



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

## CHAPTER 27

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

## 2004 CHAPTER 27

An Act to amend 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 officers, and to company investigations; to make provision for community interest companies; and for connected purposes.

[28th October 2004]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

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

#### CHAPTER 1

#### AUDITORS

##### *Recognised supervisory bodies*

#### **1 Additional requirements for recognition of supervisory bodies**

- (1) Part 2 of Schedule 11 to the Companies Act 1989 (c. 40) (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) above 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) above 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.”

## 2 Arrangements to which additional requirements for recognition relate

After Part 2 of Schedule 11 to the Companies Act 1989 (c. 40) (which is amended by section 1) insert –

### “PART 3

#### 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), 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 –
- paragraph 17(b),
  - paragraph 18(b),
  - paragraph 19(1)(b), or
  - 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 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.”
- (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.”

#### *Auditors’ qualifications*

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

- (1) Section 33 of the Companies Act 1989 (c. 40) (approval of overseas qualifications for auditors) is amended as follows.

(2) For subsections (1) and (2) substitute –

- “(1) The Secretary of State 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 subsection (1)(b) may be expressed to be subject to any specified requirement or requirements being satisfied.

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

(3) For subsection (6) substitute –

- “(6) The Secretary of State may if he thinks fit, having regard to the considerations mentioned in subsections (2) and (3) –
- (a) withdraw his approval of an overseas qualification in relation to persons becoming qualified as mentioned in subsection (1)(a), or obtaining such a qualification as is mentioned in subsection (1)(b), after such date as he may specify; or
  - (b) vary or revoke a requirement mentioned in subsection (1A) from such date as he may specify.”

*Services provided by auditors*

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

(1) For section 390B of the Companies Act 1985 (c. 6) substitute –

**“390B Disclosure of services provided by auditors or associates and related remuneration**

- (1) The Secretary of State 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 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 section 234, or
    - (c) in the auditors’ report under section 235.
  - (5) If the regulations provide that any such disclosure is to be made as mentioned in subsection (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 subsection (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 Act or (as the case may be) a provision of Part 7.
  - (6) The provisions are –
    - (a) sections 233(5) and 234(5); and
    - (b) any provision of sections 245 to 245C.
  - (7) The regulations may make different provision for different cases.
  - (8) Nothing in subsections (2) to (7) affects the generality of subsection (1).
  - (9) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 390A of the Companies Act 1985 (c. 6) (remuneration of auditors) –
- (a) subsection (3) (auditors’ remuneration to be disclosed in note to accounts) accordingly ceases to have effect, and
  - (b) in subsection (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 Act (form and contents of group accounts), omit “section 390A(3) (amount of auditors’ remuneration) and”.

## CHAPTER 2

### ACCOUNTS AND REPORTS

#### *Auditing of accounts*

## 8 Auditors’ rights to information

For section 389A of the Companies Act 1985 (c. 6) substitute—

### “389A Rights to information

- (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 subsection (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 Great Britain;
  - (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 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 Great Britain, the auditor of the parent company may require it to obtain from any of the persons mentioned in subsection (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 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 subsection (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 subsection (1)(b) or (3) may not be used in evidence against him in any criminal proceedings except proceedings for an offence under section 389B.
- (7) Nothing in this section or section 389B compels any person to disclose information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.

### **389B Offences relating to the provision of information to auditors**

- (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 section 389A(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 section 389A(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 subsection (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 section 389A(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 section affects any right of an auditor to apply for an injunction to enforce any of his rights under section 389A.”

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

- (1) Part 7 of the Companies Act 1985 (c. 6) (accounts and audit) is amended as follows.
- (2) In section 234 (duty to prepare directors’ report), after subsection (2) insert—

“(2A) If section 234ZA applies to the report, it shall contain the statement required by subsection (2) of that section.”
- (3) After section 234 insert—

### **“234ZA Statement as to disclosure of information to auditors**

- (1) This section applies to a directors’ report unless the directors have taken advantage of the exemption conferred by section 249A(1) or 249AA(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 section 234A, 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 subsection (2) “relevant audit information” means information needed by the company’s auditors in connection with preparing their report.
- (4) For the purposes of subsection (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 paragraph (b) of that subsection 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 subsection (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 subsection (2) is approved under section 234A 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*

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

- (1) Section 245C of the Companies Act 1985 (c. 6) (other persons authorised to apply to court) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) But where the order giving authorisation (see subsection (4)) is to contain any requirements or other provisions specified under subsection (4A), the Secretary of State may not authorise a person unless, in addition, it appears to him that the person would, if authorised, exercise his functions as an authorised person in accordance with any such requirements or provisions.”



(3) After subsection (4) insert –

“(4A) An order under subsection (4) may contain such requirements or other provisions relating to the exercise of functions by the authorised person as appear to the Secretary of State 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.

For this purpose “relevant proceedings” means proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person.”

## **11 Disclosure of tax information by Inland Revenue to facilitate application for declaration that accounts are defective**

(1) After section 245C of the Companies Act 1985 (c. 6) insert –

### **“245D Disclosure of information held by Inland Revenue to persons authorised to apply to court**

(1) Information which is held by or on behalf of the Commissioners of Inland Revenue may be disclosed to a person who is authorised under section 245C of this Act, or under Article 253C of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), if the disclosure –

- (a) is made for a permitted purpose, and
- (b) is made by the Commissioners or is authorised by them.

(2) Such information –

- (a) may be so disclosed despite any other restriction on the disclosure of information whether imposed by any statutory provision or otherwise, but
- (b) in the case of personal data (within the meaning of the Data Protection Act 1998), may not be disclosed in contravention of that Act.

(3) For the purposes of subsection (1), a disclosure is made for a permitted purpose if it is made for the purpose of facilitating –

- (a) the taking of steps by the authorised person to discover whether there are grounds for an application to the court under section 245B of this Act or Article 253B of the Companies (Northern Ireland) Order 1986; or
- (b) a determination by the authorised person as to whether or not to make such an application.

(4) The power of the Commissioners to authorise a disclosure under subsection (1)(b) may be delegated (either generally or for a specified purpose) to an officer of the Board of Inland Revenue.

### **245E Restrictions on use and further disclosure of information disclosed under section 245D**

(1) Information that is disclosed to an authorised person under section 245D may not be used except in or in connection with –

- 
- (a) taking steps to discover whether there are grounds for an application to the court as mentioned in section 245D(3)(a);
  - (b) determining whether or not to make such an application; or
  - (c) proceedings on any such application.
- (2) Information that is disclosed to an authorised person under section 245D may not be further disclosed except—
- (a) to the person to whom the information relates; or
  - (b) in or in connection with proceedings on any such application to the court.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable to imprisonment or a fine, or both.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove—
- (a) that he did not know, and had no reason to suspect, that the information had been disclosed under section 245D; or
  - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) Sections 732 (restriction on prosecutions), 733(2) and (3) (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to offences under this section.”

- (2) After Article 253C of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) insert—

**“253D Disclosure of information held by Inland Revenue to persons authorised to apply to court**

- (1) Information which is held by or on behalf of the Commissioners of Inland Revenue may be disclosed to a person who is authorised under Article 253C, or under section 245C of the Companies Act 1985, if the disclosure—
- (a) is made for a permitted purpose, and
  - (b) is made by the Commissioners or is authorised by them.
- (2) Such information—
- (a) may be so disclosed despite any other restriction on the disclosure of information whether imposed by any statutory provision or otherwise, but
  - (b) in the case of personal data (within the meaning of the Data Protection Act 1998), may not be disclosed in contravention of that Act.
- (3) For the purposes of paragraph (1), a disclosure is made for a permitted purpose if it is made for the purpose of facilitating—
- (a) the taking of steps by the authorised person to discover whether there are grounds for an application to the court under Article 253B or section 245B of the Companies Act 1985; or
  - (b) a determination by the authorised person as to whether or not to make such an application.

- (4) The power of the Commissioners to authorise a disclosure under paragraph (1)(b) may be delegated (either generally or for a specified purpose) to an officer of the Board of Inland Revenue.

**253E Restrictions on use and further disclosure of information disclosed under Article 253D**

- (1) Information that is disclosed to an authorised person under Article 253D may not be used except in or in connection with—
  - (a) taking steps to discover whether there are grounds for an application to the court as mentioned in Article 253D(3)(a);
  - (b) determining whether or not to make such an application; or
  - (c) proceedings on any such application.
- (2) Information that is disclosed to an authorised person under Article 253D may not be further disclosed except—
  - (a) to the person to whom the information relates; or
  - (b) in or in connection with proceedings on any such application to the court.
- (3) A person who contravenes paragraph (1) or (2) is guilty of an offence and liable to imprisonment or a fine, or both.
- (4) It is a defence for a person charged with an offence under paragraph (3) to prove—
  - (a) that he did not know, and had no reason to suspect, that the information had been disclosed under Article 253D; or
  - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (5) Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to offences under this Article.”

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

- (1) After section 245E of the Companies Act 1985 (c. 6) (as inserted by clause 11) insert—

**“245F Power of authorised persons to require documents, information and explanations**

- (1) This section applies where it appears to a person who is authorised under section 245C of this Act that there is, or may be, a question whether the annual accounts of a company comply with the requirements of this Act.
- (2) The authorised person may require any of the persons mentioned in subsection (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 section 245B; 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 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 subsection (2), the authorised person may apply to the court for an order under subsection (5).
- (5) If on such an application the court decides that the person has failed to comply with the requirement under subsection (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 subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.
- (7) Nothing in this section 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, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.
- (8) In this section “document” includes information recorded in any form.

**245G Restrictions on further disclosure of information obtained under section 245F**

- (1) This section applies to information (in whatever form) which –
- (a) has been obtained in pursuance of a requirement or order under section 245F, 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) Subsection (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 section 245C of his functions under section 245B;
  - (b) is made to a person specified in Part 1 of Schedule 7B;
  - (c) is of a description specified in Part 2 of that Schedule; or
  - (d) is made in accordance with Part 3 of that Schedule.
- (4) The Secretary of State may by order amend Schedule 7B.
- (5) An order under subsection (4) must not –
- (a) amend Part 1 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 2 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 3 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 subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A person who discloses any information in contravention of this section –
- (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 subsection (7) to prove –
- (a) that he did not know, and had no reason to suspect, that the information had been disclosed under section 245F; or
- (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (9) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to offences under this section.
- (10) This section 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 section authorises the making of a disclosure in contravention of the Data Protection Act 1998.”
- (2) Schedule 1 (which inserts Schedule 7B in the Companies Act 1985 (c. 6)) has effect.

#### *Directors’ reports*

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

In section 257 of the Companies Act 1985 (power of Secretary of State to alter accounting requirements), after subsection (4) insert –

- “(4A) Regulations under this section 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 subsection (4A) “specified” means specified in an order made by the Secretary of State; and such an order –
- (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) may contain such transitional provisions as the Secretary of State thinks fit.”

*Supervision of accounts and reports*

**14 Supervision of periodic accounts and reports of issuers of listed securities**

- (1) The Secretary of State may make an order appointing a body (“the prescribed body”) to exercise the functions mentioned in subsection (2).
- (2) The functions are –
  - (a) 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; and
  - (b) if the prescribed body thinks fit, informing the Financial Services Authority of any conclusions reached by the body in relation to any such accounts or report.
- (3) A body may be appointed under this section if it is a body corporate or an unincorporated association which appears to the Secretary of State –
  - (a) to have an interest in, and to have satisfactory procedures directed to, monitoring compliance by issuers of listed securities with accounting requirements imposed by listing rules in relation to periodic accounts and reports produced by such issuers; and
  - (b) otherwise to be a fit and proper body to be appointed.
- (4) But where the order is to contain any requirements or other provisions specified under subsection (8), the Secretary of State may not appoint a body unless, in addition, it appears to him that the body would, if appointed, exercise its functions as a prescribed body in accordance with any such requirements or provisions.
- (5) A body may be appointed either generally or in respect of any of the following, namely –
  - (a) any particular class or classes of issuers,
  - (b) any particular class or classes of periodic accounts or reports,
 and different bodies may be appointed in respect of different classes within either or both of paragraphs (a) and (b).
- (6) In relation to the appointment of a body in respect of any such class or classes, subsections (2) and (3) are to be read as referring to issuers, or (as the case may be) to periodic accounts or reports, of the class or classes concerned.
- (7) Where –
  - (a) a body is so appointed, but
  - (b) the Financial Services Authority requests the body to exercise its functions under subsection (2) in relation to any particular issuer of listed securities in relation to whom those functions would not otherwise be exercisable,

the body is to exercise those functions in relation to that issuer as well.

- (8) An order under this section may contain such requirements or other provisions relating to the exercise of functions by the prescribed body as appear to the Secretary of State to be appropriate.
- (9) If the prescribed body is an unincorporated association, any relevant proceedings may be brought by or against that body in the name of any body corporate whose constitution provides for the establishment of the body.  
For this purpose “relevant proceedings” means proceedings brought in or in connection with the exercise of any function by the body as a prescribed body.
- (10) Where an appointment is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.
- (11) The power to make an order under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section –
  - “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);
  - “periodic” accounts and reports means accounts and reports which are required by listing rules to be produced periodically.

**15 Application of provisions inserted by sections 11 and 12 to bodies appointed under section 14**

- (1) The following provisions apply, in accordance with this section, in relation to prescribed bodies and their functions under section 14 of this Act –
  - (a) sections 245D and 245E of the Companies Act 1985 (c. 6) (as inserted by section 11(1) of this Act),
  - (b) Articles 253D and 253E of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (as inserted by section 11(2) of this Act), and
  - (c) sections 245F and 245G of and Schedule 7B to the Companies Act 1985 (as inserted by section 12(1) of this Act).
- (2) Sections 245D and 245E apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under section 245C of that Act and persons authorised under Article 253C of the Companies (Northern Ireland) Order 1986 and the functions of such persons mentioned in sections 245D(3) and 245E(1).  
But section 245E so applies as if subsection (2)(b) of that section were omitted.
- (3) Articles 253D and 253E apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under Article 253C of that Order and persons authorised under section 245C of the Companies Act 1985 and the functions of such persons mentioned in Articles 253D(3) and 253E(1).  
But Article 253E so applies as if paragraph (2)(b) of that Article were omitted.
- (4) Sections 245F and 245G and Schedule 7B apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under

section 245C of that Act and the functions of such persons mentioned in section 245F(2), section 245G(3)(a) and paragraph 16 of Schedule 7B.

- (5) But section 245F so applies as if—
- (a) subsection (1) of that section provided that the section 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;
  - (b) the references in section 245F(3)(a) and (b) to “the company” were references to that issuer; and
  - (c) the references in section 245F(4) and (5) to “the court” were to the High Court or, in Scotland, the Court of Session.
- (6) In subsection (5)—
- (a) “relevant accounts or reports” means accounts or reports in relation to which the prescribed body has functions under section 14; and
  - (b) “issuer”, “listing rules” and “security” have the same meanings as in section 14.
- (7) In this section “prescribed body” has the same meaning as in section 14.

*Bodies concerned with accounting standards etc.*

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

- (1) The Secretary of State may make grants to any body carrying on activities concerned with any of the matters set out in subsection (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 paragraph (a) or (b) or from the accounting requirements of the Companies Act 1985 (c. 6) 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 Companies Act 1989 (c. 40);
  - (g) exercising functions of the Secretary of State under Part 2 of that Act;
  - (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 subsection (1) in respect of any of its activities.
- (4) For the purposes of this section –
- (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 section –
- “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 Companies Act 1985 (c. 6);
  - “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 2 of the Companies Act 1989 (c. 40), or
    - (b) a qualifying body, as defined by section 32 of that Act, 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 section 736 of the Companies Act 1985.
- (6) In their application to Scotland –
- (a) subsection (2)(a) is to be read as referring only to accounting standards applying in relation to the accounts of companies or bodies (other than companies) established for the purpose of carrying on any kind of business, whether or not for profit;
  - (b) subsection (2)(h) to (j) are to be read as referring only to accountancy functions performed in relation to companies or such bodies, and

(c) subsection (2)(k) is to be read as referring only to regulatory functions exercised in relation to the performance of such accountancy functions; and in paragraph (a) above “business” includes the provision of benefits to members of the body concerned.

- (7) Omit section 256(3) of the Companies Act 1985 (c. 6) (grants to bodies concerned with issuing accounting standards etc.), which is superseded by this section.

## **17 Levy to pay expenses of bodies concerned with accounting standards etc.**

- (1) For the purpose of meeting any part of the expenses of a grant-aided body, the Secretary of State may by regulations provide for a levy to be payable to that body (“the specified recipient”) by bodies or persons which are specified, or are of a description specified, in the regulations.
- (2) For the purposes of this section –
- (a) “grant-aided body” means a body to whom the Secretary of State has paid, or is proposing to pay, grant under section 16; and
  - (b) any expenses of any body carrying on subsidiary activities of the grant-aided body (within the meaning of that section) are to be regarded as expenses of the grant-aided body.
- (3) The power to specify (or to specify descriptions of) bodies or persons must be exercised in such a way that the levy is only payable by –
- (a) bodies corporate to which the Secretary of State considers that any of the activities of the specified recipient, or any of its subsidiary activities, are relevant to a significant extent, or
  - (b) bodies or persons who the Secretary of State considers have a major interest in any of those activities being carried on.
- (4) Regulations under this section may in particular –
- (a) specify the rate of the levy and the period in respect of which it is payable at that rate;
  - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (5) In determining the rate of the levy payable in respect of a particular period, the Secretary of State –
- (a) must take into account the amount of any grant which is to be or has been made to the specified recipient in respect of that period under section 16;
  - (b) may take into account estimated as well as actual expenses of that body in respect of that period.
- (6) Any amount of levy payable by any body or person is a debt due from the body or person to the specified recipient, and is recoverable accordingly.
- (7) The specified recipient must –
- (a) keep proper accounts in respect of amounts of levy received, and
  - (b) prepare in relation to each levy period a statement of account relating to such amounts in such form and manner as is specified in the regulations.
- (8) Those accounts must be audited, and the statement certified, by persons appointed by the Secretary of State.

- (9) The power to make regulations under this section is exercisable by statutory instrument.
- (10) Regulations to which this subsection applies may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (11) Subsection (10) applies to—
  - (a) the first regulations under this section, and
  - (b) any other regulations under this section that would result in any change in the bodies or persons by whom the levy is payable.
- (12) Otherwise, any statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **18 Exemption from liability**

- (1) Where a grant has been paid by the Secretary of State to a body under section 16, this section 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 section—
  - “the exemption period” means the period of 12 months mentioned in subsection (1);
  - “a relevant body” means the body mentioned in that subsection or a body carrying on any subsidiary activities of that body (within the meaning of section 16);
  - “section 16(2) activities” means activities concerned with any of the matters set out in section 16(2).
- (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 section 16(2) activities of the body, or
  - (b) the purported carrying on of any such activities.
- (4) Subsection (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 3

### DIRECTORS’ LIABILITIES

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

- (1) After section 309 of the Companies Act 1985 (c. 6) insert –

**“309A Provisions protecting directors from liability**

- (1) This section 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 subsection (1) is void.
- (3) 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 subsection (1) is void  
 This is subject to subsections (4) and (5).
- (4) Subsection (3) does not apply to a qualifying third party indemnity provision (see section 309B(1)).
- (5) Subsection (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 subsection (1).
- (6) In this section –
 

“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.

**309B Qualifying third party indemnity provisions**

- (1) For the purposes of section 309A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in section 309A(3) in relation to which conditions A to C below 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) section 144(3) or (4) (acquisition of shares by innocent nominee), or
    - (ii) section 727 (general power to grant relief in case of honest and reasonable conduct).
- (5) In paragraph (a), (b) or (c) of subsection (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 subsection (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 section “associated company” and “provision” have the same meaning as in section 309A.

### **309C Disclosure of qualifying third party indemnity provisions**

- (1) Subsections (2) and (3) impose disclosure requirements in relation to a directors’ report under section 234 in respect of a financial year.
- (2) If —
  - (a) at the time when the report is approved under section 234A, 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 section 234A, 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) Subsection (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) Section 318 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 section 318(1).
  - (6) In this section—
    - “associated company” and “provision” have the same meaning as in section 309A; and
    - “qualifying third party indemnity provision” has the meaning given by section 309B(1).”
  - (2) In section 310 of that Act (provisions exempting officers and auditors from liability), the following provisions cease to have effect—
    - (a) in subsection (1), the words “any officer of the company or”, and
    - (b) in subsection (3)—
      - (i) the words “officer or” (in both places), and
      - (ii) the words from “section 144(3)” to “nominee) or”;
 and in the sidenote, for “exempting officers and” substitute “protecting”.

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

After section 337 of the Companies Act 1985 (c. 6) insert—

### “337A Funding of director’s expenditure on defending proceedings

- (1) A company is not prohibited by section 330 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 subsection (2).
- (2) The provisions are—
  - section 144(3) and (4) (acquisition of shares by innocent nominee), and
  - section 727 (general power to grant relief in case of honest and reasonable conduct).

- (3) Nor does section 330 prohibit a company from doing anything to enable a director to avoid incurring such expenditure.
- (4) Subsections (1) and (3) only apply to a loan or other thing done as mentioned in those subsections 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 subsection (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 4

### INVESTIGATIONS

#### 21 Power to require documents and information

For section 447 of the Companies Act 1985 (c. 6) substitute—

**“447 Power to require documents and information**

- (1) The Secretary of State may act under subsections (2) and (3) in relation to a company.
- (2) The Secretary of State 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 Secretary of State 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 subsection (3) is imposed may require the investigator to produce evidence of his authority.
- (5) A requirement under subsection (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 section does not affect any lien which a person has on the document.
- (7) The Secretary of State or the investigator (as the case may be) may take copies of or extracts from a document produced in pursuance of this section.
- (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.”

## 22 Protection in relation to certain disclosures

After section 448 of the Companies Act 1985 (c. 6) insert –

### “448A Protection in relation to certain disclosures: information provided to Secretary of State

- (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 Secretary of State 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 Secretary of State for the purposes of the exercise of his functions under this Part;
  - (d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Secretary of State for the purposes of the exercise of those functions;
  - (e) the disclosure is not one falling within subsection (3) or (4).
- (3) A disclosure falls within this subsection if the disclosure is prohibited by virtue of any enactment.
- (4) A disclosure falls within this subsection 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.
- (5) An enactment includes an enactment –



- (a) comprised in, or in an instrument made under, an Act of the Scottish Parliament;
- (b) comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);
- (c) whenever passed or made.”

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

After section 453 of the Companies Act 1985 (c. 6) insert –

### **“453A Power to enter and remain on premises**

- (1) An inspector or investigator may act under subsection (2) in relation to a company if –
  - (a) he is authorised to do so by the Secretary of State, 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 subsection (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 subsection (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 subsection (2) or (4) –
  - (a) is guilty of an offence, and
  - (b) is liable on conviction to a fine.
- (6) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to the offence under subsection (5).
- (7) An inspector is a person appointed under section 431, 432 or 442.
- (8) An investigator is a person authorised for the purposes of section 447.

### **453B Power to enter and remain on premises: procedural**

- (1) This section applies for the purposes of section 453A.
- (2) The requirements of subsection (3) must be complied with at the time an inspector or investigator seeks to enter relevant premises under section 453A(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 section 453A;
  - (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 subsection (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 subsection (4).
- (6) As soon as reasonably practicable after exercising his powers under section 453A(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 subsection (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) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

## 24 Failure to comply with certain requirements

After section 453B of the Companies Act 1985 (c. 6) (inserted by section 23)

insert –

**“453C Failure to comply with certain requirements**

- (1) This section applies if a person fails to comply with a requirement imposed by an inspector, the Secretary of State or an investigator in pursuance of either of the following provisions –
  - (a) section 447;
  - (b) section 453A.
- (2) The inspector, Secretary of State 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 5**

SUPPLEMENTARY

**25 Minor and consequential amendments**

- (1) Schedule 2 (minor and consequential amendments relating to Part 1) has effect.
- (2) That Schedule has effect subject to the modifications set out in subsection (3) –
  - (a) in relation to England and Wales, in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003 (c. 44) comes into force, and
  - (b) in relation to Scotland.
- (3) The modifications are –
  - (a) the amendment in paragraph 10(2) has effect as if for “12 months” there were substituted “6 months”;
  - (b) the amendment in paragraph 10(3) has effect as if for “12 months”, in both places where it occurs, there were substituted “3 months”;
  - (c) the amendment in paragraph 10(4) has effect as if for “12 months” there were substituted “6 months”;
  - (d) the amendment in paragraph 26(2) has effect as if for “12 months” there were substituted “6 months”; and
  - (e) the amendment in paragraph 26(3) has effect as if for “12 months” there were substituted “6 months”.

**PART 2**

## COMMUNITY INTEREST COMPANIES

*Introductory***26 Community interest companies**

- (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—
  - (a) is not a charity, and
  - (b) must not be given such intimation as is mentioned in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (Scottish charities).

**27 Regulator**

- (1) There is to be an officer known as the Regulator of Community Interest Companies (referred to in this Part as “the Regulator”).
- (2) The Secretary of State 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 by virtue of this Act or any other enactment.
- (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 Secretary of State may require the Regulator to issue guidance or otherwise provide assistance about any matter relating to community interest companies which is specified by the Secretary of State.
- (7) Any guidance issued under this section 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 section 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 3 (further provisions about the Regulator) has effect.

## **28 Appeal Officer**

- (1) There is to be an officer known as the Appeal Officer for Community Interest Companies (referred to in this Part as “the Appeal Officer”).
- (2) The Secretary of State 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 or by virtue of this Act or any other enactment 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 4 (further provisions about the Appeal Officer) has effect.

## **29 Official Property Holder**

- (1) There is to be an officer known as the Official Property Holder for Community Interest Companies (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 by virtue of this Act or any other enactment.
- (4) Schedule 5 (further provisions about the Official Property Holder) has effect.

### *Requirements*

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

- (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 section 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 section 27) –
  - (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 section may include power for the Secretary of State 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 Gazette.

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

- (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 enactment or instrument.

### **32 Memorandum and articles**

- (1) The memorandum of a community interest company must state that the company is to be a community interest company.
- (2) Section 7(1) of the Companies Act 1985 (c. 6) (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 subsection (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 subsection (3)(a), or
  - (b) include provisions required not to be included by regulations under subsection (3)(b).
- (6) Regulations may make provision for and in connection with restricting the ability of a community interest company under section 4 of the Companies Act 1985 (c. 6) to alter its memorandum with respect to the statement of its objects.

### 33 Names

- (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) But the name of such a company may (instead) end with –
  - (a) “cwmni buddiant cymunedol”, or
  - (b) “c.b.c.”,if the memorandum of the company states that the company’s registered office is to be situated in Wales.
- (3) 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.”.
- (4) But the name of such a company may (instead) end with –
  - (a) “cwmni buddiant cymunedol cyhoeddus cyfyngedig”, or
  - (b) “cwmni buddiant cymunedol c.c.c.”,if the memorandum of the company states that the company’s registered office is to be situated in Wales.
- (5) Section 25 of the Companies Act 1985 (company name to end with “public limited company” or “limited” or equivalent) does not apply to community interest companies.
- (6) Schedule 6 (further provisions about names) has effect.

### 34 Community interest company reports

- (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) Section 242(1) of the Companies Act 1985 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 Companies Act 1985 (c. 6) 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 by virtue of this section.

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

- (1) This section 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 Great Britain 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*

### **36 New companies**

- (1) If a company is to be formed as a community interest company, the documents delivered to the registrar of companies under section 10 of the Companies Act 1985 (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 section, in such form as may be approved in accordance with the regulations.
- (3) On receiving the documents delivered under that section 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 by virtue of section 32 and the company's name complies with section 33, and
  - (b) the Regulator, having regard to the documents delivered under section 10 of the Companies Act 1985 (c. 6), 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, section 12 of the Companies Act 1985 (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 section 13 of the Companies Act 1985 (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.

### **37 Existing companies: requirements**

- (1) If a company is to become a community interest company, the company must—
  - (a) by special resolution alter its memorandum to state that it is to be a community interest company,
  - (b) by special resolutions under the Companies Act 1985 make such alterations of its memorandum and articles as it considers necessary to comply with requirements imposed by and by virtue of section 32 or otherwise appropriate in connection with becoming a community interest company, and
  - (c) by special resolution change its name to comply with section 33.
- (2) Section 380(1) of the Companies Act 1985 (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 section 4 or 17 of the Companies Act 1985 (alterations of memorandum)—
  - (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
  - (b) section 380(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 section 5 of the Companies Act 1985 (c. 6) (objection to alteration of memorandum under section 4 or 17), 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 section 5 of that Act, 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.

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

- (1) On receiving under section 37 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 section.
- (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 by virtue of section 32 and the company’s name as so altered complies with section 33, 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, section 28(6) of the Companies Act 1985 (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 section 28(6) of the Companies Act 1985 (c. 6) 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.

### **39 Existing companies: charities**

- (1) A charitable company may not by special resolution change its name to comply with section 33 without the prior written consent of the Charity Commissioners.
- (2) If a charitable company contravenes subsection (1), the Charity Commissioners may apply to the High Court for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985.
- (3) If a charitable company becomes a community interest company, that does not affect the application of –
  - (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
  - (b) any property representing income which has previously accrued, or
  - (c) the income from any such property.
- (4) "Charitable company" means a company which is a charity, other than one to which section 40 applies.

### **40 Existing companies: Scottish charities**

- (1) A Scottish charitable company may not become a community interest company.
- (2) If a Scottish charitable company purports by special resolution to change its name to comply with section 33, the Commissioners of Inland Revenue may apply to the Court of Session for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985.
- (3) Regulations may repeal subsections (1) and (2); and subsections (4) to (7) have effect on and after the day on which regulations under this subsection come into force.
- (4) A Scottish charitable company may not by special resolution change its name to comply with section 33 without the prior written consent –
  - (a) if the company's registered office is situated in Scotland, of the Scottish Charity Regulator, or
  - (b) if the company's registered office is situated in England and Wales (or Wales), of both the Scottish Charity Regulator and the Charity Commissioners.

- (5) If a Scottish charitable company contravenes subsection (4)(a), the Scottish Charity Regulator may apply to the Court of Session for an order quashing any altered certificate of incorporation issued under section 28(6) of the Companies Act 1985 (c. 6).
- (6) If a Scottish charitable company contravenes subsection (4)(b), the Scottish Charity Regulator or the Charity Commissioners may apply to the High Court for such an order.
- (7) If a Scottish charitable company becomes a community interest company, that does not affect the application of—
  - (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
  - (b) any property representing income which has previously accrued, or
  - (c) the income from any such property.
- (8) In this section “Scottish charitable company” means a company which—
  - (a) is a Scottish charity, or
  - (b) not being a Scottish charity, is registered in Scotland and established for charitable purposes only.
- (9) Regulations under subsection (3) may define the expression “the Scottish Charity Regulator” for the purposes of this section.

*Supervision by Regulator*

**41 Conditions for exercise of supervisory powers**

- (1) In deciding whether and how to exercise the powers conferred by sections 42 to 51 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) section 45 (appointment of director),
  - (b) section 46 (removal of director),
  - (c) section 47 (appointment of manager), or
  - (d) section 48 (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 section 49 (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.

## **42 Investigation**

- (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) Subsection (1)(b) is in addition to paragraph 5 of Schedule 3 (powers of Regulator exercisable by authorised members of staff) and does not affect the application of that paragraph to the Regulator’s power under subsection (1)(a).
- (3) Schedule 7 (further provision about investigations under this section) has effect.

## **43 Audit**

- (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 section 25 of the Companies Act 1989 (c. 40) (eligibility for appointment as auditor).
- (3) Sections 389A and 389B of the Companies Act 1985 (c. 6) (auditor’s rights to information) apply in relation to an auditor appointed under this section as in relation to an auditor appointed under Chapter 5 of Part 11 of that Act.
- (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 section is in addition to, and does not affect, any audit required by or by virtue of any other enactment.

## **44 Civil proceedings**

- (1) The Regulator may bring civil proceedings in the name and on behalf of a community interest company.
- (2) Before instituting proceedings under this section 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 section, or
  - (b) that proceedings instituted under this section are to be discontinued.

- (4) On an application under subsection (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 section or that proceedings instituted under this section are to be discontinued) order –
  - (a) that the proposed proceedings may be instituted under this section, or the proceedings instituted under this section 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 (or expenses) incurred by it in connection with proceedings brought under this section.
- (7) Any costs (or expenses) –
  - (a) awarded to the company in connection with proceedings brought under this section, or
  - (b) incurred by the company in connection with the proceedings and which it is agreed should be paid by a defendant (or defender),are to be paid to the Regulator.

#### **45 Appointment of director**

- (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 section –
  - (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 section 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 section 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 section 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 section, 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 section 288(2) of the Companies Act 1985 (c. 6) (requirement that company notify change among directors to registrar) is instead an obligation of the Regulator.

- (9) But if subsection (10) applies, section 288(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 subsection.
- (10) Where a person appointed to be a director of the company under this section ceases to be a director of the company (otherwise than by removal under subsection (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 subsection (10) it commits an offence.
- (12) A person guilty of an offence under subsection (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 section.

#### **46 Removal of director**

- (1) The Regulator may by order remove a director of a community interest company.
- (2) If a person has been removed under subsection (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 subsection (3) is one year.
- (5) If the Regulator suspends a director under subsection (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 subsection (1).
- (7) The discharge of an order made under subsection (1) does not reinstate the person removed by the order as a director of the company, but on the discharge of the order subsection (2) ceases to apply to the person.
- (8) The Regulator must from time to time review any order made under subsection (3) and, if it is appropriate to do so, discharge the order.
- (9) Before making an order under subsection (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 subsection (1) or (3) the director may appeal against the order –
  - (a) in England and Wales, to the High Court, or
  - (b) in Scotland, to the Court of Session.
- (11) The Regulator must, before the end of the period of 14 days beginning with the date on which –
  - (a) an order under subsection (1) is made or discharged,
  - (b) an order under subsection (3) is made or discharged or expires, or
  - (c) an order under subsection (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 subsection (11) imposes an obligation to notify the registrar of companies of an event, section 288(2) of the Companies Act 1985 (c. 6) (requirement that company notify change among directors to registrar) does not apply in respect of the event.

#### **47 Appointment of manager**

- (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 subsection (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 section 51 of the Insolvency Act 1986 (c. 45)), 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 subsection (9) the court may give such directions or make such orders as it thinks fit.
- (11) The costs of any application under subsection (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 (or, in Scotland, to find caution) 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 section.

#### **48 Property**

- (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 subsection (1) does not constitute a breach of a covenant or condition against alienation, and no right listed in subsection (5) operates or becomes exercisable as a result of the vesting or transfer.
- (5) The rights are –
  - (a) a right of reverter (or, in Scotland, the right of the fiar on the termination of a liferent),

- (b) a right of pre-emption,
  - (c) a right of forfeiture,
  - (d) a right of re-entry,
  - (e) a right of irritancy,
  - (f) an option, and
  - (g) any right similar to those listed in paragraphs (a) to (f).
- (6) The Regulator must from time to time review any order under this section and, if it is appropriate to do so, discharge the order in whole or in part.
- (7) On discharging an order under subsection (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 subsection (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 subsection (2) or (3) commits an offence, but a prosecution may be instituted in England and Wales only with the consent of the Regulator or the Director of Public Prosecutions.
- (11) A person guilty of an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) Subsections (8) to (10) do not prevent the bringing of civil proceedings in respect of a contravention of an order under subsection (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 subsection (1) or (2).
- (14) The company may appeal to the Appeal Officer against an order under subsection (3).

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

- (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 subsection (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 section 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 subsection (1).
- (6) The company and any person whose interest is extinguished by the order may appeal to the Appeal Officer against an order under subsection (2).
- (7) "Specified", in relation to an order, means specified in the order.

## **50 Petition for winding up**

- (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) Subsection (1) does not apply if the company is already being wound up by the court.
- (3) In section 124 of the Insolvency Act 1986 (c. 45) (application for winding up), after subsection (4) insert –
  - "(4A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004."

## **51 Dissolution and striking off**

- (1) If a community interest company has been dissolved, the Regulator may apply under section 651 of the Companies Act 1985 (c. 6) for an order declaring the dissolution to have been void.
- (2) If a community interest company has been struck off the register under section 652 of the Companies Act 1985 (defunct companies), the Regulator may apply under section 653(2) of that Act for an order that the company's name be restored.
- (3) If an application under section 652A of the Companies Act 1985 (application to strike name of private company off register) is made on behalf of a community interest company, section 652B(6) of that Act (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***52 Re-registration**

- (1) A community interest company is excluded from re-registering under section 49 of the Companies Act 1985 (c. 6) (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 section 43 of the Companies Act 1985, or a community interest company which is a public company re-registers as a private company under section 53 of that Act, the certificate of incorporation issued under section 47(1)(b) or 55(1)(b) of that Act 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.

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

A community interest company may not cease to be a community interest company except by dissolution or as provided –

- (a) by sections 54 and 55 (becoming a charity or a Scottish charity), or
- (b) if regulations are made under section 56 (becoming an industrial and provident society), by the regulations.

**54 Becoming a charity or a Scottish charity: requirements**

- (1) If a community interest company is to cease being a community interest company and become a charity or a Scottish charity, the company must –
  - (a) by special resolution alter its memorandum so that it does not state that it is to be a community interest company,
  - (b) by special resolutions under the Companies Act 1985 make such alterations of its memorandum and articles as it considers appropriate, and
  - (c) by special resolution change its name so that it does not comply with section 33.
- (2) Section 380(1) of the Companies Act 1985 (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 section 4 or 17 of the Companies Act 1985 (alterations of memorandum) –
  - (a) copies of the special resolutions must not be forwarded to the registrar of companies before the relevant date, and
  - (b) section 380(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 section 5 of the Companies Act 1985 (objection to alteration of memorandum under section 4 or 17), 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 section 5 of that Act, 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 under subsection (7) or, if the company's registered office is situated in Scotland and the company is to become a Scottish charity, a statement under subsection (8).
- (7) A statement under this subsection is a statement by the Charity Commissioners that in their opinion, if the special resolutions take effect and the company ceases to be a community interest company the company will be a charity and will not be an exempt charity.
- (8) A statement under this subsection is a statement by the Commissioners of Inland Revenue that –
  - (a) the company has claimed exemption under section 505(1) of the Income and Corporation Taxes Act 1988 (c. 1), and
  - (b) if the special resolutions take effect and the company ceases to be a community interest company the company will be given such intimation as is mentioned in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).
- (9) "Exempt charity" has the same meaning as in the Charities Act 1993 (c. 10) (see section 96 of that Act).

## **55 Becoming a charity or a Scottish charity: decisions etc.**

- (1) On receiving under section 54 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 section.
- (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 section 54 and none of the following applies –
  - (a) the Regulator has under section 43 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 section 44 have not been determined or discontinued,
  - (c) a director of the company holds office by virtue of an order under section 45,
  - (d) a director of the company is suspended under section 46(3),
  - (e) there is a manager in respect of the property and affairs of the company appointed under section 47,
  - (f) the Official Property Holder holds property as trustee for the company,

- (g) an order under section 48(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, section 28(6) of the Companies Act 1985 (c. 6) (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.

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

- (1) Unless regulations make provision to the contrary, a community interest company may not convert itself into a registered society under section 53 of the Industrial and Provident Societies Act 1965 (c. 12).
- (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*

## **57 Fees**

- (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 section are to be paid into the Consolidated Fund.

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

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

- (a) Part 24 of the Companies Act 1985 (registrar), or
- (b) Part 25 of that Act (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 Acts are to include provisions contained in, or made under, this Part).

## 59 Information

- (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) After section 71 of the Bankruptcy (Scotland) Act 1985 (c. 66) insert –

**“71A Further duty of Accountant in Bankruptcy**

The Accountant in Bankruptcy shall, on receiving any notice under section 109(1) of the Insolvency Act 1986 in relation to a community interest company, forward a copy of that notice to the Regulator of Community Interest Companies.”
- (3) In section 31(2) of the Data Protection Act 1998 (c. 29) (restricted access to data processed for specified purposes) –
  - (a) in paragraphs (b), (c) and (d), after “charities” insert “or community interest companies”, and
  - (b) in paragraph (b), after “trustees” insert “, directors”.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) The powers to disclose information in subsections (4) and (5) are subject to –
  - (a) any restriction on disclosure imposed by or by virtue of an enactment, and
  - (b) any express restriction on disclosure subject to which information was supplied.
- (8) Information may be disclosed under subsection (4) or (5) subject to a restriction on its further disclosure.
- (9) A person who discloses information in contravention of a restriction imposed under subsection (8) is guilty of an offence, but a prosecution may be instituted in England or Wales only with the consent of the Regulator or the Director of Public Prosecutions.
- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) “Public authority” means a person or body having functions of a public nature.

**60 Offences**

- (1) If an offence under this Part committed by a body corporate is proved –
  - (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on the part of an officer,the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) “Officer” means a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity.
- (3) “Director” –
  - (a) includes a shadow director, and
  - (b) if the affairs of a body corporate are managed by its members, means a member of the body.

**61 Orders made by Regulator**

- (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 section 46(1) or (3), to the director removed or suspended,
  - (b) if the order is under section 48(1)(b) or (2), to the person to whom the order is directed,
  - (c) if the order is under section 49(1), to the persons from and to whom shares are transferred,
  - (d) if the order is under section 49(2), to the person whose interest is extinguished and any person appointed in his place.
- (2) Orders made by the Regulator under or by virtue of this Part may contain any incidental or supplementary provisions the Regulator considers expedient.
- (3) When discharging an order made under or by virtue of 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 or by virtue of this Part, the Regulator must give reasons for the order or decision to the persons entitled to appeal against it.

**62 Regulations**

- (1) Any power to make regulations under this Part is exercisable by the Secretary of State by statutory instrument.
- (2) Regulations under this Part may make different provision for different cases.
- (3) 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 4, may provide for appeals to the Appeal Officer from a person on whom functions are conferred by the regulations).



- (4) No regulations to which this subsection applies are to be made unless a draft of the statutory instrument containing the regulations (whether or not together with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Subsection (4) applies to regulations under –
  - (a) section 30,
  - (b) section 31,
  - (c) section 32,
  - (d) section 34,
  - (e) section 35,
  - (f) section 36,
  - (g) section 37,
  - (h) section 47, and
  - (i) section 56.
- (6) A statutory instrument containing regulations under this Part is (unless a draft of it has been approved by each House of Parliament under subsection (4)) subject to annulment in pursuance of a resolution of either House of Parliament.

### **63 Interpretation**

- (1) In this Part –
  - “administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986 (c. 45),
  - “the Appeal Officer” has the meaning given by section 28(1),
  - “charity” (except in the phrase “Scottish charity”) has the same meaning as in the Charities Act 1993 (c. 10) (see section 96 of that Act),
  - “community interest object” is to be construed in accordance with section 35(3),
  - “the community interest test” is to be construed in accordance with section 35(2),
  - “enactment” includes an Act of the Scottish Parliament,
  - “excluded company” is to be construed in accordance with section 35(6),
  - “the Official Property Holder” has the meaning given by section 29(1),
  - “the Regulator” has the meaning given by section 27(1), and
  - “Scottish charity” has the meaning given by section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).
- (2) Any expression used in this Part and in the Companies Act 1985 (c. 6) has the same meaning in this Part as in that Act.

## **PART 3**

### SUPPLEMENTARY

### **64 Repeals and revocations**

Schedule 8 (repeals and revocations) has effect.

**65 Commencement etc.**

- (1) This Act (apart from this section and sections 66 and 67) does not come into force until such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different provisions or otherwise for different purposes.
- (2) The Secretary of State may by order made by statutory instrument make any transitional provisions or savings which appear appropriate in connection with the commencement of any provision of this Act.

**66 Extent**

- (1) Any amendment made by this Act has the same extent as the provision to which it relates.
- (2) Sections 14, 15(1)(b), (3) and (7) and 17 extend to Northern Ireland.
- (3) Subject to that, this Act (apart from section 65, this section and section 67) does not extend to Northern Ireland.

**67 Short title**

This Act may be cited as the Companies (Audit, Investigations and Community Enterprise) Act 2004.

## SCHEDULES

### SCHEDULE 1

Section 12

#### NEW SCHEDULE 7B TO THE COMPANIES ACT 1985

In the Companies Act 1985 (c. 6), after Schedule 7A insert –

#### “SCHEDULE 7B

Section 245G(3)

SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURES ETC. FOR THE PURPOSES OF  
SECTION 245G

#### PART 1

##### SPECIFIED PERSONS

- 1 The Secretary of State.
- 2 The Department of Enterprise, Trade and Investment for Northern Ireland.
- 3 The Treasury.
- 4 The Bank of England.
- 5 The Financial Services Authority.
- 6 The Commissioners of Inland Revenue.

#### PART 2

##### SPECIFIED DESCRIPTIONS OF DISCLOSURES

- 7 A disclosure for the purpose of assisting a body designated by an order under section 46 of the Companies Act 1989 (delegation of functions of Secretary of State) to exercise its functions under Part 2 of that Act.
- 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 Secretary of State or the Treasury to exercise any of their functions under any of the following –
  - (a) this Act;
  - (b) the insider dealing legislation;
  - (c) the Insolvency Act 1986;

- (d) the Company Directors Disqualification Act 1986;
  - (e) the Financial Services and Markets Act 2000.
- 10 A disclosure for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments 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 Inland Revenue 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) Part 7 of the Companies Act 1989;
  - (d) the Financial Services and Markets Act 2000.
- 14 A disclosure in pursuance of any Community obligation.

### PART 3

#### OVERSEAS REGULATORY BODIES

- 15 A disclosure is made in accordance with this Part of this Schedule 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 section 245B of this Act.
- 17 In determining whether to disclose information to a body in accordance with this Part of this Schedule, 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

Section 25

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 1

PART 1

AMENDMENTS RELATING TO AUDITORS

*Companies Act 1989 (c. 40)*

- 1 The Companies Act 1989 has effect subject to the following amendments.
- 2 In section 30(5), for “Parts I and II” substitute “Parts I, II and III”.
- 3 In the following provisions, for “established” substitute “designated” –
  - (a) sections 40(1)(a) and 47(3)(c);
  - (b) section 87(4) in the entry relating to bodies established by order under section 46 of the Act.

*Companies (Northern Ireland) Order 1990 (S.I. 1990/593(N.I. 5))*

- 4 In the Companies (Northern Ireland) Order 1990, omit Article 49 and Schedule 14 (supervisory and qualifying bodies: restrictive practices).

PART 2

AMENDMENTS RELATING TO ACCOUNTS AND REPORTS

*Companies Act 1985 (c. 6)*

- 5 The Companies Act 1985 has effect subject to the following amendments.
- 6 In section 249E(2)(d) (rights to information) –
  - (a) for “section 389A(1) and (2)” substitute “sections 389A(1) and 389B(1) and (5)”; and
  - (b) for “the auditors” substitute “an auditor”.
- 7 In section 732(1) and (2)(a) (prosecution by public authorities), after “210,” insert “245E, 245G,”.
- 8 In section 733(1) (offences by body corporate), after “216(3)” insert “, 245E(3), 245G(7)”.
- 9 In section 734(1) (criminal proceedings against unincorporated bodies) –
  - (a) after “under” insert “section 245E(3), section 245G(7),”; and
  - (b) omit “section 389A(3) or”.
- 10 (1) Schedule 24 (punishment of offences) is amended as follows.  
(2) After the entry relating to section 234(5) insert –

“234ZA(6)	Making a statement in a directors’ report as mentioned in section 234ZA(2) which is false	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	–”.
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(3) After the entry relating to section 241A(10) insert –

“245E(3)	Using or disclosing tax information in contravention of section 245E(1) or (2)	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	–
245G(7)	Disclosing information in contravention of section 245G(2) and (3)	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	–”.

(4) For the entries relating to sections 389A(2), 389A(3) and 389A(4) substitute –

“389B(1)	Person making false, misleading or deceptive statement to auditor	1. On indictment 2. Summary	2 years or a fine; or both 12 months or the statutory maximum; or both	–
389B(2)	Failure to provide information or explanations to auditor	Summary	Level 3 on the standard scale	–
389B(4)	Parent company failing to obtain from subsidiary undertaking information for purposes of audit	Summary	Level 3 on the standard scale	–”.

*Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))*

- 11 The Companies (Northern Ireland) Order 1986 has effect subject to the following amendments.
- 12 In Article 680(1) and (2)(a) (prosecution by public authorities), after “218,” insert “253E,”.
- 13 In Article 680A(1) (offences by bodies corporate), after “224(3),” insert “253E(3),”.
- 14 In Article 680B(1) (criminal proceedings against unincorporated bodies), after “Articles” insert “253E(3),”.
- 15 In Schedule 23 (punishment of offences), after the entry relating to Articles 249(2) and 250(2) insert –

“253E(3)	Using or disclosing tax information in contravention of Article 253E(1) or (2)	1. On indictment 2. Summary	2 years or a fine; or both 3 months or the statutory maximum; or both	–”.
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PART 3

AMENDMENTS RELATING TO INVESTIGATIONS

*Companies Act 1985 (c. 6)*

16 The Companies Act 1985 has effect subject to the following amendments.

17 After section 447 insert –

**“447A Information provided: evidence**

- (1) A statement made by a person in compliance with a requirement under section 447 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 section 451,
  - (b) an offence under section 5 of the Perjury Act 1911 (false statement made otherwise than on oath), or
  - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statement made otherwise than on oath).”

18 For section 449 substitute –

**“449 Provision for security of information obtained**

- (1) This section applies to information (in whatever form) obtained –
  - (a) in pursuance of a requirement imposed under section 447;
  - (b) by means of a relevant disclosure within the meaning of section 448A(2);
  - (c) by an investigator in consequence of the exercise of his powers under section 453A.
- (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 Secretary of State may by order amend Schedules 15C and 15D.
- (4) An order under subsection (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 subsection (3) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A person who discloses any information in contravention of this section –
  - (a) is guilty of an offence, and
  - (b) is liable on conviction to imprisonment or a fine or to both.
- (7) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to the offence under subsection (6).
- (8) Any information which may by virtue of this section be disclosed to a person specified in Schedule 15C may be disclosed to any officer or employee of the person.
- (9) This section 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 section, information obtained by an investigator in consequence of the exercise of his powers under section 453A includes information obtained by a person accompanying the investigator in pursuance of subsection (4) of that section in consequence of that person's accompanying the investigator.
- (11) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998."

19 For section 451 substitute –

**“451 Punishment for furnishing false information**

- (1) A person commits an offence if in purported compliance with a requirement under section 447 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 section is liable on conviction to imprisonment or a fine or to both.
- (3) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under this section.”

20 (1) Section 451A (disclosure of certain information) is amended as follows.

(2) For subsection (1) substitute –

- “(1) This section applies to information obtained –
- (a) under sections 434 to 446;
  - (b) by an inspector in consequence of the exercise of his powers under section 453A.”



(3) After subsection (5) insert –

“(6) For the purposes of this section, information obtained by an inspector in consequence of the exercise of his powers under section 453A includes information obtained by a person accompanying the inspector in pursuance of subsection (4) of that section in consequence of that person’s accompanying the inspector.

(7) The reference to an inspector in subsection (2)(b) above includes a reference to a person accompanying an inspector in pursuance of section 453A(4).”

21 In section 452 –

(a) for subsection (1) substitute –

“(1) Nothing in sections 431 to 446 compels the disclosure by any person to the Secretary of State or to an inspector appointed by him of information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.”

(b) for subsections (2) and (3) substitute –

“(2) Nothing in sections 447 to 451 –

- (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, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained;
- (b) authorises the taking of possession of any such document which is in the person’s possession.

(3) The Secretary of State must not under section 447 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 subsection (4) is met.

(4) The conditions are –

- (a) the Secretary of State 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 section 447;
- (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 (powers of persons appointed under section 167 or as a result of section 168(2) to conduct an investigation).

- (5) Despite subsections (1) and (2) a person who is a lawyer may be compelled to disclose the name and address of his client.”
- 22 In section 732 (prosecution by public authorities) –
- (a) in subsection (1), for “447 to 451” substitute “448, 449 to 451, 453A”;
  - (b) in subsection (2)(b), for “447 to 451” substitute “448, 449 to 451 and 453A”.
  - (c) in subsection (3), after “privilege” insert “or, in Scotland, confidentiality of communications”.
- 23 In section 733 (offences by bodies corporate) –
- (a) in subsection (1), for “and 447 to 451” substitute “, 448, 449 to 451 and 453A”;
  - (b) in subsection (4), for “447 to 451” substitute “448, 449 to 451 and 453A”.
- 24 In section 734(1) (criminal proceedings against unincorporated bodies), for “447 to 451” substitute “448, 449 to 451 or section 453A”.
- 25 After Schedule 15B insert –

“SCHEDULE 15C

Section 449

SPECIFIED PERSONS

- 1 The Secretary of State.
- 2 The Department of Enterprise, Trade and Investment for Northern Ireland.
- 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

Section 449

DISCLOSURES

- 1 A disclosure for the purpose of enabling or assisting a person authorised under section 245C to exercise his functions.
- 2 A disclosure for the purpose of enabling or assisting an inspector appointed under Part 14 to exercise his functions.
- 3 A disclosure for the purpose of enabling or assisting a person authorised under section 447 of this Act or section 84 of the Companies Act 1989 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 (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 (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 (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 (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 262(1) and (2)(k) of the Financial Services and Markets Act 2000 (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 Secretary of State or the Treasury to exercise any of their functions under any of the following –
  - (a) this Act;
  - (b) the insider dealing legislation;
  - (c) the Insolvency Act 1986;
  - (d) the Company Directors Disqualification Act 1986;
  - (e) Part 2, 3 or 7 of the Companies Act 1989;
  - (f) the Financial Services and Markets Act 2000.
- 10 A disclosure for the purpose of enabling or assisting the Scottish Ministers to exercise their functions under the enactments relating to insolvency.
- 11 A disclosure for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency.
- 12 A disclosure for the purpose of enabling or assisting a person appointed or authorised by the Department of Enterprise, Trade and Investment for Northern Ireland under the enactments relating to companies or insolvency to exercise his functions.
- 13 A disclosure for the purpose of enabling or assisting the Occupational Pensions Regulatory Authority to exercise their functions under any of the following –
  - (a) the Pension Schemes Act 1993;
  - (b) the Pensions Act 1995;

- (c) any enactment in force in Northern Ireland corresponding to either of the above.
- 14 A disclosure for the purpose of enabling or assisting the Bank of England to exercise its functions.
- 15 A disclosure for the purpose of enabling or assisting the body known as the Panel on Takeovers and Mergers to exercise its functions.
- 16 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.
- 17 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;
  - (b) the Consumer Credit Act 1974;
  - (c) the Estate Agents Act 1979;
  - (d) the Competition Act 1980;
  - (e) the Competition Act 1998;
  - (f) the Financial Services and Markets Act 2000;
  - (g) the Enterprise Act 2002;
  - (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).
- 18 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;
  - (b) the Competition Act 1980;
  - (c) the Competition Act 1998;
  - (d) the Enterprise Act 2002.
- 19 A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Competition Appeal Tribunal.
- 20 A disclosure for the purpose of enabling or assisting an enforcer under Part 8 of the Enterprise Act 2002 to exercise its functions under that Part.
- 21 A disclosure for the purpose of enabling or assisting the Charity Commissioners to exercise their functions.
- 22 A disclosure for the purpose of enabling or assisting the Attorney General to exercise his functions in connection with charities.
- 23 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.
- 24 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 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.
- 25 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.
- 26 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.
- 27 A disclosure for the purpose of enabling or assisting a local weights and measures authority in England and Wales to exercise its functions under section 230(2) of the Enterprise Act 2002.
- 28 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) Part 7 of the Companies Act 1989;
  - (d) the Financial Services and Markets Act 2000.
- 29 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 to exercise its functions under that Part.
- 30 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 (compensation scheme manager) to exercise its functions.
- 31 (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.
- 32 A disclosure for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designated professional bodies) to exercise its functions in its capacity as a body designated under that section.
- 33 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.
- 34 A disclosure for the purpose of enabling or assisting a body designated by order under section 46 of the Companies Act 1989

- (delegation of functions of Secretary of State) to exercise its functions under Part 2 of that Act.
- 35 A disclosure for the purpose of enabling or assisting a recognised supervisory or qualifying body (within the meaning of Part 2 of the Companies Act 1989) to exercise its functions as such.
- 36 A disclosure for the purpose of enabling or assisting an official receiver (including the Accountant in Bankruptcy in Scotland and the Official Assignee in Northern Ireland) to exercise his functions under the enactments relating to insolvency.
- 37 A disclosure for the purpose of enabling or assisting the Insolvency Practitioners Tribunal to exercise its functions under the Insolvency Act 1986.
- 38 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 section 391 of the Insolvency Act 1986 (recognised professional bodies) to exercise its functions as such.
- 39 (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.
- 40 A disclosure for the purpose of enabling or assisting the Regulator of Community Interest Companies to exercise functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004.
- 41 A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.
- 42 A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under section 6, 7 or 8 of the Company Directors Disqualification Act 1986.
- 43 A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal.
- 44 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).
- 45 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 (supervision of periodic accounts and reports of issuers of listed securities) to exercise functions mentioned in subsection (2) of that section.
- 46 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.

47 (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 Secretary of State by order.

(3) An order under sub-paragraph (2) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

48 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.

49 A disclosure in pursuance of any Community obligation.”

26 (1) Schedule 24 (punishment of offences) is amended as follows.

(2) For the entry for section 449(2) substitute –

“449(6)	Wrongful disclosure of information to which section 449 applies.	1. On indictment.	2 years, or a fine; or both.	–”.
		2. Summary.	12 months, or the statutory maximum; or both.	

(3) For the entry for section 451 substitute –

“451	Providing false information in purported compliance with section 447.	1. On indictment.	2 years, or a fine; or both.	–”.
		2. Summary.	12 months, or the statutory maximum; or both.	

(4) After the entry for section 451 insert –

“453A(5)	Intentionally obstructing a person lawfully acting under section 453A(2) or (4).	1. On indictment.	A fine.	–”.
		2. Summary.	The statutory maximum.	

*Insolvency Act 1986 (c. 45)*

27 In section 124A(1)(a) of the Insolvency Act 1986 (petition for winding up on grounds of public interest), after “Part XIV” insert “(except section 448A)”.

*Company Directors Disqualification Act 1986 (c. 46)*

28 In section 8(1A)(b)(i) of the Company Directors Disqualification Act 1986 (disqualification after investigation of a company), for “or 448” substitute “, 448 or 453A”.

*Companies Act 1989 (c. 40)*

- 29 In the table in section 87(4) of the Companies Act 1989 (exceptions from restrictions on disclosure), after the entry relating to the Accountant in Bankruptcy insert –

“The Regulator of Community Interest Companies. Functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004.”

*Criminal Justice and Police Act 2001 (c. 16)*

- 30 In paragraph 17 of Schedule 2 to the Criminal Justice and Police Act 2001 (amendments of sections 434 and 447 of the Companies Act 1985), for “sections 434(6) and 447(9)” substitute “section 434(6)”.

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

- 31 In paragraph 24 of Schedule 4 to the Anti-terrorism, Crime and Security Act 2001 (enactments to which section 17 of that Act applies), for “449(1)” substitute “449”.

SCHEDULE 3

Section 27

REGULATOR OF COMMUNITY INTEREST COMPANIES

*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 Secretary of State.
- (4) The Secretary of State 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 Secretary of State.

*Remuneration and pensions*

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



- (b) make contributions or payments towards provision for a pension, allowance or gratuity for or in respect of such a person.

*Staff*

- 3 (1) The Regulator may, after consulting the Minister for the Civil Service 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 section 1 of the Superannuation Act 1972 (c. 11) is appointed as the Regulator, the Minister for the Civil Service 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)).
- 4 The Chief Charity Commissioner may make available to the Regulator, to assist in the exercise of the Regulator's functions, any officer or employee appointed under paragraph 2(1) of Schedule 1 to the Charities Act 1993 (c. 10).

*Delegation of functions*

- 5 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*

- 6 The Secretary of State may make payments to the Regulator.

*Reports and other information*

- 7 (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 Secretary of State 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 Secretary of State 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 5.
- (8) The Secretary of State must lay before each House of Parliament a copy of each of those reports.
- (9) The Regulator must supply the Secretary of State with such other reports and information relating to the exercise of the Regulator’s functions as the Secretary of State may require.
- (10) “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*

- 8 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments and authorities subject to investigation), insert at the appropriate place –
 

“Office of the Regulator of Community Interest Companies.”
- 9 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (disqualifying offices), insert at the appropriate place –
 

“Regulator of Community Interest Companies.”

## SCHEDULE 4

Section 28

## APPEAL OFFICER FOR COMMUNITY INTEREST COMPANIES

*Appeal Officer’s terms of appointment*

- 1 (1) The Appeal Officer holds office for the period determined by the Secretary of State 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 Secretary of State, and
  - (b) the Secretary of State 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 Secretary of State.

*Remuneration and pensions*

- 2 (1) The Secretary of State may pay remuneration and travelling and other allowances to the Appeal Officer.
- (2) The Secretary of State 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 Secretary of State 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 Parliamentary Commissioner Act 1967 (c. 13) (departments and authorities subject to investigation), insert at the appropriate place –  
“Appeal Officer for Community Interest Companies.”
- 6 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (disqualifying offices), insert at the appropriate place –  
“Appeal Officer for Community Interest Companies.”

SCHEDULE 5

Section 29

OFFICIAL PROPERTY HOLDER FOR COMMUNITY INTEREST COMPANIES

*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) "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 6

Section 33

## COMMUNITY INTEREST COMPANIES: NAMES

*Companies Act 1985 (c. 6)*

- 1 The Companies Act 1985 has effect subject to the following amendments.
- 2 (1) Section 26 (prohibition on registration of certain names) is amended as follows.
- (2) In subsection (1)(a) –
- (a) for "or "public limited company"" substitute ", "public limited company", "community interest company" or "community interest public limited company"", and

- (b) for “and “cwmni cyfyngedig cyhoeddus”” substitute “; “cwmni cyfyngedig cyhoeddus”, “cwmni buddiant cymunedol” and “cwmni buddiant cymunedol cyhoeddus cyfyngedig””.
- (3) In subsection (3)(b), after the entry relating to “public limited company” or its Welsh equivalent insert –
- ““community interest company” or its Welsh equivalent (“cwmni buddiant cymunedol”);
- “community interest public limited company” or its Welsh equivalent (“cwmni buddiant cymunedol cyhoeddus cyfyngedig”);”.
- 3 In section 27(4) (alternatives of statutory designations), after paragraph (d) insert –
- (e) the alternative of “community interest company” is “c.i.c.”;
- (f) the alternative of “cwmni buddiant cymunedol” is “c.b.c.”;
- (g) the alternative of “community interest public limited company” is “community interest p.l.c.”; and
- (h) the alternative of “cwmni buddiant cymunedol cyhoeddus cyfyngedig” is “cwmni buddiant cymunedol c.c.c.”.
- 4 In section 30(7) (further exemptions for company exempt from using “limited” as part of its name), after “which” insert “under this section”.
- 5 In section 33(1) (person who is not a public company prohibited from trading under a name ending with the words “public limited company” or their equivalent in Welsh), insert at the end “; and a community interest company which is not a public company is guilty of an offence if it does so under a name which includes, as its last part, the words “cwmni buddiant cymunedol cyhoeddus cyfyngedig”.”
- 6 After section 34 insert –

**“34A Penalty for improper use of “community interest company” etc.**

- (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 subsection (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” or its Welsh equivalent (“cwmni buddiant cymunedol”), and
- (b) “community interest public limited company” or its Welsh equivalent (“cwmni buddiant cymunedol cyhoeddus cyfyngedig”).
- (4) Subsections (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 September 2003 and ending with 4th December 2003, or

- (b) if the name in question was on 4th December 2003 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 subsection (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.”
- 7 In section 43(2)(b) (re-registration of private company as public: alteration of name), after “section 25(1)” insert “, or section 33 of the Companies (Audit, Investigations and Community Enterprise) Act 2004,”.
- 8 In section 351(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 section 30 or a community interest company which is not a public company”.
- 9 (1) Schedule 24 (punishment of offences) is amended as follows.
- (2) In the second column of the entry relating to section 33, after “equivalent” insert “etc.”.
- (3) After the entry relating to section 34 insert –

“34A	Trading with improper use of “community interest company” etc.	Summary	Level 3 on the standard scale	One-tenth of level 3 on the standard scale.”
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*Limited Liability Partnerships Act 2000 (c. 12)*

- 10 In paragraph 8(2) of the Schedule to the Limited Liability Partnerships Act 2000 (similarity of names), after the entry relating to “public limited company” insert –
- ““community interest company”,  
“community interest public limited company”,”.

SCHEDULE 7

Section 42

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 section 42, 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 –
  - (a) in an action in the High Court, to legal professional privilege, or
  - (b) in an action in the Court of Session, to confidentiality of communications,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) section 5 of the Perjury Act 1911 (c. 6) (false statement made otherwise than on oath), or
  - (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (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 in England and Wales only with the consent of the Director of Public Prosecutions.
- (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 two years or a fine or to both,
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding twelve months or a fine of an amount not exceeding the statutory maximum or to both, and
  - (c) on summary conviction in Scotland, to imprisonment for a term not exceeding six months or a fine of an amount not exceeding the statutory maximum or to both.
- (3) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 (c. 44) comes into force, sub-paragraph (2)(b) has effect as if for “twelve” there were substituted “six”.

## SCHEDULE 8

Section 64

## REPEALS AND REVOCATIONS

<i>Title and reference</i>	<i>Extent of repeal or revocation</i>
Companies Act 1985 (c. 6)	In section 27(4), the word “and” at the end of paragraph (c). Section 245C(6). Section 256(3). In section 310, in subsection (1) the words “any officer of the company or”, and in subsection (3) the words “officer or” (in both places) and the words from “section 144(3)” to “nominee or”. Section 390A(3). In section 734(1), the words “section 389A(3) or”.



<i>Title and reference</i>	<i>Extent of repeal or revocation</i>
Companies Act 1985 (c. 6) – <i>cont.</i>	In Schedule 4A, in paragraph 1(1), the words “section 390A(3) (amount of auditors’ remuneration) and”. In Schedule 24, the entry relating to section 447(6).
Insolvency Act 1985 (c. 65)	In Schedule 6, paragraph 4.
Insolvency Act 1986 (c. 45)	In Schedule 13, in Part 1, the entry relating to section 449(1) of the Companies Act 1985.
Companies Act 1989 (c. 40)	Section 48(3). Section 63. Section 65. Section 67. Section 69(2) and (4). Section 120(2) and (3).
Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))	Article 48(2)(a). Article 49. In Article 56, the entry relating to “Director (in Schedule 14)”. Schedule 14.
Friendly Societies Act 1992 (c. 40)	In Schedule 21, paragraph 7.
Pensions Act 1995 (c. 26)	In Schedule 3, paragraph 12.
Bank of England Act 1998 (c. 11)	In Schedule 5, paragraph 62.
Competition Act 1998 (c. 41)	In Schedule 2, paragraph 3.
Youth Justice and Criminal Evidence Act 1999 (c. 23)	In Schedule 3, paragraph 6.
Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/506)	Article 41.
Enterprise Act 2002 (c. 40)	In Schedule 25, paragraph 22.