SCHEDULES

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 years or a fine; or both	—
		2. Summary	12 months or the statutory maximum; or both".	

(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 years or a fine; or both	—
		2. Summary	12 months or the statutory maximum; or both	
245G(7)	Disclosing information in contravention of section 245G(2) and (3)	1. On indictment	2 years or a fine; or both	—
		2. Summary	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 years or a fine; or both	—
		2. Summary	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".	—

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. Summary	2 years, or a fine; or both. 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 2. Summary	A fine. 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".