

SCHEDULE 4

TRANSITIONAL PROVISIONS AND SAVINGS

PART 1

PROVISIONS COMING INTO FORCE ON 6TH APRIL 2008

Execution of documents (s.44)

1.—(1) Section 44 of the Companies Act 2006 (execution of documents) applies in relation to the execution of documents on or after 6th April 2008.

(2) Section 36A of the 1985 Act or Article 46A of the 1986 Order continues to apply in relation to documents executed before that date.

(3) For the purposes of this paragraph a document signed by one authorised signatory before 6th April 2008 and by another on or after that date is treated as executed on or after 6th April 2008.

Register of members: removal of entries relating to former members (s.121)

2.—(1) The power conferred by section 121 of the Companies Act 2006 (removal after ten years of entries relating to former members) is exercisable on and after 6th April 2008, whenever the period of ten years referred to in that provision expired.

(2) A copy of any details that were included in the register immediately before that date and that are removed from the register under that power must be retained by the company until 6th April 2008 or, if earlier, 20 years after the member concerned ceased to be a member.

Register of members: time limit for claims arising from entry (s.128)

3.—(1) Section 128 of the Companies Act 2006 (ten year time limit for claims arising from entry in register of members) applies to causes of action arising on or after 6th April 2008.

(2) The time limit for causes of action arising before that date is—

(a) ten years from 6th April 2008, or

(b) 20 years (as provided by section 352(7) of the 1985 Act or Article 360(7) of the 1986 Order) from when the cause of action arose,

whichever expires first.

(3) 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).

Company secretaries (ss.270 to 274 and 280)

4.—(1) A private company whose articles immediately before 6th April 2008 expressly required it to have a secretary is a company “with a secretary” for the purposes of section 270(2) until its articles are amended to remove the requirement.

(2) For this purpose a provision—

(a) requiring or authorising things to be done by or in relation to a secretary, or

(b) as to the manner in which, or terms on which, a secretary is to be appointed or removed,

is not a provision expressly requiring the company to have a secretary.

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5.—(1) Section 273 of the Companies Act 2006 (qualifications of secretaries of public companies) applies in relation to company secretaries appointed on or after 6th April 2008.

(2) Section 286 of the 1985 Act or Article 294 of the 1986 Order continues to apply in relation to company secretaries appointed before that date.

Accounts and reports (ss.380 to 389, 393 to 416, 418 to 462 and 464 to 474)

6.—(1) Sections 380 to 389, 393 to 416, 418 to 462 and 464 to 474 of the Companies Act 2006 (accounts and reports) apply to accounts and reports for financial years beginning on or after 6th April 2008.

(2) The corresponding provisions of the 1985 Act or the 1986 Order continue to apply to accounts and reports for financial years beginning before that date.

7. Any question whether—

- (a) for the purposes of section 382, 383, 384(3) or 467(3) of the Companies Act 2006 a company or group qualified as small in a financial year beginning before 6th April 2008, or
- (b) for the purposes of section 465 or 466 of that Act a company or group qualified as medium-sized in any such financial year,

is to be determined by reference to the corresponding provisions of the 1985 Act or the 1986 Order.

8. Until section 1068(1) of the Companies Act 2006 comes into force, the notice referred to in section 392 of that Act (notice of alteration of accounting reference date) must be given in the form prescribed for the purposes of section 225(1) of the 1985 Act or Article 233(1) of the 1986 Order.

Audit (ss.475 to 484 and 489 to 539)

9.—(1) In Chapter 1 of Part 16 of the Companies Act 2006 (requirement for audited accounts)—

- (a) sections 475 to 481 (general provisions) apply to accounts for financial years beginning on or after 6th April 2008;
- (b) sections 482 and 483 (companies subject to public sector audit) apply to accounts for financial years beginning on or after 1st April 2008;
- (c) section 484 (general power of amendment by regulations) applies accordingly.

(2) Sections 235(1), 249A(1), (3) and (6) to (7), 249AA and 249B of the 1985 Act or Articles 243(1), 257A(1), (3) and (6) to (7), 257AA and 257B of the 1986 Order continue to apply to accounts for financial years beginning before 6th April 2008.

(3) In section 482 of the Companies Act 2006 (non-profit-making companies subject to public sector audit) as it applies in relation to accounts for financial years beginning on or after 1st April 2008 and before 6th April 2008, the reference to the requirements of Part 16 of that Act shall be read as a reference to the requirements of Part 7 of the 1985 Act or Part 8 of the 1986 Order.

10.—(1) In Chapter 2 of Part 16 of that Act (appointment of auditors)—

- (a) sections 489 and 490 (appointment of auditors by public companies) apply to appointments for financial years beginning on or after 6th April 2008;
- (b) section 491 (term of office of auditors of public company) applies to auditors appointed for financial years beginning on or after that date.

(2) Sections 384, 385, 387 and 388(1), (3) and (4) of the 1985 Act or Articles 392, 393, 395 and 396(1), (3) and (4) of the 1986 Order continue to apply to appointments by public companies for financial years beginning before that date.

11.—(1) In that Chapter, the following provisions apply to auditors appointed for financial years beginning on or after 6th April 2008—

- section 492 (fixing of auditor’s remuneration),
- section 493 (disclosure of terms of audit appointment), and
- section 494 (disclosure of services provided by auditor or associated and related remuneration).

(2) Sections 390A and 390B of the 1985 Act or Articles 398A and 398B of the 1986 Order continue to apply to auditors appointed for financial years beginning before that date.

(3) The repeal of section 390A of the 1985 Act and Article 398A of the 1986 Order (remuneration of auditors) does not affect the operation of any such resolution as is mentioned in paragraph 45 of Schedule 3 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007.

12.—(1) In Chapter 3 of Part 16 of that Act (functions of auditor)—

- (a) sections 495 to 498 (auditor’s report and duties of auditor) apply to auditors’ reports on accounts or reports for financial years beginning on or after 6th April 2008;
- (b) sections 499 to 501 (rights of auditors) apply to auditors appointed for financial years beginning on or after that date;
- (c) sections 503 to 509 (signature of auditor’s report and offences in connection with auditor’s report) apply to auditors’ reports on accounts or reports for financial years beginning on or after that date.

(2) Sections 235 to 237, 389A and 389B of the 1985 Act or Articles 243 to 245, 397A and 397B of the 1986 Order continue to apply as regards financial years beginning before that date.

(3) Section 502 of the Companies Act 2006 (auditor’s rights in relation to resolutions and meetings) applies to auditors appointed on or after 6th April 2008.

(4) Section 390 of the 1985 Act or Article 398 of the 1986 Order continues to apply to auditors appointed before that date.

13.—(1) In Chapter 4 of Part 16 of that Act (removal, resignation, etc of auditors), sections 510 to 513 (removal of auditor) apply where notice of the intended resolution is given to the company on or after 6th April 2008.

(2) Sections 391 and 391A of the 1985 Act or Articles 399 and 399A of the 1986 Order continue to apply where notice of the intended resolution is given to the company before that date.

(3) Until section 1068(1) of the Companies Act 2006 comes into force, the notice referred to in section 512(1) (notice to registrar of resolution removing auditor from office) must be in the form prescribed for the purposes of section 391(2) of the 1985 Act or Article 399(2) of the 1986 Order.

(4) In section 513 (rights of auditor removed from office) as it applies in relation to an auditor appointed before 6th April 2008, the reference to rights under section 502(2) shall be read as a reference to rights under section 390(1) of the 1985 Act or Article 398(1) of the 1986 Order.

14.—(1) In that Chapter, sections 514 and 515 (failure to re-appoint auditor) apply to appointments for financial years beginning on or after 6th April 2008.

(2) Section 391A of the 1985 Act or Article 399A of the 1986 Order continues to apply to appointments for financial years beginning before that date.

15.—(1) In that Chapter, sections 516 to 518 (resignation of auditor) apply to resignations occurring on or after 6th April 2008.

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(2) Sections 392 and 392A of the 1985 Act or Articles 400 and 400A of the 1986 Order continue to apply to resignations occurring before that date.

16.—(1) In that Chapter, sections 519 to 525 (statement by auditor ceasing to hold office) apply where the auditor ceases to hold office on or after 6th April 2008.

(2) Sections 394 and 394A of the 1985 Act or Articles 401A and 401B of the 1986 Order continue to apply where the auditor ceases to hold office before that date.

17.—(1) In that Chapter, section 526 (effect of casual vacancies) applies where the vacancy occurs on or after 6th April 2008.

(2) Section 388(2) of the 1985 Act or Article 396(2) of the 1986 Order continues to apply where the vacancy occurred before that date.

18. In Chapter 5 of Part 16 of that Act (quoted companies: right of members to raise audit concerns at accounts meeting), in section 527 (members' powers to require website publication of audit concerns)—

(a) subsection (1)(a) (matters relating to audit of company's accounts) applies to accounts for financial years beginning on or after 6th April 2008, and

(b) subsection (1)(b) (matters relating to circumstances connected with an auditor of the company) applies to auditors appointed for financial years beginning on or after that date.

19. A resolution passed before 6th April 2008 authorising a liability limitation agreement is effective for the purposes of section 536 (authorisation of agreement by members of company) if it complies with the requirements of that section.

Debentures (ss.738 to 754)

20. Section 741 of the Companies Act 2006 (registration of allotment of debentures) applies to allotments of debentures made on or after 6th April 2008.

21.—(1) Until regulations under section 1136 of the Companies Act 2006 come into force specifying a place for the purposes of section 743(1)(b), a company's register of debenture holders may be kept—

(a) at any office of the company at which the work of making it up is done, or

(b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other person, at the office of that other person at which the work is done,

provided that place is situated in the part of the United Kingdom in which the company is registered.

(2) Until section 1068(1) of the Companies Act 2006 comes into force, the notice referred to in section 743(2) (notice of place where register of debenture holders is kept) must be given in the form prescribed for the purposes of section 190(5) of the 1985 Act or Article 199(3) of the 1986 Order.

22.—(1) Sections 744 to 747 (register of debenture holders: right to inspect or require copy) and section 749 (right of debenture holder to copy of deed) of the Companies Act 2006 apply where the request is made on or after 6th April 2008.

(2) Section 191(1) to (6) of the 1985 Act or Article 200(1) to (6) of the 1986 Order continue to apply to requests made before that date.

23.—(1) Section 748 of the Companies Act 2006 (ten year time limit for claims arising from entry in register of debenture holders) applies to causes of action arising on or after 6th April 2008.

(2) The time limit for causes of action arising before that date is—

- (a) ten years from 6th April 2008, or
- (b) 20 years (as provided by section 191(7) of the 1985 Act or Article 200(7) of the 1986 Order) from when the cause of action arose,

whichever expires first.

(3) 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).

Prohibition of public offers by private companies (ss.755 to 759)

24.—(1) Sections 755 and 756 of the Companies Act 2006 (prohibition of public offers by private companies) apply to offers made on or after 6th April 2008.

(2) Section 81 of the 1985 Act or Article 91 of the 1986 Order continues to apply to offers made before that date.

25. Sections 758 and 759 of the Companies Act 2006 (enforcement of prohibition: orders after contravention) apply to offers made on or after 6th April 2008.

Minimum share capital requirement for public companies (ss.761 to 767)

26. A certificate issued under section 117 of the 1985 Act or Article 127 of the 1986 Order (public company share capital requirements) has effect on and after 6th April 2008 as if issued under section 761 of the Companies Act 2006.

27.—(1) Section 762 of the Companies Act 2006 (procedure for obtaining trading certificate) applies to applications made on or after 6th April 2008.

(2) Section 117(1) to (5) and (7A) of the 1985 Act or Article 127(1) to (5) and (7A) of the 1986 Order continue to apply to applications made before 6th April 2008.

(3) An application is treated as made before 6th April 2008 if—

- (a) a statutory declaration is delivered to the registrar in accordance with section 117(2) of the 1985 Act or Article 127(2) of the 1986 Order, and
- (b) the declaration was signed before that date.

28.—(1) Until section 1068(1) of the Companies Act 2006 comes into force—

- (a) an application under section 762 of that Act must be in the form prescribed for the purposes of section 117(2) of the 1985 Act or Article 127(2) of the 1986 Order;
- (b) the statement and information required by section 762(1)(a) to (c) must be provided on the form prescribed for the statutory declaration required by section 117(3) of the 1985 Act or Article 127(3) of the 1986 Order (but not in the form of a statutory declaration and disregarding so much of the form as requires other information);
- (c) a company seeking to satisfy the minimum share capital requirement in euros may adapt the form accordingly; and
- (d) the form must be signed by a director or by the company secretary.

(2) A form completed in accordance with sub-paragraph (1) is treated as the statement of compliance required by section 762(1)(d) and (2).

(3) By adapting the form as mentioned in paragraph (1)(c) the applicant is treated as electing that euros shall be the currency by reference to which it is determined whether the requirement mentioned in section 765(1) is met.

(4) By not so adapting the form the applicant is treated as electing that sterling shall be that currency.

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(5) Sub-paragraphs (1)(c), (3) and (4) above also apply in relation to the form prescribed for the purposes of section 43(3) of the 1985 Act or Article 53(3) of the 1986 Order (re-registration or private company as public) where a company seeks to satisfy the minimum share capital requirement in section 45(2)(a) of that Act or Article 55(2)(a) of that Order in euros.

29.—(1) Section 767 of the Companies Act 2006 (consequences of doing business etc without a trading certificate) applies in relation to things done on or after 6th April 2008.

(2) Section 117(6), (7) and (8) of the 1985 Act or Article 127(6), (7) and (8) of the 1986 Order continue to apply in relation to things done before that date.

Certification and transfer of securities (ss.769 to 782)

30. Section 771 of the Companies Act 2006 (procedure on transfer being lodged) applies to transfers lodged with the company on or after 6th April 2008.

31. Section 780 of the Companies Act 2006 (duty of company as to issue of certificates on surrender of share warrant) applies to share warrants surrendered on or after 6th April 2008.

Request to inspect a company's register of interests disclosed (ss.811(4), 812 and 814)

32. Sections 811(4), 812 and 814 of the Companies Act 2006 (inspection of register of interests disclosed: further provision about requests) apply to requests under section 811 of that Act made on or after 6th April 2008.

Distributions (ss.829 to 853)

33.—(1) Sections 829 to 853 of the Companies Act 2006 (distributions) apply to distributions made on or after 6th April 2008.

(2) Sections 263 to 281 of the 1985 Act or Articles 271 to 289 of the 1986 Order continue to apply to distributions made before that date.

34. Until section 1068(1) of the Companies Act 2006 comes into force—

- (a) the notice referred to in section 833(1)(a) (notice of intention to carry on business as investment company) must be in the form prescribed for the purposes of section 266(1) of the 1985 Act or Article 274(1) of the 1986 Order; and
- (b) the notice referred to in section 833(4) (notice that company no longer wishes to be an investment company) must be in the form prescribed for the purposes of section 266(3) of the 1985 Act or Article 274(3) of the 1986 Order.

35.—(1) The relevant accounts for the purposes of Chapter 2 of Part 23 of the Companies Act 2006 (justification of distribution by reference to accounts) may be accounts for financial years beginning before 6th April 2008 (to which the provisions of the 1985 Act or 1986 Order apply).

(2) In that case the provisions of that Chapter and Chapter 3 of that Part (supplementary provisions) have effect with the following adaptations—

- (a) in section 836(1)(b)(i), for “provisions of a kind specified for the purposes of this section by regulations under section 396” substitute “provisions of any of the kinds mentioned in paragraphs 88 and 89 of Schedule 4 to the Companies Act 1985 or paragraphs 87 and 88 of Schedule 4 to the Companies (Northern Ireland) Order 1986”;
- (b) in section 837—
 - (i) in subsection (1)(a), for “section 423” substitute “section 238 of the Companies Act 1985 or Article 246 of the Companies (Northern Ireland) Order 1986”;

- (ii) in subsection (1)(b), for “section 426” substitute “section 251 of the Companies Act 1985 or Article 259 of the Companies (Northern Ireland) Order 1986”;
 - (iii) in subsection (2), for “this Act” substitute “the Companies Act 1985 or the Companies (Northern Ireland) Order 1986”;
 - (iv) in subsection (4)(b)(i), for “section 423” substitute “section 238 of the Companies Act 1985 or Article 246 of the Companies (Northern Ireland) Order 1986”;
- (c) in section 838—
- (i) in subsection (4), for “sections 395 to 397” substitute “sections 226 to 226B of the Companies Act 1985 or Articles 234 to 234B of the Companies (Northern Ireland) Order 1986”;
 - (ii) in subsection (5), for “section 414” substitute “233 of the Companies Act 1985 or Article 241 of the Companies (Northern Ireland) Order 1986”;
 - (iii) in subsection (6), for “Part 35 of this Act” substitute “Part 24 of the Companies Act 1985 or Part 24 of the Companies (Northern Ireland) Order 1986”;
- (d) in section 839—
- (i) in subsection (4), for “sections 395 to 397” substitute “sections 226 to 226B of the Companies Act 1985 or Articles 234 to 234B of the Companies (Northern Ireland) Order 1986”;
 - (ii) in subsection (6)(b)(i), for “section 423” substitute “section 238 of the Companies Act 1985 or Article 246 of the Companies (Northern Ireland) Order 1986”;
 - (iii) in subsection (7), for “Part 35 of this Act” substitute “Part 24 of the Companies Act 1985 or Part 24 of the Companies (Northern Ireland) Order 1986”;
- (e) in section 841(2)(a), for “provisions of a kind specified for the purposes of this paragraph by regulations under section 396” to the end substitute “provisions of any kind mentioned in paragraphs 88 and 89 of Schedule 4 to the Companies Act 1985 or paragraphs 87 and 88 of Schedule 4 to the Companies (Northern Ireland) Order 1986”;
- (f) in section 844(3)(b)(i), for “the note required” to the end substitute “the note to the accounts required by paragraph 20 of Schedule 4 or paragraph 20 of Schedule 8 to the Companies Act 1985 or paragraph 20 of Schedule 4 or paragraph 20 of Schedule 8 to the Companies (Northern Ireland) Order 1986 (reasons for showing development costs as an asset)”;
- (g) in section 846(2)(b), for “any provision of regulations under section 396” to the end substitute “paragraphs 12(a) and 34(3)(a) of Schedule 4 or paragraphs 12(a) or 34(3)(a) of Schedule 8 to the Companies Act 1985 or paragraphs 12(a) and 34(3)(a) of Schedule 4 or paragraphs 12(a) or 34(3)(a) of Schedule 8 to the Companies (Northern Ireland) Order 1986 (only realised profits to be included in or transferred to the profit and loss account)”.

Arrangements and reconstructions (ss.896 to 901)

36.—(1) Section 901 of the Companies Act 2006 (obligations of company with respect to articles etc) applies to orders of the court made on or after 6th April 2008, including orders made under section 425(2) or 427 of the 1985 Act or 418(2) or 420 of the 1986 Order.

(2) Section 425(3) and (4) of the 1985 Act or Article 418(3) and (4) of the 1986 Order continues to apply to orders made before that date.

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Statutory auditors (ss.1209 to 1241 and 1245 to 1264)

37.—(1) The following provisions of Chapter 2 of Part 42 of the Companies Act 2006 (statutory auditors: individuals and firms) apply to the appointment of auditors for financial years beginning on or after 6th April 2008—

- (a) sections 1212 and 1213 (eligibility for appointment);
- (b) sections 1214 and 1215 (independence requirement);
- (c) section 1216 (effect of appointment of partnership).

(2) Sections 25 to 28 of the Companies Act 1989⁽¹⁾ or Articles 28 to 31 of the Companies (Northern Ireland) Order 1990⁽²⁾ continue to apply to auditors appointed for financial years beginning before that date.

38.—(1) The following provisions of that Chapter apply in relation to the supervision and qualification of auditors appointed for financial years beginning on or after 6th April 2008—

- (a) sections 1217 and 1218 and Schedule 10 (supervisory bodies);
- (b) sections 1219 to 1222 and Schedule 11 (professional qualifications and qualifying bodies).

(2) Sections 30 to 34 and 48 of, and Schedules 11 and 12 to, the Companies Act 1989 or Articles 33 to 36 and 50 of, and Schedules 11 and 12 to, the Companies (Northern Ireland) Order 1990 continue to apply in relation to the supervision and qualification of auditors appointed for financial years beginning before that date.

(3) Any declaration by the Secretary of State in force under section 33 of the Companies Act 1989 or Article 36 of the Companies (Northern Ireland) Order 1990 (approval of overseas qualifications) immediately before 6th April 2008 continues in force on and after that date as if made under section 1221 of the Companies Act 2006.

39. The repeal of sections 37 and 38 of the Companies Act 1989 (information to be provided to the Secretary of State) or Articles 39 and 40 of the Companies (Northern Ireland) Order 1990 (information to be provided to the Department of Enterprise, Trade and Investment) does not affect the operation of those provisions in relation to functions exercised under Part 2 of that Act or Part 3 of that Order on or after 6th April 2008.

40.—(1) Section 1226(2) of the Companies Act 2006 (eligibility of Auditor General for appointment as statutory auditor) applies to appointment as a statutory auditor for financial years beginning on or after 1st April 2008.

(2) Sections 1229 and 1230 (supervision of Auditors General by the Independent Supervisor) apply accordingly.

41.—(1) The following provisions of Chapter 6 of Part 42 of the Companies Act 2006 (statutory auditors: supplementary and general provisions) apply to auditors, supervisory bodies or qualifying bodies to whom Chapters 2 to 5 of that Part apply—

- (a) sections 1248 and 1249 (second audits);
- (b) section 1250 (false and misleading statements);
- (c) section 1251 (fees);
- (d) section 1254 (directions to comply with international obligations);
- (e) sections 1255 to 1257 (general provisions about offences);
- (f) sections 1258 and 1259 (notices etc).

(1) 1989 c.40.

(2) S.I. 1990/593 (N.I. 5).

(2) Sections 29, 40 to 45 and 49 of the Companies Act 1989 or Articles 32, 42 to 47 and 51 of the Companies (Northern Ireland) Order 1990 continue to apply to auditors, supervisory bodies or qualifying bodies to whom sections 25 to 28 and 30 to 39 of that Act or Articles 28 to 31 and 33 to 41 of that Order apply.

(3) The repeal of sections 52 to 54 of the Companies Act 1989 or Articles 54 to 56 of the Companies (Northern Ireland) Order 1990 (definitions) does not affect the operation of those provisions for the purposes of interpreting provisions of that Act or that Order that continue to apply on or after 6th April 2008.

42.—(1) The repeal of sections 46 and 46A of, and Schedule 13 to, the Companies Act 1989 (delegation of functions of Secretary of State) does not affect the operation of those provisions in relation to functions exercised under Part 2 of that Act on or after 6th April 2008.

(2) The repeal of Articles 48 and 48A of, and Schedule 13 to, the Companies (Northern Ireland) Order 1990 (delegation of functions of Department of Enterprise, Trade and Investment) does not affect the operation of those provisions in relation to functions exercised under Part 3 of that Order on or after 6th April 2008.

Expenses of winding up (s.1282)

43. Section 1282 of the Companies Act 2006 (expenses of winding up) applies—

- (a) to a winding up by the court where the winding-up order was made on or after 6th April 2008, and
- (b) to a voluntary winding up where the resolution for winding up was passed on or after that date.

Repeal of provisions relating to prosecution of offences

44. The repeal of sections 732 to 734 of the 1985 Act or Articles 680 to 680B of the 1986 Order does not affect the operation of those provisions in relation to offences committed before 6th April 2008.