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*Changes to legislation: There are currently no known outstanding effects for the The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed). (See end of Document for details)*

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## STATUTORY INSTRUMENTS

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# 2005 No. 1967 (N.I. 17)

## NORTHERN IRELAND

### The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005

*Made - - - - 19th July 2005*

*Coming into operation in accordance with Article 1(2)*

At the Court at Buckingham Palace, the 19th day of July 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

## PART I

### INTRODUCTORY

#### **Title and commencement**

1.—(1) This Order may be cited as the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.

(2) Parts II, III and IV shall come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional or saving provisions as the Department thinks necessary or expedient.

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#### **Subordinate Legislation Made**

**P1** [Art. 1\(2\)](#) power partly exercised: 6.4.2006 appointed for specified provisions by [{S.R. 2006/93}](#), arts. 2, Sch. (with art. 3);

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6.4.2007 by {S.R. 2007/95}, art. 2

**Interpretation**

2.—(1) Subject to paragraph (2), the Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) For the purposes of this Order, section 20(2) of that Act applies as if—

- (a) the words “the liability of whose members is limited” were omitted; and
- (b) any reference to a director included a reference to a shadow director and (where the affairs of a body corporate are managed by its members) to a member of the body in connection with his functions of management.

(3) In this Order—

- “the Department” means the Department of Enterprise, Trade and Investment;
- “the 1986 Order” means the Companies (Northern Ireland) Order 1986 (NI 6);
- “the 1990 Order” means the Companies (Northern Ireland) Order 1990 (NI 5).

**PART II**

**AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS**

**CHAPTER I**

**AUDITORS**

*Recognised supervisory bodies*

**Additional requirements for recognition of supervisory bodies**

3. <sup>F1</sup> .....

**F1** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Arrangements to which additional requirements for recognition relate**

4. <sup>F2</sup> .....

**F2** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

*Delegation of functions of Department in relation to auditors*

**Delegation of functions by Department to new or existing body**

5. <sup>F3</sup> .....

**F3** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### **Circumstances in which the Department may delegate functions to existing body**

**6.** <sup>F4</sup> .....

**F4** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### **Supplementary provisions about delegation orders**

**7.** <sup>F5</sup> .....

**F5** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### *Auditors' qualifications*

### **Approval of overseas qualifications for auditors**

**8.** <sup>F6</sup> .....

**F6** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

### *Services provided by auditors*

### **Disclosure of services provided by auditors and related remuneration**

**9.** <sup>F7</sup> .....

**F7** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

## CHAPTER II

## ACCOUNTS AND REPORTS

### *Auditing of accounts*

### **Auditors' rights to information**

**10.** <sup>F8</sup> .....

**F8** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

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**Statement in directors' report as to disclosure of information to auditors**

11. <sup>F9</sup> .....

**F9** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

*Defective accounts*

**Persons authorised to apply to court in connection with defective accounts**

12. <sup>F10</sup> .....

**F10** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Power of person authorised to require documents, information and explanations**

13. <sup>F11</sup> .....

**F11** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

*Directors' reports*

**Power to specify bodies who may issue reporting standards**

14. <sup>F12</sup> .....

**F12** Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

**Application of provisions inserted by Article 13 to certain bodies**

15.—(1) Section 15 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (application of certain provisions to bodies appointed under section 14 of that Act) is amended as follows.

(2) In subsection (1) at the end add “and

(d) Articles 253F and 253G of and Schedule 7B to the 1986 Order.”.

(3) After subsection (5) insert—

“(5A) Articles 253F and 253G of and Schedule 7B to the 1986 Order apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under Article 253C of that Order and the functions of such persons mentioned in Article 253F(2), Article 253G(3)(a) of and paragraph 16 of Schedule 7B to that Order.

(5B) But Article 253F so applies as if—

(a) paragraph (1) of that Article provided that the Article applies where it appears to a prescribed body that there is, or may be, a question whether any relevant accounts

or reports produced by an issuer of listed securities comply with any accounting requirements imposed by listing rules; and

(b) the references in Article 253F(3)(a) and (b) to “the company” were references to that issuer.”.

(4) In subsection (6) after “subsection (5)” insert “ and subsection (5B) ”.

*Bodies concerned with accounting standards etc.*

**Grants to bodies concerned with accounting standards etc.**

**16.—**(1) The Department may make grants to any body carrying on activities concerned with any of the matters set out in paragraph (2).

(2) The matters are—

- (a) issuing accounting standards;
- (b) issuing standards in respect of matters to be contained in reports required to be produced by auditors or company directors;
- (c) investigating departures from standards within sub-paragraph (a) or (b) or from the accounting requirements of the 1986 Order or any requirements of directly applicable Community legislation relating to company accounts;
- (d) taking steps to secure compliance with such standards or requirements;
- (e) keeping under review periodic accounts and reports that are produced by issuers of listed securities and are required to comply with any accounting requirements imposed by listing rules;
- (f) establishing, maintaining or carrying out arrangements within paragraph 17, 18, 19(1) or 20(1) of Schedule 11 to the 1990 Order;
- (g) exercising functions of the Department under Part III of that Order;
- (h) carrying out investigations into public interest cases arising in connection with the performance of accountancy functions by members of professional accountancy bodies;
- (i) holding disciplinary hearings relating to members of such bodies following the conclusion of such investigations;
- (j) deciding whether (and, if so, what) disciplinary action should be taken against members of such bodies to whom such hearings related;
- (k) supervising the exercise by such bodies of regulatory functions in relation to their members;
- (l) overseeing or directing any of the matters mentioned above.

(3) A grant may be made to a body within paragraph (1) in respect of any of its activities.

(4) For the purposes of this Article—

- (a) a body is to be regarded as carrying on any subsidiary activities of the body; and
- (b) a body's “subsidiary activities” are activities carried on by any of its subsidiaries or by any body established under its constitution or under the constitution of such a subsidiary.

(5) In this Article—

“accountancy functions” means functions performed as an accountant, whether in the capacity of auditor or otherwise;

“company” means a company within the meaning of the 1986 Order;

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“issuer”, “listing rules” and “security” have the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation of Part 6);

“professional accountancy body” means—

- (a) a supervisory body which is recognised for the purposes of Part III of the 1990 Order, or
- (b) a qualifying body, as defined by Article 35 of that Order, which enforces rules as to the performance of accountancy functions by its members,

and references to the members of professional accountancy bodies include persons who, although not members of such bodies, are subject to their rules in performing accountancy functions;

“public interest cases” means matters which raise or appear to raise important issues affecting the public interest;

“regulatory functions”, in relation to professional accountancy bodies, means any of the following functions—

- (a) investigatory or disciplinary functions exercised by such bodies in relation to the performance by their members of accountancy functions,
- (b) the setting by such bodies of standards in relation to the performance by their members of accountancy functions, and
- (c) the determining by such bodies of requirements in relation to the education and training of their members;

“subsidiary” has the meaning given by Article 4 of the 1986 Order.

(6) Omit Article 264(3) of the 1986 Order (grants to bodies concerned with issuing accounting standards etc.) which is superseded by this Article.

### **Exemption from liability**

17.—(1) Where a grant has been paid by the Department to a body under Article 16, this Article prevents any liability in damages arising in respect of certain acts or omissions occurring during the period of 12 months beginning with the date on which the grant was paid.

(2) In this Article—

“Article 16(2) activities” means activities concerned with any of the matters set out in Article 16(2);

“the exemption period” means the period of 12 months mentioned in paragraph (1);

“a relevant body” means the body mentioned in that paragraph or a body carrying on any subsidiary activities of that body (within the meaning of Article 16).

(3) Neither a relevant body, nor any person who is (or is acting as) a member, officer or member of staff of a relevant body, is to be liable in damages for anything done, or omitted to be done, during the exemption period for the purposes of or in connection with—

- (a) the carrying on of any Article 16(2) activities of the body, or
- (b) the purported carrying on of any such activities.

(4) Paragraph (3) 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 grounds 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).

## CHAPTER III DIRECTORS' LIABILITIES

### Relaxation of prohibition on provisions protecting directors etc. from liability

**18.**—(1) After Article 317 of the 1986 Order (directors to have regard to interests of employees) insert—

#### “Provisions protecting directors from liability

**317A.**—(1) This Article applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.

(2) Any provision which purports to exempt (to any extent) a director of a company from any liability within paragraph (1) is void.

(3) Subject to paragraphs (4) and (5), any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—

- (a) the company, or
- (b) an associated company,

against any liability within paragraph (1) is void.

(4) Paragraph (3) does not apply to a qualifying third party indemnity provision within the meaning of Article 317B(1).

(5) Paragraph (3) does not prevent a company from purchasing and maintaining for a director of—

- (a) the company, or
- (b) an associated company,

insurance against any liability within paragraph (1).

(6) In this Article—

“associated company”, in relation to a company (“C”), means a company which is C's subsidiary, or C's holding company or a subsidiary of C's holding company;

“provision” means a provision of any nature, whether or not it is contained in a company's articles or in any contract with a company.

#### Qualifying third party indemnity provisions

**317B.**—(1) For the purposes of Article 317A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in Article 317A(3) in relation to which conditions A to C are satisfied.

(2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) to the company, or
- (b) to any associated company.

(3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—

- (a) a fine imposed in criminal proceedings, or

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- (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising).
- (4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—
  - (a) in defending any criminal proceedings in which he is convicted, or
  - (b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
  - (c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—
    - (i) Article 154(3) or (4), or
    - (ii) Article 675.
- (5) In sub-paragraph (a), (b) or (c) of paragraph (4) the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.
- (6) For the purposes of paragraph (5) a conviction, judgment or refusal of relief becomes final—
  - (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (7) An appeal is disposed of—
  - (a) if it is determined and the period for bringing any further appeal has ended, or
  - (b) if it is abandoned or otherwise ceases to have effect.
- (8) In this Article “associated company” and “provision” have the same meaning as in Article 317A.

### **Disclosure of qualifying third party indemnity provisions**

**317C.**—(1) Paragraphs (2) and (3) impose disclosure requirements in relation to a directors' report under Article 242 in respect of a financial year.

- (2) If —
  - (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or
  - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of the company,

the report must state that any such provision is or (as the case may be) was so in force.

- (3) If the company has made a qualifying third party indemnity provision and—
  - (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or
  - (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of an associated company,

the report must state that any such provision is or (as the case may be) was so in force.

(4) Paragraph (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.

- (5) Article 326 shall apply to—
  - (a) the company, and



(b) if the director is a director of an associated company, the associated company, as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in Article 326(1).

(6) In this Article—

“associated company” and “provision” have the same meaning as in Article 317A; and  
“qualifying third party indemnity provision” has the meaning given by Article 317B(1).”.

(2) In Article 318 of that Order (provisions exempting officers and auditors from liability), the following provisions cease to have effect—

(a) in paragraph (1), the words “any officer of the company or”, and

(b) in paragraph (3)—

(i) the words “officer or” (in both places), and

(ii) the words from “Article 154(3)” to “nominee) or”;

and in the heading, for “exempting officers and” substitute “protecting”.

#### Commencement Information

**II** [Art. 18](#) wholly in operation at 6.4.2006, see [art. 1\(2\)](#) and [S.R. 2006/93](#) {art. 2}, Sch. (with transitional provision in art. 3)

#### Funding of director's expenditure on defending proceedings

**19.** <sup>F13</sup> .....

**F13** [Art. 19](#) repealed (1.10.2007) by [Companies Act 2006](#) (c. 46), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/2194, [art. 8](#), [Sch. 2 Pt. 2](#) (with [art. 12](#))

## CHAPTER IV INVESTIGATIONS

#### Power to require documents and information

**20.** For Article 440 of the 1986 Order (Department's power to require production of documents) substitute—

##### “Power to require documents and information

**440.**—(1) The Department may act under paragraphs (2) and (3) in relation to a company.

(2) The Department may give directions to the company requiring it—

(a) to produce such documents (or documents of such description) as may be specified in the directions;

(b) to provide such information (or information of such description) as may be so specified.

(3) The Department may authorise a person (an investigator) to require the company or any other person—

(a) to produce such documents (or documents of such description) as the investigator may specify;

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- (b) to provide such information (or information of such description) as the investigator may specify.
- (4) A person on whom a requirement under paragraph (3) is imposed may require the investigator to produce evidence of his authority.
- (5) A requirement under paragraph (2) or (3) must be complied with at such time and place as may be specified in the directions or by the investigator (as the case may be).
- (6) The production of a document in pursuance of this Article does not affect any lien which a person has on the document.
- (7) The Department or the investigator (as the case may be) may take copies of or extracts from a document produced in pursuance of this Article.
- (8) A “document” includes information recorded in any form.
- (9) In relation to information recorded otherwise than in legible form, the power to require production of it includes power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.”.

#### **Protection in relation to certain disclosures**

**21.** After Article 441 of the 1986 Order (entry and search of premises) insert—

##### **“Protection in relation to certain disclosures: information provided to Department**

**441A.**—(1) A person who makes a relevant disclosure is not liable by reason only of that disclosure in any proceedings relating to a breach of an obligation of confidence.

(2) A relevant disclosure is a disclosure which satisfies each of the following conditions—

- (a) it is made to the Department otherwise than in compliance with a requirement under this Part;
  - (b) it is of a kind that the person making the disclosure could be required to make in pursuance of this Part;
  - (c) the person who makes the disclosure does so in good faith and in the reasonable belief that the disclosure is capable of assisting the Department for the purposes of the exercise of its functions under this Part;
  - (d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Department for the purposes of the exercise of those functions;
  - (e) the disclosure is not one falling within paragraph (3) or (4).
- (3) A disclosure falls within this paragraph if the disclosure is prohibited by virtue of any statutory provision.
- (4) A disclosure falls within this paragraph if—
- (a) it is made by a person carrying on the business of banking or by a lawyer, and
  - (b) it involves the disclosure of information in respect of which he owes an obligation of confidence in that capacity.”.

#### **Power to enter and remain on premises**

**22.** After Article 446 of the 1986 Order (investigation of bodies incorporated outside Northern Ireland) insert—

**“Power to enter and remain on premises**

**446A.**—(1) An inspector or investigator may act under paragraph (2) in relation to a company if—

- (a) he is authorised to do so by the Department, and
- (b) he thinks that to do so will materially assist him in the exercise of his functions under this Part in relation to the company.

(2) An inspector or investigator may at all reasonable times—

- (a) require entry to relevant premises, and
- (b) remain there for such period as he thinks necessary for the purpose mentioned in paragraph (1)(b).

(3) Relevant premises are premises which the inspector or investigator believes are used (wholly or partly) for the purposes of the company’s business.

(4) In exercising his powers under paragraph (2), an inspector or investigator may be accompanied by such other persons as he thinks appropriate.

(5) A person who intentionally obstructs a person lawfully acting under paragraph (2) or (4)—

- (a) is guilty of an offence, and
- (b) is liable on conviction to a fine.

(6) Articles 680, 680A and 680B apply to the offence under paragraph (5).

(7) An inspector is a person appointed under Article 424, 425 or 435.

(8) An investigator is a person authorised for the purposes of Article 440.

**Power to enter and remain on premises: procedural**

**446B.**—(1) This Article applies for the purposes of Article 446A.

(2) The requirements of paragraph (3) must be complied with at the time an inspector or investigator seeks to enter relevant premises under Article 446A(2)(a).

(3) The requirements are—

- (a) the inspector or investigator must produce evidence of his identity and evidence of his appointment or authorisation (as the case may be);
- (b) any person accompanying the inspector or investigator must produce evidence of his identity.

(4) The inspector or investigator must, as soon as practicable after obtaining entry, give to an appropriate recipient a written statement containing such information as to—

- (a) the powers of the investigator or inspector (as the case may be) under Article 446A;
- (b) the rights and obligations of the company, occupier and the persons present on the premises,

as may be prescribed by regulations.

(5) If during the time the inspector or investigator is on the premises there is no person present who appears to him to be an appropriate recipient for the purposes of paragraph (4), the inspector or investigator must as soon as reasonably practicable send to the company—

- (a) a notice of the fact and time that the visit took place, and
- (b) the statement mentioned in paragraph (4).

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- (6) As soon as reasonably practicable after exercising his powers under Article 446A(2), the inspector or investigator must prepare a written record of the visit and—
- (a) if requested to do so by the company he must give it a copy of the record;
  - (b) in a case where the company is not the sole occupier of the premises, if requested to do so by an occupier he must give the occupier a copy of the record.
- (7) The written record must contain such information as may be prescribed by regulations.
- (8) If the inspector or investigator thinks that the company is the sole occupier of the premises an appropriate recipient is a person who is present on the premises and who appears to the inspector or investigator to be—
- (a) an officer of the company, or
  - (b) a person otherwise engaged in the business of the company if the inspector or investigator thinks that no officer of the company is present on the premises.
- (9) If the inspector or investigator thinks that the company is not the occupier or sole occupier of the premises an appropriate recipient is—
- (a) a person who is an appropriate recipient for the purposes of paragraph (8), and (if different)
  - (b) a person who is present on the premises and who appears to the inspector or investigator to be an occupier of the premises or otherwise in charge of them.
- (10) Regulations under this Article shall be subject to negative resolution.”.

### **Failure to comply with certain requirements**

**23.** After Article 446B of the 1986 Order (inserted by Article 22) insert—

#### **“Failure to comply with certain requirements**

**446C.**—(1) This Article applies if a person fails to comply with a requirement imposed by an inspector, the Department or an investigator in pursuance of either of the following provisions—

- (a) Article 440;
- (b) Article 446A.

(2) The inspector, Department or investigator (as the case may be) may certify the fact in writing to the court.

(3) If, after hearing—

- (a) any witnesses who may be produced against or on behalf of the alleged offender;
- (b) any statement which may be offered in defence,

the court is satisfied that the offender failed without reasonable excuse to comply with the requirement, it may deal with him as if he had been guilty of contempt of the court.”.

## CHAPTER V

### MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

#### **Minor and consequential amendments and repeals**

- 24.**—(1) Schedule 2 (minor and consequential amendments relating to this Part) has effect.
- (2) Schedule 3 (repeals relating to this Part) has effect.

**Commencement Information**

- I2** [Art. 24](#) partly in operation; [art. 24](#) not in operation at date of making, see [art. 1\(2\)](#); [art. 24\(2\)](#) in operation at 6.4.2006 by [S.R. 2006/93](#) {art 2}, Sch.

*A.K. Galloway*  
Clerk of the Privy Council

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# SCHEDULES

## SCHEDULE 1

.....

## SCHEDULE 2

Article 24

### MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART II

#### PART I

#### AMENDMENTS RELATING TO AUDITORS

*Companies (Northern Ireland) Order 1990 (NI 5)*

.....

**1.** <sup>F15</sup> .....

**F15** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

.....

**2.** <sup>F16</sup> .....

**F16** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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**3.** <sup>F17</sup> .....

**F17** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

## PART II

### AMENDMENTS RELATING TO ACCOUNTS AND REPORTS

#### *Companies (Northern Ireland) Order 1986 (NI 6)*

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4. <sup>F18</sup> .....

**F18** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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5. <sup>F19</sup> .....

**F19** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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6. <sup>F20</sup> .....

**F20** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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7. <sup>F21</sup> .....

**F21** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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8. <sup>F22</sup> .....

**F22** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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9. <sup>F23</sup> .....

**F23** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

## PART III

### AMENDMENTS RELATING TO INVESTIGATIONS

*Companies (Northern Ireland) Order 1986 (NI 6)*

10. The 1986 Order has effect subject to the following amendments.

11. After Article 440 (Department's power to require production of documents) insert—

**“Information provided: evidence**

**440A.**—(1) A statement made by a person in compliance with a requirement under Article 440 may be used in evidence against him.

(2) But in criminal proceedings in which the person is charged with a relevant offence—

(a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and

(b) no question relating to it may be asked by or on behalf of the prosecution,

unless evidence relating to it is adduced or a question relating to it is asked in the proceedings by or on behalf of that person.

(3) A relevant offence is any offence other than the following—

(a) an offence under Article 444, or

(b) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statement made otherwise than on oath).”.

12. For Article 442 (provision for security of information obtained) substitute—

**“Provision for security of information obtained**

**442.**—(1) This Article applies to information (in whatever form) obtained—

(a) in pursuance of a requirement imposed under Article 440;

(b) by means of a relevant disclosure within the meaning of Article 441A(2);

(c) by an investigator in consequence of the exercise of his powers under Article 446A.

(2) Such information must not be disclosed unless the disclosure—

(a) is made to a person specified in Schedule 15C, or

(b) is of a description specified in Schedule 15D.

(3) The Department may by order amend Schedules 15C and 15D.

(4) An order under paragraph (3) must not—

(a) amend Schedule 15C by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);

(b) amend Schedule 15D by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature.



(5) An order under paragraph (3) shall be subject to negative resolution.

(6) A person who discloses any information in contravention of this Article—

(a) is guilty of an offence, and

(b) is liable on conviction to imprisonment or a fine or to both.

(7) Articles 680, 680A and 680B apply to the offence under paragraph (6).

(8) Any information which may by virtue of this Article be disclosed to a person specified in Schedule 15C may be disclosed to any officer or employee of the person.

(9) This Article does not prohibit the disclosure of information if the information is or has been available to the public from any other source.

(10) For the purposes of this Article, information obtained by an investigator in consequence of the exercise of his powers under Article 446A includes information obtained by a person accompanying the investigator in pursuance of paragraph (4) of that Article in consequence of that person's accompanying the investigator.

(11) Nothing in this Article authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).”.

13. For Article 444 (punishment for furnishing false information) substitute—

**“Punishment for furnishing false information**

**444.**—(1) A person commits an offence if in purported compliance with a requirement under Article 440 to provide information—

(a) he provides information which he knows to be false in a material particular;

(b) he recklessly provides information which is false in a material particular.

(2) A person guilty of an offence under this Article is liable on conviction to imprisonment or a fine or to both.

(3) Articles 680, 680A and 680B apply to an offence under this Article.”.

14.—(1) Article 444A (disclosure of information by Department or inspector) is amended as follows.

(2) For paragraph (1) substitute—

“(1) This Article applies to information obtained—

(a) under Articles 427 to 439;

(b) by an inspector in consequence of the exercise of his powers under Article 446A.”.

(3) After paragraph (5) insert—

“(6) For the purposes of this Article, information obtained by an inspector in consequence of the exercise of his powers under Article 446A includes information obtained by a person accompanying the inspector in pursuance of paragraph (4) of that Article in consequence of that person's accompanying the inspector.

(7) The reference to an inspector in paragraph (2)(b) above includes a reference to a person accompanying an inspector in pursuance of Article 446A(4).”.

15. In Article 445 (privileged information)—

(a) for paragraph (1) substitute—

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

“(1) Nothing in Articles 424 to 439 compels the disclosure by any person to the Department or to an inspector appointed by it of information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.”

(b) for paragraphs (2) and (3) substitute—

“(2) Nothing in Articles 440 to 444—

- (a) compels the production by any person of a document or the disclosure by any person of information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained;
- (b) authorises the taking of possession of any such document which is in the person's possession.

(3) The Department must not under Article 440 require, or authorise a person to require—

- (a) the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his, or
- (b) the disclosure by him of information relating to those affairs,

unless one of the conditions in paragraph (4) is met.

(4) The conditions are—

- (a) the Department thinks it is necessary to do so for the purpose of investigating the affairs of the person carrying on the business of banking;
- (b) the customer is a person on whom a requirement has been imposed under Article 440;
- (c) the customer is a person on whom a requirement to produce information or documents has been imposed by an investigator appointed by the Secretary of State in pursuance of section 171 or 173 of the Financial Services and Markets Act 2000 (c. 8) (powers of persons appointed under section 167 or as a result of section 168(2) to conduct an investigation).

(5) Despite paragraphs (1) and (2) a person who is a lawyer may be compelled to disclose the name and address of his client.”

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**16.** <sup>F24</sup> .....

**F24** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8\(a\)](#), Sch. 2 Pt. 2 (with arts. 7, 12)

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**17.** <sup>F25</sup> .....

**F25** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8\(a\)](#), Sch. 2 Pt. 2 (with arts. 7, 12)

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**18.** <sup>F26</sup> .....

**F26** Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by *Companies Act 2006 (c. 46)*, ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

**19.** After Schedule 15B insert—

“SCHEDULE 15C

SPECIFIED PERSONS

1. The Secretary of State.
2. The Department.
3. The Treasury.
4. The Lord Advocate.
5. The Director of Public Prosecutions.
6. The Director of Public Prosecutions for Northern Ireland.
7. The Financial Services Authority.
8. A constable.
9. A procurator fiscal.
10. The Scottish Ministers.

SCHEDULE 15D

DISCLOSURES

1. A disclosure for the purpose of enabling or assisting a person authorised under Article 253C to exercise his functions.
2. A disclosure for the purpose of enabling or assisting an inspector appointed under Part XV to exercise his functions.
3. A disclosure for the purpose of enabling or assisting a person authorised under Article 440 of this Order or section 84 of the *Companies Act 1989 (c. 40)* to exercise his functions.
4. A disclosure for the purpose of enabling or assisting a person appointed under section 167 of the *Financial Services and Markets Act 2000 (c. 8)* (general investigations) to conduct an investigation to exercise his functions.
5. A disclosure for the purpose of enabling or assisting a person appointed under section 168 of the *Financial Services and Markets Act 2000 (c. 8)* (investigations in particular cases) to conduct an investigation to exercise his functions.
6. A disclosure for the purpose of enabling or assisting a person appointed under section 169(1)(b) of the *Financial Services and Markets Act 2000 (c. 8)* (investigation in support of overseas regulator) to conduct an investigation to exercise his functions.
7. A disclosure for the purpose of enabling or assisting a person appointed under section 284 of the *Financial Services and Markets Act 2000 (c. 8)* (investigations into

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

affairs of certain collective investment schemes) to conduct an investigation to exercise his functions.

**8.** A disclosure for the purpose of enabling or assisting a person appointed under regulations made under sections 1(1) and (2)(k) of the Open-Ended Investment Companies Act (Northern Ireland) 2002 (c. 13) (investigations into open-ended investment companies) to conduct an investigation to exercise his functions.

**9.** A disclosure for the purpose of enabling or assisting the Department, the Secretary of State or the Treasury to exercise any of their functions under any of the following—

- (a) this Order;
- (b) the insider dealing legislation;
- (c) the Insolvency (Northern Ireland) Order 1989 (NI 19);
- (d) the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4);
- (e) Part 7 of the Companies Act 1989 (c. 40);
- (f) Part III of the 1990 Order;
- (g) Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10);
- (h) the Financial Services and Markets Act 2000 (c. 8).

**10.** A disclosure for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the statutory provisions relating to companies or insolvency.

**11.** A disclosure for the purpose of enabling or assisting a person appointed or authorised by the Secretary of State under the statutory provisions relating to companies or insolvency to exercise his functions.

**12.** A disclosure for the purpose of enabling or assisting the Pensions Regulator to exercise his functions under any of the following—

- (a) the Pension Schemes (Northern Ireland) Act 1993 (c. 49);
- (b) the Pensions (Northern Ireland) Order 1995 (NI 22);
- (c) the Pensions (Northern Ireland) Order 2005 (NI 1);
- (d) any statutory provision in force in Great Britain corresponding to any of the above.

**13.** A disclosure for the purpose of enabling or assisting the Bank of England to exercise its functions.

**14.** A disclosure for the purpose of enabling or assisting the body known as the Panel on Takeovers and Mergers to exercise its functions.

**15.** A disclosure for the purpose of enabling or assisting organs of the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982) to exercise their functions under or by virtue of the Lloyd's Acts 1871 to 1982.

**16.** A disclosure for the purpose of enabling or assisting the Office of Fair Trading to exercise its functions under any of the following—

- (a) the Fair Trading Act 1973 (c. 41);
- (b) the Consumer Credit Act 1974 (c. 39);
- (c) the Estate Agents Act 1979 (c. 38);
- (d) the Competition Act 1980 (c. 21);
- (e) the Competition Act 1998 (c. 41);

- (f) the Financial Services and Markets Act 2000 (c. 8);
- (g) the Enterprise Act 2002 (c. 40);
- (h) the Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915);
- (i) the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083).

**17.** A disclosure for the purpose of enabling or assisting the Competition Commission to exercise its functions under any of the following—

- (a) the Fair Trading Act 1973 (c. 41);
- (b) the Competition Act 1980 (c. 21);
- (c) the Competition Act 1998 (c. 41);
- (d) the Enterprise Act 2002 (c. 40).

**18.** A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Competition Appeal Tribunal.

**19.** A disclosure for the purpose of enabling or assisting an enforcer under Part 8 of the Enterprise Act 2002 (c. 40) to exercise its functions under that Part.

**20.** A disclosure for the purpose of enabling or assisting the Attorney General for Northern Ireland to exercise his functions in connection with charities.

**21.** A disclosure for the purpose of enabling or assisting the National Lottery Commission to exercise its functions under sections 5 to 10 and 15 of the National Lottery etc. Act 1993 (c. 39).

**22.** A disclosure by the National Lottery Commission to the National Audit Office for the purpose of enabling or assisting the Comptroller and Auditor General to carry out an examination under Part 2 of the National Audit Act 1983 (c. 44) into the economy, effectiveness and efficiency with which the National Lottery Commission has used its resources in discharging its functions under sections 5 to 10 of the National Lottery etc. Act 1993 (c. 39).

**23.** A disclosure for the purpose of enabling or assisting a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083) to exercise its functions under those Regulations.

**24.** A disclosure for the purpose of enabling or assisting an enforcement authority under the Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334) to exercise its functions under those Regulations.

**25.** A disclosure for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—

- (a) the legislation relating to friendly societies or to industrial and provident societies;
- (b) the Building Societies Act 1986 (c. 53);
- (c) Part 7 of the Companies Act 1989 (c. 40);
- (d) the Financial Services and Markets Act 2000 (c. 8).

**26.** A disclosure for the purpose of enabling or assisting the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 (c. 8) to exercise its functions under that Part.

**27.** A disclosure for the purpose of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (c. 8) (compensation scheme manager) to exercise its functions.

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

**28.**—(1) A disclosure for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to exercise its functions as such.

(2) Recognised investment exchange and recognised clearing house have the same meaning as in section 285 of the Financial Services and Markets Act 2000 (c. 8).

**29.** A disclosure for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (c. 8) (designated professional bodies) to exercise its functions in its capacity as a body designated under that section.

**30.** A disclosure with a view to the institution of, or otherwise for the purposes of, civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000 (c. 8).

**31.** A disclosure for the purpose of enabling or assisting a body designated by order under Article 48 of the 1990 Order (delegation of functions of Department) to exercise its functions under Part III of that Order.

**32.** A disclosure for the purpose of enabling or assisting a recognised supervisory or qualifying body (within the meaning of Part II of the 1990 Order) to exercise its functions as such.

**33.** A disclosure for the purpose of enabling or assisting an official receiver (or, as the case may be, the Accountant in Bankruptcy in Scotland) to exercise his functions under the statutory provisions relating to insolvency.

**34.** A disclosure for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 (recognised professional bodies) to exercise its functions as such.

**35.**—(1) A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.

(2) Overseas regulatory authority and regulatory functions have the same meaning as in section 82 of the Companies Act 1989 (c. 40).

**36.** A disclosure for the purpose of enabling or assisting the Regulator of Community Interest Companies for Northern Ireland to exercise functions under the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.

**37.** A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.

**38.** A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under Article 9, 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4).

**39.** A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal.

**40.** A disclosure for the purposes of proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001 (S.I. 2001/3592).

**41.** A disclosure for the purpose of enabling or assisting a body appointed under section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (supervision of periodic accounts and reports of issuers of listed securities) to exercise functions mentioned in subsection (2) of that section.

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

**42.** A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a solicitor, barrister, auditor, accountant, valuer or actuary of his professional duties.

**43.—(1)** A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a public servant of his duties.

(2) Public servant means an officer or employee of the Crown or of any public or other authority for the time being designated for the purposes of this paragraph by the Department by order.

(3) An order under sub-paragraph (2) shall be subject to negative resolution.

**44.** A disclosure for the purpose of the provision of a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained.

**45.** A disclosure in pursuance of any Community obligation.”.

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

(2) For the entry for Article 442(2) substitute—

“442(6)	Wrongful disclosure of information to which Article 442 applies.	<b>1.</b> On indictment.  <b>2.</b> Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.”.
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(3) For the entry for Article 444 substitute—

“444	Providing false information in purported compliance with Article 440.	<b>1.</b> On indictment.  <b>2.</b> Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.”.
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(4) After the entry for Article 444 insert—

“446A(5)	Intentionally obstructing a person lawfully acting under Article 446A(2) or (4).	<b>1.</b> On indictment.  <b>2.</b> Summary.	A fine. The statutory maximum.”.
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*Insolvency (Northern Ireland) Order 1989 (NI 19)*

**21.** In Article 104A(1)(a) of the *Insolvency (Northern Ireland) Order 1989 (NI 19)* (petition for winding up on grounds of public interest), after “Part XV” insert “ (except Article 441A) ”.

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

*Companies Act 1989 (c. 40)*

**22.** In the table in section 87(4) of the Companies Act 1989 (c. 40) (exceptions from restrictions on disclosure), after the entry relating to the Regulator of Community Interest Companies insert—

“The Regulator of Community Interest Companies for Northern Ireland.	Functions under the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.”.
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*Criminal Justice and Police Act 2001 (c. 16)*

**23.** In paragraph 17 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16) (amendments of Articles 427 and 440 of the Companies (Northern Ireland) Order 1986 (NI 6)), for “Articles 427(6) and 440(9)” substitute “ Article 427(6) ”.

*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

**24.** In paragraph 59 of Schedule 4 to the Anti-terrorism, Crime and Security Act 2001 (c. 24) (enactments to which section 17 of that Act applies), for “442(1)” substitute “ 442 ”.

*Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4)*

**25.** In Article 11(2)(b)(i) of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) (disqualification after investigation of a company), for “or 441” substitute “ , 441 or 446A ”.

SCHEDULE 3

Article 24

REPEALS

**Commencement Information**

**I3** [Sch. 3](#) partly in operation; [Sch. 3](#) not in operation at date of making, see [art. 1\(2\)](#); [Sch. 3](#) in operation for specified purposes at 6.4.2006 by [S.R. 2006/93](#), [art. 2](#), [Sch.](#)

**Short Title**

The Companies (Northern Ireland) Order 1986 (NI 6).

**Extent of repeal**

Article 253C(6).

Article 264(3).

In Article 318(1), the words “any officer of the company or”.

In Article 318(3) the words “officer or” (in both places) and the words from “Article 154(3)” to “nominee) or”.

Article 398A(3).



	In Article 680B(1), the words “Article 397A(3),”.
	In Schedule 4A, in paragraph 1(1), the words “Article 398A(3) (amount of auditors’ remuneration) and”.
	In Schedule 23, the entry relating to Article 440(6).
The Companies (Northern Ireland) Order 1989 (NI 18).	In Schedule 4, paragraph 4.
The Companies (Northern Ireland) Order 1990 (NI 5).	Article 50(3).
The Companies (No. 2) (Northern Ireland) Order 1990 (NI 10).	Article 11. Article 13. Article 15. Article 17(2) and (4). Article 55(2).
The Friendly Societies Act 1992 (c. 40).	In Schedule 21, paragraph 30.
The Criminal Justice Act 1993 (c. 36).	In Schedule 5, paragraph 19(1) and (2).
The Pensions (Northern Ireland) Order 1995 (NI 22).	In Schedule 1, paragraph 10.
The Bank of England Act 1998 (c. 11).	In Schedule 5, paragraph 63.
The Youth Justice and Criminal Evidence Act 1999 (c. 23).	In Schedule 3, paragraph 15.
The Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4).	In Schedule 3, paragraph 5.

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## SCHEDULE 4

Article 26

### REGULATOR OF COMMUNITY INTEREST COMPANIES FOR NORTHERN IRELAND

#### *Regulator’s terms of appointment*

- 1.—(1) The period for which a person is appointed as Regulator must not exceed five years.
- (2) A person who has held office as Regulator may be re-appointed, once only, for a further period not exceeding five years.
- (3) The Regulator may at any time resign the office by giving notice in writing to the Department.
- (4) The Department may at any time remove the Regulator on the ground of incapacity or misbehaviour.
- (5) Subject to that, the Regulator holds and vacates office on the terms determined by the Department.

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

### *Remuneration and pensions*

2.—(1) The Department may pay remuneration and travelling and other allowances to the Regulator.

(2) The Department may—

- (a) pay a pension, allowance or gratuity to or in respect of a person who is or has been the Regulator, or
- (b) make contributions or payments towards provision for a pension, allowance or gratuity for or in respect of such a person.

### *Staff*

3.—(1) The Regulator may, after consulting the Department of Finance and Personnel as to numbers and terms and conditions of service, appoint such staff as the Regulator may determine.

(2) The members of staff must include a deputy to the Regulator who is to act as Regulator—

- (a) during any vacancy in that office, or
- (b) if the Regulator is absent, subject to suspension or unable to act.

(3) Where a participant in a scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 (NI 10) is appointed as the Regulator, the Department of Finance and Personnel may determine that the person's term of office as the Regulator is to be treated for the purposes of the scheme as service in the employment by reference to which he was a participant (whether or not any benefits are payable by virtue of paragraph 2(2)).

### *Delegation of functions*

4. Anything which the Regulator is authorised or required to do may be done by a member of the Regulator's staff if authorised by the Regulator (generally or specifically) for that purpose.

### *Finance*

5. The Department may make payments to the Regulator.

### *Reports and other information*

6.—(1) The Regulator must, in respect of each financial year, prepare a report on the exercise of the Regulator's functions during the financial year.

(2) The Regulator must prepare accounts in respect of a financial year if the Department so directs.

(3) The Regulator must send a copy of the accounts to the Comptroller and Auditor General.

(4) The Comptroller and Auditor General must examine, certify and report on the accounts and send a copy of the report to the Regulator.

(5) The Regulator must include the accounts and the Comptroller and Auditor General's report on them in the report prepared by the Regulator in respect of the financial year to which the accounts relate.

(6) The Regulator must prepare that report as soon as possible after the end of the financial year to which it relates.

(7) The Regulator must send to the Department a copy of—

- (a) each report prepared by the Regulator under sub-paragraph (1), and
- (b) each report prepared by the Official Property Holder under paragraph 6 of Schedule 6.

(8) The Department must lay before the Assembly a copy of each of those reports.

(9) The Regulator must supply the Department with such other reports and information relating to the exercise of the Regulator's functions as the Department may require.

(10) In this paragraph—

“the Comptroller and Auditor General” means the Comptroller and Auditor General for Northern Ireland;

“financial year” means—

- (a) the period beginning with the date on which a person is first appointed as the Regulator and ending with the next 31st March, and
- (b) each successive period of 12 months beginning with 1st April.

#### *Amendments*

7. In Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7) (bodies subject to investigation), insert at the appropriate place— “ Office of the Regulator of Community Interest Companies for Northern Ireland. ”.

8. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), insert at the appropriate place— “ Regulator of Community Interest Companies for Northern Ireland. ”.

### SCHEDULE 5

Article 27

#### APPEAL OFFICER FOR COMMUNITY INTEREST COMPANIES FOR NORTHERN IRELAND

##### *Appeal Officer's terms of appointment*

1.—(1) The Appeal Officer holds office for the period determined by the Department on appointment (or re-appointment).

(2) But—

- (a) the Appeal Officer may at any time resign the office by giving notice in writing to the Department, and
- (b) the Department may at any time remove the Appeal Officer on the ground of incapacity or misbehaviour.

(3) Subject to that, the Appeal Officer holds and vacates office on the terms determined by the Department.

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed). (See end of Document for details)

### *Remuneration and pensions*

2.—(1) The Department may pay remuneration and travelling and other allowances to the Appeal Officer.

(2) The Department may—

- (a) pay a pension, allowance or gratuity to or in respect of a person who is or has been the Appeal Officer, or
- (b) make contributions or payments towards provision for a pension, allowance or gratuity for or in respect of such a person.

### *Finance*

3. The Department may make payments to the Appeal Officer.

### *Procedure*

4.—(1) Regulations may make provision about the practice and procedure to be followed by the Appeal Officer.

(2) Regulations under this paragraph may in particular impose time limits for bringing appeals.

### *Amendments*

5. In Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7) (bodies subject to investigation), insert at the appropriate place— “ Appeal Officer for Community Interest Companies for Northern Ireland. ”.

6. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), insert at the appropriate place— “ Appeal Officer for Community Interest Companies for Northern Ireland. ”.

## SCHEDULE 6

Article 28

### OFFICIAL PROPERTY HOLDER FOR COMMUNITY INTEREST COMPANIES FOR NORTHERN IRELAND

#### *Status*

1.—(1) The Official Property Holder is a corporation sole.

(2) A document purporting to be—

- (a) duly executed under the seal of the Official Property Holder, or
- (b) signed on behalf of the Official Property Holder,

shall be received in evidence and shall, unless the contrary is proved, be taken to be so executed or signed.

#### *Relationship with Regulator*

2. The Regulator must make available to the Official Property Holder such members of the Regulator's staff as the Official Property Holder may require in order to exercise the functions of the office.

#### *Effect of vacancy*

3. The Regulator must appoint a member of the Regulator's staff who is to act as Official Property Holder—

- (a) during any vacancy in the office, or
- (b) if the Official Property Holder is absent, subject to suspension or unable to act.

#### *Property*

- 4.—(1) The Official Property Holder holds property vested in or transferred to him as a trustee.
- (2) The Official Property Holder may release or deal with the property—
- (a) to give effect to any interest in or right over the property of any person (other than the community interest company by which, or in trust for which, the property was held before it was vested or transferred), or
  - (b) at the request of a person appointed to act as administrative receiver, administrator, provisional liquidator or liquidator of the company.
- (3) Subject to sub-paragraph (2), the Official Property Holder may not release or deal with the property except in accordance with directions given by the Regulator.

#### *Finance*

5.—(1) The Official Property Holder may recover his expenses in respect of property held by him from the property or from the community interest company by which, or in trust for which, the property was held before it was vested in or transferred to the Official Property Holder.

(2) Any expenses of the Official Property Holder not recovered under sub-paragraph (1) are to be met by the Regulator.

#### *Reports*

6.—(1) As soon as possible after the end of each financial year, the Official Property Holder must prepare a report on the exercise of the Official Property Holder's functions during the financial year.

- (2) The Official Property Holder must send a copy of the report to the Regulator.
- (3) In this paragraph “financial year” means—

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**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

- (a) the period beginning with the date on which a person is first appointed as the Official Property Holder and ending with the next 31st March, and
- (b) each successive period of 12 months beginning with 1st April.

## SCHEDULE 7

Article 32

### COMMUNITY INTEREST COMPANIES: NAMES

#### *Companies (Northern Ireland) Order 1986 (NI 6)*

- 1.—(1) Article 36 (prohibition on registration of certain names) is amended as follows.
  - (2) In paragraph (1)(a) for “or “public limited company”” substitute “, “public limited company”, “community interest company” or “community interest public limited company” .
  - (3) In paragraph (3)(b), for “and “public limited company”” substitute “, “public limited company”, “community interest company”, “community interest public limited company”, ”.
2. In Article 37(4) (alternatives of statutory designations), after sub-paragraph (b) add “and
  - (c) the alternative of “community interest company” is “c.i.c.”; and
  - (d) the alternative of “community interest public limited company” is “community interest p.l.c.”.”.
3. In Article 40(7) (further exemptions for company exempt from using “limited” as part of its name), after “which” insert “ under this Article ”.
4. After Article 44 insert—

#### **“Penalty for improper use of “community interest company”**

**44A.**—(1) A company which is not a community interest company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of the expressions specified in paragraph (3).

(2) A person other than a company is guilty of an offence if it carries on any trade, profession or business under a name which includes any of those expressions (or any contraction of them) as its last part.

(3) The expressions are—

- (a) “community interest company” , and
- (b) “community interest public limited company”.

(4) Paragraphs (1) and (2) do not apply—

- (a) to a person who was carrying on a trade, profession or business under the name in question at any time during the period beginning with 1st January 2005 and ending with 15th March 2005, or

(b) if the name in question was on 15th March 2005 a registered trade mark or Community trade mark (within the meaning of the Trade Marks Act 1994 (c. 26)), to a person who was on that date a proprietor or licensee of that trade mark.

(5) A person guilty of an offence under paragraph (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.”.

5. In Article 53(2)(b) (re-registration of private company as public: alteration of name), after “Article 35(1)” insert “ , or Article 32 of the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005, ”.

6. In Article 359(1)(d) (particulars in correspondence to indicate that a company exempt from obligation to use “limited” as part of name is limited company), after “name” insert “ under Article 40 or a community interest company which is not a public company ”.

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

(2) After the entry relating to Article 44 insert—

“44A.	Trading with improper use of “community interest company” etc.	Summary.	Level 3.	One-tenth of level 3 on the standard scale.”.
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*Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12)*

8. In paragraph 8(2) of the Schedule (similarity of names), after the entry relating to “public limited company” insert—

““community interest company”,  
“community interest public limited company”.”.

SCHEDULE 8

Article 40

COMMUNITY INTEREST COMPANIES: INVESTIGATIONS

*Power to require documents and information*

1.—(1) The investigator of a community interest company may require the company or any other person—

- (a) to produce such documents (or documents of such description) as the investigator may specify;
- (b) to provide such information (or information of such description) as the investigator may specify.

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

(2) A person on whom a requirement is imposed under sub-paragraph (1) may require the investigator to produce evidence of his authority.

(3) A requirement under sub-paragraph (1) must be complied with at such time and place as may be specified by the investigator.

(4) The production of a document in pursuance of this paragraph does not affect any lien which a person has on the document.

(5) The investigator may take copies of or extracts from a document produced in pursuance of this paragraph.

(6) In relation to information recorded otherwise than in legible form, the power to require production of it includes power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.

(7) In this Schedule—

(a) “the investigator of a community interest company” means a person investigating the company's affairs under Article 40, and

(b) “document” includes information recorded in any form.

#### *Privileged information*

**2.—**(1) Nothing in paragraph 1 requires a person to produce a document or provide information in respect of which a claim could be maintained in an action in the High Court to legal professional privilege, but a person who is a lawyer may be required to provide the name and address of his client.

(2) Nothing in paragraph 1 requires a person carrying on the business of banking to produce a document, or provide information, relating to the affairs of a customer unless a requirement to produce the document, or provide the information, has been imposed on the customer under that paragraph.

#### *Use of information as evidence*

**3.—**(1) A statement made by a person in compliance with a requirement imposed under paragraph 1 may be used in evidence against the person.

(2) But in criminal proceedings—

(a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and

(b) no question relating to it may be asked by or on behalf of the prosecution,

unless evidence relating to it is adduced or a question relating to it is asked in the proceedings by or on behalf of that person.

(3) However, sub-paragraph (2) does not apply to proceedings in which a person is charged with an offence under—

(a) paragraph 5,

(b) Article 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statement made otherwise than on oath).



*Failure to comply with requirement*

4.—(1) This paragraph applies if a person fails to comply with a requirement imposed under paragraph 1.

(2) The investigator may certify that fact in writing to the court.

(3) If, after hearing—

(a) any witnesses who may be produced against or on behalf of the alleged offender, and

(b) any statement which may be offered in defence,

the court is satisfied that the offender failed without reasonable excuse to comply with the requirement, it may deal with him as if he had been guilty of contempt of the court.

*False information*

5.—(1) A person commits an offence if in purported compliance with a requirement under paragraph 1 to provide information, the person—

(a) provides information which the person knows to be false in a material particular, or

(b) recklessly provides information which is false in a material particular,

but a prosecution may be instituted only with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) A person guilty of an offence under sub-paragraph (1) is liable—

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine of an amount not exceeding the statutory maximum or to both.

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the law relating to company auditors and accounts, to the provision that may be made in respect of certain liabilities incurred by a company's directors, and to company investigations. It also makes provision for community interest companies.

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

**Status:** Point in time view as at 06/04/2008.

**Changes to legislation:** There are currently no known outstanding effects for the *The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)*. (See end of Document for details)

This Order amends the law relating to company auditors and accounts, to the provision that may be made in respect of certain liabilities incurred by a company's directors, and to company investigations. It also makes provision for community interest companies.

**Status:**

Point in time view as at 06/04/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed).