

SCHEDULES

SCHEDULE 10

Article 25.

AMENDMENTS CONSEQUENTIAL ON PART II

PART I

AMENDMENTS OF THE 1986 ORDER

1. In Article 2(3) (interpretation), omit the definition of “authorised institution” and at the appropriate place insert—

““banking company” means a company which is authorised under the Banking Act 1987,”.

2. For Article 10 (expressions used in connection with accounts) substitute—

“Expressions used in connection with accounts

10.—(1) In this Order the following expressions have the same meaning as in Part VIII (accounts)—

“annual accounts”,

“accounting reference date” and “accounting reference period”,

“balance sheet” and “balance sheet date”,

“current assets”,

“financial year”, in relation to a company,

“fixed assets”,

“parent company” and “parent undertaking”,

“profit and loss account”, and

“subsidiary undertaking”.

(2) References in this Order to “realised profits” and “realised losses”, in relation to a company’s accounts, shall be construed in accordance with Article 270(3).”.

3. In Article 56 (meaning of “unqualified” auditors’ report in Article 53(3)), for paragraphs (2) to (6) substitute—

“(2) If the balance sheet was prepared for a financial year of the company, the reference is to an auditors’ report stating without material qualification the auditors’ opinion that the balance sheet has been properly prepared in accordance with this Order.

(3) If the balance sheet was not prepared for a financial year of the company, the reference is to an auditors’ report stating without material qualification the auditors’ opinion that the balance sheet has been properly prepared in accordance with the provisions of this Order which would have applied if it had been so prepared.

For the purposes of an auditors’ report under this paragraph the provisions of this Order shall be deemed to apply with such modifications as are necessary by reason of the fact that the balance sheet is not prepared for a financial year of the company.

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(4) A qualification shall be regarded as material unless the auditors state in their report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called up share capital and undistributable reserves.

In this paragraph "net assets" and "undistributable reserves" have the meaning given by Article 272(2) and (3)."

4. In Article 217(5)(a)(i) for "an authorised institution" substitute "a banking company".
5. In Articles 219(9) and 223(4) for "paragraph 3 or 10 of Schedule 5" substitute "Article 239(3)".
6. In Article 279(3), for "Article 244" substitute "Article 243".
7. In Article 280(3)—
 - (a) for "Article 236" substitute "Article 234", and
 - (b) for "Article 246" substitute "Article 241".
8. In Articles 280(5) and 281(7) for "Article 249(3)(b)" substitute "the second sentence of Article 250(1)".
9. In Article 284(b) for "34(4)(b)" substitute "34(3)(a)".
10. For Article 287 substitute—

"Distributions by banking or insurance companies"

287. Where a company's accounts relevant for the purposes of this Part are prepared in accordance with the special provisions of Part VIII relating to banking or insurance companies, Articles 272 to 283 apply with the modifications shown in Schedule 11."

11. In Article 297(4) for "Article 260(5)" substitute "Article 258(3)".
12. In Article 305(3)(b)—
 - (a) in head (i) for "Article 252" substitute "Article 250(3)", and
 - (b) after that head insert—

"(ia) Article 253B, or".
13. In Articles 346(4), 347(4), 351(1)(a) and 352(2) for "an authorised institution", wherever occurring, substitute "a banking company".
14. In Article 351(2) and (4) for "paragraph 4 of Schedule 6, be required by Article 240" substitute "paragraph 2 of Part IV of Schedule 9, be required".
15. After Article 387 insert—

"Elective resolution of private company"

387A.—(1) An election by a private company for the purposes of Article 260 (election to dispense with laying of accounts and reports before general meeting) shall be made by resolution of the company in general meeting in accordance with this Article.

Such a resolution is referred to in this Order as an "elective resolution".

- (2) An elective resolution is not effective unless—
 - (a) at least 21 days' notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and

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- (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.
 - (3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.
 - (4) An elective resolution shall cease to have effect if the company is re-registered as a public company.
 - (5) An elective resolution may be passed or revoked in accordance with this Article, and the provision referred to in paragraph (1) has effect, notwithstanding any contrary provision in the company's articles of association.”.
- 16.** In Article 388 (registration of resolutions), in paragraph (4) (resolutions to which the Article applies), after sub-paragraph (b) insert—
- “(bb) an elective resolution or a resolution revoking such a resolution.”.
- 17.** In Article 428(2)—
- (a) in sub-paragraph (a) for “Article 240 and Part I of Schedule 6” substitute “Part II of Schedule 6, or that Part as applied by Part IV of Schedule 9”;
 - (b) omit sub-paragraph (b).
- 18.** In Part XXIII (Part XXIII companies), for Chapter II (delivery of accounts) substitute—

“CHAPTER II

DELIVERY OF ACCOUNTS AND REPORTS

Preparation of accounts and reports by Part XXIII companies

649.—(1) Every Part XXIII company shall in respect of each financial year of the company prepare the like accounts and directors' report, and cause to be prepared such an auditors' report, as would be required if the company were formed and registered under this Order.

- (2) The Department may by order—
 - (a) modify the requirements referred to in paragraph (1) for the purpose of their application to Part XXIII companies;
 - (b) exempt a Part XXIII company from those requirements or from such of them as may be specified in the order.
- (3) An order may contain such incidental and supplementary provisions as the Department thinks fit.
- (4) An order under this Article shall be subject to negative resolution.

Part XXIII company's financial year and accounting reference periods

650.—(1) Articles 231 to 233 (financial year and accounting reference periods) apply to a Part XXIII company, subject to the following modifications.

- (2) For the references to the incorporation of the company substitute references to the company establishing a place of business in Northern Ireland.
- (3) Omit Article 233(4) (restriction on frequency with which current accounting reference period may be extended).

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Delivery to registrar of accounts and reports of Part XXIII company

651.—(1) A Part XXIII company shall in respect of each financial year of the company deliver to the registrar copies of the accounts and reports prepared in accordance with Article 649.

If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(2) In relation to a Part XXIII company the period allowed for delivering accounts and reports is 13 months after the end of the relevant accounting reference period.

This is subject to the following provisions of this Article.

(3) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is 13 months from the first anniversary of the company's establishing a place of business in Northern Ireland.

(4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under Article 233 (alteration of accounting reference date), the period allowed is that applicable in accordance with the above provisions or 3 months from the date of the notice under that Article, whichever last expires.

(5) If for any special reason the Department thinks fit it may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a Part XXIII company extend that period by such further period as may be specified in the notice.

(6) In this Article "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the accounts in question was determined.

Penalty for non-compliance

652.—(1) If the requirements of Article 651(1) are not complied with before the end of the period allowed for delivering accounts and reports, or if the accounts and reports delivered do not comply with the requirements of this Order, the company and every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that the requirements in question would be complied with.

(3) It is not a defence in relation to a failure to deliver copies to the registrar to prove that the documents in question were not in fact prepared as required by this Order."

19. In Article 660(1)(k) for "Article 249 (annual accounts)" substitute "Article 250(1) (accounts and reports)".

20. In Schedule 1, in paragraph 2(2)(a) for "Article 260(5)" substitute "Article 258(3)".

21.—(1) Schedule 2 (interpretation of references to "beneficial interest") is amended as follows.

(2) After the heading at the beginning of the Schedule, and before the cross-heading preceding paragraph 1, insert the following heading—
"PART I

REFERENCES IN ARTICLES 33, 155, 156 AND 158".

(3) In paragraph 1—

- (a) in sub-paragraph (1) omit “paragraph 60(2) of Schedule 4, or paragraph 19(3) of Schedule 9”; and
 - (b) omit sub-paragraph (5).
 - (4) In paragraph 3—
 - (a) in sub-paragraph (1) omit “, paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”; and
 - (b) omit sub-paragraph (3).
 - (5) In paragraph 4—
 - (a) in sub-paragraph (1) omit “(whether as personal representative or otherwise)”, and
 - (b) in sub-paragraph (2) omit “, paragraph 60(2) of Schedule 4 and paragraph 19(3) of Schedule 9”;
- and at the end add—
- “(3) As respects Articles 155, 156 and 158, sub-paragraph (1) applies where a company is a personal representative as it applies where a company is a trustee.”.
- (6) In paragraph 5(1) for “this Schedule” substitute “this Part of this Schedule”.
 - (7) After paragraph 5 insert the following—

“PART II

REFERENCES IN SCHEDULE 5

Residual interests under pension and employees' share schemes

6.—(1) Where shares in an undertaking are held on trust for the purposes of a pension scheme or an employees' share scheme, there shall be disregarded any residual interest which has not vested in possession, being an interest of the undertaking or any of its subsidiary undertakings.

(2) In this paragraph a “residual interest” means a right of the undertaking in question (the “residual beneficiary”) to receive any of the trust property in the event of—

- (a) all the liabilities arising under the scheme having been satisfied or provided for, or
- (b) the residual beneficiary ceasing to participate in the scheme, or
- (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.

(3) In sub-paragraph (2) references to a right include a right dependent on the exercise of a discretion vested by the scheme in the trustee or any other person; and references to liabilities arising under a scheme include liabilities that have resulted or may result from the exercise of any such discretion.

(4) For the purposes of this paragraph a residual interest vests in possession—

- (a) in a case within sub-paragraph (2)(a), on the occurrence of the event there mentioned, whether or not the amount of the property receivable pursuant to the right mentioned in that sub-paragraph is then ascertained;
- (b) in a case within sub-paragraph (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to that beneficiary any of the property receivable pursuant to that right.

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Employer's charges and other rights of recovery

7.—(1) Where shares in an undertaking are held on trust, there shall be disregarded—

- (a) if the trust is for the purposes of a pension scheme, any such rights as are mentioned in sub-paragraph (2);
- (b) if the trust is for the purposes of an employees' share scheme, any such rights as are mentioned in head (a) of that sub-paragraph,

being rights of the undertaking or any of its subsidiary undertakings.

(2) The rights referred to are—

- (a) any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member, and
- (b) any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained under Article 48 of the Social Security Pensions (Northern Ireland) Order 1975(1) (deduction of premium from refund of pension contributions) or otherwise as reimbursement or partial reimbursement for any state scheme premium paid in connection with the scheme under Part IV of that Order.

Trustee's right to expenses, remuneration, indemnity, &c.

8. Where an undertaking is a trustee, there shall be disregarded any rights which the undertaking has in its capacity as trustee including, in particular, any right to recover its expenses or be remunerated out of the trust property and any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the undertaking in the performance of its duties as trustee.

Supplementary

9.—(1) The following applies for the interpretation of this Part of this Schedule.

(2) “Undertaking”, and “shares” in relation to an undertaking, have the same meaning as in Part VIII of this Order.

(3) This Part of this Schedule applies in relation to debentures as it applies in relation to shares.

(4) “Pension scheme” means any scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees; and “relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.

(5) In sub-paragraph (4) and in paragraph 7(2) “employee” and “employer” shall be read as if a director of an undertaking were employed by it.”.

22.—(1) Part II of Schedule 3 (prospectuses: auditors' and accountants' reports to be set out) is amended as follows.

(2) In paragraph 16 (auditors' reports), in sub-paragraph (2) for “subsidiaries” substitute “subsidiary undertakings” and for sub-paragraph (3) substitute—

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“(3) If the company has subsidiary undertakings, the report shall—

- (a) deal separately with the company’s profits and losses as provided by sub-paragraph (2), and in addition deal either—
 - (i) as a whole with the combined profits or losses of its subsidiary undertakings, so far as they concern members of the company, or
 - (ii) individually with the profits or losses of each of its subsidiary undertakings, so far as they concern members of the company,or, instead of dealing separately with the company’s profits or losses, deal as a whole with the profits or losses of the company and (so far as they concern members of the company) with the combined profits and losses of its subsidiary undertakings; and
- (b) deal separately with the company’s assets and liabilities as provided by sub-paragraph (2), and in addition deal either—
 - (i) as a whole with the combined assets and liabilities of its subsidiary undertakings, with or without the company’s assets and liabilities, or
 - (ii) individually with the assets and liabilities of each of its subsidiary undertakings,indicating, as respects the assets and liabilities of its subsidiary undertakings, the allowance to be made for persons other than members of the company.”.

(3) For paragraph 18 (accountants' reports) substitute—

“18.—(1) The following provisions apply if—

- (a) the proceeds of the issue are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other undertaking, or any part of the proceeds is to be so applied, and
- (b) by reason of that acquisition or anything to be done in consequence of or in connection with it, that undertaking will become a subsidiary undertaking of the company.

(2) There shall be set out in the prospectus a report made by accountants upon—

- (a) the profits or losses of the other undertaking in respect of each of the 5 financial years immediately preceding the issue of the prospectus, and
- (b) the assets and liabilities of the other undertaking at the last date to which its accounts were made up.

(3) The report shall—

- (a) indicate how the profits or losses of the other undertaking would in respect of the shares to be acquired have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired, and
- (b) where the other undertaking is a parent undertaking, deal with the profits or losses and the assets and liabilities of the undertaking and its subsidiary undertakings in the manner provided by paragraph 16(3) in relation to the company and its subsidiary undertakings.

(4) In this paragraph “undertaking” and “shares”, in relation to an undertaking, have the same meaning as in Part VIII of this Order.”.

(4) In paragraph 22 (eligibility of accountants to make reports), for sub-paragraph (2) substitute—

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“(2) Such a report shall not be made by an accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of—

- (a) the company or any of its subsidiary undertakings,
- (b) a parent undertaking of the company or any subsidiary undertaking of such an undertaking.”.

23. In paragraph 12(b) of Schedule 4, for “Article 246” substitute “Article 241”.

24.—(1) Schedule 11 is amended as follows.

(2) For the heading substitute “MODIFICATIONS OF PART IX WHERE COMPANY'S ACCOUNTS PREPARED IN ACCORDANCE WITH SPECIAL PROVISIONS FOR BANKING OR INSURANCE COMPANIES”.

(3) In paragraphs 1 and 2(a) for “Schedule 9” substitute “Part I of Schedule 9”.

(4) In paragraph 4—

- (a) in sub-paragraph (a) for “Schedule 9” substitute “Part I of Schedule 9”, and
- (b) omit sub-paragraphs (b) and (c).

(5) In paragraph 5—

- (a) in sub-paragraph (a) for “Part III of Schedule 9” substitute “paragraph 27 or 28 of Schedule 9”, and
- (b) omit sub-paragraph (b).

(6) In paragraph 6—

- (a) in sub-paragraph (a), for “Article 236” substitute “Article 234” and for “Article 266 and Schedule 9” substitute “Article 263 and Part I of Schedule 9”, and
- (b) in sub-paragraph (b), for “Part III of Schedule 9” substitute “paragraph 27 or 28 of Schedule 9”.

(7) In paragraph 7(a) for “Schedule 9” substitute “Part I of Schedule 9”.

25.—(1) In Schedule 15A (provisions applicable to mergers and divisions of public companies), paragraph 6 (documents to be made available for inspection) is amended as follows.

(2) In sub-paragraph (1)(b) (directors' report on merger or division), after “directors' report” insert “referred to in paragraph 4”.

(3) For sub-paragraph (1)(d) and (e) substitute—

- “(d) the company's annual accounts, together with the relevant directors' report and auditors' report, for the last 3 financial years ending on or before the relevant date; and
- (e) if the last of those financial years ended more than 6 months before the relevant date, an accounting statement in the form described in the following provisions.”.

(4) In sub-paragraph (1), after the heads add—

“In heads (d) and (e) “the relevant date” means one month before the first meeting of the company summoned under Article 418(1) or for the purposes of paragraph 1.”.

(5) For sub-paragraphs (2) to (5) substitute—

“(2) The accounting statement shall consist of—

- (a) a balance sheet dealing with the state of the affairs of the company as at a date not more than 3 months before the draft terms were adopted by the directors, and

(b) where the company would be required to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and its subsidiary undertakings as at that date.

(3) The requirements of this Order as to balance sheets forming part of a company's annual accounts, and the matters to be included in notes thereto, apply to any balance sheet required for the accounting statement, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.

(4) Any balance sheet required for the accounting statement shall be approved by the board of directors and signed on behalf of the board by a director of the company.

(5) In relation to a company within the meaning of section 735 of the Companies Act 1985(2), the references in this paragraph to the requirements of this Order shall be construed as references to the corresponding requirements of that Act.”.

26. In Schedule 21 (provisions applying to unregistered companies), in the entry relating to Part VIII, in column 1, for “Schedule 10” substitute “Schedules 10 and 10A”.

27.—(1) Schedule 23 (punishment of offences) is amended as follows.

(2) The existing entries for provisions in Part VIII are amended as follows, and shall be re-ordered according to the new order of the Articles in that Part:

Provision of Part VIII	Amendment
231(1)	In column 1, for “231(1)” substitute “229(5) or 230(4)”.
231(2)	In column 1, for “231(2)” substitute “230(6)”. In column 2, for “230(4)” substitute “230(5)”.
239(3)	In column 1, for “239(3)” substitute “239(7)”.
239(4)	In column 1, for “239(4)” substitute “240(4)”. In column 2, for “Schedule 5, Part V” substitute “Schedule 6, Part I”.
243(7)	In column 1, for “243(7)” substitute “242(5)”. In column 2, for “the Article” substitute “Part VIII”.
246(2)	In column 1, for “246(2)” substitute “241(6)”.
248(5)	In column 1, for “248(5)” substitute “246(5)”. In column 2, for “company balance sheet” substitute “company’s annual accounts”.
251(1)	In column 1, for “251(1)” substitute “249(2) or 250(2)”. In column 2, for “company accounts” substitute “company’s annual accounts, directors’ report and auditors’ report”.
253(1)	Omit the entry.
253(2)	Omit the entry.

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Provision of Part VIII	Amendment
254(2)	In column 1, for “254(2)” substitute “247(3)”. In column 2, after “accounts” insert “and reports”.
262(6)	In column 1, for “262(6)” substitute “248(6)”. In column 2, for the present words substitute “Failure to comply with requirements in connection with publication of accounts”.
263(5)	Omit the entry.
268(3)	Omit the entry.

(3) At the appropriate places insert the following new entries—

“241(5)	Approving defective accounts.	1. On indictment.2. Summary.	A fineThe statutory maximum.
242A(4)	Laying, circulating or delivering directors' report without required signature.	Summary	One-fifth of the statutory maximum.
244(4)	Laying, circulating or delivering auditors' report without required signature.	Summary	One-fifth of the statutory maximum.
259(5)	Failure to comply with requirements in relation to summary financial statements.	Summary	One-fifth of the statutory maximum.”

(4) In the entry for Article 652(1) (failure by Part XXIII company to comply with requirements as to accounts and reports), in column 2 for the words from “Article 649” to the end substitute “requirements as to accounts and reports”.

PART II

AMENDMENTS OF OTHER STATUTORY PROVISIONS

The Patents, Designs and Marks Act 1986 (c. 39)

28. In Schedule 2 in paragraph 1(2) (provisions in which reference to trade mark includes service mark) for sub-paragraph (l) substitute—

- “(l) in the Companies (Northern Ireland) Order 1986—
- (i) paragraph (1)(j) of Article 403 (charges which have to be registered); and
 - (ii) Part I of Schedule 4 and paragraphs 5(2)(d) and 10(1)(b) and (2) of Schedule 9 (form of company balance sheets).”.

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The Banking Act 1987 (c. 22)

29. In section 46(4) (duties of auditor of authorised institution) for “Articles 392, 244 and 245” substitute “Articles 392, 243(2), 243(3) and 245”.

The Income and Corporation Taxes Act 1988 (c. 1)

30.—(1) In section 180 (annual return of registered profit-related pay scheme) in subsection (3) for “Article 250(3)” substitute “Article 252(3)”.

(2) In section 565(7) (conditions for exemption from provisions relating to sub-contractors in construction industry: compliance with requirements of 1986 Order), for paragraph (a) substitute—

“(a) Articles 234, 249 and 250 (contents, laying and delivery of annual accounts);”.

The Companies (Northern Ireland) Order 1989 (NI 18)

31.—(1) In Article 6(3)(b) (default orders)—

(a) in head (i) for “Article 252” substitute “Article 250(3)”;

(b) after that head insert—

“(ia) Article 253B of that Order (order requiring preparation of revised accounts);”.

(2) In Schedule 1 for paragraph 5 substitute—

“**5.** The extent of the director’s responsibility for any failure by the directors of the company to comply with—

(a) Article 234 or 235 of the Companies Order (duty to prepare annual accounts); or

(b) Article 241 of that Order (approval and signature of accounts).”.