

Status: Point in time view as at 01/08/1996.

Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, [SCHEDULE 13B TO 1992 ACT]. (See end of Document for details)

SCHEDULES

[^{F1} [SCHEDULE 13B TO 1992 ACT]

RECOGNITION IN OTHER EEA STATES OF FRIENDLY SOCIETIES TO WHICH SECTION 37(2) OR (3) APPLIES]

Textual Amendments

F1 Sch. 13B inserted (1.9.1994) by S.I. 1994/1984 reg. 15(2), Sch. 2

PART I

FRIENDLY SOCIETIES CARRYING ON BUSINESS ETC, IN OTHER MEMBER STATES

Requirements for carrying on insurance business

- 1 (1) A friendly society to which section 37(2) or (3) above applies shall not carry on direct insurance business of a class or part of a class through an overseas branch in a member State other than the United Kingdom unless—
 - (a) the society is authorised under section 32 above to carry on insurance business of that class or part of a class; and
 - (b) the requirements of this paragraph have been complied with in relation to that branch.
- (2) The requirements of this paragraph are—
 - (a) that the society has given to the Commission a notice containing both the requisite EC details and the requisite UK details;
 - (b) that the Commission has given to the supervisory authority in the member State in which the overseas branch is to be established (“the member State of the branch”)—
 - (i) a notice which contains the requisite EC details; and
 - (ii) a certificate in accordance with sub-paragraph (3) below; and
 - (c) that either—
 - (i) that authority has informed the Commission of the conditions which, in the interest of the general good, must be complied with by the society in carrying on insurance business through the branch; or
 - (ii) the period of two months beginning with the day on which the Commission gave that authority the certificate mentioned in paragraph (b) above has elapsed.
- (3) A certificate is in accordance with this sub-paragraph if it—

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- (a) attests that the society has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
 - (i) Articles 16 and 17 of the first general insurance Directive, and
 - (ii) Articles 19 and 20 of the first life Directive; and
 - (b) indicates the classes of insurance business which the society is authorised to carry on in the United Kingdom.
- (4) The Commission shall, within the period of three months beginning with the date on which the society’s notice was received—
- (a) give the notice and certificate referred to in sub-paragraph (2)(b) above; or
 - (b) refuse to give either or both of those documents.
- (5) The Commission shall, within the period of three months referred to in sub-paragraph (4) above, notify the society—
- (a) that it has given the notice and certificate referred to in sub-paragraph (2)(b) above, stating the date on which it did so; or
 - (b) that it has refused to give either or both those documents, stating the reasons for the refusal.
- (6) The Commission shall not refuse to give the notice referred to in sub-paragraph (2)(b) above unless, having regard to the business to be carried on through the overseas branch, it appears to it that the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.
- (7) Where the supervisory authority in the member State of the branch has informed the Commission as mentioned in paragraph (2)(c)(i) above, the Commission shall forward the information to the society.
- 2 (1) A friendly society to which section 37(2) or (3) above applies shall not change the requisite EC details of an overseas branch—
- (a) which has been established by it in a member State other than the United Kingdom (“the member State of the branch”); and
 - (b) through which it carries on direct insurance business,
- unless the requirements of this paragraph have been complied with in relation to its making of the change.
- (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are—
- (a) that the society has given a notice to the Commission, and to the supervisory authority in the member State of the branch, stating the details of the proposed change not less than one month before the change is to take place;
 - (b) that the Commission has sent to that authority a notice in accordance with sub-paragraph (4)(a) below; and
 - (c) that either—
 - (i) that authority has informed the society of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the society in carrying on insurance business through the branch; or
 - (ii) the period of two months beginning with the day on which the society gave that authority the notice of the proposed change in accordance with paragraph (a) above has elapsed.

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Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, [SCHEDULE 13B TO 1992 ACT]. (See end of Document for details)

- (3) In the case of a change occasioned by circumstances beyond the society's control, the requirements of this paragraph are that the society shall as soon as practicable (whether before or after the change) give a notice to the Commission, and to the supervisory authority in the member State of the branch, stating the details of the change.
- (4) The Commission shall, as soon as practicable after receiving a notice under sub-paragraph (2)(a) above—
- (a) give notice to the the supervisory authority in the member State of the branch informing it of the proposed change; or
 - (b) refuse to give such notice.
- (5) The Commission shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the society—
- (a) that it has given the notice referred to in that sub-paragraph, stating the date on which it did so; or
 - (b) that it refused to give the notice, stating the reasons for that refusal.
- (6) The Commission shall not refuse to give the notice referred to in sub-paragraph (4) (a) above unless, having regard to the proposed change, it appears to it that the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.
- 3 (1) A friendly society to which section 37(2) or (3) above applies shall not change the requisite UK details of an overseas branch—
- (a) which has been established by it in a member State other than the United Kingdom; and
 - (b) through which it carries on direct insurance business,
- unless the requirements of this paragraph have been complied with in relation to its making of the change.
- (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are that the society has given a notice to the Commission stating the details of the proposed change not less than one month before the change is to take place.
- (3) In the case of a change occasioned by circumstances beyond the society's control, the requirements of this paragraph are that the society shall as soon as practicable (whether before or after the change) give a notice to the Commission stating the details of the change.

Requisite details for purposes of paragraphs 1 to 3

- 4 (1) The requisite EC details for the purposes of paragraphs 1 and 2 above are—
- (a) the member State in which the overseas branch is to be or has been established ("the member State of the branch");
 - (b) the address of the branch and confirmation that that address is an address for service on the society's authorised agent;
 - (c) the name of the society's authorised agent;

Status: Point in time view as at 01/08/1996.

Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, [SCHEDULE 13B TO 1992 ACT]. (See end of Document for details)

- (d) the classes and parts of classes of insurance business to be carried on, and the nature of the risks or commitments to be covered, in the member State of the branch;
 - (e) details of the structural organisation of the branch;
 - (f) the guiding principles as to reinsurance of business to be carried on in the member State of the branch, including the society's maximum retention per risk or event after all reinsurance ceded;
 - (g) estimates of the following, namely—
 - (i) the costs of installing administrative services and the organisation for securing business in the member State of the branch; and
 - (ii) the resources available to cover those costs;
 - (h) for each of the first three financial years following the establishment of the branch—
 - (i) estimates of the society's margin of solvency and the margin of solvency required, and a statement showing how both have been calculated;
 - (ii) in the case of a society which intends to carry on long term business, the details mentioned in sub-paragraph (2) below as respects the business to be carried on in the member State of the branch; and
 - (iii) in the case of a society which intends to carry on general business, the details mentioned in sub-paragraph (3) below as respect the business to be so carried on; and
 - (i) in the case of a society which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.
- (2) The details referred to in sub-paragraph (1)(h)(ii) above are—
- (a) a statement showing, on both optimistic and pessimistic bases, for each type of contract or treaty—
 - (i) the number of contracts or treaties expected to be issued;
 - (ii) the total premium income, both gross and net of reinsurance ceded;
 - (iii) the total sums assured or the total amounts payable each year by way of annuity;
 - (b) a statement setting out, on both optimistic and pessimistic bases, detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions; and
 - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (3) The details referred to in sub-paragraph (1)(h)(iii) above are—
- (a) estimates relating to expenses of management (other than costs of installation), and in particular those relating to current general expenses and commissions;
 - (b) estimates relating to premiums or contributions (both gross and net of all reinsurance ceded) and to claims (after all reinsurance recoveries); and
 - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (4) The requisite UK details for the purposes of paragraphs 1 and 3 above are—

Status: Point in time view as at 01/08/1996.

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- (a) the names of the society's managers and main agents in the member State of the branch;
 - (b) particulars of any association which exists or is proposed to exist between—
 - (i) the committee of management and the controllers (if any) of the society; and
 - (ii) any person who will act as an insurance broker, agent, loss adjuster or reinsurer for the society in the member State of the branch;
 - (c) the names of the principal reinsurers of business to be carried on in the member State of the branch;
 - (d) the sources of business in the member State of the branch (for example, insurance brokers, agents, own employees or direct selling) with the approximate percentage expected from each of those sources;
 - (e) copies or drafts of the following, namely—
 - (i) any separate reinsurance treaties covering business to be written in the member State of the branch;
 - (ii) any standard agreements which the society will enter into with persons who will be sources of business in the member State of the branch;
 - (iii) any agreements which the society will enter into with persons (other than employees of the society) who will manage the business to be carried on in the member State of the branch;
 - (f) in the case of a society which intends to carry on long term business—
 - (i) the technical bases which the appointed actuary proposes to use for each class of business to be carried on in the member State of the branch, including the bases needed for calculating premium rates and mathematical reserves;
 - (ii) a statement by that actuary as to whether he considers that the premium rates that will be used in the member State of the branch are suitable;
 - (iii) a statement by that actuary as to whether he agrees with the information provided under sub-paragraphs (1)(f) and (2)(b) and (c) above; and
 - (iv) the technical bases used to calculate the statements and estimates referred to in sub-paragraph (2) above; and
 - (g) in the case of a society which intends to carry on general business, copies or drafts of any agreements which the society will have with main agents in the member State of the branch.
- (5) In this paragraph "authorised agent" means an agent or employee of the society who has authority—
- (a) to bind the society in its relations with third parties; and
 - (b) to represent the society in its relations with supervisory authorities and courts in the member State of the branch.

Requirements for providing insurance

- 5 (1) A friendly society to which section 37(2) or (3) above applies shall not provide insurance of any class or part of a class in a member State other than the United Kingdom unless—

Status: Point in time view as at 01/08/1996.

Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, [SCHEDULE 13B TO 1992 ACT]. (See end of Document for details)

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- (a) the society is authorised under section 32 above to carry on insurance of that class or part of a class; and
 - (b) the requirements of this paragraph have been complied with in relation to the provision of the insurance in that member State.
- (2) The requirements of this paragraph are–
- (a) that the society has given to the Commission a notice containing the requisite details; and
 - (b) that the Commission has given to the supervisory authority in the member State in which the insurance is to be provided–
 - (i) a notice which contains the requisite details; and
 - (ii) a certificate in accordance with sub–paragraph (3) below.
- (3) A certificate is in accordance with this sub–paragraph if it–
- (a) attests that the society has the minimum margin of solvency calculated in accordance with such of the following as are appropriate–
 - (i) Articles 16 and 17 of the first general insurance Directive, and
 - (ii) Articles 19 and 20 of the first life Directive; and
 - (b) indicates the classes of insurance business which the society is authorised to carry on in the United Kingdom.
- (4) Where the society intends to provide insurance in more than one member State, the requisite details may be contained in a single notification but must be set out separately in relation to each member State.
- (5) The Commission shall, within the period of one month beginning with the date on which the society’s notice was received–
- (a) give the notice and certificate referred to in sub–paragraph (2)(b) above to the supervisory authority in the member State in which the society intends to provide insurance; or
 - (b) refuse to give either or both of those documents.
- (6) The Commission shall, within the period of one month referred to in sub–paragraph (5) above, notify the society–
- (a) that it has given the notice and certificate referred to in sub–paragraph (2)(b) above to the supervisory authority in the member State in which the society intends to provide insurance, stating the date on which it did so; or
 - (b) that it has refused to give either or both of those documents, stating the reasons for the refusal.
- (7) The Commission shall not refuse to give the notice referred to in sub–paragraph (2) (b) above unless, having regard to the insurance to be provided in the member State, it appears to it that the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.
- 6 (1) A friendly society to which section 37(2) or (3) above applies shall not change the requisite details of the provision of insurance in a member State other than the United Kingdom unless the requirements of this paragraph have been complied with in relation to its making of the change.
- (2) The requirements of this paragraph are–

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- (a) that the society has given a notice to the Commission stating the details of the proposed change;
 - (b) that the Commission has sent to the supervisory authority in the member State in which the insurance is provided a notice in accordance with sub-paragraph (4)(a) below.
- (3) In the case of a change occasioned by circumstances beyond the society's control, the requirements of this paragraph are that the society shall as soon as practicable give a notice to the Commission stating the details of the change.
- (4) The Commission shall, as soon as practicable after receiving a notice under sub-paragraph (2)(a) above either–
- (a) give notice to the supervisory authority in the member State in which the insurance is provided informing it of the proposed change; or
 - (b) refuse to give such notice.
- (5) The Commission shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the society–
- (a) that it has given the notice referred to in that sub-paragraph, stating the date on which it did so; or
 - (b) that it has refused to give the notice, stating the reasons for the refusal.
- (6) The Commission shall not refuse to give the notice referred to in sub-paragraph (4) (a) above unless, having regard to the proposed change, it appears to it that the criteria of prudent management would not or might not continue to be fulfilled in respect of the society.

Requisite details for purposes of paragraphs 5 and 6

- 7 The requisite details for the purposes of paragraphs 5 and 6 above are–
- (a) the member State in which the insurance is to be provided;
 - (b) the nature of the risks or commitments which the society proposes to cover in that State; and
 - (c) in the case of a society which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.

Requirement to notify cessation of business etc.

- 8 A friendly society to which section 37(2) or (3) above applies which has ceased–
- (a) to carry on insurance business through an overseas branch in a member State other than the United Kingdom; or
 - (b) to provide insurance in such a member State,
- shall as soon as practicable notify the Commission in writing that it has done so.

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PART II

FRIENDLY SOCIETIES PROVIDING INSURANCE IN EFTA STATES

Notification to Commission

- 9 (1) Where a friendly society to which section 37(2) or (3) above applies intends to provide insurance in an EFTA State, it shall before doing so notify the Commission of its intention.
- (2) The notification shall indicate—
- (a) the EFTA State in which the insurance is to be provided;
 - (b) the EEA State in which the establishment through which the risks or commitments will be covered is situated (“the EEA State of establishment”); and
 - (c) the nature of the risks or commitments which the society proposes to cover.
- (3) Where the society intends to provide insurance in more than one EFTA State, the information specified above may be contained in a single notification but must be set out separately in relation to each such State.
- (4) Where—
- (a) a friendly society to which section 37(2) or (3) above applies has duly notified the Commission of its intention to provide insurance in an EFTA State; and
 - (b) the society subsequently intends to extend its activities to risks or commitments the nature of which was not indicated in the notification,
- it shall before doing so comply with sub-paragraphs (1) to (3) above in relation to those risks or commitments.

Issue of certificates by Commission

- 10 (1) A friendly society to which section 37(2) or (3) above applies which intends to provide insurance in an EFTA State may apply to the Commission for a certificate—
- (a) attesting that the society possesses for its activities as a whole the minimum solvency margin calculated in accordance with the relevant provisions;
 - (b) indicating the classes of business which the society is authorised to carry on in the United Kingdom;
 - (c) stating that the Commission does not object to the society providing the insurance; and
 - (d) attesting that the society’s authorisation to carry on business in the United Kingdom, issued in accordance with Article 7(1) of the relevant Directive, enables the society to carry on business outside the EEA State of establishment.
- (2) If it appears to the Commission that a certificate applied for under sub-paragraph (1) above ought to be issued, it shall issue the certificate accordingly.
- (3) If the Commission refuses to issue a certificate, it shall inform the society in writing of its decision and of the reasons for it.

Status: Point in time view as at 01/08/1996.

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- (4) In sub-paragraph (1) above “the relevant Directive” and “the relevant provisions” means respectively—
- (a) if the society intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;
 - (b) if the society intends to cover commitments, the first life Directive and Articles 19 and 20 of that Directive.

PART III

FRIENDLY SOCIETIES PROVIDING INSURANCE IN THE UNITED KINGDOM THROUGH OVERSEAS BRANCHES IN OTHER EEA STATES

- 11 (1) Where a friendly society to which section 37(2) or (3) above applies intends to provide insurance in the United Kingdom, it shall before doing so notify the Commission of its intention.
- (2) The notification shall indicate—
- (a) the EEA State in which is situated the overseas branch through which the society intends to provide insurance in the United Kingdom; and
 - (b) the nature of the risks or commitments which the society proposes to cover in the United Kingdom.
- (3) Where the EEA State in which is situated the overseas branch through which the society intends to provide insurance in the United Kingdom is an EFTA State, the notification shall be accompanied by a certificate, issued by the supervisory authority in that State, which—
- (a) indicates the classes of insurance business which the society has been authorised to undertake through that branch;
 - (b) states that the authority does not object to the society providing insurance in the United Kingdom; and
 - (c) where the society intends to provide long term insurance in the United Kingdom, confirms that all the commitments which the society intends to cover fall within the classes of insurance business which the society has been authorised to undertake through that branch.
- (4) The society shall notify the Commission in writing if—
- (a) it changes either of the details notified to the Commission under sub-paragraph (2) above; or
 - (b) it ceases to provide insurance in the United Kingdom.

PART IV

SUPPLEMENTAL

Offences

- 12 (1) A friendly society to which section 37(2) or (3) above applies commits an offence if—

Status: Point in time view as at 01/08/1996.

Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, [SCHEDULE 13B TO 1992 ACT]. (See end of Document for details)

- (a) it carries on insurance business in a member State other than the United Kingdom in contravention of paragraph 1 above;
 - (b) in contravention of paragraph 2 or 3 above, it changes the requisite EC details or, as the case may be, the requisite UK details of an overseas branch established by it in such a member State;
 - (c) it provides insurance in such a member State in contravention of paragraph 5 above;
 - (d) in contravention of paragraph 6 above, it changes the requisite details relating to the provision of insurance in such a member State; or
 - (e) it makes default in complying with, or with a requirement imposed under, any other provision of this Schedule.
- (2) A person commits an offence if he causes or permits to be included in a notification sent to the Commission under paragraph 1, 2, 3, 5 or 6 above a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.
- (3) A person committing an offence under this paragraph shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Interpretation

- 13 (1) In this Schedule—
- (a) references in Part I to the provision of insurance in a member State other than the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that member State through an establishment in another member State;
 - (b) references in Part II to the provision of insurance in an EFTA State are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that EFTA State through an establishment in another EEA State;
 - (c) references in Part III to the provision of insurance in the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in the United Kingdom—
 - (i) through an establishment in another member State; or
 - (ii) through an establishment in an EFTA State.
- (2) In sub-paragraph (1)(b) and (c)(ii) above—
- (a) references to a risk are references to a risk falling within head B of Schedule 2 to this Act (general business), other than class 1, so far as it relates to accidents at work; and
 - (b) references to a commitment are references to a commitment falling within head A of Schedule 2 to this Act (long term business), other than class VII.
- (3) In this Schedule “health insurance risks”, in relation to a member State, means risks falling within class 2 of Schedule 2 to this Act (sickness) where—
- (a) insurance contracts covering those risks serve as a partial or complete alternative to the health cover provided by the statutory social security system in that State; and

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- (b) the law of that State requires such contracts to be operated on a technical basis similar to life assurance in accordance with all the conditions listed in the first sub-paragraph of Article 54(2) of the third general insurance Directive.

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Point in time view as at 01/08/1996.

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