



Companies Act 2006

2006 CHAPTER 46

PART 44

MISCELLANEOUS PROVISIONS

Regulation of actuaries etc

1274 Grants to bodies concerned with actuarial standards etc

- (1) Section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (grants to bodies concerned with accounting standards etc) is amended as follows.
- (2) In subsection (2) (matters carried on by bodies eligible for grants) for paragraph (l) substitute—
 - “(l) issuing standards to be applied in actuarial work;
 - (m) issuing standards in respect of matters to be contained in reports or other communications required to be produced or made by actuaries or in accordance with standards within paragraph (l);
 - (n) investigating departures from standards within paragraph (l) or (m);
 - (o) taking steps to secure compliance with standards within paragraph (l) or (m);
 - (p) carrying out investigations into public interest cases arising in connection with the performance of actuarial functions by members of professional actuarial bodies;
 - (q) holding disciplinary hearings relating to members of professional actuarial bodies following the conclusion of investigations within paragraph (p);
 - (r) deciding whether (and, if so, what) disciplinary action should be taken against members of professional actuarial bodies to whom hearings within paragraph (q) related;
 - (s) supervising the exercise by professional actuarial bodies of regulatory functions in relation to their members;

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- (t) overseeing or directing any of the matters mentioned above.”.
- (3) In subsection (5) (definitions) at the appropriate places insert—
- ““professional actuarial body” means—
- (a) the Institute of Actuaries, or
 - (b) the Faculty of Actuaries in Scotland,
- and the “members” of a professional actuarial body include persons who, although not members of the body, are subject to its rules in performing actuarial functions;”
- ““regulatory functions”, in relation to professional actuarial bodies, means any of the following—
- (a) investigatory or disciplinary functions exercised by such bodies in relation to the performance by their members of actuarial functions,
 - (b) the setting by such bodies of standards in relation to the performance by their members of actuarial functions, and
 - (c) the determining by such bodies of requirements in relation to the education and training of their members;”.

1275 Levy to pay expenses of bodies concerned with actuarial standards etc

- (1) Section 17 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (levy to pay expenses of bodies concerned with accounting standards etc) is amended in accordance with subsections (2) to (5).
- (2) In subsection (3)(a) after “to which” insert “, or persons within subsection (3A) to whom,”.
- (3) After subsection (3) insert—
- “(3A) The following persons are within this subsection—
- (a) the administrators of a public service pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993);
 - (b) the trustees or managers of an occupational or personal pension scheme (within the meaning of that section).”.

(4) After subsection (4)(b) insert—

“(c) make different provision for different cases.”.

(5) After subsection (12) insert—

“(13) If a draft of any regulations to which subsection (10) applies would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.”.

(6) The above amendments have effect in relation to any exercise of the power to make regulations under section 17 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 after this section comes into force, regardless of when the expenses to be met by the levy in respect of which the regulations are made were incurred.

(7) In Schedule 3 to the Pensions Act 2004 (c. 35) (disclosure of information held by the Pensions Regulator), in the entry relating to the Secretary of State, in the second column, for “or” at the end of paragraph (g) substitute—

“(ga) Section 17 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (levy to pay expenses of bodies concerned with accounting standards, actuarial standards etc), or”.

1276 Application of provisions to Scotland and Northern Ireland

(1) Section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (grants to bodies concerned with accounting standards etc) is amended as follows.

(2) For subsection (6) (application of section to Scotland) substitute—

“(6) In their application to Scotland, subsection (2)(a) to (t) are to be read as referring only to matters provision relating to which would be outside the legislative competence of the Scottish Parliament.”.

(3) In subsection (2) in paragraph (c), after “1985 (c. 6)” insert “or the 1986 Order”.

(4) In subsection (5)—

- (a) in the definition of “company” after “1985 (c. 6)” insert “or the 1986 Order”,
- (b) in the definition of “subsidiary” after “1985” insert “or Article 4 of the 1986 Order”, and
- (c) after that definition insert—

““the 1986 Order” means the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).”.

(5) In section 66 of that Act (extent), in subsection (2) (provisions extending to Northern Ireland, as well as England and Wales and Scotland) for “17” substitute “16 to 18”.

Information as to exercise of voting rights by institutional investors

1277 Power to require information about exercise of voting rights

(1) The Treasury or the Secretary of State may make provision by regulations requiring institutions to which this section applies to provide information about the exercise of voting rights attached to shares to which this section applies.

(2) This power is exercisable in accordance with—

section 1278 (institutions to which information provisions apply),
section 1279 (shares to which information provisions apply), and
section 1280 (obligations with respect to provision of information).

(3) In this section and the sections mentioned above—

- (a) references to a person acting on behalf of an institution include—
 - (i) any person to whom authority has been delegated by the institution to take decisions as to any matter relevant to the subject matter of the regulations, and
 - (ii) such other persons as may be specified; and

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- (b) “specified” means specified in the regulations.
- (4) The obligation imposed by regulations under this section is enforceable by civil proceedings brought by—
 - (a) any person to whom the information should have been provided, or
 - (b) a specified regulatory authority.
- (5) Regulations under this section may make different provision for different descriptions of institution, different descriptions of shares and for other different circumstances.
- (6) Regulations under this section are subject to affirmative resolution procedure.

1278 Institutions to which information provisions apply

- (1) The institutions to which section 1277 applies are—
 - (a) unit trust schemes within the meaning of the Financial Services and Markets Act 2000 (c. 8) in respect of which an order is in force under section 243 of that Act;
 - (b) open-ended investment companies incorporated by virtue of regulations under section 262 of that Act;
 - (c) companies approved for the purposes of section 842 of the Income and Corporation Taxes Act 1988 (c. 1) (investment trusts);
 - (d) pension schemes as defined in section 1(5) of the Pension Schemes Act 1993 (c. 48) or the Pension Schemes (Northern Ireland) Act 1993 (c. 49);
 - (e) undertakings authorised under the Financial Services and Markets Act 2000 to carry on long-term insurance business (that is, the activity of effecting or carrying out contracts of long-term insurance within the meaning of the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544);
 - (f) collective investment schemes that are recognised by virtue of section 270 of that Act (schemes authorised in designated countries or territories).
- (2) Regulations under that section may—
 - (a) provide that the section applies to other descriptions of institution;
 - (b) provide that the section does not apply to a specified description of institution.
- (3) The regulations must specify by whom, in the case of any description of institution, the duty imposed by the regulations is to be fulfilled.

1279 Shares to which information provisions apply

- (1) The shares to which section 1277 applies are shares—
 - (a) of a description traded on a specified market, and
 - (b) in which the institution has, or is taken to have, an interest.

Regulations under that section may provide that the section does not apply to shares of a specified description.
- (2) For this purpose an institution has an interest in shares if the shares, or a depositary certificate in respect of them, are held by it, or on its behalf.

A “depositary certificate” means an instrument conferring rights (other than options)

- (a) in respect of shares held by another person, and
 - (b) the transfer of which may be effected without the consent of that person.
- (3) Where an institution has an interest—
- (a) in a specified description of collective investment scheme (within the meaning of the Financial Services and Markets Act 2000 (c. 8)), or
 - (b) in any other specified description of scheme or collective investment vehicle, it is taken to have an interest in any shares in which that scheme or vehicle has or is taken to have an interest.
- (4) For this purpose a scheme or vehicle is taken to have an interest in shares if it would be regarded as having such an interest in accordance with subsection (2) if it was an institution to which section 1277 applied.

1280 Obligations with respect to provision of information

- (1) Regulations under section 1277 may require the provision of specified information about—
- (a) the exercise or non-exercise of voting rights by the institution or any person acting on its behalf,
 - (b) any instructions given by the institution or any person acting on its behalf as to the exercise or non-exercise of voting rights, and
 - (c) any delegation by the institution or any person acting on its behalf of any functions in relation to the exercise or non-exercise of voting rights or the giving of such instructions.
- (2) The regulations may require information to be provided in respect of specified occasions or specified periods.
- (3) Where instructions are given to act on the recommendations or advice of another person, the regulations may require the provision of information about what recommendations or advice were given.
- (4) The regulations may require information to be provided—
- (a) in such manner as may be specified, and
 - (b) to such persons as may be specified, or to the public, or both.
- (5) The regulations may provide—
- (a) that an institution may discharge its obligations under the regulations by referring to information disclosed by a person acting on its behalf, and
 - (b) that in such a case it is sufficient, where that other person acts on behalf of more than one institution, that the reference is to information given in aggregated form, that is—
 - (i) relating to the exercise or non-exercise by that person of voting rights on behalf of more than one institution, or
 - (ii) relating to the instructions given by that person in respect of the exercise or non-exercise of voting rights on behalf of more than one institution, or
 - (iii) relating to the delegation by that person of functions in relation to the exercise or non-exercise of voting rights, or the giving of instructions in respect of the exercise or non-exercise of voting rights, on behalf of more than one institution.

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- (6) References in this section to instructions are to instructions of any description, whether general or specific, whether binding or not and whether or not acted upon.

Disclosure of information under the Enterprise Act 2002

1281 Disclosure of information under the Enterprise Act 2002

In Part 9 of the Enterprise Act 2002 (c. 40) (information), after section 241 insert—

“241A Civil proceedings

- (1) A public authority which holds prescribed information to which section 237 applies may disclose that information to any person—
- (a) for the purposes of, or in connection with, prescribed civil proceedings (including prospective proceedings) in the United Kingdom or elsewhere, or
 - (b) for the purposes of obtaining legal advice in relation to such proceedings, or
 - (c) otherwise for the purposes of establishing, enforcing or defending legal rights that are or may be the subject of such proceedings.
- (2) Subsection (1) does not apply to—
- (a) information which comes to a public authority in connection with an investigation under Part 4, 5 or 6 of the 1973 Act or under section 11 of the Competition Act 1980;
 - (b) competition information within the meaning of section 351 of the Financial Services and Markets Act 2000;
 - (c) information which comes to a public authority in connection with an investigation under Part 3 or 4 or section 174 of this Act;
 - (d) information which comes to a public authority in connection with an investigation under the Competition Act 1998 (c. 41).
- (3) In subsection (1) “prescribed” means prescribed by order of the Secretary of State.
- (4) An order under this section—
- (a) may prescribe information, or civil proceedings, for the purposes of this section by reference to such factors as appear to the Secretary of State to be appropriate;
 - (b) may prescribe for the purposes of this section all information, or civil proceedings, or all information or civil proceedings not falling within one or more specified exceptions;
 - (c) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than those specified in subsection (1).”.

Expenses of winding up

1282 Payment of expenses of winding up

- (1) In Chapter 8 of Part 4 of the Insolvency Act 1986 (c. 45) (winding up of companies: provisions of general application), before section 176A (under the heading “*Property subject to floating charge*”) insert—

“176ZA Payment of expenses of winding up (England and Wales)

- (1) The expenses of winding up in England and Wales, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.
- (2) In subsection (1)—
- (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under section 176A(2)(a);
 - (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—
 - (i) the holders of debentures secured by, or holders of, the floating charge, and
 - (ii) any preferential creditors entitled to be paid out of that property in priority to them.
- (3) Provision may be made by rules restricting the application of subsection (1), in such circumstances as may be prescribed, to expenses authorised or approved—
- (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
 - (b) by the court.
- (4) References in this section to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.”.
- (2) In Chapter 8 of Part 5 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (winding up of companies: provisions of general application), before Article 150A (under the heading “*Property subject to floating charge*”) insert—

“150ZA Payment of expenses of winding up

- (1) The expenses of winding up, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.
- (2) In paragraph (1)—

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- (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under Article 150A(2)(a);
 - (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—
 - (i) the holders of debentures secured by, or holders of, the floating charge, and
 - (ii) any preferential creditors entitled to be paid out of that property in priority to them.
- (3) Provision may be made by rules restricting the application of paragraph (1), in such circumstances as may be prescribed, to expenses authorised or approved—
- (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
 - (b) by the Court.
- (4) References in this Article to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.”.

Commonhold associations

1283 Amendment of memorandum or articles of commonhold association

In paragraph 3(1) of Schedule 3 to the Commonhold and Leasehold Reform Act 2002 (c. 15) (alteration of memorandum or articles by commonhold association to be of no effect until altered version registered with Land Registry) for “An alteration of the memorandum or articles of association” substitute “Where a commonhold association alters its memorandum or articles at a time when the land specified in its memorandum is commonhold land, the alteration”.