



Companies Act 2006

2006 CHAPTER 46

PART 42

STATUTORY AUDITORS

CHAPTER 1

INTRODUCTORY

1209 Main purposes of Part

The main purposes of this Part are—

- (a) to secure that only persons who are properly supervised and appropriately qualified are appointed as statutory auditors, and
- (b) to secure that audits by persons so appointed are carried out properly, with integrity and with a proper degree of independence.

1210 Meaning of “statutory auditor” etc

(1) In this Part “statutory auditor” means—

- (a) a person appointed as auditor under Part 16 of this Act,
- (b) a person appointed as auditor under section 77 of or Schedule 11 to the Building Societies Act 1986 (c. 53),
- (c) a person appointed as auditor of an insurer that is a friendly society under section 72 of or Schedule 14 to the Friendly Societies Act 1992 (c. 40),
- (d) a person appointed as auditor of an insurer that is an industrial and provident society under section 4 of the Friendly and Industrial and Provident Societies Act 1968 (c. 55) or under section 38 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)),
- (e) a person appointed as auditor for the purposes of regulation 3 of the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations

Status: This is the original version (as it was originally enacted).

2004 (S.I. 2004/3219) or appointed to report on the “aggregate accounts” within the meaning of those Regulations,

- (f) a person appointed as auditor of an insurer for the purposes of regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993 (S.I. 1993/3245),
- (g) a person appointed as auditor of a bank for the purposes of regulation 4 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 1991 (S.I. 1991/2704), and
- (h) a person appointed as auditor of a prescribed person under a prescribed enactment authorising or requiring the appointment;

and the expressions “statutory audit” and “statutory audit work” are to be construed accordingly.

- (2) In this Part “audited person” means the person in respect of whom a statutory audit is conducted.

- (3) In subsection (1)—

“bank” means a person who—

- (a) is a credit institution within the meaning given by Article 4.1(a) of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions, and
- (b) is a company or a firm as defined in Article 48 of the Treaty establishing the European Community;

“friendly society” means a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40);

“industrial and provident society” means—

- (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a society deemed by virtue of section 4 of that Act to be so registered, or
- (b) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 or a society deemed by virtue of section 4 of that Act to be so registered;

“insurer” means a person who is an insurance undertaking within the meaning given by Article 2.1 of Council Directive 1991/674/EEC on the annual accounts and consolidated accounts of insurance undertakings;

“prescribed” means prescribed, or of a description prescribed, by order made by the Secretary of State for the purposes of subsection (1)(h).

- (4) An order under this section is subject to negative resolution procedure.

1211 Eligibility for appointment as a statutory auditor: overview

A person is eligible for appointment as a statutory auditor only if the person is so eligible—

- (a) by virtue of Chapter 2 (individuals and firms), or
- (b) by virtue of Chapter 3 (Comptroller and Auditor General, etc).

CHAPTER 2

INDIVIDUALS AND FIRMS

Eligibility for appointment

1212 Individuals and firms: eligibility for appointment as a statutory auditor

- (1) An individual or firm is eligible for appointment as a statutory auditor if the individual or firm—
 - (a) is a member of a recognised supervisory body, and
 - (b) is eligible for appointment under the rules of that body.
- (2) In the cases to which section 1222 applies (individuals retaining only 1967 Act authorisation) a person's eligibility for appointment as a statutory auditor is restricted as mentioned in that section.

1213 Effect of ineligibility

- (1) No person may act as statutory auditor of an audited person if he is ineligible for appointment as a statutory auditor.
- (2) If at any time during his term of office a statutory auditor becomes ineligible for appointment as a statutory auditor, he must immediately—
 - (a) resign his office (with immediate effect), and
 - (b) give notice in writing to the audited person that he has resigned by reason of his becoming ineligible for appointment.
- (3) A person is guilty of an offence if—
 - (a) he acts as a statutory auditor in contravention of subsection (1), or
 - (b) he fails to give the notice mentioned in paragraph (b) of subsection (2) in accordance with that subsection.
- (4) A person guilty of an offence under subsection (3) is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) A person is guilty of an offence if—
 - (a) he has been convicted of an offence under subsection (3)(a) or this subsection, and
 - (b) he continues to act as a statutory auditor in contravention of subsection (1) after the conviction.
- (6) A person is guilty of an offence if—
 - (a) he has been convicted of an offence under subsection (3)(b) or this subsection, and
 - (b) he continues, after the conviction, to fail to give the notice mentioned in subsection (2)(b).
- (7) A person guilty of an offence under subsection (5) or (6) is liable—
 - (a) on conviction on indictment, to a fine;

Status: This is the original version (as it was originally enacted).

- (b) on summary conviction, to a fine not exceeding one-tenth of the statutory maximum for each day on which the act or the failure continues.
- (8) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment as a statutory auditor.

Independence requirement

1214 Independence requirement

- (1) A person may not act as statutory auditor of an audited person if one or more of subsections (2), (3) and (4) apply to him.
- (2) This subsection applies if the person is—
 - (a) an officer or employee of the audited person, or
 - (b) a partner or employee of such a person, or a partnership of which such a person is a partner.
- (3) This subsection applies if the person is—
 - (a) an officer or employee of an associated undertaking of the audited person, or
 - (b) a partner or employee of such a person, or a partnership of which such a person is a partner.
- (4) This subsection applies if there exists, between—
 - (a) the person or an associate of his, and
 - (b) the audited person or an associated undertaking of the audited person,
 a connection of any such description as may be specified by regulations made by the Secretary of State.
- (5) An auditor of an audited person is not to be regarded as an officer or employee of the person for the purposes of subsections (2) and (3).
- (6) In this section “associated undertaking”, in relation to an audited person, means—
 - (a) a parent undertaking or subsidiary undertaking of the audited person, or
 - (b) a subsidiary undertaking of a parent undertaking of the audited person.
- (7) Regulations under subsection (4) are subject to negative resolution procedure.

1215 Effect of lack of independence

- (1) If at any time during his term of office a statutory auditor becomes prohibited from acting by section 1214(1), he must immediately—
 - (a) resign his office (with immediate effect), and
 - (b) give notice in writing to the audited person that he has resigned by reason of his lack of independence.
- (2) A person is guilty of an offence if—
 - (a) he acts as a statutory auditor in contravention of section 1214(1), or
 - (b) he fails to give the notice mentioned in paragraph (b) of subsection (1) in accordance with that subsection.
- (3) A person guilty of an offence under subsection (2) is liable—

Status: This is the original version (as it was originally enacted).

- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (4) A person is guilty of an offence if—
- (a) he has been convicted of an offence under subsection (2)(a) or this subsection, and
 - (b) he continues to act as a statutory auditor in contravention of section 1214(1) after the conviction.
- (5) A person is guilty of an offence if—
- (a) he has been convicted of an offence under subsection (2)(b) or this subsection, and
 - (b) after the conviction, he continues to fail to give the notice mentioned in subsection (1)(b).
- (6) A person guilty of an offence under subsection (4) or (5) is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding one-tenth of the statutory maximum for each day on which the act or the failure continues.
- (7) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, prohibited from acting as statutory auditor of the audited person by section 1214(1).

Effect of appointment of a partnership

1216 Effect of appointment of a partnership

- (1) This section applies where a partnership constituted under the law of—
- (a) England and Wales,
 - (b) Northern Ireland, or
 - (c) any other country or territory in which a partnership is not a legal person, is by virtue of this Chapter appointed as statutory auditor of an audited person.
- (2) Unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners.
- (3) Where the partnership ceases, the appointment is to be treated as extending to—
- (a) any appropriate partnership which succeeds to the practice of that partnership, or
 - (b) any other appropriate person who succeeds to that practice having previously carried it on in partnership.
- (4) For the purposes of subsection (3)—
- (a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership, and
 - (b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

Status: This is the original version (as it was originally enacted).

- (5) Where the partnership ceases and the appointment is not treated under subsection (3) as extending to any partnership or other person, the appointment may with the consent of the audited person be treated as extending to an appropriate partnership, or other appropriate person, who succeeds to—
- (a) the business of the former partnership, or
 - (b) such part of it as is agreed by the audited person is to be treated as comprising the appointment.
- (6) For the purposes of this section, a partnership or other person is “appropriate” if it or he—
- (a) is eligible for appointment as a statutory auditor by virtue of this Chapter, and
 - (b) is not prohibited by section 1214(1) from acting as statutory auditor of the audited person.

Supervisory bodies

1217 Supervisory bodies

- (1) In this Part a “supervisory body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which maintains and enforces rules as to—
- (a) the eligibility of persons for appointment as a statutory auditor, and
 - (b) the conduct of statutory audit work,
- which are binding on persons seeking appointment or acting as a statutory auditor either because they are members of that body or because they are otherwise subject to its control.
- (2) In this Part references to the members of a supervisory body are to the persons who, whether or not members of the body, are subject to its rules in seeking appointment or acting as a statutory auditor.
- (3) In this Part references to the rules of a supervisory body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part.
- This includes rules relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.
- (4) Schedule 10 has effect with respect to the recognition of supervisory bodies for the purposes of this Part.

1218 Exemption from liability for damages

- (1) No person within subsection (2) is to be liable in damages for anything done or omitted in the discharge or purported discharge of functions to which this subsection applies.
- (2) The persons within this subsection are—
- (a) any recognised supervisory body,
 - (b) any officer or employee of a recognised supervisory body, and
 - (c) any member of the governing body of a recognised supervisory body.

Status: This is the original version (as it was originally enacted).

- (3) Subsection (1) applies to the functions of a recognised supervisory body so far as relating to, or to matters arising out of, any of the following—
- (a) rules, practices, powers and arrangements of the body to which the requirements of Part 2 of Schedule 10 apply;
 - (b) the obligations with which paragraph 20 of that Schedule requires the body to comply;
 - (c) any guidance issued by the body;
 - (d) the obligations imposed on the body by or by virtue of this Part.
- (4) The reference in subsection (3)(c) to guidance issued by a recognised supervisory body is a reference to any guidance or recommendation which is—
- (a) issued or made by it to all or any class of its members or persons seeking to become members, and
 - (b) relevant for the purposes of this Part,
- including any guidance or recommendation relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.
- (5) Subsection (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights).

Professional qualifications

1219 Appropriate qualifications

- (1) A person holds an appropriate qualification for the purposes of this Chapter if and only if—
- (a) he holds a recognised professional qualification obtained in the United Kingdom,
 - (b) immediately before the commencement of this Chapter, he—
 - (i) held an appropriate qualification for the purposes of Part 2 of the Companies Act 1989 (c. 40) (eligibility for appointment as company auditor) by virtue of section 31(1)(a) or (c) of that Act, or
 - (ii) was treated as holding an appropriate qualification for those purposes by virtue of section 31(2), (3) or (4) of that Act,
 - (c) immediately before the commencement of this Chapter, he—
 - (i) held an appropriate qualification for the purposes of Part III of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)) by virtue of Article 34(1)(a) or (c) of that Order, or
 - (ii) was treated as holding an appropriate qualification for those purposes by virtue of Article 34(2), (3) or (4) of that Order,
 - (d) he is within subsection (2),
 - (e) he has been authorised to practise the profession of statutory auditor pursuant to the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18) and has fulfilled any requirements imposed pursuant to regulation 6 of those Regulations, or

Status: This is the original version (as it was originally enacted).

- (f) subject to any direction under section 1221(5), he is regarded for the purposes of this Chapter as holding an approved overseas qualification.
- (2) A person is within this subsection if—
- (a) before 1st January 1990, he began a course of study or practical training leading to a professional qualification in accountancy offered by a body established in the United Kingdom,
 - (b) he obtained that qualification on or after 1st January 1990 and before 1st January 1996, and
 - (c) the Secretary of State approves his qualification as an appropriate qualification for the purposes of this Chapter.
- (3) The Secretary of State may approve a qualification under subsection (2)(c) only if he is satisfied that, at the time the qualification was awarded, the body concerned had adequate arrangements to ensure that the qualification was awarded only to persons educated and trained to a standard equivalent to that required, at that time, in the case of a recognised professional qualification under Part 2 of the Companies Act 1989 (c. 40) (eligibility for appointment as company auditor).

1220 Qualifying bodies and recognised professional qualifications

- (1) In this Part a “qualifying body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which offers a professional qualification in accountancy.
- (2) In this Part references to the rules of a qualifying body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part.

This includes, so far as so relevant, rules relating to—

- (a) admission to or expulsion from a course of study leading to a qualification,
 - (b) the award or deprivation of a qualification, or
 - (c) the approval of a person for the purposes of giving practical training or the withdrawal of such approval.
- (3) Schedule 11 has effect with respect to the recognition for the purposes of this Part of a professional qualification offered by a qualifying body.

1221 Approval of overseas qualifications

- (1) The Secretary of State may declare that the following are to be regarded for the purposes of this Chapter as holding an approved overseas qualification—
- (a) persons who are qualified to audit accounts under the law of a specified foreign country, or
 - (b) persons who hold a specified professional qualification in accountancy obtained in a specified foreign country.
- (2) A declaration under subsection (1)(b) may be expressed to be subject to the satisfaction of any specified requirement or requirements.
- (3) The Secretary of State may make a declaration under subsection (1) only if he is satisfied that—

Status: This is the original version (as it was originally enacted).

- (a) in the case of a declaration under subsection (1)(a), the fact that the persons in question are qualified to audit accounts under the law of the specified foreign country, or
 - (b) in the case of a declaration under subsection (1)(b), the specified professional qualification taken with any requirement or requirements to be specified under subsection (2),
- affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.
- (4) The Secretary of State may make a declaration under subsection (1) only if he is satisfied that the treatment that the persons who are the subject of the declaration will receive as a result of it is comparable to the treatment which is, or is likely to be, afforded in the specified foreign country or a part of it to—
- (a) in the case of a declaration under subsection (1)(a), some or all persons who are eligible to be appointed as a statutory auditor, and
 - (b) in the case of a declaration under subsection (1)(b), some or all persons who hold a corresponding recognised professional qualification.
- (5) The Secretary of State may direct that persons holding an approved overseas qualification are not to be treated as holding an appropriate qualification for the purposes of this Chapter unless they hold such additional educational qualifications as the Secretary of State may specify for the purpose of ensuring that such persons have an adequate knowledge of the law and practice in the United Kingdom relevant to the audit of accounts.
- (6) The Secretary of State may give different directions in relation to different approved overseas qualifications.
- (7) The Secretary of State may, if he thinks fit, having regard to the considerations mentioned in subsections (3) and (4), withdraw a declaration under subsection (1) in relation to—
- (a) persons becoming qualified to audit accounts under the law of the specified foreign country after such date as he may specify, or
 - (b) persons obtaining the specified professional qualification after such date as he may specify.
- (8) The Secretary of State may, if he thinks fit, having regard to the considerations mentioned in subsections (3) and (4), vary or revoke a requirement specified under subsection (2) from such date as he may specify.
- (9) In this section “foreign country”, in relation to any time, means a country or territory that, at that time, is not a “relevant State” within the meaning of the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18) or part of such a State.

1222 Eligibility of individuals retaining only 1967 Act authorisation

- (1) A person whose only appropriate qualification is based on his retention of an authorisation originally granted by the Board of Trade or the Secretary of State under section 13(1) of the Companies Act 1967 (c. 81) is eligible only for appointment as auditor of an unquoted company.

Status: This is the original version (as it was originally enacted).

- (2) A company is “unquoted” if, at the time of the person’s appointment, neither the company, nor any parent undertaking of which it is a subsidiary undertaking, is a quoted company within the meaning of section 385(2).
- (3) References to a person eligible for appointment as a statutory auditor by virtue of this Part in enactments relating to eligibility for appointment as auditor of a person other than a company do not include a person to whom this section applies.

Information

1223 Matters to be notified to the Secretary of State

- (1) The Secretary of State may require a recognised supervisory body or a recognised qualifying body—
 - (a) to notify him immediately of the occurrence of such events as he may specify in writing and to give him such information in respect of those events as is so specified;
 - (b) to give him, at such times or in respect of such periods as he may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Secretary of State may reasonably require for the exercise of his functions under this Part.
- (3) The Secretary of State may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Secretary of State specifies or approves some other manner.

1224 The Secretary of State’s power to call for information

- (1) The Secretary of State may by notice in writing require a person within subsection (2) to give him such information as he may reasonably require for the exercise of his functions under this Part.
- (2) The persons within this subsection are—
 - (a) any recognised supervisory body,
 - (b) any recognised qualifying body, and
 - (c) any person eligible for appointment as a statutory auditor by virtue of this Chapter.
- (3) The Secretary of State may require that any information which he requires under this section is to be given within such reasonable time and verified in such manner as he may specify.

Enforcement

1225 Compliance orders

- (1) If at any time it appears to the Secretary of State—
 - (a) in the case of a recognised supervisory body, that any requirement of Schedule 10 is not satisfied,

- (b) in the case of a recognised professional qualification, that any requirement of Schedule 11 is not satisfied, or
- (c) that a recognised supervisory body or a recognised qualifying body has failed to comply with an obligation to which it is subject under or by virtue of this Part,

he may, instead of revoking the relevant recognition order, make an application to the court under this section.

- (2) If on an application under this section the court decides that the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question, it may order the body to take such steps as the court directs for securing that the requirement is satisfied or that the obligation is complied with.
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

CHAPTER 3

AUDITORS GENERAL

Eligibility for appointment

1226 Auditors General: eligibility for appointment as a statutory auditor

- (1) In this Part “Auditor General” means—
 - (a) the Comptroller and Auditor General,
 - (b) the Auditor General for Scotland,
 - (c) the Auditor General for Wales, or
 - (d) the Comptroller and Auditor General for Northern Ireland.
- (2) An Auditor General is eligible for appointment as a statutory auditor.
- (3) Subsection (2) is subject to any suspension notice having effect under section 1234 (notices suspending eligibility for appointment as a statutory auditor).

Conduct of audits

1227 Individuals responsible for audit work on behalf of Auditors General

An Auditor General must secure that each individual responsible for statutory audit work on behalf of that Auditor General is eligible for appointment as a statutory auditor by virtue of Chapter 2.

The Independent Supervisor

1228 Appointment of the Independent Supervisor

- (1) The Secretary of State must appoint a body (“the Independent Supervisor”) to discharge the function mentioned in section 1229(1) (“the supervision function”).
- (2) An appointment under this section must be made by order.

Status: This is the original version (as it was originally enacted).

- (3) The order has the effect of making the body appointed under subsection (1) designated under section 5 of the Freedom of Information Act 2000 (c. 36) (further powers to designate public authorities).
- (4) A body may be appointed under this section only if it is a body corporate or an unincorporated association which appears to the Secretary of State—
 - (a) to be willing and able to discharge the supervision function, and
 - (b) to have arrangements in place relating to the discharge of that function which are such as to be likely to ensure that the conditions in subsection (5) are met.
- (5) The conditions are—
 - (a) that the supervision function will be exercised effectively, and
 - (b) where the order is to contain any requirements or other provisions specified under subsection (6), that that function will be exercised in accordance with any such requirements or provisions.
- (6) An order under this section may contain such requirements or other provisions relating to the exercise of the supervision function by the Independent Supervisor as appear to the Secretary of State to be appropriate.
- (7) An order under this section is subject to negative resolution procedure.

Supervision of Auditors General

1229 Supervision of Auditors General by the Independent Supervisor

- (1) The Independent Supervisor must supervise the performance by each Auditor General of his functions as a statutory auditor.
- (2) The Independent Supervisor must discharge that duty by—
 - (a) entering into supervision arrangements with one or more bodies, and
 - (b) overseeing the effective operation of any supervision arrangements entered into by it.
- (3) For this purpose “supervision arrangements” are arrangements entered into by the Independent Supervisor with a body, for the purposes of this section, in accordance with which the body does one or more of the following—
 - (a) determines standards relating to professional integrity and independence which must be applied by an Auditor General in statutory audit work;
 - (b) determines technical standards which must be applied by an Auditor General in statutory audit work and the manner in which those standards are to be applied in practice;
 - (c) monitors the performance of statutory audits carried out by an Auditor General;
 - (d) investigates any matter arising from the performance by an Auditor General of a statutory audit;
 - (e) holds disciplinary hearings in respect of an Auditor General which appear to be desirable following the conclusion of such investigations;
 - (f) decides whether (and, if so, what) disciplinary action should be taken against an Auditor General to whom such a hearing related.

- (4) The Independent Supervisor may enter into supervision arrangements with a body despite any relationship that may exist between the Independent Supervisor and that body.
- (5) The Independent Supervisor must notify each Auditor General in writing of any supervision arrangements that it enters into under this section.
- (6) Supervision arrangements within subsection (3)(f) may, in particular, provide for the payment by an Auditor General of a fine to any person.
- (7) Any fine received by the Independent Supervisor under supervision arrangements is to be paid into the Consolidated Fund.

1230 Duties of Auditors General in relation to supervision arrangements

- (1) Each Auditor General must—
 - (a) comply with any standards of the kind mentioned in subsection (3)(a) or (b) of section 1229 determined under the supervision arrangements,
 - (b) take such steps as may be reasonably required of that Auditor General to enable his performance of statutory audits to be monitored by means of inspections carried out under the supervision arrangements, and
 - (c) comply with any decision of the kind mentioned in subsection (3)(f) of that section made under the supervision arrangements.
- (2) Each Auditor General must pay to the body or bodies with which the Independent Supervisor enters into the supervision arrangements such proportion of the costs incurred by the body or bodies for the purposes of the arrangements as the Independent Supervisor may notify to him in writing.
- (3) Expenditure under subsection (2) is—
 - (a) in the case of expenditure of the Comptroller and Auditor General, to be regarded as expenditure of the National Audit Office for the purposes of section 4(1) of the National Audit Act 1983 (c. 44);
 - (b) in the case of expenditure of the Comptroller and Auditor General for Northern Ireland, to be regarded as expenditure of the Northern Ireland Audit Office for the purposes of Article 6(1) of the Audit (Northern Ireland) Order 1987 (S.I. 1987/460 (N.I. 5)).
- (4) In this section “the supervision arrangements” means the arrangements entered into under section 1229.

Reporting requirement

1231 Reports by the Independent Supervisor

- (1) The Independent Supervisor must, at least once in each calendar year, prepare a report on the discharge of its functions.
- (2) The Independent Supervisor must give a copy of each report prepared under subsection (1) to—
 - (a) the Secretary of State;
 - (b) the First Minister in Scotland;

Status: This is the original version (as it was originally enacted).

- (c) the First Minister and the deputy First Minister in Northern Ireland;
 - (d) the Assembly First Secretary in Wales.
- (3) The Secretary of State must lay before each House of Parliament a copy of each report received by him under subsection (2)(a).
- (4) In relation to a calendar year during which an appointment of a body as the Independent Supervisor is made or revoked by an order under section 1228, this section applies with such modifications as may be specified in the order.

Information

1232 Matters to be notified to the Independent Supervisor

- (1) The Independent Supervisor may require an Auditor General—
- (a) to notify the Independent Supervisor immediately of the occurrence of such events as it may specify in writing and to give it such information in respect of those events as is so specified;
 - (b) to give the Independent Supervisor, at such times or in respect of such periods as it may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Independent Supervisor may reasonably require for the exercise of the functions conferred on it by or by virtue of this Part.
- (3) The Independent Supervisor may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Independent Supervisor specifies or approves some other manner.

1233 The Independent Supervisor’s power to call for information

- (1) The Independent Supervisor may by notice in writing require an Auditor General to give it such information as it may reasonably require for the exercise of the functions conferred on it by or by virtue of this Part.
- (2) The Independent Supervisor may require that any information which it requires under this section is to be given within such reasonable time and verified in such manner as it may specify.

Enforcement

1234 Suspension notices

- (1) The Independent Supervisor may issue—
- (a) a notice (a “suspension notice”) suspending an Auditor General’s eligibility for appointment as a statutory auditor in relation to all persons, or any specified person or persons, indefinitely or until a date specified in the notice;
 - (b) a notice amending or revoking a suspension notice previously issued to an Auditor General.

Status: This is the original version (as it was originally enacted).

- (2) In determining whether it is appropriate to issue a notice under subsection (1), the Independent Supervisor must have regard to—
 - (a) the Auditor General’s performance of the obligations imposed on him by or by virtue of this Part, and
 - (b) the Auditor General’s performance of his functions as a statutory auditor.
- (3) A notice under subsection (1) must—
 - (a) be in writing, and
 - (b) state the date on which it takes effect (which must be after the period of three months beginning with the date on which it is issued).
- (4) Before issuing a notice under subsection (1), the Independent Supervisor must—
 - (a) give written notice of its intention to do so to the Auditor General, and
 - (b) publish the notice mentioned in paragraph (a) in such manner as it thinks appropriate for bringing it to the attention of any other persons who are likely to be affected.
- (5) A notice under subsection (4) must—
 - (a) state the reasons for which the Independent Supervisor proposes to act, and
 - (b) give particulars of the rights conferred by subsection (6).
- (6) A person within subsection (7) may, within the period of three months beginning with the date of service or publication of the notice under subsection (4) or such longer period as the Independent Supervisor may allow, make written representations to the Independent Supervisor and, if desired, oral representations to a person appointed for that purpose by the Independent Supervisor.
- (7) The persons within this subsection are—
 - (a) the Auditor General, and
 - (b) any other person who appears to the Independent Supervisor to be affected.
- (8) The Independent Supervisor must have regard to any representations made in accordance with subsection (6) in determining—
 - (a) whether to issue a notice under subsection (1), and
 - (b) the terms of any such notice.
- (9) If in any case the Independent Supervisor considers it appropriate to do so in the public interest it may issue a notice under subsection (1), without regard to the restriction in subsection (3)(b), even if—
 - (a) no notice has been given or published under subsection (4), or
 - (b) the period of time for making representations in pursuance of such a notice has not expired.
- (10) On issuing a notice under subsection (1), the Independent Supervisor must—
 - (a) give a copy of the notice to the Auditor General, and
 - (b) publish the notice in such manner as it thinks appropriate for bringing it to the attention of persons likely to be affected.
- (11) In this section “specified” means specified in, or of a description specified in, the suspension notice in question.

Status: This is the original version (as it was originally enacted).

1235 Effect of suspension notices

- (1) An Auditor General must not act as a statutory auditor at any time when a suspension notice issued to him in respect of the audited person has effect.
- (2) If at any time during an Auditor General’s term of office as a statutory auditor a suspension notice issued to him in respect of the audited person takes effect, he must immediately—
 - (a) resign his office (with immediate effect), and
 - (b) give notice in writing to the audited person that he has resigned by reason of his becoming ineligible for appointment.
- (3) A suspension notice does not make an Auditor General ineligible for appointment as a statutory auditor for the purposes of section 1213 (effect of ineligibility: criminal offences).

1236 Compliance orders

- (1) If at any time it appears to the Independent Supervisor that an Auditor General has failed to comply with an obligation imposed on him by or by virtue of this Part, the Independent Supervisor may make an application to the court under this section.
- (2) If on an application under this section the court decides that the Auditor General has failed to comply with the obligation in question, it may order the Auditor General to take such steps as the court directs for securing that the obligation is complied with.
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

Proceedings

1237 Proceedings involving the Independent Supervisor

- (1) If the Independent Supervisor is an unincorporated association, any relevant proceedings may be brought by or against it in the name of any body corporate whose constitution provides for the establishment of the body.
- (2) For this purpose “relevant proceedings” means proceedings brought in or in connection with the exercise of any function by the body as the Independent Supervisor.
- (3) Where an appointment under section 1228 is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.

Grants

1238 Grants to the Independent Supervisor

In section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (grants to bodies concerned with accounting standards etc), after subsection (2)(k) insert—

- “(ka) exercising functions of the Independent Supervisor appointed under Chapter 3 of Part 42 of the Companies Act 2006;”.

CHAPTER 4

THE REGISTER OF AUDITORS ETC

1239 The register of auditors

- (1) The Secretary of State must make regulations requiring the keeping of a register of—
 - (a) the persons eligible for appointment as a statutory auditor, and
 - (b) third country auditors (see Chapter 5) who apply to be registered in the specified manner and in relation to whom specified requirements are met.
- (2) The regulations must require each person's entry in the register to contain—
 - (a) his name and address,
 - (b) in the case of an individual eligible for appointment as a statutory auditor, the specified information relating to any firm on whose behalf he is responsible for statutory audit work,
 - (c) in the case of a firm eligible for appointment as a statutory auditor, the specified information relating to the individuals responsible for statutory audit work on its behalf,
 - (d) in the case of an individual or firm eligible for appointment as a statutory auditor by virtue of Chapter 2, the name of the relevant supervisory body, and
 - (e) in the case of a firm eligible for appointment as a statutory auditor by virtue of Chapter 2 or a third country auditor, the information mentioned in subsection (3),and may require each person's entry to contain other specified information.
- (3) The information referred to in subsection (2)(e) is—
 - (a) in relation to a body corporate, except where paragraph (b) applies, the name and address of each person who is a director of the body or holds any shares in it;
 - (b) in relation to a limited liability partnership, the name and address of each member of the partnership;
 - (c) in relation to a corporation sole, the name and address of the individual for the time being holding the office by the name of which he is the corporation sole;
 - (d) in relation to a partnership, the name and address of each partner.
- (4) The regulations may provide that different parts of the register are to be kept by different persons.
- (5) The regulations may impose such obligations as the Secretary of State thinks fit on—
 - (a) recognised supervisory bodies,
 - (b) any body designated by order under section 1252 (delegation of Secretary of State's functions),
 - (c) persons eligible for appointment as a statutory auditor,
 - (d) third country auditors,
 - (e) any person with whom arrangements are made by one or more recognised supervisory bodies, or by any body designated by order under section 1252, with respect to the keeping of the register, or
 - (f) the Independent Supervisor appointed under section 1228.
- (6) The regulations may include—

Status: This is the original version (as it was originally enacted).

- (a) provision requiring that specified entries in the register be open to inspection at times and places specified or determined in accordance with the regulations;
 - (b) provision enabling a person to require a certified copy of specified entries in the register;
 - (c) provision authorising the charging of fees for inspection, or the provision of copies, of such reasonable amount as may be specified or determined in accordance with the regulations.
- (7) The Secretary of State may direct in writing that the requirements imposed by the regulations in accordance with subsections (2)(e) and (3), or such of those requirements as are specified in the direction, are not to apply, in whole or in part, in relation to a particular registered third country auditor or class of registered third country auditors.
- (8) The obligations imposed by regulations under this section on such persons as are mentioned in subsection (5)(b) or (e) are enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36).
- (9) In this section “specified” means specified by regulations under this section.
- (10) Regulations under this section are subject to negative resolution procedure.

1240 Information to be made available to public

- (1) The Secretary of State may make regulations requiring a person eligible for appointment as a statutory auditor, or a member of a specified class of such persons, to keep and make available to the public specified information, including information regarding—
- (a) the person’s ownership and governance,
 - (b) the person’s internal controls with respect to the quality and independence of its audit work,
 - (c) the person’s turnover, and
 - (d) the audited persons of whom the person has acted as statutory auditor.
- (2) Regulations under this section may—
- (a) impose such obligations as the Secretary of State thinks fit on persons eligible for appointment as a statutory auditor;
 - (b) require the information to be made available to the public in a specified manner.
- (3) In this section “specified” means specified by regulations under this section.
- (4) Regulations under this section are subject to negative resolution procedure.

CHAPTER 5

REGISTERED THIRD COUNTRY AUDITORS

Introductory

1241 Meaning of “third country auditor”, “registered third country auditor” etc

(1) In this Part—

“third country auditor” means the auditor of the accounts of a traded non-Community company, and the expressions “third country audit” and “third country audit work” are to be construed accordingly;

“registered third country auditor” means a third country auditor who is entered in the register kept in accordance with regulations under section 1239(1).

(2) In subsection (1) “traded non-Community company” means a body corporate—

- (a) which is incorporated or formed under the law of a country or territory which is not a member State or part of a member State,
- (b) whose transferable securities are admitted to trading on a regulated market situated or operating in the United Kingdom, and
- (c) which has not been excluded, or is not of a description of bodies corporate which has been excluded, from this definition by an order made by the Secretary of State.

(3) For this purpose—

“regulated market” has the meaning given by Article 4.1(14) of Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments;

“transferable securities” has the meaning given by Article 4.1(18) of that Directive.

(4) An order under this section is subject to negative resolution procedure.

Duties

1242 Duties of registered third country auditors

(1) A registered third country auditor must participate in—

- (a) arrangements within paragraph 1 of Schedule 12 (arrangements for independent monitoring of audits of traded non-Community companies), and
- (b) arrangements within paragraph 2 of that Schedule (arrangements for independent investigation for disciplinary purposes of public interest cases).

(2) A registered third country auditor must—

- (a) take such steps as may be reasonably required of it to enable its performance of third country audits to be monitored by means of inspections carried out under the arrangements mentioned in subsection (1)(a), and
- (b) comply with any decision as to disciplinary action to be taken against it made under the arrangements mentioned in subsection (1)(b).

Status: This is the original version (as it was originally enacted).

- (3) Schedule 12 makes further provision with respect to the arrangements in which registered third country auditors are required to participate.
- (4) The Secretary of State may direct in writing that subsections (1) to (3) are not to apply, in whole or in part, in relation to a particular registered third country auditor or class of registered third country auditors.

Information

1243 Matters to be notified to the Secretary of State

- (1) The Secretary of State may require a registered third country auditor—
 - (a) to notify him immediately of the occurrence of such events as he may specify in writing and to give him such information in respect of those events as is so specified;
 - (b) to give him, at such times or in respect of such periods as he may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Secretary of State may reasonably require for the exercise of his functions under this Part.
- (3) The Secretary of State may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Secretary of State specifies or approves some other manner.

1244 The Secretary of State’s power to call for information

- (1) The Secretary of State may by notice in writing require a registered third country auditor to give him such information as he may reasonably require for the exercise of his functions under this Part.
- (2) The Secretary of State may require that any information which he requires under this section is to be given within such reasonable time and verified in such manner as he may specify.

Enforcement

1245 Compliance orders

- (1) If at any time it appears to the Secretary of State that a registered third country auditor has failed to comply with an obligation imposed on him by or by virtue of this Part, the Secretary of State may make an application to the court under this section.
- (2) If on an application under this section the court decides that the auditor has failed to comply with the obligation in question, it may order the auditor to take such steps as the court directs for securing that the obligation is complied with.
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

1246 Removal of third country auditors from the register of auditors

- (1) The Secretary of State may, by regulations, confer on the person keeping the register in accordance with regulations under section 1239(1) power to remove a third country auditor from the register.
- (2) Regulations under this section must require the person keeping the register, in determining whether to remove a third country auditor from the register, to have regard to the auditor's compliance with obligations imposed on him by or by virtue of this Part.
- (3) Where provision is made under section 1239(4) (different parts of the register to be kept by different persons), references in this section to the person keeping the register are to the person keeping that part of the register which relates to third country auditors.
- (4) Regulations under this section are subject to negative resolution procedure.

1247 Grants to bodies concerned with arrangements under Schedule 12

In section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (grants to bodies concerned with accounting standards etc), after subsection (2)(ka) (inserted by section 1238) insert—

“(kb) establishing, maintaining or carrying out arrangements within paragraph 1 or 2 of Schedule 12 to the Companies Act 2006;”.

CHAPTER 6

SUPPLEMENTARY AND GENERAL

Power to require second company audit

1248 Secretary of State's power to require second audit of a company

- (1) This section applies where a person appointed as statutory auditor of a company was not an appropriate person for any part of the period during which the audit was conducted.
- (2) The Secretary of State may direct the company concerned to retain an appropriate person—
 - (a) to conduct a second audit of the relevant accounts, or
 - (b) to review the first audit and to report (giving his reasons) whether a second audit is needed.
- (3) For the purposes of subsections (1) and (2) a person is “appropriate” if he—
 - (a) is eligible for appointment as a statutory auditor or, if the person is an Auditor General, for appointment as statutory auditor of the company, and
 - (b) is not prohibited by section 1214(1) (independence requirement) from acting as statutory auditor of the company.
- (4) The Secretary of State must send a copy of a direction under subsection (2) to the registrar of companies.
- (5) The company is guilty of an offence if—

Status: This is the original version (as it was originally enacted).

- (a) it fails to comply with a direction under subsection (2) within the period of 21 days beginning with the date on which it is given, or
 - (b) it has been convicted of a previous offence under this subsection and the failure to comply with the direction which led to the conviction continues after the conviction.
- (6) The company must—
- (a) send a copy of a report under subsection (2)(b) to the registrar of companies, and
 - (b) if the report states that a second audit is needed, take such steps as are necessary for the carrying out of that audit.
- (7) The company is guilty of an offence if—
- (a) it fails to send a copy of a report under subsection (2)(b) to the registrar within the period of 21 days beginning with the date on which it receives it,
 - (b) in a case within subsection (6)(b), it fails to take the steps mentioned immediately it receives the report, or
 - (c) it has been convicted of a previous offence under this subsection and the failure to send a copy of the report, or take the steps, which led to the conviction continues after the conviction.
- (8) A company guilty of an offence under this section is liable on summary conviction—
- (a) in a case within subsection (5)(a) or (7)(a) or (b), to a fine not exceeding level 5 on the standard scale, and
 - (b) in a case within subsection (5)(b) or (7)(c), to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.
- (9) In this section “registrar of companies” has the meaning given by section 1060.

1249 Supplementary provision about second audits

- (1) If a person accepts an appointment, or continues to act, as statutory auditor of a company at a time when he knows he is not an appropriate person, the company may recover from him any costs incurred by it in complying with the requirements of section 1248.

For this purpose “appropriate” is to be construed in accordance with subsection (3) of that section.

- (2) Where a second audit is carried out under section 1248, any statutory or other provision applying in relation to the first audit applies also, in so far as practicable, in relation to the second audit.
- (3) A direction under section 1248(2) is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36).

False and misleading statements

1250 Misleading, false and deceptive statements

- (1) A person is guilty of an offence if—
- (a) for the purposes of or in connection with any application under this Part, or

Status: This is the original version (as it was originally enacted).

- (b) in purported compliance with any requirement imposed on him by or by virtue of this Part,
he knowingly or recklessly furnishes information which is misleading, false or deceptive in a material particular.
- (2) It is an offence for a person whose name does not appear on the register of auditors kept under regulations under section 1239 in an entry made under subsection (1)(a) of that section to describe himself as a registered auditor or so to hold himself out as to indicate, or be reasonably understood to indicate, that he is a registered auditor.
- (3) It is an offence for a person whose name does not appear on the register of auditors kept under regulations under that section in an entry made under subsection (1)(b) of that section to describe himself as a registered third country auditor or so to hold himself out as to indicate, or be reasonably understood to indicate, that he is a registered third country auditor.
- (4) It is an offence for a body which is not a recognised supervisory body or a recognised qualifying body to describe itself as so recognised or so to describe itself or hold itself out as to indicate, or be reasonably understood to indicate, that it is so recognised.
- (5) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both),
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).

In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” in paragraph (b)(i) substitute “six months”.

- (6) Subject to subsection (7), a person guilty of an offence under subsection (2), (3) or (4) is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or both),
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale (or both).

In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in paragraph (a) substitute “six months”.

- (7) Where a contravention of subsection (2), (3) or (4) involves a public display of the offending description, the maximum fine that may be imposed is an amount equal to level 5 on the standard scale multiplied by the number of days for which the display has continued.
- (8) It is a defence for a person charged with an offence under subsection (2), (3) or (4) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Status: This is the original version (as it was originally enacted).

Fees

1251 Fees

- (1) An applicant for a recognition order under this Part must pay such fee in respect of his application as the Secretary of State may by regulations prescribe; and no application is to be regarded as duly made unless this subsection is complied with.
- (2) The Secretary of State may by regulations prescribe periodical fees to be paid by—
 - (a) every recognised supervisory body,
 - (b) every recognised qualifying body,
 - (c) every Auditor General, and
 - (d) every registered third country auditor.
- (3) Fees received by the Secretary of State by virtue of this Part are to be paid into the Consolidated Fund.
- (4) Regulations under this section are subject to negative resolution procedure.

Delegation of Secretary of State's functions

1252 Delegation of the Secretary of State's functions

- (1) The Secretary of State may make an order under this section (a “delegation order”) for the purpose of enabling functions of the Secretary of State under this Part to be exercised by a body designated by the order.
- (2) The body designated by a delegation order may be either—
 - (a) a body corporate which is established by the order, or
 - (b) subject to section 1253, a body (whether a body corporate or an unincorporated association) which is already in existence (“an existing body”).
- (3) A delegation order has the effect of making the body designated by the order designated under section 5 of the Freedom of Information Act 2000 (c. 36) (further powers to designate public authorities).
- (4) A delegation order has the effect of transferring to the body designated by it all functions of the Secretary of State under this Part—
 - (a) subject to such exceptions and reservations as may be specified in the order, and
 - (b) except—
 - (i) his functions in relation to the body itself, and
 - (ii) his functions under section 1228 (appointment of Independent Supervisor).
- (5) A delegation order may confer on the body designated by it such other functions supplementary or incidental to those transferred as appear to the Secretary of State to be appropriate.
- (6) Any transfer of functions under the following provisions must be subject to the reservation that the functions remain exercisable concurrently by the Secretary of State—

Status: This is the original version (as it was originally enacted).

- (a) section 1224 (power to call for information from recognised bodies etc);
 - (b) section 1244 (power to call for information from registered third country auditors);
 - (c) section 1254 (directions to comply with international obligations).
- (7) Any transfer of—
- (a) the function of refusing to make a declaration under section 1221(1) (approval of overseas qualifications) on the grounds referred to in section 1221(4) (lack of comparable treatment), or
 - (b) the function of withdrawing such a declaration under section 1221(7) on those grounds,
- must be subject to the reservation that the function is exercisable only with the consent of the Secretary of State.
- (8) A delegation order may be amended or, if it appears to the Secretary of State that it is no longer in the public interest that the order should remain in force, revoked by a further order under this section.
- (9) Where functions are transferred or resumed, the Secretary of State may by order confer or, as the case may be, take away such other functions supplementary or incidental to those transferred or resumed as appear to him to be appropriate.
- (10) Where a delegation order is made, Schedule 13 has effect with respect to—
- (a) the status of the body designated by the order in exercising functions of the Secretary of State under this Part,
 - (b) the constitution and proceedings of the body where it is established by the order,
 - (c) the exercise by the body of certain functions transferred to it, and
 - (d) other supplementary matters.
- (11) An order under this section which has the effect of transferring or resuming any functions is subject to affirmative resolution procedure.
- (12) Any other order under this section is subject to negative resolution procedure.

1253 Delegation of functions to an existing body

- (1) The Secretary of State's power to make a delegation order under section 1252 which designates an existing body is exercisable in accordance with this section.
- (2) The Secretary of State may make such a delegation order if it appears to him that—
 - (a) the body is able and willing to exercise the functions that would be transferred by the order, and
 - (b) the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (3) are met.
- (3) The conditions are—
 - (a) that the functions in question will be exercised effectively, and
 - (b) where the delegation order is to contain any requirements or other provisions specified under subsection (4), that those functions will be exercised in accordance with any such requirements or provisions.

Status: This is the original version (as it was originally enacted).

- (4) The delegation order may contain such requirements or other provision relating to the exercise of the functions by the designated body as appear to the Secretary of State to be appropriate.
- (5) An existing body—
 - (a) may be designated by a delegation order under section 1252, and
 - (b) may accordingly exercise functions of the Secretary of State in pursuance of the order,despite any involvement of the body in the exercise of any functions under arrangements within paragraph 21, 22, 23(1) or 24(1) of Schedule 10 or paragraph 1 or 2 of Schedule 12.

International obligations

1254 Directions to comply with international obligations

- (1) If it appears to the Secretary of State—
 - (a) that any action proposed to be taken by a recognised supervisory body or a recognised qualifying body, or a body designated by order under section 1252, would be incompatible with Community obligations or any other international obligations of the United Kingdom, or
 - (b) that any action which that body has power to take is required for the purpose of implementing any such obligations,he may direct the body not to take or, as the case may be, to take the action in question.
- (2) A direction may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient.
- (3) A direction under this section given to a body designated by order under section 1252 is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36).

General provision relating to offences

1255 Offences by bodies corporate, partnerships and unincorporated associations

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) Where an offence under this Part committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or

any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

1256 Time limits for prosecution of offences

- (1) An information relating to an offence under this Part which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within the period of twelve months beginning with the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State to justify the proceedings comes to his knowledge.
- (2) Proceedings in Scotland for an offence under this Part may be commenced at any time within the period of twelve months beginning with the date on which evidence sufficient in the Lord Advocate's opinion to justify proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within the period of twelve months beginning with the date on which it came to the knowledge of the Secretary of State.
- (3) For the purposes of subsection (2) proceedings are to be deemed to be commenced on the date on which a warrant to apprehend or cite the accused is granted, if the warrant is executed without undue delay.
- (4) A complaint charging an offence under this Part which is triable by a magistrates' court in Northern Ireland may be so tried if it is made at any time within the period of twelve months beginning with the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Secretary of State to justify the proceedings comes to his knowledge.
- (5) This section does not authorise—
 - (a) in the case of proceedings in England and Wales, the trial of an information laid,
 - (b) in the case of proceedings in Scotland, the commencement of proceedings, or
 - (c) in the case of proceedings in Northern Ireland, the trial of a complaint made, more than three years after the commission of the offence.
- (6) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Director of Public Prosecutions for Northern Ireland or the Secretary of State as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.
- (7) Nothing in this section affects proceedings within the time limits prescribed by section 127(1) of the Magistrates' Courts Act 1980 (c. 43), section 331 of the Criminal Procedure (Scotland) Act 1975 or Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (the usual time limits for criminal proceedings).

1257 Jurisdiction and procedure in respect of offences

- (1) Summary proceedings for an offence under this Part may, without prejudice to any jurisdiction exercisable apart from this section, be taken—
 - (a) against a body corporate or unincorporated association at any place at which it has a place of business, and
 - (b) against an individual at any place where he is for the time being.

Status: This is the original version (as it was originally enacted).

- (2) Proceedings for an offence alleged to have been committed under this Part by an unincorporated association must be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate.
- (3) Section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in England and Wales with an offence under this Part as they apply in the case of a corporation.
- (4) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Article 166 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in Northern Ireland with an offence under this Part as they apply in the case of a corporation.
- (5) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under this Part by an unincorporated association, section 70 of the Criminal Procedure (Scotland) Act 1995 (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.
- (6) A fine imposed on an unincorporated association on its conviction of such an offence must be paid out of the funds of the association.

Notices etc

1258 Service of notices

- (1) This section has effect in relation to any notice, direction or other document required or authorised by or by virtue of this Part to be given to or served on any person other than the Secretary of State.
- (2) Any such document may be given to or served on the person in question—
 - (a) by delivering it to him,
 - (b) by leaving it at his proper address, or
 - (c) by sending it by post to him at that address.
- (3) Any such document may—
 - (a) in the case of a body corporate, be given to or served on an officer of that body;
 - (b) in the case of a partnership, be given to or served on any partner;
 - (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of that association.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person is his last known address (whether of his residence or of a place where he carries on business or is employed) and also—
 - (a) in the case of a person who is eligible under the rules of a recognised supervisory body for appointment as a statutory auditor and who does not have a place of business in the United Kingdom, the address of that body;
 - (b) in the case of a body corporate or an officer of that body, the address of the registered or principal office of that body in the United Kingdom;

Status: This is the original version (as it was originally enacted).

- (c) in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in the United Kingdom.

1259 Documents in electronic form

- (1) This section applies where—
 - (a) section 1258 authorises the giving or sending of a notice, direction or other document by its delivery to a particular person (“the recipient”), and
 - (b) the notice, direction or other document is transmitted to the recipient—
 - (i) by means of an electronic communications network, or
 - (ii) by other means but in a form that requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Part as a delivery of the notice, direction or other document to the recipient, but only if the recipient has indicated to the person making the transmission his willingness to receive the notice, direction or other document in the form and manner used.
- (3) An indication to a person for the purposes of subsection (2)—
 - (a) must be given to the person in such manner as he may require,
 - (b) may be a general indication or an indication that is limited to notices, directions or other documents of a particular description,
 - (c) must state the address to be used,
 - (d) must be accompanied by such other information as the person requires for the making of the transmission, and
 - (e) may be modified or withdrawn at any time by a notice given to the person in such manner as he may require.
- (4) In this section “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21).

Interpretation

1260 Meaning of “associate”

- (1) In this Part “associate”, in relation to a person, is to be construed as follows.
- (2) In relation to an individual, “associate” means—
 - (a) that individual’s spouse, civil partner or minor child or step-child,
 - (b) any body corporate of which that individual is a director, and
 - (c) any employee or partner of that individual.
- (3) In relation to a body corporate, “associate” means—
 - (a) any body corporate of which that body is a director,
 - (b) any body corporate in the same group as that body, and
 - (c) any employee or partner of that body or of any body corporate in the same group.
- (4) In relation to a partnership constituted under the law of Scotland, or any other country or territory in which a partnership is a legal person, “associate” means—
 - (a) any body corporate of which that partnership is a director,

Status: This is the original version (as it was originally enacted).

- (b) any employee of or partner in that partnership, and
 - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership constituted under the law of England and Wales or Northern Ireland, or the law of any other country or territory in which a partnership is not a legal person, “associate” means any person who is an associate of any of the partners.
- (6) In subsections (2)(b), (3)(a) and (4)(a), in the case of a body corporate which is a limited liability partnership, “director” is to be read as “member”.

1261 Minor definitions

- (1) In this Part, unless a contrary intention appears—
- “address” means—
 - (a) in relation to an individual, his usual residential or business address;
 - (b) in relation to a firm, its registered or principal office in the United Kingdom;
 - “company” means any company or other body the accounts of which must be audited in accordance with Part 16;
 - “director”, in relation to a body corporate, includes any person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the body are accustomed to act;
 - “firm” means any entity, whether or not a legal person, which is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association;
 - “group”, in relation to a body corporate, means the body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;
 - “holding company” and “subsidiary” are to be read in accordance with section 1159 and Schedule 6;
 - “officer”, in relation to a body corporate, includes a director, a manager, a secretary or, where the affairs of the body are managed by its members, a member;
 - “parent undertaking” and “subsidiary undertaking” are to be read in accordance with section 1162 and Schedule 7.
- (2) For the purposes of this Part a body is to be regarded as “established in the United Kingdom” if and only if—
- (a) it is incorporated or formed under the law of the United Kingdom or a part of the United Kingdom, or
 - (b) its central management and control are exercised in the United Kingdom;
- and any reference to a qualification “obtained in the United Kingdom” is to a qualification obtained from such a body.
- (3) The Secretary of State may by regulations make such modifications of this Part as appear to him to be necessary or appropriate for the purposes of its application in relation to any firm, or description of firm, which is not a body corporate or a partnership.
- (4) Regulations under subsection (3) are subject to negative resolution procedure.

Status: This is the original version (as it was originally enacted).

1262 Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

<i>Expression</i>	<i>Provision</i>
address	section 1261(1)
appropriate qualification	section 1219
associate	section 1260
audited person	section 1210(2)
Auditor General	section 1226(1)
company	section 1261(1)
delegation order	section 1252(1)
director (of a body corporate)	section 1261(1)
enactment	section 1293
established in the United Kingdom	section 1261(2)
firm	section 1261(1)
group (in relation to a body corporate)	section 1261(1)
holding company	section 1261(1)
main purposes of this Part	section 1209
member (of a supervisory body)	section 1217(2)
obtained in the United Kingdom	section 1261(2)
officer	section 1261(1)
parent undertaking	section 1261(1)
qualifying body	section 1220(1)
recognised, in relation to a professional qualification	section 1220(3) and Schedule 11
recognised, in relation to a qualifying body	paragraph 1(2) of Schedule 11
recognised, in relation to a supervisory body	section 1217(4) and Schedule 10
registered third country auditor	section 1241(1)
rules of a qualifying body	section 1220(2)
rules of a supervisory body	section 1217(3)
statutory auditor, statutory audit and statutory audit work	section 1210(1)
subsidiary	section 1261(1)
supervisory body	section 1217(1)

Status: This is the original version (as it was originally enacted).

<i>Expression</i>	<i>Provision</i>
subsidiary undertaking	section 1261(1)
third country auditor, third country audit and third country audit work	section 1241(1)

Miscellaneous and general

1263 Power to make provision in consequence of changes affecting accountancy bodies

- (1) The Secretary of State may by regulations make such amendments of enactments as appear to him to be necessary or expedient in consequence of any change of name, merger or transfer of engagements affecting—
- (a) a recognised supervisory body or recognised qualifying body, or
 - (b) a body of accountants referred to in, or approved, authorised or otherwise recognised for the purposes of, any other enactment.
- (2) Regulations under this section are subject to negative resolution procedure.

1264 Consequential amendments

Schedule 14 contains consequential amendments relating to this Part.