authorisation is to be granted or is to continue, as the case may be;
  - (c) in the case of an appeal against a decision to withdraw authorisation, to determine conditions or different conditions subject to which the authorisation is to continue in force, as the case may be;
  - (d) in the case of an appeal against a decision as to the steps specified in a direction under section 54 or 55 above, to determine, having taken account of any guidance given under subsection (5) above, the steps which are to be so specified.
- (8) Where by virtue of subsection (7)(d) above the tribunal directs the Commission to determine the steps to be specified in the direction, the society may appeal against the steps so specified.
- (9) Where by virtue of subsection (7) above the tribunal directs the Commission to determine conditions or different conditions—
- (a) the Commission shall in accordance with section 34 or 36 above impose such conditions as it thinks fit; and
  - (a) paragraphs 7 and 8 of Schedule 13 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule;
- and the society may appeal to the tribunal against any condition so imposed.
- (10) On any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions which are the subject of the appeal or may direct the Commission to determine different conditions; and where by virtue of this subsection the tribunal directs the Commission to determine different conditions, subsection (9) above shall apply as it applies where the tribunal gives such a direction by virtue of subsection (7) above.
- (11) Where the tribunal reverses a decision of the Commission to refuse to grant authorisation, it shall direct the Commission to grant it; and where the tribunal reverses a decision of the Commission to make the grant of authorisation subject to conditions, it shall direct the Commission to grant it unconditionally.
- (12) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Commission; and unless the tribunal has directed the Commission to determine conditions or, in any other case, the tribunal directs otherwise, the determination shall come into operation when the notice is given to the appellant.
- (13) The Treasury may out of money provided by Parliament pay to the persons appointed as members of a tribunal under this section such fees and allowances in respect of expenses as the Treasury may determine and any other expenses incurred for the purposes of this section.

#### Textual Amendments

**F35** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

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**F36** S. 59(3A) inserted (31.3.1995) by 1993 c. 8, s. 26, **Sch. 6 para.68** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

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

**C5** S. 59 restricted (31.3.1995) by 1993 c. 8, s. 26(8)(j) (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

S. 59: power to transfer functions conferred (19.5.1999) by S.I. 1999/678, **art. 2(1)**, **Sch.**

**C6** S. 59(2)(a): power to transfer certain functions conferred (1.7.1999) by S.I. 1999/1750, **arts. 1(1), 2, Sch. 1**

**Marginal Citations**

**M13** 1990 c. 41.

**F37 60 Costs, procedure and evidence.**

- (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to an appeal.
- (2) On an appeal under section 58(2) above the friendly society in relation to which the determination was made, or upon which the requirement was imposed, shall be entitled to be heard.
- (3) The Treasury may make regulations with respect to appeals under section 58 above; and those regulations may in particular make provision—
  - (a) as to the period within which and the manner in which such appeals are to be brought;
  - (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private;
  - (c) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
  - (d) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court in England and Wales or Northern Ireland or, in Scotland, for granting to any person such recovery or inspection of documents as might be granted by the sheriff;
  - (e) for enabling an appellant to withdraw an appeal or the Commission to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
  - (f) for taxing or otherwise settling any costs or expenses directed to be paid by the tribunal and for the enforcement of any such direction;
  - (g) for enabling any functions in relation to an appeal to be discharged by the chairman of the tribunal; and
  - (h) as to any other matter connected with such appeals.
- (4) Regulations under this section with respect to appeals where the friendly society concerned has its registered office in Scotland shall be made by the Lord Advocate.
- (5) A person who, having been required in accordance with regulations under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (6) A person who intentionally alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### Textual Amendments

**F37** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

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

**C7** S. 60: power to transfer functions conferred (19.5.1999) by S.I. 1999/678, **art. 2(1), Sch.**

**C8** S. 60(4): power to transfer certain functions conferred (1.7.1999) by S.I. 1999/1750, arts. 1(1), 2, **Sch. 1**

### <sup>F38</sup> 61 Further appeals on points of law.

- (1) An appeal shall lie to the High Court at the instance of the friendly society or other person concerned or of the Commission on any question of law arising from any decision of a tribunal under section 59 above; and if the court is of the opinion that the decision was erroneous in law, it shall remit the matter to the tribunal for re-hearing and determination by it.
- (2) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, references to the High Court shall be construed as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.
- (3) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (1) above except with the leave of that court or of the court or judge from whose decision the appeal is brought.
- (4) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

#### Textual Amendments

**F38** S. 58A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 58-61 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 75** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

### Information

### 62 Powers to obtain information and documents etc.

- (1) This section applies to information, documents or other material, or explanations of matters which relate to—

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- (a) the activities or the plans for future development of a friendly society; or
- (b) the activities or the plans for future development of a subsidiary of or body jointly controlled by an incorporated friendly society;

and, in relation to the imposition of requirements under this section, “the purposes of its supervisory functions” means the purposes of the discharge by the Commission of any of its functions under this Act.

- (2) This section does not authorise any requirement in relation to information, documents or other material to be imposed on a subsidiary of or body jointly controlled by an incorporated friendly society unless that subsidiary or body carries on business in the United Kingdom; but a requirement may be imposed under this section on a friendly society in relation to information, documents or other material in the possession or control of a subsidiary of or body jointly controlled by the society which does not carry on business in the United Kingdom.
- (3) Subject to subsection (2) above, the Commission may by notice to a friendly society or to a subsidiary of, or body jointly controlled by, an incorporated friendly society, require the body to which it is addressed—
  - (a) to furnish to it, within a specified period or at a specified time or times, such specified information as the Commission considers it needs for the purposes of its supervisory functions;
  - (b) to produce to it, at a specified time and place, such specified documents or other material as the Commission considers it needs for the purposes of its supervisory functions;
  - (c) to provide to it, within a specified period, such explanations of specified matters as the Commission considers it needs for the purposes of its supervisory functions;
  - (d) to furnish to it, within a specified period, a report by an accountant or actuary approved by the Commission on, or on specified aspects of, information or documents or other material furnished or produced to the Commission.
- (4) Where by virtue of subsection (3)(a), (b) or (c) above the Commission has power to require the furnishing of any information, the production of any document or material or the provision of any explanation by a friendly society, the Commission shall have the like power as regards any person who—
  - (a) is or has been an officer, employee or agent of the society [<sup>F39</sup>or, in the case of a society to which section 37(2) or (3) above applies, a controller or manager of the society], or
  - (b) in the case of documents or material, appears to the Commission to have the document or material in his possession or under his control.
- (5) Where by virtue of subsection (3)(a), (b) or (c) above the Commission has power to require the furnishing of any information, the production of any document or material or the provision of any explanation by a subsidiary of or body jointly controlled by an incorporated friendly society, the Commission shall have the like power as regards any person who—
  - (a) is or has been an officer, employee or agent of the subsidiary or jointly controlled body, or
  - (b) in the case of documents or material, appears to the Commission to have the document or material in his possession or under his control.

[<sup>F40</sup>(5A) Any person authorised by the Commission may, on producing if required evidence of his authority, enter any premises occupied by—

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- (a) any body which is a friendly society to which section 37(2) or (3) above applies, or is a subsidiary of, or body jointly controlled by, such a society, and on which a notice has been served under subsection (3) above; or
  - (b) any person who is or has been a controller, manager, officer, employee or agent of such a society, or of a subsidiary of, or body jointly controlled by, such a society, and on whom a notice has been served under subsection (4) or (5) above,
- for the purpose of obtaining the information or documents required by the notice and exercising the powers conferred by subsection (3) above.]
- (6) Where any person from whom production of a document or material is required under subsection (4) or (5) above claims a lien on the document or material, the production of it shall be without prejudice to the lien.
  - (7) Nothing in the foregoing provisions of this section shall compel the production—
    - (a) by a barrister, solicitor, advocate or licensed conveyancer of a document or material contained in a privileged communication or, in Scotland, a communication which is protected from disclosure on the ground of confidentiality, made by him or to him in that capacity or the furnishing of information contained in such communication so made;
    - (b) by a person who is not a barrister or solicitor of a document or material contained in a communication made by him or to him which is privileged by virtue of section 63 of the <sup>M14</sup>Courts and Legal Services Act 1990 or the furnishing of information contained in such a communication; or
    - (c) by an independent qualified conveyancer, an executry practitioner or a recognised financial institution of a document or material contained in a communication made by him or to him which is protected from disclosure by virtue of section 22 of the <sup>M15</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or the furnishing of information contained in such a communication.
  - (8) Where, by virtue of subsection (3), (4) or (5) above, the Commission requires the production by a friendly society or other body or any other person of documents or material, the Commission may—
    - (a) if the documents or material are not produced, require that person to state, to the best of his knowledge and belief, where the documents or material are;
    - (b) if the documents or material are produced, take copies of or extracts from them and require that person or any other person who is or has been an officer, employee or agent of the friendly society or other body, as the case may be, to provide an explanation of the documents or material.
  - (9) Any person who, when required to do so under this section, fails without reasonable excuse to furnish any information or report, to produce any documents or material, or to provide any explanation or make any statement, shall be guilty of an offence and liable on summary conviction—
    - (a) to a fine not exceeding level 5 on the standard scale; and
    - (b) in the case of a continuing offence, to an additional fine not exceeding one tenth of that level for every day during which the offence continues.
  - (10) Any friendly society which furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular, shall be guilty of an offence and liable—
    - (a) on conviction on indictment, to a fine; and

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- (b) on summary conviction to a fine not exceeding the statutory maximum.
- (11) Any person who knowingly or recklessly furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (12) In this section—
  - “specified” means specified in a notice under this section; and
  - “agent”, in relation to a friendly society or a subsidiary of, or body jointly controlled by, an incorporated friendly society, includes its bankers, accountants, solicitors and auditors and the appropriate actuary.

#### Textual Amendments

**F39** S. 62(4)(a) words substituted (1.9.1994) by S.I. 1994/1984 reg. 17(1)

**F40** S. 62(5A) inserted (1.9.1994) by S.I. 1994/1984, reg. 17(2)

#### Commencement Information

**I35** S. 62 wholly in force; s. 62 not in force at Royal Assent see s. 126(2); s. 62 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 62 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

#### Marginal Citations

**M14** 1990 c. 41.

**M15** 1990 c. 40.

VALID FROM 17/08/2001

#### <sup>F41</sup>62A Entry of premises under warrant under section 176 of the Financial Services and Markets Act 2000.

- (1) A justice of the peace may issue a warrant under section 176 of the Financial Services and Markets Act 2000 if satisfied on information on oath given by or on behalf of the Authority, an authorised officer within the meaning of section 62(3A) above, or a person appointed as an investigator under section 65(1) below or as an inspector under section 66(1) below, that there are reasonable grounds for believing that the first or second set of conditions below is satisfied.
- (2) The first set of conditions is that—
  - (a) there are on the premises specified in the warrant information, documents or other material in relation to which a requirement has been imposed on any person under section 62(3), (3A), (4) or (5) above or section 67(3) below, or which it is the duty of any person to produce under section 65(3) or 67(2) below, and
  - (b) that person has failed (wholly or in part) to comply with that requirement or, having been requested to do so, has failed (wholly or in part) to comply with that duty.

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- (3) The second set of conditions is that—
- (a) there are on the premises specified in the warrant information, documents or other material in relation to which a requirement could be imposed on any person under section 62(3), (3A), (4) or (5) above or section 67(3) below, or which any person could be requested to produce in compliance with the duty imposed on them by section 65(3) or 67(2) below, and
  - (b) if such a requirement were imposed, or such a request made,—
    - (i) it would not be complied with, or
    - (ii) any information, documents or other material to which it related would be removed, tampered with or destroyed.]

#### Textual Amendments

**F41** S. 62A inserted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, art. 2, 13(1), Sch. 3, Pt. 1 para 77 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

#### <sup>F42</sup>63 Confidentiality of certain information.

- (1) Subject to section 64 below, no restricted information which relates to the business or other affairs of a friendly society, a registered branch of a friendly society or any other person shall be disclosed (otherwise than to an officer or employee of the primary recipient) by—
- (a) the primary recipient; or
  - (b) any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.
- (2) For the purposes of this section—
- “the primary recipient” means the Commission, the Chief Registrar, the central office or any officer or servant of any such person; and
- “restricted information” means information which is obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Act or the 1974 Act;
- but information shall not be treated as restricted information if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.
- (3) Any information disclosed to the Commission or the Chief Registrar by an overseas regulatory authority (within the meaning of section 64 below) shall be treated as restricted information for the purposes of this section.
- (4) A person who discloses information in contravention of this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both.

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### Textual Amendments

**F42** S. 63A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 63, 64 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 78** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

### Commencement Information

**I36** S. 63 wholly in force; s. 63 not in force at Royal Assent see s. 126(2); s. 63 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 63 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), **Sch. 2**

VALID FROM 17/08/2001

### [<sup>F43</sup>63A Disclosure of information.

- (1) For the purposes of sections 348 to 353 of the Financial Services and Markets Act 2000 (restrictions on disclosure of confidential information)—
  - (a) information to which this section applies is to be treated as confidential information; and
  - (b) in relation to such information, each of the following is a primary recipient—
    - (i) the Authority;
    - (ii) any person who is or has been employed by the Authority; and
    - (iii) any person appointed by the Authority to carry out functions under this Act or the 1974 Act.
- (2) This section applies to information which—
  - (a) relates to the business or other affairs of a friendly society, a registered branch of a friendly society or any other person;
  - (b) was received by a primary recipient (within the meaning of subsection (1) (b)) for the purposes of, or in the discharge of, any functions of the Authority under any provision made by or under this Act or the 1974 Act; and
  - (c) is not excluded information by virtue of subsection (4).
- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
  - (a) by virtue of a requirement to provide it imposed by or under this Act;
  - (b) for other purposes as well as purposes mentioned in that subsection.
- (4) Information is excluded information if—
  - (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by section 348 of the Financial Services and Markets Act 2000 (restrictions on disclosure of confidential information); or
  - (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.]



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### Textual Amendments

**F43** S. 63A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 63, 64 by S.I. 2001/2617, art. 2, 8(1), 13(1), **Sch. 3**, Pt. 1 para. 78 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

## <sup>F42</sup> 63 Confidentiality of certain information.

- (1) Subject to section 64 below, no restricted information which relates to the business or other affairs of a friendly society, a registered branch of a friendly society or any other person shall be disclosed (otherwise than to an officer or employee of the primary recipient) by—
  - (a) the primary recipient; or
  - (b) any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.
- (2) For the purposes of this section—

“the primary recipient” means the Commission, the Chief Registrar, the central office or any officer or servant of any such person; and

“restricted information” means information which is obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Act or the 1974 Act;

but information shall not be treated as restricted information if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.
- (3) Any information disclosed to the Commission or the Chief Registrar by an overseas regulatory authority (within the meaning of section 64 below) shall be treated as restricted information for the purposes of this section.
- (4) A person who discloses information in contravention of this section shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both.

### Textual Amendments

**F42** S. 63A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 63, 64 by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 78** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

### Commencement Information

**I36** S. 63 wholly in force; s. 63 not in force at Royal Assent see s. 126(2); s. 63 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 63 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), **Sch. 2**

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## **64 Exceptions from restrictions on disclosure.**

- (1) Information which is restricted information for the purposes of section 63 above may be disclosed—
- (a) to any person with a view to the institution of, or otherwise for the purposes of, relevant proceedings;
  - (b) if it is information which is or has been available to the public from other sources;
  - (c) in the form of a summary or collection of information so framed as not to enable information related to any particular body or person to be ascertained from it;
  - (d) to the extent that it is information which is provided for the purpose, under any provision of this Act or the 1974 Act, of its being made available to the public in any manner;
  - (e) in pursuance of any Community obligation;
  - (f) for the purpose of facilitating the discharge by the Commission, the Chief Registrar or the central office of any of their functions under this Act or the 1974 Act;
  - (g) to the Treasury, if the disclosure is made for the purpose of facilitating the discharge of any functions of the Treasury under this Act or the 1974 Act or otherwise in the interests of members of friendly societies or in the public interest;
  - (h) for the purpose of enabling or assisting any person appointed investigator under section 65 below or inspector under section 66 below to discharge his duties under that section; or
  - (i) for the purpose of facilitating the discharge by the auditors of a friendly society of their duties to the Commission.
- (2) For the purposes of subsection (1)(a) above “relevant proceedings” are—
- (a) any criminal proceedings;
  - (b) any civil proceedings by or at the relation of or against the Commission or the Chief Registrar arising out of the discharge of any of their functions under this Act or the 1974 Act;
  - (c) any disciplinary proceedings relating to—
    - (i) the exercise by a solicitor, auditor, accountant, actuary or valuer of his professional duties;
    - (ii) the discharge by a public servant of his duties;
 and in paragraph (c) above “public servant” means an officer or servant of the Crown (including an officer or servant of the Crown in right of Her Majesty’s Government in Northern Ireland) or of any public or other authority designated for the purpose by order made by the Treasury.
- (3) Nothing in section 63 above prohibits the disclosure of information to the Secretary of State or the Department of Economic Development in Northern Ireland in circumstances where it is desirable or expedient—
- (a) that the information should be disclosed in the interests of members of a friendly society or in the public interest; or
  - (b) it is desirable or expedient that the information should be disclosed for the purpose of facilitating the discharge—
    - (i) by the Secretary of State, of any functions of his under the enactments relating to companies, insurance companies, or insolvency or under

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the <sup>M16</sup>Financial Services Act 1986 or any provision of Parts II, III or VII of the <sup>M17</sup>Companies Act 1989; or

(ii) by the Department, of any of its functions relating to companies or insolvency, or under Part III of the <sup>M18</sup>Companies (Northern Ireland) Order 1990 or Part II or V of the <sup>M19</sup>Companies (No. 2) (Northern Ireland) Order 1990;

nor does that section prohibit further disclosure of the information by the Secretary of State or the Department with the consent of the Commission.

[<sup>F44</sup>(3A) Nothing in section 63 above prohibits the disclosure of information to the Treasury in circumstances where it is desirable or expedient that the information should be disclosed for the purpose of facilitating the discharge by the Treasury of any functions of theirs [<sup>F45</sup>under the enactments relating to insurance companies,] under the Financial Services Act 1986 or under Part III or Part VII of the Companies Act 1989 nor does that section prohibit further disclosure of the information by the Treasury with the consent of the Commission.]

(4) Nothing in section 63 above prohibits the disclosure of information to an authority mentioned in subsection (5) below (a “relevant authority”) in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed—

- (a) in the interests of members of a friendly society or in the public interest; or
- (b) with a view to facilitating the discharge by the authority, of any functions of the authority (including functions in relation to proceedings) mentioned in that subsection (“relevant functions”);

nor does that section prohibit further disclosure of the information, with the consent of the Commission.

(5) The relevant authorities mentioned in subsection (4) above and the relevant functions in relation to each such authority, are as follows—

<i>Authority</i>	<i>Functions</i>
[ <sup>F461</sup> ] An inspector appointed under Part XIV of the Companies Act 1985, Part XV of the Companies (Northern Ireland) Order 1986 or section 94 or 177 of the Financial Services Act 1986.	Functions under that Part or that section or Article.
[ <sup>F462</sup> ] A person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of the Companies Act 1985, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989 or Article 440 of the Companies (Northern Ireland) Order 1986.	Functions under that section or Article.
[ <sup>F463</sup> ]The Policyholders Protection Board.	Functions under the Policyholders Protection Act 1975.

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[ <sup>F46</sup> 4.] A designated agency within the meaning of the Financial Services Act 1986.	Functions under that Act or Part VII of the Companies Act 1989.
[ <sup>F46</sup> 5.] A transferee body or the competent authority within the meaning of the Financial Services Act 1986.	Functions under that Act.
[ <sup>F46</sup> 6.] A body administering a scheme under section 54 of the Financial Services Act 1986.	Functions under the scheme.
[ <sup>F46</sup> 7.] A recognised self-regulating organisation, recognised professional body, recognised investment exchange, recognised clearing house, or recognised self-regulating organisation for friendly societies (within the meaning of the Financial Services Act 1986).	Functions in its capacity as an organisation, body, exchange or clearing house recognised under that Act.
[ <sup>F46</sup> 8.] The Bank of England.	[ <sup>F47</sup> Any of its functions]
[ <sup>F48</sup> The Financial Services Authority.	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989.]
[ <sup>F46</sup> 9.] A body established by order under section 46 of the Companies Act 1989.	Functions under Part II of that Act.
[ <sup>F49</sup> 10. A recognised supervisory or qualifying body (within the meaning of Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990). .	Functions as such a body or functions in relation to disciplinary proceedings against auditors.]
[ <sup>F46</sup> 11.] The Industrial Assurance Commissioner for Northern Ireland.	Functions under the enactments relating to industrial assurance.
[ <sup>F46</sup> 12.] The Insurance Brokers Registration Council.	Functions under the Insurance Brokers (Registration) Act 1977.
[ <sup>F46</sup> 13.] The Official Receiver or the Official Receiver for Northern Ireland.	Functions under the enactments relating to insolvency.
[ <sup>F50</sup> 14A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 or Article 350 of the Insolvency (Northern Ireland) Order 1989).	Functions in its capacity as such a body under that Act or that Order or functions in relation to disciplinary proceedings against insolvency practitioners (within the meaning of that Act or that Order).]
[ <sup>F46</sup> 15.] The Building Societies Commission.	Functions under the Building Societies Act 1986.
[ <sup>F51</sup> The Occupational Pensions Regulatory Authority.	Functions under the Pension Schemes Act 1993 or the Pensions Act 1995 or

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	any enactment in force in Northern Ireland corresponding to either of them.]
[ <sup>F46</sup> 16.]The Director-General of Fair Trading.	Functions under the Financial Services Act 1986.
[ <sup>F52</sup> 17An actuary exercising functions under this Act.	Those functions.
18The Institute of Actuaries or the Faculty of Actuaries.	Supervisory functions in relation to actuaries exercising functions under this Act.]

- (6) The Commission, with the consent of the Treasury, may by order—
- (a) amend the Table in subsection (5) above so as to—
    - (i) add any public or other authority to the Table and specify the relevant functions of that authority;
    - (ii) remove any authority from the Table; or
    - (iii) add functions to, or remove functions from, those which are relevant functions in relation to an authority specified in the Table;
  - (b) restrict the circumstances in which information may, by virtue of subsection (4) above, be disclosed or further disclosed; and
  - (c) impose conditions subject to which the information may be disclosed or further disclosed.

- (7) Nothing in section 63 above prohibits the disclosure to an overseas regulatory authority of information for the purpose of assisting that authority in the discharge of its functions.

[<sup>F53</sup>(7A) In the case of restricted information which relates to the business or other affairs of a friendly society to which section 37(2) or (3) above applies, no disclosure may be made by virtue of subsection (1), (3), (4) or (7) above unless the disclosure appears to be in accordance with—

- (a) Article 16 of the third general insurance Directive; or
- (b) Article 15 of the third life Directive.]

- (8) In this section—

“authority” includes any body (corporate or unincorporate) which is charged with the regulation of the carrying on of any description of financial or insurance business or the practice of any profession to which the carrying on of such business is incidental;

“overseas regulatory authority” means any government department or public or other authority in a country or territory outside the United Kingdom which is charged under the law of that country or territory with the regulation of companies, insurance companies, financial services, banking or any business corresponding to the business which may be carried on by friendly societies (or their subsidiaries); and

“regulation”, in relation to any public or other authority, means regulation in the public interest or for the protection of private interests.

#### Textual Amendments

**F44** S. 64(3A) inserted (7.6.1992) by S.I. 1992/1315, art. 10(1), Sch. 4 para. 14.

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- F45** Words in s. 64(3A) inserted (5.1.1998) by S.I. 1997/2781, art. 8(1), **Sch. Pt. II para. 118**(with art. 7)
- F46** Entries in table in s. 64(5) numbered 1-16 (18.7.1996) by S.I. 1996/1669, **reg. 16(1)**
- F47** S. 64(5): words in the entry relating to the Bank of England substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 68**; S.I. 1998/1120, **art. 2**
- F48** S. 64(5); entry relating to The Financial Services Authority inserted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 68**; S.I. 1998/1120, **art. 2**
- F49** Entry 10 in s. 64(5) has been substituted (18.7.1996) by S.I. 1996/1669, **reg. 16(2)(a)** (with saving in s. 16(3))
- F50** Entry 14 in s. 64(5) substituted (18.7.1996) by S.I. 1996/1669, **reg. 16(2)(b)** (with saving in s. 16(3))
- F51** Entry after 15 in s. 64(5) inserted (E.W.S.) (6.4.1997) by 1995 c. 26 s. 122, Sch. 3, para. 20 (with s. 121(5)); S.I. 1997/664, **art. 2(3)**, **Sch. Pt II**
- F52** Entries 17 and 18 in s. 64(5) inserted (18.7.1996) by S.I. 1996/1669, **reg. 16(2)(c)** (with saving in s. 16(3))
- F53** S. 64(7A) inserted (1.9.1994) by S.I. 1994/1984, **reg. 18**

#### Commencement Information

- I37** S. 64 wholly in force; s. 64 not in force at Royal Assent see s. 126(2); s. 64 in force for certain purposes at 13.1.1993 by S.I. 1993/16, **art. 2**, **Sch. 1**; s. 64 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, **art. 2(2)**, **Sch. 2**

#### Marginal Citations

- M16** 1986 c. 60.  
**M17** 1989 c. 40.  
**M18** S.I. 1990/593 (N.I. 5).  
**M19** S.I. 1990/1504 (N.I. 10).

*Inspections etc.*

## 65 Investigations on behalf of Commission.

- (1) If it appears to the Commission desirable to do so for the purpose of its supervisory functions in relation to a friendly society, the Commission may appoint one or more competent persons to investigate and report to it on the state and conduct of the activities of the society, or any particular aspect of those activities.
- [<sup>F54</sup>(1A) Where a person has notified the Commission under paragraph 1 or 2 of Schedule 13A to this Act of his intention to become a controller of or to acquire notifiable voting rights in a friendly society to which section 37(2) or (3) above applies, the Commission may, if it appears to it desirable to do so, appoint one or more competent persons to investigate and report to it on whether, if that person became such a controller or acquired such voting rights, the criteria of prudent management would be fulfilled with respect to the society.]
- (2) If a person appointed under subsection (1) [<sup>F54</sup>or (1A)] above thinks it necessary for the purposes of his investigation, he may also investigate the activities of any body corporate which is or has at any relevant time been a subsidiary of, or jointly controlled by, the society under investigation.
- (3) It shall be the duty of every person who is or has been an officer, employee and agent of a friendly society or other body which is under investigation—

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- (a) to produce to the persons appointed under subsection (1) [<sup>F54</sup>or (1A)] above all records, books and papers relating to the body concerned which are in his custody or power; and
  - (b) to attend before those persons when required to do so;
  - (c) to answer any question which is put to him by those persons with respect to any friendly society or other body which is under investigation,
- and otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- [<sup>F54</sup>(3A) A person appointed under subsection (1) or (1A) above may enter any premises occupied by a friendly society to which section 37(2) or (3) above applies or any subsidiary of or body jointly controlled by such a society 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 who, without reasonable excuse—
- (a) fails to produce any records, books or papers which it is his duty to produce under subsection (3)(a) above; or
  - (b) fails to comply with his duty under subsection (3)(b) or (c) above;
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who is or has been an officer, employee or agent of a friendly society or other body and who knowingly or recklessly furnishes to any person appointed under subsection (1) [<sup>F54</sup>or (1A)] above any information which is false or misleading in a material particular, shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- [<sup>F54</sup>(5A) In relation to a friendly society to which section 37(2) or (3) above applies, any reference in subsection (3) or (5) above to a person who is or has been an officer shall be read as including a reference to a person who is or has been a controller or manager.]
- (6) In this section—
- “agent”, in relation to a friendly society or other body whose activities are under investigation, includes its bankers, accountants, solicitors and auditors and the appropriate actuary;
  - “the purposes of its supervisory functions”, in relation to the Commission, has the same meaning as in section 62 above.

#### Textual Amendments

- F54** S. 65(1A) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(1)  
Words in s. 65(2)(3) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(2)  
S. 65(3A) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(3)  
Words in s. 65(5) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(4)  
S. 65(5A) inserted (1.9.1994) by S.I. 1994/1984 reg. 19(5)

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### Commencement Information

**I38** S. 65 wholly in force; s. 65 not in force at Royal Assent see s. 126(2); s. 65 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 65 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

## 66 Inspections and special meetings: general.

- (1) In the circumstances mentioned in subsection (2) below, the Commission may—
- (a) appoint one or more competent inspectors to investigate and report on the affairs of a friendly society; or
  - (b) call a special meeting of a friendly society to consider its affairs; or
  - (c) appoint (whether on the same or on different occasions) an inspector or inspectors and call a special meeting for those purposes;
- and, in the circumstances mentioned in subsection (3) below, the investigation or consideration may extend to the affairs of any body corporate which is or at any relevant time has been a subsidiary of or jointly controlled by the society concerned.
- (2) The powers conferred by subsection (1) above may be exercised either—
- (a) on the application of the requisite number of members of the society concerned; or
  - (b) where the Commission is of the opinion that an investigation should be held into the affairs of the society, or that the affairs of the society call for consideration by a meeting of its members;
- but paragraph (a) above shall not apply to a registered society with branches (regardless of the number of members) except with the consent of the central body of that society.
- (3) The powers conferred by subsection (1) above may be exercised so as to extend the investigation or consideration to the affairs of a body which is or has been a subsidiary of or jointly controlled by a friendly society either—
- (a) where an application referred to in subsection (2)(a) above so requests; or
  - (b) where the Commission is of the opinion that it is necessary for the purposes of the investigation into or consideration of the affairs of the friendly society that the affairs of the subsidiary or other body should also be investigated or considered.
- (4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a subsidiary of or a body jointly controlled by the society under investigation they may, with the consent of the Commission, extend their investigation to the affairs of the subsidiary or other body and make their report accordingly.
- (5) For the purposes of subsections (1) to (3) above the requisite number of members—
- (a) in the case of a friendly society having more than 1,000 members, is 100; and
  - (b) in the case of any other friendly society, is one-tenth of the whole number of members of the society.
- (6) Where an application is made as mentioned in subsection (2) above—
- (a) the application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for making the application and are not actuated by malicious, frivolous, vexatious or scandalous motives;



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- (b) such notice of the application shall be given to the society concerned and, if the application extends to the affairs of a subsidiary of or body jointly controlled by that society, to that subsidiary or other body, as the Commission may direct;
  - (c) the Commission may require the applicants to give security for payment of the costs of the investigation or meeting before the inspector is appointed or the meeting is called subject, in the case of the costs of an investigation, to an amount not exceeding the corresponding Companies Act limit; and
  - (d) as regards the expenses of or incidental to the investigation or meeting—
    - (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the Commission but without prejudice to its rights to contribution under section 67(10) below;
    - (ii) in the case of a meeting, the expenses shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers or former members or officers of the society, in such proportions as the Commission may direct.
- (7) Before exercising its powers under subsection (1) above in a case falling within subsection (2)(b) above, the Commission shall inform the society of the action which it proposes to take and the grounds for that action, and the society shall, within 14 days of receiving the information, be entitled to give the Commission an explanatory statement in writing by way of a reply.
- (8) Where the Commission proposes to exercise its powers under subsection (1) above in a case falling within subsection (3)(b) above, subsection (7) above shall apply in relation to the subsidiary or jointly controlled body as it applies in relation to the society.
- (9) Inspectors appointed under this section shall, in addition to having the powers which are necessary for or incidental to the discharge of their functions under this section, have the power specified in section 67 below.
- (10) Where a special meeting is called under this section—
  - (a) the Commission may—
    - (i) direct at what time and place the meeting is to be held and what matters are to be discussed and determined at the meeting; and
    - (ii) direct which members may attend and vote at the meeting, and may give such other directions as it thinks fit with respect to the call, holding and conduct of the meeting;
  - (b) the Commission may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman;
  - (c) the meeting shall have all the powers of a meeting called according to the rules of the society;and the provisions of this subsection and any direction given under it shall have effect notwithstanding anything in the rules of the society.
- (11) In this section “the corresponding Companies Act limit”, in relation to security for the payment of the costs of an investigation, is £5,000 or such other sum as is specified for the time being in an order under section 431(4) of the <sup>M20</sup>Companies Act 1985 or Article 424(4) of the <sup>M21</sup>Companies (Northern Ireland) Order 1986.

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### Commencement Information

**I39** S. 66 wholly in force; s. 66 not in force at Royal Assent see s. 126(2); s. 66 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 66 in force for all remaining purposes at 28.4.1993 by 1993/1186, art. 2(2), Sch. 2

### Marginal Citations

**M20** 1985 c. 6.

**M21** S.I. 1986/1032 (N.I. 6).

## 67 Inspections: supplementary provision.

(1) In this section—

“the body under investigation” means—

- (i) the friendly society whose affairs are the subject of the investigation, or
- (ii) the friendly society, and each subsidiary of or body jointly controlled by the society, whose affairs are so subject,

as the case may be;

“the inspectors” means the person appointed by the Commission under section 66 above to conduct the investigation;

“the investigation” means the investigation under section 66 above which the inspectors have been appointed to hold;

and references to officers, employees or agents include past, as well as present, officers, employees or agents; and “agents”, in relation to a friendly society or any subsidiary of or body jointly controlled by an incorporated friendly society, includes its bankers, accountants, solicitors and auditors and the appropriate actuary.

(2) When the inspectors have been appointed, it is the duty of all officers, employees and agents of the body under investigation—

- (a) to produce to the inspectors all documents and material of or relating to the body under investigation which are in their custody or power;
- (b) to attend before the inspectors when required to do so; and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(3) If the inspectors consider that a person other than an officer, employee or agent of the body under investigation is or may be in possession of information concerning its affairs, they may require that person to produce to them any documents or material in his custody or power relating to the body under investigation, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person’s duty to comply with the requirement.

(4) The inspectors may examine on oath the officers, employees and agents of the body under investigation, and any such person as is mentioned in subsection (3) above, in relation to the affairs of the body under investigation, and may administer an oath accordingly.

(5) An answer given by a person to a question put to him under the foregoing provisions of this section may be used in evidence against him.

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[<sup>F55</sup>(5A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(5B) Subsection (5A) above applies to any offence other than—

- (a) an offence under section 2 or 5 of the <sup>M22</sup>Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath);
- (b) an offence under section 44(1) or (2) of the <sup>M23</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath); or
- (c) an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).]

(6) If an officer, employee or agent of the body under investigation or any such person as is mentioned in subsection (3) above—

- (a) refuses to produce any document or material which it is his duty under this section to produce; or
- (b) refuses to attend before the inspectors when required to do so; or
- (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the body under investigation,

the inspectors may certify the refusal in writing to the High Court; and the court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the court.

(7) The inspectors may, and if so directed by the Commission shall, make interim reports to the Commission, but they may at any time in the course of the investigation, without making an interim report, inform the Commission of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

(8) The Commission may, if it thinks fit—

- (a) send a copy of any report made by the inspectors to the body whose affairs are or were the subject of the investigation;
- (b) furnish a copy of any such report on request and on payment of the prescribed fee to—
  - (i) any member of the body whose affairs are or were the subject of the investigation;
  - (ii) the auditors of that body;
  - (iii) any person whose conduct is referred to in the report;
  - (iv) any other person whose financial interests appear to the Commission to be affected by matters dealt with in the report, whether as creditor or otherwise; and
- (c) cause the report to be printed and published.

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(9) A copy of a report of inspectors appointed under section 66 above to hold an investigation under that section, certified by the Commission to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report; and a document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

(10) The Commission shall be entitled to be repaid the expenses of the investigation defrayed by it under section 66(6)(d) above as provided in the following paragraph, that is to say—

- (a) by the applicants for the investigation, to such extent (if any) as the Commission may direct;
- (b) by any body whose affairs were the subject of the investigation, to such extent (if any) as the Commission may direct;
- (c) by any person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by or before which he was convicted may order;

and a person liable under any one of paragraphs (a) to (c) above is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

[<sup>F56</sup>(10A) In relation to a friendly society to which section 37(2) or (3) above applies—

- (a) any reference in subsection (1), (2) or (4) above to officers shall be read as including a reference to controllers or managers; and
- (b) any reference in subsection (3) or (6) above to an officer shall be read as including a reference to a controller or manager.]

(11) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, any reference to the High Court shall be read as a reference to the Court of Session or, as the case may be, to the High Court in Northern Ireland.

#### Textual Amendments

**F55** S. 67(5A)(5B) inserted (14.4.2000 in relation to England and Wales and to Northern Ireland and 1.1.2001 in relation to Scotland) by 1999 c. 23, s. 59, **Sch. 3 para. 24** (with s. 63(2), **Sch. 7 para. 3(3)**); S.I. 2000/1034, **art. 2**; S.S.I. 2000/445, **art. 2**

**F56** S. 67(10A) inserted (1.9.1994) by S.I. 1994/1984 reg. 20

#### Commencement Information

**I40** S. 67 wholly in force; s. 67 not in force at Royal Assent see s. 126(2); s. 67 in force for certain purposes at 13.1.1993 by S.I. 1993/16, **art. 2**, **Sch. 1**; s. 67 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, **art. 2(2)**, **Sch. 2**

#### Marginal Citations

**M22** 1911 c. 6.

**M23** 1995 c. 39.

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**[67A** <sup>F57</sup> **Information for members.**

Schedule 13C to this Act shall have effect for requiring friendly societies to which section 37(2) or (3) above applies to furnish members with the information there mentioned.]

**Textual Amendments**

**F57** S. 67A inserted (1.9.1994) by S.I. 1994/1984 reg. 21(1)

**[<sup>F58</sup>67B** **Statutory notice.**

- (1) Subject to subsection (7) below, unless the requirements of subsection (2) below are fulfilled no friendly society to which section 37(2) above applies shall enter into a contract the effecting of which constitutes—
  - (a) the carrying on of long term business in the United Kingdom; or
  - (b) the provision there of long term insurance.
- (2) The requirements of this subsection are that—
  - (a) the society sends by post to the other party to the contract, at or before the time when it is entered into, a statutory notice in relation to that contract; or
  - (b) a representative of the society gives such notice to that party at that time.
- (3) Where a statutory notice is sent to the other party to the proposed contract before the time when it is entered into, the society shall, not later than 14 days after the contract has become binding, inform the party in writing that it has done so.
- (4) For the purposes of this section a statutory notice is a notice which—
  - (a) contains such matters (and no others) and is in such form as may be prescribed by regulations made under section 2(2) of the European Communities Act 1972 <sup>F59</sup> and complies with such requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) as may be so prescribed for securing that the notice is easily legible; and
  - (b) has annexed to it a form of notice of cancellation of such description as may be so prescribed for use under section 67C below.
- (5) The Commission may, on the application of a friendly society, alter the requirements in relation to the notice referred to in subsection (4)(a) above so as to adapt those requirements to the circumstances of that society or to any particular kind of contract proposed to be entered into by that society.
- (6) Any society which contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale but, without prejudice to section 67C(2) below, no contract shall be invalidated by reason of the fact that the society has contravened this section in relation to that contract.
- (7) Subsection (1) above does not apply to—
  - (a) a contract the effecting of which by the society constitutes the carrying on of investment business (within the meaning of the Financial Services Act 1986 <sup>F60</sup>);
  - (b) a contract the effecting of which by the society constitutes the carrying on of industrial assurance business;

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- (c) a contract the other party to which is habitually resident in [<sup>F61</sup>an EEA State] other than the United Kingdom;
  - (d) a contract the other party to which is not an individual;
  - (e) a contract of term assurance effected for a period of six months or less; or
  - (f) a contract of reinsurance.
- (8) In sections 67C and 67D below “statutory notice” has the same meaning as in this section.]

#### Textual Amendments

- F58** S. 67B inserted (1.9.1994) by S.I. 1994/1984 reg. 22
- F59** 1972 c.68.
- F60** 1986 c.60.
- F61** S. 67B(7)(c) words substituted (1.1.1998) by S.I. 1997/2849 reg. 3

#### [<sup>F62</sup>67C Right to withdraw from transaction.

- (1) A person who has received a statutory notice in relation to a contract may, before the expiration of the fourteenth day after that on which he is informed in writing that the contract has become binding, serve a notice of cancellation on the friendly society.
- (2) A person to whom a friendly society to which section 37(2) above applies ought to have, but has not, sent a statutory notice in relation to a contract may serve a notice of cancellation on the society; but if the society sends him a statutory notice in relation to the contract before he has served a notice of cancellation under this subsection, then without prejudice to his right to serve a notice of cancellation under subsection (1) above, his right to do so under this subsection shall cease.
- (3) A notice of cancellation may, but need not, be in the form annexed to the statutory notice and shall have effect if, however expressed, it indicates the intention of the person serving it to withdraw from the transaction in relation to which the statutory notice was or ought to have been sent.
- (4) Where a person serves a notice of cancellation, then—
  - (a) if at the time when the notice is served the contract has been entered into, the notice shall operate so as to rescind the contract;
  - (b) in any other case, the service of the notice shall operate as a withdrawal of any offer to enter into the contract which is contained in, or implied by, any proposal made to the society by the person serving the notice of cancellation and as notice to the society that any such offer is withdrawn.
- (5) Where a notice of cancellation operates to rescind a contract or as the withdrawal of an offer to enter into a contract—
  - (a) any sum which the person serving the notice has paid in connection with the contract (whether by way of premium or otherwise and whether to the society or to a person who is the agent of the society for the purpose of receiving that sum) shall be recoverable from the society by the person serving the notice;
  - (b) any sum which the society has paid under the contract shall be recoverable by him from the person serving the notice.

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- (6) Any sum recoverable under subsection (5) above shall be recoverable in any court of competent jurisdiction.]

#### Textual Amendments

**F62** S. 67C inserted (1.9.1994) by S.I. 1994/1984 reg. 23

#### [<sup>F63</sup>67D Service of notice of cancellation.

- (1) For the purposes of section 67C above a notice of cancellation—
- (a) shall be deemed to be served on the society if it is sent by post addressed to any person specified in the statutory notice as a person to whom a notice of cancellation may be sent, and is addressed to that person at an address so specified; and
  - (b) where paragraph (a) above applies, shall be deemed to be served on the society at the time when it is posted.
- (2) Subsection (1) above shall have effect without prejudice to the service of a notice of cancellation (whether by post or otherwise) in any way in which the notice could be served apart from that subsection, whether the notice is served on the society or on a person who is the agent of the society for the purpose of receiving such a notice.
- (3) A notice of cancellation which is sent by post to a person at his proper address, otherwise than in accordance with subsection (1) above, shall be deemed to be served on him at the time when it is posted.
- (4) So much of section 7 of the Interpretation Act 1978 as relates to the time when service is deemed to have been effected shall not apply to a notice of cancellation.]

#### Textual Amendments

**F63** S. 67D inserted (1.9.1994) by S.I. 1994/1984 reg. 24

## PART VI

### ACCOUNTS AND AUDIT

#### *Records and systems*

#### **68 Accounting records and systems of business control.**

- (1) Every friendly society and every registered branch shall—
- (a) cause accounting records to be kept; and
  - (b) establish and maintain systems of control of its business and records and of inspection and report,
- in accordance with this section.
- (2) The accounting records must be sufficient to show and explain the transactions of the society or branch and—

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- (a) disclose, with reasonable accuracy and promptness, the financial position of the society or branch at any time;
  - (b) enable the committee of management properly to discharge the duties imposed on them by or under this Act or the 1974 Act and their function of direction of the affairs of the society or branch; and
  - (c) enable the society or branch properly to discharge the duties imposed on it by or under this Act or the 1974 Act,
- and must be kept in an orderly manner.
- (3) The accounting records shall in particular contain—
- (a) entries from day to day of all sums received and paid by the society or branch and the matters in respect of which they are received or paid;
  - (b) entries from day to day of every transaction entered into by the society or branch which will or there is reasonable ground for expecting may give rise to liabilities or assets of the society or branch other than insignificant assets or liabilities in respect of the management of the society or branch; and
  - (c) a record of the assets and liabilities of the society or branch.
- (4) The system of control which is to be established and maintained by a friendly society or a registered branch is a system for the control of the conduct of its activities in accordance with this Act and the decisions of the committee of management and for the control of the accounting and other records of its activities.
- (5) The system of inspection and report which is to be established and maintained by a friendly society or registered branch is a system of inspection on behalf of and report to the committee of management on the operation of the system of control of the activities of the society or branch and records required by subsection (1)(b) above.
- (6) The systems of control and of inspection and report must be such as to—
- (a) enable the committee of management properly to discharge the duties imposed on them by or under this Act or the 1974 Act and their functions of direction of the affairs of the society or branch; and
  - (b) enable the society or branch properly to discharge the duties imposed on it by or under this Act or the 1974 Act;
- and no such system of control shall be treated as established or maintained unless there is kept available to the committee of management a detailed statement in writing of the system as in operation for the time being.
- (7) Without prejudice to the generality of subsection (6) above, the systems of control and of inspection and report must be such as to secure that the activities of the society or branch are so conducted and its records so kept that—
- (a) the information necessary to enable the committee of management and the society or branch to discharge their duties and functions is sufficiently accurate, and is available with sufficient regularity or at need and with sufficient promptness, for those purposes; and
  - (b) the information regularly obtained by or furnished to the Commission under or for the purposes of this Act is sufficiently accurate for the purpose for which it is obtained or furnished and is regularly furnished;
- and in this subsection, in its application in relation to the Commission, “regularly” includes that regularity requested by or agreed with the Commission.



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- (8) The accounting records shall be kept at the registered office of the society or branch or at such other place or places as the committee of management thinks fit, and shall at all times be open to inspection by the committee of management.
- (9) Accounting records shall be preserved for 6 years from the date on which they were made.
- (10) Where an incorporated friendly society has subsidiaries or jointly controls other bodies, the society shall also secure that such accounting records are kept and such systems of control and of inspection and report are established and maintained by them as will enable the society to comply with the requirements of this section in relation to the business of the society and those subsidiaries and jointly controlled bodies.
- (11) The committee of management of every friendly society shall within the period of 6 months beginning with the end of each financial year make and send to the Commission a statement of their opinion whether the requirements of this section have been complied with in respect of that year by the society and also, in the case of a registered friendly society with registered branches, by each of those branches, and the statement shall be signed by the chairman on behalf of the committee of management and by the chief executive.

#### Commencement Information

- I41** S. 68 wholly in force; s. 68 not in force at Royal Assent see s. 126(2); s. 68 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 68 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### *Annual accounts of friendly societies and registered branches*

#### **69 Duty to prepare accounts.**

- (1) The committee of management of a friendly society or registered branch shall prepare for each financial year of the society or branch—
  - (a) a balance sheet as at the last day of the year, and
  - (b) an income and expenditure account.
- (2) Except as provided by regulations under subsection (4) below, if at the end of its financial year an incorporated friendly society has subsidiaries, the committee of management shall also prepare group accounts.
- (3) Group accounts shall be consolidated accounts comprising—
  - (a) a consolidated balance sheet dealing with the state of affairs of the society and its subsidiaries; and
  - (b) a consolidated income and expenditure account dealing with the income and expenditure of the society and its subsidiaries.
- (4) The Commission may by regulations made with the consent of the Treasury exempt specified descriptions of incorporated friendly societies with subsidiaries from any duty to prepare group accounts.
- (5) Regulations under subsection (4) above may exempt societies by reference to any criterion and may make different provision for different descriptions of societies.

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### Commencement Information

**I42** S. 69 wholly in force; s. 69 not in force at Royal Assent see s. 126(2); s. 69 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 69 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

## 70 Contents and form of annual accounts.

- (1) The annual accounts of a friendly society or a registered branch shall conform to the requirements of this section and regulations made under it.
- (2) The balance sheet shall give a true and fair view of the state of the affairs of the society or branch as at the end of the financial year.
- (3) The income and expenditure account shall give a true and fair view of the income and expenditure of the society or branch for the financial year.
- (4) Subsections (2) and (3) above, in their application to the group accounts of an incorporated friendly society, are to be read as referring to the society and (so far as it concerns the members of the society) the subsidiaries dealt with in the group accounts.
- (5) The annual accounts shall also contain, whether in the form of notes or otherwise, such supplementary information as is prescribed.
- (6) The Commission shall, by regulations made with the consent of the Treasury, make provision with respect to the contents and the form of the annual accounts.
- (7) Without prejudice to the generality of subsections (5) and (6) above, the regulations may—
  - (a) prescribe accounting principles and rules;
  - (b) require corresponding information for a preceding financial year;
  - (c) require the accounts of incorporated friendly societies to deal also with bodies jointly controlled by them;
  - (d) require the accounts to give particulars of the emoluments, pensions, compensation for loss of office and financial interests of members of the committee of management, other officers and employees of prescribed descriptions of the society;
  - (e) add to the classes of documents to be comprised in the annual accounts;
  - (f) make provision as to the matters to be included in any document so added;
  - (g) modify the requirements of this Part of this Act as to the matters to be stated in any document comprised in the annual accounts; and
  - (h) reduce the classes of documents to be comprised in the annual accounts;
 and the regulations may make different provision for different cases.
- (8) Where compliance with regulations under this section would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.
- (9) If in special circumstances compliance with any provisions contained in regulations is inconsistent with the requirement to give a true and fair view, the committee of management shall depart from that provision to the extent necessary to give a true and fair view.

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- (10) Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.
- (11) It is the duty of every member of the committee of management, other officer and employee of a society or registered branch as respects whom prescribed particulars are by virtue of subsection (7)(d) above required to be given in the accounts to give notice to the society of such matters as may be necessary to enable the society to give those particulars in the accounts.

#### Commencement Information

**I43** S. 70 wholly in force; s. 70 not in force at Royal Assent see s. 126(2); s. 70 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 70(5)(6)(7) in force for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 70(1)-(4)(8)-(11) in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### *Committee of management's annual report*

#### **71 Report on a friendly society's affairs by the committee of management.**

- (1) The committee of management of a friendly society shall prepare for submission to the annual general meeting of the society a report on the activities of the society containing—
  - (a) a fair review of the development of the activities of the society during the financial year and of its position at the end of it; and
  - (b) such information relating to such aspects of the activities of the society as may be prescribed by regulations made by the Commission with the consent of the Treasury; and
  - (c) a statement whether any and, if so, what activities carried on during the year by the society are believed to have been carried on outside its powers.
- (2) Where an incorporated friendly society has subsidiaries or jointly controls other bodies, the report shall—
  - (a) contain such information relating to such aspects of the activities of any subsidiaries or bodies which it jointly controls as may be prescribed by regulations made by the Commission with the consent of the Treasury;
  - (b) review the development of any such subsidiaries and bodies during the year and their position at the end of it; and
  - (c) contain a statement whether any and, if so, what activities carried on during the year by any of its subsidiaries or by any body which it jointly controls are believed to have been carried on outside the powers of the subsidiary or jointly controlled body.
- (3) If a report under this section does not contain the prescribed information or the information in the report is not given in accordance with the regulations, each member of the committee of management shall be 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.

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#### Commencement Information

**I44** S. 71 wholly in force; s. 71 not in force at Royal Assent see s. 126(2); s. 71 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 71(1)(2) in force for certain purposes 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 4; s. 71 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### Auditors

#### 72 Auditors' appointment, tenure, qualifications, etc.

- (1) Every friendly society and every registered branch shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- (2) Schedule 14 to this Act has effect as regards—
  - (a) the appointment of auditors;
  - (b) their qualifications and grounds of disqualification;
  - (c) the resignation and removal of auditors; and
  - (d) the remuneration of auditors.

#### Commencement Information

**I45** S. 72 partly in force; s. 72 not in force at Royal Assent see s. 126(2); s. 72 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 72(1) in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5; s. 72(2) in force for certain purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Schs. 2, 3; s. 72(2) in force (except to the extent that it relates to any provision in Sch. 14 para. 7 not yet in force) at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### Auditors' report on annual accounts

#### 73 Auditors' report.

- (1) The auditors of a friendly society or of a registered branch shall make a report to the members on the annual accounts which are to be laid before the society or branch at the annual general meeting during their tenure of office.
- (2) The auditors of a friendly society or registered branch shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to—
  - (a) whether proper accounting records have been kept under section 68 above;
  - (b) whether satisfactory systems of control of the business and records of the society or branch and of inspection and report under that section have been maintained; and
  - (c) whether the annual accounts are in agreement with the accounting records;
 and, if the auditors are of the opinion that proper accounting records have not been kept, they shall state that fact in their report.

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- (3) If the auditors fail to obtain all the information and explanations and the access to documents which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.
- (4) The auditors shall, in their report, also make a report to the members on the report of the committee of management, in so far as subsection (7) below requires them to do so.
- (5) The auditors' report shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with this Act and the regulations made under it and in particular whether a true and fair view is given—
  - (a) in the case of the income and expenditure account, of the income and expenditure of the society or branch for the financial year; and
  - (b) in the case of the balance-sheet, of the state of the affairs of the society or branch as at the end of the financial year; and
  - (c) in the case of the group accounts of an incorporated friendly society, of the state of affairs as at the end of the financial year of the society and any subsidiaries of the society.
- (6) Subsection (5) above, in its application to the group accounts of an incorporated friendly society, is to be read as referring to the society and (so far as it concerns the members of the society) the subsidiaries dealt with in the group accounts.
- (7) The auditors' report, in so far as it deals with the report of the committee of management, shall state whether in the auditors' opinion it has been prepared in accordance with this Act and the regulations made under it and whether the information given in the report of the committee of management is consistent with the accounting records and the annual accounts for the financial year.

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

**C9** S. 73(5)(b) excluded (1.4.1995) by S.I. 1995/710, reg. 4(2)

**Commencement Information**

**I46** S. 73 wholly in force; s. 73 not in force at Royal Assent see s. 126(2); s. 73 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 73 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

**74 Signature of auditors' report.**

- (1) The auditors' report to the members of a friendly society or registered branch shall state the names of the auditors and be signed by them.
- (2) The copies of the auditors' report which are sent to the Commission or the central office under section 78(1) or (2) below shall be signed by the auditors.
- (3) Every copy of the auditors' report which is laid before the society or branch in general meeting, sent to the Commission or the central office or is otherwise circulated, published or issued shall state the names of the auditors.
- (4) If a copy of the auditors' report—
  - (a) is laid before the society or branch, sent to the Commission or central office or otherwise circulated, published or issued, without the required statement of the auditors' names; or

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(b) is sent to the Commission or the central office without being signed as required by this section,

the society or branch and every officer of it who is in default is guilty of an offence and liable on conviction on indictment to a fine.

(5) References in this section to signature by the auditors are, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf.

#### Commencement Information

**I47** S. 74 wholly in force; s. 74 not in force at Royal Assent see s. 126(2); s. 74 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 74 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### 75 Auditors' rights to information and to attend meetings.

(1) The auditors of a friendly society are entitled—

- (a) to access at all times to the books, accounts and vouchers of the society;
- (b) to require from the officers of the society such information and explanations as they think necessary for the performance of their duties as auditors;
- (c) to receive from the society—
  - (i) notice of any general meeting of the society and of any matter relating to the business of such a meeting of which notice is given (by whatever means) to the society's members; and
  - (ii) copies of any communications sent to the society's members with respect to any such meeting; and
- (d) to attend any general meeting of the society and to be heard on any part of the business of the meeting which concerns them as auditors;

and the auditors of a registered branch have the corresponding rights to those specified in paragraphs (a) to (d) above, with the substitution for references to the society of references to the branch.

(2) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.

(3) An officer of a friendly society is guilty of an offence if he knowingly or recklessly makes to the society's auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the society; and
- (b) is misleading, false or deceptive in a material particular.

(4) An officer of a registered branch is guilty of an offence if he knowingly or recklessly makes to the auditors of the branch a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the branch; and
- (b) is misleading, false or deceptive in a material particular.

(5) A person guilty of an offence under subsection (3) or (4) above is liable —

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- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.
- (6) It shall be the duty of a subsidiary of a friendly society which is—
- (a) a company within the meaning of the <sup>M24</sup>Companies Act 1985 incorporated in Great Britain; or
  - (b) a company within the meaning of the <sup>M25</sup>Companies (Northern Ireland) Order 1986 incorporated in Northern Ireland,
- and of the auditors of such a subsidiary to give to the auditors of the society such information and explanations as those auditors may reasonably require for the purposes of their duties as auditors of that society.
- (7) If—
- (a) a subsidiary to which subsection (6) above applies fails to comply with that subsection; or
  - (b) an auditor of such a subsidiary fails without reasonable excuse to comply with that subsection,
- the subsidiary or auditor is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) An incorporated friendly society having a subsidiary to which subsection (6) above does not apply shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanations as they may reasonably require for the purposes of their duties as auditors of that society.
- (9) If an incorporated friendly society fails to comply with subsection (8) above, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

**I48** S. 75 wholly in force; s. 75 not in force at Royal Assent see s. 126(2); s. 75 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 75 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

#### Marginal Citations

**M24** 1985 c.6.

**M25** S.I. 1986/1032 (N.I.6).

## 76 Approval and signing of accounts.

- (1) The annual accounts of a friendly society or a registered branch shall be approved by the committee of management.
- (2) The accounts so approved shall be signed by the secretary of the society or branch; and the signature shall be on the balance sheet.

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- (3) Every copy of the balance sheet which is laid before the society or branch in general meeting, or is otherwise circulated, published or issued, shall state the name of the secretary of the society or branch.
- (4) The copy of the balance sheet of a friendly society or a registered branch which is sent to the Commission or to the central office under section 78 below shall be signed by the secretary of the society or branch.
- (5) If annual accounts of a society or branch are approved which do not comply with the requirements of this Act, every member of the committee of management who is party to their approval and who knows that they do not comply or is reckless as to whether they comply is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

For this purpose every member of the committee at the time the accounts are approved shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

- (6) If a copy of the balance sheet of a society or branch—
  - (a) is laid before the society or branch, or otherwise circulated, published or issued, without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included; or
  - (b) is sent to the Commission or to the central office without being signed as required by this section,
 the society or branch and every officer of it who is in default is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Commencement Information

**I49** S. 76 wholly in force; s. 76 not in force at Royal Assent see s. 126(2); s. 76 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 76 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

#### 77 Information on appointed actuary to be annexed to balance sheet.

- (1) This section applies to any copy of a friendly society's balance sheet which—
  - (a) is furnished to the Commission or the central office under section 78 below or at its or their request;
  - (b) is laid before the society at its annual general meeting; or
  - (c) is furnished to a member at his request.
- (2) Subject to the provisions of this section, a friendly society shall annex to each copy of its balance sheet to which this section applies as respects every person who, at any time during the financial year to which the balance sheet relates, was its appointed actuary, a statement of the following information—
  - (a) whether the actuary was a member of the society or any subsidiary of the society at any time during that year;
  - (b) particulars of any pecuniary interest of the actuary in any transaction between the actuary and the society or any subsidiary of the society and subsisting at



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any time during that year or, in the case of transactions of a minor character, a general description of such interests;

- (c) the aggregate amount of any remuneration and the value of any other benefits other than a pension or other future or contingent benefit under any contract of service of the actuary with, or contract for services by the actuary to, the society or any subsidiary of the society, receivable by the actuary in respect of any period in that year; and
- (d) a general description of any other pecuniary benefit (including any pension and other future contingent benefit) received by the actuary from the society or any subsidiary of the society in that year or receivable by him from the society or any such subsidiary,

together with a statement that the society has made a request to the actuary to furnish to it the particulars specified in this subsection and identifying any particulars furnished pursuant to the request.

(3) Subsection (2) above applies in relation—

- (a) to the actuary's spouse;
- (b) to a partner of the actuary;
- (c) to any child or step-child of the actuary who is under 18;
- (d) to any person (other than the society concerned or any subsidiary of that society) of whom the actuary is an employee; and
- (e) to any body corporate (other than the society concerned or any subsidiary of that society) of which the actuary is a director or which is controlled by him,

as it applies in relation to the actuary.

(4) For the purposes of subsection (3) above, an actuary shall be taken to control a body corporate if he is a person—

- (a) in accordance with whose directions or instructions the directors of that body corporate or of a body corporate of which it is a subsidiary are accustomed to act; or
- (b) who, either alone or with any other person falling within that subsection, is entitled to exercise or controls the exercise of, one-third or more of the voting power at any general meeting of the body corporate or of a body corporate of which it is a subsidiary.

(5) If a friendly society fails to annex the statement required by subsection (2) above to a copy of its balance sheet to which this section applies, the society concerned shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Commencement Information

**I50** S. 77 wholly in force; s. 77 not in force at Royal Assent see s. 126(2); s. 77 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 77 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

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### *Laying and furnishing of accounts and reports*

#### **78 Laying and furnishing of accounts and reports.**

- (1) The committee of management of a friendly society shall in each year—
  - (a) lay before the society at the annual general meeting; and
  - (b) send to the Commission and to the central office not later than 30th June or 14 days before that meeting, whichever is earlier,
 copies of the annual accounts for the last financial year, the report of the committee of management for that year and the auditors' report on those accounts.
- (2) The committee of management of a registered branch shall in each year—
  - (a) lay before the branch at the annual general meeting; and
  - (b) send to the Commission and to the central office not later than 30th June or 14 days before that meeting, whichever is earlier,
 copies of the annual accounts for the last financial year and the auditors' report on those accounts.
- (3) Every friendly society shall, as from the date by which at the latest its committee of management is required by subsection (1) above to send them to the Commission—
  - (a) make copies of the annual accounts, the report of the committee of management and the auditors' report available free of charge to members of the society at every office of the society; and
  - (b) send, free of charge, copies of those documents to any member of the society who demands them;
 and that duty shall cease, as respects those accounts, when the society comes to be under the same duty in respect of the accounts for the next financial year.
- (4) Every registered branch shall, as from the date by which at the latest its committee of management is required by subsection (2) above to send them to the Commission—
  - (a) make copies of the annual accounts and the auditors' report available free of charge to members of the branch at every office of the branch; and
  - (b) send, free of charge, copies of those documents to any member of the branch who demands them;
 and that duty shall cease, as respects those accounts, when the branch comes to be under the same duty in respect of the accounts for the next financial year.
- (5) If default is made in complying with subsection (1) or (2) above, every person who was a member of the committee of management of the society or, as the case may be, the branch, at any time during the relevant period shall be guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.
- (6) If, on demand made of it under subsection (3) or (4) above, a friendly society or registered branch fails, in accordance with that subsection, to make available or, as the case may be, within 7 days of the demand, to send to a person a copy of the annual accounts, the society or branch shall be guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale; and

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- (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.
- (7) In subsection (5) above “the relevant period” means the period beginning at the end of the last financial year and ending with the date which falls 14 days before the annual general meeting following the end of that year.
- (8) The central office shall keep the copies of documents received by it from a friendly society under subsection (1) above in the public file of the society.

#### Commencement Information

**I51** S. 78 wholly in force; s. 78 not in force at Royal Assent see s. 126(2); s. 78 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 78 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

### 79 Auditors’ duties to Commission and related rights.

- (1) The auditors of a friendly society shall, unless they are exempt from the requirements of this section, make a report to the Commission, as respects each financial year of the society, on the conduct of the activities of the society in that year in relation to the matters specified in subsection (2) below.
- (2) The auditors’ report shall deal with—
  - (a) the accounting records kept by the society under section 68 above; and
  - (b) the systems of control of its business and records and of inspection and report maintained under that section.
- (3) The report shall state the auditors’ opinion as respects the matters specified in subsection (2) above as follows, that is to say—
  - (a) as regards the accounting records of the society, whether or not they comply with the requirements of section 68 above and, if not, specifying each requirement not complied with and the respects in which it was not complied with;
  - (b) as regards the system of control of its business and records, whether or not the system complies with the requirements of section 68 above and, if not, specifying each requirement not complied with and the respects in which it was not complied with;
  - (c) as regards the system of inspection and report, whether or not the system complies with the requirements of section 68 above and, if not, specifying each requirement not complied with and the respects in which it was not complied with.
- (4) Where an incorporated friendly society had, at any time during the year to which the report relates, subsidiaries or jointly controlled other bodies, the auditors’ report shall deal also with and contain corresponding statements of their opinion as to compliance with the requirements of section 68 above in its application to incorporated friendly societies having subsidiaries or jointly controlling other bodies.
- (5) The auditors of a friendly society shall send their report under this section to the society and, subject to subsection (6) below, shall do so within the period of 6 months beginning with the end of the financial year to which it relates, and the society shall,

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within the period of 9 months so beginning, send the report to the Commission together with such comments as the committee of management thinks fit to make.

- (6) A friendly society may allow its auditors a longer period in which to send their report than that specified in subsection (5) above, but not so as to prevent the society from complying with the duty imposed on it by that subsection as regards the Commission.
- (7) If the committee of management of a friendly society makes any comments to the Commission under subsection (5) above, the committee shall cause a copy of the comments to be sent to the auditors before they send them to the Commission with the report under that subsection.
- (8) <sup>[F64]</sup>The following, namely—
- (a) the auditors of a friendly society;
  - (b) an accountant appointed to make a report under section 62(3)(d) above by a friendly society to which section 37(2) or (3) above applies; and
  - (c) the auditors of any body with which a friendly society to which section 37(2) or (3) above applies is closely linked by control where either—
    - (i) they are also the auditors of the society; or
    - (ii) one of them is an accountant appointed by the society to make a report under section 62(3)(d) above,]
 if they are satisfied that it is expedient to do so in order to protect the interests of members of the society or if they are requested to do so by the Commission on its being so satisfied, shall be entitled, notwithstanding any obligation of confidence incumbent on them and whether or not to do so would be contrary to the interests of the society, to furnish information to the Commission relating to the conduct of the activities of the society or, in the case of an incorporated friendly society, the business of any of its subsidiaries or any body of which it has joint control.
- (9) The Treasury may by order impose on <sup>[F64]</sup>such persons as are mentioned in paragraph (a), (b) or (c) of subsection (8) above] an obligation to furnish to the Commission, in such circumstances as may be prescribed in the order, relevant information available to them of such descriptions as may be prescribed in the order; and it shall be the duty of <sup>[F64]</sup>any such person] to furnish information to which the obligation extends notwithstanding any obligation of confidence incumbent on him.
- (10) In subsection (9) above, “relevant information” means information relating to the conduct of the business of friendly societies or their subsidiaries or bodies of which they have joint control.
- (11) Subject to subsection (12) below, the auditors of a friendly society are exempt from the requirements of this section if the auditors of that society do not need to be members of a recognised supervisory body.
- (12) The Commission may direct that the auditors of a society specified in the direction whose auditors would otherwise be exempt from the requirements of this section shall not be exempt from those requirements.

#### Textual Amendments

**F64** Words in s. 79(8) substituted (18.7.1996) by S.I. 1996/1669, reg. 17(1)

Words in s. 79(9) substituted (18.7.1996) by S.I. 1996/1669, reg. 17(2)

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### Commencement Information

**I52** S. 79 wholly in force; s. 79 not in force at Royal Assent see s. 126(2); s. 79 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 79 in force for all remaining purposes at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5

## PART VII

### DISPUTES

#### *Disputes relating to friendly societies*

### 80 Determination of certain disputes by arbitration.

- (1) Subject to the following provisions of this section, any dispute between—
  - (a) a member or person claiming through a member or under the rules of a friendly society or registered branch and the society or branch;
  - (b) a person aggrieved who has ceased to be a member of a friendly society or registered branch, or a person claiming through such a person, and the society or branch or an officer of the society or branch;
  - (c) a registered branch and the society of which it is a registered branch;
  - (d) an officer of a registered branch and the society of which it is a registered branch; or
  - (e) two or more registered branches, or any of their officers,shall be determined by arbitration in the manner directed by the rules of the society or branch.
- (2) An application for the enforcement of an award on an arbitration under this section may be made to the county court.
- (3) An award made in such an arbitration shall, in Scotland—
  - (a) subject to subsection (4) below, be final; and
  - (b) be enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (4) An arbiter who has made an award in an arbitration under this section shall, on the application of a party to such arbitration, state a case for the opinion of the Court of Session on any question of law.
- (5) If the parties to a dispute of a description specified in subsection (1) above agree that it shall be determined by the county court or, in Scotland, the sheriff, it may be so determined instead of being determined by arbitration under this section.
- (6) If—
  - (a) a party to a dispute of a description specified in subsection (1) above applies to the society or branch in accordance with the rules for determination of the dispute by arbitration;
  - (b) no such determination has been made within the period of 40 days beginning with the day on which the application was made; and
  - (c) either party applies for determination of the dispute by the county court or, in Scotland, the sheriff,

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the dispute may be so determined.

- (7) If the society has registered branches—
- (a) the period of 40 days shall not begin to run until application has been made in succession to all the bodies entitled to determine the dispute by arbitration in accordance with the rules; but
  - (b) the rules may not require a greater delay than 3 months between each successive determination by such a body.
- (8) In this section “dispute”—
- (a) includes any dispute arising on the question whether a member or person aggrieved is entitled to be, or to continue to be, a member or to be reinstated as a member; but
  - (b) in the case of a person who has ceased to be a member does not (except as provided in paragraph (a) above) include any dispute other than one on a question which arose while he was a member, or arises out of his membership; and
  - (c) does not include a dispute between parties mentioned in subsection (1)(a) or (b) above which has arisen as a result of and incidentally to a dispute between a member, or person aggrieved who has ceased to be a member and a person claiming through him or under the rules of a society or branch.

## 81 Complaints by members of friendly societies.

- (1) Nothing in section 80 above shall affect the power of a friendly society or registered branch—
- (a) to establish internal procedures for the resolution of complaints; or
  - (b) to make, to join with any other persons in making, or to accede to, schemes for the investigation and settlement by an adjudicator of complaints;
- but a society or branch may not prevent a member from referring any dispute to arbitration under that section by purporting to require instead the making of a complaint or the acceptance of any determination of a complaint.
- (2) The Commission shall have the function of promoting the establishment by friendly societies and registered branches of—
- (a) internal complaints procedures; and
  - (b) schemes for the investigation and settlement of complaints;
- and, in particular, the Commission may issue such guidance on those matters to friendly societies and registered branches as it thinks fit.
- (3) In this section—
- “accede”, in relation to a scheme, means assume the obligations and rights of membership of the scheme;
- “complaint” includes any complaint made by a member about action of a friendly society or branch which constitutes (in relation to that member) unfair treatment, maladministration or breach of any contractual or other duty and causes him pecuniary loss or inconvenience;
- “member” in relation to a friendly society or branch includes any person who is or was a member of the society or branch or is claiming through a member or under the rules; and
- “action” includes omissions.

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## 82 Disputes arising out of loans of surplus funds to societies of different description.

(1) Where—

- (a) a registered friendly society or a registered branch (“the lender”) has made or agreed to make advances under section 50 of the 1974 Act to another society or branch (“the borrower”); and
- (b) the lender is by reason of this empowered by the rules of the borrower to take part in the government or control of the borrower,

subject to subsection (3) below, section 80 above shall apply in relation to the determination of a dispute between the lender and the borrower relating to such an advance or agreement or to the rights of the lender or an officer of the lender under the rules of the borrower, as if the borrower were a branch of the lender.

- (2) In the application of section 80 above to any such dispute, references in that section to the rules of the society are references to the rules of the borrower.
- (3) Section 80 above shall not prevent the bringing of legal proceedings for the determination of any such dispute unless, before the commencement of the proceedings, application has been made for a reference under the rules of the borrower.
- (4) Proceedings for the determination of any such dispute may be brought in a county court or, in Scotland, before the sheriff, whether or not the court would apart from this subsection have jurisdiction to entertain them.
- (5) The reference in subsection (1) above to advances under section 50 of the 1974 Act includes, in the case of a society formerly registered in Northern Ireland, a reference to advances made under section 42 of the<sup>M26</sup>Friendly Societies Act (Northern Ireland) 1970.

### Commencement Information

**I53** S. 82 wholly in force; s. 82 not in force at Royal Assent see s. 126(2); s. 82(1)-(4) in force at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 2; s. 82(5) in force at 1.1.1994 by S.I. 1993/3226, art. 2(1), Sch. 2

### Marginal Citations

**M26** 1970 c. 31 (N.I.).

### *Disputes relating to industrial and provident societies*

## 83 Disputes relating to industrial and provident societies.

The following subsection shall be substituted for subsection (2) of section 60 of the<sup>M27</sup>Industrial and Provident Societies Act 1965 (decision of dispute)—

- “(2) The county court or, in Scotland, the sheriff may determine a dispute in a registered society if—
- (a) both parties to the dispute consent; or
  - (b) the rules of the society concerned contain no directions as to disputes.”.

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### Marginal Citations

M27 1965 c. 12.

### *Disputes under National Savings Bank Act 1971 and National Debt Act 1972*

## **84 Disputes under the National Savings Bank Act 1971 and National Debt Act 1972.**

- (1) The jurisdiction as to disputes such as are mentioned—
  - (a) in subsection (1) of section 10 of the <sup>M28</sup>National Savings Bank Act 1971 (disputes between the Director of Savings and depositors etc); and
  - (b) in subsection (1) of section 5 of the <sup>M29</sup>National Debt Act 1972 (disputes between the Director and the holder of any stock registered in the National Savings Stock Register or a person claiming to be entitled to any such stock),
 shall be exercisable by a person (“the adjudicator”) appointed by the Treasury.
- (2) The adjudicator shall be a person who—
  - (a) has a seven year general qualification, within the meaning of the <sup>M30</sup>Courts and Legal Services Act 1990;
  - (b) is an advocate or solicitor in Scotland of at least seven years’ standing; or
  - (c) is a member of the bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years’ standing.
- (3) Subject to subsections (4) and (5) below, the adjudicator shall hold and vacate office in accordance with the terms of his appointment.
- (4) A person may at any time resign office as adjudicator by giving the Treasury a signed notice stating that he resigns that office.
- (5) The adjudicator may be removed from office by the Chancellor of the Exchequer on the ground of incapacity or misbehaviour.
- (6) The Treasury may pay, or make such payments towards the provision of, such remuneration, pensions, allowances or gratuities to the adjudicator as the Treasury may determine.
- (7) The Chancellor of the Exchequer may appoint for the adjudicator such staff as he thinks fit with such remuneration and other terms and conditions of service as he thinks fit.
- (8) Payments under this section shall be made out of money provided by Parliament.

### Commencement Information

I54 S. 84 wholly in force at 1.1.1993 see s. 126(2) and S.I. 1992/3117, art. 2(i).

### Marginal Citations

M28 1971 c. 29.

M29 1972 c. 65.

M30 1990 c. 41.



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## PART VIII

### AMALGAMATIONS, TRANSFERS OF ENGAGEMENTS AND CONVERSION OF FRIENDLY SOCIETIES INTO COMPANIES

#### Commencement Information

**I55** Pt. VIII (ss. 85-92) wholly in force; Pt. VIII not in force at Royal Assent see s. 126(2); Pt. VIII in force at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 3

#### *Amalgamations*

#### **85 Amalgamation of friendly societies.**

- (1) Any two or more friendly societies may, in accordance with this Part of this Act, amalgamate by establishing an incorporated friendly society as their successor.
- (2) In order to establish a society as their successor, friendly societies proposing to amalgamate must—
  - (a) comply with the applicable requirements of Part I of Schedule 15 to this Act;
  - (b) take the steps required by paragraph 1(2) of Schedule 3 to this Act;
  - (c) each approve the proposed amalgamation and the terms on which it is to take place by special resolution; and
  - (d) obtain the confirmation of the Commission of the amalgamation;and, on obtaining that confirmation, the successor may be registered and incorporated under this Act.
- (3) If the Commission confirms the amalgamation and the successor society is registered under this Act, the certificate of incorporation issued by the central office shall specify a date as the transfer date for that amalgamation.
- (4) On the transfer date—
  - (a) all the property, rights and liabilities of each society participating in the amalgamation shall become by virtue of this subsection the property, rights and liabilities of the successor society; and
  - (b) each such society shall be dissolved;but the transfer from each such society effected by paragraph (a) above shall be deemed to have been effected immediately before the dissolution of that society.
- (5) Where a friendly society is dissolved by subsection (4)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the central office.
- (6) Schedule 15 to this Act has effect for supplementing this section.

#### *Transfers of engagements*

#### **86 Transfer of engagements by or to friendly society.**

- (1) A friendly society may, in accordance with this Part of this Act, transfer its engagements to any extent to any of the following persons, that is to say—
  - (a) to another friendly society;

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- (b) to an industrial and provident society;
  - (c) to a company within the meaning of the <sup>M31</sup>Companies Act 1985 or the <sup>M32</sup>Companies (Northern Ireland) Order 1986 incorporated in Great Britain or Northern Ireland;
  - (d) in relation to engagements the fulfilment of which will constitute the carrying on of insurance business, to any other person who is an insurance company (within the meaning of the <sup>M33</sup>Insurance Companies Act 1982);
  - (e) in relation to engagements the fulfilment of which will not constitute the carrying on of insurance business, to a person (or body of persons) who is not of a description specified in paragraph (a), (b) or (c) above.
- (2) A friendly society, in order to transfer any of its engagements, must—
- (a) comply with the applicable requirements of Part I of Schedule 15 to this Act;
  - (b) resolve to transfer the engagements by special resolution;
  - (c) if the transfer is of some but not all of its engagements, resolve to do so by an affected members' resolution;
  - (d) record the extent of the transfer as so resolved in an instrument of transfer of engagements; and
  - (e) obtain the confirmation of the Commission of the transfer;
- and, on obtaining that confirmation, the instrument of transfer of engagements may be registered under subsection (4) below.
- (3) Where it is proposed to transfer the engagements of one friendly society to another friendly society, the proposed transferee, in order to undertake to fulfil them, must—
- (a) comply with the applicable requirements of Part I of Schedule 15 to this Act and, if required, with sections 87 and 88 below; and
  - (b) resolve to undertake to fulfil the engagements by special resolution or, if the Commission consents to that mode of proceeding, by resolution of the committee of management.
- (4) Where the Commission confirms a transfer of engagements, the central office shall, on the application of the society proposing to transfer them and the proposed transferee—
- (a) register a copy of the instrument of transfer of engagements; and
  - (b) issue a registration certificate to the transferee,
- and a registration certificate shall specify a date as the transfer date for that transfer.
- (5) On the transfer date—
- (a) the property, rights and liabilities of the society transferring its engagements shall by virtue of this subsection become, to the extent provided in the instrument of transfer of engagements, the property, rights and liabilities of the transferee; and
  - (b) if the transfer is of all the society's engagements, the society shall be dissolved; but the transfer shall be deemed to have been effected immediately before any such dissolution.
- (6) The central office shall keep a copy of the instrument and of the registration certificate issued under subsection (4) above—
- (a) where the transferee is a friendly society, in the public file of that society;
  - (b) in any other case, in the public file of the society transferring the engagements.

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- (7) Where a friendly society is dissolved by subsection (5)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the central office.
- (8) Where it is proposed that any engagements of a person other than a friendly society should be transferred to a friendly society, the proposed transferee, in order to undertake to fulfil them, must resolve to do so by special resolution.
- (9) For the purposes of this section—
  - (a) an “affected members’ resolution” is a resolution approving a transfer of engagements which is passed by the appropriate majority of those members whose contracts with the society are included in the transfer and who are entitled to vote on the resolution; and
  - (b) the “appropriate majority” means a majority consisting of not less than three quarters of those who vote on the resolution (in person or by proxy) at a meeting of the society or in a postal ballot;and sub-paragraphs (1)(b) and (c), (4), (5) and (6) of paragraph 7 of Schedule 12 to this Act shall apply to an affected members’ resolution as they apply to a special resolution.
- (10) Delegate voting may not take place on an affected members’ resolution; and where the rules of a friendly society provide for delegate voting on any matter, they must provide for voting by individual members on such resolutions.
- (11) Schedule 15 to this Act has effect for supplementing this section.

#### Marginal Citations

M31 1985 c.6.

M32 S.I. 1986/1032 (N.I.6).

M33 1982 c. 50.

## 87 Actuary’s report as to margin of solvency.

- (1) This section applies where a friendly society (“the transferor”) proposes to transfer any of its engagements under section 86 above to another friendly society (“the transferee”).
- (2) Where—
  - <sup>F65</sup>(a) the fulfilment of any of the engagements to be transferred will constitute—
    - (i) in the case of a transferor to which subsection (2) or (3) of section 37 above applies, the carrying on of insurance business in one or more <sup>F66</sup>EEA State], or
    - (ii) in the case of a transferor to which neither of those subsections applies, the carrying on of insurance business in the United Kingdom, and]
  - (b) the transferee will, after taking the proposed transfer into account, be under a duty to maintain the margin of solvency required by section 48 above;,,  
the transferee shall furnish the Commission with a report by the appropriate actuary as to whether it will immediately after the proposed transfer, possess that margin of solvency.
- (3) Where—

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- (a) the fulfilment of any of the engagements will constitute the carrying on of long-term business, and
  - (b) a report is not required to be furnished under subsection (2) above, the Commission may direct the transferee to furnish the Commission with a report by the appropriate actuary as to whether it will, immediately after the proposed transfer, possess an excess of assets over liabilities.
- (4) The appropriate actuary has a right of access at all times to the books, accounts and vouchers of the transferor and of the transferee, and is entitled to require from the officers of either society such information and explanations as he thinks necessary to enable him to prepare a report under this section.
- (5) If the appropriate actuary fails to obtain all the information and explanations and the access to documents which, to the best of his knowledge and belief, are necessary for the purposes of a report under this section, he shall state that fact in his report.
- (6) An officer of a transferor or of the transferee shall be guilty of an offence if he knowingly or recklessly makes to the appropriate actuary a statement (whether written or oral) which—
- (a) conveys or purports to convey any information or explanations which he requires, or is entitled to require, for the purposes of a report under this section; and
  - (b) is misleading, false or deceptive in a material particular.
- (7) A person guilty of an offence under subsection (6) above is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.

#### Textual Amendments

**F65** S. 87(2)(a) substituted (1.9.1994) by S.I. 1994/1984 reg. 26(1)

**F66** Words in s. 87(2)(a)(i) substituted (1.1.1998) by S.I. 1997/2849 reg. 3

## 88 Actuary’s report on transfer of long term business.

- (1) This section applies where—
- [<sup>F67</sup>(a) a friendly society (“a transferor society”) proposes to transfer to any person engagements the fulfilment of which will constitute—
    - (i) in the case of a society to which subsection (2) or (3) of section 37 above applies, the carrying on of long term business in one of more [<sup>F68</sup>EEA State]; or
    - (ii) in the case of a society to which neither of those subsections applies, the carrying on of long term business in the United Kingdom; or]
  - (b) a friendly society (a “transferee society”) proposes to undertake to fulfil any such engagements to be transferred to it from another friendly society.
- (2) The Commission may direct a transferor society or a transferee society to furnish the Commission with a report by an independent actuary on the terms of the proposed transfer and as to his opinion on the likely effects of the transfer on the members of the society who are long term policyholders.

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- (3) A friendly society which is directed to furnish a report under this section shall, on payment of a reasonable fee, furnish a copy of the report to any person who asks for one at any time before the transfer in question is confirmed by the Commission.
- (4) Subsections (4) to (7) of section 87 above shall apply in relation to an actuary preparing a report under this section as they apply to the appropriate actuary preparing a report under that section.
- (5) In this section—
  - “independent actuary”, in relation to a transfer of engagements, means an actuary who is not the appropriate actuary of a friendly society participating in the transfer;
  - “long term policyholder” means a member whose contract with a friendly society is a contract the effecting of which by the society constituted the carrying on of long term business.

#### Textual Amendments

**F67** S. 88(1)(a) substituted (1.9.1994) by S.I. 1994/1984 reg. 27

**F68** Words in s. 88(1)(a)(i) substituted (1.1.1998) by S.I. 1997/2849 reg. 3

### **89 Power of Commission to alter requirements for transfer by friendly society.**

- (1) If the Commission is satisfied that it is expedient to do so in the interests of the members or potential members of a friendly society, it may give a direction under this section (“a direction”)—
  - (a) modifying the requirements of subsection (2)(b) and (c) of section 86 above; and
  - (b) modifying or disapplying the requirements of Part I of Schedule 15 to this Act, in relation to a particular proposed transfer or to all transfers made by the society after the making of the direction.
- (2) A direction may not modify the requirements of section 86(2) above so as to permit a society to resolve to make a transfer by a resolution passed by less than a majority, or to require more than a three-quarters majority, of those voting on the resolution.
- (3) The Commission shall not give a direction unless—
  - (a) an application has been made to it by not less than 10 per cent. of the members of the society concerned or, in the case of a society with more than 1000 members, by not less than 100 members of the society;
  - (b) not less than one month before giving the direction the Commission has served on the society concerned a notice stating that it proposes to make a direction and specifying the considerations which have led it to conclude that it would be expedient to give it;
  - (c) the Commission has considered any representations made by the society with respect to the notice mentioned in paragraph (b) above within such period (not being less than one month) from the date on which the society was served with the notice as the Commission may allow; and
  - (d) if the society so requests, the Commission has afforded to it an opportunity of being heard by it within that period.

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- (4) If the Commission considers it expedient to do so in the interests of the members or potential members of the society concerned, it may vary or revoke a direction by a further direction.
- (5) On giving a direction in relation to a society, the Commission shall serve on the society a copy of the direction, specifying the considerations which have led it to conclude that it is expedient to give the direction; but the Commission may not give a direction unless all the considerations so specified were those, or among those, which were specified in the notice served on the society under subsection (3) above.
- (6) Notice of a direction shall be published by the Commission in one or more of the London Gazette, the Belfast Gazette or the Edinburgh Gazette, as it thinks appropriate, and in such other ways as appear to the Commission expedient for informing the public.
- (7) The Commission shall send a copy of a direction to the central office and the central office shall keep the copy in the public file of the society concerned.

## **90 Power of Commission to effect transfer of engagements.**

- (1) Subject to the following provisions of this section the Commission may give a direction under this section (“a direction”) providing for the transfer of such of the engagements of a friendly society (“the society”) as are specified in the order to a person so specified (“the transferee”).
- (2) The Commission may give a direction if—
  - (a) it considers that—
    - (i) the society is unable to manage its affairs satisfactorily in relation to the engagements specified in the order; and
    - (ii) a transfer of those engagements would be expedient to protect the interests of the members of the society; and
  - (b) the proposed transferee has complied with paragraph 1 of Schedule 15 to this Act and has resolved to undertake to fulfil the engagements by special resolution or, if the Commission consents to that mode of proceeding, by resolution of the committee of management;

but the Commission may direct that paragraph (b) above shall be modified in relation to a particular proposed transfer (but not to permit a society to resolve to undertake to fulfil the engagements by less than a majority or more than a three-quarters majority of those voting).
- (3) The Commission may not give a direction if, were the transfer to be proposed to be made under section 86 above, it would be precluded from confirming it by any provision of paragraphs 13 to 17 of Schedule 15 to this Act.
- (4) Before giving a direction, the Commission shall—
  - (a) serve on the society a notice stating that it proposes to give the direction and specifying the considerations which have led it to conclude that giving the direction would be expedient to protect the interests of the members of the society; and
  - (b) publish notice of the proposed direction in one or more of the London Gazette, the Belfast Gazette or the Edinburgh Gazette, as it thinks appropriate, and, if it thinks appropriate, in one or more newspapers.

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- (5) A notice published in pursuance of subsection (4)(b) above shall—
- (a) state that any interested party has the right to make representations to the Commission with respect to the proposed direction;
  - (b) specify a date determined by the Commission before which any written representations or notice of a person's intention to make oral representations must be received by the Commission; and
  - (c) specify a date determined by the Commission as the day on which it intends to hear any oral representations.
- (6) After the date specified in pursuance of subsection (5)(b) above, the Commission shall—
- (a) determine the time and place at which oral representations may be made;
  - (b) give notice of that determination to the society and the proposed transferee and to any persons who have given notice of their intention to make oral representations; and
  - (c) send copies of the written representations received by the Commission to the society concerned and the proposed transferee.
- (7) The Commission shall allow the society and the proposed transferee an opportunity to comment on the written representations, whether at a hearing or in writing before the expiration of such period as the Commission specifies in a notice to it.
- (8) If the Commission gives a direction it shall furnish a copy to the central office, who shall—
- (a) register that copy; and
  - (b) issue a registration certificate to the transferee;
- and the registration certificate shall specify a date as the transfer date for the transfer.
- (9) On the transfer date—
- (a) the property, rights and liabilities of the society shall by virtue of this subsection become, to the extent provided in the direction, the property, rights and liabilities of the transferee; and
  - (b) if the transfer is of all the society's engagements, the society shall be dissolved; but the transfer shall be deemed to have been effected before any such dissolution.
- (10) The central office shall keep a copy of a direction and of the registration certificate—
- (a) if the transferee is a friendly society, in the public file of that society;
  - (b) in any other case, in the public file of the society transferring the engagements.
- (11) Where a friendly society is dissolved by subsection (9)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the central office.

#### **[<sup>F69</sup>90A Issue of certificates by Commission.**

- (1) Where it is proposed to execute an instrument by which—
- (a) an EC company, or a non-EC company whose head office is in an EFTA State, is to transfer to a friendly society to which section 37(2) or (3) above applies all its rights and obligations under such long term or general policies, or long term or general policies of such descriptions, as may be specified in the instrument; or

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- (b) a Swiss general insurance company is to transfer to such a friendly society all its rights and obligations under such general policies, or general policies of such descriptions, as may be so specified,

the Commission may, if it is satisfied that the transferee possesses (after taking the proposed transfer into account) the margin of solvency required by section 48 above, issue a certificate to that effect.

(2) In this section—

“EC company”, “non-EC company” and “Swiss general insurance company” have the same meanings as in the Insurance Companies Act 1982;

“general policy” means a policy evidencing a contract (other than a contract of reinsurance) the effecting of which by the transferor constituted the carrying on of general business of any class;

“long term policy” means a policy evidencing a contract (other than a contract of reinsurance) the effecting of which by the transferor constituted the carrying on of long term business of any class.]

#### Textual Amendments

**F69** S. 90A added (1.9.1994) by S.I. 1994/1984 reg. 28

### *Conversions*

#### **91 Conversion of friendly society into company.**

(1) A friendly society may, in accordance with this Part of this Act, convert itself into a company registered under the <sup>M34</sup>Companies Act 1985 or the <sup>M35</sup>Companies (Northern Ireland) Order 1986 (“a company”).

(2) In order to convert itself into a company a friendly society must—

- (a) comply with the applicable requirements of Part I of Schedule 15 to this Act ;
- (b) approve the proposed conversion, the terms on which it is to take place and the proposed memorandum and articles of association for the company by special resolution; and
- (c) obtain the confirmation of the Commission of the conversion;

and, on obtaining that confirmation, the society may apply for registration as a company.

(3) The terms on which the conversion of a friendly society into a company is to take place may include provision for part of the funds of the society or the company to be distributed among, or for other rights in relation to shares in the company to be conferred on, members of the society.

(4) Where—

- (a) a special resolution of a society contains the particulars required by the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 to be contained in—
  - (i) the memorandum of association of a company; or
  - (ii) the articles of association of a company; and



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- (b) a copy of the resolution has been registered at the central office, a copy of that resolution under the seal and stamp of the central office shall have the same effect as a memorandum of association or, as the case may be, as articles of association, which have been duly signed under the <sup>M36</sup>Companies Act 1985 or the <sup>M37</sup>Companies (Northern Ireland) Order 1986.
- (5) On the registration of a friendly society as a company the registration of the society under this Act or the 1974 Act shall be cancelled by the central office.
- (6) Where a friendly society converts into a company the terms approved by the society and confirmed by the Commission shall, in so far as they provide for the conferral of rights on members or officers of the society, be enforceable as if they had been the subject of an agreement between the society and those members and officers.
- (7) Registration of a friendly society as a company shall not affect any right or claim subsisting against the society or any penalty incurred by the society; and for the purpose of enforcing any such right, claim or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company.
- (8) The Commission, with the consent of the Treasury, may make regulations providing for the regulation of the conversion of friendly societies into companies; and such regulations may, in particular make provision—
- (a) for and in connection with the transition from regulation by and under this Act or the 1974 Act to regulation by and under any other enactments on a society's ceasing to be registered under that Act; and
- (b) for the treatment, in the hands of the company into which a friendly society has converted, of the property, rights and liabilities of the society immediately before its conversion and for the modification of any enactment in its application to any such property, rights and liabilities.
- (9) Schedule 15 to this Act has effect for supplementing this section.

#### Marginal Citations

**M34** 1985 c.6.

**M35** S.I. 1986/1032 (N.I.6).

**M36** 1985 c.6.

**M37** S.I. 1986/1032 (N.I.6).

### Supplementary

## 92 Compensation for loss of office.

- (1) Subject to subsection (3) below, the terms of—
- (a) an amalgamation under section 85 above,
- (b) a transfer of engagements of a friendly society under section 86 above, or
- (c) a conversion under section 91 above,
- may include provision for compensation for loss of office or diminution of emoluments attributable to the amalgamation, transfer or conversion to be paid by a participating friendly society to or in respect of any of the persons mentioned in subsection (2) below.

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- (2) Those persons are—
- (a) the officers of the society which is to pay the compensation;
  - (b) in the case of an amalgamation or transfer, the officers of any other participating society;
  - (c) in the case of a transfer, the officers of any other person participating in the transfer; and
  - (d) the appointed actuary (if any) of any society participating in the amalgamation or transfer.
- (3) Any such provision as is mentioned in subsection (1) above must be approved by the society which is to pay the compensation by a special resolution separate from any resolution approving the other terms of the amalgamation, transfer or conversion.
- (4) If compensation which has not been authorised in accordance with subsection (3) above is received by an officer, it shall be repaid.
- (5) In this section—
- “compensation” includes the provision of benefits in kind;
- “loss of office” includes, in relation to an officer of an incorporated friendly society holding office by virtue of his position in the society in a subsidiary of the society or body jointly controlled by the society, the loss of that office; and
- “participating society”, in relation to an amalgamation or transfer, means a friendly society participating in the amalgamation or transfer and, in relation to the conversion of a friendly society, that society.

## PART IX

### MISCELLANEOUS

#### *Societies registered under 1974 Act*

#### **93 Registration of societies under 1974 Act.**

- (1) No society may be registered under the <sup>M38</sup>1974 Act after the commencement of this section.
- (2) Subject to section 7 of the 1974 Act, a society registered under the 1974 Act immediately before the commencement of this section (an “existing society”) shall continue as a registered society in accordance with the provisions of that Act.
- (3) Nothing in subsection (1) above shall be taken as preventing the registration after the commencement of this section of a branch of an existing society as a registered branch.
- (4) Nothing in this Act shall be taken as preventing—
  - (a) the performance by an existing friendly society of any contract which is in force immediately before the commencement of this section; or
  - (b) the carrying on by such a society of any social or benevolent activity which is not inconsistent with the other activities of the society.
- (5) Before the end of the transitional period each existing friendly society shall—

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- (a) by special resolution agree upon the alterations to be made to its rules so that they conform to this Act and the 1974 Act; and
  - (b) send to the central office [<sup>F70</sup>three] copies of the rules as altered each signed by the secretary and accompanied by a statutory declaration by the secretary that that agreement was effected by a resolution passed as a special resolution.
- (6) On agreeing upon any such alteration to its rules a society shall, subject to subsection (7) below, determine the date on which the society intends it to take effect, and any alteration to the society's rules sent to the central office shall be accompanied by a record specifying that date (in this paragraph referred to as "the specified date").
- (7) No date shall be specified under subsection (6) above which falls more than six months after the date of the meeting at which the society agreed upon the alteration to its rules.
- (8) The central office, if satisfied that the rules as altered are in conformity with this Act and the 1974 Act, shall retain and register a copy of the altered rules.
- (9) On registering a copy of the altered rules under subsection (8) above, the central office shall—
  - (a) return another copy to the secretary of the society, together with a certificate of registration, and
  - (b) keep another copy with the record of the specified date sent to it under subsection (6) above and a copy of that certificate, in the public file of the society.
- (10) Rules registered under this paragraph shall take effect on the specified date for the rule or, if registration of the rules is not effected until a later date, that later date.
- (11) If the central office has not, before the end of the transitional period, received from an existing registered friendly society copies of its rules as altered in accordance with subsection (5) above, the society shall be treated as having agreed upon such alteration of its rules as the Commission directs.
- (12) Where the Commission proposes to give a direction under subsection (11) above in relation to a society it shall—
  - (a) serve on the society a notice stating that it proposes to give a direction; and
  - (b) consider any representations made by the society within such period (not being less than fourteen days) from the date on which the notice is served as the Commission may allow;and, if the society so requests, the Commission shall afford to it an opportunity of being heard by the Commission within that period.
- (13) Where under this section a society is treated as having agreed upon altered rules, the central office shall prepare three copies of rules for the society and shall—
  - (a) retain and register one copy,
  - (b) send another to the secretary of the society, together with a certificate of registration, and
  - (c) keep another copy, together with a copy of that certificate, in the public file of the society;and the rules so registered shall be for all purposes the rules of the society until amended under the 1974 Act.

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- (14) In this section “the transitional period” means the period beginning with the commencement date for this section and expiring with such day as the Commission, with the consent of the Treasury, prescribes by order.
- (15) Subsections (5) to (14) above apply to the rules of a registered branch of an existing friendly society as they apply to the rules of the society.

#### Textual Amendments

**F70** Word in s. 93(5)(b) substituted (1.8.1996) by S.I. 1996/1188 art. 5

#### Commencement Information

**I56** S. 93 wholly in force; s. 93 not in force at Royal Assent see s. 126(2); s. 93(1)-(4) in force 1.2.1993 by S.I. 1993/16, art. 2, Sch. 3; s. 93 (5)-(15) in force at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 6

#### Marginal Citations

**M38** 1974 c.46

## 94 Registered friendly societies and branches: validation and ratification by members.

- (1) Subject to subsection (3) below, if action not permitted by the rules of a registered friendly society or a registered branch is taken by or on behalf of the society or branch, the action is valid (whether or not it would be valid apart from this subsection) if all the members of the society or branch—
- signified their agreement to it in writing before it was taken; or
  - signified their approval of it in writing before the end of the period of 28 days commencing with the day on which it was taken.
- (2) Subject to subsection (3) below, if a contract between a registered friendly society or branch and its members purports to create rights and obligations as to which the rules of the society or branch do not permit rights and obligations to be created, the contract shall be valid and shall bind all members of the society or branch if all members of the society or branch are parties to it.
- (3) This section does not validate the taking of any action or any term in a contract unless the matter falls within the capacity of a registered friendly society or branch under the 1974 Act or this Act.
- (4) In this section references to the members of a society or branch are to the members entitled to vote at a meeting of the society or branch.

## 95 Amendments of 1974 Act.

Schedule 16 to this Act (which contains amendments to the 1974 Act) shall have effect.

#### Commencement Information

**I57** S. 95 partly in force; s. 95 not in force at Royal Assent see s. 126(2); s. 95 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 2; s. 95 in force for certain purposes at 1.2.1993 by S.I. 1993/16, art. 2, Sch. 3; s. 95 in force to the extent specified for all remaining purposes at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 95 in force to the extent specified at 13.9.1993 by S.I. 1993/2213,

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art. 2(1), **Sch. 3**; s. 95 in force to the extent specified at 1.1.1994 by S.I. 1993/2213, art. 2(1), **Sch. 6**; s. 95 in force to the extent specified at 1.1.1994 by S.I. 1993/3226, **art. 2(1) Sch. 2**

### *Societies registered in Northern Ireland*

#### **96 Extension of 1974 Act to Northern Ireland.**

- (1) The 1974 Act shall extend to Northern Ireland.
- (2) Societies which, immediately before the commencement of subsection (1) above, were societies registered under any provision of section 1 of the <sup>M39</sup>Friendly Societies Act (Northern Ireland) 1970 shall be treated as if they were societies registered under the corresponding provision of section 7 of the 1974 Act.
- (3) A branch of a society registered under that Act of 1970 which is, immediately before the commencement of subsection (1) above, a registered branch of the society under that Act, shall be treated as a branch registered under the 1974 Act.
- (4) In consequence of subsections (1) to (3) above, the Friendly Societies Act (Northern Ireland) 1970 is repealed.

#### **Marginal Citations**

**M39** 1970 c. 31 (N.I.).

### *Other miscellaneous provisions*

#### **[<sup>F71</sup>97 Insurance protection.**

The <sup>M40</sup>Policyholders Protection Act 1975 shall have effect subject to the amendments in Schedule 17 to this Act, being amendments to extend that Act to contracts of insurance with friendly societies.]

#### **Textual Amendments**

**F71** Ss. 97, 98 shall cease to have effect (17.8.2001 for specified purposes and otherwise *prosp.*) by virtue of S.I. 2001/2617, arts. 2(a), 8(1), 13(1), **Sch. 3** para. 104 (with art. 13(3), **Sch. 5**) and repealed (*prosp.*) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5**)

#### **Marginal Citations**

**M40** 1975 c. 75.

#### **97 Insurance protection. **U.K.****

The <sup>M59</sup>Policyholders Protection Act 1975 shall have effect subject to the amendments in Schedule 17 to this Act, being amendments to extend that Act to contracts of insurance with friendly societies.

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### Marginal Citations

M59 1975 c. 75.

## 98 Financial services.

The <sup>M41</sup>Financial Services Act 1986 shall have effect subject to the amendments in Schedule 18 to this Act, and in that Schedule—

- (a) the amendments in Part I relate to the provisions of that Act other than Schedule 11; and
- (b) the amendments in Part II relate to Schedule 11 to that Act (friendly societies).

### Commencement Information

**I58** S. 98 partly in force; s. 98 not in force at Royal Assent see s. 126(2); s. 98 in force for certain purposes at 1.2.1993 by S.I. 1993/16, art. 2, Sch. 4; s. 98 in force to the extent specified at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2; s. 98 in force to the extent specified at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 5; s. 98 in force to the extent specified at 1.1.1994 by S.I. 1993/3226, art. 2(1), Sch. 1

### Marginal Citations

M41 1986 c. 60.

## 99 Insurance of lives of children under 10.

- (1) Subject to the following provisions of this section, if—
  - (a) after this section comes into force a friendly society or registered branch or an industrial assurance company enters into a contract of insurance under which benefit in excess of £800 is payable on the death of any person; and
  - (b) that person dies under the age of 10,
 the obligation of the society, branch or company as to payment of benefit is only to pay £800 (without prejudice to any person's right to recover part of the premiums paid).
- (2) Subsection (1) above does not apply where the benefit is payable to a person who has an interest in the life of the person on whose death it is payable.
- (3) The Commission may, with the consent of the Treasury, by order substitute some other sum for the sum for the time being specified in subsection (1) above.
- (4) In the application of this section to Northern Ireland the references to industrial assurance companies shall be omitted.

## 100 Industrial assurance.

Schedule 19 to this Act (which contains amendments as relating to industrial assurance) shall have effect.

### Commencement Information

**I59** S. 100 partly in force; s. 100 not in force at Royal Assent see s. 126(2); s. 100 in force to the extent specified at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 2; s. 100 in force to the extent specified 1.2.1993 by

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S.I. 1993/16, art. 2, Schs. 3, 4; s. 100 in force to the extent specified at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2; s. 100 in force to the extent specified at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 2; s. 100 in force to the extent specified at 1.1.1994 by S.I. 1993/2213, art. 2(1), Sch. 6; s. 100 in force to the extent specified at 1.1.1994 by S.I. 1993/3226, art. 2(1), Sch. 2

[<sup>F72</sup>**101 Law applicable to contracts of insurance with friendly societies.**

- (1) The law applicable to a contract of insurance made by a friendly society the effecting of which constitutes general business and which covers risks situated in the United Kingdom or another member State shall be determined—
  - (a) in the case of a society to which section 37(3) above applies, in accordance with Part I of Schedule 20 to this Act; and
  - (b) in any other case, in accordance with that Part of that Schedule as modified by subsection (3) below.
- (2) The law applicable to a contract of insurance made by a friendly society the effecting of which constitutes long term business and which covers commitments or risks situated in the United Kingdom or another member State shall be determined—
  - (a) in the case of a society to which section 37(2) above applies, in accordance with Part II of Schedule 20 to this Act; and
  - (b) in any other case, in accordance with Part I of that Schedule as modified by subsection (3) below.
- (3) For the purposes of paragraph (b) of subsections (1) and (2) above, Part I of Schedule 20 to this Act shall be modified as follows—
  - (a) the words “or central administration”, in each place where they occur, shall be omitted;
  - (b) in paragraph 5(1), for the words from “shall act” to the end there shall be substituted the words “shall apply the general rules of private international law of that part of the United Kingdom concerning contractual obligations”; and
  - (c) in paragraph 5(2), for the words “those provisions” there shall be substituted the words “those rules”.
- (4) The provisions of this section do not apply in relation to a contract of reinsurance.]

**Textual Amendments**

**F72** S. 101 substituted (1.1.1994) by S.I. 1993/2519, reg. 6(1)

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## PART X

### GENERAL AND SUPPLEMENTARY

#### *General*

#### **102 Power to amend, etc. to assimilate to company law or law relating to persons carrying on insurance business.**

(1) If, on any modification of the statutory provisions in force in Great Britain or Northern Ireland relating—

- (a) to companies; or
- (b) to persons or bodies of persons, other than friendly societies, whether incorporated or not, carrying on insurance business (including reinsurance business),

it appears to the Treasury to be expedient to modify the relevant provisions of this Act for the purpose of assimilating the law relating to friendly societies to the law as so modified, the Treasury may, by order, make such modifications of the relevant provisions of this Act as they think appropriate for that purpose.

(2) The “relevant provisions of this Act” are the following provisions as for the time being in force, that is to say—

- (a) so much of Part II as relates to winding up;
- (b) Part IV;
- (c) Part V;
- (d) Part VI; and
- (e) Part VIII.

(3) The power conferred by subsection (1) above includes power to modify the relevant provisions of this Act so as to—

- (a) confer power to make orders, regulations, rules or other subordinate legislation;
- (b) create criminal offences; or
- (c) provide for the charging of fees but not any charge in the nature of taxation.

(4) An order under this section may—

- (a) make consequential amendments of or repeals in other provisions of this Act; or
- (b) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient.

(5) In this section—

“modification” includes any additions and, as regards modifications of the statutory provisions relating to companies, any modification whether effected by any future Act or by an instrument made after the passing of this Act under an Act whenever passed; and

“statutory provisions” includes the provisions of any instrument made under an Act.



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### **103 Power to modify Parts V and VI in relation to particular friendly societies.**

- (1) The Commission may, on the application or with the consent of a friendly society, by order direct that all or any of the provisions of Part V or VI of this Act shall not apply to the society 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.
- (3) An order under this section may be revoked by the Commission at any time; and the Commission, may at any time vary any such order on the application or with the consent of the society to which it applies.
- [<sup>F73</sup>(4) The Commission may, on the application or with the consent of a friendly society, direct in relation to any provision of regulations made for the purposes of Part V or VI of this Act that the provision shall not apply to the society, or shall apply to it with such modifications as may be specified in the direction.
- <sup>F73</sup>(5) A direction under subsection (4) above may be subject to conditions.
- <sup>F73</sup>(6) A direction under subsection (4) above may be revoked by the Commission at any time; and the Commission may at any time vary any such direction on the application or with the consent of the society to which it applies.
- <sup>F73</sup>(7) Where the Commission—
  - (a) makes a direction under subsection (4) above, or
  - (b) revokes or varies such a direction,it shall cause the direction, variation or revocation to be entered on a register kept by it for the purposes of this subsection.
- <sup>F73</sup>(8) The register kept for the purposes of subsection (7) above shall be available for inspection on reasonable notice by members of the public.
- <sup>F73</sup>(9) The Commission shall provide to the central office a copy of—
  - (a) any direction made by it under subsection (4) above, and
  - (b) any revocation or variation of any such direction,and the central office shall keep the copy in the public file of the society to which it relates.]

#### **Textual Amendments**

**F73** S. 103(4)-(9) inserted (1.8.1996) by S.I. 1996/1188 art. 6

### **104 Public file of a friendly society.**

- (1) The central office shall prepare and maintain a file relating to each friendly society (to be known as the public file) and the file shall—
  - (a) contain the documents or, as the case may be, copies of the documents and the records of the matters directed by or under any provision of this Act to be kept in the public file of the society; and
  - (b) be available for inspection on reasonable notice by members of the public on payment of the fee prescribed under section 114 below.

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- (2) Any member of the public shall be entitled, on payment of the fee so prescribed, to be furnished with a copy of all or any of the documents or records kept in the public file of a friendly society.
- (3) The central office may keep in the public file of a registered friendly society any documents relating to a registered branch of the society which correspond to documents relating to the society which it is required to keep on that file.

### **105 Exemptions from stamp duty.**

Stamp duty shall not be chargeable upon any document required or authorised by this Act, the 1974 Act or by the constitution of an incorporated friendly society or of a registered friendly society or registered branch.

### **106 Officers and auditors not to be exempted from liability.**

- (1) Subject to subsection (3) below, any provision to which this section applies, whether contained in the constitution of a friendly society or in any contract with a friendly society or otherwise, shall be void.
- (2) This section applies to any provision for—
  - (a) exempting any member of the committee of management, other officer, or person employed as auditor of a friendly society from any liability which, by virtue of any rule of law, would otherwise attach to him in respect of the negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society; or
  - (b) indemnifying any such person against any such liability.
- (3) Subsection (1) above shall not prevent a friendly society—
  - (a) from purchasing and maintaining for such a person insurance against any such liability; or
  - (b) from indemnifying such a person against any liability incurred by him in defending any proceedings (whether criminal or civil) in which judgement is given in his favour or in which he is acquitted.
- (4) Section 727 of the <sup>M42</sup>Companies Act 1985 or Article 675 of the <sup>M43</sup>Companies (Northern Ireland) Order 1986 (each of which empowers the court to grant relief in certain cases of negligence, default, breach of duty or breach of trust) shall apply in relation to officers and auditors of a friendly society as it applies in relation to officers and auditors of a company.
- (5) For the purposes of this section a reference to an officer of a friendly society includes a reference to the appropriate actuary.

#### **Marginal Citations**

**M42** 1985 c. 6.

**M43** S.I. 1986/1032 (N.I. 6).

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## 107 Time limit for commencing proceedings.

- (1) Notwithstanding any limitation on the time for the taking of proceedings contained in any enactment, summary proceedings for any offence under this Act may, subject to subsection (2) below, be commenced by the Commission at any time within the period of one year beginning with the date on which evidence sufficient in the opinion of the Commission to justify a prosecution for the offence, comes to its knowledge.
- (2) Nothing in subsection (1) above shall authorise the commencement of proceedings for any offence at a time more than three years after the date on which the offence was committed.
- (3) For the purposes of subsection (1) above a certificate, purporting to be signed by or on behalf of the Commission, as to the date on which such evidence as is mentioned in that subsection came to its knowledge, shall be conclusive evidence of that date.
- (4) In the application of this section to Scotland, in subsection (1) the words “by the Commission” shall be omitted and in this section references to the Commission shall be read as references to the Lord Advocate.
- (5) In the application of this section to Scotland, [F74section 136(1) of the Criminal Procedure (Scotland) Act 1995] shall apply for the purposes of this section as it applies for the purposes of that section.

### Textual Amendments

F74 Words in s. 107(5) substituted (1.4.1996) by 1995 c. 40 ss. 5, 7(2), Sch. 4 para. 84

## 108 Offences by bodies corporate, partnerships and unincorporated associations.

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any member of the committee of management, director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by the members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (4) Where an unincorporated association (other than a partnership) is guilty of an offence under this Act—
  - (a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or
  - (b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

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shall also be guilty of the offence and be liable to be proceeded against and punished accordingly.

### 109 Defence of due diligence.

In any proceedings for an offence under this Act, it shall be a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

### 110 Jurisdiction of magistrates' courts.

- (1) Without prejudice to the provisions of the <sup>M44</sup>Magistrates' Courts Act 1980 or the <sup>M45</sup>Magistrates' Courts (Northern Ireland) Order 1981 as to the jurisdiction of a magistrates' court, in England and Wales or Northern Ireland all summary offences under this Act may be prosecuted—
  - (a) where the prosecution is against a friendly society or any officer of a friendly society, before a magistrates' court acting for the petty sessions area in which the registered office of the society is situated; and
  - (b) where the prosecution is against a person other than a friendly society or an officer of a friendly society, before a magistrates' court acting for the petty sessions area in which the person is resident at the time of the institution of the prosecution.
- (2) In the application of subsection (1) above to Northern Ireland—
  - (a) for the reference in paragraph (a) to a magistrates' court acting for a petty sessions area there shall be substituted a reference to a magistrates' court acting for a county court division; and
  - (b) paragraph (b) shall be omitted.

#### Marginal Citations

**M44** 1980 c. 43.

**M45** S.I. 1981/165 (N.I. 26).

### 111 Evidence.

- (1) Any document purporting to have been signed by a registrar on behalf of the central office and to be a certificate of incorporation or registration or other document relating to a friendly society shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to have been signed by a registrar on behalf of the central office.
- (2) Any printed document purporting to be a copy of the rules or memorandum of an incorporated friendly society or the rules of a registered friendly society or a registered branch and certified by the secretary or other officer of the society or branch to be a true copy of its rules or memorandum as registered, shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to be a true copy of its rules or memorandum.

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## 112 Records of friendly societies.

- (1) Subject to any other provision of this Act or regulations under it, any record to be kept by a friendly society may be kept in any manner.
- (2) Where any such record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.
- (3) The power in subsection (1) above includes power to keep the record by recording matters otherwise than in legible form so long as the recording is capable of being reproduced in a legible form; and any duty imposed by or under this Act to allow inspection of, or to furnish a copy of, the record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.
- (4) The Commission may, by regulations made with the consent of the Treasury, make such provision in addition to subsection (3) above as it considers appropriate in connection with such records as are kept otherwise than in legible form; and the regulations may make modifications of this Act so far as it relates to the records of friendly societies.
- (5) If default is made in complying with this section the society shall be guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 4 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

### Modifications etc. (not altering text)

**C10** S. 112(4): functions of Friendly societies Commission transferred (17.8.2001 for specified purposes and otherwise 1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), Sch. 1 Pt. II

## 113 Service of notices.

- (1) This section has effect in relation to any notice, directions or other document required or authorised by or under any provision of this Act or by the rules of a friendly society to be served on any person other than the Commission and the central office but subject, in the case of notices or other documents to be given or sent to members of a friendly society, to any provision of its rules.
- (2) Any such document may be served on the person in question—
  - (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by post to him at that address.
- (3) Any such document may—
  - (a) in the case of a friendly society, be served on the secretary of the society;
  - (b) in the case of a body corporate (other than an incorporated friendly society), be served on the secretary or clerk of that body;
  - (c) in the case of a partnership, be served on any partner;

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- (d) in the case of an unincorporated association, other than a partnership or a registered friendly society or registered branch, be served on any member of its governing body.
- (4) For the purposes of this section and section 7 of the <sup>M46</sup>Interpretation Act 1978 (service of documents) in its application to this section, the proper address of any person is—
- (a) in the case of a friendly society or its secretary, the address of its registered office;
  - (b) in the case of a member of an incorporated friendly society, his registered address;
  - (c) in the case of a member of the committee of management or the chief executive of a friendly society, his officially notified address;
  - (d) in the case of a body corporate (other than an incorporated friendly society), its secretary or clerk, the address of its registered or principal office in the United Kingdom;
  - (e) in the case of an unincorporated association (other than a partnership, registered friendly society or registered branch) or a member of its governing body, its principal office in the United Kingdom;
- and, in any other case, his last-known address (whether of his residence or of a place where he carries on business or is employed).

#### Marginal Citations

**M46** 1978 c. 30.

### 114 Form of documents and power to prescribe fees.

- (1) The Chief Registrar may, by directions under this subsection, make provision with respect to the form of, and the particulars to be included in, any document to be issued or sent by, or to be sent to, the central office under this Act or the 1974 Act.
- (2) The Treasury may make regulations providing for fees, of such amounts as may be prescribed in the regulations, to be paid to the Chief Registrar for the inspection, or the furnishing of copies, of any documents in the custody of the central office, or in respect of the exercise by the central office of any of its functions, under this Act or the 1974 Act.
- (3) Any amounts received by the Chief Registrar under subsection (2) above shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Chief Registrar under this Act and the 1974 Act and, in so far as not so applied, shall be paid by the Chief Registrar into the Consolidated Fund.

### 115 Provision as to information supplied for purposes of social security.

- (1) Subject to any exceptions or conditions prescribed by regulations of the Secretary of State, the Secretary of State shall at the request of any person claiming benefit from an incorporated friendly society provide the society for the purposes of the claim with a copy or abstract of any medical certificate relating to that person and supplied by him to the Secretary of State for the purposes of the enactments relating to social security.
- (2) Where the Secretary of State furnishes an incorporated friendly society, in connection with a claim for benefit from the society with information relating to a claim or award

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under those enactments, the expenses incurred in connection with his doing so by the Secretary of State or any other government department shall be treated as expenses in carrying those enactments into effect.

[<sup>F75</sup>(3) In this section, references to the Secretary of State shall be construed as including references to the Department of Health and Social Services for Northern Ireland.]

#### Textual Amendments

**F75** S. 115(3) inserted (1.4.1995) by S.I. 1995/710, reg. 6

### Interpretation

#### 116 Friendly societies etc.

In this Act—

“friendly society” means an incorporated friendly society or a registered friendly society;

“incorporated friendly society” means a society incorporated under this Act;

“registered branch” means a branch of a registered friendly society which is separately registered within the meaning of the 1974 Act;

“registered friendly society” means a society registered within the meaning of the 1974 Act by virtue of section 7(1)(a) of that Act or any enactment which it replaced.

#### Commencement Information

**I60** Ss. 116-119 wholly in force at 8.6.1992 see s. 126(2) and S.I. 1992/1325, art. 2(c).

#### 117 Insurance business etc.

(1) For the purposes of this Act—

“annual contribution income” means, in relation to a friendly society’s long term business, the income of the society in a financial year without any deduction for reinsurance cessions;

[<sup>F76</sup>“commitment” means, in relation to a friendly society to which section 37(2) applies, a commitment represented by insurance business of any class of Head A of Schedule 2 to this Act;]

“insurance business” means long term business and general business but does not include the operations of a society whose benefits vary according to the resources available and which require each of its members to contribute on a flat-rate basis;

[<sup>F77</sup>“direct insurance business” means insurance business other than reinsurance business and “direct insurance” shall be construed accordingly;]

“long term business” means insurance business of any of the classes specified in head A of Schedule 2 to this Act; and

“general business” means insurance business of any of the classes specified in head B of that Schedule.

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- (2) For the purposes of any provision of Parts IV, V, VI and VIII of this Act, unless the context otherwise requires—
- (a) references to insurance business include references to reinsurance business; and
  - (b) reinsurance business consisting of the effecting and carrying out of a contract of reinsurance of risks of any class shall be taken to constitute the carrying on of insurance business of that class;
- and “reinsurance business” means the effecting and carrying out of contracts of reinsurance.
- (3) For the purposes of this Act the effecting and carrying out of a contract whose principal object is within one class of insurance business, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of insurance business of the first-mentioned class, and no other, if subsection (4) or (5) below applies to the contract.
- (4) This subsection applies to a contract whose principal object is within any class of long term business, but which contains subsidiary provisions within general business class 1 or 2, if the society concerned is authorised under section 32 above to carry on long term business class I.
- (5) This subsection applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes.
- [<sup>F78</sup>(6) In relation to a contract of insurance entered into by a person on any date with a friendly society to which section 37(3) above applies the effecting of which constitutes general business, or a contract of insurance entered into by a person on any date with a friendly society to which section 37(2) above applies the effecting of which constitutes long term business, references in this Act to the [<sup>F79</sup>member or EEA State] where the risk or commitment is situated shall be construed as follows—
- (a) where that person is an individual, as references to the [<sup>F79</sup>member or EEA State] where he has his habitual place of residence on that date; and
  - (b) in any other case, as references to the [<sup>F79</sup>member or EEA State] where the establishment of that person to which the contract relates is situated on that date.
- (7) In relation to any other contract of insurance with a friendly society, references in this Act to the member State where the risk is situated shall be construed as references to the member State where the person who has entered into the contract has his habitual place of residence.]
- [<sup>F80</sup>(8) In this Act references, in relation to a friendly society to which section 37(2) or (3) above applies, to the provision of insurance in the United Kingdom or any other EEA State are references to either or both of the following—
- (a) the covering (otherwise than by way of reinsurance) of a risk situated there through an establishment in another EEA State (“the provision of general insurance”); and
  - (b) the covering (otherwise than by way of reinsurance) of a commitment situated there through an establishment in another EEA State (“the provision of long term insurance”).



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- (9) In this Act “establishment”, in relation to a friendly society to which section 37(2) or (3) above applies, means the registered office or an overseas branch of the society.

Any permanent presence of such a society in an EEA State other than the United Kingdom shall be regarded for those purposes as a single overseas branch, whether that presence consists of a single office which, or two or more offices each of which—

- (a) is managed by the society’s own staff;
- (b) is an agency of the society; or
- (c) is managed by a person who is independent but has permanent authority to act for the society in the same way as an agency.]

#### Textual Amendments

- F76** Definition in s. 117(1) inserted (1.1.1994) by [S.I. 1993/2519, reg. 7\(1\)](#)  
**F77** Definition in s. 117(1) added (1.9.1994) by [S.I. 1994/1984 reg. 29\(1\)](#)  
**F78** [S. 117\(6\)\(7\)](#) substituted (1.1.1994) for s. 177(6) by [S.I. 1993/2519, reg. 7\(2\)](#)  
**F79** [S. 117\(6\)](#) words substituted (1.9.1994) by [S.I. 1994/1984 reg. 29\(2\)](#)  
**F80** [S. 117\(8\)\(9\)](#) inserted (1.9.1994) by [S.I. 1994/1984 reg. 29\(3\)](#)

#### Commencement Information

- I61** [Ss. 116-119](#) wholly in force at 8.6.1992 see [s. 126\(2\)](#) and [S.I. 1992/1325, art. 2\(c\)](#).

### 118 Financial year of friendly societies.

- (1) Subject to subsection (2) below, in this Act “financial year” means the period of 12 months ending with 31st December.
- (2) The initial financial year of a friendly society shall be such period as expires with the end of the calendar year in which it is registered under the 1974 Act or incorporated under this Act and the final financial year of the society shall be such shorter period than 12 months as expires with the date as at which the society makes up its final accounts.

#### Commencement Information

- I62** [Ss. 116-119](#) wholly in force at 8.6.1992 see [s. 126\(2\)](#) and [S.I. 1992/1325, art. 2\(c\)](#).

### 119 General interpretation.

- (1) In this Act, unless the context otherwise requires—
- “the 1974 Act” means the <sup>M47</sup>Friendly Societies Act 1974;
  - “actuary” means an actuary possessing the qualifications prescribed by regulations under section 44 above;
  - “annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons;
  - “appointed actuary” means the actuary appointed under section 44 above;
  - “the appropriate actuary” means—

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- (a) if the society is under the duty imposed by section 44(1) above, the society's appointed actuary; and
- (b) if it is not under that duty, an actuary appointed to perform the function in question;

“the central office” means the central office of the registry of friendly societies except in relation to Scotland where it means the assistant registrar of friendly societies for Scotland;

“the Chief Registrar” means the Chief Registrar of Friendly Societies;

“collecting society” has the same meaning as in the <sup>M48</sup>Industrial Assurance Act 1923 or the <sup>M49</sup>Industrial Assurance (Northern Ireland) Order 1979;

“the Commission” means the Friendly Societies Commission established by section 1 above;

“committee of management” means the committee of management or other directing body of a society or branch;

“contract of insurance” includes any contract the effecting of which constitutes the carrying on of insurance business by virtue of section 117 above;

[<sup>F81</sup>“controller” has the meaning given by section 55A above;]

“the court” except in relation to the winding-up of an incorporated friendly society, means—

- (a) in the case of a body whose registered office is situated in England and Wales or in Northern Ireland, the county court for the district in which the office is situated;
- (b) in the case of a body whose registered office is situated in Scotland, the sheriff in whose jurisdiction the office is situated;

and, in relation to the winding-up of an incorporated friendly society, means the court which has jurisdiction under the applicable winding-up legislation to wind-up the society;

“the criteria of prudent management” means the criteria set out in section 50 above;

[<sup>F82</sup>“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 <sup>M50</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993 <sup>M51</sup>;

<sup>F82</sup>“EEA State” means a State which is a Contracting Party to the EEA Agreement but, until the EEA Agreement comes into force in relation to Liechtenstein, does not include Liechtenstein;

<sup>F82</sup>“EFTA State” means an EEA State which is not a member State;]

“financial year” is to be construed in accordance with section 118;

“the first general insurance Directive” means Council Directive [73/239/EEC](#) of 24th July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;

“the first life Directive” means Council Directive [79/267/EEC](#) of 5th March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance;

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[<sup>F83</sup>“the general insurance Directives” means the first general insurance Directive, the second general insurance Directive and the third general insurance Directive as amended, and such other Directives as make provision with respect to the business of direct insurance other than life assurance;]

“group business” is to be construed in accordance with section 11 above;

“jointly controlled body” is to be construed in accordance with section 13 above;

[<sup>F84</sup>“the life Directives” means the first life Directive, the second life Directive and the third life Directive as amended, and such other Directives as make provision with respect to the business of direct life assurance;

“manager”, in relation to a friendly society to which section 37(2) or (3) above applies, means any person (other than an employee of a society) appointed by the society to manage any part of its insurance business, or any employee of the society (other than a chief executive) who, under the immediate authority of a member of the committee of management or chief executive of the society—

- (a) exercises managerial functions, or is responsible for maintaining accounts or other records of the society; and
- (b) is not a person whose functions relate exclusively to business conducted from a place of business which is not in a member State;]

“memorandum” has the meaning given by paragraph 4(3) of Schedule 3 to this Act;

“modifications”, in relation to enactments, includes additions, omissions and amendments;

“non-insurance business” means business falling within head C of Schedule 2 to this Act;

“notice” means written notice and “notice to” a person means notice given to that person, and “notify” shall be construed accordingly;

[<sup>F85</sup>“notifiable voting rights” has the meaning given by section 55A above;]

“officer” means—

- (a) in relation to a registered friendly society or a registered branch—
  - (i) a trustee;
  - (ii) the treasurer, secretary and chief executive (however described);
  - (iii) a member of the committee of management; and
  - (iv) a person appointed by the society or branch to sue or be sued on its behalf; or
- (b) in relation to an incorporated friendly society, a member of the committee of management, the chief executive (however described) and the secretary;

“the public file”, in relation to a friendly society, means the file relating to the society which the central office is required to maintain under section 104 above;

“registered address”, in relation to a member of an incorporated friendly society, has the meaning given by paragraph 14(6) of Schedule 3 to this Act;

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“the second general insurance Directive” means Council Directive [88/357/EEC](#) of 22nd June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive [73/239/EEC](#);

“the second life Directive” means Council Directive [90/619/EEC](#) of 8th November 1990 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive [79/267/EEC](#);

“special resolution” has the meaning given by paragraph 7 of Schedule 12 to this Act;

“subscription” includes any premium or other sum (however described) payable, in respect of the provision of benefits, by (or on behalf of) a member of a friendly society under the rules of the society;

“subsidiary” is to be construed in accordance with section 13 above; and

[<sup>F86</sup>“supervisory authority”, in relation to an EEA State other than the United Kingdom, means the authority responsible in that State for supervising insurance companies;

<sup>F86</sup>“the third general insurance Directive” means Council Directive [92/49/EEC](#) of 18th June 1992 <sup>M52</sup> on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives [73/239/EEC](#) <sup>M53</sup> and [88/357/EEC](#) <sup>M54</sup>;

<sup>F86</sup>“the third life Directive” means Council Directive [92/96/EEC](#) of 10th November 1992 <sup>M55</sup> on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives [79/267/EEC](#) <sup>M56</sup> and [90/619/EEC](#) <sup>M57</sup>;

“valuation regulations” means regulations under section 45 above.

[<sup>F87</sup>(1A) References in this Act to the first or third general insurance Directive, or to the first or third life Directive, are references to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).

<sup>F87</sup>(1B) References in this Act—

- (a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or
- (b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of those Regulations.]

(2) References in this Act to the “ECU” are to the unit of account of that name defined in Council Regulation (EEC) No.3180/78 as amended; and the exchange rates as between the ECU and pounds sterling to be applied for each year beginning on 31st December shall be the rates applicable on the last day of the preceding October for which exchange rates for the currencies of all the member States were published in the Official Journal of the Communities.

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### Textual Amendments

- F81** S. 119(1): definition inserted (1.9.1994) by S.I. 1994/1984 reg. 30(a)  
**F82** S. 119(1): definition inserted (1.9.1994) by S.I. 1994/1984, **reg. 30(b)**  
**F83** S. 119(1): definition substituted (1.9.1994) by S.I. 1994/1984 reg. 30(c)  
**F84** S. 119(1): definitions of “the life Directives” and “manager” substituted for definition of “the life Directives” (1.9.1994) by S.I. 1994/1984, **reg. 30(d)**  
**F85** S. 119(1): definition inserted (1.9.1994) by S.I. 1994/1984, **reg. 30(e)**  
**F86** S. 119(1): definition inserted (1.9.1994) by S.I. 1994/1984, **reg. 30(f)**  
**F87** S. 119(1A)(1B) inserted (18.7.1996) by S.I. 1996/1669, reg. 23, **Sch. 5 para. 6**

### Commencement Information

- I63** Ss. 116-119 wholly in force at 8.6.1992 see s. 126(2) and S.I. 1992/1325, **art. 2(c)**.

### Marginal Citations

- M47** 1974 c. 46.  
**M48** 1923 c. 8.  
**M49** S.I. 1979/1574 (N.I. 13).  
**M50** O.J. L1, 3.1.94, page 3.  
**M51** O.J. L1, 3.1.94, page 572.  
**M52** O.J. L228, 11.8.92, page 1.  
**M53** O.J. L228, 16.8.73, page 3.  
**M54** O.J. L172, 4.7.88, page 1.  
**M55** O.J. L360, 9.12.92, page 1.  
**M56** O.J. L63, 13.3.79, page 1.  
**M57** O.J. L330, 29.11.90, page 50.

### [<sup>F88</sup> 119A Meaning of “associate”.

(1) In this Act “associate”, in relation to any person entitled to exercise or control the exercise of voting power in relation to a friendly society to which section 37(2) or (3) above applies, means—

- (a) the wife or husband or minor son or daughter of that person;
- (b) any company of which that person is a director;
- (c) any person who is an employee or partner of that person;
- (d) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary undertaking of that company;
  - (iii) any director or employee of any such subsidiary under- taking; and
- (e) if that person has made an agreement or arrangement with any other person under which they undertake to act together in exercising their voting power in relation to the society, that other person.

(2) In this section—

“minor”, in relation to Scotland, means not having attained the age of sixteen;

“son” includes stepson and “daughter” includes stepdaughter;

“subsidiary undertaking” has the same meaning as in the Insurance Companies Act 1982 <sup>M58</sup>.]

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#### Textual Amendments

**F88** S. 119(A) inserted (1.9.1994) by S.I. 1994/1984 reg. 31

#### Marginal Citations

**M58** 1982 c.50.

### [<sup>F89</sup> 119B Meaning of “main agent”.

- (1) In this Act “main agent”, in relation to a society to which section 37(2) or (3) above applies, means a person appointed by the society to be its agent in respect of general business in [<sup>F90</sup>an EEA State] with authority to enter into contracts on behalf of the society in any financial year—
  - (a) without limit on the aggregate amount of premiums; or
  - (b) with a limit in excess of the 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below.
- (2) A person shall not be regarded as falling within subsection (1)(a) above unless—
  - (a) the society is of the opinion that the aggregate amount of premiums, on contracts entered into by him on behalf of the society in that year in respect of general business in the [<sup>F90</sup>EEA State] or States concerned, will be in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below; or
  - (b) the aggregate amount of premiums, on contracts so entered into, actually is in excess of 10 per cent. of that premium limit.
- (3) Subject to subsections (4) to (6) below, the premium limit for the purposes of subsections (1) and (2) above is the aggregate of the amounts of gross premiums shown in the annual accounts relating to the society’s business last sent to the Commission under section 78 above as receivable in respect of general business in the financial year to which the accounts relate.
- (4) If the accounts so sent relate to a financial year which is not a period of 12 months, the aggregate of the amounts of gross premiums shown in the accounts as receivable in that financial year shall be divided by the number of months in the financial year and multiplied by twelve.
- (5) If no accounts have been sent to the Commission under section 78 above the aggregate amount of gross premiums shall be the amount or, if more than one amount, the lower or lowest amount, shown in respect of gross premiums relating to the society’s business in the financial forecast last submitted by the society in accordance with regulations made for the purposes of paragraph 2(2) of Schedule 13 to this Act.
- (6) Any reference in subsection (3) or (5) above to the society’s business is a reference to its business in the [<sup>F90</sup> EEA State] or States in which the agent has authority to enter into contracts on its behalf.]

#### Textual Amendments

**F89** S. 119B inserted (1.9.1994) by S.I. 1994/1984 reg. 32

**F90** Words in s. 119B(1) substituted (1.1.1998) by S.I. 1997/2849 reg. 3

Words in s. 119B(2)(a) substituted (1.1.1998) by S.I. 1997/2849 reg. 3

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Words in [s. 119B\(6\)](#) substituted (1.1.1998) by [S.I. 1997/2849](#) reg. 3

## Supplementary

### 120 Amendments and repeals.

- (1) The enactments specified in Schedule 21 to this Act shall have effect with the amendments made by that Schedule.
- (2) The enactments specified in Schedule 22 to this Act are repealed to the extent specified in the third column of that Schedule.

#### Commencement Information

**I64** [S. 120](#) partly in force; [s. 120](#) not in force at Royal Assent see [s. 126\(2\)](#); [s. 120\(1\)](#) partly in force at 1.1.1993 by [S.I. 1992/3117](#), [art. 2\(ii\)](#); [s. 120\(2\)](#) in force to the extent specified at 13.1.1993 by [S.I. 1993/16](#), [art. 2](#), [Sch. 2](#); [s. 120](#) in force to the extent specified at 1.2.1993 by [S.I. 1993/16](#), [art. 2](#), [Sch. 3](#); [s. 120\(2\)](#) in force to the extent specified at 5.2.1993 by [S.I. 1993/197](#), [art. 2](#); [s. 120\(2\)](#) in force to the extent specified at 13.9.1993 by [S.I. 1993/2213](#), [art. 2\(1\)](#), [Sch. 3](#); [s. 120\(2\)](#) in force to the extent specified at 1.1.1994 by [S.I. 1993/2213](#), [art. 2\(1\)](#), [Schs. 5, 6](#); [s. 120](#) in force to the extent specified at 1.1.1994 by [S.I. 1993/3226](#), [art. 2\(1\)](#), [Sch. 2](#); [S. 120\(2\)](#) in force to the extent specified at 1.11.1994 by [S.I. 1994/2543](#), [art. 2\(3\)\(a\)](#)

### 121 Orders and regulations.

- (1) Any power of the Treasury or the Commission to make regulations or an order under this Act is exercisable by statutory instrument.
- (2) Any statutory instrument containing such regulations or such an order, other than an order under section 5 above or section 126 below, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any power conferred by this Act to make such regulations or such an order includes power—
  - (a) to make different provision for different cases; and
  - (b) to make transitional, consequential or supplementary provision.

#### Commencement Information

**I65** [S. 121](#) wholly in force at 8.6.1992 see [s. 126\(2\)](#) and [S.I. 1992/1325](#), [art. 2\(d\)](#).

### 122 Expenses.

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Commission which are attributable to the provisions of this Act;
- (b) any expenses incurred by the Chief Registrar which are attributable to any functions of his or of the central office under this Act;
- (c) any increase attributable to this Act in the sums so payable under any other enactment.

**Status:** Point in time view as at 14/04/2000. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Friendly Societies Act 1992 is up to date with all changes known to be in force on or before 19 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)

#### Commencement Information

**I66** S. 122 wholly in force at 8.6.1992 see s. 126(2) and S.I. 1992/1325, art. 2(e).

### 123 Power to make transitional, consequential etc. provisions.

- (1) The Treasury may by regulations make such transitional and consequential provisions and such savings as they consider necessary or expedient in preparation for, in connection with, or in consequence of—
  - (a) the coming into force of any provision of this Act; or
  - (b) the operation of any enactment repealed or amended by a provision of this Act during any period when the repeal or amendment is not wholly in force.
- (2) Regulations under this section may make modifications of any enactment contained in this or in any other Act.

#### Commencement Information

**I67** S. 123 wholly in force at 8.6.1992 see s. 126(2) and S.I. 1992/1325, art. 2(f).

### 124 Northern Ireland.

- (1) This Act extends to Northern Ireland.
- <sup>F91</sup>(2) .....

#### Textual Amendments

**F91** S. 124(2) repealed (2.12.1999) by 1998 c.47, s. 100(2), Sch. 15; S.I. 1999/3209, art. 2, Sch.

### 125 Channel Islands and Isle of Man.

- (1) Her Majesty may by Order in Council direct that any of the provisions of this Act or any instrument made under it shall extend, with such modifications (if any) as may be specified in the Order, to—
  - (a) any of the Channel Islands; or
  - (b) the Isle of Man.
- (2) An Order in Council under this section may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient.

### 126 Short title and commencement.

- (1) This Act may be cited as the Friendly Societies Act 1992.
- (2) This Act shall come into force on such day as the Treasury may by order appoint and different days may be appointed for different provisions or different purposes.
- (3) An order under subsection (2) above may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as



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appear to the Treasury necessary or expedient in connection with the provisions brought into force.

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#### Subordinate Legislation Made

- P1** S. 126(2) power partly exercised (3.6.1992): 8.6.1992 appointed for specified provisions by [S.I. 1992/1325](#), [art. 2](#)
- s. 126(2) power partly exercised (9.12.1992): 1.1.1993 appointed for specified provisions by [S.I. 1992/3117](#), [art. 2](#)
- S. 126(2) power partly exercised (4.1.1993): 13.2.1993 and 1.2.1993 appointed for specified provisions by [S.I. 1993/16](#)
- S. 126(2) power partly exercised (3.2.1993): 5.2.1993 appointed for specified provisions by [S.I. 1993/197](#)
- S. 126(2) power partly exercised (22.4.1993): 28.4.1993 appointed for specified provisions by [S.I. 1993/1186](#)
- S. 126(2) power partly exercised (8.9.1993): 13.9.1993, 1.1.1994 and 1.7.1994 appointed for specified provisions by [S.I. 1993/2213](#)
- S. 126(2) power partly exercised (22.12.1993): 1.1.1994 and 1.1.1995 appointed for specified provisions by [S.I. 1993/3226](#)

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#### Commencement Information

- I68** S. 126 wholly in force at 8.6.1992 see [s. 126\(2\)](#) and [S.I. 1992/1325](#), [art. 2](#).

**Status:**

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**Changes to legislation:**

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