

**CHAPTER 318.  
EXTERNAL INSURANCE.**

16 of 2001

{Incorporating amendments up to and inclusive of 31st August 2001}

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## CHAPTER 318.

### EXTERNAL INSURANCE.

11 of 1983

AN ACT TO PROVIDE FOR THE REGISTRATION AND CONTROL OF THE BUSINESS OF EXTERNAL INSURERS AND UNDERWRITING MANAGERS OF EXTERNAL INSURERS AND TO PROVIDE FOR MATTERS RELATING THERETO.

*[20th December 1983.]*

*[Commencement 30th December 1983.]*

16 of 2001

**{Incorporating Amendments up to and inclusive of 31<sup>st</sup> August 2001}**

#### PART I.

#### PRELIMINARY.

Short title.  
Interpretation.

1. This Act may be cited as the External Insurance Act.
2. (1) In this Act, unless the context otherwise requires—

“actuary” means a person qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the Society of Actuaries in Canada or the Society of Actuaries in the United States of America or a person holding himself out as an actuary by virtue of similar qualifications as the Minister may recognise for the purposes of this Act;

“Affiliated company” means a company which—

- (a) stands in relation to another body corporate as a parent or subsidiary company of that body corporate; or
- (b) together with that body corporate stands in such relationship to another body corporate; or
- (c) is, in relation to another body corporate, a member of the same group of companies by virtue of common ownership or control;

“auditor” means a person who has qualified by examination recognised by The Bahamas Institute of Chartered Accountants and holding a practising certificate from the said Institute or by examination of one of the Institutes of Chartered Accountants of England

and Wales, Ireland and Scotland, the Institute of Chartered Accountants, Canadian Provinces, the Association of Certified and Corporate Accountants, the Association of Certified Public Accountants, or a person holding himself out as an auditor by virtue of similar qualifications as the Minister may recognize for the purposes of this Act;

“external insurer” means a body corporate incorporated in The Bahamas, or registered in The Bahamas under the Foreign Companies Act, and which carries on only external Insurance business;

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“external insurance business” means –

- (a) insurance business of which not less than a substantial amount of the value of the risks underwritten are risks of an affiliated company, provided, however, that insurance business which is long term business shall constitute external insurance business without regard to the amount of value of the risks underwritten which are risks of an affiliated company; or
- (b) any other insurance business not referred to in paragraph (a) as may be approved by the Minister as external insurance business with regard to a particular insurer on the advice of the Registrar;

“financial year” in relation to a person carrying on external insurance business means the period not exceeding fifty-three weeks at the end of which the balance of the accounts of that person is struck or, if no such balance is struck or if a period in excess of fifty-three weeks is employed, then a calendar year;

“insurance business” means the business of effecting and carrying out contracts of insurance—

- (a) protecting persons resident outside The Bahamas against loss or liability to loss in respect of risks located outside The Bahamas to which such persons may be exposed;

- (b) to pay to a person resident outside The Bahamas a sum of money or other thing of value upon the happening of an event;

and includes re-insurance of such business;

“long-term business” means insurance business involving the making of contracts of insurance—

- (a) on human life or contracts to pay annuities on human life;
- (b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of specified class or becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; or
- (c) whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the persons insured in the future, not being contracts such as would fall within paragraph (a) or (b);

“mutual company” means a company whose capital is owned by the policyholders of that company;

“parent company” means a body corporate, that directly or indirectly owns, controls or holds with power to vote more than fifty per centum of the outstanding voting shares or other securities of another body corporate;

“policy holder” means the person with whom an insurer has effected a contract of insurance;

“registered” and its cognate expressions are references to a registration effected under this Act;

“Registrar” has the meaning assigned to it in the

Insurance Act;

“underwriting manager” means a company incorporated in The Bahamas which, operating in or from within The Bahamas as manager or consultant (but not as a bona fide employee) provides underwriting and insurance expertise for one or more external insurers.

(2) For the purposes of this Act a reference—

- (a) to a “parent company” shall include a reference to any partnership or individual holding such voting shares as is mentioned in the definition of that expression;
- (b) in the expression “external insurance business” to a substantial amount is to such amount of the value underwritten as may be prescribed.

(3) An auditor shall not be considered to be an independent auditor for the purposes of this Act if he is an employee or an officer of the respective registered insurer or owns any financial interest in the business of that insurer.

Application of parts.

3. (1) Part II shall apply to external insurers and external insurance business.

(2) Part III shall apply to underwriting managers.

Exemption of registered external insurer from Insurance Act, Ch. 317.

4. An external insurer registered under this Act shall not in respect of external insurance business carried on by him be subject to any of the provisions of the Insurance Act.

## **PART II.**

### **REGISTRATION AND CONTROL OF EXTERNAL INSURERS.**

Requirement for registration of external insurer.

5. (1) Subject to subsection (2), any person who, not being a registered external insurer, carries on external insurance business in or from within The Bahamas is guilty of an offence.

(2) Any person doing external insurance business in The Bahamas on the date of commencement of this Act who is on that date registered under the Insurance Act as an insurer shall, subject to subsection (3), be deemed to be registered in respect of such business under this Act as an external insurer for the period during which the registration under the Insurance Act would continue to subsist but for section 4 or for the period of six months from the date of the coming into operation of this Act whichever is the longer period.

Ch. 317.

(3) Any person to whom subsection (2) applies shall not be deemed to be registered under this Act after three months from the date of the coming into operation of this Act unless an application for registration as an external insurer has been made within that period of three months in such form and manner as may be prescribed.

Application for registration as external insurer.

6. (1) An application to be registered as an external insurer shall be made to the Minister in such form and manner as may be prescribed and be accompanied by such documents as the Minister may reasonably require together with the prescribed fee for registration, which is refundable if the application is not approved.

(2) Subject to section 28, the Minister, if satisfied that it will be in the public interest, may approve of the application upon such terms and conditions as the Minister may see fit and any decision of the Minister as regards the application shall not be called in question in any court.

(3) Upon approval of an application by the Minister, the Registrar shall effect the registration of the applicant in accordance with that approval in a register to be kept for the purpose and issue to the applicant a certificate in evidence of such registration which shall, subject to any revocation, suspension or renewal, expire on thirty-first December of the year in which the registration, or that for which renewal thereof, has been made.

(4) The registration of an external insurer may be renewed prior to the expiration of the registration upon payment to the Registrar of the prescribed renewal fee.

Notification of material change in circumstances of applicant.

7. (1) It is a condition of every registration, breach of which shall render the registration liable to revocation by the Minister, that the external insurer shall notify the Minister forthwith of any material change in the information supplied in the application for registration.

(2) A registered external insurer shall carry on only insurance business as defined in this Act and as is referred to in the certificate of registration.

Continuing financial requirement of registered external insurer.

8. (1) A registered external insurer doing long-term business shall have a paid-up share capital, or if a mutual company the equivalent surplus, of two hundred thousand dollars or such other amount as may be prescribed.

(2) Any registered external insurer doing external insurance business other than long-term business shall in the current year have a net worth in the amount specified in the following table—

**TABLE**

Case	Amount
(i)—If premium income in last preceding financial year did not exceed \$500,000	\$100,000.00
(ii)—If said income in that financial year	One-fifth of the said

exceeded \$1,000,000 but did not exceed \$7,000,000

income in that year.

(iii)—If the said income in that financial year exceeded \$7,000,000.

The aggregate of year \$1,400,000 and one-tenth of the amount by which the said income in that year exceeded \$7,000,000.

**Additional financial requirements of registered external insurer.**

**9.** In respect of all external insurance business, the Minister may prescribe that a registered external insurer shall maintain in cash, short-term securities, or other easily realisable investments, funds adequate for prompt payment of claims save that, notwithstanding such prescription, the amount so required at any material time of an external insurer shall not exceed forty per centum of the last annual total net premiums payable to the insurer.

**Separate account to be kept by registered external insurer.**

**10.** (1) Without prejudice to section 7(2), a registered external insurer who carries on any business other than the external insurance business described in its certificate of registration shall keep separate accounts in respect of its external insurance business and shall segregate the assets and liabilities of its insurance business from those of its other business.

(2) A registered external insurer who carries on both life insurance or other long-term business as well as other kinds of insurance business shall keep accounts of its life insurance separate from those for its other long-term business, save however that investments need not be kept separate.

(3) A registered external insurer carrying on long term business may establish any number of separate accounts in respect of the respective premiums paid to it to provide -

(a) annuities on human life; and

(b) contract of insurance on human life,

and such respective premiums shall be kept segregated one from the other and independent of all other funds of the insurer, and, notwithstanding the other provisions of this Act or of any other law to the contrary are not chargeable with any liability arising from any other business of the insurer or arising from any activity carried out by the insurer in relation to any other separate account.

(4) Notwithstanding any law to the contrary, where any person shall die leaving a policy of insurance issued on his life by a registered external insurer, the said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of any creditor of the insured, his estate, and of any beneficiary under the policy or of the owner or estate of the owner.

(5) Notwithstanding any law to the contrary, unless the insurance policy or annuity contract was affected for the benefit of such creditor, the cash surrender value of life insurance policies and the proceeds of annuity contracts

issued by a registered external insurer shall not be liable to attachment, garnishment or legal process in favour of any creditor of the insured, his estate, and of any beneficiary under the policy or of the benefit of any Trust which is the owner of a life insurance policy or an annuity contract issued by a registered external insurer.

(6) Life insurance policies and annuity contracts issued by a registered external insurer, by their terms subject to cancellation or redemption by the owner thereof, shall not be subject to cancellation or redemption during any period during which the owner is acting under duress imposed by any lawful authority or otherwise other than lawful authority in The Bahamas.

**Audit of accounts of registered external insurers.**

**11.** (1) Every registered external insurer shall prepare annual financial statements in accordance with generally accepted accounting principles, which financial statements shall be audited by an independent auditor with offices in The Bahamas.

(2) The auditor of a registered external insurer shall satisfy himself that the financial statements of the insurer have been properly prepared in accordance with the books and records of such insurer.

(3) Such auditor shall include in his report such particulars as may be prescribed.

(4) Every registered insurer shall furnish to the Minister within six months of the end of its financial year the following annual returns—

- (a) a statement signed by an independent auditor certifying the external insurer's compliance with section 7(2);
- (b) written confirmation from an independent auditor that annual financial statements have been prepared as required under section 11(1) and whether or not the auditor's report for such financial statements is unqualified;
- (c) a certified copy of the financial statements showing the financial position of all the external insurance business of the insurer at the close of that year; and
- (d) in the case of an insurer who is a body corporate incorporated abroad, a certificate issued by the insurance authority in that place to the effect that the insurer is complying with all the applicable insurance supervisory requirements of that authority.

**Suspension and cancellation of registration.**

**12.** (1) The Minister may cancel the registration of an external insurer---

- (a) if the insurer ceases to be an external Insurer; or
- (b) if the insurer becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved;

or

- (c) if false, misleading or inaccurate information was given in the application for registration or for the purposes of section 8, 9, or 11; or
- (d) if the insurer does not fulfill the requirements of section 8 or 11.

(2) Where the Minister is of the opinion that an external insurer is carrying on business—

- (a) in a manner likely to be detrimental to the public interest or to the interest of its creditors or policy-holders; or
- (b) in contravention of this Act,

he may require the insurer forthwith to take steps to rectify the matter within a specified time failing which the Minister may, after affording the insurer an opportunity to show cause why his registration should not be suspended, suspend the registration of the insurer pending an enquiry into the insurer's affairs pursuant to the provisions of section 29(2).

(3) Where the Minister, having received a report upon an external insurer made pursuant to section 29(2), is of the opinion that it is detrimental to the public interest that the insurer should continue to carry on business he may direct the Registrar to cancel the registration of the insurer.

(4) The cancellation of a registration shall be effective from the date the Registrar has served written notice upon the external insurer of the cancellation and the grounds therefor.

### **PART III.**

#### **REGISTRATION AND CONTROL OF UNDER-WRITING MANAGERS.**

**Underwriting manager to be registered.**

**13.** (1) Any person who, not being registered under this Act as an underwriting manager, carries on the business of an underwriting manager in or from within The Bahamas is guilty of an offence.

(2) Any person who is an underwriting manager in The Bahamas on the date of commencement of this Act shall be deemed to be registered under this Act for a period of six months from such date provided such person within three months of that date makes application to be so registered.

**Application to be registered as an underwriting manager.**

**14.** (1) An application to be registered as an registered as an underwriting manager shall be made to the Minister in such form and manner as may be prescribed and be accompanied by the prescribed fee for registration which shall be refunded if the application is refused.

(2) The Minister, if satisfied that it will be in the public interest, may approve of the application upon such terms and conditions as the Minister sees fit and any decision of the Minister as regards the application shall not be called in question in any court.

(3) The provisions of subsections (3) and (4) of section 6 shall, as they apply to an external insurer, apply mutatis mutandis to an underwriting manager.

Observation of certain requirements by underwriting manager.

**15.** (1) A registered underwriting manager shall use his best efforts to provide underwriting management or similar services only to or for registered external insurers of good reputation.

(2) If an underwriting manager has knowledge or information regarding the lack of good reputation or solvency of any registered external insurer which he manages or for whom he provides similar services, he shall forthwith report the same to the Minister.

(3) An underwriting manager shall not by reason of registration under this Act be prohibited from providing underwriting management services from within The Bahamas to persons elsewhere who carry on there business in the nature of external insurance.

List of insurers to be supplied by manager.

**16.** (1) A registered underwriting manager shall, subject to any prescription made under subsection (2), within six months of the end of his financial year furnish to the Minister a list of all external insurers for whom the underwriting manager provides services.

(2) The Minister may prescribe the form and nature and extent of the particulars required of the returns to be made by underwriting managers under this section.

Cancellation of registration of underwriting manager.

**17.** The Minister may cancel the registration of an underwriting manager—

- (a) if the manager ceases to carry on underwriting management insurance business; or
- (b) if the manager becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved; or
- (c) fails to observe any of the requirements or prohibitions imposed by this Act,

and where the Minister intends to effect a cancellation pursuant to paragraph (c), he shall prior thereto afford an opportunity to the manager to show cause why the registration should not be cancelled.

## PART IV.

### GENERAL.

Registration not prohibitive.

**18.** Subject to section 4, nothing in this Act shall be construed as prohibiting any person registered under Part III from carrying on other insurance business to which this Act does not apply.

Restriction on use of words associated with insurance business.

**19.** (1) After the expiration of six months from the commencement of this Act, any person who without the approval of the Minister or not being registered under this Act—

- (a) uses or continues to use the words “underwriter”, “insurance”, “indemnity”, “casualty”, or any other word which represents or conveys the impression that such person carries on external insurance business in or from within The Bahamas; or
- (b) makes or continues to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any manner whatsoever that be is carrying on external insurance business,

shall be guilty of an offence.

(2) Before giving any approval for the purposes of subsection (1), the Minister may require of the respective person such references and such information and particulars as the Minister sees fit or as may be prescribed.

Registered names. Ch.317.

**20.** Notwithstanding anything to the contrary in section 6, the provisions of section 40 of the Insurance Act shall, as they apply to an applicant for registration as an insurer or as an insurance agent under that Act, apply mutatis mutandis to an applicant for registration as an external insurer or underwriting manager, respectively.

Confidentiality. 16 of 2001.

**21.** (1) Subject to subsections (2) and (3), the Registrar or any officer, employee, agent or adviser of the Registrar who discloses any information relating to -

- (a) the affairs of the Registrar’s office;
- (b) any application made to the Registrar;
- (c) the affairs of an external insurer or underwriting manager; or
- (d) the affairs of a customer, client or policyholder of an external insurer or underwriting manager,

that he has acquired in the course of his duties or in the exercise of the Registrar’s functions under this or any other law, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

(2) Subsection (1) shall not apply to a disclosure -

- (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
- (b) for the purpose of assisting the Registrar to exercise any functions conferred on him by this Act, by any other Act or by regulations made thereunder;
- (c) in respect of the affairs of an external insurer or underwriting manager or of a customer, client or policyholder of an external insurer or underwriting manager, with the consent of the external insurer or underwriting manager, customer, client or policyholder, as the case may be, which consent has been voluntarily given;
- (d) where the information disclosed is or has been available to the public from any other source;
- (e) where the information disclosed is in a manner that does not enable the identity of any external insurer or underwriting manager or of any customer, client or policyholder of the external insurer or underwriting manager to which the information relates to be ascertained;
- (f) to a person with a view to the institution of, or for the purpose of -
  - (i) criminal proceedings,
  - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties,
  - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Registrar of his duties; or
- (g) in any legal proceedings in connection with -
  - (i) the winding-up or dissolution of an external insurer or underwriting manager, or
  - (ii) the appointment or duties of a receiver of an external insurer or underwriting manager.

(3) Subject to subsection (6), the Registrar may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(4) In deciding whether or not to exercise his power under subsection (3), the Registrar may take into account -

- (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
- (b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.

(5) The Registrar may decline to exercise his powers under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Registrar considers appropriate.

(6) Nothing in subsection (3) authorises a disclosure by the Registrar unless -

- (a) the Registrar has satisfied himself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
- (b) the Registrar has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Registrar; and
- (c) the Registrar is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and
- (d) the Registrar is satisfied that information provided following the exercise of his power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Registrar it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Registrar shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(8) The Registrar may provide information that he has acquired in the course of his duties or in the exercise of his functions under this or any other law to any other regulatory authority in The Bahamas where he considers such information may be relevant to the functions of such other regulatory authority.

(9) In this section “overseas regulatory authority” means an authority which, in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Registrar.

**Duty of Registrar.**  
16 of 2001.

**21A.** The Registrar shall, for the purpose of carrying out the provisions of this Act, satisfy himself that the provisions of the Financial Transactions Reporting Act, 2000 are being complied with.

**Exemptions.**

**22.** Notwithstanding the provisions of any other Act, every external insurer registered under this Act shall be exempt from the payment of any tax, fee, duty or impost other than those in force at the commencement of, or payable in respect of registration under, this Act, for a period of fifteen years from the date of the first such registration of the insurer.

**Winding-up.**  
Ch. 279.

**23.** The Registrar may present a petition for the winding-up of any company registered under this Act on the ground of insolvency in accordance with the relevant winding-up provisions of the Companies Act.

**Regulations.**

**24.** (1) The Minister may make regulations for carrying into effect the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations—

- (a) prescribing anything by this Act required to be prescribed;
- (b) exempting any person or class of persons or business or class of business from any provision of this Act;
- (c) prescribing forms to be used for any purposes of this Act;
- (d) constituting the breach of any regulation to be an offence.

(2) Any regulations made pursuant to subsection (1) for the purpose of imposing a fee shall be subject to affirmative resolution of both Houses of Parliament, that is to say the regulations shall not come into operation unless and until approved by such a resolution.

**Appeal.**

**25.** (1) An appeal shall lie to the Supreme Court against any order of the Minister to suspend or cancel a registration under section 12 or 17(1) as the case may be.

(2) An appeal under this section shall not operate as a stay of any decision appealed against and any Rules of Court applicable to like appeals instituted under the Insurance Act shall mutatis mutandis apply to appeals under this section.

**False statements.**

**26.** Any person who for any purpose of this Act makes any representation in the truth of which he has no reasonable ground to believe (the onus of proof of his belief being upon him) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

**Offences generally.**

**27.** (1) A person who contravenes or fails or neglects to comply with section 5, 7, 8, 10, 11(4), 13(1), 15(2) or 16(1) shall be guilty of an offence.

(2) Any person guilty of an offence under this Act, including any regulations made hereunder, and for which no specific provision or penalty is otherwise provided in this Act or such regulations, shall, if the offender is an individual, be liable on summary conviction to a fine of two thousand dollars or to imprisonment for six months, or to both such fine and imprisonment, or if the offender is not an individual, to a fine of three thousand dollars.

(3) Where any offence under this Act or regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer or employee of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**External insurer  
non-resident status.**

**28.** No person shall be registered as an external insurer unless he submits with his application for registration a statement from the Central Bank of The Bahamas to the effect that he is regarded as a non-resident company for the purposes of the Exchange Control Regulations Act.

**Ch. 330.**

**Responsibilities of  
Registrar.**

**29.** (1) The general administration of this Act shall be the responsibility of the Registrar.

(2) It shall be the duty of the Registrar—

- (a) to maintain a general review of external insurers and external insurance business in The Bahamas;
- (b) of his own motion or when so required by the Minister, to examine the affairs or business of any person carrying on external insurance business in or from within The Bahamas for the purpose of satisfying himself that the provisions of this Act are being complied with and that such person is in a sound financial position, and is carrying on his business in a satisfactory manner, and to report to the Minister the results of such examination;
- (c) to examine and report on the annual returns of the registered external insurers delivered to the Minister pursuant to section 11(4);
- (d) to examine and make recommendations to the Minister with respect to applications for registration.

(3) In the performance of his functions under this Act, and subject to the provisions of section 21, the Registrar may upon reasonable written notice—

- (a) have access to such books, records, vouchers, documents, policies, contracts, cash and securities of any registered external insurer;
- (b) call upon the manager or any officer designated by the manager of any registered external insurer for such information or explanation as the Registrar may reasonably require for the purpose of enabling him to perform his functions under this Act:

Provided that the Registrar shall have access to the insurance account of a policy-holder or to any information, matter or thing to or concerning the insurance of any policy-holder only with the consent of that policy-holder.

(4) Any person who fails to comply with any requirement lawfully made pursuant to subsection (3) shall be guilty of an offence.