

2004 No. 3379

INSURANCE

The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004

Made - - - - - *21st December 2004*

Laid before Parliament *21st December 2004*

Coming into force - - *11th January 2005*

The Treasury, being a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to: (i) authorisation of the carrying on of insurance business and the regulation of such business and its conduct; (ii) matters relating to the transfer of contracts of life assurance from one insurance undertaking to another; and (iii) anything supplemental or incidental to those matters in exercise of the powers conferred on them by that section, hereby make the following Regulations:

PART 1

Citation and commencement

1. These Regulations may be cited as the Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004, and shall come into force on 11th January 2005.

PART 2

Amendments to Primary Legislation

Companies Act 1985 (c. 6)

2.—(1) The Companies Act 1985 is amended as follows.

(2) In the definition of “authorised insurance undertaking” in subsection (1) of section 220(c) (definitions for Part VI), for “Article 6 or 27 of Council Directive 79/267/EEC” substitute “Article 4 or 51 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”(d).

(a) S.I. 1997/2781 article 6.

(b) 1972 (c. 68).

(c) Section 220(1) was substituted by S.I. 1993/1819, regulation 9 and amended by S.I. 2001/3649, article 10 and S.I. 2001/1228, regulation 84 and Schedule 7 paragraph 6.

(d) OJ No. L 345, 19.12.2002 p.1.

(3) In paragraph 46(3) of Part I of Schedule 9A(a) (form and content of accounts of insurance companies and groups), for “Council Directive 92/96/EEC” substitute “Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

Friendly Societies Act 1992 (c. 40)

3.—(1) The Friendly Societies Act 1992 is amended as follows.

(2) In subsection(2)(c)(i) of section 52 (applications to court) for “life Directives” substitute “the life assurance consolidation Directive”.

(3) In subsection (1) of section 119 (general interpretation)—

(a) after the definition of “committee of management” insert—

““the life assurance consolidation Directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance;”;

(b) the definitions of “the first life Directive”, “the second life Directive”, “the third life Directive” and “the life Directives”(b) are omitted.

(4) In subsection (1A) of section 119(c)—

(a) the words “, or to the first or third life Directive,” are omitted; and

(b) for “Directives 72/239/EEC and 92/96/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/49/EEC in the field of life insurance” substitute “Directives 72/239/EEC and 92/49/EEC in the field of non-life insurance”.

(5) In sub-paragraph (1)(c)(v) of paragraph 15A(d) of Schedule 15 (amalgamations, transfers of engagements and conversion: supplementary), for “Article 29 or 30 of the first life Directive” substitute “Article 55 or 56 of the life assurance consolidation Directive”.

Value Added Tax Act 1994 (c. 23)

4.—(1) Group 2—Insurance(e) of Part II of Schedule 9 (exemptions) to the Value Added Tax Act 1994 is amended as follows.

(2) In paragraph (a) of item no. 2(f), for “in the Annex to the first life insurance directive” substitute “in Annex 1 to the life assurance consolidation directive”.

(3) For paragraph (b) in note (C1)(g) substitute—

“(b) “life assurance consolidation directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance.”

Finance Act 1997(c. 16)

5.—(1) Section 96 (demutualisation of insurance companies) of the Finance Act 1997 is amended as follows.

(2) In subsection (7)(b) for sub-paragraph (i)(h) there is substituted—

“(i) Article 14 of the life assurance consolidation directive, or”.

(3) In subsection (8)(i)—

(a) before the definition of “contract of insurance” insert—

““the life assurance consolidation directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance;”;

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- (a) Schedule 9A originally numbered as Schedule 9 was renumbered as 9A by S.I. 1991/2705, regulation 5(1) and substituted by S.I. 1993/3246, regulation 4 and Schedule 1.
- (b) The definition of “the third life directive” was inserted by S.I. 1994/1984, regulation 30(f).
- (c) Section 119(1A) was inserted by S.I. 1996/1669 regulation 23 and Schedule 5 paragraph 6 and amended by S.I. 2001/3649 article 205(2) and (4).
- (d) Paragraph 15A of Schedule 15 was inserted by S.I. 1993/2519, regulation 5 and substituted by S.I. 1994/1984, regulation 25 and Schedule 4, paragraph 4.
- (e) Group 2 was substituted by the Finance Act 1997 (c. 16), section 38.
- (f) Item No. 2 was substituted by S.I. 2001/3649, article 347(1) and (3).
- (g) Note (C1) was inserted by S.I. 2001/3649, article 347(1) and (5).
- (h) Paragraph (b) of section 96(7) was substituted by S.I. 2001/3629, articles 97 and 100(1) and (2).
- (i) The definition of “third life assurance directive” was inserted by S.I. 2001/3629, articles 97 and 100(1) and (3)(c). There are other amendments to 96(8) but none is relevant.

- (b) the definition of “the third life insurance directive” is omitted.

Financial Services and Markets Act 2000 (c. 8)

- 6.—(1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 116 (effect of insurance business transfers authorised in other EEA states)—
- (a) in subsection (2), for “Article 27 of the first life insurance directive” substitute “Article 51 of the life assurance consolidation directive”;
 - (b) in subsection (5)(a), for sub-paragraph (i) substitute—
 - “(i) Article 14 of the life assurance consolidation directive; or”;and
 - (c) in subsection (5)(b), for sub-paragraph (i) substitute—
 - “(i) Article 53 of the life assurance consolidation directive; or”.
- (3) In subsection (1) of section 198 (power to apply to court for an injunction in respect of certain overseas insurance companies), for paragraph (b) substitute—
 - “(b) Article 37.5 of the life assurance consolidation directive”.
- (4) In subsection (5) of section 405(a) (directions), for paragraph (d) substitute—
 - “(d) Article 59(4) of the life assurance consolidation directive.”
- (5) In subsection (1)(a) of section 425(b) (expressions relating to authorisation elsewhere in the single market)—
- (a) before ““EEA authorisation” insert “life assurance consolidation directive”,
 - (b) the words ““first life insurance directive”,” are omitted;
- (6) In Schedule 3 (EEA passport rights)(c)—
- (a) in paragraph 3—
 - (i) in sub-paragraph (1), for “first, second and third life insurance directives” substitute “life assurance consolidation directive”;
 - (ii) for sub-paragraphs (5), (6) and (7) substitute—
 - “(8) “Life assurance consolidation directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance.”; and
 - (b) in paragraph 5(d)—
 - (i) for “Article 1 of the first life insurance directive or of the first non-life insurance directive” substitute “Article 2 of the life assurance consolidation directive or Article 1 of the first non-life insurance directive”.
 - (ii) for “Article 6” substitute “Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive”.
- (7) In Schedule 12 (transfer schemes: certificates)—
- (a) in paragraph 1—
 - (i) in sub-paragraph (2)(a), for “Article 6 of the first life insurance directive or” substitute “Article 4 of the life assurance consolidation directive or Article 6”;
 - (ii) in sub-paragraph (3)(a), for “Article 6 of the first life insurance directive” substitute “Article 4 of the life assurance consolidation directive”;
 - (b) in paragraph 10(3)—
 - (i) for “Article 27 of the first life insurance directive” substitute “Article 51 of the life assurance consolidation directive”;
 - (ii) for “Article 6 of either of those directives” substitute “Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive”; and
 - (c) in paragraph 10(4), for “Article 6 of the first life insurance directive or the first non-life insurance directive” substitute “Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive”.

(a) There are amendments to section 405(5) that are not relevant to these Regulations.

(b) Section 425(1)(a) was substituted by S.I. 2003/2066, regulation 2(1).

(c) There are amendments to Schedule 3 that are not relevant to these Regulations.

7. In paragraph 6(1)(i) of Schedule 6(a) (financial information) to the Terrorism Act 2000, for “Article 6 or 27 of the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance” substitute “Article 4 or 51 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

PART 3

Amendments to Secondary Legislation

*Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993
(S.I. 1993/3245)*

8. In paragraph (3)(b) of regulation 2(b) (interpretation) of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993, for “Article 2(2) or (3) or 3 of Council Directive 79/267/EEC” substitute “Article 3(2) to (6) of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

Companies Act 1985 (Insurance Companies Accounts) Regulations 1993 (S.I. 1993/3246)

9. In paragraph (2)(b) of regulation 6 (exempted companies) of the Companies Act 1985 (Insurance Companies Accounts) Regulations 1993, for “Article 2(2) or (3) or 3 of Council Directive 79/267/EEC” substitute “Article 3(2) to (6) of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

Industry-Wide Mineworkers’ Pension Scheme Regulations 1994 (S.I. 1994/2974)

10. In clause 43 of the Schedule (terms of trust deed) to the Industry-Wide Mineworkers’ Pension Scheme Regulations 1994, in the definition of “Recognised Insurance Company”, for “Article 6 or Article 27 of Council Directive 79/267/EEC” substitute “Article 4 or Article 51 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

Mineworkers’ Pension Scheme (Modification) Regulations 1994 (S.I. 1994/2577)

11. In paragraph 41(2) of the Schedule(c) (the scheme as modified) to the Mineworkers’ Pension Scheme (Modification) Regulations 1994 in the definition of “Recognised Insurance Company”, for “Article 6 or Article 27 of Council Directive 79/267/EEC” substitute “Article 4 or Article 51 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

Individual Savings Account Regulations 1998 (S.I. 1998/1870)

12. In paragraph (1)(a) of regulation 2(d) (interpretation) of the Individual Savings Account Regulations 1998 in the definition of “assurance undertaking” for “Article 8 of the First Council Directive 79/267 as extended by the EEA Agreement” substitute “Article 6 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

(a) There are amendments to Schedule 6 that are not relevant to these Regulations.

(b) Regulation 2 was amended by S.I. 2001/3649, article 450.

(c) There are amendments to the Schedule that are not relevant to these Regulations.

(d) There are amendments to regulation 2 that are not relevant to these Regulations.

Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000 (S.I. 2000/262)

13. In paragraph 1 of the Schedule(a) (applicable turnover) to the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000, in the definition of “insurance undertaking” for “Article 1 of Council Directive (EEC) 79/267 the First Council Directive on the co ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance” substitute “Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance”.

Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (S.I. 2000/309)

14. In paragraph 1 of the Schedule(b) (applicable turnover) to the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, in the definition of “insurance undertaking”, for “Article 1 of Council Directive (EEC) 79/267 the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance” substitute “Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334)

15.—(1) The Consumer Protection (Distance Selling) Regulations 2000 are amended as follows.

(2) In paragraph 4 of Schedule 2 (non-exhaustive list of financial services)—

- (a) for “the Annex to Directive 79/267/EEC” substitute “Annex I to Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”; and
- (b) for “92/96/EEC” substitute “2002/83/EC of the European Parliament and of the Council of 5th November concerning life assurance”.

Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2001 (S.I. 2001/117)

16. In paragraph 9 of the Schedule (list of investments that may be held directly or indirectly for the purposes of a self-invested personal pension scheme) to the Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2001, for “Article 6 of Council Directive 79/267 (First Council Directive on Direct Life Assurance)” substitute “Article 4 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance”.

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)

17. In paragraph 2(a) of article 72A(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, for “Article 6 of the first life insurance directive” substitute “Article 4 of the life assurance consolidation directive”.

Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335)

18. In paragraph (2)(b)(i) of article 20B(d) (incoming electronic commerce communications) of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2001, for “Article 6 of the first life insurance directive” substitute “Article 4 of the life assurance consolidation directive”.

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- (a) There are amendments to the Schedule that are not relevant to these Regulations.
 - (b) There are amendments to the Schedule that are not relevant to these Regulations.
 - (c) Article 72A was inserted by S.I. 2002/1776, article 2.
 - (d) Article 20B was inserted by S.I. 2002/2157 article 2, 6.

*Financial Services and Markets Act 2000 (Disclosure of Confidential Information)
Regulations 2001 (S.I. 2001/2188)*

19.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in the definition “directive restrictions”(a), for “article 15 of the third life insurance directive” substitute “Articles 16 and 17 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance as amended by the conglomerates directive”; and
- (b) following the definition of “single market directive information”, for ““the third life insurance directive” and “the third non-life insurance directive” each” substitute ““the third non-life insurance directive””.

(3) In regulation 9 (disclosure by the authority or authority of workers to certain other persons)—

- (a) in paragraph 2(c), for “article 15.3 of the third life assurance directive” substitute “article 16.3 of the life assurance consolidation directive”;
- (b) in paragraph (2A)(b) omit “(c),”; and
- (c) in paragraph 3(b)(iii), for “article 16 of the first life insurance directive” substitute “article 11 of the life assurance consolidation directive”.

Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (S.I. 2001/3625)

20. In regulation 2 (meaning of “commitment”) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001, for “Article 1 of the first life insurance directive” substitute “Article 2 of the life assurance consolidation directive”.

*Nick Ainger
Jim Murphy*

21st December 2004

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) The definition “directive restrictions” was amended by S.I. 2003/1475 regulation 10 and S.I. 2001/3624 regulation 2(1) and 2(a).
(b) Paragraph (2A) was inserted by S.I. 2003/693, regulation 3(b).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make textual amendments consequent on the consolidation and repeal of Council Directives 79/267/EEC, 90/619/EEC and 92/96/EEC (“the life directives”) by Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance (the “life assurance consolidation directive”). These Regulations make the necessary changes to those United Kingdom enactments which refer to the repealed Directives by substituting references to the life directives for references to the life assurance consolidation directive.

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

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Amendments) Regulations 2004**

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1389 1/2005 141389 19585

ISBN 0-11-051459-9



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