



# Companies (Audit, Investigations and Community Enterprise) Act 2004

## 2004 CHAPTER 27

### PART 1

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

### CHAPTER 1

#### AUDITORS

##### *Delegation of Secretary of State's functions in relation to auditors*

### **3 Delegation of functions by Secretary of State to new or existing body**

(1) Section 46 of the Companies Act 1989 (c. 40) (delegation by Secretary of State of functions relating to auditors) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Secretary of State may make an order under this section (a “delegation order” for the purpose of enabling functions of the Secretary of State 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 section 46A, a body (whether a body corporate or an unincorporated association) which is already in existence (“an existing body”).”

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

(4) For subsection (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 Secretary of State 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.”

#### **4 Circumstances in which Secretary of State may delegate functions to existing body**

After section 46 of the Companies Act 1989 (which is amended by section 3) insert—

##### **“46A Circumstances in which Secretary of State may delegate functions to existing body**

- (1) The Secretary of State’s power to make a delegation order under section 46 which designates an existing body (see section 46(1A)(b)) is exercisable in accordance with this section.
- (2) The Secretary of State may make such an order if it appears to the Secretary of State—
  - (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 subsection (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 subsection (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 Secretary of State to be appropriate.
- (5) An existing body—
  - (a) may be designated by a delegation order under section 46, and
  - (b) may accordingly exercise functions of the Secretary of State 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.”

## 5 Supplementary provisions about delegation orders

(1) Schedule 13 to the Companies Act 1989 (c. 40) (supplementary provisions about 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 section 46 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 section 46(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 section 46.”

(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.”; and

(b) after sub-paragraph (4) insert—

“(5) Unless the body is a company to which section 226 of the Companies Act 1985 (duty to prepare individual company accounts) applies—

- (a) the Secretary of State may, with the consent of the Treasury, 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 section 226 of the Companies Act 1985 applies—

- (a) the Secretary of State may give directions to the body providing that any provisions of that Act 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.”

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

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(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 Secretary of State in any legal proceedings is to be read with the appropriate modifications.”