
EXPLANATORY NOTE

(This Note is not part of the Regulations)

The Insurance Companies Act 1982 (“the Act”), which consolidated the Insurance Companies Acts 1974 and 1981, contains provision for the regulation of insurance companies. The Act incorporates provisions which implemented Council Directives [73/239/EEC](#) (O.J. No. L228, 16.8.73, p.3) and [79/267/EEC](#) (O.J. No. L63, 13.3.79, p.1) relating to non-life and life insurance. It has been amended *inter alia* by regulations made under section 2(2) of, and paragraph 2(2) of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”) to implement the provisions of Council Directives [88/357/EEC](#) (O.J. No. L172, 4.7.88, p.1) and [90/619/EEC](#) (O.J. No. L330, 29.11.90, p.50).

The Act is to be further amended, with effect from 1st July 1994, by the Insurance Companies (Third Insurance Directives) Regulations 1994 (“the Third Directives Regulations”) to implement Council Directives [92/49/EEC](#) (O.J. No. L228, 11.8.92, p.1) and [92/96/EEC](#) (O.J. No. L360, 9.12.92, p.1) (“the Third Directives”).

The Insurance Companies Regulations 1994, which come into force on 1st July 1994, are made primarily under the Act and consolidate the Insurance Companies Regulations 1981 ([S.I. 1981/1654](#)) (“the 1981 Regulations”), as amended, with further amendments principally to implement the Third Directives. They also consolidate in part the Insurance Companies (Credit Insurance) Regulations 1990 ([S.I. 1990/1181](#)) and regulation 13 of the Insurance Companies (Amendment) Regulations 1992 ([S.I. 1992/2890](#)), as amended by [S.I. 1993/174](#), made under the 1972 Act pursuant to Council Directives [87/343/EEC](#) (O.J. No. L185, 4.7.87, p.72), [88/357/EEC](#) and [90/619/EEC](#).

Part I contains citation, commencement and interpretation provisions.

Part II consolidates regulations 23, 24, 29 and 30 of the 1981 Regulations, which related to matters concerned with authorisation. Regulation 3 (made under sections 2(5) and 15(6) of the Act) prescribes contracts under which the benefits are exclusively or primarily benefits in kind, the effecting and carrying out of which contracts is not subject to authorisation and regulation under the Act. Regulation 4 (made under section 5(1) of the Act), together with Schedules 1 and 2, covers the information to be submitted by an applicant for authorisation. In the case of an applicant whose head office is in the United Kingdom, information on policy conditions and, for general business, tariffs is no longer to be provided. The information to be provided in support of an application for authorisation by a non-EC company with its head office in an EEA State, or by a Swiss general insurance company, is revised. Regulation 5 (made under section 96E(1)(b) of the Act) prescribes certain agents who are excluded from the provisions of the Act which apply to main agents. Regulation 6 (made under section 9(1) of the Act) prescribes the assets which an applicant for authorisation must have in the United Kingdom if the applicant is a company whose head office is not in an EEA State or is not an applicant to which section 8 of the Act applies.

Part III (made under section 9(1) of the Act) reproduces the existing law in Part III (regulations 14 to 22) of the 1981 Regulations. It regulates the making of a deposit by a company whose head office is not in an EEA State or is not an applicant to which section 8 of the Act applies.

Part IV largely reproduces the existing law contained in Part II (regulations 3 to 13) of the 1981 Regulations and deals with the margin of solvency (that is, the excess of the value of a company’s assets over the amount of its liabilities) which an insurance company is required under the Act to maintain. The value and amount in question are to be determined in accordance with regulations made under section 90 of the Act and referred to as “valuation regulations”.

Regulations 17 to 21 are made under section 32 of the Act, which provides for the amount of the margin to be prescribed or determined in accordance with regulations. The required margin for

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various classes of long term business (principally life assurance and annuities) is to be determined in accordance with the detailed rules in regulations 18 to 21. Provision is newly made for long term classes VIII and IX. The required margin for general business (non-life business) is the higher of the results given by the methods of calculation set out in Schedules 3 and 4 (regulation 17). Regulation 22 (made under section 33 of the Act), together with Schedule 5, sets out the minimum level of the “guarantee fund” (generally one third of the required margin of solvency).

Regulations 23 to 26 in Part IV are valuation regulations made under section 90 of the Act. By virtue of regulation 23(1), these particular valuation regulations are not available for valuing the assets which cover the company’s liabilities; but if the liabilities are covered, they are available for valuing the amount by which the liabilities are exceeded. With that limitation, regulation 23(2) allows half the amount of unpaid capital to be valued so long as a quarter of the capital is paid up (with analogous provisions for a mutual) and regulation 23(3) allows a mutual carrying on general business to value uncalled contributions, subject to the restrictions in sub-paragraphs (a) and (b). With the same limitation, regulations 23(4), 24, 25 and 26 make provision for what are known as the implicit items in the margin of solvency for long term business. A new provision is made in regulation 23 for the valuation of liabilities in respect of cumulative preference shares.

Part V (made under section 35 of the Act) consolidates and amends regulations 25, 25A, 25B, 25C and 26 to 28 of the 1981 Regulations. Regulations 27 to 30 regulate matching (the extent to which an insurance company must hold its assets in a currency appropriate to its liabilities), while regulations 31 to 33 regulate localisation (the extent to which an insurance company must hold assets in specific places). The matching regulations are revised so that regulation 27 provides for the requirements which are common to both long term and general business, while regulations 28 to 30 deal with matching of particular liabilities and provide for certain exceptions. Regulation 31 amends the localisation requirements so that a company to which Part II of the Act applies will have freedom to localise anywhere in the European Community the assets it holds to cover liabilities. Regulation 32 provides for exclusions from regulation 31, while regulation 33 will maintain a requirement on certain non-EC companies to localise assets within the United Kingdom.

Part VI and Schedule 6 (made under sections 60(1), 61(1) and 62(1) of the Act) replace regulations 31 to 36 of the 1981 Regulations and specify the particulars which have to be notified in connection with a change of director, controller, manager, etc. The particulars to be notified in relation to particular changes are listed in Schedule 6 and the former Forms A to D in Schedule 6 to the 1981 Regulations are discontinued.

Part VII consolidates with amendments Part VII of the 1981 Regulations. Regulations 35 to 37 (made under section 72 of the Act) amend regulations 65, 65A, 65B, 65C and 66 of the 1981 Regulations and provide for certain matters and words to be included in insurance advertisements. The requirement to include a statement relating to protection under the Policyholders Protection Act 1975 is disapplied in the case of advertisements issued by insurance companies whose head office is in an EEA State, while other matters are simplified. Regulations 38 to 40 consolidate regulations 67 to 69 of the 1981 Regulations and provide for certain information to be given by an intermediary to a person whom he invites to enter into certain insurance contracts. The reference in former regulation 67 to a “significant interest in shares” is amended in regulation 38, while regulation 39(2) (formerly regulation 68(2)) is amended to exclude its application where an invitation is issued in relation to a contract with a permitted insurer. Regulations 41 and 42, together with Schedules 7 to 9, consolidate regulations 70 and 71 of, and Schedules 10 to 12, to the 1981 Regulations, which were amended by the Insurance Companies (Cancellation No. 2) Regulations 1993 (S.I. 1993/1092) *inter alia* to implement the Third Directives. Regulation 43, together with Schedule 10, consolidates and amends regulation 72 of and Schedule 13 to the 1981 Regulations and provides that benefits under a linked long term contract may only be linked to the investment performance of certain prescribed assets or indices (known as “permitted links”). The list of permitted links in Schedule 10 is amended principally to permit links in approved derivative contracts, to unlisted securities and unit trusts. Specified indices are also replaced by a definition of an approved index.

Parts VIII and IX are valuation regulations made under section 90 of the Act. They reproduce with amendments the law previously in force in Parts V and VI of the 1981 Regulations.

In Part VIII, a number of new definitions have been added, for example to allow for the valuation of assets in the context of derivative contracts or stock lending transactions, and for assets relating to a regulated financial institution. The definition of a secured debt is revised. The definition of a dependant has been amended in line with the definition of a subsidiary in the Companies Act 1985. Of the amendments to the kinds of assets that may be valued, regulation 48 (debt and other rights) is substantially revised. A new regulation (regulation 55) covering the valuation of rights under a derivative contract is added. Regulation 57 is, as a consequence of changes made to Part VIII, in particular in the case of derivative contracts and stock lending transactions, substantially revised to introduce the concept of aggregate exposure. The extent that assets held by a company may be taken into account to cover its liabilities is determined on the basis that if the company's aggregate exposure to assets of any one description exceeds the maximum admissible value determined by reference to the limits in Schedule 12, assets of that description and, to the extent necessary, any other assets equal in value to the excess shall be left out of account. Schedule 11 reproduces existing law. Schedule 12 is amended principally to comply with the Third Directives.

In Part IX, a new regulation (regulation 61) requires a company which has an obligation under a derivative contract to provide for the effect of possible adverse changes in the value of assets to which the contract relates. Regulation 62 is also new and provides for the determination of a company's general business liabilities in compliance with Council Directive [92/49/EEC](#). Another new regulation (regulation 65) implements the obligations under Council Directive [92/96/EEC](#) relating to the method of calculating a company's long term liabilities. Several amendments are made to the determination of the rates of interest to be used for calculating liabilities when assessing the assumed yield on existing assets and on sums to be invested in the future (regulation 69). Regulation 75 (nature and term of assets representing long term liabilities), formerly regulation 55, has been clarified, in particular by referring specifically to the adequacy of the assets to meet the liabilities as determined in accordance with regulations 65 to 74.

Part X and Schedule 14 (made under section 2(2) of the 1972 Act) consolidate with amendments regulations 3 and 4 of and Schedule 1 to [S.I. 1990/1181](#). These Regulations implement Council Directive [87/343/EEC](#) (O.J. No. L185,4.7.87, p.72) which amended, as regards credit insurance and suretyship insurance, Council Directive [73/239/EEC](#). They do so by imposing a general obligation upon insurers carrying on credit insurance business to establish an equalisation reserve for the purpose of providing against above average fluctuations in claims, in accordance with one of four specified methods which they may select (regulation 76 and Schedule 14). The provisions no longer apply to EC companies. Regulation 78 makes failure to comply with regulation 76 an offence.

Part XI (made under section 2(2) of the 1972 Act), together with Schedules 15 and 16, provide for the return of certain statistical information which is required to be furnished to other EEA supervisory authorities under Council Directives [88/357/EEC](#) and [90/619/EEC](#) and the Third Directives. Regulation 80 and Schedule 15 consolidate with amendments regulation 13 of, and Schedules 1 and 2 to, [S.I. 1992/2890](#) and requires a return to be made in relation to the provision of insurance by a UK company in an EFTA State and by an EFTA company in an EEA State through an establishment in the United Kingdom. Regulation 81 and Schedule 16 implement corresponding provisions of the Third Directives and requires a return to be made by a UK company which carries on insurance business through a branch in another member State or provides insurance in another member State. Regulation 82 makes failure to comply with regulation 80 or 81 an offence, and regulation 83 applies regulations 80 to 82 to Lloyd's.

In **Part XII**, regulation 84 provides for the case where another member State fails to implement (whether fully or substantially) the Third Directives before 1st July 1994. In that circumstance, a company whose head office is in a member State will be treated (pending such full or substantial implementation) as if its head office were in an EFTA State.

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A Compliance Cost Assessment is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies are also available from the Insurance Division of the Department of Trade and Industry, Room 817, 10-18 Victoria Street, London SW1H 0NN. A similar assessment was provided with the draft Insurance Companies (Third Insurance Directives) Regulations 1994 laid before Parliament on 24th May 1994 for approval by resolution of each House.