

SCHEDULES

SCHEDULE 5

Section 94

OPTION TO KEEP INFORMATION ON CENTRAL REGISTER

PART 1

CREATION OF THE OPTION

Register of members

- 1 Part 8 of the Companies Act 2006 (a company's members) is amended as follows.
- 2 In Chapter 2 (register of members), before section 113 insert—

“112A Alternative method of record-keeping

This Chapter must be read with Chapter 2A (which allows for an alternative method of record-keeping in the case of private companies).”

- 3 After Chapter 2 insert—

“CHAPTER 2A

OPTION TO KEEP INFORMATION ON CENTRAL REGISTER

128A Introduction

- (1) This Chapter sets out rules allowing private companies to keep information on the register kept by the registrar instead of entering it in their register of members.
- (2) The register kept by the registrar (see section 1080) is referred to in this Chapter as “the central register”.

128B Right to make an election

- (1) An election may be made under this section—
 - (a) by the subscribers wishing to form a private company under this Act, or
 - (b) by the private company itself once it is formed and registered.
- (2) In the latter case, the election is of no effect unless, before it is made—
 - (a) all the members of the company have assented to the making of the election, and

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- (b) any overseas branch registers that the company was keeping under Chapter 3 have been discontinued and all the entries in those registers transferred to the company's register of members in accordance with section 135.
- (3) An election under this section is made by giving notice of election to the registrar.
- (4) If the notice is given by subscribers wishing to form a private company—
 - (a) it must be given when the documents required to be delivered under section 9 are delivered to the registrar, and
 - (b) it must be accompanied by a statement containing all the information that—
 - (i) would be required (in the absence of the notice) to be entered in the company's register of members on incorporation of the company, and
 - (ii) is not otherwise included in the documents delivered under section 9.
- (5) If the notice is given by the company, it must be accompanied by—
 - (a) a statement by the company—
 - (i) that all the members of the company have assented to the making of the election, and
 - (ii) if the company was keeping any overseas branch registers, that all such registers have been discontinued and all the entries in them transferred to the company's register of members in accordance with section 135, and
 - (b) a statement containing all the information that is required to be contained in the company's register of members as at the date of the notice in respect of matters that are current as at that date.
- (6) The company must where necessary update the statement sent under subsection (5)(b) to ensure that the final version delivered to the registrar contains all the information that is required to be contained in the company's register of members as at the time immediately before the election takes effect (see section 128C) in respect of matters that are current as at that time.
- (7) The obligation in subsection (6) to update the statement includes an obligation to rectify it (where necessary) in consequence of the company's register of members being rectified (whether before or after the election takes effect).
- (8) If default is made in complying with subsection (6), an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

- (10) A reference in this Chapter to matters that are current as at a given date or time is a reference to—
- (a) persons who are members of the company as at that date or time, and
 - (b) any other matters that are current as at that date or time.

128C Effective date of election

- (1) An election made under section 128B takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
 - (a) the company ceases to be a private company, or
 - (b) a notice of withdrawal sent by the company under section 128J is registered by the registrar,whichever occurs first.

128D Effect of election on obligations under Chapter 2

- (1) The effect of an election under section 128B on a company's obligations under Chapter 2 is as follows.
- (2) The company's obligation to maintain a register of members does not apply with respect to the period when the election is in force.
- (3) This means that, during that period—
 - (a) the company must continue to keep a register of members in accordance with Chapter 2 (a "historic" register) containing all the information that was required to be stated in that register as at the time immediately before the election took effect, but
 - (b) the company does not have to update that register to reflect any changes that occur after that time.
- (4) Subsections (2) and (3) apply to the index of members (if the company is obliged to keep an index of members) as they apply to the register of members.
- (5) The provisions of Chapter 2 (including the rights to inspect or require copies of the register and to inspect the index) continue to apply to the historic register and, if applicable, the historic index during the period when the election is in force.
- (6) The company must place a note in its historic register—
 - (a) stating that an election under section 128B is in force,
 - (b) recording when that election took effect, and
 - (c) indicating that up-to-date information about its members is available for public inspection on the central register.
- (7) Subsections (7) and (8) of section 113 apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.

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- (8) The obligations under this section with respect to a historic register and historic index do not apply in a case where the election was made by subscribers wishing to form a private company.

128E Duty to notify registrar of changes

- (1) The duty under subsection (2) applies during the period when an election under section 128B is in force.
- (2) The company must deliver to the registrar any relevant information that the company would during that period have been obliged under this Act to enter in its register of members, had the election not been in force.
- (3) “Relevant information” means information other than—
- (a) the date mentioned in section 113(2)(b) (date when person registered as member),
 - (b) the date mentioned in section 123(3)(b) (date when membership of limited company increases from one to two or more members), and
 - (c) the dates mentioned in the following provisions, but only in cases where the date to be recorded in the central register is to be the date on which the document containing information of the relevant change is registered by the registrar—
 - (i) section 113(2)(c) (date when person ceases to be member),
 - (ii) section 123(2)(b) (date when company becomes single member company).
- (4) The relevant information must be delivered as soon as reasonably practicable after the company becomes aware of it and, in any event, no later than the time by which the company would have been required to enter the information in its register of members.
- (5) In a case of the kind described in subsection (3)(c), the company must, when it delivers information under subsection (2) of the relevant change, indicate to the registrar that, in accordance with section 1081(1A), the date to be recorded in the central register is to be the date on which the document containing that information is registered by the registrar.
- (6) If default is made in complying with this section, an offence is committed by—
- (a) the company, and
 - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

128F Information as to state of central register

- (1) When a person inspects or requests a copy of material on the central register relating to a company in respect of which an election under section 128B

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is in force, the person may ask the company to confirm that all information that the company is required to deliver to the registrar under this Chapter has been delivered.

- (2) If a company fails to respond to a request under subsection (1), an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

128G Power of court to order company to remedy default or delay

- (1) This section applies if—
 - (a) the name of a person is without sufficient cause included in, or omitted from, information that a company delivers to the registrar under this Chapter concerning its members, or
 - (b) default is made or unnecessary delay takes place in informing the registrar under this Chapter of—
 - (i) the name of a person who is to be a member of the company, or
 - (ii) the fact that a person has ceased or is to cease to be a member of the company.
- (2) The person aggrieved, or any member of the company, or the company, may apply to the court for an order—
 - (a) requiring the company to deliver to the registrar the information (or statements) necessary to rectify the position, and
 - (b) where applicable, requiring the registrar to record under section 1081(1A) the date determined by the court.
- (3) The court may either refuse the application or may make the order and order the company to pay any damages sustained by any party aggrieved.
- (4) On such an application the court may decide—
 - (a) any question relating to the title of a person who is a party to the application to have the person's name included in or omitted from information delivered to the registrar under this Chapter about the company's members, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and
 - (b) any question necessary or expedient to be decided for rectifying the position.
- (5) Nothing in this section affects a person's rights under section 1095 or 1096 (rectification of register on application to registrar or under court order).

128H Central register to be evidence

- (1) The central register is prima facie evidence of any matters about which a company is required to deliver information to the registrar under this Chapter.

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- (2) Subsection (1) does not apply to information to be included in a statement under section 128B(5)(b) or in any updated statement under section 128B(6).

128I Time limits for claims arising from delivery to registrar

- (1) Liability incurred by a company—
- (a) from the delivery to the registrar of information under this Chapter, or
 - (b) from a failure to deliver any such information,
- is not enforceable more than 10 years after the date on which the information was delivered or, as the case may be, the failure first occurred.
- (2) This is without prejudice to any lesser period of limitation (and, in Scotland, to any rule that the obligation giving rise to the liability prescribes before the expiry of that period).

128J Withdrawing the election

- (1) A company may withdraw an election made by or in respect of it under section 128B.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
- (3) The withdrawal takes effect when the notice is registered by the registrar.
- (4) The effect of withdrawal is that the company's obligation under Chapter 2 to maintain a register of members applies from then on with respect to the period going forward.
- (5) This means that, when the withdrawal takes effect—
- (a) the company must enter in its register of members all the information that is required to be contained in that register in respect of matters that are current as at that time,
 - (b) the company must also retain in its register all the information that it was required under section 128D(3)(a) to keep in a historic register while the election was in force, but
 - (c) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.
- (6) The company must place a note in its register of members—
- (a) stating that the election under section 128B has been withdrawn,
 - (b) recording when that withdrawal took effect, and
 - (c) indicating that information about its members relating to the period when the election was in force that is no longer current is available for public inspection on the central register.
- (7) Subsections (7) and (8) of section 113 apply if a company makes default in complying with subsection (6) as they apply if a company makes default in complying with that section.

128K Power to extend option to public companies

- (1) The Secretary of State may by regulations amend this Act—
 - (a) to extend sections 128A to 128J (with or without modification) to public companies or public companies of a class specified in the regulations, and
 - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

Register of overseas members

- 4 In Chapter 3 of Part 8 of the Companies Act 2006 (overseas branch registers), in section 129 (overseas branch registers), at the end insert—
 - “(6) A company’s right under subsection (1) to keep an overseas branch register does not apply during or with respect to any period when an election is in force in respect of the company under section 128B.”

Register of directors and register of directors’ residential addresses

- 5 Chapter 1 of Part 10 of the Companies Act 2006 (appointment and removal of directors) is amended as follows.
- 6 Under the heading “*Register of directors, etc*”, before section 162 insert—

“161A Alternative method of record-keeping

Sections 162 to 167 must be read with sections 167A to 167E (which allow for an alternative method of record-keeping in the case of private companies).”

- 7 After section 167 insert—

“Option to keep information on the central register

167A Right to make an election

- (1) An election may be made under this section in respect of a register of directors or a register of directors’ residential addresses (or both).
- (2) The election may be made—
 - (a) by the subscribers wishing to form a private company under this Act, or
 - (b) by the private company itself once it is formed and registered.
- (3) The election is made by giving notice of election to the registrar.
- (4) If the notice is given by subscribers wishing to form a private company, it must be given when the documents required to be delivered under section 9 are delivered to the registrar.

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167B Effective date of election

- (1) An election made under section 167A takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
 - (a) the company ceases to be a private company, or
 - (b) a notice of withdrawal sent by the company under section 167E is registered by the registrar,whichever occurs first.

167C Effect of election on obligations under sections 162 to 167

- (1) If an election is in force under section 167A with respect to a company, the company's obligations under sections 162 to 167—
 - (a) to keep and maintain a register of the relevant kind, and
 - (b) to notify the registrar of changes to it,do not apply with respect to the period when the election is in force.
- (2) The reference in subsection (1) to a register “of the relevant kind” is to a register (whether a register of directors or a register of directors' residential addresses) of the kind in respect of which the election is made.

167D Duty to notify registrar of changes

- (1) The duty under subsection (2) applies during the period when an election under section 167A is in force.
- (2) The company must deliver to the registrar—
 - (a) any information of which the company would during that period have been obliged to give notice under section 167, had the election not been in force, and
 - (b) any statement that would have had to accompany such a notice.
- (3) The information (and any accompanying statement) must be delivered as soon as reasonably practicable after the company becomes aware of the information and, in any event, no later than the time by which the company would have been required under section 167 to give notice of the information.
- (4) If default is made in complying with this section, an offence is committed by—
 - (a) the company, and
 - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (5) A person guilty of an offence under this section is liable on summary conviction—
 - (a) in England and Wales, to a fine and, for continued contravention, a daily default fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale;

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- (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

167E Withdrawing the election

- (1) A company may withdraw an election made by or in respect of it under section 167A.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
- (3) The withdrawal takes effect when the notice is registered by the registrar.
- (4) The effect of withdrawal is that the company's obligation under section 162 or (as the case may be) 165 to keep and maintain a register of the relevant kind, and its obligation under section 167 to notify the registrar of changes to that register, apply from then on with respect to the period going forward.
- (5) This means that, when the withdrawal takes effect—
 - (a) the company must enter in that register all the information that is required to be contained in that register in respect of matters that are current as at that time, but
 - (b) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.

167F Power to extend option to public companies

- (1) The Secretary of State may by regulations amend this Act—
 - (a) to extend sections 167A to 167E (with or without modification) to public companies or public companies of a class specified in the regulations, and
 - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

Register of secretaries

8 Part 12 of the Companies Act 2006 (company secretaries) is amended as follows.

9 After section 274 insert—

“274A Alternative method of record-keeping

Sections 275 and 276 must be read with sections 279A to 279E (which allow for an alternative method of record-keeping in the case of private companies).”

10 After section 279 insert—

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“Option to keep information on the central register

279A Right to make an election

- (1) An election may be made under this section—
 - (a) by the subscribers wishing to form a private company under this Act, or
 - (b) by the private company itself once it is formed and registered.
- (2) The election is made by giving notice of election to the registrar.
- (3) If the notice is given by subscribers wishing to form a private company, it must be given when the documents required to be delivered under section 9 are delivered to the registrar.

279B Effective date of election

- (1) An election made under section 279A takes effect when the notice of election is registered by the registrar.
- (2) The election remains in force until either—
 - (a) the company ceases to be a private company, or
 - (b) a notice of withdrawal sent by the company under section 279E is registered by the registrar,whichever occurs first.

279C Effect of election on obligations under sections 275 and 276

If an election is in force under section 279A in respect of a company, the company’s obligations—

- (a) to keep and maintain a register of secretaries under section 275, and
 - (b) to notify the registrar of changes to it under section 276,
- do not apply with respect to the period when the election is in force.

279D Duty to notify registrar of changes

- (1) The duty under subsection (2) applies during the period when an election under section 279A is in force.
- (2) The company must deliver to the registrar—
 - (a) any information of which the company would during that period have been obliged to give notice under section 276, had the election not been in force, and
 - (b) any statement that would have had to accompany such a notice.
- (3) The information (and any accompanying statement) must be delivered as soon as reasonably practicable after the company becomes aware of the information and, in any event, no later than the time by which the company would have been obliged under section 276 to give notice of the information.

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

- (4) If default is made in complying with this section, an offence is committed by—
- (a) the company, and
 - (b) every officer of the company who is in default.

For this purpose a shadow director is treated as an officer of the company.

- (5) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to a fine and, for continued contravention, a daily default fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale;
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

279E Withdrawing the election

- (1) A company may withdraw an election made by or in respect of it under section 279A.
- (2) Withdrawal is achieved by giving notice of withdrawal to the registrar.
- (3) The withdrawal takes effect when the notice is registered by the registrar.
- (4) The effect of withdrawal is that the company's obligation under section 275 to keep and maintain a register of secretaries, and its obligation under section 276 to notify the registrar of changes to that register, apply from then on with respect to the period going forward.
- (5) This means that, when the withdrawal takes effect—
 - (a) the company must enter in its register of secretaries all the information that is required to be contained in that register in respect of matters that are current as at that time, but
 - (b) the company is not required to enter in its register information relating to the period when the election was in force that is no longer current.

279F Power to extend option to public companies

- (1) The Secretary of State may by regulations amend this Act—
 - (a) to extend sections 279A to 279E (with or without modification) to public companies or public companies of a class specified in the regulations, and
 - (b) to make such other amendments as the Secretary of State thinks fit in consequence of that extension.
- (2) Regulations under this section are subject to affirmative resolution procedure.”

PART 2

RELATED AMENDMENTS

- 11 The Companies Act 2006 is amended as follows.
- 12 In section 12 (statement of proposed officers), in subsection (2), after “will be required” insert “(or, in the absence of an election under section 167A or 279A, would be required)”.
- 13 In section 112 (the members of a company), after subsection (2) insert—
- “(3) Where an election under section 128B is in force in respect of a company—
- (a) the requirement in subsection (1) to enter particulars of members in the company’s register of members does not apply, and
- (b) subsection (2) has effect as if the reference to a person whose name is entered in the company’s register of members were a reference to a person with respect to whom the following steps have been taken—
- (i) the person’s name has been delivered to the registrar under section 128E, and
- (ii) the document containing that information has been registered by the registrar.”
- 14 In section 127 (register to be evidence), after the words “in it” insert “, except for any matters of which the central register is prima facie evidence by virtue of section 128H”.
- 15 In section 246 (putting the address on the public record)—
- (a) after subsection (3) insert—
- “(3A) But—
- (a) subsection (3)(a) does not apply if an election under section 167A is in force in respect of the company’s register of directors, and
- (b) subsection (3)(b) does not apply if an election under section 167A is in force in respect of the company’s register of directors’ residential addresses.”,
- (b) after subsection (4) insert—
- “(4A) If an election under section 167A is in force in respect of the company’s register of directors, the company must, in place of doing the things mentioned in subsection (4)(a) and (b), deliver the particulars to the registrar in accordance with section 167D.”, and
- (c) in subsection (5), for “or (4)” substitute “, (4) or (4A)”.
- 16 In section 286 (votes of joint holders of shares), in subsection (2), after “register of members” insert “(or, if an election under section 128B is in force in respect of the company, in the register kept by the registrar under section 1080)”.
- 17 In section 311 (contents of notices of meetings), in subsection (3)(b)(i), after “register of members” insert “(or, if an election under section 128B is in force in respect of the company, by reference to the register kept by the registrar under section 1080)”.
- 18 In section 360B (traded companies: requirements for participating in and voting at general meetings), after subsection (4) insert—

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- “(5) If an election is in force under section 128B in respect of a company, the reference in subsection (2) to the register of members is to be read as a reference to the register kept by the registrar under section 1080.”
- 19 In section 554 (registration of allotment), after subsection (2) insert—
- “(2A) If an election is in force under Chapter 2A of Part 8, the obligation under subsection (1) to register the allotment of shares is replaced by an obligation to deliver particulars of the allotment of shares to the registrar in accordance with that Chapter.”
- 20 In section 558 (when shares are allotted), after “members” insert “(or, as the case may be, to have the person’s name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar)”.
- 21 In section 588 (liability of subsequent holders of shares), in subsection (3)(a), after “members” insert “(or, as the case may be, to have his name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar)”.
- 22 In section 605 (liability of subsequent holders of shares), in subsection (4)(a), after “members” insert “(or, as the case may be, to have his name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar)”.
- 23 In section 616 (interpretation of Chapter 7), in subsection (3), after “members” insert “(or, as the case may be, have your name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar)”.
- 24 In section 655 (shares no bar to damages against company), after “members” insert “(or have his name and other particulars delivered to the registrar under Chapter 2A of Part 8 and registered by the registrar)”.
- 25 In section 724 (Treasury shares), in subsection (4), after “members” insert “(or, as the case may be, the company’s name must be delivered to the registrar under Chapter 2A of Part 8)”.
- 26 In section 770 (registration of transfer), after subsection (2) insert—
- “(3) If an election under Chapter 2A of Part 8 is in force in respect of the company, references in this section to registering a transfer (or a person) are to be read as references to delivering particulars of that transfer (or person) to the registrar under that Chapter.”
- 27 In section 771 (procedure on transfer being lodged), after subsection (2) insert—
- “(2A) If an election is in force under Chapter 2A of Part 8 in respect of the company, references in this section to registering the transfer are to be read as references to delivering particulars of the transfer to the registrar in accordance with that Chapter.”
- 28 In section 772 (transfer of shares on application of transferor)—
- (a) after “the name of the transferee” insert “(or, as the case may be, deliver the name of the transferee to the registrar under Chapter 2A of Part 8)”, and
- (b) after “entry” insert “(or delivery)”.

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

- 29 In section 786 (provision enabling or requiring arrangements to be adopted), in subsection (3)(a), after “members” insert “(or, as the case may be, delivered to the registrar under Chapter 2A of Part 8)”.
- 30 In section 1068 (registrar’s requirements as to form, authentication and manner of delivery), after subsection (6) insert—
- “(6A) But the power conferred by this section does authorise the registrar to require any document permitted or required to be delivered to the registrar under Chapter 2A of Part 8 (option to keep membership information on central register) to be delivered by electronic means.”
- 31 (1) Section 1081 (annotation of the register) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) If the registrar registers a document delivered by a company under section 128E that, by virtue of subsection (3)(a), (b) or (c) of that section, does not specify the relevant date, the registrar must place a note in the register recording as that date the date on which the document was registered by the registrar.”
- (3) In subsection (6), after “(1)” insert “or (1A)”.
- 32 In section 1094 (administrative removal of material from the register), in subsection (3)(a)—
- (a) omit “or” at the end of sub-paragraph (vii),
- (b) insert “, or” at the end of sub-paragraph (viii), and
- (c) after that sub-paragraph insert—
- “(ix) a change in its membership particulars of which were delivered to the registrar under section 128E (duty to notify registrar of changes while election to keep information on central register is in force);”.
- 33 In section 1136 (regulations about where certain company records to be kept available for inspection), in subsection (2), after the entry for section 114 insert—
- “section 128D (historic register of members);”.
- 34 In Schedule 5 (communications by a company)—
- (a) in paragraph 4 (address for communications in hard copy form), after sub-paragraph (1) insert—
- “(1A) Sub-paragraph (1) has effect—
- (a) where an election under section 128B is in force, as if the reference in paragraph (c) to the company’s register of members were a reference to the register kept by the registrar under section 1080, and
- (b) where an election under section 167A is in force in respect of the company’s register of directors, as if the reference in paragraph (d) to the company’s register of directors were a reference to the register kept by the registrar under section 1080.”, and
- (b) in paragraph 16 (joint holders of shares or debentures), after sub-paragraph (3) insert—

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

“(3A) Where an election under section 128B is in force, the reference in sub-paragraph (3)(b) to the register of members is to be read as a reference to the register kept by the registrar under section 1080.”

35 In Schedule 8 (index of defined expressions), in the appropriate place insert—

“the central register	
—in Chapter 2A of Part 8	section 128A(2)
—in Chapter 4 of Part 21A	section 790W(2)”.