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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.

**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.—(1) Part II of Schedule 11 to the 1990 Order (requirements for recognition of supervisory bodies for purposes of provisions relating to company auditors) is amended as follows.

(2) After paragraph 7(1) (body must have rules and practices for ensuring company audit work is carried out with integrity and without conflicts of interest) insert—

“(1A) The body must participate in arrangements within paragraph 17, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.”.

(3) In paragraph 8 (body must have rules and practices as to the technical standards to be applied in company audit work), the existing provisions become sub-paragraph (1), and after that sub-paragraph insert—

“(2) The body must participate in arrangements within paragraph 18, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.”.

(4) After paragraph 10 insert—

##### *“Independent monitoring of audits of listed and other major companies*

**10A.**—(1) The body must—

- (a) participate in arrangements within paragraph 19(1), and
- (b) have rules designed to ensure that members of the body who perform any company audit functions in respect of major audits take such steps as may be reasonably required of them to enable their performance of any such functions to be monitored by means of inspections carried out under the arrangements.

(2) Any monitoring of such persons under the arrangements is to be regarded (so far as their performance of company audit functions in respect of major audits is concerned) as monitoring of compliance with the body’s rules for the purposes of paragraph 10(1).

(3) In this paragraph “company audit function” and “major audit” have the same meaning as in paragraph 19.”.

(5) After paragraph 12 insert—

*“Independent investigation for disciplinary purposes of public interest cases*

**12A.**—(1) The body must—

- (a) participate in arrangements within paragraph 20(1), and
- (b) have rules and practices designed to ensure that, where the designated persons have decided that any particular disciplinary action should be taken against a member of the body following the conclusion of an investigation under such arrangements, that decision is to be treated as if it were a decision made by the body in disciplinary proceedings against the member.

(2) In sub-paragraph (1) “the designated persons” means the persons who, under the arrangements, have the function of deciding whether (and, if so, what) disciplinary action should be taken against a member of the body in the light of an investigation carried out under the arrangements.”.

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

4. After Part II of Schedule 11 to the 1990 Order (which is amended by Article 3) insert—

### **“PART III**

#### **ARRANGEMENTS IN WHICH SUPERVISORY BODIES ARE REQUIRED TO PARTICIPATE**

##### *Arrangements for setting standards relating to professional integrity and independence*

**17.** The arrangements referred to in paragraph 7(1A) are appropriate funded arrangements—

- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 7(1), and
- (b) for ensuring that the determination of those standards is done independently of the body.

##### *Arrangements for setting technical standards*

**18.** The arrangements referred to in paragraph 8(2) are appropriate funded arrangements—

- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 8(1), and
- (b) for ensuring that the determination of those standards is done independently of the body.

*Arrangements for independent monitoring of audits of listed and other major companies*

**19.**—(1) The arrangements referred to in paragraph 10A(1) are appropriate funded arrangements—

- (a) for enabling the performance by members of the body of company audit functions in respect of major audits to be monitored by means of inspections carried out under the arrangements, and
- (b) for ensuring that the carrying out of such monitoring and inspections is done independently of the body.

(2) In this paragraph—

“company audit function” means any function performed as a company auditor;

“major audit” means an audit conducted in respect of—

- (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c. 8)), or
- (b) any other company in whose financial condition there is a major public interest.

*Arrangements for independent investigation for disciplinary purposes of public interest cases*

**20.**—(1) The arrangements referred to in paragraph 12A(1) are appropriate funded arrangements—

- (a) for the carrying out of investigations into public interest cases arising in connection with the performance of company audit functions by members of the body,
- (b) for the holding of disciplinary hearings relating to members of the body which appear to be desirable following the conclusion of such investigations,
- (c) for requiring such hearings to be held in public except where the interests of justice otherwise require,
- (d) for the persons before whom such hearings have taken place to decide whether (and, if so, what) disciplinary action should be taken against the members to whom the hearings related, and
- (e) for ensuring that the carrying out of those investigations, the holding of those hearings, and the taking of those decisions are done independently of the body.

(2) In this paragraph—

“company audit function” means any function performed as a company auditor;

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

*Supplementary: arrangements to operate independently of body*

**21.**—(1) This paragraph applies for the purposes of—

- (a) paragraph 17(b),
- (b) paragraph 18(b),
- (c) paragraph 19(1)(b), or
- (d) paragraph 20(1)(e).

(2) Arrangements cannot be regarded as appropriate for the purpose of ensuring that the thing or things mentioned in that provision is or are done independently of the body unless they are designed to ensure that the body—

- (a) will have no involvement in the appointment or selection of any of the persons who are to be responsible for doing the thing or things in question, and
- (b) will not otherwise be involved in the doing of that thing or those things.

(3) Sub-paragraph (2) imposes a minimum requirement and does not preclude the possibility that additional criteria may need to be satisfied in order for the arrangements to be regarded as appropriate for the purpose in question.

*Supplementary: “funded” arrangements etc.*

**22.**—(1) For the purposes of any of paragraphs 17, 18, 19 and 20, arrangements are “funded” arrangements if, in the event of their providing for the payment of costs of maintaining the arrangements, such costs are to be paid by the body in accordance with the arrangements.

(2) Arrangements can qualify as arrangements within any of paragraphs 17, 18, 19(1) and 20(1) even though the matters for which they provide are more extensive in any respect than those mentioned in that provision.”.

*Delegation of functions of Department in relation to auditors*

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

**5.**—(1) Article 48 of the 1990 Order (delegation of functions of Department) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The Department may make an order under this Article (a “delegation order”) for the purpose of enabling functions of the Department under this Part to be exercised by a body designated by the order.

(1A) The body so designated may be either—

- (a) a body corporate which is established by the order, or
- (b) subject to Article 48A, a body (whether a body corporate or an unincorporated association) which is already in existence (“an existing body”).”.

(3) In paragraph (2) (effect of delegation order on body established by it), for “established” substitute “designated”.

(4) For paragraph (6) substitute—

“(6) Where a delegation order is made, the provisions of Schedule 13 have effect with respect to—

- (a) the status of the body designated by the order in exercising functions of the Department under this Part;
- (b) the constitution and proceedings of the body where it is established by the order;
- (c) the exercise by the body of certain functions transferred to it; and
- (d) other supplementary matters.”.

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

6. After Article 48 of the 1990 Order (which is amended by Article 5) insert—

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

**48A.**—(1) The Department’s power to make a delegation order under Article 48 which designates an existing body is exercisable in accordance with this Article.

(2) The Department may make such an order if it appears to the Department—

- (a) that the body is willing and able to exercise the functions that would be transferred by the order; and
- (b) that the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in paragraph (3) are met.

(3) The conditions are—

- (a) that the functions in question will be exercised effectively; and
- (b) where the delegation order is to contain any requirements or other provisions specified under paragraph (4), that those functions will be exercised in accordance with any such requirements or provisions.

(4) The delegation order may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Department to be appropriate.

(5) An existing body—

- (a) may be designated by a delegation order under Article 48, and
- (b) may accordingly exercise functions of the Department in pursuance of the order,

despite any involvement of the body in the exercise of any functions under arrangements within any of paragraphs 17, 18, 19(1) or 20(1) of Schedule 11.”.

**Supplementary provisions about delegation orders**

7.—(1) Schedule 13 to the 1990 Order (supplementary provisions with respect to delegation orders) is amended as follows.

(2) For paragraph 1 substitute—

*“Operation of this Schedule*

**1.**—(1) This Schedule has effect in relation to a body designated by an order under Article 48 as follows—

- (a) paragraphs 2 to 12 have effect in relation to the body where it is established by the order;
- (b) paragraphs 2 and 6 to 11 have effect in relation to the body where it is an existing body (see Article 48(1A)(b)); and
- (c) paragraph 13 has effect in relation to the body where it is an existing body that is an unincorporated association.

(2) In their operation in accordance with sub-paragraph (1)(b), paragraphs 2 and 6 apply only in relation to—

- (a) things done by or in relation to the body in or in connection with the exercise of functions transferred to it by the order, and
  - (b) functions of the body which are functions so transferred.
- (3) Any power conferred by this Schedule to make provision by order is a power to make provision by an order under Article 48.”
- (3) In paragraph 10 (report and accounts)—
  - (a) after sub-paragraph (2) insert—
    - “(2A) The following provisions of this paragraph apply as follows—
      - (a) sub-paragraphs (3) and (4) apply only where the body is established by the order, and
      - (b) sub-paragraphs (5) and (6) apply only where the body is an existing body.”;
  - (b) after sub-paragraph (4) insert—
    - “(5) Unless the body is a company to which Article 234 of the 1986 Order (duty to prepare individual company accounts) applies—
      - (a) the Department may, with the consent of the Department of Finance and Personnel, give directions to the body with respect to its accounts and the audit of its accounts, and
      - (b) it is the duty of the body to comply with the directions.
    - (6) Whether or not the body is a company to which Article 234 of the 1986 Order applies—
      - (a) the Department may give directions to the body providing that any provisions of that Order specified in the directions are to apply to the body, with or without any modifications so specified, and
      - (b) it is the duty of the body to comply with the directions.”.
- (4) In paragraph 11 (other supplementary provisions), for “established” (in both places) substitute “designated”.
- (5) After paragraph 12 insert—
  - “**13.**—(1) This paragraph applies where the body is an unincorporated association.
  - (2) Any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.
  - (3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any transferred function.
  - (4) In relation to proceedings brought as mentioned in sub-paragraph (2), any reference in paragraph 11(3)(e) or (4)(c) to the body replacing or being replaced by the Department in any legal proceedings is to be read with the appropriate modifications.”.

#### *Auditors' qualifications*

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

- 8.**—(1) Article 36 of the 1990 Order (approval of overseas qualifications) is amended as follows.
- (2) For paragraphs (1) and (2) substitute—

“(1) The Department may declare that the following are to be regarded for the purposes of this Part as holding an approved overseas qualification—

- (a) persons who are qualified to audit accounts under the law of a specified country or territory outside the United Kingdom;
- (b) persons who hold a specified professional qualification in accountancy obtained in a specified country or territory outside the United Kingdom.

(1A) Approval of a qualification under paragraph (1)(b) may be expressed to be subject to any specified requirement or requirements being satisfied.

(2) A qualification must not be approved under paragraph (1) unless the Department is satisfied that the qualification, taken with any requirement or requirements to be specified under paragraph (1A), affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.”.

(3) For paragraph (6) substitute—

“(6) The Department may if it thinks fit, having regard to the considerations mentioned in paragraphs (2) and (3)—

- (a) withdraw its approval of an overseas qualification in relation to persons becoming qualified as mentioned in paragraph (1)(a), or obtaining such a qualification as is mentioned in paragraph (1)(b), after such date as it may specify; or
- (b) vary or revoke a requirement mentioned in paragraph (1A) from such date as it may specify.”.

#### *Services provided by auditors*

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

**9.**—(1) For Article 398B of the 1986 Order (remuneration of auditors or their associates for non-audit work) substitute—

#### **“Disclosure of services provided by auditors or associates and related remuneration**

**398B.**—(1) The Department may make provision by regulations for securing the disclosure of—

- (a) the nature of any services provided for a company by the company’s auditors (whether in their capacity as such or otherwise) or by their associates;
- (b) the amount of any remuneration received or receivable by a company’s auditors, or their associates, in respect of any services within sub-paragraph (a).

(2) The regulations may provide—

- (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described);
- (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described);
- (c) for the disclosure of separate amounts so received or receivable by the company’s auditors or any of their associates, or of aggregate amounts so received or receivable by all or any of those persons.

(3) The regulations may—

- (a) provide that “remuneration” includes sums paid in respect of expenses;
  - (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value;
  - (c) apply to services provided for associates of a company as well as to those provided for a company;
  - (d) define “associate” in relation to an auditor and a company respectively.
- (4) The regulations may provide that any disclosure required by the regulations is to be made—
- (a) in a note to the company’s annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
  - (b) in the directors' report required by Article 242, or
  - (c) in the auditors' report under Article 243.
- (5) If the regulations provide that any such disclosure is to be made as mentioned in paragraph (4)(a) or (b), the regulations may—
- (a) require the auditors to supply the directors of the company with any information necessary to enable the disclosure to be made;
  - (b) provide for any provision within paragraph (6) to apply in relation to a failure to make the disclosure as it applies in relation to a failure to comply with a requirement of this Order or (as the case may be) a provision of Part VIII.
- (6) The provisions are—
- (a) Articles 241(5) and 242(5); and
  - (b) any provision of Articles 253 to 253C.
- (7) Nothing in paragraphs (2) to (6) affects the generality of paragraph (1).
- (8) Regulations under this Article shall be subject to negative resolution.”.
- (2) In Article 398A of the 1986 Order (remuneration of auditors)—
- (a) paragraph (3) (auditors' remuneration to be disclosed in note to accounts) accordingly ceases to have effect, and
  - (b) in paragraph (5) (application to benefits in kind), for the words from “payments in cash” onwards substitute “payments of money.”.
- (3) In paragraph 1(1) of Schedule 4A to that Order (form and contents of group accounts), omit “Article 398A(3) (amount of auditors' remuneration) and”.

## CHAPTER II

### ACCOUNTS AND REPORTS

#### *Auditing of accounts*

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

- 10.** For Article 397A of the 1986 Order (rights to information) substitute—

#### *“Rights to information*

- 397A.—**(1) An auditor of a company—

- (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
  - (b) may require any of the persons mentioned in paragraph (2) to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.
- (2) Those persons are—
- (a) any officer or employee of the company;
  - (b) any person holding or accountable for any of the company's books, accounts or vouchers;
  - (c) any subsidiary undertaking of the company which is a body corporate incorporated in Northern Ireland;
  - (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;
  - (e) any person who fell within any of sub-paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate.
- (3) Where a parent company has a subsidiary undertaking which is not a body corporate incorporated in Northern Ireland, the auditor of the parent company may require it to obtain from any of the persons mentioned in paragraph (4) such information or explanations as he may reasonably require for the purposes of his duties as auditor.
- (4) Those persons are—
- (a) the undertaking;
  - (b) any officer, employee or auditor of the undertaking;
  - (c) any person holding or accountable for any of the undertaking's books, accounts or vouchers;
  - (d) any person who fell within sub-paragraph (b) or (c) at a time to which the information or explanations relates or relate.
- (5) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person within paragraph (4) from whom the auditor has required the company to obtain the information or explanations.
- (6) A statement made by a person in response to a requirement under paragraph (1)(b) or (3) may not be used in evidence against him in any criminal proceedings except proceedings for an offence under Article 397B.
- (7) Nothing in this Article or Article 397B compels any person to disclose information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.

#### **Offences relating to the provision of information to auditors**

**397B.**—(1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—

- (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under Article 397A(1)(b), and
  - (b) is misleading, false or deceptive in a material particular,
- the person is guilty of an offence and liable to imprisonment or a fine, or both.

(2) A person who fails to comply with a requirement under Article 397A(1)(b) without delay is guilty of an offence and is liable to a fine.

(3) However, it is a defence for a person charged with an offence under paragraph (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.

(4) If a company fails to comply with Article 397A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Nothing in this Article affects any right of an auditor to apply for an injunction to enforce any of his rights under Article 397A.”.

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

**11.**—(1) Part VIII of the 1986 Order (accounts and audit) is amended as follows.

(2) In Article 242 (duty to prepare directors' report), after paragraph (2) insert—

“(2A) If Article 242ZA applies to the report, it shall contain the statement required by paragraph (2) of that Article.”.

(3) After Article 242 insert—

#### **“Statement as to disclosure of information to auditors**

**242ZA.**—(1) This Article applies to a directors' report unless the directors have taken advantage of the exemption conferred by Article 257A(1) or 257AA(1).

(2) The report must contain a statement to the effect that, in the case of each of the persons who are directors at the time when the report is approved under Article 242A, the following applies—

- (a) so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and
- (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditors are aware of that information.

(3) In paragraph (2) “relevant audit information” means information needed by the company's auditors in connection with preparing their report.

(4) For the purposes of paragraph (2) a director has taken all the steps that he ought to have taken as a director in order to do the things mentioned in sub-paragraph (b) of that paragraph if he has—

- (a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and
- (b) taken such other steps (if any) for that purpose,

as were required by his duty as a director of the company to exercise due care, skill and diligence.

(5) In determining for the purposes of paragraph (2) the extent of that duty in the case of a particular director, the following considerations (in particular) are relevant—

- (a) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by the director in relation to the company, and
- (b) (so far as they exceed what may reasonably be so expected) the knowledge, skill and experience that the director in fact has.

- (6) Where a directors' report containing the statement required by paragraph (2) is approved under Article 242A but the statement is false, every director of the company who—
- (a) knew that the statement was false, or was reckless as to whether it was false, and
  - (b) failed to take reasonable steps to prevent the report from being approved,
- is guilty of an offence and liable to imprisonment or a fine, or both.”.

### *Defective accounts*

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

**12.**—(1) Article 253C of the 1986 Order (other persons authorised to apply to court) is amended as follows.

(2) After paragraph (1) insert—

“(1A) But where the order giving authorisation is to contain any requirements or other provisions specified under paragraph (4A), the Department may not authorise a person unless, in addition, it appears to the Department that the person would, if authorised, exercise his functions as an authorised person in accordance with any such requirements or provisions.”.

(3) After paragraph (4) insert—

“(4A) An order under paragraph (4) may contain such requirements or other provisions relating to the exercise of functions by the authorised person as appear to the Department to be appropriate.

(4B) If the authorised person is an unincorporated association, any relevant proceedings may be brought by or against that association in the name of any body corporate whose constitution provides for the establishment of the association.

(4C) For the purposes of paragraph (4B) “relevant proceedings” means proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person.”.

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

**13.**—(1) After Article 253E of the 1986 Order (restrictions on use and further disclosure of information disclosed under Article 253D) insert—

##### **“Power of authorised persons to require documents, information and explanations**

**253F.**—(1) This Article applies where it appears to a person who is authorised under Article 253C that there is, or may be, a question whether the annual accounts of a company comply with the requirements of this Order.

(2) The authorised person may require any of the persons mentioned in paragraph (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—

- (a) discovering whether there are grounds for an application to the court under Article 253B; or
- (b) determining whether or not to make such an application.

(3) Those persons are—

- (a) the company;
- (b) any officer, employee, or auditor of the company;

(c) any persons who fell within sub-paragraph (b) at a time to which the document or information required by the authorised person relates.

(4) If a person fails to comply with a requirement under paragraph (2), the authorised person may apply to the court for an order under paragraph (5).

(5) If on such an application the court decides that the person has failed to comply with the requirement under paragraph (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.

(6) A statement made by a person in response to a requirement under paragraph (2) or an order under paragraph (5) may not be used in evidence against him in any criminal proceedings.

(7) Nothing in this Article compels any person to disclose documents or information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.

(8) In this Article “document” includes information recorded in any form.

### **Restrictions on further disclosure of information obtained under Article 253F**

**253G.**—(1) This Article applies to information (in whatever form) which—

- (a) has been obtained in pursuance of a requirement or order under Article 253F, and
- (b) relates to the private affairs of an individual or to any particular business.

(2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(3) Paragraph (2) does not apply to any disclosure of information which—

- (a) is made for the purpose of facilitating the carrying out by a person authorised under Article 253C of his functions under Article 253B;
- (b) is made to a person specified in Part I of Schedule 7B;
- (c) is of a description specified in Part II of that Schedule; or
- (d) is made in accordance with Part III of that Schedule.

(4) The Department may by order amend Schedule 7B.

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

- (a) amend Part I of Schedule 7B by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
- (b) amend Part II of Schedule 7B 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;
- (c) amend Part III of Schedule 7B so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.

(6) An order under paragraph (4) shall be subject to negative resolution.

(7) 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 both.

(8) However, it is a defence for a person charged with an offence under paragraph (7) to prove—

- (a) that he did not know, and had no reason to suspect, that the information had been disclosed under Article 253F; or
  - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (9) Articles 680, 680A and 680B apply to offences under this Article.
- (10) This Article does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (11) Nothing in this Article authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).”.
- (2) Schedule 1 (which inserts Schedule 7B in the 1986 Order) has effect.

#### *Directors' reports*

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

**14.** In Article 265 of the 1986 Order (power of Department to alter accounting requirements), after paragraph (4) insert—

- “(4A) Regulations under this Article may also make provision—
- (a) for the issuing, by such body or bodies as may be specified, of standards in relation to matters to be contained in reports which are required by this Part to be prepared by the directors of a company;
  - (b) for directors of a company who have complied with any such standard, or any of its provisions, in relation to any such report, to be presumed (unless the contrary is proved) to have complied with any requirements of this Part relating to the contents of the report to which the standard or provision relates.
- (4B) In paragraph (4A) “specified” means specified in an order made by the Department; and such an order—
- (a) shall be made subject to negative resolution;
  - (b) may contain such transitional provisions as the Department thinks fit.”.

#### **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;

“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

- (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”.

### **Funding of director’s expenditure on defending proceedings**

**19.** After Article 345 of the 1986 Order (funding of director’s expenditure on duty to company) insert—

#### **“Funding of director’s expenditure on defending proceedings**

**345A.**—(1) A company is not prohibited by Article 338 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him—

(a) in defending any criminal or civil proceedings, or

(b) in connection with any application under any of the provisions mentioned in paragraph (2).

(2) The provisions are—

(a) Article 154(3) and (4), and

(b) Article 675.

(3) Nor does Article 338 prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

(4) Paragraphs (1) and (3) only apply to a loan or other thing done as mentioned in those paragraphs if the terms on which it is made or done will result in the loan falling to be repaid, or any liability of the company under any transaction connected with the thing in question falling to be discharged, not later than—

(a) in the event of the director being convicted in the proceedings, the date when the conviction becomes final,

(b) in the event of judgment being given against him in the proceedings, the date when the judgment becomes final, or

(c) in the event of the court refusing to grant him relief on the application, the date when the refusal of relief becomes final.

(5) For the purposes of paragraph (4) 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.
- (6) 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.”.

## 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;
    - (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 (8), 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).

(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.

## PART III

### COMMUNITY INTEREST COMPANIES

#### *Introductory*

#### **Community interest companies**

25.—(1) There is to be a new type of company to be known as the community interest company.

(2) In accordance with this Part—

- (a) a company limited by shares or a company limited by guarantee and not having a share capital may be formed as or become a community interest company, and
- (b) a company limited by guarantee and having a share capital may become a community interest company.

(3) A community interest company established for charitable purposes is to be treated as not being so established and accordingly is not a charity.

## **Regulator**

**26.**—(1) There is to be an officer known as the Regulator of Community Interest Companies for Northern Ireland (referred to in this Part as “the Regulator”).

(2) The Department must appoint a person to be the Regulator.

(3) The Regulator has such functions relating to community interest companies as are conferred or imposed by or under this Order or any other statutory provision.

(4) The Regulator must adopt an approach to the discharge of those functions which is based on good regulatory practice, that is an approach adopted having regard to—

- (a) the likely impact on those who may be affected by the discharge of those functions,
- (b) the outcome of consultations with, and with organisations representing, community interest companies and others with relevant experience, and
- (c) the desirability of using the Regulator’s resources in the most efficient and economic way.

(5) The Regulator may issue guidance, or otherwise provide assistance, about any matter relating to community interest companies.

(6) The Department may require the Regulator to issue guidance or otherwise provide assistance about any matter relating to community interest companies which is specified by the Department.

(7) Any guidance issued under this Article must be such that it is readily accessible to, and capable of being easily understood by, those at whom it is aimed; and any other assistance provided under this Article must be provided in the manner which the Regulator considers is most likely to be helpful to those to whom it is provided.

(8) Schedule 4 (further provisions about the Regulator) has effect.

## **Appeal Officer**

**27.**—(1) There is to be an officer known as the Appeal Officer for Community Interest Companies for Northern Ireland (referred to in this Part as “the Appeal Officer”).

(2) The Department must appoint a person to be the Appeal Officer.

(3) The Appeal Officer has the function of determining appeals against decisions and orders of the Regulator which under this Order or any other statutory provision lie to the Appeal Officer.

(4) An appeal to the Appeal Officer against a decision or order of the Regulator may be brought on the ground that the Regulator made a material error of law or fact.

(5) On such an appeal the Appeal Officer must—

- (a) dismiss the appeal,
- (b) allow the appeal, or
- (c) remit the case to the Regulator.

(6) Where a case is remitted the Regulator must reconsider it in accordance with any rulings of law and findings of fact made by the Appeal Officer.

(7) Schedule 5 (further provisions about the Appeal Officer) has effect.

## **Official Property Holder**

**28.**—(1) There is to be an officer known as the Official Property Holder for Community Interest Companies for Northern Ireland (referred to in this Part as “the Official Property Holder”).

(2) The Regulator must appoint a member of the Regulator’s staff to be the Official Property Holder.

(3) The Official Property Holder has such functions relating to property of community interest companies as are conferred or imposed by or under this Order or any other statutory provision.

(4) Schedule 6 (further provisions about the Official Property Holder) has effect.

### *Requirements*

#### **Cap on distributions and interest**

**29.**—(1) Community interest companies must not distribute assets to their members unless regulations make provision authorising them to do so.

(2) If regulations authorise community interest companies to distribute assets to their members, the regulations may impose limits on the extent to which they may do so.

(3) Regulations may impose limits on the payment of interest on debentures issued by, or debts of, community interest companies.

(4) Regulations under this Article may make provision for limits to be set by the Regulator.

(5) The Regulator—

(a) may set a limit by reference to a rate determined by any other person (as it has effect from time to time), and

(b) may set different limits for different descriptions of community interest companies.

(6) The Regulator must (in accordance with Article 26)—

(a) undertake appropriate consultation before setting a limit, and

(b) in setting a limit, have regard to its likely impact on community interest companies.

(7) Regulations under this Article may include power for the Department to require the Regulator to review a limit or limits.

(8) Where the Regulator sets a limit he must publish notice of it in the Belfast Gazette.

#### **Distribution of assets on winding up**

**30.**—(1) Regulations may make provision for and in connection with the distribution, on the winding up of a community interest company, of any assets of the company which remain after satisfaction of the company's liabilities.

(2) The regulations may, in particular, amend or modify the operation of any statutory provision.

#### **Memorandum and articles**

**31.**—(1) The memorandum of a community interest company must state that the company is to be a community interest company.

(2) Article 18(1) of the 1986 Order (articles) applies in relation to a community interest company limited by shares as if it were a company limited by guarantee (so that articles must be registered).

(3) The memorandum and articles of a community interest company of any description—

(a) must at all times include such provisions as regulations require to be included in the memorandum and articles of every community interest company or a community interest company of that description, and

(b) must not include such provisions as regulations require not to be so included.

(4) The provisions required by regulations under paragraph (3)(a) to be included in the memorandum or articles of a community interest company may (in particular) include—

- (a) provisions about the transfer and distribution of the company's assets (including their distribution on a winding up),
  - (b) provisions about the payment of interest on debentures issued by the company or debts of the company,
  - (c) provisions about membership of the company,
  - (d) provisions about the voting rights of members of the company,
  - (e) provisions about the appointment and removal of directors of the company, and
  - (f) provisions about voting at meetings of directors of the company.
- (5) The memorandum and articles of a community interest company are of no effect to the extent that they—
- (a) are inconsistent with provisions required to be included in the memorandum or articles of the company by regulations under paragraph (3)(a), or
  - (b) include provisions required not to be included by regulations under paragraph (3)(b).
- (6) Regulations may make provision for and in connection with restricting the ability of a community interest company under Article 15 of the 1986 Order to alter its memorandum with respect to the statement of its objects.

### **Names**

- 32.**—(1) The name of a community interest company which is not a public company must end with—
- (a) “community interest company”, or
  - (b) “c.i.c.”.
- (2) The name of a community interest company which is a public company must end with—
- (a) “community interest public limited company”, or
  - (b) “community interest p.l.c.”.
- (3) Article 35 of the 1986 Order (company name to end with “public limited company” or “limited”) does not apply to community interest companies.
- (4) Schedule 7 (further provisions about names) has effect.

### **Community interest company reports**

- 33.**—(1) The directors of a community interest company must prepare in respect of each financial year a report about the company's activities during the financial year (a “community interest company report”).
- (2) Article 250(1) of the 1986 Order is to be treated as requiring the directors of a community interest company to deliver to the registrar of companies a copy of the community interest company report.
- (3) Regulations—
- (a) must make provision requiring community interest company reports to include information about the remuneration of directors,
  - (b) may make provision as to the form of, and other information to be included in, community interest company reports, and
  - (c) may apply provisions of the 1986 Order relating to directors' reports to community interest company reports (with any appropriate modifications).

(4) The registrar of companies must forward to the Regulator a copy of each community interest company report delivered to the registrar under this Article.

### **Community interest test and excluded companies**

**34.**—(1) This Article has effect for the purposes of this Part.

(2) A company satisfies the community interest test if a reasonable person might consider that its activities are being carried on for the benefit of the community.

(3) An object stated in the memorandum of a company is a community interest object of the company if a reasonable person might consider that the carrying on of activities by the company in furtherance of the object is for the benefit of the community.

(4) Regulations may provide that activities of a description prescribed by the regulations are to be treated as being, or as not being, activities which a reasonable person might consider are activities carried on for the benefit of the community.

(5) “Community” includes a section of the community (whether in Northern Ireland or anywhere else); and regulations may make provision about what does, does not or may constitute a section of the community.

(6) A company is an excluded company if it is a company of a description prescribed by regulations.

### *Becoming a community interest company*

### **New companies**

**35.**—(1) If a company is to be formed as a community interest company, the documents delivered to the registrar of companies under Article 21 of the 1986 Order (memorandum, articles and statement of names and particulars of directors and secretary) must be accompanied by the prescribed formation documents.

(2) “The prescribed formation documents” means such statutory declarations or other declarations or statements as are required by regulations to accompany the documents delivered under that Article, in such form as may be approved in accordance with the regulations.

(3) On receiving the documents delivered under that Article and the prescribed formation documents the registrar of companies must (instead of registering the memorandum and articles)—

- (a) forward a copy of each of the documents to the Regulator, and
- (b) retain the documents pending the Regulator’s decision.

(4) The Regulator must decide whether the company is eligible to be formed as a community interest company.

(5) A company is eligible to be formed as a community interest company if—

- (a) the memorandum and articles comply with the requirements imposed by and under Article 31 and the company’s name complies with Article 32, and
- (b) the Regulator, having regard to the documents delivered under Article 21 of the 1986 Order, the prescribed formation documents and any other relevant considerations, considers that the company will satisfy the community interest test and is not an excluded company.

(6) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).

(7) If the Regulator gives notice of a decision that the company is eligible to be formed as a community interest company, Article 23 of the 1986 Order (registration of memorandum and

articles) applies; and if the registrar registers the memorandum and articles he must also retain and record the prescribed formation documents.

(8) The certificate of incorporation under Article 24 of the 1986 Order (effect of registration) is to contain a statement that the company is a community interest company.

(9) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.

(10) If the Regulator decides that the company is not eligible to be formed as a community interest company, any subscriber to the memorandum may appeal to the Appeal Officer against the decision.

### **Existing companies: requirements**

**36.**—(1) If a company is to become a community interest company, the company must by special resolutions under the 1986 Order—

- (a) alter its memorandum to state that it is to be a community interest company,
- (b) make such alterations of its memorandum and articles as it considers necessary to comply with requirements imposed by and under Article 31 or otherwise appropriate in connection with becoming a community interest company, and
- (c) change its name to comply with Article 32.

(2) Article 388(1) of the 1986 Order (forwarding of copies of special resolutions to registrar of companies) must be complied with in relation to each of the special resolutions at the same time.

(3) If the special resolutions include one under Article 15 or 28 of the 1986 Order (alterations of memorandum)—

- (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
- (b) Article 388(1) has effect in relation to them as if it referred to 15 days after the relevant date.

(4) If an application is made under Article 16 of the 1986 Order (objection to alteration of memorandum under Article 15 or 28), the relevant date is—

- (a) the date on which the court determines the application (or, if there is more than one application, the date on which the last to be determined by the court is determined), or
- (b) such later date as the court may order.

(5) If there is no application under Article 16 of that Order, the relevant date is the end of the period for making such an application.

(6) The copies of the special resolutions forwarded to the registrar of companies must be accompanied by—

- (a) a copy of the memorandum and articles of the company as altered by the special resolutions, and
- (b) the prescribed conversion documents.

(7) “The prescribed conversion documents” means such statutory declarations or other declarations or statements as are required by regulations to accompany the copies of the special resolutions, in such form as may be approved in accordance with the regulations.

### **Existing companies: decisions etc.**

**37.**—(1) On receiving under Article 36 the copies of the special resolutions, the memorandum and articles as altered by the special resolutions and the prescribed conversion documents, the registrar

of companies must (instead of recording the special resolutions and entering a new name on the register)—

- (a) forward a copy of each of the documents to the Regulator, and
- (b) retain the documents pending the Regulator’s decision.

(2) The alterations of the memorandum and articles made by the special resolutions are to take effect only as provided by this Article.

(3) The Regulator must decide whether the company is eligible to become a community interest company.

(4) A company is eligible to become a community interest company if—

- (a) the memorandum and articles as altered by the special resolutions comply with the requirements imposed by and under Article 31 and the company’s name as so altered complies with Article 32, and
- (b) the Regulator, having regard to the special resolutions, the memorandum and articles as altered, the prescribed conversion documents and any other relevant considerations, considers that the company will satisfy the community interest test and is not an excluded company.

(5) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).

(6) If the Regulator gives notice of a decision that the company is eligible to become a community interest company, Article 38(6) of the 1986 Order (registration of new name) applies; and if the registrar of companies enters the new name of the company on the register the registrar must also retain and record the special resolutions and the prescribed conversion documents.

(7) On the special resolutions being recorded, the alterations to the company’s articles and memorandum made by the special resolutions take effect.

(8) The certificate of incorporation under Article 38(6) of the 1986 Order is to contain a statement that the company is a community interest company.

(9) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.

(10) If the Regulator decides that the company is not eligible to become a community interest company, the company may appeal to the Appeal Officer against the decision.

### **Existing companies: charities**

**38.**—(1) A charitable company may not become a community interest company.

(2) If a charitable company purports by special resolution to change its name to comply with Article 32, the Commissioners of Her Majesty’s Revenue and Customs may apply to the High Court for an order quashing any altered certificate of incorporation issued under Article 38(6) of the 1986 Order.

### *Supervision by Regulator*

### **Conditions for exercise of supervisory powers**

**39.**—(1) In deciding whether and how to exercise the powers conferred by Articles 40 to 49 the Regulator must adopt an approach which is based on the principle that those powers should be exercised only to the extent necessary to maintain confidence in community interest companies.

(2) No power conferred on the Regulator by—

- (a) Article 43 (appointment of director),
- (b) Article 44 (removal of director),
- (c) Article 45 (appointment of manager), or
- (d) Article 46 (property),

is exercisable in relation to a community interest company unless the company default condition is satisfied in relation to the power and the company.

(3) The company default condition is satisfied in relation to a power and a company if it appears to the Regulator necessary to exercise the power in relation to the company because—

- (a) there has been misconduct or mismanagement in the administration of the company,
- (b) there is a need to protect the company's property or to secure the proper application of that property,
- (c) the company is not satisfying the community interest test, or
- (d) if the company has community interest objects, the company is not carrying on any activities in pursuit of those objects.

(4) The power conferred on the Regulator by Article 47 (transfer of shares etc.) is not exercisable in relation to a community interest company unless it appears to the Regulator that the company is an excluded company.

### **Investigation**

**40.**—(1) The Regulator may—

- (a) investigate the affairs of a community interest company, or
- (b) appoint any person (other than a member of the Regulator's staff) to investigate the affairs of a community interest company on behalf of the Regulator.

(2) Paragraph (1)(b) is in addition to paragraph 4 of Schedule 4 (powers of Regulator exercisable by authorised members of staff) and does not affect the application of that paragraph to the Regulator's power under paragraph (1)(a).

(3) Schedule 8 (further provision about investigations under this Article) has effect.

### **Audit**

**41.**—(1) The Regulator may by order require a community interest company to allow the annual accounts of the company to be audited by a qualified auditor appointed by the Regulator.

(2) A person is a qualified auditor if he is eligible for appointment as a company auditor under Article 28 of the [Companies \(Northern Ireland\) Order 1990 \(NI 5\)](#) (eligibility for appointment as auditor).

(3) Articles 397A and 397B of the 1986 Order (auditor's rights to information) apply in relation to an auditor appointed under this Article as in relation to an auditor appointed under Chapter V of Part XII of that Order.

(4) On completion of the audit the auditor must make a report to the Regulator on such matters and in such form as the Regulator specifies.

(5) The expenses of the audit, including the remuneration of the auditor, are to be paid by the Regulator.

(6) An audit under this Article is in addition to, and does not affect, any audit required by or under any other statutory provision.

### **Civil proceedings**

**42.**—(1) The Regulator may bring civil proceedings in the name and on behalf of a community interest company.

(2) Before instituting proceedings under this Article the Regulator must give written notice to the company stating—

- (a) the cause of action,
- (b) the remedy sought, and
- (c) a summary of the facts on which the proceedings are to be based.

(3) Any director of the company may apply to the court for an order—

- (a) that proposed proceedings are not to be instituted under this Article, or
- (b) that proceedings instituted under this Article are to be discontinued.

(4) On an application under paragraph (3) the court may make such order as it thinks fit.

(5) In particular the court may (as an alternative to ordering that proposed proceedings are not to be instituted under this Article or that proceedings instituted under this Article are to be discontinued) order—

- (a) that the proposed proceedings may be instituted under this Article, or the proceedings instituted under this Article may be continued, on such terms and conditions as the court thinks fit,
- (b) that any proceedings instituted by the company are to be discontinued, or
- (c) that any proceedings instituted by the company may be continued on such terms and conditions as the court thinks fit.

(6) The Regulator must indemnify the company against any costs incurred by it in connection with proceedings brought under this Article.

(7) Any costs—

- (a) awarded to the company in connection with proceedings brought under this Article, or
- (b) incurred by the company in connection with the proceedings and which it is agreed should be paid by a defendant,

are to be paid to the Regulator.

### **Appointment of director**

**43.**—(1) The Regulator may by order appoint a director of a community interest company.

(2) The person appointed may be anyone whom the Regulator thinks appropriate, other than a member of the Regulator's staff.

(3) A person may be appointed as a director of a company under this Article—

- (a) whether or not the person is a member of the company, and
- (b) irrespective of any provision made by the memorandum or articles of the company or a resolution of the company in general meeting.

(4) An order appointing a person to be a director of a company under this Article must specify the terms on which the director is to hold office; and those terms have effect as if contained in a contract between the director and the company.

(5) The terms specified must include the period for which the director is to hold office, and may include terms as to the remuneration of the director by the company.

(6) A director appointed under this Article has all the powers of the directors appointed by the company (including powers exercisable only by a particular director or class of directors).

(7) A director appointed under this Article may not be removed by the company, but may be removed by the Regulator at any time.

(8) Where—

(a) a person is appointed to be a director of the company under this Article, or

(b) a person so appointed ceases to be a director of the company,

the obligation which would otherwise be imposed on the company under Article 296(2) of the 1986 Order (requirement that company notify change among directors to registrar) is instead an obligation of the Regulator.

(9) But if paragraph (10) applies, Article 296(2) applies as if the period within which the Regulator must send a notification to the registrar of companies is 14 days from the date on which the Regulator receives notification under that paragraph.

(10) Where a person appointed to be a director of the company under this Article ceases to be a director of the company (otherwise than by removal under paragraph (7)), the company must give notification of that fact to the Regulator in a form approved by the Regulator before the end of the period of 14 days beginning with the date on which the person ceases to be a director.

(11) If the company fails to comply with paragraph (10) it commits an offence.

(12) A person guilty of an offence under paragraph (11) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(13) The company may appeal to the Appeal Officer against an order under this Article.

### **Removal of director**

**44.—**(1) The Regulator may by order remove a director of a community interest company.

(2) If a person has been removed under paragraph (1)—

(a) the company may not subsequently appoint him a director of the company, and

(b) any assignment to the person of the office of director of the company is of no effect (even if approved by special resolution of the company).

(3) The Regulator may by order suspend a director of the company pending a decision whether to remove him.

(4) The maximum period for which a director may be suspended under paragraph (3) is one year.

(5) If the Regulator suspends a director under paragraph (3) the Regulator may give directions in relation to the performance of the director's functions.

(6) The Regulator may discharge an order made under paragraph (1).

(7) The discharge of an order made under paragraph (1) does not reinstate the person removed by the order as a director of the company, but on the discharge of the order paragraph (2) ceases to apply to the person.

(8) The Regulator must from time to time review any order made under paragraph (3) and, if it is appropriate to do so, discharge the order.

(9) Before making an order under paragraph (1) or (3) in relation to a director, the Regulator must give at least 14 days' notice to—

(a) the director, and

(b) the company.

(10) Where an order is made in relation to a director under paragraph (1) or (3) the director may appeal against the order to the High Court.

(11) The Regulator must, before the end of the period of 14 days beginning with the date on which—

- (a) an order under paragraph (1) is made or discharged,
- (b) an order under paragraph (3) is made or discharged or expires, or
- (c) an order under paragraph (1) or (3) is quashed on appeal,

give notification of that event to the registrar of companies in a form approved by the registrar of companies.

(12) Where paragraph (11) imposes an obligation to notify the registrar of companies of an event, Article 296(2) of the 1986 Order (requirement that company notify change among directors to registrar) does not apply in respect of the event.

### **Appointment of manager**

**45.**—(1) The Regulator may by order appoint a manager in respect of the property and affairs of a community interest company.

(2) The person appointed may be anyone whom the Regulator thinks appropriate, other than a member of the Regulator's staff.

(3) An order under paragraph (1) may make provision as to the functions to be exercised by, and the powers of, the manager.

(4) The order may in particular provide—

- (a) for the manager to have such of the functions of the company's directors as are specified in the order, and
- (b) for the company's directors to be prevented from exercising any of those functions.

(5) In carrying out his functions the manager acts as the company's agent; and a person dealing with the manager in good faith and for value need not inquire whether the manager is acting within his powers.

(6) The appointment of the manager does not affect—

- (a) any right of any person to appoint a receiver or manager of the company's property (including any right under Article 42 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#)), or
- (b) the rights of a receiver or manager appointed by a person other than the Regulator.

(7) The manager's functions are to be discharged by him under the supervision of the Regulator; and the Regulator must from time to time review the order by which the manager is appointed and, if it is appropriate to do so, discharge it in whole or in part.

(8) In particular, the Regulator must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the company.

(9) The Regulator may apply to the court for directions in relation to any matter arising in connection with the manager's functions or powers.

(10) On an application under paragraph (9) the court may give such directions or make such orders as it thinks fit.

(11) The costs of any application under paragraph (9) are to be paid by the company.

(12) Regulations may authorise the Regulator—

- (a) to require a manager to make reports,

- (b) to require a manager to give security for the due exercise of the manager's functions, and
  - (c) to remove a manager in circumstances prescribed by the regulations.
- (13) Regulations may—
- (a) provide for a manager's remuneration to be payable from the property of the company, and
  - (b) authorise the Regulator to determine the amount of a manager's remuneration and to disallow any amount of remuneration in circumstances prescribed by the regulations.
- (14) The company may appeal to the Appeal Officer against an order under this Article.

## Property

- 46.—(1) The Regulator may by order—
- (a) vest in the Official Property Holder any property held by or in trust for a community interest company, or
  - (b) require persons in whom such property is vested to transfer it to the Official Property Holder.
- (2) The Regulator—
- (a) may order a person who holds property on behalf of a community interest company, or on behalf of a trustee of a community interest company, not to part with the property without the Regulator's consent, and
  - (b) may order any debtor of a community interest company not to make any payment in respect of the debtor's liability to the company without the Regulator's consent.
- (3) The Regulator may by order restrict—
- (a) the transactions which may be entered into by a community interest company, or
  - (b) the nature or amount of the payments that a community interest company may make,
- and the order may in particular provide that transactions may not be entered into or payments made without the Regulator's consent.
- (4) The vesting or transfer of property under paragraph (1) does not constitute a breach of a covenant or condition against alienation, and no right listed in paragraph (5) operates or becomes exercisable as a result of the vesting or transfer.
- (5) The rights are—
- (a) a right of reverter,
  - (b) a right of pre-emption,
  - (c) a right of forfeiture,
  - (d) a right of re-entry,
  - (e) an option, and
  - (f) any right similar to those listed in sub-paragraphs (a) to (e).
- (6) The Regulator must from time to time review any order under this Article and, if it is appropriate to do so, discharge the order in whole or in part.
- (7) On discharging an order under paragraph (1) the Regulator may make any order as to the vesting or transfer of the property, and give any directions, which he considers appropriate.
- (8) If a person fails to comply with an order under paragraph (1)(b), the Regulator may certify that fact in writing to the court.
- (9) 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 order, it may deal with him as if he had been guilty of contempt of the court.

(10) A person who contravenes an order under paragraph (2) or (3) commits an offence, but a prosecution may be instituted only with the consent of the Regulator or the Director of Public Prosecutions for Northern Ireland.

(11) A person guilty of an offence under paragraph (10) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) Paragraphs (8) to (10) do not prevent the bringing of civil proceedings in respect of a contravention of an order under paragraph (1)(b), (2) or (3).

(13) The company and any person to whom the order is directed may appeal to the Appeal Officer against an order under paragraph (1) or (2).

(14) The company may appeal to the Appeal Officer against an order under paragraph (3).

### **Transfer of shares etc.**

**47.**—(1) If a community interest company has a share capital, the Regulator may by order transfer specified shares in the company to specified persons.

(2) If a community interest company is a company limited by guarantee, the Regulator may by order—

- (a) extinguish the interests in the company of specified members of the company (otherwise than as shareholders), and
- (b) appoint a new member in place of each member whose interest has been extinguished.

(3) An order under paragraph (1) may not transfer any shares in respect of which—

- (a) a dividend may be paid, or
- (b) a distribution of the company's assets may be made if the company is wound up.

(4) An order under this Article in relation to a company—

- (a) may only transfer shares to, and appoint as new members, persons who have consented to the transfer or appointment, and
- (b) may be made irrespective of any provision made by the memorandum or articles of the company or a resolution of the company in general meeting.

(5) The company and any person from whom shares are transferred by the order may appeal to the Appeal Officer against an order under paragraph (1).

(6) The company and any person whose interest is extinguished by the order may appeal to the Appeal Officer against an order under paragraph (2).

(7) "Specified", in relation to an order, means specified in the order.

### **Petition for winding up**

**48.**—(1) The Regulator may present a petition for a community interest company to be wound up if the court is of the opinion that it is just and equitable that the company should be wound up.

(2) Paragraph (1) does not apply if the company is already being wound up by the court.

(3) In Article 104 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (application for winding up), after paragraph (5) insert—

“(5A) A winding-up petition may be presented by the Regulator of Community Interest Companies for Northern Ireland in a case falling within Article 48 of the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.”.

### **Dissolution and striking off**

**49.**—(1) If a community interest company has been dissolved, the Regulator may apply under Article 602 of the 1986 Order for an order declaring the dissolution to have been void.

(2) If a community interest company has been struck off the register under Article 603 of the 1986 Order (defunct companies), the Regulator may apply under Article 604(2) of that Order for an order that the company’s name be restored.

(3) If an application under Article 603A of the 1986 Order (application to strike name of private company off register) is made on behalf of a community interest company, Article 603B(6) of that Order (persons to be notified of application) is to be treated as also requiring a copy of the application to be given to the Regulator.

### *Change of status*

### **Re-registration**

**50.**—(1) A community interest company is excluded from re-registering under Article 59 of the 1986 Order (re-registration of limited company as unlimited).

(2) If a community interest company which is not a public company re-registers as a public company under Article 53 of the 1986 Order, or a community interest company which is a public company re-registers as a private company under Article 63 of that Order, the certificate of incorporation issued under Article 57(1)(b) or 65(1)(b) of that Order is to contain a statement that the company is a community interest company.

(3) The fact that the certificate of incorporation contains such a statement is conclusive evidence that the company is a community interest company.

### **Ceasing to be a community interest company**

**51.** A community interest company may not cease to be a community interest company except by dissolution or as provided—

- (a) by Articles 52 and 53 (becoming a charity), or
- (b) if regulations are made under Article 54 (becoming an industrial and provident society), by the regulations.

### **Becoming a charity: requirements**

**52.**—(1) If a community interest company is to cease being a community interest company and become a charity the company must by special resolutions under the 1986 Order—

- (a) alter its memorandum so that it does not state that it is to be a community interest company,
- (b) make such alterations of its memorandum and articles as it considers appropriate, and
- (c) change its name so that it does not comply with Article 32.

(2) Article 388(1) of the 1986 Order (forwarding of copies of special resolutions to registrar of companies) must be complied with in relation to each of the special resolutions at the same time.

(3) If the special resolutions include one under Article 15 or 28 of the 1986 Order (alterations of memorandum)—

- (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
  - (b) Article 388(1) has effect in relation to them as if it referred to 15 days after the relevant date.
- (4) If an application is made under Article 16 of the 1986 Order (objection to alteration of memorandum under Article 15 or 28), the relevant date is—
- (a) the date on which the court determines the application (or, if there is more than one application, the date on which the last to be determined by the court is determined), or
  - (b) such later date as the court may order.
- (5) If there is no application under Article 16 of that Order, the relevant date is the end of the period for making such an application.
- (6) The copies of the special resolutions forwarded to the registrar of companies must be accompanied by—
- (a) a copy of the memorandum and articles of the company as altered by the special resolutions, and
  - (b) a statement by the Commissioners of Her Majesty's Revenue and Customs that the company has claimed exemption under section 505(1) of the Income and Corporation Taxes Act 1988 (c. 1).

### **Becoming a charity: decisions**

**53.**—(1) On receiving under Article 52 the copies of the special resolutions, the memorandum and articles as altered by the special resolutions and the statement, the registrar must (instead of recording the special resolutions and entering a new name on the register)—

- (a) forward a copy of each of the documents to the Regulator, and
  - (b) retain them pending the Regulator's decision.
- (2) The alterations of the memorandum and articles made by the special resolutions are to take effect only as provided by this Article.
- (3) The Regulator must decide whether the company is eligible to cease being a community interest company.
- (4) The company is eligible to cease being a community interest company if it has complied with Article 52 and none of the following applies—
- (a) the Regulator has under Article 41 appointed an auditor to audit the company's annual accounts and the audit has not been completed,
  - (b) civil proceedings instituted by the Regulator in the name of the company under Article 42 have not been determined or discontinued,
  - (c) a director of the company holds office by virtue of an order under Article 43,
  - (d) a director of the company is suspended under Article 44(3),
  - (e) there is a manager in respect of the property and affairs of the company appointed under Article 45,
  - (f) the Official Property Holder holds property as trustee for the company,
  - (g) an order under Article 46(2) or (3) is in force in relation to the company,
  - (h) a petition has been presented for the company to be wound up.
- (5) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).

(6) If the Regulator gives notice of a decision that the company is eligible to cease being a community interest company, Article 38(6) of the 1986 Order (registration of new name) applies; and if the registrar of companies enters the new name of the company on the register he must also retain and record the special resolutions and the statement.

(7) On the date on which the certificate of incorporation is issued the alterations to the company's articles and memorandum made by the special resolutions take effect and the company ceases to be a community interest company.

(8) If the Regulator decides that the company is not eligible to cease being a community interest company, the company may appeal to the Appeal Officer against the decision.

### **Becoming an industrial and provident society**

**54.**—(1) Unless regulations make provision to the contrary, a community interest company may not convert itself into a registered society under section 62 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).

(2) If regulations make provision allowing the conversion of community interest companies under that section they may include provision modifying that section in its application by virtue of the regulations.

### *Supplementary*

#### **Fees**

**55.**—(1) Regulations may require the payment of such fees in connection with the Regulator's functions as may be specified in the regulations.

(2) The regulations may provide for fees to be paid to the registrar of companies (rather than to the Regulator).

(3) The Regulator may charge a fee for any service which is provided otherwise than in pursuance of an obligation imposed by law, other than the provision of guidance which the Regulator considers to be of general interest.

(4) Fees paid by virtue of this Article are to be paid into the Consolidated Fund.

#### **Extension of provisions about registrar etc.**

**56.** Regulations may make amendments or modifications of any provision contained in—

- (a) Part XXIV of the 1986 Order (registrar), or
- (b) Part XXV of that Order (miscellaneous and supplementary),

in consequence of any provision contained in, or made under, this Part (in particular, so as to provide that references to the Companies Orders are to include provisions contained in, or made under, this Part).

#### **Information**

**57.**—(1) Regulations may require the registrar of companies—

- (a) to notify the Regulator of matters specified in the regulations, and
- (b) to provide the Regulator with copies of documents specified in the regulations.

(2) A public authority may disclose to the Regulator, for any purpose connected with the exercise of the Regulator's functions, information received by the authority in connection with its functions.

(3) The Regulator may disclose to a public authority any information received by the Regulator in connection with the functions of the Regulator—

- (a) for a purpose connected with the exercise of those functions, or
- (b) for a purpose connected with the exercise by the authority of its functions.

(4) In deciding whether to disclose information to a public authority in a country or territory outside the United Kingdom the Regulator must have regard to the considerations listed in section 243(6) of the Enterprise Act 2002 (c. 40) (overseas disclosures), but as if the reference to information of a kind to which section 237 of that Act applies were to information of the kind the Regulator is considering disclosing.

(5) The powers to disclose information in paragraphs (2) and (3) are subject to—

- (a) any restriction on disclosure imposed by or under a statutory provision; and
- (b) any express restriction on disclosure subject to which information was supplied.

(6) Information may be disclosed under paragraph (2) or (3) subject to a restriction on its further disclosure.

(7) A person who discloses information in contravention of a restriction imposed under paragraph (6) is guilty of an offence, but a prosecution may be instituted only with the consent of the Regulator or the Director of Public Prosecutions for Northern Ireland.

(8) A person guilty of an offence under paragraph (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) In this Article “public authority” means a person or body having functions of a public nature.

### **Orders made by Regulator**

**58.**—(1) An order made by the Regulator under this Part must be given to the community interest company in relation to which it is made and—

- (a) if the order is under Article 44(1) or (3), to the director removed or suspended,
- (b) if the order is under Article 46(1)(b) or (2), to the person to whom the order is directed,
- (c) if the order is under Article 47(1), to the persons from and to whom shares are transferred,
- (d) if the order is under Article 47(2), to the person whose interest is extinguished and any person appointed in his place.

(2) Orders made by the Regulator under this Part may contain any incidental or supplementary provisions the Regulator considers expedient.

(3) When discharging an order made under this Part, the Regulator may make savings and transitional provisions.

(4) A document certified by the Regulator to be a true copy of an order made by the Regulator is evidence of the order without further proof; and a document purporting to be so certified shall, unless the contrary is proved, be taken to be so certified.

(5) Where the Regulator makes an order or decision against which an appeal lies under this Part, the Regulator must give reasons for the order or decision to the persons entitled to appeal against it.

### **Regulations**

**59.**—(1) Any power to make regulations under this Part is exercisable by the Department.

(2) Regulations under this Part may confer or impose functions on the Regulator or any other person specified in the regulations (and, unless made under paragraph 4 of Schedule 5, may provide for appeals to the Appeal Officer from a person on whom functions are conferred by the regulations).

(3) No regulations to which this paragraph applies are to be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(4) Paragraph (3) applies to regulations made under (or containing provision made under)—

- (a) Article 29,
- (b) Article 30,
- (c) Article 31,
- (d) Article 33,
- (e) Article 34,
- (f) Article 35,
- (g) Article 36,
- (h) Article 45, and
- (i) Article 54.

(5) Regulations under this Part are (unless a draft of them has been approved by the Assembly under paragraph (3)) subject to negative resolution.

### **Interpretation of Part III**

**60.**—(1) In this Part—

“administrative receiver” has the meaning given by Article 5(1) of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#),

“the Appeal Officer” has the meaning given by Article 27(1),

“charity” has the same meaning as in the Charities Act (Northern Ireland) 1964 (c. 33),

“community interest object” is to be construed in accordance with Article 34(3),

“the community interest test” is to be construed in accordance with Article 34(2),

“excluded company” is to be construed in accordance with Article 34(6),

“the Official Property Holder” has the meaning given by Article 28(1),

“the Regulator” has the meaning given by Article 26(1).

(2) Any expression used in this Part and in the 1986 Order has the same meaning in this Part as in that Order.

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

## SCHEDULES

### SCHEDULE 1

Article 13

NEW SCHEDULE 7B TO THE COMPANIES (NORTHERN IRELAND) ORDER 1986  
In the 1986 Order, after Schedule 7A insert—

#### “SCHEDULE 7B

#### SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURES ETC. FOR THE PURPOSES OF ARTICLE 253G

### PART I

#### SPECIFIED PERSONS

1. The Secretary of State.
2. The Department.
3. The Treasury.
4. The Bank of England.
5. The Financial Services Authority.
6. The Commissioners of Her Majesty’s Revenue and Customs.

### PART II

#### SPECIFIED DESCRIPTIONS OF DISCLOSURES

7. A disclosure for the purpose of assisting a body designated by an order under Article 48 of the [Companies \(Northern Ireland\) Order 1990 \(NI 5\)](#) (delegation of functions of Department) to exercise its functions under Part III of that Order.

8. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by an accountant or auditor of his professional duties.

9. A disclosure for the purpose of enabling or assisting the Department or the Treasury to exercise any of its 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) 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 the Bank of England to exercise its functions.

**12.** A disclosure for the purpose of enabling or assisting the Commissioners of Her Majesty's Revenue and Customs to exercise their functions.

**13.** 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 V of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10);
- (d) the Financial Services and Markets Act 2000 (c. 8).

**14.** A disclosure in pursuance of any Community obligation.

### PART III

#### OVERSEAS REGULATORY BODIES

**15.** A disclosure is made in accordance with this Part if—

- (a) it is made to a body within paragraph 16, and
- (b) it is made for the purpose of enabling or assisting that body to exercise the functions mentioned in that paragraph.

**16.** A body is within this paragraph if it exercises functions of a public nature under legislation in any country or territory outside the United Kingdom which appear to the authorised person to be similar to his functions under Article 253B.

**17.** In determining whether to disclose information to a body in accordance with this Part, the authorised person must have regard to the following considerations—

- (a) whether the use which the body is likely to make of the information is sufficiently important to justify making the disclosure; and
- (b) whether the body has adequate arrangements to prevent the information from being used or further disclosed other than for the purposes of carrying out the functions mentioned in paragraph 16 or any other purposes substantially similar to those for which information disclosed to the authorised person could be used or further disclosed.”.

## 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. The 1990 Order has effect subject to the following amendments.
2. In Article 33(5), for “Parts I and II” substitute “Parts I, II and III”.
3. In Articles 42(1)(a) and 49(3)(c), for “established” substitute “designated”.

## PART II

## AMENDMENTS RELATING TO ACCOUNTS AND REPORTS

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

4. The 1986 Order has effect subject to the following amendments.
5. In Article 257E(2)(d) (rights to information)—
  - (a) for “Article 397A(1) and (2)” substitute “Articles 397A(1) and 397B(1) and (5)”; and
  - (b) for “the auditors” substitute “an auditor”.
6. In Article 680(1) and (2)(a) (prosecution by public authorities), after “253E,” insert “253G,”.
7. In Article 680A(1) (offences by body corporate), after “253E(3)” insert “, 253G(7)”.
8. In Article 680B(1) (criminal proceedings against unincorporated bodies)—
  - (a) after “253E(3),” insert “253G(7),”; and
  - (b) omit “397A(3),”.
- 9.—(1) Schedule 23 (punishment of offences) is amended as follows.
- (2) After the entry relating to Article 242(5) insert—

“242ZA(6)	Making a statement in a directors' report as mentioned in Article 242ZA(2) which is false.	<ol style="list-style-type: none"> <li>1. On indictment.</li> <li>2. Summary.</li> </ol>	<p>2 years or a fine; or both.</p> <p>6 months or the statutory maximum; or both.”.</p>
(3) After the entry relating to Article 253E(3) insert—			
“253G(7)	Disclosing information in contravention of Article 253G(2) or (3).	<ol style="list-style-type: none"> <li>1. On indictment.</li> <li>2. Summary.</li> </ol>	<p>2 years or a fine; or both.</p> <p>3 months or the statutory maximum; or both.”.</p>

(4) For the entries relating to Articles 397A(2), 397A(3) and 397A(4) substitute—

“397B(1)	Person making false, misleading or deceptive statement to auditor.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.
397B(2)	Failure to provide information or explanations to auditor.	Summary.	Level 3 on the standard scale.
397B(4)	Parent company failing to obtain from subsidiary undertaking information for purposes of audit.	Summary.	Level 3 on the standard scale.”.

### 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—

“(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.”.

**16. In Article 680 (prosecution by public authorities)—**

(a) in paragraph (1), for “440 to 444” substitute “441, 442 to 444, 446A”;

(b) in paragraph (2)(b), for “440 to 444” substitute “441, 442 to 444 and 446A”.

**17. In Article 680A (offences by bodies corporate)—**

(a) in paragraph (1), for “or 440 to 444” substitute “,441, 442 to 444 or 446A”;

(b) in paragraph (4), for “440 to 444” substitute “441, 442 to 444, 446A”.

**18. In Article 680B(1) (criminal proceedings against unincorporated bodies), for “440 to 444” substitute “441, 442 to 444 or Article 446A”.**

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 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.

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.

**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)”.

#### *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

Short Title	Extent of repeal
<a href="#">The Companies (Northern Ireland) Order 1986 (NI 6)</a> .	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).
	In Schedule 4, paragraph 4.
<a href="#">The Companies (Northern Ireland) Order 1989 (NI 18)</a> .	
<a href="#">The Companies (Northern Ireland) Order 1990 (NI 5)</a> .	Article 50(3).

Short Title	Extent of repeal
<a href="#">The Companies (No. 2) (Northern Ireland) Order 1990 (NI 10).</a>	Article 11. Article 13. Article 15. Article 17(2) and (4). Article 55(2).
<a href="#">The Friendly Societies Act 1992 (c. 40).</a>	In Schedule 21, paragraph 30.
<a href="#">The Criminal Justice Act 1993 (c. 36).</a>	In Schedule 5, paragraph 19(1) and (2).
<a href="#">The Pensions (Northern Ireland) Order 1995 (NI 22).</a>	In Schedule 1, paragraph 10.
<a href="#">The Bank of England Act 1998 (c. 11).</a>	In Schedule 5, paragraph 63.
<a href="#">The Youth Justice and Criminal Evidence Act 1999 (c. 23).</a>	In Schedule 3, paragraph 15.
<a href="#">The Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4).</a>	In Schedule 3, paragraph 5.

## 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.

*Remuneration and pensions*

- 2.—(1) The Department may pay remuneration and travelling and other allowances to the Regulator.
- (2) The Department may—
- pay a pension, allowance or gratuity to or in respect of a person who is or has been the Regulator, or
  - 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.

*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—

- (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.

(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.