IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96 - 2158

LOUIS F. ALLEN, et al.	)	
Plaintiffs-Appellees,	)	CIVIL ACTION
vs.	)	
LLOYD'S OF LONDON, et al.	)	
Defendants-Appellants,	)	

MOTION OF THE BRITISH GOVERNMENT FOR LEAVE TO FILE A STATEMENT AS AMICUS CURIAE

The Government of the United Kingdom of Great Britain and Northern Ireland ("British Government"), by its undersigned counsel, hereby moves for leave to file, as *amicus curiae*, the Statement accompanying this Motion in support of the Appellants' Motions to stay enforcement of the District Court's Order of Preliminary Injunction.[1/] The grounds for this Motion are stated below. A proposed order is attached for the Court's consideration.

We have notified Appellees of our intent to file this Motion and have sought their consent. Appellees declined to grant their

1/ Order of Preliminary Injunction, Civil Action No. 3:96CV522 (August 23, 1996).

consent on the grounds that they would not have an opportunity to respond in writing.

In 1978, the Department of State, at the suggestion of the Clerk of the Supreme Court of the United States,[2/] encouraged foreign governments to present their views with regard to pending judicial proceedings in which they have an interest directly to the U.S. courts.[3/] Since then, friendly foreign governments have relied on the State Department's position and have submitted statements as amicus curiae in relevant U.S. courts. The court below granted the British Government's Motion to file a Statement in those proceedings.[4/]

The British Government has an interest in this matter because, through the Department of Trade and Industry, it regulates the United Kingdom insurance and reinsurance industry, and because it has authorized the creation of Equitas. The Preliminary Injunction issued by the Court below directly affects

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2/ Letter from Solicitor General McCree to Legal Adviser Hansell (May 2, 1978), reprinted in U.S. Dep't of State, 1978 Digest of United States Practice in International Law 560, reprinted in part in 73 Am. J. Int'l L. 122, 125 (1979).

3/ Department of State Circular Diplomatic Note to Chiefs of Mission in Washington, D.C. (Aug. 17, 1978), reprinted in U.S. Dep't of State, 1978 Digest of United States Practice in International Law 560, reprinted in part in 73 Am. J. Int'l L. 122, 124 (1979). See also Letter from Deputy Legal Adviser Marks (June 15, 1979), 73 Am. J. Int'l L. 669, 678-79 (1979).

4/ Order of Judge Payne, Civil Action No. 3:96CV522 (August 9, 1996).

the Lloyd's Reconstruction and Renewal process and deadlines that have been approved by the British Government.

Principles of international comity recognized by the Supreme Court require that U.S. courts consider the competing procedural and substantive policies of other nations whose interests are affected by assertions of jurisdiction by U.S. courts, especially when, as here, there is a conflict between the policies of the U.S. and British Governments. Hartford Fire Insurance Co. v. California, 509 U.S. 764, 798 (1993) (holding that considerations of international comity did not "counsel against exercising jurisdiction in the circumstances alleged here.")(; Asahi Metal Industry Co. V. Superior Court, 480 U.S. 102, 115 (1987) (requiring "court[s] to consider the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction") (emphasis in the original); Societe Nationale Industrielle Aerospatiale v. United States District Court, 482 U.S. 522, 543-44 (1987) ("the concept of international comity requires in this context a more particularized analysis of the respective interests of the foreign nation and the requesting nation"); Doe v. United States, 487 U.S. 201, 218 n.16 (1988) ("We are not unaware of the international comity questions implicated by the Government's attempts to overcome protections afforded by the laws of another nation"). The British Government submits that this Court would benefit from its views in deciding whether to stay enforcement of the lower court's Preliminary Injunction.

The British Government respectfully moves that it be granted leave to file a Statement as amicus curiae on relevant issues before the Court.

Respectfully submitted,

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DATED: August 26, 1996

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96 - 2158

LOUIS F. ALLEN, et al. Plaintiffs-Appellees, vs. LLOYD'S OF LONDON, et al. Defendants-Appellants.	CIVIL ACTION

ORDER

Upon consideration of the motion of the Government of Great Britain and Northern Ireland ("British Government") for leave to file a Statement as amicus curiae, and all of the relevant facts and circumstances presented in this case, it is

ORDERED that the British Government's motion for leave to file a Statement as amicus curiae is granted; and it is further

ORDERED that the clerk shall file the Statement of the British Government and shall record such filing in the docket of this action.

____
Date

______________________, Judge

DATED: August 26, 1996

WA01A/62980.1

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-2158

LOUIS F. ALLEN, et al.

Plaintiffs - Appellees,

v.

LLOYD'S OF LONDON, et al.

Defendants - Appellants.

Appeal from the United States District Court
for the Eastern District of Virginia
Civil Action No. 3:96:CV522
(Robert E. Payne, U.S. District Judge)

STATEMENT OF BRITISH GOVERNMENT, AMICUS CURIAE IN SUPPORT OF LLOYD'S OF LONDON, et al.'s MOTION TO STAY

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British Government

The British Government have considered the Order of Preliminary Injunction granted by the United States District Court for the Eastern District of Virginia in this action on 23 August 1996 and the accompanying Memorandum Opinion. There is enclosed with this Statement -

(a) the Statement filed by the British Government on 8 August 1996 before the District Court; and

(B) an affidavit sworn by Richard Henry Hobbs, an officer of the British Department of Trade and Industry ("DTI") before the English High Court of Justice in _The Queen v. The Council of the Society of Lloyd's ex parte Susan Johnson and Others_ (referred to at pp. 55-56 of the Memorandum Opinion), which was also filed before the District Court in this action.

2. As indicated in the Statement of 8 August, the DTI is responsible under the Insurance Companies Act 1982 for the authorisation and supervision of insurance business carried on in the United Kingdom. While the Lloyd's market is largely self-regulating under the provisions of the Lloyd's Acts 1871-1982, the DTI is charged under the Insurance Companies Act with the function of monitoring the individual and global solvency of Names carrying on insurance business at Lloyd's, and has wide powers of intervention should either individual Names, or the market as a whole, fail to meet the relevant requirements of that

Act. Accordingly, the DTI has been closely concerned in the efforts made by Lloyd's to resolve the solvency problems which have beset the market during recent years. In particular, they have been consulted fully on the development of the Reconstruction and Renewal ("R&R") proposals which have appeared to them to offer the best means of achieving a successful solution. The DTI's primary concern has been to satisfy themselves that the proposed reinsurance into Equitas will provide a firm assurance that all pre-1993 underwriting claims will be met, and they and their advisers have for this purpose examined in detail the constitution and financing of Equitas and its proposed reinsurance contract with Names, including a thorough review of the sources of funds which would make up the reinsurance premiums.

3. While the British Government welcome the decision of the District Court not to impose a world-wide injunction on the implementation of R&R as had initially been requested by the Plaintiffs in this action, the Preliminary Injunction has not eliminated their concerns. The Preliminary Injunction, which applies to all American Names, will have far-reaching consequences. It should also be noted that while, as the District Court suggests, it is possible that other participants in R&R would accept the proposals even if some or all of the American Names should accede to the terms of the Preliminary Injunction, there is, in the British Government's view, a very

considerable risk of others seeking to reopen the basis upon which the proposals have been concluded.

4. It is the view of the British Government that the Preliminary Injunction, if maintained, could cast serious doubt upon whether the DTI would be able to conclude that the conditions imposed upon the authorisation of Equitas had been met. In particular, they confirm that the DTI would not recognize contributions by American Names, which had been placed in escrow under the terms of the Preliminary Injunction, as forming part of the Equitas reinsurance premium or otherwise as counting towards the funding of Equitas, because it could not be certain that those contributions would ultimately be payable to Equitas. Should those contributions not be recognized, and if as a consequence Equitas is not permitted by the DTI to assume the pre-1993 liabilities of Names, it is likely that Lloyd's will be unable to demonstrate compliance with the solvency requirements of the Insurance Companies Act and that the market will be forced into run-off, with extremely damaging consequences for policyholders in the USA and world-wide, third parties, and Names.

5. It should be noted in this context that the timing of the returns required by the Insurance Companies Act is not the critical issue for the DTI. However, the global solvency requirement is continuous and thus, whether or not the return has

been submitted, it would be incumbent upon the DTI to intervene if at any time that requirement ceased to be met or a breach of the requirement could be anticipated. And although the individual requirement is formally triggered only upon the presentation of the returns, if at any time before then it appeared that the returns would be likely to show individual members as being in default, the DTI would need to take all appropriate steps to ensure that policyholders would not be prejudiced by the continuation of business in the interim, which could well mean seeking to have the market put into run-off (in so far as the Council did not decide, on its own account, to do so).

6. The British Government reaffirm their view that the Plaintiffs' action should be dismissed on the ground that it is inconsistent with Names' agreement to the exclusive jurisdiction of the English courts and/or that England is the most appropriate forum to determine the Plaintiffs' complaint. The R&R process has been conducted by the Council of Lloyd's in pursuance of its regulatory functions under the Lloyd's Act, but with the full support of the DTI and with the benefit of extensive advice, and wide consultation with Names, including a review by the Settlement Agreement Review Group representing their interests. The R&R proposals comprise two key elements, namely the Equitas transaction, which is quite clearly a reinsurance transaction affecting Names' insurance liabilities (and regarded by the DTI

as being akin to the normal syndicate reinsurance to close), and the settlement offer, which is an offer to settle outstanding litigation. The British Government would not, of course, seek to maintain that the interests of the plaintiffs or associated American Names should simply be overridden in the interests of reaching a settlement. And it would be quite wrong to suggest (as is apparently suggested at page 54 of the Memorandum Opinion) that the Government would overlook any complaints which those Names might seek to bring in the United Kingdom. Any failure by the Government or any of its Departments to exercise its responsibilities in that respect would properly be reviewable by the United Kingdom courts. The question in this case is whether the possibility of Lloyd's having to comply with the special disclosure requirements of U.S. law, if they are found to be applicable to the R&R proposals and if it should be found that they are not matched by the English law remedies considered by the District Court, should outweigh the risk that the Preliminary Injunction would result in a total collapse of R&R. In the view of the British Government it should not. It is to be noted, in this respect, that even on the analysis of the District Court it is apparent that if there is not an exact match of remedies there are at least substantial constraints under English law upon the misrepresentation or concealment of material which is germane to transactions of the kind contained in the R&R proposals.

7. Considerations of international comity should lead this Court to stay the Preliminary Injunction. A direct conflict exists between the policies of the British and U.S. Governments because of the timing and scope of the Preliminary Injunction. The Preliminary Injunction directly interferes with the timetables, procedures and purposes of the authorisation of a new reinsurance company, Equitas, by the British Government which is an integral part of a plan intended, by a program of reinsurance into that company, to avert a financial breakdown affecting a great number of people world-wide. It is for consideration whether the interests intended to be protected by the Preliminary Injunction should be allowed to frustrate those objectives. The British Government submit that a reasonable evaluation would militate in favor of allowing this program to proceed.

8. The British Government would also request that this appeal should be finally determined as soon as can possibly be achieved, since the delay and uncertainty caused by its continuation will be likely in themselves to undermine Lloyd's attempts to finalise the R&R process, with the undesirable consequences for policyholders and others which have been mentioned above.

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LOUIS F. ALLEN, et al. Plaintiffs, vs. LLOYD'S OF LONDON, an unincorporated association; CORPORATION OF LLOYD'S, a/k/a SOCIETY AND COUNCIL OF LLOYD'S; COUNCIL OF LLOYD'S; EQUITAS HOLDINGS LIMITED; EQUITAS REINSURANCE LIMITED; and EQUITAS LIMITED a/k/a EQUITAS or EQUITAS GROUP, Defendants.	CIVIL ACTION FILE NO. 3:96CV522

STATEMENT OF THE BRITISH GOVERNMENT AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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Dated: August 8, 1996

The British Government have been shown the First Amended Complaint dated July 12, 1996, filed by the Plaintiffs in this action, by which they seek "a preliminary and permanent injunction to enjoin Lloyd's and the Equitas Group from taking any action (1) to solicit or obtain any proxy or consent or authorisation of any investors in Lloyd's, whether citizens of the United States or elsewhere, including but not limited to Plaintiffs, to accept Lloyd's Reconstruction and Renewal ("R&R") proposal and/or (2) to solicit them or force them to invest in a new Lloyd's company called Equitas, or to solicit them or force them to exchange their existing securities in Lloyd's for new securities in Equitas, unless and until Defendants comply with the obligations under the federal securities laws and the regulations promulgated thereunder."

The British Government have also seen the motion by Lloyd's to dismiss the First Amended Complaint and the Memorandum dated July 26, 1996, submitted in support of that motion, and wish to submit the following Statement concerning the role of the British Government's Department of Trade and Industry ("DTI") in relation to the R&R proposals and in particular the proposed reinsurance into Equitas[1/] of Names' pre-1993 liabilities.

1/ The proposed reinsurance would be effected into Equitas Reinsurance Ltd. and retroceded into Equitas Ltd., both being insurance companies authorised by the DTI.

The British Government's position, more fully set out below, is that: (1) Lloyd's carries out its functions under the supervision of the DTI, which gives effect in the United Kingdom to European Union Directives on the taking up and pursuit of direct insurance business; (2) the DTI has satisfied itself that the R&R proposals offer the most likely means of achieving a successful solution to the problem posed by the possible insolvency of Lloyd's Names and has authorised Equitas on that basis; and (3) the effect of Plaintiffs' Complaint may be to inflict a fatal blow to the viability of the R&R proposals. The Plaintiffs' Complaint should be dismissed on the grounds that it is inconsistent with the Names' agreement to the exclusive jurisdiction of the English courts, and/or that, given considerations of *forum non conveniens* and international comity, England is the most appropriate forum for the consideration of Plaintiffs' claims.

DTI's Statutory Responsibilities

In their Memorandum (paragraphs 4-5), Lloyd's describe their functions as follows:

> Pursuant to the Lloyd's Act 1871-1982, Lloyd's performs its regulatory and oversight functions, subject to supervision by the British Department of Trade and Industry....Lloyd's carries out its regulatory responsibilities through the Council of Lloyd's...which, among other things, promulgates by-laws, regulations and codes of conduct and otherwise

regulates those who do business in the market, including the brokers who bring demand for insurance coverage into the market, Names who are willing to supply such coverage, and the Member's Agents and Managing Agents...who act on behalf of the Names in the Lloyd's market on a daily basis.

The functions of the DTI are governed by the Insurance Companies Act 1982,[2/] which gives effect in the United Kingdom to European Union Directives on the taking up and pursuit of direct insurance business. Under that Act, subject to certain exceptions, no person may carry on insurance or reinsurance business in the United Kingdom unless authorised to do so by the Secretary of State (Section 2); and again with some exceptions, all insurance companies (i.e., persons carrying on insurance or reinsurance business) in the United Kingdom are subject to supervision by the Secretary of State under Part II (see Section 15: Part II requires the maintenance under Sections 32 and 33 of a specified margin of solvency and confers wide powers of intervention upon the Secretary of State if the required margin is not maintained or a company's ability to meet its liabilities is otherwise at risk). Members of Lloyd's ("Names") are excepted both from the authorisation requirement and, subject to conditions, from supervision under Part II. Those conditions are that:

(a) Insurance premiums are held within a trust fund in accordance with the provisions of a trust deed approved

2/ 1982 c.50.

by the Secretary of State. (Certain reserves of members are also held within the trust fund though not so required by the Act.) This protects the insurance funds - required to meet liabilities to policyholders - from general creditors in the event of the bankruptcy of a member;

(b) An auditor approved by the Council of Lloyd's has to certify annually to the Secretary of State and to the Council of Lloyd's that each member has assets sufficient to meet his share of the insurance liabilities; this is known as the solvency test. Liabilities in respect of non-life insurance are calculated on a basis approved by the Secretary of State;

(c) Members of Lloyd's taken together satisfy the solvency margin requirements laid down in the EU Directives and under the 1982 Act; and

(d) The Council of Lloyd's deposits annually with the Secretary of State in a form prescribed by him, a statement of business done by members in the preceding year.

The detailed requirements for (b) to (d) are laid down in the Insurance (Lloyd's) Regulations 1983.[3/] In the event of the conditions described in (a) and (b) not being complied with in full certain consequences arise. If the member is unable to meet

3/ S.I. 1983 No. 224.

the solvency test, he is suspended by the Council of Lloyd's from writing new business until he makes good his deficiency; this is the corollary to action which the Secretary of State may take in relation to any insurance company which fails to demonstrate the required margin of solvency under Section 32 or 33 of the Act with a view to restoring such company to financial health. Non-compliance by a Name with both conditions (a) and (b) would have the result that he became subject to Part II of the Act. He and his business would thus be supervised, *mutatis mutandis*, by the Secretary of State as if he were an insurance company.

Reconstruction and Renewal

The British Government agree with the description given in Lloyd's Memorandum of the developing threat to Names' solvency and of the proposals in R&R to resolve the situation. The role of the DTI in relation to those proposals has been to satisfy themselves:

(a) That the form of the proposals offers the most likely means of achieving a successful solution; and

(b) That the reinsurance into Equitas will provide firm assurance that all pre-1993 underwriting claims will be met.

As regards (a), the Department has been unable to identify any other method of proceeding which could produce a satisfactory outcome. The DTI noted, in this context, the report of Messrs. Slaughter and May, who were appointed as independent legal advisers to consider the advantages and disadvantages of the Reconstruction and Renewal proposals when compared to any alternatives. In their report, Messrs. Slaughter and May concluded (at paragraph 93) that:

> It will be apparent from the foregoing that we are unable to conclude that any of the alternatives to R&R considered above is preferable to R&R. There would be no prospect of finality for Names of the kind discussed in Section D. In short, if Lloyd's goes into run off, we think it unlikely that any section of the Lloyd's community will be better off.

As regards (b), the DTI and their advisers have examined in detail the constitution and financing of Equitas and its proposed reinsurance agreement with Names, including a thorough review of the sources of funds which would make up the reinsurance premium. Their interim conclusions were set out in a Parliamentary statement of 29th March 1996 by the DTI Minister for Trade, Anthony Nelson, when announcing the Secretary of State's decision to authorise Equitas Reinsurance Ltd and Equitas Ltd, subject to conditions. He noted that "Lloyd's proposals are based on a thorough review of the 1992 and prior liabilities and in particular of their exposure to U.S. asbestos and pollution claims" and that "the Government Actuary takes the view that there is a reasonable prospect that Equitas will be able to pay off its liabilities in full as they fall due."

On 10th May 1996, Mr. Nelson said, in answer to a Parliamentary question, that 'further work has taken place on the level of liabilities which Equitas will reinsure and on the assets available to cover them. As a result, the expected opening balance sheet of Equitas will be significantly stronger than originally foreseen, while the increase in provisions for 1992 and prior liabilities required will be about £1.2 billion rather than £1.5 billion or more previously envisaged. These **developments improve the prospects that Equitas will be able to** pay off its liabilities in full as they fall due.' The complete official texts of the Minister's statements are attached to this Statement.

Irreparable Harm to the R&R Process

As indicated in Lloyd's Memorandum, the intended effect of the Plaintiffs' Complaint appears to be to freeze Lloyd's efforts to provide reinsurance through Equitas in a form that will protect not only the Names themselves, but also policyholders of the Names. If the relief which they have sought is granted, it appears to the British Government that it may well have a fatal impact upon the R&R proposals:

(a) Because any delay in finalizing the proposals is likely to create a degree of uncertainty among Names as to whether they should accept the proposals at all; and

(b) Because any delay is likely to lead to a further depletion of Lloyd's Central Fund and endanger the chain of security established by the Council of Lloyd's to ensure that policyholders' claims are promptly paid. In that event, it will be clear that Lloyd's policyholders worldwide are likely to suffer very considerable economic loss, with consequential effects on third parties, and many Lloyd's Names will face insolvency and severe financial distress.

Forum Conveniens

The British Government support the arguments made in the Lloyd's Memorandum to the effect that the Plaintiffs' action should be dismissed on the ground that it is inconsistent with Names' agreement to the exclusive jurisdiction of the English courts and/or that England is the most appropriate forum to determine the Plaintiffs' Complaint. In particular, they consider that the regulatory structure described above (under which it is the responsibility of the Council of Lloyd's and, secondarily, the DTI to monitor and supervise the solvency of Names), and the residence in England of potential witnesses involved in R&R, make it more suitable for the Plaintiffs' complaints to be brought in the English courts. The R&R process has reached a very delicate stage involving 34,000 Names around the world. As a matter of international comity, the British Government believes that it would be inappropriate for a U.S. court to issue a worldwide injunction of the type requested in this case for the benefit of the very small number of Names who have brought this Complaint.

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HOUSE OF COMMONS
OFFICIAL REPORT

PARLIAMENTARY DEBATES

(HANSARD)

Friday 29 March 1996

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(4) what targets, have been set by her or by those responsible in her Department for the date by which S/NVQs for *(a)* the youth service and *(b)* youth work should be in place. [23168]

Mr. Paice: In 1994, the former Employment Department funded the National Youth Agency to commission a feasibility study by Professor Eraut of Sussex university to explore the scope for developing NVQ standards for youth and community work. He recommended that a comprehensive occupational and functional analysis of the field should be completed, together with a cost-benefit analysis. Following extensive consultation with the youth service field, including the voluntary sector, there is now general agreement that such an analysis should take place. No targets have been set for the introduction of NVQs for youth work or of a lead body for this occupational sector.

The Department would fund any occupational and functional mapping exercise, a cost-benefit analysis, the development of standards and qualifications and the implementation of those qualifications. Funding is also normally available to assist with the training costs of assessment.

The Government are committed to completing the NVQ framework and I am pleased to say that the voluntary sector has been generally supportive of the need to develop NVQs in the youth service.

GCSE Results

Mr. Blunkett: To ask the Secretary of State for Education and Employment what were the average point scores for *(a)* GCSE English language, *(b)* GCSE mathematics, *(c)* both subjects and *(d)* all GCSEs together of each 20th group (i) of all 15-year-olds, (ii) boys and (iii) girls when ranked according to (d) indicating the average number of entries per pupil in each group and in *(a)* to *(d)*, the number of pupils in each group and in total and the average score for *(a)* to *(d)* for all such pupils (1) in England, (2) in the local education authority maintained sector, (3) in the grant-maintained sector, (4) in the whole maintained sector and (5) in the independent sector for each year from 1991 to 1995. [23546]

Mr. Paice: I will write to the hon. Member as soon as possible and place a copy of the answer in the Library.

School Closures and Mergers

Mr. Blunkett: To ask the Secretary of State for Education and Employment how many schools in England have *(a)* closed and *(b)* merged for each year since 1985, giving the totals for (i) primary, (ii) secondary and (iii) special schools. [23390]

Mr. Robin Squire: Information on the number of maintained schools closing each year is available only from 1987 onwards. For years before 1993, full information is not available to show whether closures occurred as the result of a merger or other closure. The total number of closures recorded in each year since 1987 is as follows:

Year	*Primary*	*Secondary*	*Special*
1987	192	n/a	31
1988	198	176	47
1989	152	96	18
1990	265	127	31
1991	229	67	41
1992	318	108	27
1993	258	23	20
1994	253	26	24
1995 (provisional)	128	26	23

This table excludes 111 primary, 15 secondary and 21 special schools which closed during this period for which the precise closure date is not readily available.

The following table breaks down closures since 1993 between those recorded as mergers and other closures.

Year	*Primary*		*Secondary*		*Special*	
	Mergers	*Other*	*Mergers*	*Other*	*Mergers*	*Other*
1993	196	62	7	16	1	19
1994	205	48	12	14	6	18
1995 (provisional)	87	41	9	17	6	17

Orders

Mr. Win Griffiths: To ask the Secretary of State for Education and Employment how many orders under the negative resolution procedure have been brought into effect on the day they have been made since January 1995. [23307]

Mr. Robin Squire: Since January 1995, no orders made by my right hon. Friend subject to the negative resolution procedure have been brought into effect on the day on which they were made.

Training and Enterprise Councils

Sir Mark Lennox-Boyd: To ask the Secretary of State for Education and Employment what progress Bradford and District training and enterprise councils and Lancashire Area West training and enterprise council are making in meeting the criteria for the award of a three-year licence. [23219]

Mr. Paice: I am pleased to announce the award of a three-year licence to Bradford and District TEC and LAWTEC who have now completed the process of meeting the rigorous standards we set.

TRADE AND INDUSTRY

Equitas

Mr. Butterfill: To ask the President of the Board of Trade if he has taken a decision under the Insurance Companies Act 1982 on the authorisation of Equitas, and if he will make a statement. [24286]

Mr. Nelson: I have considered carefully the proposals made by Lloyd's for the authorisation of Equitas Reinsurance Ltd. and Equitas Ltd. ("Equitas"). Lloyd's proposes to reinsure the market's 1992 and prior non-life liabilities into Equitas, and to provide matching assets together with an additional solvency margin of free assets. Equitas would be a pure reinsurer, and Lloyd's application does not seek authorisation for it to undertake any subsequent business.

Lloyd's proposals are based on a thorough review of the 1992 and prior liabilities and in particular of exposure to US asbestos and pollution claims. This review has been assisted by work undertaken by a number of leading firms of consulting actuaries and chartered accountants.

I have decided to authorise Equitas on the basis of Lloyd's proposals, subject to certain conditions which Lloyd's does not expect to fulfil before August this year. Of these, the most important are, first, that the contracts reinsuring names' liabilities into Equitas cannot be completed until Lloyd's can demonstrate that the assets available to Equitas are such as to ensure it has the minimum solvency margin I have required. Lloyd's statement of assets available to Equitas will be subject to independent review by Coopers and Lybrand, which is to be appointed as Equitas' auditors once the contracts are completed. Secondly, there are conditions to ensure that if developments between now and August should lead to an increase in the estimate of the overall level of liabilities, then a matching increase in the assets would have to be provided. In addition, there is a condition making any dividend to any shareholders or return premium to reinsured names subject to DTI consent. Any future proposal that Equitas should undertake further business would require DTI consent.

Under section 32 of the Insurance Companies Act 1982, UK insurance companies are required to maintain a minimum margin of free assets, calculated according to a formula. The formula was not devised with circumstances such as the Equitas proposal in mind, and is likely to produce widely fluctuating requirements over the first four years of Equitas' life. I have therefore decided to exercise the discretion to which I am entitled under the Act to make a direction under section 68 to modify the normal requirements in 1996 and 1998.

In reaching this decision, I have been mindful of my responsibilities under the Insurance Companies Act 1982 in relation to the authorisation of new insurance companies and the protection of policyholders in general. In this case, I have to consider whether policyholders would be better protected if Equitas is authorised than if it is not: I must also be satisfied that all the statutory requirements for authorisation under the Act have been met.

The main reasons for my decision are as follows.

First, policyholders will benefit from substantial additional funds which would not otherwise be likely to be forthcoming. The provisions made for 1992 and prior liabilities have been increased by more than £1.5 billion. Equitas will be funded to meet its estimated liabilities and to provide the additional margin of free assets. Some £1 billion plus of the funding is to be provided from sources which have no obligation to support 1992 and prior losses, together with approximately a further £2.5 billion deriving from new money from names, the settlement of the current litigation and from 1993–94–95 profits which would not otherwise be necessarily or immediately available to support these losses. The Equitas proposals will also ensure that the assets to cover these provisions will be fully paid. In contrast to the present position in which some £4 billion of Lloyd's assets is represented by uncalled losses or unpaid cash calls. Furthermore, subject to the division of Equitas' assets between US, Canadian and UK trust funds, the assets of Equitas will be fully mutualised and all available to support all of Equitas' liabilities to policyholders.

Second, the creation of Equitas offers a strong prospect of lower claims handling costs and higher investment yields than would otherwise be the case, the benefits of which will accrue to policyholders in the first instance.

Overall, I am satisfied that the resources available to support 1992 and prior policyholders through Equitas will be greater and more certain than without its authorisation. The Government Actuary takes the view that there is a reasonable prospect that Equitas will be able to pay off its liabilities in full as they fall due.

Third, if against expectation, the liabilities of Equitas at some future point should appear to be on the point of exceeding the assets available, arrangements will have been built into the reinsurance contract with names designed to ensure that policyholders would continue to receive an uninterrupted flow of claims payments, albeit at less than 100 per cent., with the residual balance of claims falling back on to the reinsured names. These arrangements would provide a much superior outcome for all policyholders, including reinsured names, than conventional insolvency proceedings for Equitas.

Fourth, the creation of Equitas as proposed will very significantly improve the security of 1993 and subsequent policyholders at Lloyd's, by substantially removing the risk that further deterioration in the 1992 and prior liabilities would affect them.

Lastly, if Equitas does not proceed, Lloyd's has acknowledged that there is a significant risk that Lloyd's as a whole would have to cease underwriting. In that event, the subsequent run-off would face an uncertain future. I therefore consider Lloyd's proposals are a well-judged response to this situation in the interests of existing Lloyd's policyholders, and of reinsuring names as policyholders.

It is now for the members of Lloyd's to decide whether to support Lloyd's proposals as the next step before Equitas can go live later this year.

Iraq (Exports)

Mr. Wigley: To ask the President of the Board of Trade what guidelines covered the provision by United Kingdom companies of computer services for the Iraqi air force immediately before the outbreak of the Gulf war; what dispensation had been (a) sought by and (b) given to the ICL company at West Gorton, Manchester; and if he will make a statement. [21291]

Mr. Lang: The provision of services to Iraq before the imposition of UN sanctions in August 1990 was not controlled and there were no guidelines.

Friday
10 May 1996

Volume 277
No. 100

HOUSE OF COMMONS
OFFICIAL REPORT

PARLIAMENTARY DEBATES

(HANSARD)

Friday 10 May 1996

LONDON: HMSO
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Mr. Whittingdale: To ask the President of the Board of Trade what progress has been made on the issuing of licences and consents to British Energy and Magnox Electric. [29060]

Mr. Eggar: On 31 March 1996 new nuclear site licences came into force for each of the nuclear power stations owned by the British Energy group. These licences were granted by the Health and Safety Executive. On the same date, new discharge authorisations for Her Majesty's inspectorate of pollution and Her Majesty's industrial pollution inspectorate came into effect for British Energy plc's operating subsidiaries, Nuclear Electric Ltd. and Scottish Nuclear Ltd. respectively. The Director General of Electricity Supply has granted an electricity generation licence to Nuclear Electric Ltd. and is in the process of consulting on a modified electricity generation licence for Scottish Nuclear Ltd. Nuclear Electric Ltd. has also been granted with a second tier supply licence for England, Wales and Scotland.

Cuba

Mr. John Greenway: To ask the President of the Board of Trade if he will make a statement about the recent US legislation on Cuba. [29304]

Mr. Ian Taylor: I made a speech to a seminar hosted by the Caribbean trade advisory group on 2 May setting out Her Majesty's Government policy in respect of this legislation and how the interests of United Kingdom business could be protected if threatened by its provisions. A copy of this speech has been placed in the Library of the House.

As I indicated in that speech, we are still seeking to clarify certain areas of deep concern about this potentially damaging piece of legislation. Our objection is to its attempts to interfere with the legitimate trade of UK companies outside US. In this connection, my officials will be meeting US State Department officials this week to establish details on how the latter intend to implement the provisions covering the exclusion of persons from the US. We will take the opportunity to reiterate the UK's concern that the Helms-Burton legislation could disrupt normal trading relationship with the USA. We shall consider carefully how to coordinate our response with our EU partners.

Equitas

Mr. John Greenway: To ask the President of the Board of Trade, pursuant to his answer to the hon. member for Bournemouth, West (Mr. Butterfill) on 29 March, *Official Report*, columns 762–64, what developments there have been since 29 March concerning Equitas; and if he will make a statement. [29305]

Mr. Nelson: Since I announced the authorisation of Equitas on 29 March 1996, *Official Report*, columns 762–63, further work has taken place on the level of liabilities which Equitas will reinsure and on the assets available to cover them. As a result, the expected opening balance sheet of Equitas will be significantly stronger than originally foreseen, while the increase in provisions for 1992 and prior liabilities required will be about £1.2 billion rather than the £1.5 billion or more previously envisaged. These developments improve the prospects that Equitas will be able to pay off its liabilities in full as they fall due.

Fossil Fuel Levy

Mr. Battle: To ask the President of the Board of Trade how much money was raised by the fossil fuel levy in each year from its inception to date; how much of that money was spent on renewables in each year; and how much money was retained by the Treasury in each year. [27908]

Mr. Page: The information requested is:

£ million

Year	Amount raised	Paid to renewable generators
1990–91	1,175	6
1991–92	1,324	12
1992–93	1,348	29
1993–94	1,233	68
1994–95	1,205	96
1995–96[1]	1,104	95

[1] Estimate.

The balance of levy receipts is used to finance payments to Nuclear Electric, British Nuclear Fuels plc in respect of nuclear electricity generated by its plant, and to cover certain other costs such as administration costs.

Industrial Death and Retirement Fund

Mrs. Clwyd: To ask the President of the board of Trade (1) if he will place in the Library copies of the documentation held by his Department relating to the industrial death and retirement fund; [28886]

(2) if he will make it his policy that where British Coal intends to destroy documents relating to the industrial death and retirement fund a minimum of 42 days notice is given to the National Association of Colliery Overmen, Deputies and Shotfirers and to his own Department. [28887]

Mr. Page: These are matters for the British Coal Corporation, which is subject to the Public Records Act 1958.

Ostrich Farming

Mr. Harvey: To ask the President of the Board of Trade what plans he has for compensation measures for ostrich breeders affected by his Department's investigation into the Ostrich Farming Corporation. [28527]

Mr. John M. Taylor: I see no reason to consider compensation payments.

Mr. Harvey: To ask the President of the Board of Trade if he will make a statement on the progress of his Department's investigation into the Ostrich Farming Corporation. [28528]

Mr. John M. Taylor: Following an investigation under Companies Act powers, on 28 March 1996 the Secretary of State presented a petition to wind-up the company in the public interest. On 3 April 1996, at an opposed hearing, the court granted the Secretary of State's further application for the appointment of the official receiver as provisional liquidator pending the hearing of the petition. On 8 May the company stated its intention to oppose the

ATTACHMENT B

Richard Henry Hobbs
9 August 1996

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CROWN OFFICE LIST

CO/2577/96

IN THE MATTER of Order 53 rule 3 of the Rules of the Supreme Court

AND IN THE MATTER of An Application for Leave to Apply for Judicial Review by Susan Rachel Johnson, Anthony John Welford, Michael Gordon Toppin and Richard Henry Sammons acting for themselves and for the Committee and Members of the Paying Names Action Group

AND IN THE MATTER of the Proposals for Reconstruction and Renewal published by the Council of Lloyd's published on 20 June 1996

THE QUEEN

-v-

THE COUNCIL OF THE SOCIETY OF LLOYD'S

Respondent

- ex parte -

(1) SUSAN RACHEL JOHNSON
(2) ANTHONY JOHN WELFORD
(3) MICHAEL GORDON TOPPIN
(4) RICHARD HENRY SAMMONS
(the 2nd to 4th Applicants acting for themselves, the Committee and Members of the Paying Names Action Group)

Applicants

AFFIDAVIT OF RICHARD HENRY HOBBS

I, RICHARD HENRY HOBBS of the Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET, **MAKE OATH AND SAY** as follows:

Richard Henry Hobbs
1 August 1996

1. I am the Head of the Branch of the Insurance Directorate at the Department of Trade Industry (the DTI) which deals with Lloyd's matters and the official with overall responsibility for the DTI's relationship with Lloyd's. I am duly authorised by the Secretary of State for Trade and Industry to swear this affidavit. The facts deposed to in this affidavit are either within my own knowledge and are true, or are based on information provided to me which, to the best of my knowledge, information and belief, is true.

2. The Lloyd's market is an important part of the UK insurance industry, an industry which is regulated by the DTI. The DTI is therefore the regulator of Equitas Reinsurance Limited and Equitas Limited (together *Equitas*), the companies established, as part of the Reconstruction and Renewal plan, to reinsure certain liabilities underwritten by members of Lloyd's.

3. The main focus of the DTI's supervision of the insurance industry is the protection of policyholders. Its supervision is therefore prudential and the most significant requirement is whether an insurance company maintains the margin of solvency required under the Insurance Companies Act 1982 and whether the currency and location of its assets is appropriately matched with the currency and location of its liabilities.

4. The Lloyd's market is, for the main part, self-regulating; the Society and Corporation of Lloyd's (the *Society*) acting through the Council regulates the conduct of insurance business in the market. However, in one important area, the DTI has a direct regulatory role. That area is the prudential supervision of the Lloyd's market. Members of Lloyd's are required under Sections 83 and 84 of the Insurance Companies Act 1982 to satisfy two solvency tests. The first test (the member level test) is applied annually to each member of the Society individually and tests whether the liabilities of each member are covered by available assets. In respect of a member whose Lloyd's trust funds do not contain sufficient assets to meet his liabilities, shortfalls are made good by the Society. The Society achieves this by identifying available assets from its own resources including the Central Fund (which is a fund maintained by the Society for the principal purpose of ensuring that members' obligations to policyholders are fulfilled). Those assets are then "earmarked" to cover the shortfalls in members' assets. An auditor's certificate in a prescribed form must be filed with the DTI for each member each year in connection with this test.

5. The second solvency test (the global test) under the Insurance Companies Act 1982 establishes whether the aggregate assets of the Society and all of its members exceed their liabilities by a required margin. It is adapted from the test generally applicable to insurance companies throughout the European Union. For this second test, Lloyd's is required to demonstrate its compliance by making an annual filing with the DTI.

6. My understanding of Lloyd's current financial position is that the proposed reinsurance into Equitas will need to become unconditional before Lloyd's submits its annual return to the DTI if that return is to show a solvent position for the purposes of the 1982 Act. If this reinsurance has not become unconditional, Lloyd's will be required to include all of the market's 1992 and prior underwriting liabilities as part of the solvency returns which I believe

would be likely to result in a significant number of members failing the member level solvency test.

7. Should a member fail his individual solvency test, the DTI would have certain powers of intervention in relation to that member under Part II of the 1982 Act; and should the Lloyd's market fail the global solvency test, certain of these powers of intervention would arise in relation to all the members of Lloyd's. Nevertheless, it seems to me that in those circumstances there must be considerable doubt as to whether the Central Fund could be made available to make good defaulting members' liabilities and accordingly the risk to Lloyd's policyholders would be very greatly increased.

8. The DTI's relationship with Lloyd's is not, however, limited to its prudential supervision of the market. Lloyd's is an important source of reinsurance for other UK insurance companies. Accordingly, were the Lloyd's market to go into run-off, defaults by Lloyd's syndicates could have a major adverse impact on other insurance companies supervised by the DTI.

9. For these reasons, the DTI maintains close contact with Lloyd's and has been kept informed at all stages of the formulation of the Reconstruction and Renewal plan. As the regulator of Equitas, it has to be satisfied with all aspects of Equitas' constitution and financing and the obligations it is undertaking and has, in particular, reviewed the reserving work carried out in respect of the liabilities Equitas is to reinsure.

10. The DTI supports the Lloyd's Reconstruction and Renewal plan. As stated in a statement to Parliament on 29 March 1996, a copy of which is now produced and shown to me marked "RH-1", Anthony Nelson, the Minister for Trade stated:

> *"Lastly, if Equitas does not proceed, Lloyd's have acknowledged that there is a significant risk that Lloyd's as a whole would have to cease underwriting. In that event, the subsequent run-off would face an uncertain future. I therefore consider Lloyd's proposals are a well judged response to this situation in the interests of existing Lloyd's policyholders, and of reinsuring Names as policyholders."*

11. In addition, the DTI has no doubt that were the Lloyd's market to go into run-off, the consequences for policyholders and members would be severe. There is now produced and shown to me marked "RH-2" a copy of a letter dated 22 December 1995 which Mr Jonathan Spencer, the Head of the Insurance Directorate of the DTI, wrote to Sir David Berriman of the Association of Lloyd's Members in which he stated:

> *"The Department considers it prudent to give thought to possible alternatives to [the Reconstruction and Renewal plan], and considers that members of Lloyd's should be properly informed of the consequences of [the Reconstruction and Renewal plan] failing. We were glad that Lloyd's has issued a summary of its perception of the possible consequences, and as you are probably aware Lloyd's consulted us before issuing that document.*

It is not for the Department to enter into any debate that may go on within the Society of Lloyd's about the future of the market. The Department's responsibilities - flowing from the provisions of the Insurance Companies Act 1982 (ICA) - are, first, to monitor the solvency of Lloyd's (to be satisfied that Lloyd's has sufficient funds to meet policyholders' valid claims); and, second, to make appropriate use of its powers if any of the statutory requirements are breached, in order to protect policyholders' interests to the maximum extent possible..........

..........in principle, it would be possible for the Society to be put into solvent run-off without the intervention powers being triggered - but only for as long as the statutory solvency requirements continued to be met. In the light of our experience of other insurers in run-off, the very act of going into run-off could lead to a rapid crystallisation of claims which would increase the likelihood of the solvency requirements being breached. This would be aggravated in the event of the failure of intra-market reinsurance provided by Names for whom the Central Fund ceased to cover any defaults. A breach of the statutory solvency requirements would lead to the requirement for the preparation of a plan to restore a sound financial position. It is true that the plan might not envisage the Society starting to underwrite again, and the requirements of the plan could be tailored to such an outlook. But a plan which did not provide for financial backing (through the Central Fund or by other means) to restore the effective solvency of every defaulting Name is unlikely to be regarded as restoring a sound financial position. Furthermore, any such plan would have to be based on a normal full assessment of claims incurred but not reported (IBNR)."

12. I believe the matters set out in this affidavit to be material to the decision of the court in determining whether to exercise its discretion to grant the relief requested by the applicants. In particular, I am concerned that the protection of policyholders interests should be taken into account when considering this application.

SWORN at 3, Dean Farrar Street in the City of Westminster)
on this 9th day of August 1996)

Before me

Andrew Lewis
WA LEWIS A Solicitor

[illegible] referred to in the affidavit of Richard Henry Hobbs sworn this 9th day of August 1996 before me

Alastair Lewis

RHH

EXTRACT FROM OFFICIAL REPORT

Commons	Date: 29/3/96	Cols: 762-763

Equitas

Mr. Butterfill: To ask the President of the Board of Trade if he has taken a decision under the Insurance Companies Act 1982 on the authorisation of Equitas; and if he will make a statement. [24286]

Mr. Nelson: I have considered carefully the proposals made by Lloyd's for the authorisation of Equitas Reinsurance Ltd. and Equitas Ltd. ("Equitas"). Lloyd's proposes to reinsure the market's 1992 and prior non-life liabilities into Equitas, and to provide matching assets together with an additional solvency margin of free assets. Equitas would be a pure reinsurer, and Lloyd's application does not seek authorisation for it to undertake any subsequent business.

Lloyd's proposals are based on a thorough review of the 1992 and prior liabilities and in particular of exposure to US asbestos and pollution claims. This review has been assisted by work undertaken by a number of leading firms of consulting actuaries and chartered accountants.

I have decided to authorise Equitas on the basis of Lloyd's proposals, subject to certain conditions which Lloyd's does not expect to fulfil before August this year. Of these, the most important are, first, that the contracts reinsuring names' liabilities into Equitas cannot be completed until Lloyd's can demonstrate that the assets available to Equitas are such as to ensure it has the minimum solvency margin I have required. Lloyd's statement of assets available to Equitas will be subject to independent review by Coopers and Lybrand, which is to be appointed as Equitas' auditors once the contracts are completed. Secondly, there are conditions to ensure that if developments between now and August should lead to an increase in the estimate of the overall level of liabilities, then a matching increase in the assets would have to be provided. In addition, there is a condition making any dividend to any shareholders or return premium to reinsured names subject to DTI consent. Any future proposal that Equitas should undertake further business would require DTI consent.

Under section 32 of the Insurance Companies Act 1982, UK insurance companies are required to maintain a minimum margin of free assets, calculated according to a formula. The formula was not devised with circumstances such as the Equitas proposal in mind, and is likely to produce widely fluctuating requirements over the first four years of Equitas' life. I have therefore decided to exercise the discretion to which I am entitled under the Act to make a direction under section 68 to modify the normal requirements in 1996 and 1998.

In reaching this decision, I have been mindful of my responsibilities under the Insurance Companies Act 1982 in relation to the authorisation of new insurance companies and the protection of policyholders in general. In this case, I have to consider whether policyholders would be better protected if Equitas is authorised than if it is not. I must also be satisfied that all the statutory requirements for authorisation under the Act have been met.

The main reasons for my decision are as follows.

First, policyholders will benefit from substantial additional funds which would not otherwise be likely to be forthcoming. The provisions made for 1992 and prior liabilities have been increased by more than £1.5 billion. Equitas will be funded to meet its estimated liabilities and to provide the additional margin of free assets. Some £1 billion plus of the funding is to be provided from sources which have no obligation to support 1992 and prior losses, together with approaching a further £2.5 billion deriving from new money from names, the settlement of the current litigation and from 1993–94–95 profits which would not otherwise be necessarily or immediately available to support these losses. The Equitas proposals will also ensure [illegible] provisions [illegible] to the present position in which [illegible] of Lloyd's assets is represented by uncalled losses or unpaid cash calls. Furthermore, subject to the division of Equitas' assets between US, Canadian and UK trust funds, the assets of Equitas will be fully mutualised and all available to support all of Equitas' liabilities to policyholders.

Second, the creation of Equitas offers a strong prospect of lower claims handling costs and higher investment yields than would otherwise be the case, the benefits of which will accrue to policyholders in the first instance.

Overall, I am satisfied that the resources available to support 1992 and prior policyholders through Equitas will be greater and more certain than without its authorisation. The Government Actuary takes the view that there is a reasonable prospect that Equitas will be able to pay off its liabilities in full as they fall due.

Third, if against expectation, the liabilities of Equitas at some future point should appear to be on the point of exceeding the assets available, arrangements will have been built into the reinsurance contract with names designed to ensure that policyholders would continue to receive an uninterrupted flow of claims payments, albeit at less than 100 per cent., with the residual balance of claims falling back on to the reinsured names. These arrangements would provide a much superior outcome for all policyholders, including reinsured names, than conventional insolvency proceedings for Equitas.

Fourth, the creation of Equitas as proposed will very significantly improve the security of 1993 and subsequent policyholders at Lloyd's, by substantially removing the risk that further deterioration in the 1992 and prior liabilities would affect them.

Lastly, if Equitas does not proceed, Lloyd's has acknowledged that there is a significant risk that Lloyd's as a whole would have to cease underwriting. In that event, the subsequent run-off would face an uncertain future. I therefore consider Lloyd's proposals are a well-judged response to this situation in the interests of existing Lloyd's policyholders, and of reinsuring names as policyholders.

It is now for the members of Lloyd's to decide whether to support Lloyd's proposals as the next step before

This is the exhibit "RH 2" referred to in the affidavit of Richard Henry Hobbs sworn this 9th day of August 1996 before me

Alastair Lewis

RH2

Department of
Trade and Industry

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Sir David Berriman
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Direct line 0171-215 0120
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Our ref
Your ref
Date 22 December, 1995

Dear Sir David

LLOYD'S RECONSTRUCTION AND RENEWAL

Further to my letter of 15 December, I am now able to reply in more detail to your letter of 9 December seeking the Department's comments on the document recently published by the Lloyd's Names Associations' Working Party (LNAWP).

The Department has considered the discussion paper prepared by the LNAWP proposing an alternative to the *Reconstruction and Renewal* Plan (*R&R*) published in May 1995 by the Council of Lloyd's. The Department considers it prudent to give thought to possible alternatives to *R&R*, and considers that members of Lloyd's should be properly informed of the consequences of *R&R* failing. We were glad that Lloyd's has issued a summary of its perception of the possible consequences, and as you are probably aware Lloyd's consulted us before issuing that document.

It is not for the Department to enter into any debate that may go on within the Society of Lloyd's about the future of the market. The Department's responsibilities - flowing from the provisions of the Insurance Companies Act 1982 (ICA) - are, first, to monitor the solvency of Lloyd's (to be satisfied that Lloyd's has sufficient funds to meet policyholders' valid claims); and, second, to make appropriate use of its powers if any of the statutory requirements are breached, in order to protect policyholders' interests to the maximum extent possible.

The consequences of Lloyd's failing to meet its statutory solvency requirements cannot be described precisely in advance. Nor can the exact way in which the Secretary of State's powers in part II of the ICA would be exercised be predicted, partly because this would depend on the circumstances prevailing at the time. In addition, while DTI has extensive experience of the use of its Part II powers in relation to insurance companies, their use in relation to Names has not previously been needed. Against this background, our principal comments on the LNAWP paper are set out in the attached note.

The note does not attempt to comment on every point made in the LNAWP paper, but focuses on the principal misconceptions contained in the document. I hope that this outline of our general position is helpful. If you have any further specific questions, please contact Richard Hobbs (0171-215 0209, fax 0171-215 0240) or myself.

This letter and the attachment can be distributed as you wish.

I am sending a copy of this letter and the paper to Christopher Stockwell (Chairman of the Steering Group which produced the paper), Michael Deeny (Chairman of the Litigating Names Committee) and David Rowland (Chairman of Lloyd's).

Yours sincerely

JONATHAN SPENCER
HEAD/INSURANCE DIVISION

LLOYD'S RECONSTRUCTION AND RENEWAL *(R&R)*

DTI COMMENTS ON THE DISCUSSION PAPER PREPARED BY THE LLOYD'S NAMES ASSOCIATIONS' WORKING PARTY ON AN ALTERNATIVE TO *R&R*

Basis of intervention by the Secretary of State

Paragraph 1.1 incorrectly describes the statutory solvency requirements placed on Lloyd's by the Insurance Companies Act 1982 (ICA). Not only is the solvency assessed on a "global basis" (ie "the members of Lloyd's taken together" must satisfy the solvency requirements laid down in the ICA - and indeed in the relevant European Directives - which also apply to other insurers), but also solvency is assessed at the level of each individual Name, in accordance with the requirements of section 83 of the ICA. This second test is necessary because Names underwrite severally and not jointly, and so the aggregate assets of the members taken together (which can properly be taken into account for the global solvency test) cannot necessarily be used to support the liabilities of each and every Name. Nevertheless, as suggested in the paper, should Lloyd's cease paying claims in full, it is likely that the existing Society would in practice have to stop accepting new business. This would probably be as much a commercial reaction as a statutory one - if the Society were to stop paying claims in full there would probably be a collapse of commercial confidence in the market, and the business would flee elsewhere.

Use of Secretary of State's intervention powers

2. As we have sought to make clear on a number of occasions, the way in which the intervention powers contained in the ICA might be exercised would depend on the circumstances prevailing at the time. However, in general terms the powers exist to help to ensure that policyholders' valid claims are paid as fully as possible.

3. In principle, it would be possible for the Society to be put into solvent run-off without the intervention powers being triggered - but only for as long as the statutory solvency requirements continued to be met. In the light of our experience of other insurers in run-off, the very act of going into run-off could lead to a rapid crystallisation of claims

which would increase the likelihood of the solvency requirements being breached. This would be aggravated in the event of the failure of intra-market reinsurance provided by Names for whom the Central Fund ceased to cover any defaults. A breach of the statutory solvency requirements would lead to the requirement for the preparation of a plan to restore a sound financial position. It is true that the plan might not envisage the Society starting to underwrite again, and the requirements of the plan could be tailored to such an outlook. But a plan which did not provide for financial backing (through the Central Fund or by other means) to restore the effective solvency of every defaulting Name is unlikely to be regarded as restoring a sound financial position. Furthermore, any such plan would have to be based on a normal fair assessment of claims incurred but not reported (IBNR).

4. Moreover, any solvency statement by Lloyd's (either in aggregate or at Names' level) would, as now, have to meet the normal requirement that the assessment of liabilities should recognise all liabilities including provision for IBNR claims; and secure assets would be expected to cover these liabilities in the absence of on-going Central Fund support. It would be for consideration in the circumstances how best to achieve this objective; one possibility would be to require that all such assets were held in trust to prevent their dissipation. To do otherwise would run the risk of earlier claimants being preferred to later ones; for this reason it would not be acceptable for Names only to provide funds when claims were due. Use could be made of the relevant provisions of sections 37 to 45 of the ICA to obtain information and where necessary to alienate Names' assets to protect the interests of policyholders.

On-going business/New Lloyd's

5. The paper presents an unrealistic view of the new entities which would underwrite the on-going business, should the existing Lloyd's go into run-off. The third bullet point of para 1.2 suggests that there could be "new mini-insurance companies or syndicates based on the best of the current syndicates and managing agencies", and para 2.2.1 second bullet suggests that this would occur "the next working day". The reality would be very different. Any new entities would need to be insurance companies authorised under section 2 of the ICA, for which new, unimpaired, capital would need to be subscribed. The authorisation of a new insurance company takes some time (because of the need for scrutiny of the information that needs to be submitted to enable the DTI to be satisfied that the authorisation ought to be granted) - the ICA requires the Secretary of State to make a

decision within six months of receiving the necessary information - but applications are normally shown in draft to the DTI in advance. Experience in recent years indicates a typical period from conception to authorisation of six to twelve months, depending on the state of preparations when the DTI is first consulted.

6. The notion of Names being able to participate in on-going business is therefore problematic, and the promise of guaranteed capacity for Names is likely to be unfulfilled. Any new entities would not be able to operate as the old Lloyd's - they would have to be independent insurance companies or groups of companies. They might possibly be based in the Lloyd's building (though conceivably might migrate to the London Underwriting Centre or elsewhere). They might also seek to obtain whatever benefit might be possible from the continued use of the Lloyd's name (assuming that it has not been tarnished by the prior failure of the market).

Settlement fund

7. We are surprised by the notion that the "settlement pot" might still be enhanced if Lloyd's went into run-off (1.2 fifth bullet). It is far from self-evident that the planned contributions from a number of sources would be forthcoming if the market were not on-going. Moreover there must be considerable doubt whether, in run-off, the contribution from the Central Fund could be as large as that envisaged, as noted in Lloyd's letter to members' agents of 4 December. In addition, the Central Fund's guarantee of Lioncover's solvency would need to be maintained.

Establishment of Equitas

8. We consider that the concern (para 1.5) that Equitas will be taken beyond a point of no return without the consent of Names is unfounded. As we see it, any initial authorisation of Equitas would require, as a condition for the completion of the reinsurance contracts with Equitas, that sufficient funds are subscribed as (for example) Equitas premiums, to ensure that the company has a prescribed minimum quantum of assets to cover the liabilities plus a margin of solvency. We doubt whether this can be done without a substantial majority of Names paying their "finality" bills. Moreover, we doubt whether agents etc will make their contributions to the financing of the *R&R* package unless a sufficient majority of Names agree to accept the settlement and waive future rights of

litigation against the agents. In addition, the Central Fund contributions, which need the support of the Names concerned, are also essential features of the *R&R* package.

Other issues

9. The Department is not aware of any significant volume of cases in which multiple and punitive damages (as defined in Protection of Trading Interests Act 1980, section 5) have been awarded against insurers, so the benefits suggested in para 2.4.13 appear to be over-estimated.

10. There is no £75,000 limit to the cover provided under the Policyholders Protection Act (as suggested in para 2.8.5) and Lloyd's has never been covered by it.

11. Names cannot be said (as suggested in para 2.9.3) to be solvent by comparing their premiums trust funds with claims notified but not paid.

12. The suggestion (para 2.10.3, fourth bullet) that the Equitas structure is designed to give control to the on-going market is unsubstantiated, and would not be acceptable to the DTI.

13. The solvency margin of Equitas is not required to be (as suggested in para 4.1.5, last bullet, page 23) assets 16% in excess of the liabilities.

Insurance Division/DTI
22-Dec-95

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 1996, a copy of the foregoing: Our form of Appearance of Counsel on Behalf of British Government; Motion of other British Government For Leave to File a Statement as Amicus Curiae; Statement of the British Government As Amicus Curiae in Support of Defendants' Motion to Dismiss; and Order were delivered by facsimile and sent by Federal Express to:

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