

### **1002 Supplementary provisions as to service of letter or notice**

- (1) A letter or notice to be sent under section 1000 or 1001 to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company.
- (2) If there is no officer of the company whose name and address are known to the registrar, the letter or notice may be sent to each of the persons who subscribed the memorandum (if their addresses are known to the registrar).
- (3) A notice to be sent to a liquidator under section 1001 may be addressed to him at his last known place of business.

#### *Voluntary striking off*

### **1003 Striking off on application by company**

- (1) On application by a company, the registrar of companies may strike the company's name off the register.
- (2) The application –
  - (a) must be made on the company's behalf by its directors or by a majority of them, and
  - (b) must contain the prescribed information.
- (3) The registrar may not strike a company off under this section until after the expiration of three months from the publication by the registrar in the Gazette of a notice –
  - (a) stating that the registrar may exercise the power under this section in relation to the company, and
  - (b) inviting any person to show cause why that should not be done.
- (4) The registrar must publish notice in the Gazette of the company's name having been struck off.
- (5) On the publication of the notice in the Gazette the company is dissolved.
- (6) However –
  - (a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and
  - (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

### **1004 Circumstances in which application not to be made: activities of company**

- (1) An application under section 1003 (application for voluntary striking off) on behalf of a company must not be made if, at any time in the previous three months, the company has –
  - (a) changed its name,
  - (b) traded or otherwise carried on business,
  - (c) made a disposal for value of property or rights that, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or

- (d) engaged in any other activity, except one which is –
  - (i) necessary or expedient for the purpose of making an application under that section, or deciding whether to do so,
  - (ii) necessary or expedient for the purpose of concluding the affairs of the company,
  - (iii) necessary or expedient for the purpose of complying with any statutory requirement, or
  - (iv) specified by the Secretary of State by order for the purposes of this sub-paragraph.
- (2) For the purposes of this section, a company is not to be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.
- (3) The Secretary of State may by order amend subsection (1) for the purpose of altering the period in relation to which the doing of the things mentioned in paragraphs (a) to (d) of that subsection is relevant.
- (4) An order under this section is subject to negative resolution procedure.
- (5) It is an offence for a person to make an application in contravention of this section.
- (6) In proceedings for such an offence it is a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.
- (7) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **1005 Circumstances in which application not to be made: other proceedings not concluded**

- (1) An application under section 1003 (application for voluntary striking off) on behalf of a company must not be made at a time when –
  - (a) an application to the court under Part 26 has been made on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;
  - (b) a voluntary arrangement in relation to the company has been proposed under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) and the matter has not been finally concluded;
  - (c) the company is in administration under Part 2 of that Act or Part 3 of that Order;
  - (d) paragraph 44 of Schedule B1 to that Act or paragraph 45 of Schedule B1 to that Order applies (interim moratorium on proceedings where application to the court for an administration order has been made or notice of intention to appoint administrator has been filed);
  - (e) the company is being wound up under Part 4 of that Act or Part 5 of that Order, whether voluntarily or by the court, or a petition under that Part for winding up of the company by the court has been presented and not finally dealt with or withdrawn;

- (f) there is a receiver or manager of the company's property;
  - (g) the company's estate is being administered by a judicial factor.
- (2) For the purposes of subsection (1)(a), the matter is finally concluded if –
- (a) the application has been withdrawn,
  - (b) the application has been finally dealt with without a compromise or arrangement being sanctioned by the court, or
  - (c) a compromise or arrangement has been sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.
- (3) For the purposes of subsection (1)(b), the matter is finally concluded if –
- (a) no meetings are to be summoned under section 3 of the Insolvency Act 1986 (c. 45) or Article 16 of the Insolvency (Northern Ireland) Order 1989,
  - (b) meetings summoned under that section or Article fail to approve the arrangement with no, or the same, modifications,
  - (c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act or Article 19(4)(b) of that Order, has been fully implemented, or
  - (d) the court makes an order under section 6(5) of that Act or Article 19(5) of that Order revoking approval given at previous meetings and, if the court gives any directions under section 6(6) of that Act or Article 19(6) of that Order, the company has done whatever it is required to do under those directions.
- (4) It is an offence for a person to make an application in contravention of this section.
- (5) In proceedings for such an offence it is a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.
- (6) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **1006 Copy of application to be given to members, employees, etc**

- (1) A person who makes an application under section 1003 (application for voluntary striking off) on behalf of a company must secure that, within seven days from the day on which the application is made, a copy of it is given to every person who at any time on that day is –
- (a) a member of the company,
  - (b) an employee of the company,
  - (c) a creditor of the company,
  - (d) a director of the company,
  - (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
  - (f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State.

Regulations under paragraph (f) are subject to negative resolution procedure.

- (2) Subsection (1) does not require a copy of the application to be given to a director who is a party to the application.
- (3) The duty imposed by this section ceases to apply if the application is withdrawn before the end of the period for giving the copy application.
- (4) A person who fails to perform the duty imposed on him by this section commits an offence.  
If he does so with the intention of concealing the making of the application from the person concerned, he commits an aggravated offence.
- (5) In proceedings for an offence under this section it is a defence for the accused to prove that he took all reasonable steps to perform the duty.
- (6) A person guilty of an offence under this section (other than an aggravated offence) is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) A person guilty of an aggravated offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

### **1007 Copy of application to be given to new members, employees, etc**

- (1) This section applies in relation to any time after the day on which a company makes an application under section 1003 (application for voluntary striking off) and before the day on which the application is finally dealt with or withdrawn.
- (2) A person who is a director of the company at the end of a day on which a person (other than himself) becomes—
  - (a) a member of the company,
  - (b) an employee of the company,
  - (c) a creditor of the company,
  - (d) a director of the company,
  - (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
  - (f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State,must secure that a copy of the application is given to that person within seven days from that day.  
Regulations under paragraph (f) are subject to negative resolution procedure.
- (3) The duty imposed by this section ceases to apply if the application is finally dealt with or withdrawn before the end of the period for giving the copy application.

- (4) A person who fails to perform the duty imposed on him by this section commits an offence.  
If he does so with the intention of concealing the making of the application from the person concerned, he commits an aggravated offence.
- (5) In proceedings for an offence under this section it is a defence for the accused to prove—
- (a) that at the time of the failure he was not aware of the fact that the company had made an application under section 1003, or
  - (b) that he took all reasonable steps to perform the duty.
- (6) A person guilty of an offence under this section (other than an aggravated offence) is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) A person guilty of an aggravated offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

### **1008 Copy of application: provisions as to service of documents**

- (1) The following provisions have effect for the purposes of—  
section 1006 (copy of application to be given to members, employees, etc),  
and  
section 1007 (copy of application to be given to new members, employees, etc).
- (2) A document is treated as given to a person if it is—
- (a) delivered to him, or
  - (b) left at his proper address, or
  - (c) sent by post to him at that address.
- (3) For the purposes of subsection (2) and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) as it applies in relation to that subsection, the proper address of a person is—
- (a) in the case of a firm incorporated or formed in the United Kingdom, its registered or principal office;
  - (b) in the case of a firm incorporated or formed outside the United Kingdom—
    - (i) if it has a place of business in the United Kingdom, its principal office in the United Kingdom, or
    - (ii) if it does not have a place of business in the United Kingdom, its registered or principal office;
  - (c) in the case of an individual, his last known address.

- (4) In the case of a creditor of the company a document is treated as given to him if it is left or sent by post to him –
  - (a) at the place of business of his with which the company has had dealings by virtue of which he is a creditor of the company, or
  - (b) if there is more than one such place of business, at each of them.

### **1009 Circumstances in which application to be withdrawn**

- (1) This section applies where, at any time on or after the day on which a company makes an application under section 1003 (application for voluntary striking off) and before the day on which the application is finally dealt with or withdrawn –
  - (a) the company –
    - (i) changes its name,
    - (ii) trades or otherwise carries on business,
    - (iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under that section, or
    - (iv) engages in any activity, except one to which subsection (4) applies;
  - (b) an application is made to the court under Part 26 on behalf of the company for the sanctioning of a compromise or arrangement;
  - (c) a voluntary arrangement in relation to the company is proposed under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
  - (d) an application to the court for an administration order in respect of the company is made under paragraph 12 of Schedule B1 to that Act or paragraph 13 of Schedule B1 to that Order;
  - (e) an administrator is appointed in respect of the company under paragraph 14 or 22 of Schedule B1 to that Act or paragraph 15 or 23 of Schedule B1 to that Order, or a copy of notice of intention to appoint an administrator of the company under any of those provisions is filed with the court;
  - (f) there arise any of the circumstances in which, under section 84(1) of that Act or Article 70 of that Order, the company may be voluntarily wound up;
  - (g) a petition is presented for the winding up of the company by the court under Part 4 of that Act or Part 5 of that Order;
  - (h) a receiver or manager of the company's property is appointed; or
  - (i) a judicial factor is appointed to administer the company's estate.
- (2) A person who, at the end of a day on which any of the events mentioned in subsection (1) occurs, is a director of the company must secure that the company's application is withdrawn forthwith.
- (3) For the purposes of subsection (1)(a), a company is not treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.
- (4) The excepted activities referred to in subsection (1)(a)(iv) are –
  - (a) any activity necessary or expedient for the purposes of –

- (i) making, or proceeding with, an application under section 1003 (application for voluntary striking off),
- (ii) concluding affairs of the company that are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with, such an application, or
- (iii) complying with any statutory requirement;
- (b) any activity specified by the Secretary of State by order for the purposes of this subsection.

An order under paragraph (b) is subject to negative resolution procedure.

- (5) A person who fails to perform the duty imposed on him by this section commits an offence.
- (6) In proceedings for an offence under this section it is a defence for the accused to prove –
  - (a) that at the time of the failure he was not aware of the fact that the company had made an application under section 1003, or
  - (b) that he took all reasonable steps to perform the duty.
- (7) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### 1010 Withdrawal of application

An application under section 1003 is withdrawn by notice to the registrar.

### 1011 Meaning of “creditor”

In this Chapter “creditor” includes a contingent or prospective creditor.

## CHAPTER 2

### PROPERTY OF DISSOLVED COMPANY

#### *Property vesting as bona vacantia*

### 1012 Property of dissolved company to be bona vacantia

- (1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for another person) are deemed to be *bona vacantia* and –
  - (a) accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being (as the case may be), and
  - (b) vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.
- (2) Subsection (1) has effect subject to the possible restoration of the company to the register under Chapter 3 (see section 1034).

### **1013 Crown disclaimer of property vesting as bona vacantia**

- (1) Where property vests in the Crown under section 1012, the Crown's title to it under that section may be disclaimed by a notice signed by the Crown representative, that is to say the Treasury Solicitor, or, in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer.
- (2) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession.
- (3) A notice of disclaimer must be executed within three years after –
  - (a) the date on which the fact that the property may have vested in the Crown under section 1012 first comes to the notice of the Crown representative, or
  - (b) if ownership of the property is not established at that date, the end of the period reasonably necessary for the Crown representative to establish the ownership of the property.
- (4) If an application in writing is made to the Crown representative by a person interested in the property requiring him to decide whether he will or will not disclaim, any notice of disclaimer must be executed within twelve months after the making of the application or such further period as may be allowed by the court.
- (5) A notice of disclaimer under this section is of no effect if it is shown to have been executed after the end of the period specified by subsection (3) or (4).
- (6) A notice of disclaimer under this section must be delivered to the registrar and retained and registered by him.
- (7) Copies of it must be published in the Gazette and sent to any persons who have given the Crown representative notice that they claim to be interested in the property.
- (8) This section applies to property vested in the Duchy of Lancaster or the Duke of Cornwall under section 1012 as if for references to the Crown and the Crown representative there were respectively substituted references to the Duchy of Lancaster and to the Solicitor to that Duchy, or to the Duke of Cornwall and to the Solicitor to the Duchy of Cornwall, as the case may be.

### **1014 Effect of Crown disclaimer**

- (1) Where notice of disclaimer is executed under section 1013 as respects any property, that property is deemed not to have vested in the Crown under section 1012.
- (2) The following sections contain provisions as to the effect of the Crown disclaimer –
  - sections 1015 to 1019 apply in relation to property in England and Wales or Northern Ireland;
  - sections 1020 to 1022 apply in relation to property in Scotland.

*Effect of Crown disclaimer: England and Wales and Northern Ireland*

**1015 General effect of disclaimer**

- (1) The Crown's disclaimer operates so as to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed.
- (2) It does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

**1016 Disclaimer of leaseholds**

- (1) The disclaimer of any property of a leasehold character does not take effect unless a copy of the disclaimer has been served (so far as the Crown representative is aware of their addresses) on every person claiming under the company as underlessee or mortgagee, and either –
  - (a) no application under section 1017 (power of court to make vesting order) is made with respect to that property before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served, or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 1017, make such order as it thinks fit with respect to fixtures, tenant's improvements and other matters arising out of the lease.
- (3) In this section the "Crown representative" means –
  - (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
  - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
  - (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
  - (d) in relation to other property, the Treasury Solicitor.

**1017 Power of court to make vesting order**

- (1) The court may on application by a person who –
  - (a) claims an interest in the disclaimed property, or
  - (b) is under a liability in respect of the disclaimed property that is not discharged by the disclaimer,make an order under this section in respect of the property.
- (2) An order under this section is an order for the vesting of the disclaimed property in, or its delivery to –
  - (a) a person entitled to it (or a trustee for such a person), or
  - (b) a person subject to such a liability as is mentioned in subsection (1)(b) (or a trustee for such a person).

- (3) An order under subsection (2)(b) may only be made where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (4) An order under this section may be made on such terms as the court thinks fit.
- (5) On a vesting order being made under this section, the property comprised in it vests in the person named in that behalf in the order without conveyance, assignment or transfer.

#### **1018 Protection of persons holding under a lease**

- (1) The court must not make an order under section 1017 vesting property of a leasehold nature in a person claiming under the company as underlessee or mortgagee except on terms making that person –
  - (a) subject to the same liabilities and obligations as those to which the company was subject under the lease, or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as if the lease had been assigned to him.
- (2) Where the order relates to only part of the property comprised in the lease, subsection (1) applies as if the lease had comprised only the property comprised in the vesting order.
- (3) A person claiming under the company as underlessee or mortgagee who declines to accept a vesting order on such terms is excluded from all interest in the property.
- (4) If there is no person claiming under the company who is willing to accept an order on such terms, the court has power to vest the company's estate and interest in the property in any person who is liable (whether personally or in a representative character, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.
- (5) The court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

#### **1019 Land subject to rentcharge**

Where in consequence of the disclaimer land that is subject to a rentcharge vests in any person, neither he nor his successors in title are subject to any personal liability in respect of sums becoming due under the rentcharge, except sums becoming due after he, or some person claiming under or through him, has taken possession or control of the land or has entered into occupation of it.

*Effect of Crown disclaimer: Scotland*

#### **1020 General effect of disclaimer**

- (1) The Crown's disclaimer operates to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed.

- (2) It does not (except so far as is necessary for the purpose of releasing the company and its property from liability) affect the rights or liabilities of any other person.

### **1021 Power of court to make vesting order**

- (1) The court may –
- (a) on application by a person who either claims an interest in disclaimed property or is under a liability not discharged by this Act in respect of disclaimed property, and
  - (b) on hearing such persons as it thinks fit,
- make an order for the vesting of the property in or its delivery to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him.
- (2) The order may be made on such terms as the court thinks fit.
- (3) On a vesting order being made under this section, the property comprised in it vests accordingly in the person named in that behalf in the order, without conveyance or assignation for that purpose.

### **1022 Protection of persons holding under a lease**

- (1) Where the property disclaimed is held under a lease the court must not make a vesting order in favour of a person claiming under the company, whether –
- (a) as sub-lessee, or
  - (b) as creditor in a duly registered or (as the case may be) recorded heritable security over a lease,
- except on the following terms.
- (2) The person must by the order be made subject –
- (a) to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property, or
  - (b) if the court thinks fit, only to the same liabilities and obligations as if the lease had been assigned to him.
- In either event (if the case so requires) the liabilities and obligations must be as if the lease had comprised only the property comprised in the vesting order.
- (3) A sub-lessee or creditor declining to accept a vesting order on such terms is excluded from all interest in and security over the property.
- (4) If there is no person claiming under the company who is willing to accept an order on such terms, the court has power to vest the company's estate and interest in the property in any person liable (either personally or in a representative character, and either alone or jointly with the company) to perform the lessee's obligations under the lease.
- (5) The court may vest that estate and interest in such a person freed and discharged from all interests, rights and obligations created by the company in the lease or in relation to the lease.
- (6) For the purposes of this section a heritable security –
- (a) is duly recorded if it is recorded in the Register of Sasines, and
  - (b) is duly registered if registered in accordance with the Land Registration (Scotland) Act 1979 (c. 33).

*Supplementary provisions*

**1023 Liability for rentcharge on company’s land after dissolution**

- (1) This section applies where on the dissolution of a company land in England and Wales or Northern Ireland that is subject to a rentcharge vests by operation of law in the Crown or any other person (“the proprietor”).
- (2) Neither the proprietor nor his successors in title are subject to any personal liability in respect of sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through him, has taken possession or control of the land or has entered into occupation of it.
- (3) In this section “company” includes any body corporate.

**CHAPTER 3**

RESTORATION TO THE REGISTER

*Administrative restoration to the register*

**1024 Application for administrative restoration to the register**

- (1) An application may be made to the registrar to restore to the register a company that has been struck off the register under section 1000 or 1001 (power of registrar to strike off defunct company).
- (2) An application under this section may be made whether or not the company has in consequence been dissolved.
- (3) An application under this section may only be made by a former director or former member of the company.
- (4) An application under this section may not be made after the end of the period of six years from the date of the dissolution of the company.  
For this purpose an application is made when it is received by the registrar.

**1025 Requirements for administrative restoration**

- (1) On an application under section 1024 the registrar shall restore the company to the register if, and only if, the following conditions are met.
- (2) The first condition is that the company was carrying on business or in operation at the time of its striking off.
- (3) The second condition is that, if any property or right previously vested in or held on trust for the company has vested as *bona vacantia*, the Crown representative has signified to the registrar in writing consent to the company’s restoration to the register.
- (4) It is the applicant’s responsibility to obtain that consent and to pay any costs (in Scotland, expenses) of the Crown representative –
  - (a) in dealing with the property during the period of dissolution, or
  - (b) in connection with the proceedings on the application, that may be demanded as a condition of giving consent.

- (5) The third condition is that the applicant has –
- (a) delivered to the registrar such documents relating to the company as are necessary to bring up to date the records kept by the registrar, and
  - (b) paid any penalties under section 453 or corresponding earlier provisions (civil penalty for failure to deliver accounts) that were outstanding at the date of dissolution or striking off.
- (6) In this section the “Crown representative” means –
- (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
  - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
  - (c) in relation to property in Scotland, the Queen’s and Lord Treasurer’s Remembrancer;
  - (d) in relation to other property, the Treasury Solicitor.

#### **1026 Application to be accompanied by statement of compliance**

- (1) An application under section 1024 (application for administrative restoration to the register) must be accompanied by a statement of compliance.
- (2) The statement of compliance required is a statement –
- (a) that the person making the application has standing to apply (see subsection (3) of that section), and
  - (b) that the requirements for administrative restoration (see section 1025) are met.
- (3) The registrar may accept the statement of compliance as sufficient evidence of those matters.

#### **1027 Registrar’s decision on application for administrative restoration**

- (1) The registrar must give notice to the applicant of the decision on an application under section 1024 (application for administrative restoration to the register).
- (2) If the decision is that the company should be restored to the register, the restoration takes effect as from the date that notice is sent.
- (3) In the case of such a decision, the registrar must –
- (a) enter on the register a note of the date as from which the company’s restoration to the register takes effect, and
  - (b) cause notice of the restoration to be published in the Gazette.
- (4) The notice under subsection (3)(b) must state –
- (a) the name of the company or, if the company is restored to the register under a different name (see section 1033), that name and its former name,
  - (b) the company’s registered number, and
  - (c) the date as from which the restoration of the company to the register takes effect.

### 1028 Effect of administrative restoration

- (1) The general effect of administrative restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register.
- (2) The company is not liable to a penalty under section 453 or any corresponding earlier provision (civil penalty for failure to deliver accounts) for a financial year in relation to which the period for filing accounts and reports ended –
  - (a) after the date of dissolution or striking off, and
  - (b) before the restoration of the company to the register.
- (3) The court may give such directions and make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register.
- (4) An application to the court for such directions or provision may be made any time within three years after the date of restoration of the company to the register.

#### *Restoration to the register by the court*

### 1029 Application to court for restoration to the register

- (1) An application may be made to the court to restore to the register a company –
  - (a) that has been dissolved under Chapter 9 of Part 4 of the Insolvency Act 1986 (c. 45) or Chapter 9 of Part 5 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (dissolution of company after winding up),
  - (b) that is deemed to have been dissolved under paragraph 84(6) of Schedule B1 to that Act or paragraph 85(6) of Schedule B1 to that Order (dissolution of company following administration), or
  - (c) that has been struck off the register –
    - (i) under section 1000 or 1001 (power of registrar to strike off defunct company), or
    - (ii) under section 1003 (voluntary striking off),whether or not the company has in consequence been dissolved.
- (2) An application under this section may be made by –
  - (a) the Secretary of State,
  - (b) any former director of the company,
  - (c) any person having an interest in land in which the company had a superior or derivative interest,
  - (d) any person having an interest in land or other property –
    - (i) that was subject to rights vested in the company, or
    - (ii) that was benefited by obligations owed by the company,
  - (e) any person who but for the company's dissolution would have been in a contractual relationship with it,
  - (f) any person with a potential legal claim against the company,
  - (g) any manager or trustee of a pension fund established for the benefit of employees of the company,
  - (h) any former member of the company (or the personal representatives of such a person),

- (i) any person who was a creditor of the company at the time of its striking off or dissolution,
  - (j) any former liquidator of the company,
  - (k) where the company was struck off the register under section 1003 (voluntary striking off), any person of a description specified by regulations under section 1006(1)(f) or 1007(2)(f) (persons entitled to notice of application for voluntary striking off),
- or by any other person appearing to the court to have an interest in the matter.

### **1030 When application to the court may be made**

- (1) An application to the court for restoration of a company to the register may be made at any time for the purpose of bringing proceedings against the company for damages for personal injury.
- (2) No order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.
- (3) In making that decision the court must have regard to its power under section 1032(3) (power to give consequential directions etc) to direct that the period between the dissolution (or striking off) of the company and the making of the order is not to count for the purposes of any such enactment.
- (4) In any other case an application to the court for restoration of a company to the register may not be made after the end of the period of six years from the date of the dissolution of the company, subject as follows.
- (5) In a case where –
  - (a) the company has been struck off the register under section 1000 or 1001 (power of registrar to strike off defunct company),
  - (b) an application to the registrar has been made under section 1024 (application for administrative restoration to the register) within the time allowed for making such an application, and
  - (c) the registrar has refused the application,
 an application to the court under this section may be made within 28 days of notice of the registrar’s decision being issued by the registrar, even if the period of six years mentioned in subsection (4) above has expired.
- (6) For the purposes of this section –
  - (a) “personal injury” includes any disease and any impairment of a person’s physical or mental condition; and
  - (b) references to damages for personal injury include –
    - (i) any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41) or section 14(2)(c) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (1937 c. 9 (N.I.)) (funeral expenses), and
    - (ii) damages under the Fatal Accidents Act 1976 (c. 30), the Damages (Scotland) Act 1976 (c. 13) or the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I. 18)).

### **1031 Decision on application for restoration by the court**

- (1) On an application under section 1029 the court may order the restoration of the company to the register –

- (a) if the company was struck off the register under section 1000 or 1001 (power of registrar to strike off defunct companies) and the company was, at the time of the striking off, carrying on business or in operation;
  - (b) if the company was struck off the register under section 1003 (voluntary striking off) and any of the requirements of sections 1004 to 1009 was not complied with;
  - (c) if in any other case the court considers it just to do so.
- (2) If the court orders restoration of the company to the register, the restoration takes effect on a copy of the court's order being delivered to the registrar.
- (3) The registrar must cause to be published in the Gazette notice of the restoration of the company to the register.
- (4) The notice must state –
  - (a) the name of the company or, if the company is restored to the register under a different name (see section 1033), that name and its former name,
  - (b) the company's registered number, and
  - (c) the date on which the restoration took effect.

### **1032 Effect of court order for restoration to the register**

- (1) The general effect of an order by the court for restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register.
- (2) The company is not liable to a penalty under section 453 or any corresponding earlier provision (civil penalty for failure to deliver accounts) for a financial year in relation to which the period for filing accounts and reports ended –
  - (a) after the date of dissolution or striking off, and
  - (b) before the restoration of the company to the register.
- (3) The court may give such directions and make such provision as seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register.
- (4) The court may also give directions as to –
  - (a) the delivery to the registrar of such documents relating to the company as are necessary to bring up to date the records kept by the registrar,
  - (b) the payment of the costs (in Scotland, expenses) of the registrar in connection with the proceedings for the restoration of the company to the register,
  - (c) where any property or right previously vested in or held on trust for the company has vested as *bona vacantia*, the payment of the costs (in Scotland, expenses) of the Crown representative –
    - (i) in dealing with the property during the period of dissolution, or
    - (ii) in connection with the proceedings on the application.
- (5) In this section the “Crown representative” means –
  - (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
  - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;

- (c) in relation to property in Scotland, the Queen's and Lord Treasurer's Remembrancer;
- (d) in relation to other property, the Treasury Solicitor.

*Supplementary provisions*

**1033 Company's name on restoration**

- (1) A company is restored to the register with the name it had before it was dissolved or struck off the register, subject to the following provisions.
- (2) If at the date of restoration the company could not be registered under its former name without contravening section 66 (name not to be the same as another in the registrar's index of company names), it must be restored to the register –
  - (a) under another name specified –
    - (i) in the case of administrative restoration, in the application to the registrar, or
    - (ii) in the case of restoration under a court order, in the court's order, or
  - (b) as if its registered number was also its name.

References to a company's being registered in a name, and to registration in that context, shall be read as including the company's being restored to the register.

- (3) If a company is restored to the register under a name specified in the application to the registrar, the provisions of –
  - section 80 (change of name: registration and issue of new certificate of incorporation), and
  - section 81 (change of name: effect),apply as if the application to the registrar were notice of a change of name.
- (4) If a company is restored to the register under a name specified in the court's order, the provisions of –
  - section 80 (change of name: registration and issue of new certificate of incorporation), and
  - section 81 (change of name: effect),apply as if the copy of the court order delivered to the registrar were notice of a change a name.
- (5) If the company is restored to the register as if its registered number was also its name –
  - (a) the company must change its name within 14 days after the date of the restoration,
  - (b) the change may be made by resolution of the directors (without prejudice to any other method of changing the company's name),
  - (c) the company must give notice to the registrar of the change, and
  - (d) sections 80 and 81 apply as regards the registration and effect of the change.
- (6) If the company fails to comply with subsection (5)(a) or (c) an offence is committed by –
  - (a) the company, and

- (b) every officer of the company who is in default.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

#### **1034 Effect of restoration to the register where property has vested as bona vacantia**

- (1) The person in whom any property or right is vested by section 1012 (property of dissolved company to be *bona vacantia*) may dispose of, or of an interest in, that property or right despite the fact that the company may be restored to the register under this Chapter.
- (2) If the company is restored to the register –
  - (a) the restoration does not affect the disposition (but without prejudice to its effect in relation to any other property or right previously vested in or held on trust for the company), and
  - (b) the Crown or, as the case may be, the Duke of Cornwall shall pay to the company an amount equal to –
    - (i) the amount of any consideration received for the property or right or, as the case may be, the interest in it, or
    - (ii) the value of any such consideration at the time of the disposition,or, if no consideration was received an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.
- (3) There may be deducted from the amount payable under subsection (2)(b) the reasonable costs of the Crown representative in connection with the disposition (to the extent that they have not been paid as a condition of administrative restoration or pursuant to a court order for restoration).
- (4) Where a liability accrues under subsection (2) in respect of any property or right which before the restoration of the company to the register had accrued as *bona vacantia* to the Duchy of Lancaster, the Attorney General of that Duchy shall represent Her Majesty in any proceedings arising in connection with that liability.
- (5) Where a liability accrues under subsection (2) in respect of any property or right which before the restoration of the company to the register had accrued as *bona vacantia* to the Duchy of Cornwall, such persons as the Duke of Cornwall (or other possessor for the time being of the Duchy) may appoint shall represent the Duke (or other possessor) in any proceedings arising out of that liability.
- (6) In this section the “Crown representative” means –
  - (a) in relation to property vested in the Duchy of Lancaster, the Solicitor to that Duchy;
  - (b) in relation to property vested in the Duke of Cornwall, the Solicitor to the Duchy of Cornwall;
  - (c) in relation to property in Scotland, the Queen’s and Lord Treasurer’s Remembrancer;
  - (d) in relation to other property, the Treasury Solicitor.

**PART 32**

## COMPANY INVESTIGATIONS: AMENDMENTS

**1035 Powers of Secretary of State to give directions to inspectors**

- (1) In Part 14 of the Companies Act 1985 (c. 6) (investigation of companies and their affairs), after section 446 insert –

*“Powers of Secretary of State to give directions to inspectors*

**446A General powers to give directions**

- (1) In exercising his functions an inspector shall comply with any direction given to him by the Secretary of State under this section.
- (2) The Secretary of State may give an inspector appointed under section 431, 432(2) or 442(1) a direction –
- (a) as to the subject matter of his investigation (whether by reference to a specified area of a company’s operation, a specified transaction, a period of time or otherwise), or
  - (b) which requires the inspector to take or not to take a specified step in his investigation.
- (3) The Secretary of State may give an inspector appointed under any provision of this Part a direction requiring him to secure that a specified report under section 437 –
- (a) includes the inspector’s views on a specified matter,
  - (b) does not include any reference to a specified matter,
  - (c) is made in a specified form or manner, or
  - (d) is made by a specified date.
- (4) A direction under this section –
- (a) may be given on an inspector’s appointment,
  - (b) may vary or revoke a direction previously given, and
  - (c) may be given at the request of an inspector.
- (5) In this section –
- (a) a reference to an inspector’s investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary);
  - (b) “specified” means specified in a direction under this section.

**446B Direction to terminate investigation**

- (1) The Secretary of State may direct an inspector to take no further steps in his investigation.
- (2) The Secretary of State may give a direction under this section to an inspector appointed under section 432(1) or 442(3) only on the grounds that it appears to him that –
- (a) matters have come to light in the course of the inspector’s investigation which suggest that a criminal offence has been committed, and

- (b) those matters have been referred to the appropriate prosecuting authority.
- (3) Where the Secretary of State gives a direction under this section, any direction already given to the inspector under section 437(1) to produce an interim report, and any direction given to him under section 446A(3) in relation to such a report, shall cease to have effect.
- (4) Where the Secretary of State gives a direction under this section, the inspector shall not make a final report to the Secretary of State unless—
  - (a) the direction was made on the grounds mentioned in subsection (2) and the Secretary of State directs the inspector to make a final report to him, or
  - (b) the inspector was appointed under section 432(1) (appointment in pursuance of order of the court).
- (5) An inspector shall comply with any direction given to him under this section.
- (6) In this section, a reference to an inspector’s investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary).”.
- (2) In section 431 of that Act (inspectors’ powers during investigation) in subsection (1) for “report on them in such manner as he may direct” substitute “report the result of their investigations to him”.
- (3) In section 432 of that Act (other company investigations) in subsection (1) for “report on them in such manner as he directs” substitute “report the result of their investigations to him”.
- (4) In section 437 of that Act (inspectors’ reports)—
  - (a) in subsection (1) omit the second sentence, and
  - (b) subsections (1B) and (1C) shall cease to have effect.
- (5) In section 442 of that Act (power to investigate company ownership), omit subsection (2).

### **1036 Resignation, removal and replacement of inspectors**

After section 446B of the Companies Act 1985 (c. 6) (inserted by section 1035 above) insert—

#### *“Resignation, removal and replacement of inspectors*

#### **446C Resignation and revocation of appointment**

- (1) An inspector may resign by notice in writing to the Secretary of State.
- (2) The Secretary of State may revoke the appointment of an inspector by notice in writing to the inspector.

#### **446D Appointment of replacement inspectors**

- (1) Where—
  - (a) an inspector resigns,
  - (b) an inspector’s appointment is revoked, or
  - (c) an inspector dies,

the Secretary of State may appoint one or more competent inspectors to continue the investigation.

- (2) An appointment under subsection (1) shall be treated for the purposes of this Part (apart from this section) as an appointment under the provision of this Part under which the former inspector was appointed.
- (3) The Secretary of State must exercise his power under subsection (1) so as to secure that at least one inspector continues the investigation.
- (4) Subsection (3) does not apply if—
  - (a) the Secretary of State could give any replacement inspector a direction under section 446B (termination of investigation), and
  - (b) such a direction would (under subsection (4) of that section) result in a final report not being made.
- (5) In this section, references to an investigation include any investigation the former inspector conducted under section 433(1) (power to investigate affairs of holding company or subsidiary)."

### **1037 Power to obtain information from former inspectors etc**

- (1) After section 446D of the Companies Act 1985 (c. 6) (inserted by section 1036 above) insert—

*“Power to obtain information from former inspectors etc*

#### **446E Obtaining information from former inspectors etc**

- (1) This section applies to a person who was appointed as an inspector under this Part—
  - (a) who has resigned, or
  - (b) whose appointment has been revoked.
- (2) This section also applies to an inspector to whom the Secretary of State has given a direction under section 446B (termination of investigation).
- (3) The Secretary of State may direct a person to whom this section applies to produce documents obtained or generated by that person during the course of his investigation to—
  - (a) the Secretary of State, or
  - (b) an inspector appointed under this Part.
- (4) The power under subsection (3) to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—
  - (a) in hard copy form, or
  - (b) in a form from which a hard copy can be readily obtained.
- (5) The Secretary of State may take copies of or extracts from a document produced in pursuance of this section.
- (6) The Secretary of State may direct a person to whom this section applies to inform him of any matters that came to that person’s knowledge as a result of his investigation.

- (7) A person shall comply with any direction given to him under this section.
- (8) In this section—
  - (a) references to the investigation of a former inspector or inspector include any investigation he conducted under section 433(1) (power to investigate affairs of holding company or subsidiary), and
  - (b) “document” includes information recorded in any form.”.
- (2) In section 451A of that Act (disclosure of information by Secretary of State or inspector), in subsection (1)(a) for “446” substitute “446E”.
- (3) In section 452(1) of that Act (privileged information) for “446” substitute “446E”.

### 1038 Power to require production of documents

- (1) In section 434 of the Companies Act 1985 (c. 6) (production of documents and evidence to inspectors), for subsection (6) substitute—
  - “(6) In this section “document” includes information recorded in any form.
  - (7) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—
    - (a) in hard copy form, or
    - (b) in a form from which a hard copy can be readily obtained.
  - (8) An inspector may take copies of or extracts from a document produced in pursuance of this section.”.
- (2) In section 447 of the Companies Act 1985 (power of Secretary of State to require documents and information), for subsection (9) substitute—
  - “(9) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—
    - (a) in hard copy form, or
    - (b) in a form from which a hard copy can be readily obtained.”.

### 1039 Disqualification orders: consequential amendments

- In section 8(1A)(b)(i) of the Company Directors Disqualification Act 1986 (c. 46) (disqualification after investigation of company: meaning of “investigative material”)—
- (a) after “section” insert “437, 446E,” and
  - (b) after “448” insert “, 451A”.

## PART 33

### UK COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION

#### CHAPTER 1

##### COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION BUT AUTHORISED TO REGISTER

#### **1040 Companies authorised to register under this Act**

- (1) This section applies to—
  - (a) any company that was in existence on 2nd November 1862 (including any company registered under the Joint Stock Companies Acts), and
  - (b) any company formed after that date (whether before or after the commencement of this Act)—
    - (i) in pursuance of an Act of Parliament other than this Act or any of the former Companies Acts,
    - (ii) in pursuance of letters patent, or
    - (iii) that is otherwise duly constituted according to law.
- (2) Any such company may on making application register under this Act.
- (3) Subject to the following provisions, it may register as an unlimited company, as a company limited by shares or as a company limited by guarantee.
- (4) A company having the liability of its members limited by Act of Parliament or letters patent—
  - (a) may not register under this section unless it is a joint stock company, and
  - (b) may not register under this section as an unlimited company or a company limited by guarantee.
- (5) A company that is not a joint stock company may not register under this section as a company limited by shares.
- (6) The registration of a company under this section is not invalid by reason that it has taken place with a view to the company's being wound up.

#### **1041 Definition of “joint stock company”**

- (1) For the purposes of section 1040 (companies authorised to register under this Act) “joint stock company” means a company—
  - (a) having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and
  - (b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons.
- (2) Such a company when registered with limited liability under this Act is deemed a company limited by shares.

#### **1042 Power to make provision by regulations**

- (1) The Secretary of State may make provision by regulations—

- (a) for and in connection with registration under section 1040 (companies authorised to register under this Act), and
  - (b) as to the application to companies so registered of the provisions of the Companies Acts.
- (2) Without prejudice to the generality of that power, regulations under this section may make provision corresponding to any provision formerly made by Chapter 2 of Part 22 of the Companies Act 1985 (c. 6).
- (3) Regulations under this section are subject to negative resolution procedure.

## CHAPTER 2

### UNREGISTERED COMPANIES

#### 1043 Unregistered companies

- (1) This section applies to bodies corporate incorporated in and having a principal place of business in the United Kingdom, other than –
- (a) bodies incorporated by, or registered under, a public general Act of Parliament;
  - (b) bodies not formed for the purpose of carrying on a business that has for its object the acquisition of gain by the body or its individual members;
  - (c) bodies for the time being exempted from this section by direction of the Secretary of State;
  - (d) open-ended investment companies.
- (2) The Secretary of State may make provision by regulations applying specified provisions of the Companies Acts to all, or any specified description of, the bodies to which this section applies.
- (3) The regulations may provide that the specified provisions of the Companies Acts apply subject to any specified limitations and to such adaptations and modifications (if any) as may be specified.
- (4) This section does not –
- (a) repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which provisions of the Companies Acts are applied by regulations under this section, or
  - (b) restrict the power of Her Majesty to grant a charter in lieu or supplementary to any such charter.

But in relation to any such body the operation of any such enactment, charter or instrument is suspended in so far as it is inconsistent with any of those provisions as they apply for the time being to that body.

- (5) In this section “specified” means specified in the regulations.
- (6) Regulations under this section are subject to negative resolution procedure.

**PART 34**

## OVERSEAS COMPANIES

*Introductory***1044 Overseas companies**

In the Companies Acts an “overseas company” means a company incorporated outside the United Kingdom.

**1045 Company contracts and execution of documents by companies**

- (1) The Secretary of State may make provision by regulations applying sections 43 to 52 (formalities of doing business and other matters) to overseas companies, subject to such exceptions, adaptations or modifications as may be specified in the regulations.
- (2) Regulations under this section are subject to negative resolution procedure.

*Registration of particulars***1046 Duty to register particulars**

- (1) The Secretary of State may make provision by regulations requiring an overseas company –
  - (a) to deliver to the registrar for registration a return containing specified particulars, and
  - (b) to deliver to the registrar with the return specified documents.
- (2) The regulations –
  - (a) must, in the case of a company other than a Gibraltar company, require the company to register particulars if the company opens a branch in the United Kingdom, and
  - (b) may, in the case of a Gibraltar company, require the company to register particulars if the company opens a branch in the United Kingdom, and
  - (c) may, in any case, require the registration of particulars in such other circumstances as may be specified.
- (3) In subsection (2) –

“branch” means a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC);

“Gibraltar company” means a company incorporated in Gibraltar.
- (4) The regulations may provide that where a company has registered particulars under this section and any alteration is made –
  - (a) in the specified particulars, or
  - (b) in any document delivered with the return,the company must deliver to the registrar for registration a return containing specified particulars of the alteration.
- (5) The regulations may make provision –

- (a) requiring the return under this section to be delivered for registration to the registrar for a specified part of the United Kingdom, and
  - (b) requiring it to be so delivered before the end of a specified period.
- (6) The regulations may make different provision according to –
- (a) the place where the company is incorporated, and
  - (b) the activities carried on (or proposed to be carried on) by it.
- This is without prejudice to the general power to make different provision for different cases.
- (7) In this section “specified” means specified in the regulations.
- (8) Regulations under this section are subject to affirmative resolution procedure.

#### **1047 Registered name of overseas company**

- (1) Regulations under section 1046 (duty to register particulars) must require an overseas company that is required to register particulars to register its name.
- (2) This may be –
- (a) the company’s corporate name (that is, its name under the law of the country or territory in which it is incorporated) or
  - (b) an alternative name specified in accordance with section 1048.
- (3) Subject only to subsection (5), an EEA company may always register its corporate name.
- (4) In any other case, the following provisions of Part 5 (a company’s name) apply in relation to the registration of the name of an overseas company –
- (a) section 53 (prohibited names);
  - (b) sections 54 to 56 (sensitive words and expressions);
  - (c) section 65 (inappropriate use of indications of company type or legal form);
  - (d) sections 66 to 74 (similarity to other names);
  - (e) section 75 (provision of misleading information etc);
  - (f) section 76 (misleading indication of activities).
- (5) The provisions of section 57 (permitted characters etc) apply in every case.
- (6) Any reference in the provisions mentioned in subsection (4) or (5) to a change of name shall be read as a reference to registration of a different name under section 1048.

#### **1048 Registration under alternative name**

- (1) An overseas company that is required to register particulars under section 1046 may at any time deliver to the registrar for registration a statement specifying a name, other than its corporate name, under which it proposes to carry on business in the United Kingdom.
- (2) An overseas company that has registered an alternative name may at any time deliver to the registrar of companies for registration a statement specifying a different name under which it proposes to carry on business in the United Kingdom (which may be its corporate name or a further alternative) in substitution for the name previously registered.

- (3) The alternative name for the time being registered under this section is treated for all purposes of the law applying in the United Kingdom as the company's corporate name.
- (4) This does not –
  - (a) affect the references in this section or section 1047 to the company's corporate name,
  - (b) affect any rights or obligation of the company, or
  - (c) render defective any legal proceedings by or against the company.
- (5) Any legal proceedings that might have been continued or commenced against the company by its corporate name, or any name previously registered under this section, may be continued or commenced against it by its name for the time being so registered.

*Other requirements*

**1049 Accounts and reports: general**

- (1) The Secretary of State may make provision by regulations requiring an overseas company that is required to register particulars under section 1046 –
  - (a) to prepare the like accounts and directors' report, and
  - (b) to cause to be prepared such an auditor's report,as would be required if the company were formed and registered under this Act.
- (2) The regulations may for this purpose apply, with or without modifications, all or any of the provisions of –
  - Part 15 (accounts and reports), and
  - Part 16 (audit).
- (3) The Secretary of State may make provision by regulations requiring an overseas company to deliver to the registrar copies of –
  - (a) the accounts and reports prepared in accordance with the regulations, or
  - (b) the accounts and reports that it is required to prepare and have audited under the law of the country in which it is incorporated.
- (4) Regulations under this section are subject to negative resolution procedure.

**1050 Accounts and reports: credit or financial institutions**

- (1) This section applies to a credit or financial institution –
  - (a) that is incorporated or otherwise formed outside the United Kingdom and Gibraltar,
  - (b) whose head office is outside the United Kingdom and Gibraltar, and
  - (c) that has a branch in the United Kingdom.
- (2) In subsection (1) "branch" means a place of business that forms a legally dependent part of the institution and conducts directly all or some of the operations inherent in its business.
- (3) The Secretary of State may make provision by regulations requiring an institution to which this section applies –

- (a) to prepare the like accounts and directors' report, and
  - (b) to cause to be prepared such an auditor's report,  
as would be required if the institution were a company formed and registered under this Act.
- (4) The regulations may for this purpose apply, with or without modifications, all or any of the provisions of –  
Part 15 (accounts and reports), and  
Part 16 (audit).
- (5) The Secretary of State may make provision by regulations requiring an institution to which this section applies to deliver to the registrar copies of –  
(a) accounts and reports prepared in accordance with the regulations, or  
(b) accounts and reports that it is required to prepare and have audited under the law of the country in which the institution has its head office.
- (6) Regulations under this section are subject to negative resolution procedure.

#### **1051 Trading disclosures**

- (1) The Secretary of State may by regulations make provision requiring overseas companies carrying on business in the United Kingdom –  
(a) to display specified information in specified locations,  
(b) to state specified information in specified descriptions of document or communication, and  
(c) to provide specified information on request to those they deal with in the course of their business.
- (2) The regulations –  
(a) shall in every case require a company that has registered particulars under section 1046 to disclose the name registered by it under section 1047, and  
(b) may make provision as to the manner in which any specified information is to be displayed, stated or provided.
- (3) The regulations may make provision corresponding to that made by –  
section 83 (civil consequences of failure to make required disclosure), and  
section 84 (criminal consequences of failure to make required disclosure).
- (4) In this section “specified” means specified in the regulations.
- (5) Regulations under this section are subject to affirmative resolution procedure.

#### **1052 Company charges**

- (1) The Secretary of State may by regulations make provision about the registration of specified charges over property in the United Kingdom of a registered overseas company.
- (2) The power in subsection (1) includes power to make provision about –  
(a) a registered overseas company that –  
(i) has particulars registered in more than one part of the United Kingdom;  
(ii) has property in more than one part of the United Kingdom;

- (b) the circumstances in which property is to be regarded, for the purposes of the regulations, as being, or not being, in the United Kingdom or in a particular part of the United Kingdom;
  - (c) the keeping by a registered overseas company of records and registers about specified charges and their inspection;
  - (d) the consequences of a failure to register a charge in accordance with the regulations;
  - (e) the circumstances in which a registered overseas company ceases to be subject to the regulations.
- (3) The regulations may for this purpose apply, with or without modifications, any of the provisions of Part 25 (company charges).
- (4) The regulations may modify any reference in an enactment to Part 25, or to a particular provision of that Part, so as to include a reference to the regulations or to a specified provision of the regulations.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section –  
“registered overseas company” means an overseas company that has registered particulars under section 1046(1), and  
“specified” means specified in the regulations.

### 1053 Other returns etc

- (1) This section applies to overseas companies that are required to register particulars under section 1046.
- (2) The Secretary of State may make provision by regulations requiring the delivery to the registrar of returns –  
(a) by a company to which this section applies that –  
(i) is being wound up, or  
(ii) becomes or ceases to be subject to insolvency proceedings, or an arrangement or composition or any analogous proceedings;  
(b) by the liquidator of a company to which this section applies.
- (3) The regulations may specify –  
(a) the circumstances in which a return is to be made,  
(b) the particulars to be given in it, and  
(c) the period within which it is to be made.
- (4) The Secretary of State may make provision by regulations requiring notice to be given to the registrar of the appointment in relation to a company to which this section applies of a judicial factor (in Scotland).
- (5) The regulations may include provision corresponding to any provision made by section 1154 of this Act (duty to notify registrar of certain appointments).
- (6) Regulations under this section are subject to affirmative resolution procedure.

*Supplementary*

**1054 Offences**

- (1) Regulations under this Part may specify the person or persons responsible for complying with any specified requirement of the regulations.
- (2) Regulations under this Part may make provision for offences, including provision as to –
  - (a) the person or persons liable in the case of any specified contravention of the regulations, and
  - (b) circumstances that are, or are not, to be a defence on a charge of such an offence.
- (3) The regulations must not provide –
  - (a) for imprisonment, or
  - (b) for the imposition on summary conviction of a fine exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.
- (4) In this section “specified” means specified in the regulations.

**1055 Disclosure of individual’s residential address: protection from disclosure**

Where regulations under section 1046 (overseas companies: duty to register particulars) require an overseas company to register particulars of an individual’s usual residential address, they must contain provision corresponding to that made by Chapter 8 of Part 10 (directors’ residential addresses: protection from disclosure).

**1056 Requirement to identify persons authorised to accept service of documents**

Regulations under section 1046 (overseas companies: duty to register particulars) must require an overseas company to register –

- (a) particulars identifying every person resident in the United Kingdom authorised to accept service of documents on behalf of the company, or
- (b) a statement that there is no such person.

**1057 Registrar to whom returns, notices etc to be delivered**

- (1) This section applies to an overseas company that is required to register or has registered particulars under section 1046 in more than one part of the United Kingdom.
- (2) The Secretary of State may provide by regulations that, in the case of such a company, anything authorised or required to be delivered to the registrar under this Part is to be delivered –
  - (a) to the registrar for each part of the United Kingdom in which the company is required to register or has registered particulars, or
  - (b) to the registrar for such part or parts of the United Kingdom as may be specified in or determined in accordance with the regulations.
- (3) Regulations under this section are subject to negative resolution procedure.

**1058 Duty to give notice of ceasing to have registrable presence**

- (1) The Secretary of State may make provision by regulations requiring an overseas company –
  - (a) if it has registered particulars following the opening of a branch, in accordance with regulations under section 1046(2)(a) or (b), to give notice to the registrar if it closes that branch;
  - (b) if it has registered particulars in other circumstances, in accordance with regulations under section 1046(2)(c), to give notice to the registrar if the circumstances that gave rise to the obligation to register particulars cease to obtain.
- (2) The regulations must provide for the notice to be given to the registrar for the part of the United Kingdom to which the original return of particulars was delivered.
- (3) The regulations may specify the period within which notice must be given.
- (4) Regulations under this section are subject to negative resolution procedure.

**1059 Application of provisions in case of relocation of branch**

For the purposes of this Part –

- (a) the relocation of a branch from one part of the United Kingdom to another counts as the closing of one branch and the opening of another;
- (b) the relocation of a branch within the same part of the United Kingdom does not.

**PART 35**

## THE REGISTRAR OF COMPANIES

*The registrar***1060 The registrar**

- (1) There shall continue to be –
  - (a) a registrar of companies for England and Wales,
  - (b) a registrar of companies for Scotland, and
  - (c) a registrar of companies for Northern Ireland.
- (2) The registrars shall be appointed by the Secretary of State.
- (3) In the Companies Acts “the registrar of companies” and “the registrar” mean the registrar of companies for England and Wales, Scotland or Northern Ireland, as the case may require.
- (4) References in the Companies Acts to registration in a particular part of the United Kingdom are to registration by the registrar for that part of the United Kingdom.

**1061 The registrar’s functions**

- (1) The registrar shall continue –
  - (a) to perform the functions conferred on the registrar –

- (i) under the Companies Acts, and
    - (ii) under the enactments listed in subsection (2), and
  - (b) to perform such functions on behalf of the Secretary of State, in relation to the registration of companies or other matters, as the Secretary of State may from time to time direct.
- (2) The enactments are—
- the Joint Stock Companies Acts;
  - the Newspaper Libel and Registration Act 1881 (c. 60);
  - the Limited Partnerships Act 1907 (c. 24);
  - section 53 of the Industrial and Provident Societies Act 1965 (c. 12) or, for Northern Ireland, section 62 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));
  - the Insolvency Act 1986 (c. 45) or, for Northern Ireland, the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
  - section 12 of the Statutory Water Companies Act 1991 (c. 58);
  - sections 3, 4, 6, 63 and 64 of, and Schedule 1 to, the Housing Act 1996 (c. 52) or, for Northern Ireland, Articles 3 and 16 to 32 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));
  - sections 2, 4 and 26 of the Commonwealth Development Corporation Act 1999 (c. 20);
  - Part 6 and section 366 of the Financial Services and Markets Act 2000 (c. 8);
  - the Limited Liability Partnerships Act 2000 (c. 12);
  - section 14 of the Insolvency Act 2000 (c. 39) or, for Northern Ireland, Article 11 of the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6));
  - section 121 of the Land Registration Act 2002 (c. 9);
  - section 1248 of this Act.
- (3) References in this Act to the functions of the registrar are to functions within subsection (1)(a) or (b).

### **1062 The registrar's official seal**

The registrar shall have an official seal for the authentication of documents in connection with the performance of the registrar's functions.

### **1063 Fees payable to registrar**

- (1) The Secretary of State may make provision by regulations requiring the payment to the registrar of fees in respect of—
- (a) the performance of any of the registrar's functions, or
  - (b) the provision by the registrar of services or facilities for purposes incidental to, or otherwise connected with, the performance of any of the registrar's functions.
- (2) The matters for which fees may be charged include—
- (a) the performance of a duty imposed on the registrar or the Secretary of State,
  - (b) the receipt of documents delivered to the registrar, and
  - (c) the inspection, or provision of copies, of documents kept by the registrar.

- (3) The regulations may –
  - (a) provide for the amount of the fees to be fixed by or determined under the regulations;
  - (b) provide for different fees to be payable in respect of the same matter in different circumstances;
  - (c) specify the person by whom any fee payable under the regulations is to be paid;
  - (d) specify when and how fees are to be paid.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) In respect of the performance of functions or the provision of services or facilities –
  - (a) for which fees are not provided for by regulations, or
  - (b) in circumstances other than those for which fees are provided for by regulations,the registrar may determine from time to time what fees (if any) are chargeable.
- (6) Fees received by the registrar are to be paid into the Consolidated Fund.
- (7) The Limited Partnerships Act 1907 (c. 24) is amended as follows –
  - (a) in section 16(1) (inspection of statements registered) –
    - (i) omit the words “, and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding 5p for each inspection”, and
    - (ii) omit the words from “and there shall be paid for such certificate” to the end;
  - (b) in section 17 (power to make rules) –
    - (i) omit the words “(but as to fees with the concurrence of the Treasury)”, and
    - (ii) omit paragraph (a).

*Certificates of incorporation*

**1064 Public notice of issue of certificate of incorporation**

- (1) The registrar must cause to be published –
  - (a) in the Gazette, or
  - (b) in accordance with section 1116 (alternative means of giving public notice),notice of the issue by the registrar of any certificate of incorporation of a company.
- (2) The notice must state the name and registered number of the company and the date of issue of the certificate.
- (3) This section applies to a certificate of incorporation issued under –
  - (a) section 80 (change of name),
  - (b) section 88 (Welsh companies), or
  - (c) any provision of Part 7 (re-registration),as well as to the certificate issued on a company’s formation.

### **1065 Right to certificate of incorporation**

Any person may require the registrar to provide him with a copy of any certificate of incorporation of a company, signed by the registrar or authenticated by the registrar's seal.

#### *Registered numbers*

### **1066 Company's registered numbers**

- (1) The registrar shall allocate to every company a number, which shall be known as the company's registered number.
- (2) Companies' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may determine.
- (3) The registrar may on adopting a new form of registered number make such changes of existing registered numbers as appear necessary.
- (4) A change of a company's registered number has effect from the date on which the company is notified by the registrar of the change.
- (5) For a period of three years beginning with that date any requirement to disclose the company's registered number imposed by regulations under section 82 or section 1051 (trading disclosures) is satisfied by the use of either the old number or the new.
- (6) In this section "company" includes an overseas company whose particulars have been registered under section 1046, other than a company that appears to the registrar not to be required to register particulars under that section.

### **1067 Registered numbers of branches of overseas company**

- (1) The registrar shall allocate to every branch of an overseas company whose particulars are registered under section 1046 a number, which shall be known as the branch's registered number.
- (2) Branches' registered numbers shall be in such form, consisting of one or more sequences of figures or letters, as the registrar may determine.
- (3) The registrar may on adopting a new form of registered number make such changes of existing registered numbers as appear necessary.
- (4) A change of a branch's registered number has effect from the date on which the company is notified by the registrar of the change.
- (5) For a period of three years beginning with that date any requirement to disclose the branch's registered number imposed by regulations under section 1051 (trading disclosures) is satisfied by the use of either the old number or the new.

*Delivery of documents to the registrar***1068 Registrar's requirements as to form, authentication and manner of delivery**

- (1) The registrar may impose requirements as to the form, authentication and manner of delivery of documents required or authorised to be delivered to the registrar under any enactment.
- (2) As regards the form of the document, the registrar may –
  - (a) require the contents of the document to be in a standard form;
  - (b) impose requirements for the purpose of enabling the document to be scanned or copied.
- (3) As regards authentication, the registrar may –
  - (a) require the document to be authenticated by a particular person or a person of a particular description;
  - (b) specify the means of authentication;
  - (c) require the document to contain or be accompanied by the name or registered number of the company to which it relates (or both).
- (4) As regards the manner of delivery, the registrar may specify requirements as to –
  - (a) the physical form of the document (for example, hard copy or electronic form);
  - (b) the means to be used for delivering the document (for example, by post or electronic means);
  - (c) the address to which the document is to be sent;
  - (d) in the case of a document to be delivered by electronic means, the hardware and software to be used, and technical specifications (for example, matters relating to protocol, security, anti-virus protection or encryption).
- (5) The registrar must secure that as from 1st January 2007 all documents subject to the Directive disclosure requirements (see section 1078) may be delivered to the registrar by electronic means.
- (6) The power conferred by this section does not authorise the registrar to require documents to be delivered by electronic means (see section 1069).
- (7) Requirements imposed under this section must not be inconsistent with requirements imposed by any enactment with respect to the form, authentication or manner of delivery of the document concerned.

**1069 Power to require delivery by electronic means**

- (1) The Secretary of State may make regulations requiring documents that are authorised or required to be delivered to the registrar to be delivered by electronic means.
- (2) Any such requirement to deliver documents by electronic means is effective only if registrar's rules have been published with respect to the detailed requirements for such delivery.
- (3) Regulations under this section are subject to affirmative resolution procedure.

### **1070 Agreement for delivery by electronic means**

- (1) The registrar may agree with a company that documents relating to the company that are required or authorised to be delivered to the registrar –
  - (a) will be delivered by electronic means, except as provided for in the agreement, and
  - (b) will conform to such requirements as may be specified in the agreement or specified by the registrar in accordance with the agreement.
- (2) An agreement under this section may relate to all or any description of documents to be delivered to the registrar.
- (3) Documents in relation to which an agreement is in force under this section must be delivered in accordance with the agreement.

### **1071 Document not delivered until received**

- (1) A document is not delivered to the registrar until it is received by the registrar.
- (2) Provision may be made by registrar's rules as to when a document is to be regarded as received.

#### *Requirements for proper delivery*

### **1072 Requirements for proper delivery**

- (1) A document delivered to the registrar is not properly delivered unless all the following requirements are met –
  - (a) the requirements of the provision under which the document is to be delivered to the registrar as regards –
    - (i) the contents of the document, and
    - (ii) form, authentication and manner of delivery;
  - (b) any applicable requirements under –  
section 1068 (registrar's requirements as to form, authentication and manner of delivery),  
section 1069 (power to require delivery by electronic means), or  
section 1070 (agreement for delivery by electronic means);
  - (c) any requirements of this Part as to the language in which the document is drawn up and delivered or as to its being accompanied on delivery by a certified translation into English;
  - (d) in so far as it consists of or includes names and addresses, any requirements of this Part as to permitted characters, letters or symbols or as to its being accompanied on delivery by a certificate as to the transliteration of any element;
  - (e) any applicable requirements under section 1111 (registrar's requirements as to certification or verification);
  - (f) any requirement of regulations under section 1082 (use of unique identifiers);
  - (g) any requirements as regards payment of a fee in respect of its receipt by the registrar.
- (2) A document that is not properly delivered is treated for the purposes of the provision requiring or authorising it to be delivered as not having been

delivered, subject to the provisions of section 1073 (power to accept documents not meeting requirements for proper delivery).

### **1073 Power to accept documents not meeting requirements for proper delivery**

- (1) The registrar may accept (and register) a document that does not comply with the requirements for proper delivery.
- (2) A document accepted by the registrar under this section is treated as received by the registrar for the purposes of section 1077 (public notice of receipt of certain documents).
- (3) No objection may be taken to the legal consequences of a document's being accepted (or registered) by the registrar under this section on the ground that the requirements for proper delivery were not met.
- (4) The acceptance of a document by the registrar under this section does not affect—
  - (a) the continuing obligation to comply with the requirements for proper delivery, or
  - (b) subject as follows, any liability for failure to comply with those requirements.
- (5) For the purposes of—
  - (a) section 453 (civil penalty for failure to file accounts and reports), and
  - (b) any enactment imposing a daily default fine for failure to deliver the document,the period after the document is accepted does not count as a period during which there is default in complying with the requirements for proper delivery.
- (6) But if, subsequently—
  - (a) the registrar issues a notice under section 1094(4) in respect of the document (notice of administrative removal from the register), and
  - (b) the requirements for proper delivery are not complied with before the end of the period of 14 days after the issue of that notice,any subsequent period of default does count for the purposes of those provisions.

### **1074 Documents containing unnecessary material**

- (1) This section applies where a document delivered to the registrar contains unnecessary material.
- (2) “Unnecessary material” means material that—
  - (a) is not necessary in order to comply with an obligation under any enactment, and
  - (b) is not specifically authorised to be delivered to the registrar.
- (3) For this purpose an obligation to deliver a document of a particular description, or conforming to certain requirements, is regarded as not extending to anything that is not needed for a document of that description or, as the case may be, conforming to those requirements.
- (4) If the unnecessary material cannot readily be separated from the rest of the document, the document is treated as not meeting the requirements for proper delivery.

- (5) If the unnecessary material can readily be separated from the rest of the document, the registrar may register the document either –
  - (a) with the omission of the unnecessary material, or
  - (b) as delivered.

#### **1075 Informal correction of document**

- (1) A document delivered to the registrar may be corrected by the registrar if it appears to the registrar to be incomplete or internally inconsistent.
- (2) This power is exercisable only –
  - (a) on instructions, and
  - (b) if the company has given (and has not withdrawn) its consent to instructions being given under this section.
- (3) The following requirements must be met as regards the instructions –
  - (a) the instructions must be given in response to an enquiry by the registrar;
  - (b) the registrar must be satisfied that the person giving the instructions is authorised to do so –
    - (i) by the person by whom the document was delivered, or
    - (ii) by the company to which the document relates;
  - (c) the instructions must meet any requirements of registrar's rules as to –
    - (i) the form and manner in which they are given, and
    - (ii) authentication.
- (4) The company's consent to instructions being given under this section (and any withdrawal of such consent) –
  - (a) may be in hard copy or electronic form, and
  - (b) must be notified to the registrar.
- (5) This section applies in relation to documents delivered under Part 25 (company charges) by a person other than the company as if the references to the company were to the company or the person by whom the document was delivered.
- (6) A document that is corrected under this section is treated, for the purposes of any enactment relating to its delivery, as having been delivered when the correction is made.
- (7) The power conferred by this section is not exercisable if the document has been registered under section 1073 (power to accept documents not meeting requirements for proper delivery).

#### **1076 Replacement of document not meeting requirements for proper delivery**

- (1) The registrar may accept a replacement for a document previously delivered that –
  - (a) did not comply with the requirements for proper delivery, or
  - (b) contained unnecessary material (within the meaning of section 1074).
- (2) A replacement document must not be accepted unless the registrar is satisfied that it is delivered by –
  - (a) the person by whom the original document was delivered, or

- (b) the company to which the original document relates, and that it complies with the requirements for proper delivery.
- (3) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the replacement in a form and manner enabling it to be associated with the original.
- (4) This section does not apply where the original document was delivered under Part 25 (company charges) (but see sections 873 and 888 (rectification of register of charges)).

*Public notice of receipt of certain documents*

**1077 Public notice of receipt of certain documents**

- (1) The registrar must cause to be published –
- (a) in the Gazette, or
  - (b) in accordance with section 1116 (alternative means of giving public notice),
- notice of the receipt by the registrar of any document that, on receipt, is subject to the Directive disclosure requirements (see section 1078).
- (2) The notice must state the name and registered number of the company, the description of document and the date of receipt.
- (3) The registrar is not required to cause notice of the receipt of a document to be published before the date of incorporation of the company to which the document relates.

**1078 Documents subject to Directive disclosure requirements**

- (1) The documents subject to the “Directive disclosure requirements” are as follows.
- The requirements referred to are those of Article 3 of the First Company Law Directive (68/151/EEC), as amended, extended and applied.
- (2) In the case of every company –
- Constitutional documents*
1. The company’s memorandum and articles.
  2. Any amendment of the company’s articles (including every resolution or agreement required to be embodied in or annexed to copies of the company’s articles issued by the company).
  3. After any amendment of the company’s articles, the text of the articles as amended.
  4. Any notice of a change of the company’s name.
- Directors*
1. The statement of proposed officers required on formation of the company.
  2. Notification of any change among the company’s directors.
  3. Notification of any change in the particulars of directors required to be delivered to the registrar.
- Accounts, reports and returns*

1. All documents required to be delivered to the registrar under section 441 (annual accounts and reports).
2. The company's annual return.

*Registered office*

Notification of any change of the company's registered office.

*Winding up*

1. Copy of any winding-up order in respect of the company.
2. Notice of the appointment of liquidators.
3. Order for the dissolution of a company on a winding up.
4. Return by a liquidator of the final meeting of a company on a winding up.

(3) In the case of a public company –

*Share capital*

1. Any statement of capital and initial shareholdings.
2. Any return of allotment and the statement of capital accompanying it.
3. Copy of any resolution under section 570 or 571 (disapplication of pre-emption rights).
4. Copy of any report under section 593 or 599 as to the value of a non-cash asset.
5. Statement of capital accompanying notice given under section 625 (notice by company of redenomination of shares).
6. Statement of capital accompanying notice given under section 627 (notice by company of reduction of capital in connection with redenomination of shares).
7. Notice delivered under section 636 (notice of new name of class of shares) or 637 (notice of variation of rights attached to shares).
8. Statement of capital accompanying order delivered under section 649 (order of court confirming reduction of capital).
9. Notification (under section 689) of the redemption of shares and the statement of capital accompanying it.
10. Statement of capital accompanying return delivered under section 708 (notice of cancellation of shares on purchase of own shares) or 730 (notice of cancellation of shares held as treasury shares).
11. Any statement of compliance delivered under section 762 (statement that company meets conditions for issue of trading certificate).

*Mergers and divisions*

1. Copy of any draft of the terms of a scheme required to be delivered to the registrar under section 906 or 921.
2. Copy of any order under section 899 or 900 in respect of a compromise or arrangement to which Part 27 (mergers and divisions of public companies) applies.

(4) Where a private company re-registers as a public company (see section 96) –

- (a) the last statement of capital relating to the company received by the registrar under any provision of the Companies Acts becomes subject to the Directive disclosure requirements, and
- (b) section 1077 (public notice of receipt of certain documents) applies as if the statement had been received by the registrar when the re-registration takes effect.

(5) In the case of an overseas company, such particulars, returns and other documents required to be delivered under Part 34 as may be specified by the Secretary of State by regulations.

- (6) Regulations under subsection (5) are subject to negative resolution procedure.

### 1079 Effect of failure to give public notice

- (1) A company is not entitled to rely against other persons on the happening of any event to which this section applies unless –
- (a) the event has been officially notified at the material time, or
  - (b) the company shows that the person concerned knew of the event at the material time.
- (2) The events to which this section applies are –
- (a) an amendment of the company’s articles,
  - (b) a change among the company’s directors,
  - (c) (as regards service of any document on the company) a change of the company’s registered office,
  - (d) the making of a winding-up order in respect of the company, or
  - (e) the appointment of a liquidator in a voluntary winding up of the company.
- (3) If the material time falls –
- (a) on or before the 15th day after the date of official notification, or
  - (b) where the 15th day was not a working day, on or before the next day that was,
- the company is not entitled to rely on the happening of the event as against a person who shows that he was unavoidably prevented from knowing of the event at that time.
- (4) “Official notification” means –
- (a) in relation to an amendment of the company’s articles, notification in accordance with section 1077 (public notice of receipt by registrar of certain documents) of the amendment and the amended text of the articles;
  - (b) in relation to anything else stated in a document subject to the Directive disclosure requirements, notification of that document in accordance with that section;
  - (c) in relation to the appointment of a liquidator in a voluntary winding up, notification of that event in accordance with section 109 of the Insolvency Act 1986 (c. 45) or Article 95 of the Insolvency (Northern Ireland) Order 1989 (S.I.1989/2405 (N.I. 19)).

### *The register*

### 1080 The register

- (1) The registrar shall continue to keep records of –
- (a) the information contained in documents delivered to the registrar under any enactment,
  - (b) certificates of incorporation issued by the registrar, and
  - (c) certificates issued by the registrar under section 869(5) or 885(4) (certificates of registration of charge).
- (2) The records relating to companies are referred to collectively in the Companies Acts as “the register”.

- (3) Information deriving from documents subject to the Directive disclosure requirements (see section 1078) that are delivered to the registrar on or after 1st January 2007 must be kept by the registrar in electronic form.
- (4) Subject to that, information contained in documents delivered to the registrar may be recorded and kept in any form the registrar thinks fit, provided it is possible to inspect it and produce a copy of it.  
This is sufficient compliance with any duty of the registrar to keep, file or register the document or to record the information contained in it.
- (5) The records kept by the registrar must be such that information relating to a company is associated with that company, in such manner as the registrar may determine, so as to enable all the information relating to the company to be retrieved.

### 1081 Annotation of the register

- (1) The registrar must place a note in the register recording –
  - (a) the date on which a document is delivered to the registrar;
  - (b) if a document is corrected under section 1075, the nature and date of the correction;
  - (c) if a document is replaced (whether or not material derived from it is removed), the fact that it has been replaced and the date of delivery of the replacement;
  - (d) if material is removed –
    - (i) what was removed (giving a general description of its contents),
    - (ii) under what power, and
    - (iii) the date on which that was done.
- (2) The Secretary of State may make provision by regulations –
  - (a) authorising or requiring the registrar to annotate the register in such other circumstances as may be specified in the regulations, and
  - (b) as to the contents of any such annotation.
- (3) No annotation is required in the case of a document that by virtue of section 1072(2) (documents not meeting requirements for proper delivery) is treated as not having been delivered.
- (4) A note may be removed if it no longer serves any useful purpose.
- (5) Any duty or power of the registrar with respect to annotation of the register is subject to the court's power under section 1097 (powers of court on ordering removal of material from the register) to direct –
  - (a) that a note be removed from the register, or
  - (b) that no note shall be made of the removal of material that is the subject of the court's order.
- (6) Notes placed in the register in accordance with subsection (1), or in pursuance of regulations under subsection (2), are part of the register for all purposes of the Companies Acts.
- (7) Regulations under this section are subject to negative resolution procedure.

**1082 Allocation of unique identifiers**

- (1) The Secretary of State may make provision for the use, in connection with the register, of reference numbers (“unique identifiers”) to identify each person who—
  - (a) is a director of a company,
  - (b) is secretary (or a joint secretary) of a company, or
  - (c) in the case of an overseas company whose particulars are registered under section 1046, holds any such position as may be specified for the purposes of this section by regulations under that section.
- (2) The regulations may—
  - (a) provide that a unique identifier may be in such form, consisting of one or more sequences of letters or numbers, as the registrar may from time to time determine;
  - (b) make provision for the allocation of unique identifiers by the registrar;
  - (c) require there to be included, in any specified description of documents delivered to the registrar, as well as a statement of the person’s name—
    - (i) a statement of the person’s unique identifier, or
    - (ii) a statement that the person has not been allocated a unique identifier;
  - (d) enable the registrar to take steps where a person appears to have more than one unique identifier to discontinue the use of all but one of them.
- (3) The regulations may contain provision for the application of the scheme in relation to persons appointed, and documents registered, before the commencement of this Act.
- (4) The regulations may make different provision for different descriptions of person and different descriptions of document.
- (5) Regulations under this section are subject to affirmative resolution procedure.

**1083 Preservation of original documents**

- (1) The originals of documents delivered to the registrar in hard copy form must be kept for three years after they are received by the registrar, after which they may be destroyed provided the information contained in them has been recorded in the register.  
This is subject to section 1087(3) (extent of obligation to retain material not available for public inspection).
- (2) The registrar is under no obligation to keep the originals of documents delivered in electronic form, provided the information contained in them has been recorded in the register.
- (3) This section applies to documents held by the registrar when this section comes into force as well as to documents subsequently received.

**1084 Records relating to companies that have been dissolved etc**

- (1) This section applies where—
  - (a) a company is dissolved,

- (b) an overseas company ceases to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 1046, or
  - (c) a credit or financial institution ceases to be within section 1050 (overseas institutions required to file accounts with the registrar).
- (2) At any time after two years from the date on which it appears to the registrar that—
- (a) the company has been dissolved,
  - (b) the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 1046, or
  - (c) the credit or financial institution has ceased to be within section 1050 (overseas institutions required to file accounts with the registrar),
- the registrar may direct that records relating to the company or institution may be removed to the Public Record Office or, as the case may be, the Public Record Office of Northern Ireland.
- (3) Records in respect of which such a direction is given shall be disposed of under the enactments relating to that Office and the rules made under them.
- (4) In subsection (1)(a) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844 (c. 110).
- (5) This section does not extend to Scotland.

*Inspection etc of the register*

**1085 Inspection of the register**

- (1) Any person may inspect the register.
- (2) The right of inspection extends to the originals of documents delivered to the registrar in hard copy form if, and only if, the record kept by the registrar of the contents of the document is illegible or unavailable.  
The period for which such originals are to be kept is limited by section 1083(1).
- (3) This section has effect subject to section 1087 (material not available for public inspection).

**1086 Right to copy of material on the register**

- (1) Any person may require a copy of any material on the register.
- (2) The fee for any such copy of material derived from a document subject to the Directive disclosure requirements (see section 1078), whether in hard copy or electronic form, must not exceed the administrative cost of providing it.
- (3) This section has effect subject to section 1087 (material not available for public inspection).

**1087 Material not available for public inspection**

- (1) The following material must not be made available by the registrar for public inspection—

- 
- (a) the contents of any document sent to the registrar containing views expressed pursuant to section 56 (comments on proposal by company to use certain words or expressions in company name);
  - (b) protected information within section 242(1) (directors' residential addresses: restriction on disclosure by registrar) or any corresponding provision of regulations under section 1046 (overseas companies);
  - (c) any application to the registrar under section 1024 (application for administrative restoration to the register) that has not yet been determined or was not successful;
  - (d) any document received by the registrar in connection with the giving or withdrawal of consent under section 1075 (informal correction of documents);
  - (e) any application or other document delivered to the registrar under section 1088 (application to make address unavailable for public inspection) and any address in respect of which such an application is successful;
  - (f) any application or other document delivered to the registrar under section 1095 (application for rectification of register);
  - (g) any court order under section 1096 (rectification of the register under court order) that the court has directed under section 1097 (powers of court on ordering removal of material from the register) is not to be made available for public inspection;
  - (h) the contents of –
    - (i) any instrument creating or evidencing a charge and delivered to the registrar under section 860 (registration of company charges: England and Wales or Northern Ireland), or
    - (ii) any certified copy of an instrument creating or evidencing a charge and delivered to the registrar under section 878 (registration of company charges: Scotland);
  - (i) any e-mail address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone;
  - (j) the contents of any documents held by the registrar pending a decision of the Regulator of Community Interest Companies under section 36 or 38 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (decision on eligibility for registration as community interest company) and that the registrar is not later required to record;
  - (k) any other material excluded from public inspection by or under any other enactment.
- (2) A restriction applying by reference to material deriving from a particular description of document does not affect the availability for public inspection of the same information contained in material derived from another description of document in relation to which no such restriction applies.
- (3) Material to which this section applies need not be retained by the registrar for longer than appears to the registrar reasonably necessary for the purposes for which the material was delivered to the registrar.

### **1088 Application to registrar to make address unavailable for public inspection**

- (1) The Secretary of State may make provision by regulations requiring the registrar, on application, to make an address on the register unavailable for public inspection.
- (2) The regulations may make provision as to—
  - (a) who may make an application,
  - (b) the grounds on which an application may be made,
  - (c) the information to be included in and documents to accompany an application,
  - (d) the notice to be given of an application and of its outcome, and
  - (e) how an application is to be determined.
- (3) Provision under subsection (2)(e) may in particular—
  - (a) confer a discretion on the registrar;
  - (b) provide for a question to be referred to a person other than the registrar for the purposes of determining the application.
- (4) An application must specify the address to be removed from the register and indicate where on the register it is.
- (5) The regulations may provide—
  - (a) that an address is not to be made unavailable for public inspection under this section unless replaced by a service address, and
  - (b) that in such a case the application must specify a service address.
- (6) Regulations under this section are subject to affirmative resolution procedure.

### **1089 Form of application for inspection or copy**

- (1) The registrar may specify the form and manner in which application is to be made for—
  - (a) inspection under section 1085, or
  - (b) a copy under section 1086.
- (2) As from 1st January 2007, applications in respect of documents subject to the Directive disclosure requirements may be submitted to the registrar in hard copy or electronic form, as the applicant chooses.  
This does not affect the registrar's power under subsection (1) above to impose requirements in respect of other matters.

### **1090 Form and manner in which copies to be provided**

- (1) The following provisions apply as regards the form and manner in which copies are to be provided under section 1086.
- (2) As from 1st January 2007, copies of documents subject to the Directive disclosure requirements must be provided in hard copy or electronic form, as the applicant chooses.  
This is subject to the following proviso.
- (3) The registrar is not obliged by subsection (2) to provide copies in electronic form of a document that was delivered to the registrar in hard copy form if—

- (a) the document was delivered to the registrar on or before 31st December 1996, or
  - (b) the document was delivered to the registrar on or before 31st December 2006 and ten years or more elapsed between the date of delivery and the date of receipt of the first application for a copy on or after 1st January 2007.
- (4) Subject to the preceding provisions of this section, the registrar may determine the form and manner in which copies are to be provided.

#### **1091 Certification of copies as accurate**

- (1) Copies provided under section 1086 in hard copy form must be certified as true copies unless the applicant dispenses with such certification.
- (2) Copies so provided in electronic form must not be certified as true copies unless the applicant expressly requests such certification.
- (3) A copy provided under section 1086, certified by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of the original document, is in all legal proceedings admissible in evidence –
  - (a) as of equal validity with the original document, and
  - (b) as evidence (in Scotland, sufficient evidence) of any fact stated in the original document of which direct oral evidence would be admissible.
- (4) The Secretary of State may make provision by regulations as to the manner in which such a certificate is to be provided in a case where the copy is provided in electronic form.
- (5) Except in the case of documents that are subject to the Directive disclosure requirements (see section 1078), copies provided by the registrar may, instead of being certified in writing to be an accurate record, be sealed with the registrar's official seal.

#### **1092 Issue of process for production of records kept by the registrar**

- (1) No process for compelling the production of a record kept by the registrar shall issue from any court except with the permission of the court.
- (2) Any such process shall bear on it a statement that it is issued with the permission of the court.

#### *Correction or removal of material on the register*

#### **1093 Registrar's notice to resolve inconsistency on the register**

- (1) Where it appears to the registrar that the information contained in a document delivered to the registrar is inconsistent with other information on the register, the registrar may give notice to the company to which the document relates –
  - (a) stating in what respects the information contained in it appears to be inconsistent with other information on the register, and
  - (b) requiring the company to take steps to resolve the inconsistency.
- (2) The notice must –
  - (a) state the date on which it is issued, and

- (b) require the delivery to the registrar, within 14 days after that date, of such replacement or additional documents as may be required to resolve the inconsistency.
- (3) If the necessary documents are not delivered within the period specified, an offence is committed by –
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

#### **1094 Administrative removal of material from the register**

- (1) The registrar may remove from the register anything that there was power, but no duty, to include.
- (2) This power is exercisable, in particular, so as to remove –
  - (a) unnecessary material within the meaning of section 1074, and
  - (b) material derived from a document that has been replaced under –
    - section 1076 (replacement of document not meeting requirements for proper delivery), or
    - section 1093 (notice to remedy inconsistency on the register).
- (3) This section does not authorise the removal from the register of –
  - (a) anything whose registration has had legal consequences in relation to the company as regards –
    - (i) its formation,
    - (ii) a change of name,
    - (iii) its re-registration,
    - (iv) its becoming or ceasing to be a community interest company,
    - (v) a reduction of capital,
    - (vi) a change of registered office,
    - (vii) the registration of a charge, or
    - (viii) its dissolution;
  - (b) an address that is a person's registered address for the purposes of section 1140 (service of documents on directors, secretaries and others).
- (4) On or before removing any material under this section (otherwise than at the request of the company) the registrar must give notice –
  - (a) to the person by whom the material was delivered (if the identity, and name and address of that person are known), or
  - (b) to the company to which the material relates (if notice cannot be given under paragraph (a) and the identity of that company is known).
- (5) The notice must –
  - (a) state what material the registrar proposes to remove, or has removed, and on what grounds, and
  - (b) state the date on which it is issued.

**1095 Rectification of register on application to registrar**

- (1) The Secretary of State may make provision by regulations requiring the registrar, on application, to remove from the register material of a description specified in the regulations that –
  - (a) derives from anything invalid or ineffective or that was done without the authority of the company, or
  - (b) is factually inaccurate, or is derived from something that is factually inaccurate or forged.
- (2) The regulations may make provision as to –
  - (a) who may make an application,
  - (b) the information to be included in and documents to accompany an application,
  - (c) the notice to be given of an application and of its outcome,
  - (d) a period in which objections to an application may be made, and
  - (e) how an application is to be determined.
- (3) An application must –
  - (a) specify what is to be removed from the register and indicate where on the register it is, and
  - (b) be accompanied by a statement that the material specified in the application complies with this section and the regulations.
- (4) If no objections are made to the application, the registrar may accept the statement as sufficient evidence that the material specified in the application should be removed from the register.
- (5) Where anything is removed from the register under this section the registration of which had legal consequences as mentioned in section 1094(3), any person appearing to the court to have a sufficient interest may apply to the court for such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register.
- (6) Regulations under this section are subject to affirmative resolution procedure.

**1096 Rectification of the register under court order**

- (1) The registrar shall remove from the register any material –
  - (a) that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the company, or
  - (b) that a court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged,and that the court directs should be removed from the register.
- (2) The court order must specify what is to be removed from the register and indicate where on the register it is.
- (3) The court must not make an order for the removal from the register of anything the registration of which had legal consequences as mentioned in section 1094(3) unless satisfied –
  - (a) that the presence of the material on the register has caused, or may cause, damage to the company, and

- (b) that the company's interest in removing the material outweighs any interest of other persons in the material continuing to appear on the register.
- (4) Where in such a case the court does make an order for removal, it may make such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register.
- (5) A copy of the court's order must be sent to the registrar for registration.
- (6) This section does not apply where the court has other, specific, powers to deal with the matter, for example under –
  - (a) the provisions of Part 15 relating to the revision of defective accounts and reports, or
  - (b) section 873 or 888 (rectification of the register of charges).

#### **1097 Powers of court on ordering removal of material from the register**

- (1) Where the court makes an order for the removal of anything from the register under section 1096 (rectification of the register), it may give directions under this section.
- (2) It may direct that any note on the register that is related to the material that is the subject of the court's order shall be removed from the register.
- (3) It may direct that its order shall not be available for public inspection as part of the register.
- (4) It may direct –
  - (a) that no note shall be made on the register as a result of its order, or
  - (b) that any such note shall be restricted to such matters as may be specified by the court.
- (5) The court shall not give any direction under this section unless it is satisfied –
  - (a) that –
    - (i) the presence on the register of the note or, as the case may be, of an unrestricted note, or
    - (ii) the availability for public inspection of the court's order, may cause damage to the company, and
  - (b) that the company's interest in non-disclosure outweighs any interest of other persons in disclosure.

#### **1098 Public notice of removal of certain material from the register**

- (1) The registrar must cause to be published –
  - (a) in the Gazette, or
  - (b) in accordance with section 1116 (alternative means of giving public notice),notice of the removal from the register of any document subject to the Directive disclosure requirements (see section 1078) or of any material derived from such a document.
- (2) The notice must state the name and registered number of the company, the description of document and the date of receipt.

*The registrar's index of company names***1099 The registrar's index of company names**

- (1) The registrar of companies must keep an index of the names of the companies and other bodies to which this section applies.  
This is “the registrar's index of company names”.
- (2) This section applies to –
  - (a) UK-registered companies;
  - (b) any body to which any provision of the Companies Acts applies by virtue of regulations under section 1043 (unregistered companies); and
  - (c) overseas companies that have registered particulars with the registrar under section 1046, other than companies that appear to the registrar not to be required to do so.
- (3) This section also applies to –
  - (a) limited partnerships registered in the United Kingdom;
  - (b) limited liability partnerships incorporated in the United Kingdom;
  - (c) European Economic Interest Groupings registered in the United Kingdom;
  - (d) open-ended investment companies authorised in the United Kingdom;
  - (e) societies registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)).
- (4) The Secretary of State may by order amend subsection (3) –
  - (a) by the addition of any description of body;
  - (b) by the deletion of any description of body.
- (5) Any such order is subject to negative resolution procedure.

**1100 Right to inspect index**

Any person may inspect the registrar's index of company names.

**1101 Power to amend enactments relating to bodies other than companies**

- (1) The Secretary of State may by regulations amend the enactments relating to any description of body for the time being within section 1099(3) (bodies other than companies whose names are to be entered in the registrar's index), so as to –
  - (a) require the registrar to be provided with information as to the names of bodies registered, incorporated, authorised or otherwise regulated under those enactments, and
  - (b) make provision in relation to such bodies corresponding to that made by –
    - section 66 (company name not to be the same as another in the index), and
    - sections 67 and 68 (power to direct change of company name in case of similarity to existing name).
- (2) Regulations under this section are subject to affirmative resolution procedure.

*Language requirements: translation*

**1102 Application of language requirements**

- (1) The provisions listed below apply to all documents required to be delivered to the registrar under any provision of –
  - (a) the Companies Acts, or
  - (b) the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) The Secretary of State may make provision by regulations applying all or any of the listed provisions, with or without modifications, in relation to documents delivered to the registrar under any other enactment.
- (3) The provisions are –
  - section 1103 (documents to be drawn up and delivered in English),
  - section 1104 (documents relating to Welsh companies),
  - section 1105 (documents that may be drawn up and delivered in other languages),
  - section 1107 (certified translations).
- (4) Regulations under this section are subject to negative resolution procedure.

**1103 Documents to be drawn up and delivered in English**

- (1) The general rule is that all documents required to be delivered to the registrar must be drawn up and delivered in English.
- (2) This is subject to –
  - section 1104 (documents relating to Welsh companies) and
  - section 1105 (documents that may be drawn up and delivered in other languages).

**1104 Documents relating to Welsh companies**

- (1) Documents relating to a Welsh company may be drawn up and delivered to the registrar in Welsh.
- (2) On delivery to the registrar any such document must be accompanied by a certified translation into English, unless it is –
  - (a) of a description excepted from that requirement by regulations made by the Secretary of State, or
  - (b) in a form prescribed in Welsh (or partly in Welsh and partly in English) by virtue of section 26 of the Welsh Language Act 1993 (c. 38).
- (3) Where a document is properly delivered to the registrar in Welsh without a certified translation into English, the registrar must obtain such a translation if the document is to be available for public inspection.

The translation is treated as if delivered to the registrar in accordance with the same provision as the original.
- (4) A Welsh company may deliver to the registrar a certified translation into Welsh of any document in English that relates to the company and is or has been delivered to the registrar.

- (5) Section 1105 (which requires certified translations into English of documents delivered to the registrar in another language) does not apply to a document relating to a Welsh company that is drawn up and delivered in Welsh.

### **1105 Documents that may be drawn up and delivered in other languages**

- (1) Documents to which this section applies may be drawn up and delivered to the registrar in a language other than English, but when delivered to the registrar they must be accompanied by a certified translation into English.
- (2) This section applies to –
- (a) agreements required to be forwarded to the registrar under Chapter 3 of Part 3 (agreements affecting the company's constitution);
  - (b) documents required to be delivered under section 400(2)(e) or section 401(2)(f) (company included in accounts of larger group: required to deliver copy of group accounts);
  - (c) instruments or copy instruments required to be delivered under Part 25 (company charges);
  - (d) documents of any other description specified in regulations made by the Secretary of State.
- (3) Regulations under this section are subject to negative resolution procedure.

### **1106 Voluntary filing of translations**

- (1) A company may deliver to the registrar one or more certified translations of any document relating to the company that is or has been delivered to the registrar.
- (2) The Secretary of State may by regulations specify –
- (a) the languages, and
  - (b) the descriptions of document,
- in relation to which this facility is available.
- (3) The regulations must provide that it is available as from 1st January 2007 –
- (a) in relation to all the official languages of the European Union, and
  - (b) in relation to all documents subject to the Directive disclosure requirements (see section 1078).
- (4) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the translation in a form and manner enabling it to be associated with the original.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) This section does not apply where the original document was delivered to the registrar before this section came into force.

### **1107 Certified translations**

- (1) In this Part a “certified translation” means a translation certified to be a correct translation.
- (2) In the case of any discrepancy between the original language version of a document and a certified translation –

- (a) the company may not rely on the translation as against a third party, but
  - (b) a third party may rely on the translation unless the company shows that the third party had knowledge of the original.
- (3) A “third party” means a person other than the company or the registrar.

*Language requirements: transliteration*

**1108 Transliteration of names and addresses: permitted characters**

- (1) Names and addresses in a document delivered to the registrar must contain only letters, characters and symbols (including accents and other diacritical marks) that are permitted.
- (2) The Secretary of State may make provision by regulations –
  - (a) as to the letters, characters and symbols (including accents and other diacritical marks) that are permitted, and
  - (b) permitting or requiring the delivery of documents in which names and addresses have not been transliterated into a permitted form.
- (3) Regulations under this section are subject to negative resolution procedure.

**1109 Transliteration of names and addresses: voluntary transliteration into Roman characters**

- (1) Where a name or address is or has been delivered to the registrar in a permitted form using other than Roman characters, the company may deliver to the registrar a transliteration into Roman characters.
- (2) The power of the registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the transliteration in a form and manner enabling it to be associated with the original.

**1110 Transliteration of names and addresses: certification**

- (1) The Secretary of State may make provision by regulations requiring the certification of transliterations and prescribing the form of certification.
- (2) Different provision may be made for compulsory and voluntary transliterations.
- (3) Regulations under this section are subject to negative resolution procedure.

*Supplementary provisions*

**1111 Registrar’s requirements as to certification or verification**

- (1) Where a document required or authorised to be delivered to the registrar under any enactment is required –
  - (a) to be certified as an accurate translation or transliteration, or
  - (b) to be certified as a correct copy or verified,

the registrar may impose requirements as to the person, or description of person, by whom the certificate or verification is to be given.

- (2) The power conferred by section 1068 (registrar's requirements as to form, authentication and manner of delivery) is exercisable in relation to the certificate or verification as if it were a separate document.
- (3) Requirements imposed under this section must not be inconsistent with requirements imposed by any enactment with respect to the certification or verification of the document concerned.

#### **1112 General false statement offence**

- (1) It is an offence for a person knowingly or recklessly –
  - (a) to deliver or cause to be delivered to the registrar, for any purpose of the Companies Acts, a document, or
  - (b) to make to the registrar, for any such purpose, a statement, that is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### **1113 Enforcement of company's filing obligations**

- (1) This section applies where a company has made default in complying with any obligation under the Companies Acts –
  - (a) to deliver a document to the registrar, or
  - (b) to give notice to the registrar of any matter.
- (2) The registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the obligation.
- (3) If the company fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the company, may apply to the court for an order directing the company, and any specified officer of it, to make good the default within a specified time.
- (4) The court's order may provide that all costs (in Scotland, expenses) of or incidental to the application are to be borne by the company or by any officers of it responsible for the default.
- (5) This section does not affect the operation of any enactment making it an offence, or imposing a civil penalty, for the default.

#### **1114 Application of provisions about documents and delivery**

- (1) In this Part –

- (a) “document” means information recorded in any form, and
  - (b) references to delivering a document include forwarding, lodging, registering, sending, producing or submitting it or (in the case of a notice) giving it.
- (2) Except as otherwise provided, this Part applies in relation to the supply to the registrar of information otherwise than in documentary form as it applies in relation to the delivery of a document.

#### **1115 Supplementary provisions relating to electronic communications**

- (1) Registrar’s rules may require a company to give any necessary consents to the use of electronic means for communications by the registrar to the company as a condition of making use of any facility to deliver material to the registrar by electronic means.
- (2) A document that is required to be signed by the registrar or authenticated by the registrar’s seal shall, if sent by electronic means, be authenticated in such manner as may be specified by registrar’s rules.

#### **1116 Alternative to publication in the Gazette**

- (1) Notices that would otherwise need to be published by the registrar in the Gazette may instead be published by such means as may from time to time be approved by the registrar in accordance with regulations made by the Secretary of State.
- (2) The Secretary of State may make provision by regulations as to what alternative means may be approved.
- (3) The regulations may, in particular –
- (a) require the use of electronic means;
  - (b) require the same means to be used –
    - (i) for all notices or for all notices of specified descriptions, and
    - (ii) whether the company is registered in England and Wales, Scotland or Northern Ireland;
  - (c) impose conditions as to the manner in which access to the notices is to be made available.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) Before starting to publish notices by means approved under this section the registrar must publish at least one notice to that effect in the Gazette.
- (6) Nothing in this section prevents the registrar from giving public notice both in the Gazette and by means approved under this section.
- In that case, the requirement of public notice is met when notice is first given by either means.

#### **1117 Registrar’s rules**

- (1) Where any provision of this Part enables the registrar to make provision, or impose requirements, as to any matter, the registrar may make such provision or impose such requirements by means of rules under this section.
- This is without prejudice to the making of such provision or the imposing of such requirements by other means.

- (2) Registrar's rules –
  - (a) may make different provision for different cases, and
  - (b) may allow the registrar to disapply or modify any of the rules.
- (3) The registrar must –
  - (a) publicise the rules in a manner appropriate to bring them to the notice of persons affected by them, and
  - (b) make copies of the rules available to the public (in hard copy or electronic form).

### **1118 Payments into the Consolidated Fund**

Nothing in the Companies Acts or any other enactment as to the payment of receipts into the Consolidated Fund shall be read as affecting the operation in relation to the registrar of section 3(1) of the Government Trading Funds Act 1973 (c. 63).

### **1119 Contracting out of registrar's functions**

- (1) Where by virtue of an order made under section 69 of the Deregulation and Contracting Out Act 1994 (c. 40) a person is authorised by the registrar to accept delivery of any class of documents that are under any enactment to be delivered to the registrar, the registrar may direct that documents of that class shall be delivered to a specified address of the authorised person.  
Any such direction must be printed and made available to the public (with or without payment).
- (2) A document of that class that is delivered to an address other than the specified address is treated as not having been delivered.
- (3) Registrar's rules are not subordinate legislation for the purposes of section 71 of the Deregulation and Contracting Out Act 1994 (functions excluded from contracting out).

### **1120 Application of this Part to overseas companies**

Unless the context otherwise requires, the provisions of this Part apply to an overseas company as they apply to a company as defined in section 1.

## **PART 36**

### **OFFENCES UNDER THE COMPANIES ACTS**

#### *Liability of officer in default*

### **1121 Liability of officer in default**

- (1) This section has effect for the purposes of any provision of the Companies Acts to the effect that, in the event of contravention of an enactment in relation to a company, an offence is committed by every officer of the company who is in default.
- (2) For this purpose "officer" includes –
  - (a) any director, manager or secretary, and

- (b) any person who is to be treated as an officer of the company for the purposes of the provision in question.
- (3) An officer is “in default” for the purposes of the provision if he authorises or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.

### **1122 Liability of company as officer in default**

- (1) Where a company is an officer of another company, it does not commit an offence as an officer in default unless one of its officers is in default.
- (2) Where any such offence is committed by a company the officer in question also commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In this section “officer” and “in default” have the meanings given by section 1121.

### **1123 Application to bodies other than companies**

- (1) Section 1121 (liability of officers in default) applies to a body other than a company as it applies to a company.
- (2) As it applies in relation to a body corporate other than a company –
  - (a) the reference to a director of the company shall be read as referring –
    - (i) where the body’s affairs are managed by its members, to a member of the body,
    - (ii) in any other case, to any corresponding officer of the body, and
  - (b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the body.
- (3) As it applies in relation to a partnership –
  - (a) the reference to a director of the company shall be read as referring to a member of the partnership, and
  - (b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the partnership.
- (4) As it applies in relation to an unincorporated body other than a partnership –
  - (a) the reference to a director of the company shall be read as referring –
    - (i) where the body’s affairs are managed by its members, to a member of the body,
    - (ii) in any other case, to a member of the governing body, and
  - (b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the body.

### *Offences under the Companies Act 1985*

### **1124 Amendments of the Companies Act 1985**

Schedule 3 contains amendments of the Companies Act 1985 (c. 6) relating to offences.

*General provisions***1125 Meaning of “daily default fine”**

- (1) This section defines what is meant in the Companies Acts where it is provided that a person guilty of an offence is liable on summary conviction to a fine not exceeding a specified amount “and, for continued contravention, a daily default fine” not exceeding a specified amount.
- (2) This means that the person is liable on a second or subsequent summary conviction of the offence to a fine not exceeding the latter amount for each day on which the contravention is continued (instead of being liable to a fine not exceeding the former amount).

**1126 Consents required for certain prosecutions**

- (1) This section applies to proceedings for an offence under any of the following provisions –
  - section 458, 460 or 949 of this Act (offences of unauthorised disclosure of information);
  - section 953 of this Act (failure to comply with rules about takeover bid documents);
  - section 448, 449, 450, 451 or 453A of the Companies Act 1985 (c. 6) (offences in connection with company investigations);
  - section 798 of this Act or section 455 of the Companies Act 1985 (offence of attempting to evade restrictions on shares).
- (2) No such proceedings are to be brought in England and Wales except by or with the consent of –
  - (a) in the case of an offence under –
    - (i) section 458, 460 or 949 of this Act,
    - (ii) section 953 of this Act, or
    - (iii) section 448, 449, 450, 451 or 453A of the Companies Act 1985,the Secretary of State or the Director of Public Prosecutions;
  - (b) in the case of an offence under section 798 of this Act or section 455 of the Companies Act 1985, the Secretary of State.
- (3) No such proceedings are to be brought in Northern Ireland except by or with the consent of –
  - (a) in the case of an offence under –
    - (i) section 458, 460 or 949 of this Act,
    - (ii) section 953 of this Act, or
    - (iii) section 448, 449, 450, 451 or 453A of the Companies Act 1985,the Secretary of State or the Director of Public Prosecutions for Northern Ireland;
  - (b) in the case of an offence under section 798 of this Act or section 455 of the Companies Act 1985, the Secretary of State.

**1127 Summary proceedings: venue**

- (1) Summary proceedings for any offence under the Companies Acts may be taken –

- (a) against a body corporate, at any place at which the body has a place of business, and
  - (b) against any other person, at any place at which he is for the time being.
- (2) This is without prejudice to any jurisdiction exercisable apart from this section.

### 1128 Summary proceedings: time limit for proceedings

- (1) An information relating to an offence under the Companies Acts that is triable by a magistrates' court in England and Wales may be so tried if it is laid –
- (a) at any time within three years after the commission of the offence, and
  - (b) within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.
- (2) Summary proceedings in Scotland for an offence under the Companies Acts –
- (a) must not be commenced after the expiration of three years from the commission of the offence;
  - (b) subject to that, may be commenced at any time –
    - (i) within twelve months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge, or
    - (ii) where such evidence was reported to him by the Secretary of State, within twelve months after the date on which it came to the knowledge of the latter.

Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date when proceedings deemed to be commenced) applies for the purposes of this subsection as for the purposes of that section.

- (3) A magistrates' court in Northern Ireland has jurisdiction to hear and determine a complaint charging the commission of a summary offence under the Companies Acts provided that the complaint is made –
- (a) within three years from the time when the offence was committed, and
  - (b) within twelve months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.
- (4) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Director of Public Prosecutions for Northern Ireland or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his notice is conclusive evidence.

### 1129 Legal professional privilege

In proceedings against a person for an offence under the Companies Acts, nothing in those Acts is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).

**1130 Proceedings against unincorporated bodies**

- (1) Proceedings for an offence under the Companies Acts alleged to have been committed by an unincorporated body must be brought in the name of the body (and not in that of any of its members).
- (2) For the purposes of such proceedings –
  - (a) any rules of court relating to the service of documents have effect as if the body were a body corporate, and
  - (b) the following provisions apply as they apply in relation to a body corporate –
    - (i) in England and Wales, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43),
    - (ii) in Scotland, sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995 (c. 46),
    - (iii) in Northern Ireland, section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Article 166 of and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (3) A fine imposed on an unincorporated body on its conviction of an offence under the Companies Acts must be paid out of the funds of the body.

**1131 Imprisonment on summary conviction in England and Wales: transitory provision**

- (1) This section applies to any provision of the Companies Acts that provides that a person guilty of an offence is liable on summary conviction in England and Wales to imprisonment for a term not exceeding twelve months.
- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for "twelve months" substitute "six months".

*Production and inspection of documents***1132 Production and inspection of documents where offence suspected**

- (1) An application under this section may be made –
  - (a) in England and Wales, to a judge of the High Court by the Director of Public Prosecutions, the Secretary of State or a chief officer of police;
  - (b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate;
  - (c) in Northern Ireland, to the High Court by the Director of Public Prosecutions for Northern Ireland, the Department of Enterprise, Trade and Investment or a chief superintendent of the Police Service of Northern Ireland.
- (2) If on an application under this section there is shown to be reasonable cause to believe –
  - (a) that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs, and

- (b) that evidence of the commission of the offence is to be found in any documents in the possession or control of the company,  
an order under this section may be made.
- (3) The order may –
  - (a) authorise any person named in it to inspect the documents in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or
  - (b) require the secretary of the company, or such other officer of it as may be named in the order, to produce the documents (or any of them) to a person named in the order at a place so named.
- (4) This section applies also in relation to documents in the possession or control of a person carrying on the business of banking, so far as they relate to the company's affairs, as it applies to documents in the possession or control of the company, except that no such order as is referred to in subsection (3)(b) may be made by virtue of this subsection.
- (5) The decision under this section of a judge of the High Court, any of the Lords Commissioners of Justiciary or the High Court is not appealable.
- (6) In this section “document” includes information recorded in any form.

### *Supplementary*

#### **1133 Transitional provision**

The provisions of this Part except section 1132 do not apply to offences committed before the commencement of the relevant provision.

## **PART 37**

### COMPANIES: SUPPLEMENTARY PROVISIONS

#### *Company records*

#### **1134 Meaning of “company records”**

In this Part “company records” means –

- (a) any register, index, accounting records, agreement, memorandum, minutes or other document required by the Companies Acts to be kept by a company, and
- (b) any register kept by a company of its debenture holders.

#### **1135 Form of company records**

- (1) Company records –
  - (a) may be kept in hard copy or electronic form, and
  - (b) may be arranged in such manner as the directors of the company think fit,provided the information in question is adequately recorded for future reference.

- (2) Where the records are kept in electronic form, they must be capable of being reproduced in hard copy form.
- (3) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (5) Any provision of an instrument made by a company before 12th February 1979 that requires a register of holders of the company's debentures to be kept in hard copy form is to be read as requiring it to be kept in hard copy or electronic form.

### **1136 Regulations about where certain company records to be kept available for inspection**

- (1) The Secretary of State may make provision by regulations specifying places other than a company's registered office at which company records required to be kept available for inspection under a relevant provision may be so kept in compliance with that provision.
- (2) The "relevant provisions" are –
  - section 114 (register of members);
  - section 162 (register of directors);
  - section 228 (directors' service contracts);
  - section 237 (directors' indemnities);
  - section 275 (register of secretaries);
  - section 358 (records of resolutions etc);
  - section 702 (contracts relating to purchase of own shares);
  - section 720 (documents relating to redemption or purchase of own shares out of capital by private company);
  - section 743 (register of debenture holders);
  - section 805 (report to members of outcome of investigation by public company into interests in its shares);
  - section 809 (register of interests in shares disclosed to public company);
  - section 877 (instruments creating charges and register of charges: England and Wales);
  - section 892 (instruments creating charges and register of charges: Scotland).
- (3) The regulations may specify a place by reference to the company's principal place of business, the part of the United Kingdom in which the company is registered, the place at which the company keeps any other records available for inspection or in any other way.
- (4) The regulations may provide that a company does not comply with a relevant provision by keeping company records available for inspection at a place specified in the regulations unless conditions specified in the regulations are met.
- (5) The regulations –
  - (a) need not specify a place in relation to each relevant provision;

- (b) may specify more than one place in relation to a relevant provision.
- (6) A requirement under a relevant provision to keep company records available for inspection is not complied with by keeping them available for inspection at a place specified in the regulations unless all the company's records subject to the requirement are kept there.
- (7) Regulations under this section are subject to negative resolution procedure.

### **1137 Regulations about inspection of records and provision of copies**

- (1) The Secretary of State may make provision by regulations as to the obligations of a company that is required by any provision of the Companies Acts –
  - (a) to keep available for inspection any company records, or
  - (b) to provide copies of any company records.
- (2) A company that fails to comply with the regulations is treated as having refused inspection or, as the case may be, having failed to provide a copy.
- (3) The regulations may –
  - (a) make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection, and
  - (b) define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.
- (4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.
- (5) Nothing in any provision of this Act or in the regulations shall be read as preventing a company –
  - (a) from affording more extensive facilities than are required by the regulations, or
  - (b) where a fee may be charged, from charging a lesser fee than that prescribed or none at all.
- (6) Regulations under this section are subject to negative resolution procedure.

### **1138 Duty to take precautions against falsification**

- (1) Where company records are kept otherwise than in bound books, adequate precautions must be taken –
  - (a) to guard against falsification, and
  - (b) to facilitate the discovery of falsification.
- (2) If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) This section does not apply to the documents required to be kept under –
  - (a) section 228 (copy of director's service contract or memorandum of its terms); or

- (b) section 237 (qualifying indemnity provision).

*Service addresses*

**1139 Service of documents on company**

- (1) A document may be served on a company registered under this Act by leaving it at, or sending it by post to, the company's registered office.
- (2) A document may be served on an overseas company whose particulars are registered under section 1046 –
  - (a) by leaving it at, or sending it by post to, the registered address of any person resident in the United Kingdom who is authorised to accept service of documents on the company's behalf, or
  - (b) if there is no such person, or if any such person refuses service or service cannot for any other reason be effected, by leaving it at or sending by post to any place of business of the company in the United Kingdom.
- (3) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.
- (4) Where a company registered in Scotland or Northern Ireland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company's principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company.

Where process is served on a company under this subsection, the person issuing out the process must send a copy of it by post to the company's registered office.
- (5) Further provision as to service and other matters is made in the company communications provisions (see section 1143).

**1140 Service of documents on directors, secretaries and others**

- (1) A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address.
- (2) This section applies to –
  - (a) a director or secretary of a company;
  - (b) in the case of an overseas company whose particulars are registered under section 1046, a person holding any such position as may be specified for the purposes of this section by regulations under that section;
  - (c) a person appointed in relation to a company as –
    - (i) a judicial factor (in Scotland),
    - (ii) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or
    - (iii) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
- (3) This section applies whatever the purpose of the document in question.

It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.

- (4) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.
- (5) If notice of a change of that address is given to the registrar, a person may validly serve a document at the address previously registered until the end of the period of 14 days beginning with the date on which notice of the change is registered.
- (6) Service may not be effected by virtue of this section at an address –
  - (a) if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment;
  - (b) in the case of a person holding any such position as is mentioned in subsection (2)(b), if the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 1046.
- (7) Further provision as to service and other matters is made in the company communications provisions (see section 1143).
- (8) Nothing in this section shall be read as affecting any enactment or rule of law under which permission is required for service out of the jurisdiction.

#### **1141 Service addresses**

- (1) In the Companies Acts a "service address", in relation to a person, means an address at which documents may be effectively served on that person.
- (2) The Secretary of State may by regulations specify conditions with which a service address must comply.
- (3) Regulations under this section are subject to negative resolution procedure.

#### **1142 Requirement to give service address**

Any obligation under the Companies Acts to give a person's address is, unless otherwise expressly provided, to give a service address for that person.

#### *Sending or supplying documents or information*

#### **1143 The company communications provisions**

- (1) The provisions of sections 1144 to 1148 and Schedules 4 and 5 ("the company communications provisions") have effect for the purposes of any provision of the Companies Acts that authorises or requires documents or information to be sent or supplied by or to a company.
- (2) The company communications provisions have effect subject to any requirements imposed, or contrary provision made, by or under any enactment.

- (3) In particular, in their application in relation to documents or information to be sent or supplied to the registrar, they have effect subject to the provisions of Part 35.
- (4) For the purposes of subsection (2), provision is not to be regarded as contrary to the company communications provisions by reason only of the fact that it expressly authorises a document or information to be sent or supplied in hard copy form, in electronic form or by means of a website.

#### **1144 Sending or supplying documents or information**

- (1) Documents or information to be sent or supplied to a company must be sent or supplied in accordance with the provisions of Schedule 4.
- (2) Documents or information to be sent or supplied by a company must be sent or supplied in accordance with the provisions of Schedule 5.
- (3) The provisions referred to in subsection (2) apply (and those referred to in subsection (1) do not apply) in relation to documents or information that are to be sent or supplied by one company to another.

#### **1145 Right to hard copy version**

- (1) Where a member of a company or a holder of a company's debentures has received a document or information from the company otherwise than in hard copy form, he is entitled to require the company to send him a version of the document or information in hard copy form.
- (2) The company must send the document or information in hard copy form within 21 days of receipt of the request from the member or debenture holder.
- (3) The company may not make a charge for providing the document or information in that form.
- (4) If a company fails to comply with this section, an offence is committed by the company and every officer of it who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **1146 Requirement of authentication**

- (1) This section applies in relation to the authentication of a document or information sent or supplied by a person to a company.
- (2) A document or information sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.
- (3) A document or information sent or supplied in electronic form is sufficiently authenticated—
  - (a) if the identity of the sender is confirmed in a manner specified by the company, or
  - (b) where no such manner has been specified by the company, if the communication contains or is accompanied by a statement of the

identity of the sender and the company has no reason to doubt the truth of that statement.

- (4) Where a document or information is sent or supplied by one person on behalf of another, nothing in this section affects any provision of the company's articles under which the company may require reasonable evidence of the authority of the former to act on behalf of the latter.

#### **1147 Deemed delivery of documents and information**

- (1) This section applies in relation to documents and information sent or supplied by a company.
- (2) Where –
- (a) the document or information is sent by post (whether in hard copy or electronic form) to an address in the United Kingdom, and
  - (b) the company is able to show that it was properly addressed, prepaid and posted,
- it is deemed to have been received by the intended recipient 48 hours after it was posted.
- (3) Where –
- (a) the document or information is sent or supplied by electronic means, and
  - (b) the company is able to show that it was properly addressed,
- it is deemed to have been received by the intended recipient 48 hours after it was sent.
- (4) Where the document or information is sent or supplied by means of a website, it is deemed to have been received by the intended recipient –
- (a) when the material was first made available on the website, or
  - (b) if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.
- (5) In calculating a period of hours for the purposes of this section, no account shall be taken of any part of a day that is not a working day.
- (6) This section has effect subject to –
- (a) in its application to documents or information sent or supplied by a company to its members, any contrary provision of the company's articles;
  - (b) in its application to documents or information sent or supplied by a company to its debentures holders, any contrary provision in the instrument constituting the debentures;
  - (c) in its application to documents or information sent or supplied by a company to a person otherwise than in his capacity as a member or debenture holder, any contrary provision in an agreement between the company and that person.

#### **1148 Interpretation of company communications provisions**

- (1) In the company communications provisions –
- “address” includes a number or address used for the purposes of sending or receiving documents or information by electronic means;
  - “company” includes any body corporate;

“document” includes summons, notice, order or other legal process and registers.

- (2) References in the company communications provisions to provisions of the Companies Acts authorising or requiring a document or information to be sent or supplied include all such provisions, whatever expression is used, and references to documents or information being sent or supplied shall be construed accordingly.
- (3) References in the company communications provisions to documents or information being sent or supplied by or to a company include references to documents or information being sent or supplied by or to the directors of a company acting on behalf of the company.

*Requirements as to independent valuation*

#### **1149 Application of valuation requirements**

The provisions of sections 1150 to 1153 apply to the valuation and report required by –

- section 93 (re-registration as public company: recent allotment of shares for non-cash consideration);
- section 593 (allotment of shares of public company in consideration of non-cash asset);
- section 599 (transfer of non-cash asset to public company).

#### **1150 Valuation by qualified independent person**

- (1) The valuation and report must be made by a person (“the valuer”) who –
  - (a) is eligible for appointment as a statutory auditor (see section 1212), and
  - (b) meets the independence requirement in section 1151.
- (2) However, where it appears to the valuer to be reasonable for the valuation of the consideration, or part of it, to be made by (or for him to accept a valuation made by) another person who –
  - (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it, and
  - (b) is not an officer or employee of –
    - (i) the company, or
    - (ii) any other body corporate that is that company’s subsidiary or holding company or a subsidiary of that company’s holding company,
 or a partner of or employed by any such officer or employee,
 he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this section.
- (3) The references in subsection (2)(b) to an officer or employee do not include an auditor.
- (4) Where the consideration or part of it is valued by a person other than the valuer himself, the latter’s report must state that fact and shall also –
  - (a) state the former’s name and what knowledge and experience he has to carry out the valuation, and

- (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of that valuation.

### **1151 The independence requirement**

- (1) A person meets the independence requirement for the purposes of section 1150 only if—
  - (a) he is not—
    - (i) an officer or employee of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;
  - (b) he is not—
    - (i) an officer or employee of an associated undertaking of the company, or
    - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; and
  - (c) there does not exist between—
    - (i) the person or an associate of his, and
    - (ii) the company or an associated undertaking of the company, a connection of any such description as may be specified by regulations made by the Secretary of State.
- (2) An auditor of the company is not regarded as an officer or employee of the company for this purpose.
- (3) In this section—
  - “associated undertaking” means—
    - (a) a parent undertaking or subsidiary undertaking of the company, or
    - (b) a subsidiary undertaking of a parent undertaking of the company; and
  - “associate” has the meaning given by section 1152.
- (4) Regulations under this section are subject to negative resolution procedure.

### **1152 Meaning of “associate”**

- (1) This section defines “associate” for the purposes of section 1151 (valuation: independence requirement).
- (2) In relation to an individual, “associate” means—
  - (a) that individual’s spouse or civil partner or minor child or step-child,
  - (b) any body corporate of which that individual is a director, and
  - (c) any employee or partner of that individual.
- (3) In relation to a body corporate, “associate” means—
  - (a) any body corporate of which that body is a director,
  - (b) any body corporate in the same group as that body, and
  - (c) any employee or partner of that body or of any body corporate in the same group.

- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means –
  - (a) any body corporate of which that partnership is a director,
  - (b) any employee of or partner in that partnership, and
  - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”.

### 1153 Valuer entitled to full disclosure

- (1) A person carrying out a valuation or making a report with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to –
  - (a) carry out the valuation or make the report, and
  - (b) provide any note required by section 596(3) or 600(3) (note required where valuation carried out by another person).
- (2) A person who knowingly or recklessly makes a statement to which this subsection applies that is misleading, false or deceptive in a material particular commits an offence.
- (3) Subsection (2) applies to a statement –
  - (a) made (whether orally or in writing) to a person carrying out a valuation or making a report, and
  - (b) conveying or purporting to convey any information or explanation which that person requires, or is entitled to require, under subsection (1).
- (4) A person guilty of an offence under subsection (2) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

#### *Notice of appointment of certain officers*

### 1154 Duty to notify registrar of certain appointments etc

- (1) Notice must be given to the registrar of the appointment in relation to a company of –
  - (a) a judicial factor (in Scotland),
  - (b) a receiver and manager appointed under section 18 of the Charities Act 1993 (c. 10), or

- (c) a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
- (2) The notice must be given –
  - (a) in the case of appointment of a judicial factor, by the judicial factor;
  - (b) in the case of appointment of a receiver and manager under section 18 of the Charities Act 1993 (c. 10), by the Charity Commission;
  - (c) in the case of appointment of a manager under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, by the Regulator of Community Interest Companies.
- (3) The notice must specify an address at which service of documents (including legal process) may be effected on the person appointed.  
Notice of a change in the address for service may be given to the registrar by the person appointed.
- (4) Where notice has been given under this section of the appointment of a person, notice must also be given to the registrar of the termination of the appointment.  
This notice must be given by the person specified in subsection (2).

#### **1155 Offence of failure to give notice**

- (1) If a judicial factor fails to give notice of his appointment in accordance with section 1154 within the period of 14 days after the appointment he commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

#### *Courts and legal proceedings*

#### **1156 Meaning of “the court”**

- (1) Except as otherwise provided, in the Companies Acts “the court” means –
  - (a) in England and Wales, the High Court or (subject to subsection (3)) a county court;
  - (b) in Scotland, the Court of Session or the sheriff court;
  - (c) in Northern Ireland, the High Court.
- (2) The provisions of the Companies Acts conferring jurisdiction on “the court” as defined above have effect subject to any enactment or rule of law relating to the allocation of jurisdiction or distribution of business between courts in any part of the United Kingdom.
- (3) The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order –
  - (a) exclude a county court from having jurisdiction under the Companies Acts, and
  - (b) for the purposes of that jurisdiction attach that court’s district, or any part of it, to another county court.

- (4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise his functions under subsection (3).

### 1157 Power of court to grant relief in certain cases

- (1) If in proceedings for negligence, default, breach of duty or breach of trust against—
- (a) an officer of a company, or
  - (b) a person employed by a company as auditor (whether he is or is not an officer of the company),

it appears to the court hearing the case that the officer or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.

- (2) If any such officer or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust—
- (a) he may apply to the court for relief, and
  - (b) the court has the same power to relieve him as it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant (in Scotland, the defender) ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case from the jury and forthwith direct judgment to be entered for the defendant (in Scotland, grant decree of absolvitor) on such terms as to costs (in Scotland, expenses) or otherwise as the judge may think proper.

## PART 38

### COMPANIES: INTERPRETATION

#### *Meaning of "UK-registered company"*

### 1158 Meaning of “UK-registered company”

In the Companies Acts “UK-registered company” means a company registered under this Act.

The expression does not include an overseas company that has registered particulars under section 1046.

#### *Meaning of "subsidiary" and related expressions*

### 1159 Meaning of “subsidiary” etc

- (1) A company is a “subsidiary” of another company, its “holding company”, if that other company—

- (a) holds a majority of the voting rights in it, or
  - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
  - (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it,
- or if it is a subsidiary of a company that is itself a subsidiary of that other company.
- (2) A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other’s wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
  - (3) Schedule 6 contains provisions explaining expressions used in this section and otherwise supplementing this section.
  - (4) In this section and that Schedule “company” includes any body corporate.

#### **1160 Meaning of “subsidiary” etc: power to amend**

- (1) The Secretary of State may by regulations amend the provisions of section 1159 (meaning of “subsidiary” etc) and Schedule 6 (meaning of “subsidiary” etc: supplementary provisions) so as to alter the meaning of the expressions “subsidiary”, “holding company” or “wholly-owned subsidiary”.
- (2) Regulations under this section are subject to negative resolution procedure.
- (3) Any amendment made by regulations under this section does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.
- (4) So much of section 23(3) of the Interpretation Act 1978 (c. 30) as applies section 17(2)(a) of that Act (effect of repeal and re-enactment) to deeds, instruments and documents other than enactments does not apply in relation to any repeal and re-enactment effected by regulations under this section.

#### *Meaning of “undertaking” and related expressions*

#### **1161 Meaning of “undertaking” and related expressions**

- (1) In the Companies Acts “undertaking” means –
  - (a) a body corporate or partnership, or
  - (b) an unincorporated association carrying on a trade or business, with or without a view to profit.
- (2) In the Companies Acts references to shares –
  - (a) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and
  - (b) in relation to an undertaking without capital, are to interests –
    - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.
- (3) Other expressions appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding

persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

This is subject to provision in any specific context providing for the translation of such expressions.

- (4) References in the Companies Acts to “fellow subsidiary undertakings” are to undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.
- (5) In the Companies Acts “group undertaking”, in relation to an undertaking, means an undertaking which is—
  - (a) a parent undertaking or subsidiary undertaking of that undertaking, or
  - (b) a subsidiary undertaking of any parent undertaking of that undertaking.

### 1162 Parent and subsidiary undertakings

- (1) This section (together with Schedule 7) defines “parent undertaking” and “subsidiary undertaking” for the purposes of the Companies Acts.
- (2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—
  - (a) it holds a majority of the voting rights in the undertaking, or
  - (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or
  - (c) it has the right to exercise a dominant influence over the undertaking—
    - (i) by virtue of provisions contained in the undertaking’s articles, or
    - (ii) by virtue of a control contract, or
  - (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.
- (3) For the purposes of subsection (2) an undertaking shall be treated as a member of another undertaking—
  - (a) if any of its subsidiary undertakings is a member of that undertaking, or
  - (b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.
- (4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—
  - (a) it has the power to exercise, or actually exercises, dominant influence or control over it, or
  - (b) it and the subsidiary undertaking are managed on a unified basis.
- (5) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.
- (6) Schedule 7 contains provisions explaining expressions used in this section and otherwise supplementing this section.

- (7) In this section and that Schedule references to shares, in relation to an undertaking, are to allotted shares.

*Other definitions*

**1163 “Non-cash asset”**

- (1) In the Companies Acts “non-cash asset” means any property or interest in property, other than cash.  
For this purpose “cash” includes foreign currency.
- (2) A reference to the transfer or acquisition of a non-cash asset includes –
- (a) the creation or extinction of an estate or interest in, or a right over, any property, and
  - (b) the discharge of a liability of any person, other than a liability for a liquidated sum.

**1164 Meaning of “banking company” and “banking group”**

- (1) This section defines “banking company” and “banking group” for the purposes of the Companies Acts.
- (2) “Banking company” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, other than –
- (a) a person who is not a company, and
  - (b) a person who has such permission only for the purpose of carrying on another regulated activity in accordance with permission under that Part.
- (3) The definition in subsection (2) must be read with section 22 of that Act, any relevant order under that section and Schedule 2 to that Act.
- (4) References to a banking group are to a group where the parent company is a banking company or where –
- (a) the parent company’s principal subsidiary undertakings are wholly or mainly credit institutions, and
  - (b) the parent company does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings.
- “Group” here means a parent undertaking and its subsidiary undertakings.
- (5) For the purposes of subsection (4) –
- (a) a parent company’s principal subsidiary undertakings are the subsidiary undertakings of the company whose results or financial position would principally affect the figures shown in the group accounts, and
  - (b) the management of interests in subsidiary undertakings includes the provision of services to such undertakings.

**1165 Meaning of “insurance company” and related expressions**

- (1) This section defines “insurance company”, “authorised insurance company”, “insurance group” and “insurance market activity” for the purposes of the Companies Acts.

- (2) An “authorised insurance company” means a person (whether incorporated or not) who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to effect or carry out contracts of insurance.
- (3) An “insurance company” means –
- (a) an authorised insurance company, or
  - (b) any other person (whether incorporated or not) who –
    - (i) carries on insurance market activity, or
    - (ii) may effect or carry out contracts of insurance under which the benefits provided by that person are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle.
- (4) Neither expression includes a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40).
- (5) References to an insurance group are to a group where the parent company is an insurance company or where –
- (a) the parent company’s principal subsidiary undertakings are wholly or mainly insurance companies, and
  - (b) the parent company does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings.
- “Group” here means a parent undertaking and its subsidiary undertakings.
- (6) For the purposes of subsection (5) –
- (a) a parent company’s principal subsidiary undertakings are the subsidiary undertakings of the company whose results or financial position would principally affect the figures shown in the group accounts, and
  - (b) the management of interests in subsidiary undertakings includes the provision of services to such undertakings.
- (7) “Insurance market activity” has the meaning given in section 316(3) of the Financial Services and Markets Act 2000.
- (8) References in this section to contracts of insurance and to the effecting or carrying out of such contracts must be read with section 22 of that Act, any relevant order under that section and Schedule 2 to that Act.

### 1166 “Employees’ share scheme”

For the purposes of the Companies Acts an employees’ share scheme is a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of –

- (a) the bona fide employees or former employees of –
  - (i) the company,
  - (ii) any subsidiary of the company, or
  - (iii) the company’s holding company or any subsidiary of the company’s holding company, or
- (b) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees.

### **1167 Meaning of “prescribed”**

In the Companies Acts “prescribed” means prescribed (by order or by regulations) by the Secretary of State.

### **1168 Hard copy and electronic form and related expressions**

- (1) The following provisions apply for the purposes of the Companies Acts.
- (2) A document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read.  
References to hard copy have a corresponding meaning.
- (3) A document or information is sent or supplied in electronic form if it is sent or supplied –
  - (a) by electronic means (for example, by e-mail or fax), or
  - (b) by any other means while in an electronic form (for example, sending a disk by post).References to electronic copy have a corresponding meaning.
- (4) A document or information is sent or supplied by electronic means if it is –
  - (a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data, and
  - (b) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.References to electronic means have a corresponding meaning.
- (5) A document or information authorised or required to be sent or supplied in electronic form must be sent or supplied in a form, and by a means, that the sender or supplier reasonably considers will enable the recipient –
  - (a) to read it, and
  - (b) to retain a copy of it.
- (6) For the purposes of this section, a document or information can be read only if –
  - (a) it can be read with the naked eye, or
  - (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.
- (7) The provisions of this section apply whether the provision of the Companies Acts in question uses the words “sent” or “supplied” or uses other words (such as “deliver”, “provide”, “produce” or, in the case of a notice, “give”) to refer to the sending or supplying of a document or information.

### **1169 Dormant companies**

- (1) For the purposes of the Companies Acts a company is “dormant” during any period in which it has no significant accounting transaction.
- (2) A “significant accounting transaction” means a transaction that is required by section 386 to be entered in the company’s accounting records.
- (3) In determining whether or when a company is dormant, there shall be disregarded –

- (a) any transaction arising from the taking of shares in the company by a subscriber to the memorandum as a result of an undertaking of his in connection with the formation of the company;
  - (b) any transaction consisting of the payment of –
    - (i) a fee to the registrar on a change of the company’s name,
    - (ii) a fee to the registrar on the re-registration of the company,
    - (iii) a penalty under section 453 (penalty for failure to file accounts), or
    - (iv) a fee to the registrar for the registration of an annual return.
- (4) Any reference in the Companies Acts to a body corporate other than a company being dormant has a corresponding meaning.

### 1170 Meaning of “EEA State” and related expressions

In the Companies Acts –

“EEA State” means a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time);

“EEA company” and “EEA undertaking” mean a company or undertaking governed by the law of an EEA State.

### 1171 The former Companies Acts

In the Companies Acts –

“the former Companies Acts” means –

- (a) the Joint Stock Companies Acts, the Companies Act 1862 (c. 89), the Companies (Consolidation) Act 1908 (c. 69), the Companies Act 1929 (c. 23), the Companies Act (Northern Ireland) 1932 (c. 7 (N.I.)), the Companies Acts 1948 to 1983, the Companies Act (Northern Ireland) 1960 (c. 22 (N.I.)), the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) and the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9)), and
- (b) the provisions of the Companies Act 1985 (c. 6) and the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) that are no longer in force;

“the Joint Stock Companies Acts” means the Joint Stock Companies Act 1856 (c. 47), the Joint Stock Companies Acts 1856, 1857 (20 & 21 Vict. c. 14), the Joint Stock Banking Companies Act 1857 (c. 49), and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability (1858 c. 91), but does not include the Joint Stock Companies Act 1844 (c. 110).

### *General*

### 1172 References to requirements of this Act

References in the company law provisions of this Act to the requirements of this Act include the requirements of regulations and orders made under it.

### 1173 Minor definitions: general

(1) In the Companies Acts –

“body corporate” and “corporation” include a body incorporated outside the United Kingdom, but do not include –

- (a) a corporation sole, or
- (b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“credit institution” means a credit institution as defined in Article 4.1(a) of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions;

“financial institution” means a financial institution within the meaning of Article 1.1 of the Council Directive on the obligations of branches established in a Member State of credit and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (the Bank Branches Directive, 89/117/EEC);

“firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association;

“the Gazette” means –

- (a) as respects companies registered in England and Wales, the London Gazette,
- (b) as respects companies registered in Scotland, the Edinburgh Gazette, and
- (c) as respects companies registered in Northern Ireland, the Belfast Gazette;

“hire-purchase agreement” has the same meaning as in the Consumer Credit Act 1974 (c. 39);

“officer”, in relation to a body corporate, includes a director, manager or secretary;

“parent company” means a company that is a parent undertaking (see section 1162 and Schedule 7);

“regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000 (c. 8);

“regulated market” has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14));

“working day”, in relation to a company, means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the company is registered.

(2) In relation to an EEA State that has not implemented Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments, the following definition of “regulated market” has effect in place of that in subsection (1) –

“regulated market” has the same meaning as it has in Council Directive 93/22/EEC on investment services in the securities field.

**1174 Index of defined expressions**

Schedule 8 contains an index of provisions defining or otherwise explaining expressions used in the Companies Acts.

**PART 39**

## COMPANIES: MINOR AMENDMENTS

**1175 Removal of special provisions about accounts and audit of charitable companies**

- (1) Part 7 of the Companies Act 1985 (c. 6) and Part 8 of the Companies (Northern Ireland) Order 1986 (accounts and audit) are amended in accordance with Schedule 9 to this Act so as to remove the special provisions about companies that are charities.
- (2) In that Schedule—
  - Part 1 contains repeals and consequential amendments of provisions of the Companies Act 1985;
  - Part 2 contains repeals and consequential amendments of provisions of the Companies (Northern Ireland) Order 1986.

**1176 Power of Secretary of State to bring civil proceedings on company's behalf**

- (1) Section 438 of the Companies Act 1985 (power of Secretary of State to bring civil proceedings on company's behalf) shall cease to have effect.
- (2) In section 439 of that Act (expenses of investigating company's affairs)—
  - (a) in subsection (2) omit “, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438,”;
  - (b) omit subsections (3) and (7) (which relate to section 438);
  - (c) in subsection (8)—
    - (i) for “subsections (2) and (3)” substitute “subsection (2)”, and
    - (ii) omit “; and any such liability imposed by subsection (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subsection (3)”.
- (3) In section 453(1A) of that Act (investigation of overseas companies: provisions not applicable), omit paragraph (b) (which relates to section 438).
- (4) Nothing in this section affects proceedings brought under section 438 before the commencement of this section.

**1177 Repeal of certain provisions about company directors**

The following provisions of Part 10 of the Companies Act 1985 shall cease to have effect—

- section 311 (prohibition on tax-free payments to directors);
- sections 323 and 327 (prohibition on directors dealing in share options);
- sections 324 to 326 and 328 to 329, and Parts 2 to 4 of Schedule 13 (register of directors' interests);
- sections 343 and 344 (special procedure for disclosure by banks).

### **1178 Repeal of requirement that certain companies publish periodical statement**

The following provisions shall cease to have effect –  
section 720 of the Companies Act 1985 (c. 6) (certain companies to publish periodical statement), and  
Schedule 23 to that Act (form of statement under section 720).

### **1179 Repeal of requirement that Secretary of State prepare annual report**

Section 729 of the Companies Act 1985 (annual report to Parliament by Secretary of State on matters within the Companies Acts) shall cease to have effect.

### **1180 Repeal of certain provisions about company charges**

Part 4 of the Companies Act 1989 (c. 40) (registration of company charges), which has not been brought into force, is repealed.

### **1181 Access to constitutional documents of RTE and RTM companies**

- (1) The Secretary of State may by order –
  - (a) amend Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) for the purpose of facilitating access to the provisions of the articles or any other constitutional document of RTE companies;
  - (b) amend Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (c. 15) (leasehold reform) for the purpose of facilitating access to the provisions of the articles or any other constitutional document of RTM companies.
- (2) References in subsection (1) to provisions of a company's articles or any other constitutional document include any provisions included in those documents by virtue of any enactment.
- (3) An order under this section is subject to negative resolution procedure.
- (4) In this section –
  - “RTE companies” has the same meaning as in Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993;
  - “RTM companies” has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.

## **PART 40**

### **COMPANY DIRECTORS: FOREIGN DISQUALIFICATION ETC**

#### *Introductory*

### **1182 Persons subject to foreign restrictions**

- (1) This section defines what is meant by references in this Part to a person being subject to foreign restrictions.
- (2) A person is subject to foreign restrictions if under the law of a country or territory outside the United Kingdom –

- (a) he is, by reason of misconduct or unfitness, disqualified to any extent from acting in connection with the affairs of a company,
  - (b) he is, by reason of misconduct or unfitness, required –
    - (i) to obtain permission from a court or other authority, or
    - (ii) to meet any other condition,
 before acting in connection with the affairs of a company, or
  - (c) he has, by reason of misconduct or unfitness, given undertakings to a court or other authority of a country or territory outside the United Kingdom –
    - (i) not to act in connection with the affairs of a company, or
    - (ii) restricting the extent to which, or the way in which, he may do so.
- (3) The references in subsection (2) to acting in connection with the affairs of a company are to doing any of the following –
- (a) being a director of a company,
  - (b) acting as receiver of a company’s property, or
  - (c) being concerned or taking part in the promotion, formation or management of a company.
- (4) In this section –
- (a) “company” means a company incorporated or formed under the law of the country or territory in question, and
  - (b) in relation to such a company –
    - “director” means the holder of an office corresponding to that of director of a UK company; and
    - “receiver” includes any corresponding officer under the law of that country or territory.

### 1183 Meaning of “the court” and “UK company”

In this Part –

“the court” means –

- (a) in England and Wales, the High Court or a county court;
- (b) in Scotland, the Court of Session or the sheriff court;
- (c) in Northern Ireland, the High Court;

“UK company” means a company registered under this Act.

### *Power to disqualify*

### 1184 Disqualification of persons subject to foreign restrictions

- (1) The Secretary of State may make provision by regulations disqualifying a person subject to foreign restrictions from –
- (a) being a director of a UK company,
  - (b) acting as receiver of a UK company’s property, or
  - (c) in any way, whether directly or indirectly, being concerned or taking part in the promotion, formation or management of a UK company.
- (2) The regulations may provide that a person subject to foreign restrictions –
- (a) is disqualified automatically by virtue of the regulations, or

- (b) may be disqualified by order of the court on the application of the Secretary of State.
- (3) The regulations may provide that the Secretary of State may accept an undertaking (a “disqualification undertaking”) from a person subject to foreign restrictions that he will not do anything which would be in breach of a disqualification under subsection (1).
- (4) In this Part –
  - (a) a “person disqualified under this Part” is a person –
    - (i) disqualified as mentioned in subsection (2)(a) or (b), or
    - (ii) who has given and is subject to a disqualification undertaking;
  - (b) references to a breach of a disqualification include a breach of a disqualification undertaking.
- (5) The regulations may provide for applications to the court by persons disqualified under this Part for permission to act in a way which would otherwise be in breach of the disqualification.
- (6) The regulations must provide that a person ceases to be disqualified under this Part on his ceasing to be subject to foreign restrictions.
- (7) Regulations under this section are subject to affirmative resolution procedure.

#### **1185 Disqualification regulations: supplementary**

- (1) Regulations under section 1184 may make different provision for different cases and may in particular distinguish between cases by reference to –
  - (a) the conduct on the basis of which the person became subject to foreign restrictions;
  - (b) the nature of the foreign restrictions;
  - (c) the country or territory under whose law the foreign restrictions were imposed.
- (2) Regulations under section 1184(2)(b) or (5) (provision for applications to the court) –
  - (a) must specify the grounds on which an application may be made;
  - (b) may specify factors to which the court shall have regard in determining an application.
- (3) The regulations may, in particular, require the court to have regard to the following factors –
  - (a) whether the conduct on the basis of which the person became subject to foreign restrictions would, if done in relation to a UK company, have led a court to make a disqualification order on an application under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4));
  - (b) in a case in which the conduct on the basis of which the person became subject to foreign restrictions would not be unlawful if done in relation to a UK company, the fact that the person acted unlawfully under foreign law;
  - (c) whether the person’s activities in relation to UK companies began after he became subject to foreign restrictions;

- (d) whether the person's activities (or proposed activities) in relation to UK companies are undertaken (or are proposed to be undertaken) outside the United Kingdom.
- (4) Regulations under section 1184(3) (provision as to undertakings given to the Secretary of State) may include provision allowing the Secretary of State, in determining whether to accept an undertaking, to take into account matters other than criminal convictions notwithstanding that the person may be criminally liable in respect of those matters.
- (5) Regulations under section 1184(5) (provision for application to court for permission to act) may include provision –
  - (a) entitling the Secretary of State to be represented at the hearing of the application, and
  - (b) as to the giving of evidence or the calling of witnesses by the Secretary of State at the hearing of the application.

### **1186 Offence of breach of disqualification**

- (1) Regulations under section 1184 may provide that a person disqualified under this Part who acts in breach of the disqualification commits an offence.
- (2) The regulations may provide that a person guilty of such an offence is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” in subsection (2)(b)(i) substitute “six months”.

#### *Power to make persons liable for company's debts*

### **1187 Personal liability for debts of company**

- (1) The Secretary of State may provide by regulations that a person who, at a time when he is subject to foreign restrictions –
  - (a) is a director of a UK company, or
  - (b) is involved in the management of a UK company,is personally responsible for all debts and other liabilities of the company incurred during that time.
- (2) A person who is personally responsible by virtue of this section for debts and other liabilities of a company is jointly and severally liable in respect of those debts and liabilities with –
  - (a) the company, and
  - (b) any other person who (whether by virtue of this section or otherwise) is so liable.

- (3) For the purposes of this section a person is involved in the management of a company if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (4) The regulations may make different provision for different cases and may in particular distinguish between cases by reference to—
  - (a) the conduct on the basis of which the person became subject to foreign restrictions;
  - (b) the nature of the foreign restrictions;
  - (c) the country or territory under whose law the foreign restrictions were imposed.
- (5) Regulations under this section are subject to affirmative resolution procedure.

*Power to require statements to be sent to the registrar of companies*

**1188 Statements from persons subject to foreign restrictions**

- (1) The Secretary of State may make provision by regulations requiring a person who—
  - (a) is subject to foreign restrictions, and
  - (b) is not disqualified under this Part,to send a statement to the registrar if he does anything that, if done by a person disqualified under this Part, would be in breach of the disqualification.
- (2) The statement must include such information as may be specified in the regulations relating to—
  - (a) the person's activities in relation to UK companies, and
  - (b) the foreign restrictions to which the person is subject.
- (3) The statement must be sent to the registrar within such period as may be specified in the regulations.
- (4) The regulations may make different provision for different cases and may in particular distinguish between cases by reference to—
  - (a) the conduct on the basis of which the person became subject to foreign restrictions;
  - (b) the nature of the foreign restrictions;
  - (c) the country or territory under whose law the foreign restrictions were imposed.
- (5) Regulations under this section are subject to affirmative resolution procedure.

**1189 Statements from persons disqualified**

- (1) The Secretary of State may make provision by regulations requiring a statement or notice sent to the registrar of companies under any of the provisions listed below that relates (wholly or partly) to a person who—
  - (a) is a person disqualified under this Part, or
  - (b) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),to be accompanied by an additional statement.

- (2) The provisions referred to above are—
  - (a) section 12 (statement of a company’s proposed officers),
  - (b) section 167(2) (notice of person having become director), and
  - (c) section 276 (notice of a person having become secretary or one of joint secretaries).
- (3) The additional statement is a statement that the person has obtained permission from a court, on an application under section 1184(5) or (as the case may be) for the purposes of section 1(1)(a) of the Company Directors Disqualification Act 1986 (c. 46) or Article 3(1) of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)), to act in the capacity in question.
- (4) Regulations under this section are subject to affirmative resolution procedure.

### 1190 Statements: whether to be made public

- (1) Regulations under section 1188 or 1189 (statements required to be sent to registrar) may provide that a statement sent to the registrar of companies under the regulations is to be treated as a record relating to a company for the purposes of section 1080 (the companies register).
- (2) The regulations may make provision as to the circumstances in which such a statement is to be, or may be—
  - (a) withheld from public inspection, or
  - (b) removed from the register.
- (3) The regulations may, in particular, provide that a statement is not to be withheld from public inspection or removed from the register unless the person to whom it relates provides such information, and satisfies such other conditions, as may be specified.
- (4) The regulations may provide that section 1081 (note of removal of material from the register) does not apply, or applies with such modifications as may be specified, in the case of material removed from the register under the regulations.
- (5) In this section “specified” means specified in the regulations.

### 1191 Offences

- (1) Regulations under section 1188 or 1189 may provide that it is an offence for a person—
  - (a) to fail to comply with a requirement under the regulations to send a statement to the registrar;
  - (b) knowingly or recklessly to send a statement under the regulations to the registrar that is misleading, false or deceptive in a material particular.
- (2) The regulations may provide that a person guilty of such an offence is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction—

- (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
  - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” in subsection (2)(b)(i) substitute “six months”.

## PART 41

### BUSINESS NAMES

#### CHAPTER 1

##### RESTRICTED OR PROHIBITED NAMES

###### *Introductory*

### **1192 Application of this Chapter**

- (1) This Chapter applies to any person carrying on business in the United Kingdom.
- (2) The provisions of this Chapter do not prevent –
  - (a) an individual carrying on business under a name consisting of his surname without any addition other than a permitted addition, or
  - (b) individuals carrying on business in partnership under a name consisting of the surnames of all the partners without any addition other than a permitted addition.
- (3) The following are the permitted additions –
  - (a) in the case of an individual, his forename or initial;
  - (b) in the case of a partnership –
    - (i) the forenames of individual partners or the initials of those forenames, or
    - (ii) where two or more individual partners have the same surname, the addition of “s” at the end of that surname;
  - (c) in either case, an addition merely indicating that the business is carried on in succession to a former owner of the business.

###### *Sensitive words or expressions*

### **1193 Name suggesting connection with government or public authority**

- (1) A person must not, without the approval of the Secretary of State, carry on business in the United Kingdom under a name that would be likely to give the impression that the business is connected with –
  - (a) Her Majesty’s Government, any part of the Scottish administration or Her Majesty’s Government in Northern Ireland,
  - (b) any local authority, or

- (c) any public authority specified for the purposes of this section by regulations made by the Secretary of State.
- (2) For the purposes of this section –
  - “local authority” means –
    - (a) a local authority within the meaning of the Local Government Act 1972 (c. 70), the Common Council of the City of London or the Council of the Isles of Scilly,
    - (b) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), or
    - (c) a district council in Northern Ireland;
  - “public authority” includes any person or body having functions of a public nature.
- (3) Regulations under this section are subject to affirmative resolution procedure.
- (4) A person who contravenes this section commits an offence.
- (5) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **1194 Other sensitive words or expressions**

- (1) A person must not, without the approval of the Secretary of State, carry on business in the United Kingdom under a name that includes a word or expression for the time being specified in regulations made by the Secretary of State under this section.
- (2) Regulations under this section are subject to approval after being made.
- (3) A person who contravenes this section commits an offence.
- (4) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

#### **1195 Requirement to seek comments of government department or other relevant body**

- (1) The Secretary of State may by regulations under –
  - (a) section 1193 (name suggesting connection with government or public authority), or
  - (b) section 1194 (other sensitive words or expressions),require that, in connection with an application for the approval of the Secretary of State under that section, the applicant must seek the view of a specified Government department or other body.

- (2) Where such a requirement applies, the applicant must request the specified department or other body (in writing) to indicate whether (and if so why) it has any objections to the proposed name.
- (3) He must submit to the Secretary of State a statement that such a request has been made and a copy of any response received from the specified body.
- (4) If these requirements are not complied with, the Secretary of State may refuse to consider the application for approval.
- (5) In this section “specified” means specified in the regulations.

#### **1196 Withdrawal of Secretary of State’s approval**

- (1) This section applies to approval given for the purposes of –
  - section 1193 (name suggesting connection with government or public authority), or
  - section 1194 (other sensitive words or expressions).
- (2) If it appears to the Secretary of State that there are overriding considerations of public policy that require such approval to be withdrawn, the approval may be withdrawn by notice in writing given to the person concerned.
- (3) The notice must state the date as from which approval is withdrawn.

#### *Misleading names*

#### **1197 Name containing inappropriate indication of company type or legal form**

- (1) The Secretary of State may make provision by regulations prohibiting a person from carrying on business in the United Kingdom under a name consisting of or containing specified words, expressions or other indications –
  - (a) that are associated with a particular type of company or form of organisation, or
  - (b) that are similar to words, expressions or other indications associated with a particular type of company or form of organisation.
- (2) The regulations may prohibit the use of words, expressions or other indications –
  - (a) in a specified part, or otherwise than in a specified part, of a name;
  - (b) in conjunction with, or otherwise than in conjunction with, such other words, expressions or indications as may be specified.
- (3) In this section “specified” means specified in the regulations.
- (4) Regulations under this section are subject to negative resolution procedure.
- (5) A person who uses a name in contravention of regulations under this section commits an offence.
- (6) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **1198 Name giving misleading indication of activities**

- (1) A person must not carry on business in the United Kingdom under a name that gives so misleading an indication of the nature of the activities of the business as to be likely to cause harm to the public.
- (2) A person who uses a name in contravention of this section commits an offence.
- (3) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### *Supplementary*

### **1199 Savings for existing lawful business names**

- (1) This section has effect in relation to—
  - sections 1192 to 1196 (sensitive words or expressions), and
  - section 1197 (inappropriate indication of company type or legal form).
- (2) Those sections do not apply to the carrying on of a business by a person who—
  - (a) carried on the business immediately before the date on which this Chapter came into force, and
  - (b) continues to carry it on under the name that immediately before that date was its lawful business name.
- (3) Where—
  - (a) a business is transferred to a person on or after the date on which this Chapter came into force, and
  - (b) that person carries on the business under the name that was its lawful business name immediately before the transfer,those sections do not apply in relation to the carrying on of the business under that name during the period of twelve months beginning with the date of the transfer.
- (4) In this section “lawful business name”, in relation to a business, means a name under which the business was carried on without contravening—
  - (a) section 2(1) of the Business Names Act 1985 (c. 7) or Article 4(1) of the Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 N.I. 7), or
  - (b) after this Chapter has come into force, the provisions of this Chapter.

## CHAPTER 2

### DISCLOSURE REQUIRED IN CASE OF INDIVIDUAL OR PARTNERSHIP

#### *Introductory*

#### **1200 Application of this Chapter**

- (1) This Chapter applies to an individual or partnership carrying on business in the United Kingdom under a business name.  
References in this Chapter to “a person to whom this Chapter applies” are to such an individual or partnership.
- (2) For the purposes of this Chapter a “business name” means a name other than –
  - (a) in the case of an individual, his surname without any addition other than a permitted addition;
  - (b) in the case of a partnership –
    - (i) the surnames of all partners who are individuals, and
    - (ii) the corporate names of all partners who are bodies corporate, without any addition other than a permitted addition.
- (3) The following are the permitted additions –
  - (a) in the case of an individual, his forename or initial;
  - (b) in the case of a partnership –
    - (i) the forenames of individual partners or the initials of those forenames, or
    - (ii) where two or more individual partners have the same surname, the addition of “s” at the end of that surname;
  - (c) in either case, an addition merely indicating that the business is carried on in succession to a former owner of the business.

#### **1201 Information required to be disclosed**

The “information required by this Chapter” is –

- (a) in the case of an individual, his name;
- (b) in the case of a partnership, the name of each member of the partnership;

and in relation to each person so named, an address in the United Kingdom at which service of any document relating in any way to the business will be effective.

#### *Disclosure requirements*

#### **1202 Disclosure required: business documents etc**

- (1) A person to whom this Chapter applies must state the information required by this Chapter, in legible characters, on all –
  - (a) business letters,
  - (b) written orders for goods or services to be supplied to the business,
  - (c) invoices and receipts issued in the course of the business, and

- (d) written demands for payment of debts arising in the course of the business.

This subsection has effect subject to section 1203 (exemption for large partnerships if certain conditions met).

- (2) A person to whom this Chapter applies must secure that the information required by this Chapter is immediately given, by written notice, to any person with whom anything is done or discussed in the course of the business and who asks for that information.
- (3) The Secretary of State may by regulations require that such notices be given in a specified form.
- (4) Regulations under this section are subject to negative resolution procedure.

### **1203 Exemption for large partnerships if certain conditions met**

- (1) Section 1202(1) (disclosure required in business documents) does not apply in relation to a document issued by a partnership of more than 20 persons if the following conditions are met.
- (2) The conditions are that—
- (a) the partnership maintains at its principal place of business a list of the names of all the partners,
  - (b) no partner's name appears in the document, except in the text or as a signatory, and
  - (c) the document states in legible characters the address of the partnership's principal place of business and that the list of the partners' names is open to inspection there.
- (3) Where a partnership maintains a list of the partners' names for the purposes of this section, any person may inspect the list during office hours.
- (4) Where an inspection required by a person in accordance with this section is refused, an offence is committed by any member of the partnership concerned who without reasonable excuse refused the inspection or permitted it to be refused.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

### **1204 Disclosure required: business premises**

- (1) A person to whom this Chapter applies must, in any premises—
- (a) where the business is carried on, and
  - (b) to which customers of the business or suppliers of goods or services to the business have access,
- display in a prominent position, so that it may easily be read by such customers or suppliers, a notice containing the information required by this Chapter.
- (2) The Secretary of State may by regulations require that such notices be displayed in a specified form.
- (3) Regulations under this section are subject to negative resolution procedure.

*Consequences of failure to make required disclosure*

**1205 Criminal consequences of failure to make required disclosure**

- (1) A person who without reasonable excuse fails to comply with the requirements of—
  - section 1202 (disclosure required: business documents etc), or
  - section 1204 (disclosure required: business premises),commits an offence.
- (2) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (4) References in this section to the requirements of section 1202 or 1204 include the requirements of regulations under that section.

**1206 Civil consequences of failure to make required disclosure**

- (1) This section applies to any legal proceedings brought by a person to whom this Chapter applies to enforce a right arising out of a contract made in the course of a business in respect of which he was, at the time the contract was made, in breach of section 1202(1) or (2) (disclosure in business documents etc) or section 1204(1) (disclosure at business premises).
- (2) The proceedings shall be dismissed if the defendant (in Scotland, the defender) to the proceedings shows—
  - (a) that he has a claim against the claimant (pursuer) arising out of the contract that he has been unable to pursue by reason of the latter's breach of the requirements of this Chapter, or
  - (b) that he has suffered some financial loss in connection with the contract by reason of the claimant's (pursuer's) breach of those requirements,unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.
- (3) References in this section to the requirements of this Chapter include the requirements of regulations under this Chapter.
- (4) This section does not affect the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

**CHAPTER 3**

SUPPLEMENTARY

**1207 Application of general provisions about offences**

The provisions of sections 1121 to 1123 (liability of officer in default) and 1125 to 1131 (general provisions about offences) apply in relation to offences under this Part as in relation to offences under the Companies Acts.

**1208 Interpretation**

In this Part –

“business” includes a profession;

“initial” includes any recognised abbreviation of a name;

“partnership” means –

(a) a partnership within the Partnership Act 1890 (c. 39), or

(b) a limited partnership registered under the Limited Partnerships Act 1907 (c. 24),

or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom;

“surname”, in relation to a peer or person usually known by a British title different from his surname, means the title by which he is known.

**PART 42**

## STATUTORY AUDITORS

**CHAPTER 1**

## INTRODUCTORY

**1209 Main purposes of Part**

The main purposes of this Part are –

- (a) to secure that only persons who are properly supervised and appropriately qualified are appointed as statutory auditors, and
- (b) to secure that audits by persons so appointed are carried out properly, with integrity and with a proper degree of independence.

**1210 Meaning of “statutory auditor” etc**

(1) In this Part “statutory auditor” means –

- (a) a person appointed as auditor under Part 16 of this Act,
- (b) a person appointed as auditor under section 77 of or Schedule 11 to the Building Societies Act 1986 (c. 53),
- (c) a person appointed as auditor of an insurer that is a friendly society under section 72 of or Schedule 14 to the Friendly Societies Act 1992 (c. 40),
- (d) a person appointed as auditor of an insurer that is an industrial and provident society under section 4 of the Friendly and Industrial and Provident Societies Act 1968 (c. 55) or under section 38 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)),
- (e) a person appointed as auditor for the purposes of regulation 3 of the Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219) or appointed to report on the “aggregate accounts” within the meaning of those Regulations,
- (f) a person appointed as auditor of an insurer for the purposes of regulation 3 of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993 (S.I. 1993/3245),

- (g) a person appointed as auditor of a bank for the purposes of regulation 4 of the Bank Accounts Directive (Miscellaneous Banks) Regulations 1991 (S.I. 1991/2704), and
  - (h) a person appointed as auditor of a prescribed person under a prescribed enactment authorising or requiring the appointment;  
and the expressions “statutory audit” and “statutory audit work” are to be construed accordingly.
- (2) In this Part “audited person” means the person in respect of whom a statutory audit is conducted.
- (3) In subsection (1) –
- “bank” means a person who –
    - (a) is a credit institution within the meaning given by Article 4.1(a) of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions, and
    - (b) is a company or a firm as defined in Article 48 of the Treaty establishing the European Community;
  - “friendly society” means a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40);
  - “industrial and provident society” means –
    - (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a society deemed by virtue of section 4 of that Act to be so registered, or
    - (b) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 or a society deemed by virtue of section 4 of that Act to be so registered;
  - “insurer” means a person who is an insurance undertaking within the meaning given by Article 2.1 of Council Directive 1991/674/EEC on the annual accounts and consolidated accounts of insurance undertakings;
  - “prescribed” means prescribed, or of a description prescribed, by order made by the Secretary of State for the purposes of subsection (1)(h).
- (4) An order under this section is subject to negative resolution procedure.

### **1211 Eligibility for appointment as a statutory auditor: overview**

A person is eligible for appointment as a statutory auditor only if the person is so eligible –

- (a) by virtue of Chapter 2 (individuals and firms), or
- (b) by virtue of Chapter 3 (Comptroller and Auditor General, etc).

## CHAPTER 2

### INDIVIDUALS AND FIRMS

#### *Eligibility for appointment*

#### **1212 Individuals and firms: eligibility for appointment as a statutory auditor**

- (1) An individual or firm is eligible for appointment as a statutory auditor if the individual or firm—
  - (a) is a member of a recognised supervisory body, and
  - (b) is eligible for appointment under the rules of that body.
- (2) In the cases to which section 1222 applies (individuals retaining only 1967 Act authorisation) a person's eligibility for appointment as a statutory auditor is restricted as mentioned in that section.

#### **1213 Effect of ineligibility**

- (1) No person may act as statutory auditor of an audited person if he is ineligible for appointment as a statutory auditor.
- (2) If at any time during his term of office a statutory auditor becomes ineligible for appointment as a statutory auditor, he must immediately—
  - (a) resign his office (with immediate effect), and
  - (b) give notice in writing to the audited person that he has resigned by reason of his becoming ineligible for appointment.
- (3) A person is guilty of an offence if—
  - (a) he acts as a statutory auditor in contravention of subsection (1), or
  - (b) he fails to give the notice mentioned in paragraph (b) of subsection (2) in accordance with that subsection.
- (4) A person guilty of an offence under subsection (3) is liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) A person is guilty of an offence if—
  - (a) he has been convicted of an offence under subsection (3)(a) or this subsection, and
  - (b) he continues to act as a statutory auditor in contravention of subsection (1) after the conviction.
- (6) A person is guilty of an offence if—
  - (a) he has been convicted of an offence under subsection (3)(b) or this subsection, and
  - (b) he continues, after the conviction, to fail to give the notice mentioned in subsection (2)(b).
- (7) A person guilty of an offence under subsection (5) or (6) is liable—
  - (a) on conviction on indictment, to a fine;

- (b) on summary conviction, to a fine not exceeding one-tenth of the statutory maximum for each day on which the act or the failure continues.
- (8) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment as a statutory auditor.

#### *Independence requirement*

### **1214 Independence requirement**

- (1) A person may not act as statutory auditor of an audited person if one or more of subsections (2), (3) and (4) apply to him.
- (2) This subsection applies if the person is –
  - (a) an officer or employee of the audited person, or
  - (b) a partner or employee of such a person, or a partnership of which such a person is a partner.
- (3) This subsection applies if the person is –
  - (a) an officer or employee of an associated undertaking of the audited person, or
  - (b) a partner or employee of such a person, or a partnership of which such a person is a partner.
- (4) This subsection applies if there exists, between –
  - (a) the person or an associate of his, and
  - (b) the audited person or an associated undertaking of the audited person, a connection of any such description as may be specified by regulations made by the Secretary of State.
- (5) An auditor of an audited person is not to be regarded as an officer or employee of the person for the purposes of subsections (2) and (3).
- (6) In this section “associated undertaking”, in relation to an audited person, means –
  - (a) a parent undertaking or subsidiary undertaking of the audited person, or
  - (b) a subsidiary undertaking of a parent undertaking of the audited person.
- (7) Regulations under subsection (4) are subject to negative resolution procedure.

### **1215 Effect of lack of independence**

- (1) If at any time during his term of office a statutory auditor becomes prohibited from acting by section 1214(1), he must immediately –
  - (a) resign his office (with immediate effect), and
  - (b) give notice in writing to the audited person that he has resigned by reason of his lack of independence.
- (2) A person is guilty of an offence if –
  - (a) he acts as a statutory auditor in contravention of section 1214(1), or

- (b) he fails to give the notice mentioned in paragraph (b) of subsection (1) in accordance with that subsection.
- (3) A person guilty of an offence under subsection (2) is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (4) A person is guilty of an offence if –
  - (a) he has been convicted of an offence under subsection (2)(a) or this subsection, and
  - (b) he continues to act as a statutory auditor in contravention of section 1214(1) after the conviction.
- (5) A person is guilty of an offence if –
  - (a) he has been convicted of an offence under subsection (2)(b) or this subsection, and
  - (b) after the conviction, he continues to fail to give the notice mentioned in subsection (1)(b).
- (6) A person guilty of an offence under subsection (4) or (5) is liable –
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding one-tenth of the statutory maximum for each day on which the act or the failure continues.
- (7) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, prohibited from acting as statutory auditor of the audited person by section 1214(1).

*Effect of appointment of a partnership*

**1216 Effect of appointment of a partnership**

- (1) This section applies where a partnership constituted under the law of –
  - (a) England and Wales,
  - (b) Northern Ireland, or
  - (c) any other country or territory in which a partnership is not a legal person,is by virtue of this Chapter appointed as statutory auditor of an audited person.
- (2) Unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners.
- (3) Where the partnership ceases, the appointment is to be treated as extending to –
  - (a) any appropriate partnership which succeeds to the practice of that partnership, or
  - (b) any other appropriate person who succeeds to that practice having previously carried it on in partnership.
- (4) For the purposes of subsection (3) –

- (a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership, and
  - (b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.
- (5) Where the partnership ceases and the appointment is not treated under subsection (3) as extending to any partnership or other person, the appointment may with the consent of the audited person be treated as extending to an appropriate partnership, or other appropriate person, who succeeds to –
- (a) the business of the former partnership, or
  - (b) such part of it as is agreed by the audited person is to be treated as comprising the appointment.
- (6) For the purposes of this section, a partnership or other person is “appropriate” if it or he –
- (a) is eligible for appointment as a statutory auditor by virtue of this Chapter, and
  - (b) is not prohibited by section 1214(1) from acting as statutory auditor of the audited person.

### *Supervisory bodies*

#### **1217 Supervisory bodies**

- (1) In this Part a “supervisory body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which maintains and enforces rules as to –
- (a) the eligibility of persons for appointment as a statutory auditor, and
  - (b) the conduct of statutory audit work,
- which are binding on persons seeking appointment or acting as a statutory auditor either because they are members of that body or because they are otherwise subject to its control.
- (2) In this Part references to the members of a supervisory body are to the persons who, whether or not members of the body, are subject to its rules in seeking appointment or acting as a statutory auditor.
- (3) In this Part references to the rules of a supervisory body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part.  
This includes rules relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.
- (4) Schedule 10 has effect with respect to the recognition of supervisory bodies for the purposes of this Part.

#### **1218 Exemption from liability for damages**

- (1) No person within subsection (2) is to be liable in damages for anything done or omitted in the discharge or purported discharge of functions to which this subsection applies.

- (2) The persons within this subsection are –
  - (a) any recognised supervisory body,
  - (b) any officer or employee of a recognised supervisory body, and
  - (c) any member of the governing body of a recognised supervisory body.
- (3) Subsection (1) applies to the functions of a recognised supervisory body so far as relating to, or to matters arising out of, any of the following –
  - (a) rules, practices, powers and arrangements of the body to which the requirements of Part 2 of Schedule 10 apply;
  - (b) the obligations with which paragraph 20 of that Schedule requires the body to comply;
  - (c) any guidance issued by the body;
  - (d) the obligations imposed on the body by or by virtue of this Part.
- (4) The reference in subsection (3)(c) to guidance issued by a recognised supervisory body is a reference to any guidance or recommendation which is –
  - (a) issued or made by it to all or any class of its members or persons seeking to become members, and
  - (b) relevant for the purposes of this Part,
 including any guidance or recommendation relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.
- (5) Subsection (1) 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 ground 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).

*Professional qualifications*

**1219 Appropriate qualifications**

- (1) A person holds an appropriate qualification for the purposes of this Chapter if and only if –
  - (a) he holds a recognised professional qualification obtained in the United Kingdom,
  - (b) immediately before the commencement of this Chapter, he –
    - (i) held an appropriate qualification for the purposes of Part 2 of the Companies Act 1989 (c. 40) (eligibility for appointment as company auditor) by virtue of section 31(1)(a) or (c) of that Act, or
    - (ii) was treated as holding an appropriate qualification for those purposes by virtue of section 31(2), (3) or (4) of that Act,
  - (c) immediately before the commencement of this Chapter, he –
    - (i) held an appropriate qualification for the purposes of Part III of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)) by virtue of Article 34(1)(a) or (c) of that Order, or
    - (ii) was treated as holding an appropriate qualification for those purposes by virtue of Article 34(2), (3) or (4) of that Order,
  - (d) he is within subsection (2),

- (e) he has been authorised to practise the profession of statutory auditor pursuant to the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18) and has fulfilled any requirements imposed pursuant to regulation 6 of those Regulations, or
  - (f) subject to any direction under section 1221(5), he is regarded for the purposes of this Chapter as holding an approved overseas qualification.
- (2) A person is within this subsection if –
- (a) before 1st January 1990, he began a course of study or practical training leading to a professional qualification in accountancy offered by a body established in the United Kingdom,
  - (b) he obtained that qualification on or after 1st January 1990 and before 1st January 1996, and
  - (c) the Secretary of State approves his qualification as an appropriate qualification for the purposes of this Chapter.
- (3) The Secretary of State may approve a qualification under subsection (2)(c) only if he is satisfied that, at the time the qualification was awarded, the body concerned had adequate arrangements to ensure that the qualification was awarded only to persons educated and trained to a standard equivalent to that required, at that time, in the case of a recognised professional qualification under Part 2 of the Companies Act 1989 (c. 40) (eligibility for appointment as company auditor).

### **1220 Qualifying bodies and recognised professional qualifications**

- (1) In this Part a “qualifying body” means a body established in the United Kingdom (whether a body corporate or an unincorporated association) which offers a professional qualification in accountancy.
- (2) In this Part references to the rules of a qualifying body are to the rules (whether or not laid down by the body itself) which the body has power to enforce and which are relevant for the purposes of this Part.  
This includes, so far as so relevant, rules relating to –
  - (a) admission to or expulsion from a course of study leading to a qualification,
  - (b) the award or deprivation of a qualification, or
  - (c) the approval of a person for the purposes of giving practical training or the withdrawal of such approval.
- (3) Schedule 11 has effect with respect to the recognition for the purposes of this Part of a professional qualification offered by a qualifying body.

### **1221 Approval of overseas qualifications**

- (1) The Secretary of State may declare that the following are to be regarded for the purposes of this Chapter as holding an approved overseas qualification –
  - (a) persons who are qualified to audit accounts under the law of a specified foreign country, or
  - (b) persons who hold a specified professional qualification in accountancy obtained in a specified foreign country.

- (2) A declaration under subsection (1)(b) may be expressed to be subject to the satisfaction of any specified requirement or requirements.
- (3) The Secretary of State may make a declaration under subsection (1) only if he is satisfied that—
  - (a) in the case of a declaration under subsection (1)(a), the fact that the persons in question are qualified to audit accounts under the law of the specified foreign country, or
  - (b) in the case of a declaration under subsection (1)(b), the specified professional qualification taken with any requirement or requirements to be specified under subsection (2),affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.
- (4) The Secretary of State may make a declaration under subsection (1) only if he is satisfied that the treatment that the persons who are the subject of the declaration will receive as a result of it is comparable to the treatment which is, or is likely to be, afforded in the specified foreign country or a part of it to—
  - (a) in the case of a declaration under subsection (1)(a), some or all persons who are eligible to be appointed as a statutory auditor, and
  - (b) in the case of a declaration under subsection (1)(b), some or all persons who hold a corresponding recognised professional qualification.
- (5) The Secretary of State may direct that persons holding an approved overseas qualification are not to be treated as holding an appropriate qualification for the purposes of this Chapter unless they hold such additional educational qualifications as the Secretary of State may specify for the purpose of ensuring that such persons have an adequate knowledge of the law and practice in the United Kingdom relevant to the audit of accounts.
- (6) The Secretary of State may give different directions in relation to different approved overseas qualifications.
- (7) The Secretary of State may, if he thinks fit, having regard to the considerations mentioned in subsections (3) and (4), withdraw a declaration under subsection (1) in relation to—
  - (a) persons becoming qualified to audit accounts under the law of the specified foreign country after such date as he may specify, or
  - (b) persons obtaining the specified professional qualification after such date as he may specify.
- (8) The Secretary of State may, if he thinks fit, having regard to the considerations mentioned in subsections (3) and (4), vary or revoke a requirement specified under subsection (2) from such date as he may specify.
- (9) In this section “foreign country”, in relation to any time, means a country or territory that, at that time, is not a “relevant State” within the meaning of the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18) or part of such a State.

#### **1222 Eligibility of individuals retaining only 1967 Act authorisation**

- (1) A person whose only appropriate qualification is based on his retention of an authorisation originally granted by the Board of Trade or the Secretary of State under section 13(1) of the Companies Act 1967 (c. 81) is eligible only for appointment as auditor of an unquoted company.

- (2) A company is “unquoted” if, at the time of the person’s appointment, neither the company, nor any parent undertaking of which it is a subsidiary undertaking, is a quoted company within the meaning of section 385(2).
- (3) References to a person eligible for appointment as a statutory auditor by virtue of this Part in enactments relating to eligibility for appointment as auditor of a person other than a company do not include a person to whom this section applies.

### *Information*

#### **1223 Matters to be notified to the Secretary of State**

- (1) The Secretary of State may require a recognised supervisory body or a recognised qualifying body –
  - (a) to notify him immediately of the occurrence of such events as he may specify in writing and to give him such information in respect of those events as is so specified;
  - (b) to give him, at such times or in respect of such periods as he may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Secretary of State may reasonably require for the exercise of his functions under this Part.
- (3) The Secretary of State may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Secretary of State specifies or approves some other manner.

#### **1224 The Secretary of State’s power to call for information**

- (1) The Secretary of State may by notice in writing require a person within subsection (2) to give him such information as he may reasonably require for the exercise of his functions under this Part.
- (2) The persons within this subsection are –
  - (a) any recognised supervisory body,
  - (b) any recognised qualifying body, and
  - (c) any person eligible for appointment as a statutory auditor by virtue of this Chapter.
- (3) The Secretary of State may require that any information which he requires under this section is to be given within such reasonable time and verified in such manner as he may specify.

### *Enforcement*

#### **1225 Compliance orders**

- (1) If at any time it appears to the Secretary of State –
  - (a) in the case of a recognised supervisory body, that any requirement of Schedule 10 is not satisfied,

- (b) in the case of a recognised professional qualification, that any requirement of Schedule 11 is not satisfied, or
  - (c) that a recognised supervisory body or a recognised qualifying body has failed to comply with an obligation to which it is subject under or by virtue of this Part,
- he may, instead of revoking the relevant recognition order, make an application to the court under this section.
- (2) If on an application under this section the court decides that the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question, it may order the body to take such steps as the court directs for securing that the requirement is satisfied or that the obligation is complied with.
  - (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

### CHAPTER 3

#### AUDITORS GENERAL

##### *Eligibility for appointment*

#### **1226 Auditors General: eligibility for appointment as a statutory auditor**

- (1) In this Part “Auditor General” means –
  - (a) the Comptroller and Auditor General,
  - (b) the Auditor General for Scotland,
  - (c) the Auditor General for Wales, or
  - (d) the Comptroller and Auditor General for Northern Ireland.
- (2) An Auditor General is eligible for appointment as a statutory auditor.
- (3) Subsection (2) is subject to any suspension notice having effect under section 1234 (notices suspending eligibility for appointment as a statutory auditor).

##### *Conduct of audits*

#### **1227 Individuals responsible for audit work on behalf of Auditors General**

An Auditor General must secure that each individual responsible for statutory audit work on behalf of that Auditor General is eligible for appointment as a statutory auditor by virtue of Chapter 2.

##### *The Independent Supervisor*

#### **1228 Appointment of the Independent Supervisor**

- (1) The Secretary of State must appoint a body (“the Independent Supervisor”) to discharge the function mentioned in section 1229(1) (“the supervision function”).
- (2) An appointment under this section must be made by order.

- (3) The order has the effect of making the body appointed under subsection (1) designated under section 5 of the Freedom of Information Act 2000 (c. 36) (further powers to designate public authorities).
- (4) A body may be appointed under this section only if it is a body corporate or an unincorporated association which appears to the Secretary of State –
  - (a) to be willing and able to discharge the supervision function, and
  - (b) to have arrangements in place relating to the discharge of that function which are such as to be likely to ensure that the conditions in subsection (5) are met.
- (5) The conditions are –
  - (a) that the supervision function will be exercised effectively, and
  - (b) where the order is to contain any requirements or other provisions specified under subsection (6), that that function will be exercised in accordance with any such requirements or provisions.
- (6) An order under this section may contain such requirements or other provisions relating to the exercise of the supervision function by the Independent Supervisor as appear to the Secretary of State to be appropriate.
- (7) An order under this section is subject to negative resolution procedure.

*Supervision of Auditors General*

**1229 Supervision of Auditors General by the Independent Supervisor**

- (1) The Independent Supervisor must supervise the performance by each Auditor General of his functions as a statutory auditor.
- (2) The Independent Supervisor must discharge that duty by –
  - (a) entering into supervision arrangements with one or more bodies, and
  - (b) overseeing the effective operation of any supervision arrangements entered into by it.
- (3) For this purpose “supervision arrangements” are arrangements entered into by the Independent Supervisor with a body, for the purposes of this section, in accordance with which the body does one or more of the following –
  - (a) determines standards relating to professional integrity and independence which must be applied by an Auditor General in statutory audit work;
  - (b) determines technical standards which must be applied by an Auditor General in statutory audit work and the manner in which those standards are to be applied in practice;
  - (c) monitors the performance of statutory audits carried out by an Auditor General;
  - (d) investigates any matter arising from the performance by an Auditor General of a statutory audit;
  - (e) holds disciplinary hearings in respect of an Auditor General which appear to be desirable following the conclusion of such investigations;
  - (f) decides whether (and, if so, what) disciplinary action should be taken against an Auditor General to whom such a hearing related.

- (4) The Independent Supervisor may enter into supervision arrangements with a body despite any relationship that may exist between the Independent Supervisor and that body.
- (5) The Independent Supervisor must notify each Auditor General in writing of any supervision arrangements that it enters into under this section.
- (6) Supervision arrangements within subsection (3)(f) may, in particular, provide for the payment by an Auditor General of a fine to any person.
- (7) Any fine received by the Independent Supervisor under supervision arrangements is to be paid into the Consolidated Fund.

### **1230 Duties of Auditors General in relation to supervision arrangements**

- (1) Each Auditor General must –
  - (a) comply with any standards of the kind mentioned in subsection (3)(a) or (b) of section 1229 determined under the supervision arrangements,
  - (b) take such steps as may be reasonably required of that Auditor General to enable his performance of statutory audits to be monitored by means of inspections carried out under the supervision arrangements, and
  - (c) comply with any decision of the kind mentioned in subsection (3)(f) of that section made under the supervision arrangements.
- (2) Each Auditor General must pay to the body or bodies with which the Independent Supervisor enters into the supervision arrangements such proportion of the costs incurred by the body or bodies for the purposes of the arrangements as the Independent Supervisor may notify to him in writing.
- (3) Expenditure under subsection (2) is –
  - (a) in the case of expenditure of the Comptroller and Auditor General, to be regarded as expenditure of the National Audit Office for the purposes of section 4(1) of the National Audit Act 1983 (c. 44);
  - (b) in the case of expenditure of the Comptroller and Auditor General for Northern Ireland, to be regarded as expenditure of the Northern Ireland Audit Office for the purposes of Article 6(1) of the Audit (Northern Ireland) Order 1987 (S.I. 1987/460 (N.I. 5)).
- (4) In this section “the supervision arrangements” means the arrangements entered into under section 1229.

#### *Reporting requirement*

### **1231 Reports by the Independent Supervisor**

- (1) The Independent Supervisor must, at least once in each calendar year, prepare a report on the discharge of its functions.
- (2) The Independent Supervisor must give a copy of each report prepared under subsection (1) to –
  - (a) the Secretary of State;
  - (b) the First Minister in Scotland;
  - (c) the First Minister and the deputy First Minister in Northern Ireland;
  - (d) the Assembly First Secretary in Wales.

- (3) The Secretary of State must lay before each House of Parliament a copy of each report received by him under subsection (2)(a).
- (4) In relation to a calendar year during which an appointment of a body as the Independent Supervisor is made or revoked by an order under section 1228, this section applies with such modifications as may be specified in the order.

### *Information*

#### **1232 Matters to be notified to the Independent Supervisor**

- (1) The Independent Supervisor may require an Auditor General –
  - (a) to notify the Independent Supervisor immediately of the occurrence of such events as it may specify in writing and to give it such information in respect of those events as is so specified;
  - (b) to give the Independent Supervisor, at such times or in respect of such periods as it may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Independent Supervisor may reasonably require for the exercise of the functions conferred on it by or by virtue of this Part.
- (3) The Independent Supervisor may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Independent Supervisor specifies or approves some other manner.

#### **1233 The Independent Supervisor’s power to call for information**

- (1) The Independent Supervisor may by notice in writing require an Auditor General to give it such information as it may reasonably require for the exercise of the functions conferred on it by or by virtue of this Part.
- (2) The Independent Supervisor may require that any information which it requires under this section is to be given within such reasonable time and verified in such manner as it may specify.

### *Enforcement*

#### **1234 Suspension notices**

- (1) The Independent Supervisor may issue –
  - (a) a notice (a “suspension notice”) suspending an Auditor General’s eligibility for appointment as a statutory auditor in relation to all persons, or any specified person or persons, indefinitely or until a date specified in the notice;
  - (b) a notice amending or revoking a suspension notice previously issued to an Auditor General.
- (2) In determining whether it is appropriate to issue a notice under subsection (1), the Independent Supervisor must have regard to –
  - (a) the Auditor General’s performance of the obligations imposed on him by or by virtue of this Part, and

- (b) the Auditor General’s performance of his functions as a statutory auditor.
- (3) A notice under subsection (1) must –
  - (a) be in writing, and
  - (b) state the date on which it takes effect (which must be after the period of three months beginning with the date on which it is issued).
- (4) Before issuing a notice under subsection (1), the Independent Supervisor must –
  - (a) give written notice of its intention to do so to the Auditor General, and
  - (b) publish the notice mentioned in paragraph (a) in such manner as it thinks appropriate for bringing it to the attention of any other persons who are likely to be affected.
- (5) A notice under subsection (4) must –
  - (a) state the reasons for which the Independent Supervisor proposes to act, and
  - (b) give particulars of the rights conferred by subsection (6).
- (6) A person within subsection (7) may, within the period of three months beginning with the date of service or publication of the notice under subsection (4) or such longer period as the Independent Supervisor may allow, make written representations to the Independent Supervisor and, if desired, oral representations to a person appointed for that purpose by the Independent Supervisor.
- (7) The persons within this subsection are –
  - (a) the Auditor General, and
  - (b) any other person who appears to the Independent Supervisor to be affected.
- (8) The Independent Supervisor must have regard to any representations made in accordance with subsection (6) in determining –
  - (a) whether to issue a notice under subsection (1), and
  - (b) the terms of any such notice.
- (9) If in any case the Independent Supervisor considers it appropriate to do so in the public interest it may issue a notice under subsection (1), without regard to the restriction in subsection (3)(b), even if –
  - (a) no notice has been given or published under subsection (4), or
  - (b) the period of time for making representations in pursuance of such a notice has not expired.
- (10) On issuing a notice under subsection (1), the Independent Supervisor must –
  - (a) give a copy of the notice to the Auditor General, and
  - (b) publish the notice in such manner as it thinks appropriate for bringing it to the attention of persons likely to be affected.
- (11) In this section “specified” means specified in, or of a description specified in, the suspension notice in question.

### **1235 Effect of suspension notices**

- (1) An Auditor General must not act as a statutory auditor at any time when a suspension notice issued to him in respect of the audited person has effect.

- (2) If at any time during an Auditor General’s term of office as a statutory auditor a suspension notice issued to him in respect of the audited person takes effect, he must immediately –
  - (a) resign his office (with immediate effect), and
  - (b) give notice in writing to the audited person that he has resigned by reason of his becoming ineligible for appointment.
- (3) A suspension notice does not make an Auditor General ineligible for appointment as a statutory auditor for the purposes of section 1213 (effect of ineligibility: criminal offences).

### **1236 Compliance orders**

- (1) If at any time it appears to the Independent Supervisor that an Auditor General has failed to comply with an obligation imposed on him by or by virtue of this Part, the Independent Supervisor may make an application to the court under this section.
- (2) If on an application under this section the court decides that the Auditor General has failed to comply with the obligation in question, it may order the Auditor General to take such steps as the court directs for securing that the obligation is complied with.
- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

### *Proceedings*

### **1237 Proceedings involving the Independent Supervisor**

- (1) If the Independent Supervisor is an unincorporated association, any relevant proceedings may be brought by or against it in the name of any body corporate whose constitution provides for the establishment of the body.
- (2) For this purpose “relevant proceedings” means proceedings brought in or in connection with the exercise of any function by the body as the Independent Supervisor.
- (3) Where an appointment under section 1228 is revoked, the revoking order may make such provision as the Secretary of State thinks fit with respect to pending proceedings.

### *Grants*

### **1238 Grants to the Independent Supervisor**

In section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (grants to bodies concerned with accounting standards etc), after subsection (2)(k) insert –

- “(ka) exercising functions of the Independent Supervisor appointed under Chapter 3 of Part 42 of the Companies Act 2006;”.

## CHAPTER 4

### THE REGISTER OF AUDITORS ETC

#### 1239 The register of auditors

- (1) The Secretary of State must make regulations requiring the keeping of a register of—
  - (a) the persons eligible for appointment as a statutory auditor, and
  - (b) third country auditors (see Chapter 5) who apply to be registered in the specified manner and in relation to whom specified requirements are met.
- (2) The regulations must require each person's entry in the register to contain—
  - (a) his name and address,
  - (b) in the case of an individual eligible for appointment as a statutory auditor, the specified information relating to any firm on whose behalf he is responsible for statutory audit work,
  - (c) in the case of a firm eligible for appointment as a statutory auditor, the specified information relating to the individuals responsible for statutory audit work on its behalf,
  - (d) in the case of an individual or firm eligible for appointment as a statutory auditor by virtue of Chapter 2, the name of the relevant supervisory body, and
  - (e) in the case of a firm eligible for appointment as a statutory auditor by virtue of Chapter 2 or a third country auditor, the information mentioned in subsection (3),and may require each person's entry to contain other specified information.
- (3) The information referred to in subsection (2)(e) is—
  - (a) in relation to a body corporate, except where paragraph (b) applies, the name and address of each person who is a director of the body or holds any shares in it;
  - (b) in relation to a limited liability partnership, the name and address of each member of the partnership;
  - (c) in relation to a corporation sole, the name and address of the individual for the time being holding the office by the name of which he is the corporation sole;
  - (d) in relation to a partnership, the name and address of each partner.
- (4) The regulations may provide that different parts of the register are to be kept by different persons.
- (5) The regulations may impose such obligations as the Secretary of State thinks fit on—
  - (a) recognised supervisory bodies,
  - (b) any body designated by order under section 1252 (delegation of Secretary of State's functions),
  - (c) persons eligible for appointment as a statutory auditor,
  - (d) third country auditors,
  - (e) any person with whom arrangements are made by one or more recognised supervisory bodies, or by any body designated by order under section 1252, with respect to the keeping of the register, or

- (f) the Independent Supervisor appointed under section 1228.
- (6) The regulations may include –
  - (a) provision requiring that specified entries in the register be open to inspection at times and places specified or determined in accordance with the regulations;
  - (b) provision enabling a person to require a certified copy of specified entries in the register;
  - (c) provision authorising the charging of fees for inspection, or the provision of copies, of such reasonable amount as may be specified or determined in accordance with the regulations.
- (7) The Secretary of State may direct in writing that the requirements imposed by the regulations in accordance with subsections (2)(e) and (3), or such of those requirements as are specified in the direction, are not to apply, in whole or in part, in relation to a particular registered third country auditor or class of registered third country auditors.
- (8) The obligations imposed by regulations under this section on such persons as are mentioned in subsection (5)(b) or (e) are enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36).
- (9) In this section “specified” means specified by regulations under this section.
- (10) Regulations under this section are subject to negative resolution procedure.

#### **1240 Information to be made available to public**

- (1) The Secretary of State may make regulations requiring a person eligible for appointment as a statutory auditor, or a member of a specified class of such persons, to keep and make available to the public specified information, including information regarding –
  - (a) the person’s ownership and governance,
  - (b) the person’s internal controls with respect to the quality and independence of its audit work,
  - (c) the person’s turnover, and
  - (d) the audited persons of whom the person has acted as statutory auditor.
- (2) Regulations under this section may –
  - (a) impose such obligations as the Secretary of State thinks fit on persons eligible for appointment as a statutory auditor;
  - (b) require the information to be made available to the public in a specified manner.
- (3) In this section “specified” means specified by regulations under this section.
- (4) Regulations under this section are subject to negative resolution procedure.

## CHAPTER 5

### REGISTERED THIRD COUNTRY AUDITORS

#### *Introductory*

#### **1241 Meaning of “third country auditor”, “registered third country auditor” etc**

- (1) In this Part—
  - “third country auditor” means the auditor of the accounts of a traded non-Community company, and the expressions “third country audit” and “third country audit work” are to be construed accordingly;
  - “registered third country auditor” means a third country auditor who is entered in the register kept in accordance with regulations under section 1239(1).
- (2) In subsection (1) “traded non-Community company” means a body corporate—
  - (a) which is incorporated or formed under the law of a country or territory which is not a member State or part of a member State,
  - (b) whose transferable securities are admitted to trading on a regulated market situated or operating in the United Kingdom, and
  - (c) which has not been excluded, or is not of a description of bodies corporate which has been excluded, from this definition by an order made by the Secretary of State.
- (3) For this purpose—
  - “regulated market” has the meaning given by Article 4.1(14) of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments;
  - “transferable securities” has the meaning given by Article 4.1(18) of that Directive.
- (4) An order under this section is subject to negative resolution procedure.

#### *Duties*

#### **1242 Duties of registered third country auditors**

- (1) A registered third country auditor must participate in—
  - (a) arrangements within paragraph 1 of Schedule 12 (arrangements for independent monitoring of audits of traded non-Community companies), and
  - (b) arrangements within paragraph 2 of that Schedule (arrangements for independent investigation for disciplinary purposes of public interest cases).
- (2) A registered third country auditor must—
  - (a) take such steps as may be reasonably required of it to enable its performance of third country audits to be monitored by means of inspections carried out under the arrangements mentioned in subsection (1)(a), and

- (b) comply with any decision as to disciplinary action to be taken against it made under the arrangements mentioned in subsection (1)(b).
- (3) Schedule 12 makes further provision with respect to the arrangements in which registered third country auditors are required to participate.
- (4) The Secretary of State may direct in writing that subsections (1) to (3) are not to apply, in whole or in part, in relation to a particular registered third country auditor or class of registered third country auditors.

### *Information*

#### **1243 Matters to be notified to the Secretary of State**

- (1) The Secretary of State may require a registered third country auditor –
  - (a) to notify him immediately of the occurrence of such events as he may specify in writing and to give him such information in respect of those events as is so specified;
  - (b) to give him, at such times or in respect of such periods as he may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Secretary of State may reasonably require for the exercise of his functions under this Part.
- (3) The Secretary of State may require information given under this section to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this section must be given in writing unless the Secretary of State specifies or approves some other manner.

#### **1244 The Secretary of State's power to call for information**

- (1) The Secretary of State may by notice in writing require a registered third country auditor to give him such information as he may reasonably require for the exercise of his functions under this Part.
- (2) The Secretary of State may require that any information which he requires under this section is to be given within such reasonable time and verified in such manner as he may specify.

### *Enforcement*

#### **1245 Compliance orders**

- (1) If at any time it appears to the Secretary of State that a registered third country auditor has failed to comply with an obligation imposed on him by or by virtue of this Part, the Secretary of State may make an application to the court under this section.
- (2) If on an application under this section the court decides that the auditor has failed to comply with the obligation in question, it may order the auditor to take such steps as the court directs for securing that the obligation is complied with.

- (3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

#### **1246 Removal of third country auditors from the register of auditors**

- (1) The Secretary of State may, by regulations, confer on the person keeping the register in accordance with regulations under section 1239(1) power to remove a third country auditor from the register.
- (2) Regulations under this section must require the person keeping the register, in determining whether to remove a third country auditor from the register, to have regard to the auditor’s compliance with obligations imposed on him by or by virtue of this Part.
- (3) Where provision is made under section 1239(4) (different parts of the register to be kept by different persons), references in this section to the person keeping the register are to the person keeping that part of the register which relates to third country auditors.
- (4) Regulations under this section are subject to negative resolution procedure.

#### **1247 Grants to bodies concerned with arrangements under Schedule 12**

In section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (grants to bodies concerned with accounting standards etc), after subsection (2)(ka) (inserted by section 1238) insert –

“(kb) establishing, maintaining or carrying out arrangements within paragraph 1 or 2 of Schedule 12 to the Companies Act 2006;”.

### **CHAPTER 6**

#### SUPPLEMENTARY AND GENERAL

##### *Power to require second company audit*

#### **1248 Secretary of State’s power to require second audit of a company**

- (1) This section applies where a person appointed as statutory auditor of a company was not an appropriate person for any part of the period during which the audit was conducted.
- (2) The Secretary of State may direct the company concerned to retain an appropriate person –
- (a) to conduct a second audit of the relevant accounts, or
  - (b) to review the first audit and to report (giving his reasons) whether a second audit is needed.
- (3) For the purposes of subsections (1) and (2) a person is “appropriate” if he –
- (a) is eligible for appointment as a statutory auditor or, if the person is an Auditor General, for appointment as statutory auditor of the company, and
  - (b) is not prohibited by section 1214(1) (independence requirement) from acting as statutory auditor of the company.

- (4) The Secretary of State must send a copy of a direction under subsection (2) to the registrar of companies.
- (5) The company is guilty of an offence if—
  - (a) it fails to comply with a direction under subsection (2) within the period of 21 days beginning with the date on which it is given, or
  - (b) it has been convicted of a previous offence under this subsection and the failure to comply with the direction which led to the conviction continues after the conviction.
- (6) The company must—
  - (a) send a copy of a report under subsection (2)(b) to the registrar of companies, and
  - (b) if the report states that a second audit is needed, take such steps as are necessary for the carrying out of that audit.
- (7) The company is guilty of an offence if—
  - (a) it fails to send a copy of a report under subsection (2)(b) to the registrar within the period of 21 days beginning with the date on which it receives it,
  - (b) in a case within subsection (6)(b), it fails to take the steps mentioned immediately it receives the report, or
  - (c) it has been convicted of a previous offence under this subsection and the failure to send a copy of the report, or take the steps, which led to the conviction continues after the conviction.
- (8) A company guilty of an offence under this section is liable on summary conviction—
  - (a) in a case within subsection (5)(a) or (7)(a) or (b), to a fine not exceeding level 5 on the standard scale, and
  - (b) in a case within subsection (5)(b) or (7)(c), to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.
- (9) In this section “registrar of companies” has the meaning given by section 1060.

#### **1249 Supplementary provision about second audits**

- (1) If a person accepts an appointment, or continues to act, as statutory auditor of a company at a time when he knows he is not an appropriate person, the company may recover from him any costs incurred by it in complying with the requirements of section 1248.  
For this purpose “appropriate” is to be construed in accordance with subsection (3) of that section.
- (2) Where a second audit is carried out under section 1248, any statutory or other provision applying in relation to the first audit applies also, in so far as practicable, in relation to the second audit.
- (3) A direction under section 1248(2) is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36).

*False and misleading statements*

**1250 Misleading, false and deceptive statements**

- (1) A person is guilty of an offence if –
- (a) for the purposes of or in connection with any application under this Part, or
  - (b) in purported compliance with any requirement imposed on him by or by virtue of this Part,

he knowingly or recklessly furnishes information which is misleading, false or deceptive in a material particular.

- (2) It is an offence for a person whose name does not appear on the register of auditors kept under regulations under section 1239 in an entry made under subsection (1)(a) of that section to describe himself as a registered auditor or so to hold himself out as to indicate, or be reasonably understood to indicate, that he is a registered auditor.
- (3) It is an offence for a person whose name does not appear on the register of auditors kept under regulations under that section in an entry made under subsection (1)(b) of that section to describe himself as a registered third country auditor or so to hold himself out as to indicate, or be reasonably understood to indicate, that he is a registered third country auditor.
- (4) It is an offence for a body which is not a recognised supervisory body or a recognised qualifying body to describe itself as so recognised or so to describe itself or hold itself out as to indicate, or be reasonably understood to indicate, that it is so recognised.
- (5) A person guilty of an offence under subsection (1) is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both),
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both).

In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” in paragraph (b)(i) substitute “six months”.

- (6) Subject to subsection (7), a person guilty of an offence under subsection (2), (3) or (4) is liable on summary conviction –
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or both),
  - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale (or both).

In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, for “51 weeks” in paragraph (a) substitute “six months”.

- (7) Where a contravention of subsection (2), (3) or (4) involves a public display of the offending description, the maximum fine that may be imposed is an amount equal to level 5 on the standard scale multiplied by the number of days for which the display has continued.
- (8) It is a defence for a person charged with an offence under subsection (2), (3) or (4) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### *Fees*

#### **1251 Fees**

- (1) An applicant for a recognition order under this Part must pay such fee in respect of his application as the Secretary of State may by regulations prescribe; and no application is to be regarded as duly made unless this subsection is complied with.
- (2) The Secretary of State may by regulations prescribe periodical fees to be paid by –
  - (a) every recognised supervisory body,
  - (b) every recognised qualifying body,
  - (c) every Auditor General, and
  - (d) every registered third country auditor.
- (3) Fees received by the Secretary of State by virtue of this Part are to be paid into the Consolidated Fund.
- (4) Regulations under this section are subject to negative resolution procedure.

### *Delegation of Secretary of State's functions*

#### **1252 Delegation of the Secretary of State's functions**

- (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.
- (2) The body designated by a delegation order may be either –
  - (a) a body corporate which is established by the order, or
  - (b) subject to section 1253, a body (whether a body corporate or an unincorporated association) which is already in existence (“an existing body”).
- (3) A delegation order has the effect of making the body designated by the order designated under section 5 of the Freedom of Information Act 2000 (c. 36) (further powers to designate public authorities).
- (4) A delegation order has the effect of transferring to the body designated by it all functions of the Secretary of State under this Part –
  - (a) subject to such exceptions and reservations as may be specified in the order, and
  - (b) except –
    - (i) his functions in relation to the body itself, and

- (ii) his functions under section 1228 (appointment of Independent Supervisor).
- (5) A delegation order may confer on the body designated by it such other functions supplementary or incidental to those transferred as appear to the Secretary of State to be appropriate.
- (6) Any transfer of functions under the following provisions must be subject to the reservation that the functions remain exercisable concurrently by the Secretary of State –
  - (a) section 1224 (power to call for information from recognised bodies etc);
  - (b) section 1244 (power to call for information from registered third country auditors);
  - (c) section 1254 (directions to comply with international obligations).
- (7) Any transfer of –
  - (a) the function of refusing to make a declaration under section 1221(1) (approval of overseas qualifications) on the grounds referred to in section 1221(4) (lack of comparable treatment), or
  - (b) the function of withdrawing such a declaration under section 1221(7) on those grounds,must be subject to the reservation that the function is exercisable only with the consent of the Secretary of State.
- (8) A delegation order may be amended or, if it appears to the Secretary of State that it is no longer in the public interest that the order should remain in force, revoked by a further order under this section.
- (9) Where functions are transferred or resumed, the Secretary of State may by order confer or, as the case may be, take away such other functions supplementary or incidental to those transferred or resumed as appear to him to be appropriate.
- (10) Where a delegation order is made, Schedule 13 has 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.
- (11) An order under this section which has the effect of transferring or resuming any functions is subject to affirmative resolution procedure.
- (12) Any other order under this section is subject to negative resolution procedure.

### **1253 Delegation of functions to an existing body**

- (1) The Secretary of State's power to make a delegation order under section 1252 which designates an existing body is exercisable in accordance with this section.
- (2) The Secretary of State may make such a delegation order if it appears to him that –
  - (a) the body is able and willing to exercise the functions that would be transferred by the order, and

- (b) 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 provision 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 1252, 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 paragraph 21, 22, 23(1) or 24(1) of Schedule 10 or paragraph 1 or 2 of Schedule 12.

#### *International obligations*

### **1254 Directions to comply with international obligations**

- (1) If it appears to the Secretary of State –
  - (a) that any action proposed to be taken by a recognised supervisory body or a recognised qualifying body, or a body designated by order under section 1252, would be incompatible with Community obligations or any other international obligations of the United Kingdom, or
  - (b) that any action which that body has power to take is required for the purpose of implementing any such obligations,he may direct the body not to take or, as the case may be, to take the action in question.
- (2) A direction may include such supplementary or incidental requirements as the Secretary of State thinks necessary or expedient.
- (3) A direction under this section given to a body designated by order under section 1252 is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988 (c. 36).

#### *General provision relating to offences*

### **1255 Offences by bodies corporate, partnerships and unincorporated associations**

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) Where an offence under this Part committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

### **1256 Time limits for prosecution of offences**

- (1) An information relating to an offence under this Part which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within the period of twelve months beginning with the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State to justify the proceedings comes to his knowledge.
- (2) Proceedings in Scotland for an offence under this Part may be commenced at any time within the period of twelve months beginning with the date on which evidence sufficient in the Lord Advocate's opinion to justify proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within the period of twelve months beginning with the date on which it came to the knowledge of the Secretary of State.
- (3) For the purposes of subsection (2) proceedings are to be deemed to be commenced on the date on which a warrant to apprehend or cite the accused is granted, if the warrant is executed without undue delay.
- (4) A complaint charging an offence under this Part which is triable by a magistrates' court in Northern Ireland may be so tried if it is made at any time within the period of twelve months beginning with the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Secretary of State to justify the proceedings comes to his knowledge.
- (5) This section does not authorise—
  - (a) in the case of proceedings in England and Wales, the trial of an information laid,
  - (b) in the case of proceedings in Scotland, the commencement of proceedings, or
  - (c) in the case of proceedings in Northern Ireland, the trial of a complaint made,more than three years after the commission of the offence.
- (6) For the purposes of this section a certificate of the Director of Public Prosecutions, the Lord Advocate, the Director of Public Prosecutions for Northern Ireland or the Secretary of State as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.
- (7) Nothing in this section affects proceedings within the time limits prescribed by section 127(1) of the Magistrates' Courts Act 1980 (c. 43), section 331 of the Criminal Procedure (Scotland) Act 1975 or Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (the usual time limits for criminal proceedings).

### 1257 Jurisdiction and procedure in respect of offences

- (1) Summary proceedings for an offence under this Part may, without prejudice to any jurisdiction exercisable apart from this section, be taken –
  - (a) against a body corporate or unincorporated association at any place at which it has a place of business, and
  - (b) against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under this Part by an unincorporated association must be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate.
- (3) Section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in England and Wales with an offence under this Part as they apply in the case of a corporation.
- (4) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Article 166 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in Northern Ireland with an offence under this Part as they apply in the case of a corporation.
- (5) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under this Part by an unincorporated association, section 70 of the Criminal Procedure (Scotland) Act 1995 (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.
- (6) A fine imposed on an unincorporated association on its conviction of such an offence must be paid out of the funds of the association.

*Notices etc*

### 1258 Service of notices

- (1) This section has effect in relation to any notice, direction or other document required or authorised by or by virtue of this Part to be given to or served on any person other than the Secretary of State.
- (2) Any such document may be given to or served on the person in question –
  - (a) by delivering it to him,
  - (b) by leaving it at his proper address, or
  - (c) by sending it by post to him at that address.
- (3) Any such document may –
  - (a) in the case of a body corporate, be given to or served on an officer of that body;
  - (b) in the case of a partnership, be given to or served on any partner;
  - (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of that association.

- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person is his last known address (whether of his residence or of a place where he carries on business or is employed) and also –
- (a) in the case of a person who is eligible under the rules of a recognised supervisory body for appointment as a statutory auditor and who does not have a place of business in the United Kingdom, the address of that body;
  - (b) in the case of a body corporate or an officer of that body, the address of the registered or principal office of that body in the United Kingdom;
  - (c) in the case of an unincorporated association other than a partnership or a member of its governing body, its principal office in the United Kingdom.

### **1259 Documents in electronic form**

- (1) This section applies where –
- (a) section 1258 authorises the giving or sending of a notice, direction or other document by its delivery to a particular person (“the recipient”), and
  - (b) the notice, direction or other document is transmitted to the recipient –
    - (i) by means of an electronic communications network, or
    - (ii) by other means but in a form that requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Part as a delivery of the notice, direction or other document to the recipient, but only if the recipient has indicated to the person making the transmission his willingness to receive the notice, direction or other document in the form and manner used.
- (3) An indication to a person for the purposes of subsection (2) –
- (a) must be given to the person in such manner as he may require,
  - (b) may be a general indication or an indication that is limited to notices, directions or other documents of a particular description,
  - (c) must state the address to be used,
  - (d) must be accompanied by such other information as the person requires for the making of the transmission, and
  - (e) may be modified or withdrawn at any time by a notice given to the person in such manner as he may require.
- (4) In this section “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21).

### *Interpretation*

### **1260 Meaning of “associate”**

- (1) In this Part “associate”, in relation to a person, is to be construed as follows.
- (2) In relation to an individual, “associate” means –
- (a) that individual’s spouse, civil partner or minor child or step-child,
  - (b) any body corporate of which that individual is a director, and
  - (c) any employee or partner of that individual.

- (3) In relation to a body corporate, “associate” means –
  - (a) any body corporate of which that body is a director,
  - (b) any body corporate in the same group as that body, and
  - (c) any employee or partner of that body or of any body corporate in the same group.
- (4) In relation to a partnership constituted under the law of Scotland, or any other country or territory in which a partnership is a legal person, “associate” means –
  - (a) any body corporate of which that partnership is a director,
  - (b) any employee of or partner in that partnership, and
  - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership constituted under the law of England and Wales or Northern Ireland, or the law of any other country or territory in which a partnership is not a legal person, “associate” means any person who is an associate of any of the partners.
- (6) In subsections (2)(b), (3)(a) and (4)(a), in the case of a body corporate which is a limited liability partnership, “director” is to be read as “member”.

#### **1261 Minor definitions**

- (1) In this Part, unless a contrary intention appears –
  - “address” means –
    - (a) in relation to an individual, his usual residential or business address;
    - (b) in relation to a firm, its registered or principal office in the United Kingdom;
  - “company” means any company or other body the accounts of which must be audited in accordance with Part 16;
  - “director”, in relation to a body corporate, includes any person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the body are accustomed to act;
  - “firm” means any entity, whether or not a legal person, which is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association;
  - “group”, in relation to a body corporate, means the body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;
  - “holding company” and “subsidiary” are to be read in accordance with section 1159 and Schedule 6;
  - “officer”, in relation to a body corporate, includes a director, a manager, a secretary or, where the affairs of the body are managed by its members, a member;
  - “parent undertaking” and “subsidiary undertaking” are to be read in accordance with section 1162 and Schedule 7.
- (2) For the purposes of this Part a body is to be regarded as “established in the United Kingdom” if and only if –

- (a) it is incorporated or formed under the law of the United Kingdom or a part of the United Kingdom, or
- (b) its central management and control are exercised in the United Kingdom;
- and any reference to a qualification “obtained in the United Kingdom” is to a qualification obtained from such a body.
- (3) The Secretary of State may by regulations make such modifications of this Part as appear to him to be necessary or appropriate for the purposes of its application in relation to any firm, or description of firm, which is not a body corporate or a partnership.
- (4) Regulations under subsection (3) are subject to negative resolution procedure.

### 1262 Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section) –

<i>Expression</i>	<i>Provision</i>
address	section 1261(1)
appropriate qualification	section 1219
associate	section 1260
audited person	section 1210(2)
Auditor General	section 1226(1)
company	section 1261(1)
delegation order	section 1252(1)
director (of a body corporate)	section 1261(1)
enactment	section 1293
established in the United Kingdom	section 1261(2)
firm	section 1261(1)
group (in relation to a body corporate)	section 1261(1)
holding company	section 1261(1)
main purposes of this Part	section 1209
member (of a supervisory body)	section 1217(2)
obtained in the United Kingdom	section 1261(2)
officer	section 1261(1)
parent undertaking	section 1261(1)

<i>Expression</i>	<i>Provision</i>
qualifying body	section 1220(1)
recognised, in relation to a professional qualification	section 1220(3) and Schedule 11
recognised, in relation to a qualifying body	paragraph 1(2) of Schedule 11
recognised, in relation to a supervisory body	section 1217(4) and Schedule 10
registered third country auditor	section 1241(1)
rules of a qualifying body	section 1220(2)
rules of a supervisory body	section 1217(3)
statutory auditor, statutory audit and statutory audit work	section 1210(1)
subsidiary	section 1261(1)
supervisory body	section 1217(1)
subsidiary undertaking	section 1261(1)
third country auditor, third country audit and third country audit work	section 1241(1)

*Miscellaneous and general*

**1263 Power to make provision in consequence of changes affecting accountancy bodies**

- (1) The Secretary of State may by regulations make such amendments of enactments as appear to him to be necessary or expedient in consequence of any change of name, merger or transfer of engagements affecting—
  - (a) a recognised supervisory body or recognised qualifying body, or
  - (b) a body of accountants referred to in, or approved, authorised or otherwise recognised for the purposes of, any other enactment.
- (2) Regulations under this section are subject to negative resolution procedure.

**1264 Consequential amendments**

Schedule 14 contains consequential amendments relating to this Part.

**PART 43**

## TRANSPARENCY OBLIGATIONS AND RELATED MATTERS

*Introductory***1265 The transparency obligations directive**

In Part 6 of the Financial Services and Markets Act 2000 (c. 8) (which makes provision about official listing, prospectus requirements for transferable securities, etc), in section 103(1) (interpretation), at the appropriate place insert –

““the transparency obligations directive” means Directive 2004/109/EC of the European Parliament and of the Council relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;”.

*Transparency obligations***1266 Transparency rules**

- (1) After section 89 of the Financial Services and Markets Act 2000 insert –

*“Transparency obligations***89A Transparency rules**

- (1) The competent authority may make rules for the purposes of the transparency obligations directive.
- (2) The rules may include provision for dealing with any matters arising out of or related to any provision of the transparency obligations directive.
- (3) The competent authority may also make rules –
  - (a) for the purpose of ensuring that voteholder information in respect of voting shares traded on a UK market other than a regulated market is made public or notified to the competent authority;
  - (b) providing for persons who hold comparable instruments (see section 89F(1)(c)) in respect of voting shares to be treated, in the circumstances specified in the rules, as holding some or all of the voting rights in respect of those shares.
- (4) Rules under this section may, in particular, make provision –
  - (a) specifying how the proportion of –
    - (i) the total voting rights in respect of shares in an issuer, or
    - (ii) the total voting rights in respect of a particular class of shares in an issuer,
 held by a person is to be determined;
  - (b) specifying the circumstances in which, for the purposes of any determination of the voting rights held by a person (“P”) in respect of voting shares in an issuer, any voting rights held, or

- treated by virtue of subsection (3)(b) as held, by another person in respect of voting shares in the issuer are to be regarded as held by P;
- (c) specifying the nature of the information which must be included in any notification;
  - (d) about the form of any notification;
  - (e) requiring any notification to be given within a specified period;
  - (f) specifying the manner in which any information is to be made public and the period within which it must be made public;
  - (g) specifying circumstances in which any of the requirements imposed by rules under this section does not apply.
- (5) Rules under this section are referred to in this Part as “transparency rules”.
- (6) Nothing in sections 89B to 89G affects the generality of the power to make rules under this section.

### **89B Provision of voteholder information**

- (1) Transparency rules may make provision for voteholder information in respect of voting shares to be notified, in circumstances specified in the rules –
- (a) to the issuer, or
  - (b) to the public,
- or to both.
- (2) Transparency rules may make provision for voteholder information notified to the issuer to be notified at the same time to the competent authority.
- (3) In this Part “voteholder information” in respect of voting shares means information relating to the proportion of voting rights held by a person in respect of the shares.
- (4) Transparency rules may require notification of voteholder information relating to a person –
- (a) initially, not later than such date as may be specified in the rules for the purposes of the first indent of Article 30.2 of the transparency obligations directive, and
  - (b) subsequently, in accordance with the following provisions.
- (5) Transparency rules under subsection (4)(b) may require notification of voteholder information relating to a person only where there is a notifiable change in the proportion of –
- (a) the total voting rights in respect of shares in the issuer, or
  - (b) the total voting rights in respect of a particular class of share in the issuer,
- held by the person.
- (6) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes –
- (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
  - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or

- (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.

(7) In subsection (6) “designated” means designated by the rules.

### **89C Provision of information by issuers of transferable securities**

- (1) Transparency rules may make provision requiring the issuer of transferable securities, in circumstances specified in the rules –
  - (a) to make public information to which this section applies, or
  - (b) to notify to the competent authority information to which this section applies,or to do both.
- (2) In the case of every issuer, this section applies to –
  - (a) information required by Article 4 of the transparency obligations directive;
  - (b) information relating to the rights attached to the transferable securities, including information about the terms and conditions of those securities which could indirectly affect those rights; and
  - (c) information about new loan issues and about any guarantee or security in connection with any such issue.
- (3) In the case of an issuer of debt securities, this section also applies to information required by Article 5 of the transparency obligations directive.
- (4) In the case of an issuer of shares, this section also applies to –
  - (a) information required by Article 5 of the transparency obligations directive;
  - (b) information required by Article 6 of that directive;
  - (c) voteholder information –
    - (i) notified to the issuer, or
    - (ii) relating to the proportion of voting rights held by the issuer in respect of shares in the issuer;
  - (d) information relating to the issuer’s capital; and
  - (e) information relating to the total number of voting rights in respect of shares or shares of a particular class.

### **89D Notification of voting rights held by issuer**

- (1) Transparency rules may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer –
  - (a) initially, not later than such date as may be specified in the rules for the purposes of the second indent of Article 30.2 of the transparency obligations directive, and
  - (b) subsequently, in accordance with the following provisions.
- (2) Transparency rules under subsection (1)(b) may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer only where there is a notifiable change in the proportion of –
  - (a) the total voting rights in respect of shares in the issuer, or

- (b) the total voting rights in respect of a particular class of share in the issuer,  
held by the issuer.
- (3) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes –
  - (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
  - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
  - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (4) In subsection (3) “designated” means designated by the rules.

#### **89E Notification of proposed amendment of issuer’s constitution**

Transparency rules may make provision requiring an issuer of transferable securities that are admitted to trading on a regulated market to notify a proposed amendment to its constitution –

- (a) to the competent authority, and
- (b) to the market on which the issuer’s securities are admitted,  
at times and in circumstances specified in the rules.

#### **89F Transparency rules: interpretation etc**

- (1) For the purposes of sections 89A to 89G –
  - (a) the voting rights in respect of any voting shares are the voting rights attached to those shares,
  - (b) a person is to be regarded as holding the voting rights in respect of the shares –
    - (i) if, by virtue of those shares, he is a shareholder within the meaning of Article 2.1(e) of the transparency obligations directive;
    - (ii) if, and to the extent that, he is entitled to acquire, dispose of or exercise those voting rights in one or more of the cases mentioned in Article 10(a) to (h) of the transparency obligations directive;
    - (iii) if he holds, directly or indirectly, a financial instrument which results in an entitlement to acquire the shares and is an Article 13 instrument, and
  - (c) a person holds a “comparable instrument” in respect of voting shares if he holds, directly or indirectly, a financial instrument in relation to the shares which has similar economic effects to an Article 13 instrument (whether or not the financial instrument results in an entitlement to acquire the shares).
- (2) Transparency rules under section 89A(3)(b) may make different provision for different descriptions of comparable instrument.
- (3) For the purposes of sections 89A to 89G two or more persons may, at the same time, each be regarded as holding the same voting rights.
- (4) In those sections –

“Article 13 instrument” means a financial instrument of a type determined by the European Commission under Article 13.2 of the transparency obligations directive;

“UK market” means a market that is situated or operating in the United Kingdom;

“voting shares” means shares of an issuer to which voting rights are attached.

### **89G Transparency rules: other supplementary provisions**

- (1) Transparency rules may impose the same obligations on a person who has applied for the admission of transferable securities to trading on a regulated market without the issuer’s consent as they impose on an issuer of transferable securities.
  - (2) Transparency rules that require a person to make information public may include provision authorising the competent authority to make the information public in the event that the person fails to do so.
  - (3) The competent authority may make public any information notified to the authority in accordance with transparency rules.
  - (4) Transparency rules may make provision by reference to any provision of any rules made by the Panel on Takeovers and Mergers under Part 28 of the Companies Act 2006.
  - (5) Sections 89A to 89F and this section are without prejudice to any other power conferred by this Part to make Part 6 rules.”.
- (2) The effectiveness for the purposes of section 155 of the Financial Services and Markets Act 2000 (c. 8) (consultation on proposed rules) of things done by the Financial Services Authority before this section comes into force with a view to making transparency rules (as defined in the provisions to be inserted in that Act by subsection (1) above) is not affected by the fact that those provisions were not then in force.

### **1267 Competent authority’s power to call for information**

In Part 6 of the Financial Services and Markets Act 2000 after the sections inserted by section 1266 above insert—

*“Power of competent authority to call for information*

### **89H Competent authority’s power to call for information**

- (1) The competent authority may by notice in writing given to a person to whom this section applies require him—
  - (a) to provide specified information or information of a specified description, or
  - (b) to produce specified documents or documents of a specified description.
- (2) This section applies to—
  - (a) an issuer in respect of whom transparency rules have effect;
  - (b) a voteholder;
  - (c) an auditor of—
    - (i) an issuer to whom this section applies, or

- (ii) a voteholder;
  - (d) a person who controls a voteholder;
  - (e) a person controlled by a voteholder;
  - (f) a director or other similar officer of an issuer to whom this section applies;
  - (g) a director or other similar officer of a voteholder or, where the affairs of a voteholder are managed by its members, a member of the voteholder.
- (3) This section applies only to information and documents reasonably required in connection with the exercise by the competent authority of functions conferred on it by or under sections 89A to 89G (transparency rules).
- (4) Information or documents required under this section must be provided or produced –
- (a) before the end of such reasonable period as may be specified, and
  - (b) at such place as may be specified.
- (5) If a person claims a lien on a document, its production under this section does not affect the lien.

#### **89I Requirements in connection with call for information**

- (1) The competent authority may require any information provided under section 89H to be provided in such form as it may reasonably require.
- (2) The competent authority may require –
- (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require;
  - (b) any document produced to be authenticated in such manner as it may reasonably require.
- (3) If a document is produced in response to a requirement imposed under section 89H, the competent authority may –
- (a) take copies of or extracts from the document; or
  - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (4) In subsection (3)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who –
- (a) has been or is a director or controller of that person;
  - (b) has been or is an auditor of that person;
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
  - (d) has been or is an employee of that person.
- (5) If a person who is required under section 89H to produce a document fails to do so, the competent authority may require him to state, to the best of his knowledge and belief, where the document is.

#### **89J Power to call for information: supplementary provisions**

- (1) The competent authority may require an issuer to make public any information provided to the authority under section 89H.

- (2) If the issuer fails to comply with a requirement under subsection (1), the competent authority may, after seeking representations from the issuer, make the information public.
- (3) In sections 89H and 89I (power of competent authority to call for information) –
  - “control” and “controlled” have the meaning given by subsection (4) below;
  - “specified” means specified in the notice;
  - “voteholder” means a person who –
    - (a) holds voting rights in respect of any voting shares for the purposes of sections 89A to 89G (transparency rules), or
    - (b) is treated as holding such rights by virtue of rules under section 89A(3)(b).
- (4) For the purposes of those sections a person (“A”) controls another person (“B”) if –
  - (a) A holds a majority of the voting rights in B,
  - (b) A is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B,
  - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
  - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (5) For the purposes of subsection (4)(b) –
  - (a) any rights of a person controlled by A, and
  - (b) any rights of a person acting on behalf of A or a person controlled by A,
 are treated as held by A.”.

## 1268 Powers exercisable in case of infringement of transparency obligation

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after the sections inserted by section 1267 above insert –

*“Powers exercisable in case of infringement of transparency obligation*

### 89K Public censure of issuer

- (1) If the competent authority finds that an issuer of securities admitted to trading on a regulated market is failing or has failed to comply with an applicable transparency obligation, it may publish a statement to that effect.
- (2) If the competent authority proposes to publish a statement, it must give the issuer a warning notice setting out the terms of the proposed statement.
- (3) If, after considering any representations made in response to the warning notice, the competent authority decides to make the proposed

statement, it must give the issuer a decision notice setting out the terms of the statement.

- (4) A notice under this section must inform the issuer of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.
- (5) In this section “transparency obligation” means an obligation under –
  - (a) a provision of transparency rules, or
  - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

#### **89L Power to suspend or prohibit trading of securities**

- (1) This section applies to securities admitted to trading on a regulated market.
- (2) If the competent authority has reasonable grounds for suspecting that an applicable transparency obligation has been infringed by an issuer, it may –
  - (a) suspend trading in the securities for a period not exceeding 10 days,
  - (b) prohibit trading in the securities, or
  - (c) make a request to the operator of the market on which the issuer’s securities are traded –
    - (i) to suspend trading in the securities for a period not exceeding 10 days, or
    - (ii) to prohibit trading in the securities.
- (3) If the competent authority has reasonable grounds for suspecting that a provision required by the transparency obligations directive has been infringed by a voteholder of an issuer, it may –
  - (a) prohibit trading in the securities, or
  - (b) make a request to the operator of the market on which the issuer’s securities are traded to prohibit trading in the securities.
- (4) If the competent authority finds that an applicable transparency obligation has been infringed, it may require the market operator to prohibit trading in the securities.
- (5) In this section “transparency obligation” means an obligation under –
  - (a) a provision contained in transparency rules, or
  - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

#### **89M Procedure under section 89L**

- (1) A requirement under section 89L takes effect –

- (a) immediately, if the notice under subsection (2) states that that is the case;
  - (b) in any other case, on such date as may be specified in the notice.
- (2) If the competent authority –
- (a) proposes to exercise the powers in section 89L in relation to a person, or
  - (b) exercises any of those powers in relation to a person with immediate effect,
- it must give that person written notice.
- (3) The notice must –
- (a) give details of the competent authority’s action or proposed action;
  - (b) state the competent authority’s reasons for taking the action in question and choosing the date on which it took effect or takes effect;
  - (c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he had referred the matter to the Tribunal);
  - (d) inform him of the date on which the action took effect or takes effect;
  - (e) inform him of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.
- (4) The competent authority may extend the period within which representations may be made to it.
- (5) If, having considered any representations made to it, the competent authority decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

#### **89N Right to refer matters to the Tribunal**

A person –

- (a) to whom a decision notice is given under section 89K (public censure), or
  - (b) to whom a notice is given under section 89M (procedure in connection with suspension or prohibition of trading),
- may refer the matter to the Tribunal.”.

*Other matters*

#### **1269 Corporate governance rules**

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after the sections

inserted by section 1268 above insert –

*“Corporate governance*

**890 Corporate governance rules**

- (1) The competent authority may make rules (“corporate governance rules”) –
  - (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
  - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation.
- (2) “Corporate governance”, in relation to an issuer, includes –
  - (a) the nature, constitution or functions of the organs of the issuer;
  - (b) the manner in which organs of the issuer conduct themselves;
  - (c) the requirements imposed on organs of the issuer;
  - (d) the relationship between the different organs of the issuer;
  - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer’s securities.
- (3) The burdens and restrictions imposed by rules under this section on foreign-traded issuers must not be greater than the burdens and restrictions imposed on UK-traded issuers by –
  - (a) rules under this section, and
  - (b) listing rules.
- (4) For this purpose –

“foreign-traded issuer” means an issuer who has requested or approved admission of the issuer’s securities to trading on a regulated market situated or operating outside the United Kingdom;

“UK-traded issuer” means an issuer who has requested or approved admission of the issuer’s securities to trading on a regulated market situated or operating in the United Kingdom.
- (5) This section is without prejudice to any other power conferred by this Part to make Part 6 rules.”.

**1270 Liability for false or misleading statements in certain publications**

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after section 90 insert –

**“90A Compensation for statements in certain publications**

- (1) The publications to which this section applies are –
  - (a) any reports and statements published in response to a requirement imposed by a provision implementing Article 4, 5 or 6 of the transparency obligations directive, and

- (b) any preliminary statement made in advance of a report or statement to be published in response to a requirement imposed by a provision implementing Article 4 of that directive, to the extent that it contains information that it is intended –
    - (i) will appear in the report or statement, and
    - (ii) will be presented in the report or statement in substantially the same form as that in which it is presented in the preliminary statement.
- (2) The securities to which this section applies are –
  - (a) securities that are traded on a regulated market situated or operating in the United Kingdom, and
  - (b) securities that –
    - (i) are traded on a regulated market situated or operating outside the United Kingdom, and
    - (ii) are issued by an issuer for which the United Kingdom is the home Member State within the meaning of Article 2.1(i) of the transparency obligations directive.
- (3) The issuer of securities to which this section applies is liable to pay compensation to a person who has –
  - (a) acquired such securities issued by it, and
  - (b) suffered loss in respect of them as a result of –
    - (i) any untrue or misleading statement in a publication to which this section applies, or
    - (ii) the omission from any such publication of any matter required to be included in it.
- (4) The issuer is so liable only if a person discharging managerial responsibilities within the issuer in relation to the publication –
  - (a) knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
  - (b) knew the omission to be dishonest concealment of a material fact.
- (5) A loss is not regarded as suffered as a result of the statement or omission in the publication unless the person suffering it acquired the relevant securities –
  - (a) in reliance on the information in the publication, and
  - (b) at a time when, and in circumstances in which, it was reasonable for him to rely on that information.
- (6) Except as mentioned in subsection (8) –
  - (a) the issuer is not subject to any other liability than that provided for by this section in respect of loss suffered as a result of reliance by any person on –
    - (i) an untrue or misleading statement in a publication to which this section applies, or
    - (ii) the omission from any such publication of any matter required to be included in it, and
  - (b) a person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.

- (7) Any reference in subsection (6) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement.
- (8) This section does not affect –
  - (a) the powers conferred by section 382 and 384 (powers of the court to make a restitution order and of the Authority to require restitution);
  - (b) liability for a civil penalty;
  - (c) liability for a criminal offence.
- (9) For the purposes of this section –
  - (a) the following are persons “discharging managerial responsibilities” in relation to a publication –
    - (i) any director of the issuer (or person occupying the position of director, by whatever name called),
    - (ii) in the case of an issuer whose affairs are managed by its members, any member of the issuer,
    - (iii) in the case of an issuer that has no persons within subparagraph (i) or (ii), any senior executive of the issuer having responsibilities in relation to the publication;
  - (b) references to the acquisition by a person of securities include his contracting to acquire them or any interest in them.

**90B Power to make further provision about liability for published information**

- (1) The Treasury may by regulations make provision about the liability of issuers of securities traded on a regulated market, and other persons, in respect of information published to holders of securities, to the market or to the public generally.
- (2) Regulations under this section may amend any primary or subordinate legislation, including any provision of, or made under, this Act.”.

**1271 Exercise of powers where UK is host member State**

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after section 100 insert –

**“100A Exercise of powers where UK is host member state**

- (1) This section applies to the exercise by the competent authority of any power under this Part exercisable in case of infringement of –
  - (a) a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or
  - (b) a provision of transparency rules or any other provision made in accordance with the transparency obligations directive,in relation to an issuer whose home State is a member State other than the United Kingdom.
- (2) The competent authority may act in such a case only in respect of the infringement of a provision required by the relevant directive. Any reference to an applicable provision or applicable transparency obligation shall be read accordingly.

- (3) If the authority finds that there has been such an infringement, it must give a notice to that effect to the competent authority of the person's home State requesting it –
  - (a) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
  - (b) to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures.
- (4) The authority may not act further unless satisfied –
  - (a) that the competent authority of the person's home State has failed or refused to take measures for the purpose mentioned in subsection (3)(a), or
  - (b) that the measures taken by that authority have proved inadequate for that purpose.

This does not affect exercise of the powers under section 87K(2), 87L(2) or (3) or 89L(2) or (3) (powers to protect market).
- (5) If the authority is so satisfied, it must, after informing the competent authority of the person's home State, take all appropriate measures to protect investors.
- (6) In such a case the authority must inform the Commission of the measures at the earliest opportunity.”.

#### **1272 Transparency obligations and related matters: minor and consequential amendments**

- (1) Schedule 15 to this Act makes minor and consequential amendments in connection with the provision made by this Part.
- (2) In that Schedule-
  - Part 1 contains amendments of the Financial Services and Markets Act 2000 (c. 8);
  - Part 2 contains amendments of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

#### **1273 Corporate governance regulations**

- (1) The Secretary of State may make regulations –
  - (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
  - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation.
- (2) “Corporate governance”, in relation to an issuer, includes –
  - (a) the nature, constitution or functions of the organs of the issuer;
  - (b) the manner in which organs of the issuer conduct themselves;
  - (c) the requirements imposed on organs of the issuer;
  - (d) the relationship between different organs of the issuer;

- (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer’s securities.
- (3) The regulations may –
- (a) make provision by reference to any specified code on corporate governance that may be issued from time to time by a specified body;
  - (b) create new criminal offences (subject to subsection (4));
  - (c) make provision excluding liability in damages in respect of things done or omitted for the purposes of, or in connection with, the carrying on, or purported carrying on, of any specified activities.
- “Specified” here means specified in the regulations.
- (4) The regulations may not create a criminal offence punishable by a greater penalty than –
- (a) on indictment, a fine;
  - (b) on summary conviction, a fine not exceeding the statutory maximum or (if calculated on a daily basis) £100 a day.
- (5) Regulations under this section are subject to negative resolution procedure.
- (6) In this section “issuer”, “securities” and “regulated market” have the same meaning as in Part 6 of the Financial Services and Markets Act 2000 (c. 8).

## 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;
  - (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
  - (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.
- (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) –
  - (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”.

**PART 45**

NORTHERN IRELAND

**1284 Extension of Companies Acts to Northern Ireland**

- (1) The Companies Acts as defined by this Act (see section 2) extend to Northern Ireland.
- (2) The Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9)) and Part 3 of the Companies (Audit, Investigations and Community Enterprise) Order 2005 (S.I. 2005/1967 (N.I. 17)) shall cease to have effect accordingly.

**1285 Extension of GB enactments relating to SEs**

- (1) The enactments in force in Great Britain relating to SEs extend to Northern Ireland.

- (2) The following enactments shall cease to have effect accordingly –
  - (a) the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (SR 2004/417), and
  - (b) the European Public Limited-Liability Company (Fees) Regulations (Northern Ireland) 2004 (SR 2004/418).
- (3) In this section “SE” means a European Public Limited-Liability Company (or Societas Europaea) within the meaning of Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European Company.

**1286 Extension of GB enactments relating to certain other forms of business organisation**

- (1) The enactments in force in Great Britain relating to –
  - (a) limited liability partnerships,
  - (b) limited partnerships,
  - (c) open-ended investment companies, and
  - (d) European Economic Interest Groupings,extend to Northern Ireland.
- (2) The following enactments shall cease to have effect accordingly –
  - (a) the Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12 (N.I.));
  - (b) the Limited Partnerships Act 1907 (c. 24) as it formerly had effect in Northern Ireland;
  - (c) the Open-Ended Investment Companies Act (Northern Ireland) 2002 (c. 13 (N.I.));
  - (d) the European Economic Interest Groupings Regulations (Northern Ireland) 1989 (SR 1989/216).

**1287 Extension of enactments relating to business names**

- (1) The provisions of Part 41 of this Act (business names) extend to Northern Ireland.
- (2) The Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 (N.I. 7)) shall cease to have effect accordingly.

**PART 46**

GENERAL SUPPLEMENTARY PROVISIONS

*Regulations and orders*

**1288 Regulations and orders: statutory instrument**

Except as otherwise provided, regulations and orders under this Act shall be made by statutory instrument.

**1289 Regulations and orders: negative resolution procedure**

Where regulations or orders under this Act are subject to “negative resolution procedure” the statutory instrument containing the regulations or order shall

be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **1290 Regulations and orders: affirmative resolution procedure**

Where regulations or orders under this Act are subject to “affirmative resolution procedure” the regulations or order must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.

#### **1291 Regulations and orders: approval after being made**

- (1) Regulations or orders under this Act that are subject to “approval after being made” –
  - (a) must be laid before Parliament after being made, and
  - (b) cease to have effect at the end of 28 days beginning with the day on which they were made unless during that period they are approved by resolution of each House.
- (2) In reckoning the period of 28 days no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (3) The regulations or order ceasing to have effect does not affect –
  - (a) anything previously done under them or it, or
  - (b) the making of new regulations or a new order.

#### **1292 Regulations and orders: supplementary**

- (1) Regulations or orders under this Act may –
  - (a) make different provision for different cases or circumstances,
  - (b) include supplementary, incidental and consequential provision, and
  - (c) make transitional provision and savings.
- (2) Any provision that may be made by regulations under this Act may be made by order; and any provision that may be made by order under this Act may be made by regulations.
- (3) Any provision that may be made by regulations or order under this Act for which no Parliamentary procedure is prescribed may be made by regulations or order subject to negative or affirmative resolution procedure.
- (4) Any provision that may be made by regulations or order under this Act subject to negative resolution procedure may be made by regulations or order subject to affirmative resolution procedure.

#### *Meaning of "enactment"*

#### **1293 Meaning of “enactment”**

In this Act, unless the context otherwise requires, “enactment” includes –

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30),

- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation within the meaning of the Interpretation Act 1978.

*Consequential and transitional provisions*

**1294 Power to make consequential amendments etc**

- (1) The Secretary of State or the Treasury may by order make such provision amending, repealing or revoking any enactment to which this section applies as they consider necessary or expedient in consequence of any provision made by or under this Act.
- (2) This section applies to –
  - (a) any enactment passed or made before the passing of this Act,
  - (b) any enactment contained in this Act or in subordinate legislation made under it, and
  - (c) any enactment passed or made before the end of the session after that in which this Act is passed.
- (3) Without prejudice to the generality of the power conferred by subsection (1), orders under this section may –
  - (a) make provision extending to other forms of organisation any provision made by or under this Act in relation to companies, or
  - (b) make provision corresponding to that made by or under this Act in relation to companies,in either case with such adaptations or other modifications as appear to the Secretary of State or the Treasury to be necessary or expedient.
- (4) The references in subsection (3) to provision made by this Act include provision conferring power to make provision by regulations, orders or other subordinate legislation.
- (5) Amendments and repeals made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.
- (6) Orders under this section are subject to affirmative resolution procedure.

**1295 Repeals**

The enactments specified in Schedule 16, which include enactments that are no longer of practical utility, are repealed to the extent specified.

**1296 Power to make transitional provision and savings**

- (1) The Secretary of State or the Treasury may by order make such transitional provision and savings as they consider necessary or expedient in connection with the commencement of any provision made by or under this Act.
- (2) An order may, in particular, make such adaptations of provisions brought into force as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.

- (3) Transitional provision and savings made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.
- (4) Orders under this section are subject to negative resolution procedure.

### **1297 Continuity of the law**

- (1) This section applies where any provision of this Act re-enacts (with or without modification) an enactment repealed by this Act.
- (2) The repeal and re-enactment does not affect the continuity of the law.
- (3) Anything done (including subordinate legislation made), or having effect as if done, under or for the purposes of the repealed provision that could have been done under or for the purposes of the corresponding provision of this Act, if in force or effective immediately before the commencement of that corresponding provision, has effect thereafter as if done under or for the purposes of that corresponding provision.
- (4) Any reference (express or implied) in this Act or any other enactment, instrument or document to a provision of this Act shall be construed (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.
- (5) Any reference (express or implied) in any enactment, instrument or document to a repealed provision shall be construed (so far as the context permits), as respects times, circumstances and purposes in relation to which the corresponding provision of this Act has effect, as being or (according to the context) including a reference to the corresponding provision of this Act.
- (6) This section has effect subject to any specific transitional provision or saving contained in this Act.
- (7) References in this section to this Act include subordinate legislation made under this Act.
- (8) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## **PART 47**

### **FINAL PROVISIONS**

#### **1298 Short title**

The short title of this Act is the Companies Act 2006.

#### **1299 Extent**

Except as otherwise provided (or the context otherwise requires), the provisions of this Act extend to the whole of the United Kingdom.

#### **1300 Commencement**

- (1) The following provisions come into force on the day this Act is passed –

- (a) Part 43 (transparency obligations and related matters), except the amendment in paragraph 11(2) of Schedule 15 of the definition of “regulated market” in Part 6 of the Financial Services and Markets Act 2000 (c. 8),
  - (b) in Part 44 (miscellaneous provisions) –
    - section 1274 (grants to bodies concerned with actuarial standards etc), and
    - section 1276 (application of provisions to Scotland and Northern Ireland),
  - (c) Part 46 (general supplementary provisions), except section 1295 and Schedule 16 (repeals), and
  - (d) this Part.
- (2) The other provisions of this Act come into force on such day as may be appointed by order of the Secretary of State or the Treasury.

## SCHEDULES

## SCHEDULE 1

Sections 254 and 255

## CONNECTED PERSONS: REFERENCES TO AN INTEREST IN SHARES OR DEBENTURES

*Introduction*

- 1 (1) The provisions of this Schedule have effect for the interpretation of references in sections 254 and 255 (directors connected with or controlling a body corporate) to an interest in shares or debentures.
- (2) The provisions are expressed in relation to shares but apply to debentures as they apply to shares.

*General provisions*

- 2 (1) A reference to an interest in shares includes any interest of any kind whatsoever in shares.
- (2) Any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded.
- (3) It is immaterial that the shares in which a person has an interest are not identifiable.
- (4) Persons having a joint interest in shares are deemed each of them to have that interest.

*Rights to acquire shares*

- 3 (1) A person is taken to have an interest in shares if he enters into a contract to acquire them.
- (2) A person is taken to have an interest in shares if—
  - (a) he has a right to call for delivery of the shares to himself or to his order, or
  - (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares,whether the right or obligation is conditional or absolute.
- (3) Rights or obligations to subscribe for shares are not to be taken for the purposes of sub-paragraph (2) to be rights to acquire or obligations to take an interest in shares.
- (4) A person ceases to have an interest in shares by virtue of this paragraph—
  - (a) on the shares being delivered to another person at his order—
    - (i) in fulfilment of a contract for their acquisition by him, or
    - (ii) in satisfaction of a right of his to call for their delivery;

- (b) on a failure to deliver the shares in accordance with the terms of such a contract or on which such a right falls to be satisfied;
- (c) on the lapse of his right to call for the delivery of shares.

*Right to exercise or control exercise of rights*

- 4 (1) A person is taken to have an interest in shares if, not being the registered holder, he is entitled –
- (a) to exercise any right conferred by the holding of the shares, or
  - (b) to control the exercise of any such right.
- (2) For this purpose a person is taken to be entitled to exercise or control the exercise of a right conferred by the holding of shares if he –
- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
  - (b) is under an obligation (whether or not so subject) the fulfilment of which would make him so entitled.
- (3) A person is not by virtue of this paragraph taken to be interested in shares by reason only that –
- (a) he has been appointed a proxy to exercise any of the rights attached to the shares, or
  - (b) he has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members.

*Bodies corporate*

- 5 (1) A person is taken to be interested in shares if a body corporate is interested in them and –
- (a) the body corporate or its directors are accustomed to act in accordance with his directions or instructions, or
  - (b) he is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of the body corporate.
- (2) For the purposes of sub-paragraph (1)(b) where –
- (a) a person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of a body corporate, and
  - (b) that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate,
- the voting power mentioned in paragraph (b) above is taken to be exercisable by that person.

*Trusts*

- 6 (1) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is taken to have an interest in shares, subject as follows.
- (2) So long as a person is entitled to receive, during the lifetime of himself or another, income from trust property comprising shares, an interest in the shares in reversion or remainder or (as regards Scotland) in fee shall be disregarded.

- (3) A person is treated as not interested in shares if and so long as he holds them—
- (a) under the law in force in any part of the United Kingdom, as a bare trustee or as a custodian trustee, or
  - (b) under the law in force in Scotland, as a simple trustee.
- (4) There shall be disregarded any interest of a person subsisting by virtue of—
- (a) an authorised unit trust scheme (within the meaning of section 237 of the Financial Services and Markets Act 2000 (c. 8));
  - (b) a scheme made under section 22 or 22A of the Charities Act 1960 (c. 58), section 25 of the Charities Act (Northern Ireland) 1964 (c. 33 (N.I.)) or section 24 or 25 of the Charities Act 1993 (c. 10), section 11 of the Trustee Investments Act 1961 (c. 62) or section 42 of the Administration of Justice Act 1982 (c. 53); or
  - (c) the scheme set out in the Schedule to the Church Funds Investment Measure 1958 (1958 No. 1).
- (5) There shall be disregarded any interest—
- (a) of the Church of Scotland General Trustees or of the Church of Scotland Trust in shares held by them;
  - (b) of any other person in shares held by those Trustees or that Trust otherwise than as simple trustees.

“The Church of Scotland General Trustees” are the body incorporated by the order confirmed by the Church of Scotland (General Trustees) Order Confirmation Act 1921 (1921 c. xxv), and “the Church of Scotland Trust” is the body incorporated by the order confirmed by the Church of Scotland Trust Order Confirmation Act 1932 (1932 c. xxi).

## SCHEDULE 2

Section 948

### SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURES ETC FOR THE PURPOSES OF SECTION 948

#### 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 for Her Majesty’s Revenue and Customs.
- 7 The Lord Advocate.
- 8 The Director of Public Prosecutions.
- 9 The Director of Public Prosecutions for Northern Ireland.
- 10 A constable.

- 11 A procurator fiscal.
- 12 The Scottish Ministers.

## PART 2

## SPECIFIED DESCRIPTIONS OF DISCLOSURES

- 13 A disclosure for the purpose of enabling or assisting a person authorised under section 457 of this Act (persons authorised to apply to court) to exercise his functions.  
Until the coming into force of section 457, the reference to that section is to be read as a reference to section 245C of the Companies Act 1985 (c. 6).
- 14 A disclosure for the purpose of enabling or assisting an inspector appointed under Part 14 of the Companies Act 1985 (investigation of companies and their affairs, etc) to exercise his functions.
- 15 A disclosure for the purpose of enabling or assisting a person authorised under section 447 of the Companies Act 1985 (power to require production of documents) or section 84 of the Companies Act 1989 (c. 40) (exercise of powers by officer etc) to exercise his functions.
- 16 A disclosure for the purpose of enabling or assisting a person appointed under section 167 of the Financial Services and Markets Act 2000 (c. 8) (general investigations) to conduct an investigation to exercise his functions.
- 17 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.
- 18 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.
- 19 A disclosure for the purpose of enabling or assisting the body corporate responsible for administering the scheme referred to in section 225 of the Financial Services and Markets Act 2000 (the ombudsman scheme) to exercise its functions.
- 20 A disclosure for the purpose of enabling or assisting a person appointed under paragraph 4 (the panel of ombudsmen) or 5 (the Chief Ombudsman) of Schedule 17 to the Financial Services and Markets Act 2000 to exercise his functions.
- 21 A disclosure for the purpose of enabling or assisting a person appointed under regulations made under section 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.
- 22 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.
- 23 A disclosure for the purpose of enabling or assisting the investigator appointed under paragraph 7 of Schedule 1 to the Financial Services and

- Markets Act 2000 (arrangements for investigation of complaints) to exercise his functions.
- 24 A disclosure for the purpose of enabling or assisting a person appointed by the Treasury to hold an inquiry into matters relating to financial services (including an inquiry under section 15 of the Financial Services and Markets Act 2000 (c. 8)) to exercise his functions.
- 25 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) the Companies Acts;
  - (b) Part 5 of the Criminal Justice Act 1993 (c. 36) (insider dealing);
  - (c) the Insolvency Act 1986 (c. 45);
  - (d) the Company Directors Disqualification Act 1986 (c. 46);
  - (e) Part 42 of this Act (statutory auditors);
  - (f) Part 3 (investigations and powers to obtain information) or 7 (financial markets and insolvency) of the Companies Act 1989 (c. 40);
  - (g) the Financial Services and Markets Act 2000.
- Until the coming into force of Part 42 of this Act, the reference to it in paragraph (e) is to be read as a reference to Part 2 of the Companies Act 1989.
- 26 A disclosure for the purpose of enabling or assisting the Scottish Ministers to exercise their functions under the enactments relating to insolvency.
- 27 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.
- 28 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.
- 29 A disclosure for the purpose of enabling or assisting the Pensions Regulator to exercise the functions conferred on it by or by virtue of any of the following—
- (a) the Pension Schemes Act 1993 (c. 48);
  - (b) the Pensions Act 1995 (c. 26);
  - (c) the Welfare Reform and Pensions Act 1999 (c. 30);
  - (d) the Pensions Act 2004 (c. 35);
  - (e) any enactment in force in Northern Ireland corresponding to any of those enactments.
- 30 A disclosure for the purpose of enabling or assisting the Board of the Pension Protection Fund to exercise the functions conferred on it by or by virtue of Part 2 of the Pensions Act 2004 or any enactment in force in Northern Ireland corresponding to that Part.
- 31 A disclosure for the purpose of enabling or assisting—
- (a) the Bank of England,
  - (b) the European Central Bank, or
  - (c) the central bank of any country or territory outside the United Kingdom,
- to exercise its functions.

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- 32 A disclosure for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions.
- 33 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 (c. xiv)) to exercise their functions under or by virtue of the Lloyd's Acts 1871 to 1982.
- 34 A disclosure for the purpose of enabling or assisting the Office of Fair Trading to exercise its functions under any of the following –
- (a) the Fair Trading Act 1973 (c. 41);
  - (b) the Consumer Credit Act 1974 (c. 39);
  - (c) the Estate Agents Act 1979 (c. 38);
  - (d) the Competition Act 1980 (c. 21);
  - (e) the Competition Act 1998 (c. 41);
  - (f) the Financial Services and Markets Act 2000 (c. 8);
  - (g) the Enterprise Act 2002 (c. 40);
  - (h) the Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915);
  - (i) the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083).
- 35 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.
- 36 A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Competition Appeal Tribunal.
- 37 A disclosure for the purpose of enabling or assisting an enforcer under Part 8 of the Enterprise Act 2002 (enforcement of consumer legislation) to exercise its functions under that Part.
- 38 A disclosure for the purpose of enabling or assisting the Charity Commission to exercise its functions.
- 39 A disclosure for the purpose of enabling or assisting the Attorney General to exercise his functions in connection with charities.
- 40 A disclosure for the purpose of enabling or assisting the National Lottery Commission to exercise its functions under sections 5 to 10 (licensing) and 15 (power of Secretary of State to require information) of the National Lottery etc. Act 1993 (c. 39).
- 41 A disclosure by the National Lottery Commission to the National Audit Office for the purpose of enabling or assisting the Comptroller and Auditor General to carry out an examination under Part 2 of the National Audit Act 1983 (c. 44) into the economy, effectiveness and efficiency with which the National Lottery Commission has used its resources in discharging its functions under sections 5 to 10 of the National Lottery etc. Act 1993.

- 42 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.
- 43 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.
- 44 A disclosure for the purpose of enabling or assisting an enforcement authority under the Financial Services (Distance Marketing) Regulations 2004 (S.I. 2004/2095) to exercise its functions under those Regulations.
- 45 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 (c. 40) (notice of intention to prosecute, etc).
- 46 A disclosure for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—
- (a) the legislation relating to friendly societies or to industrial and provident societies;
  - (b) the Building Societies Act 1986 (c. 53);
  - (c) Part 7 of the Companies Act 1989 (c. 40) (financial markets and insolvency);
  - (d) the Financial Services and Markets Act 2000 (c. 8).
- 47 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 (official listing) to exercise its functions under that Part.
- 48 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.
- 49 A disclosure for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to exercise its functions as such.  
“Recognised investment exchange” and “recognised clearing house” have the same meaning as in section 285 of the Financial Services and Markets Act 2000.
- 50 A disclosure for the purpose of enabling or assisting a person approved under the Uncertificated Securities Regulations 2001 (S.I. 2001/3755) as an operator of a relevant system (within the meaning of those regulations) to exercise his functions.
- 51 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.
- 52 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.
- 53 A disclosure for the purpose of enabling or assisting a body designated by order under section 1252 of this Act (delegation of functions of Secretary of State) to exercise its functions under Part 42 of this Act (statutory auditors).

- Until the coming into force of that Part, the references to section 1252 and Part 42 are to be read as references to section 46 of the Companies Act 1989 (c. 40) and Part 2 of that Act respectively.
- 54 A disclosure for the purpose of enabling or assisting a recognised supervisory or qualifying body, within the meaning of Part 42 of this Act, to exercise its functions as such.  
Until the coming into force of that Part, the reference to it is to be read as a reference to Part 2 of the Companies Act 1989.
- 55 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.
- 56 A disclosure for the purpose of enabling or assisting the Insolvency Practitioners Tribunal to exercise its functions under the Insolvency Act 1986 (c. 45).
- 57 A disclosure for the purpose of enabling or assisting a body that 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.
- 58 A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.  
“Overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.
- 59 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 (c. 27).
- 60 A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.
- 61 A disclosure for the purpose of enabling or assisting a person authorised by the Secretary of State under Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (c. 29) to exercise his functions.
- 62 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 (c. 46) (disqualification for unfitness).
- 63 A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal.
- 64 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).
- 65 A disclosure for the purposes of proceedings before the Pensions Regulator Tribunal.
- 66 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.
- 67 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, advocate, foreign lawyer, auditor, accountant, valuer or actuary of his professional duties.  
“Foreign lawyer” has the meaning given by section 89(9) of the Courts and Legal Services Act 1990 (c. 41).
- 68 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.  
“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 subject to negative resolution procedure.
- 69 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.
- 70 A disclosure in pursuance of any Community obligation.

### PART 3

#### OVERSEAS REGULATORY BODIES

- 71 A disclosure is made in accordance with this Part of this Schedule if –  
(a) it is made to a person or body within paragraph 72, and  
(b) it is made for the purpose of enabling or assisting that person or body to exercise the functions mentioned in that paragraph.
- 72 The persons or bodies that are within this paragraph are those exercising functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Services Authority.
- 73 In determining whether to disclose information to a person or body in accordance with this Part of this Schedule, the Panel must have regard to the following considerations –  
(a) whether the use that the person or body is likely to make of the information is sufficiently important to justify making the disclosure;  
(b) whether the person or body has adequate arrangements to prevent the information from being used or further disclosed otherwise than for the purposes of carrying out the functions mentioned in paragraph 72 or any other purposes substantially similar to those for which information disclosed to the Panel could be used or further disclosed.

## SCHEDULE 3

Section 1124

## AMENDMENTS OF REMAINING PROVISIONS OF THE COMPANIES ACT 1985 RELATING TO OFFENCES

*Failure to give information about interests in shares etc*

- 1 (1) In subsection (3) of section 444 of the Companies Act 1985 (c. 6) (failure to give information requested by Secretary of State relating to interests in shares etc) for “is liable to imprisonment or a fine, or both” substitute “commits an offence”.
- (2) At the end of that section add –
  - “(4) A person guilty of an offence under this section is liable –
    - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
    - (b) on summary conviction –
      - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum;
      - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both) and, for continued contravention, a daily default fine not exceeding one-fiftieth of the statutory maximum.”.

*Obstruction of rights conferred by a warrant or failure to comply with requirement under section 448*

- 2 (1) In section 448(7) of the Companies Act 1985 (obstruction of rights conferred by or by virtue of warrant for entry and search of premises) omit the words “and liable to a fine.” to the end.
- (2) After that provision insert –
  - “(7A) A person guilty of an offence under this section is liable –
    - (a) on conviction on indictment, to a fine;
    - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

*Wrongful disclosure of information to which section 449 applies*

- 3 (1) Section 449 of the Companies Act 1985 (wrongful disclosure of information obtained in course of company investigation) is amended as follows.
- (2) For subsection (6)(a) and (b) substitute “is guilty of an offence.”
- (3) After subsection (6) insert –
  - “(6A) A person guilty of an offence under this section is liable –
    - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
    - (b) on summary conviction –

- (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
- (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).”.

(4) Omit subsection (7).

*Destruction, mutilation etc of company documents*

4 (1) For subsection (3) of section 450 of the Companies Act 1985 (offence of destroying, etc company documents) substitute –

- “(3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).”.

(2) Omit subsection (4) of that section.

*Provision of false information in purported compliance with section 447*

5 (1) For subsection (2) of section 451 of the Companies Act 1985 (c. 6) (provision of false information in response to requirement under section 447) substitute –

- “(2) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction –
    - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).”.

(2) Omit subsection (3) of that section.

*Obstruction of inspector, etc exercising power to enter and remain on premises*

6 (1) Section 453A of the Companies Act 1985 (obstruction of inspector etc exercising power to enter and remain on premises) is amended as follows.

(2) For subsection (5)(a) and (b) substitute “is guilty of an offence.”

(3) After subsection (5) insert –

- “(5A) A person guilty of an offence under this section is liable –

- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.
- (4) Omit subsection (6).

*Attempted evasion of restrictions under Part 15*

- 7 (1) In subsection (1) of section 455 of the Companies Act 1985 (attempted evasion of restrictions under Part 15) for “is liable to a fine if he” substitute “commits an offence if he”.
- (2) In subsection (2) of that section for the words “the company” to the end substitute “an offence is committed by –
- (a) the company, and
  - (b) every officer of the company who is in default.”
- (3) After that subsection insert –
- “(2A) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”.

## SCHEDULE 4

Section 1144(1)

## DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO A COMPANY

## PART 1

## INTRODUCTION

*Application of Schedule*

- 1 (1) This Schedule applies to documents or information sent or supplied to a company.
- (2) It does not apply to documents or information sent or supplied by another company (see section 1144(3) and Schedule 5).

## PART 2

## COMMUNICATIONS IN HARD COPY FORM

*Introduction*

- 2 A document or information is validly sent or supplied to a company if it is sent or supplied in hard copy form in accordance with this Part of this Schedule.

*Method of communication in hard copy form*

- 3 (1) A document or information in hard copy form may be sent or supplied by hand or by post to an address (in accordance with paragraph 4).

- (2) For the purposes of this Schedule, a person sends a document or information by post if he posts a prepaid envelope containing the document or information.

*Address for communications in hard copy form*

- 4 A document or information in hard copy form may be sent or supplied –
- (a) to an address specified by the company for the purpose;
  - (b) to the company's registered office;
  - (c) to an address to which any provision of the Companies Acts authorises the document or information to be sent or supplied.

PART 3

COMMUNICATIONS IN ELECTRONIC FORM

*Introduction*

- 5 A document or information is validly sent or supplied to a company if it is sent or supplied in electronic form in accordance with this Part of this Schedule.

*Conditions for use of communications in electronic form*

- 6 A document or information may only be sent or supplied to a company in electronic form if –
- (a) the company has agreed (generally or specifically) that the document or information may be sent or supplied in that form (and has not revoked that agreement), or
  - (b) the company is deemed to have so agreed by a provision in the Companies Acts.

*Address for communications in electronic form*

- 7 (1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address –
- (a) specified for the purpose by the company (generally or specifically), or
  - (b) deemed by a provision in the Companies Acts to have been so specified.
- (2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be sent or supplied to an address to which it could be validly sent if it were in hard copy form.

PART 4

OTHER AGREED FORMS OF COMMUNICATION

- 8 A document or information that is sent or supplied to a company otherwise than in hard copy form or electronic form is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the company.

SCHEDULE 5

Section 1144(2)

COMMUNICATIONS BY A COMPANY

PART 1

INTRODUCTION

*Application of this Schedule*

- 1 This Schedule applies to documents or information sent or supplied by a company.

PART 2

COMMUNICATIONS IN HARD COPY FORM

*Introduction*

- 2 A document or information is validly sent or supplied by a company if it is sent or supplied in hard copy form in accordance with this Part of this Schedule.

*Method of communication in hard copy form*

- 3 (1) A document or information in hard copy form must be –
  - (a) handed to the intended recipient, or
  - (b) sent or supplied by hand or by post to an address (in accordance with paragraph 4).
- (2) For the purposes of this Schedule, a person sends a document or information by post if he posts a prepaid envelope containing the document or information.

*Address for communications in hard copy form*

- 4 (1) A document or information in hard copy form may be sent or supplied by the company –
  - (a) to an address specified for the purpose by the intended recipient;
  - (b) to a company at its registered office;
  - (c) to a person in his capacity as a member of the company at his address as shown in the company's register of members;
  - (d) to a person in his capacity as a director of the company at his address as shown in the company's register of directors;
  - (e) to an address to which any provision of the Companies Acts authorises the document or information to be sent or supplied.
- (2) Where the company is unable to obtain an address falling within subparagraph (1), the document or information may be sent or supplied to the intended recipient's last address known to the company.

## PART 3

## COMMUNICATIONS IN ELECTRONIC FORM

*Introduction*

- 5 A document or information is validly sent or supplied by a company if it is sent in electronic form in accordance with this Part of this Schedule.

*Agreement to communications in electronic form*

- 6 A document or information may only be sent or supplied by a company in electronic form –
- (a) to a person who has agreed (generally or specifically) that the document or information may be sent or supplied in that form (and has not revoked that agreement), or
  - (b) to a company that is deemed to have so agreed by a provision in the Companies Acts.

*Address for communications in electronic form*

- 7 (1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address –
- (a) specified for the purpose by the intended recipient (generally or specifically), or
  - (b) where the intended recipient is a company, deemed by a provision of the Companies Acts to have been so specified.
- (2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be –
- (a) handed to the intended recipient, or
  - (b) sent or supplied to an address to which it could be validly sent if it were in hard copy form.

## PART 4

## COMMUNICATIONS BY MEANS OF A WEBSITE

*Use of website*

- 8 A document or information is validly sent or supplied by a company if it is made available on a website in accordance with this Part of this Schedule.

*Agreement to use of website*

- 9 A document or information may only be sent or supplied by the company to a person by being made available on a website if the person –
- (a) has agreed (generally or specifically) that the document or information may be sent or supplied to him in that manner, or
  - (b) is taken to have so agreed under –
    - (i) paragraph 10 (members of the company etc), or
    - (ii) paragraph 11 (debenture holders),and has not revoked that agreement.

*Deemed agreement of members of company etc to use of website*

- 10 (1) This paragraph applies to a document or information to be sent or supplied to a person –
- (a) as a member of the company, or
  - (b) as a person nominated by a member in accordance with the company's articles to enjoy or exercise all or any specified rights of the member in relation to the company, or
  - (c) as a person nominated by a member under section 146 to enjoy information rights.
- (2) To the extent that –
- (a) the members of the company have resolved that the company may send or supply documents or information to members by making them available on a website, or
  - (b) the company's articles contain provision to that effect,
- a person in relation to whom the following conditions are met is taken to have agreed that the company may send or supply documents or information to him in that manner.
- (3) The conditions are that –
- (a) the person has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him by means of a website, and
  - (b) the company has not received a response within the period of 28 days beginning with the date on which the company's request was sent.
- (4) A person is not taken to have so agreed if the company's request –
- (a) did not state clearly what the effect of a failure to respond would be, or
  - (b) was sent less than twelve months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information.
- (5) Chapter 3 of Part 3 (resolutions affecting a company's constitution) applies to a resolution under this paragraph.

*Deemed agreement of debenture holders to use of website*

- 11 (1) This paragraph applies to a document or information to be sent or supplied to a person as holder of a company's debentures.
- (2) To the extent that –
- (a) the relevant debenture holders have duly resolved that the company may send or supply documents or information to them by making them available on a website, or
  - (b) the instrument creating the debenture in question contains provision to that effect,
- a debenture holder in relation to whom the following conditions are met is taken to have agreed that the company may send or supply documents or information to him in that manner.
- (3) The conditions are that –

- (a) the debenture holder has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him by means of a website, and
  - (b) the company has not received a response within the period of 28 days beginning with the date on which the company's request was sent.
- (4) A person is not taken to have so agreed if the company's request –
- (a) did not state clearly what the effect of a failure to respond would be, or
  - (b) was sent less than twelve months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information.
- (5) For the purposes of this paragraph –
- (a) the relevant debenture holders are the holders of debentures of the company ranking *pari passu* for all purposes with the intended recipient, and
  - (b) a resolution of the relevant debenture holders is duly passed if they agree in accordance with the provisions of the instruments creating the debentures.

#### *Availability of document or information*

- 12 (1) A document or information authorised or required to be sent or supplied by means of a website must be made available in a form, and by a means, that the company reasonably considers will enable the recipient –
- (a) to read it, and
  - (b) to retain a copy of it.
- (2) For this purpose a document or information can be read only if –
- (a) it can be read with the naked eye, or
  - (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

#### *Notification of availability*

- 13 (1) The company must notify the intended recipient of –
- (a) the presence of the document or information on the website,
  - (b) the address of the website,
  - (c) the place on the website where it may be accessed, and
  - (d) how to access the document or information.
- (2) The document or information is taken to be sent –
- (a) on the date on which the notification required by this paragraph is sent, or
  - (b) if later, the date on which the document or information first appears on the website after that notification is sent.

#### *Period of availability on website*

- 14 (1) The company must make the document or information available on the website throughout –

- (a) the period specified by any applicable provision of the Companies Acts, or
  - (b) if no such period is specified, the period of 28 days beginning with the date on which the notification required under paragraph 13 is sent to the person in question.
- (2) For the purposes of this paragraph, a failure to make a document or information available on a website throughout the period mentioned in subparagraph (1) shall be disregarded if –
- (a) it is made available on the website for part of that period, and
  - (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

#### PART 5

##### OTHER AGREED FORMS OF COMMUNICATION

- 15 A document or information that is sent or supplied otherwise than in hard copy or electronic form or by means of a website is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient.

#### PART 6

##### SUPPLEMENTARY PROVISIONS

###### *Joint holders of shares or debentures*

- 16 (1) This paragraph applies in relation to documents or information to be sent or supplied to joint holders of shares or debentures of a company.
- (2) Anything to be agreed or specified by the holder must be agreed or specified by all the joint holders.
- (3) Anything authorised or required to be sent or supplied to the holder may be sent or supplied either –
- (a) to each of the joint holders, or
  - (b) to the holder whose name appears first in the register of members or the relevant register of debenture holders.
- (4) This paragraph has effect subject to anything in the company's articles.

###### *Death or bankruptcy of holder of shares*

- 17 (1) This paragraph has effect in the case of the death or bankruptcy of a holder of a company's shares.
- (2) Documents or information required or authorised to be sent or supplied to the member may be sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy –
- (a) by name, or
  - (b) by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description,

at the address in the United Kingdom supplied for the purpose by those so claiming.

- (3) Until such an address has been so supplied, a document or information may be sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.
- (4) This paragraph has effect subject to anything in the company's articles.
- (5) References in this paragraph to the bankruptcy of a person include –
  - (a) the sequestration of the estate of a person;
  - (b) a person's estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)).

In such a case the reference in sub-paragraph (2)(b) to the trustee of the bankrupt is to be read as the permanent or interim trustee (within the meaning of that Act) on the sequestrated estate or, as the case may be, the trustee under the protected deed.

## SCHEDULE 6

Section 1159

### MEANING OF "SUBSIDIARY" ETC: SUPPLEMENTARY PROVISIONS

#### *Introduction*

- 1 The provisions of this Part of this Schedule explain expressions used in section 1159 (meaning of "subsidiary" etc) and otherwise supplement that section.

#### *Voting rights in a company*

- 2 In section 1159(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.

#### *Right to appoint or remove a majority of the directors*

- 3 (1) In section 1159(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.
- (2) A company shall be treated as having the right to appoint to a directorship if –
  - (a) a person's appointment to it follows necessarily from his appointment as director of the company, or
  - (b) the directorship is held by the company itself.
- (3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

*Rights exercisable only in certain circumstances or temporarily incapable of exercise*

- 4 (1) Rights which are exercisable only in certain circumstances shall be taken into account only –
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
  - (b) when the circumstances are within the control of the person having the rights.
- (2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

*Rights held by one person on behalf of another*

- 5 Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- 6 (1) Rights held by a person as nominee for another shall be treated as held by the other.
- (2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

*Rights attached to shares held by way of security*

- 7 Rights attached to shares held by way of security shall be treated as held by the person providing the security –
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions, and
  - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

*Rights attributed to holding company*

- 8 (1) Rights shall be treated as held by a holding company if they are held by any of its subsidiary companies.
- (2) Nothing in paragraph 6 or 7 shall be construed as requiring rights held by a holding company to be treated as held by any of its subsidiaries.
- (3) For the purposes of paragraph 7 rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of –
- (a) any subsidiary or holding company of that company, or
  - (b) any subsidiary of a holding company of that company.

*Disregard of certain rights*

- 9 The voting rights in a company shall be reduced by any rights held by the company itself.

*Supplementary*

- 10 References in any provision of paragraphs 5 to 9 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.

## SCHEDULE 7

Section 1162

## PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTARY PROVISIONS

*Introduction*

- 1 The provisions of this Schedule explain expressions used in section 1162 (parent and subsidiary undertakings) and otherwise supplement that section.

*Voting rights in an undertaking*

- 2 (1) In section 1162(2)(a) and (d) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.
- (2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

*Right to appoint or remove a majority of the directors*

- 3 (1) In section 1162(2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.
- (2) An undertaking shall be treated as having the right to appoint to a directorship if –
- (a) a person’s appointment to it follows necessarily from his appointment as director of the undertaking, or
  - (b) the directorship is held by the undertaking itself.
- (3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

*Right to exercise dominant influence*

- 4 (1) For the purposes of section 1162(2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another

undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.

- (2) A “control contract” means a contract in writing conferring such a right which –
  - (a) is of a kind authorised by the articles of the undertaking in relation to which the right is exercisable, and
  - (b) is permitted by the law under which that undertaking is established.
- (3) This paragraph shall not be read as affecting the construction of section 1162(4)(a).

*Rights exercisable only in certain circumstances or temporarily incapable of exercise*

- 5 (1) Rights which are exercisable only in certain circumstances shall be taken into account only –
  - (a) when the circumstances have arisen, and for so long as they continue to obtain, or
  - (b) when the circumstances are within the control of the person having the rights.
- (2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

*Rights held by one person on behalf of another*

- 6 Rights held by a person in a fiduciary capacity shall be treated as not held by him.
- 7 (1) Rights held by a person as nominee for another shall be treated as held by the other.
- (2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

*Rights attached to shares held by way of security*

- 8 Rights attached to shares held by way of security shall be treated as held by the person providing the security –
  - (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions, and
  - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

*Rights attributed to parent undertaking*

- 9 (1) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

- (2) Nothing in paragraph 7 or 8 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.
- (3) For the purposes of paragraph 8 rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

*Disregard of certain rights*

- 10 The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

*Supplementary*

- 11 References in any provision of paragraphs 6 to 10 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.

## SCHEDULE 8

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## SCHEDULE 9

Section 1175

### REMOVAL OF SPECIAL PROVISIONS ABOUT ACCOUNTS AND AUDIT OF CHARITABLE COMPANIES

#### PART 1

#### THE COMPANIES ACT 1985 (C. 6)

- 1 In section 240 (requirements in connection with publication of accounts)—
  - (a) in subsection (1) omit from “or, as the case may be,” to “section 249A(2)”;
  - (b) in subsection (3)(c) omit from “and, if no such report” to “any financial year”;
  - (c) after subsection (3)(c) insert “, and”;
  - (d) omit subsection (3)(e) and the “, and” preceding it;
  - (e) in the closing words of subsection (3) omit from “or any report” to “section 249A(2)”.
- 2 In section 245 (voluntary revision of annual accounts or directors’ report), in subsection (4)(b) omit “or reporting accountant”.
- 3 In section 249A (exemptions from audit)—
  - (a) omit subsections (2), (3A) and (4);

- (b) in subsection (6) for “figures for turnover or gross income” substitute “figure for turnover”;
  - (c) in subsection (6A) omit “or (2)”;
  - (d) in subsection (7) omit the definition of “gross income” and the “, and” preceding it.
- 4 In section 249B (cases where exemptions not available) –
- (a) in the opening words of subsection (1) omit “or (2)”;
  - (b) in subsection (1C)(b) omit from “where the company referred to” to “is not a charity”;
  - (c) in subsection (3) omit “or (2)”;
  - (d) in subsection (4), in the opening words and in paragraph (a), omit “or (2)”.
- 5 Omit section 249C (report required for purposes of section 249A(2)).
- 6 Omit section 249D (the reporting accountant).
- 7 In section 249E (effect of exemptions) omit subsection (2).
- 8 In section 262A (index of defined expressions) omit the entry for “reporting accountant”.

## PART 2

### THE COMPANIES (NORTHERN IRELAND) ORDER 1986 (S.I. 1986/1032 (N.I. 6))

- 9 In Article 248 (requirements in connection with publication of accounts) –
- (a) in paragraph (1) omit from “or, as the case may be,” to “Article 257A(2)”;
  - (b) in paragraph (3)(c) omit from “and, if no such report” to “any such financial year”;
  - (c) after paragraph (3)(c) insert “, and”;
  - (d) omit paragraph (3)(e) and the word “, and” preceding it;
  - (e) in the closing words of paragraph (3) omit from “or any report” to “Article 257A(2)”.
- 10 In Article 253 (voluntary revision of annual accounts or directors’ report), in paragraph (4)(b) omit “or reporting accountant”.
- 11 In Article 257A (exemptions from audit) –
- (a) omit paragraphs (2), (3A) and (4);
  - (b) in paragraph (6) for “figures for turnover or gross income” substitute “figure for turnover”;
  - (c) in paragraph (6A) omit “or (2)”;
  - (d) in paragraph (7) omit the definition of “gross income” and the “, and” preceding it.
- 12 In Article 257B (cases where exemptions not available) –
- (a) in the opening words of paragraph (1) omit “or (2)”;
  - (b) in paragraph (1C)(b) omit from “where the company referred to” to “is not a charity”;
  - (c) in paragraph (3) omit “or (2)”;
  - (d) in paragraph (4), in the opening words and in sub-paragraph (a), omit “or (2)”.

- 13 Omit Article 257C (report required for purposes of Article 257A(2)).
- 14 Omit Article 257D (the reporting accountant).
- 15 In Article 257E (effect of exemptions) omit paragraph (2).
- 16 In Article 270A (index of defined expressions) omit the entry for “reporting accountant”.

## SCHEDULE 10

Section 1217

### RECOGNISED SUPERVISORY BODIES

#### PART 1

##### GRANT AND REVOCATION OF RECOGNITION OF A SUPERVISORY BODY

###### *Application for recognition of supervisory body*

- 1 (1) A supervisory body may apply to the Secretary of State for an order declaring it to be a recognised supervisory body for the purposes of this Part of this Act (“a recognition order”).
  - (2) Any such application must be –
    - (a) made in such manner as the Secretary of State may direct, and
    - (b) accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.
  - (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
  - (4) The directions and requirements given or imposed under sub-paragraphs (2) and (3) may differ as between different applications.
  - (5) The Secretary of State may require any information to be furnished under this paragraph to be in such form or verified in such manner as he may specify.
  - (6) Every application must be accompanied by –
    - (a) a copy of the applicant’s rules, and
    - (b) a copy of any guidance issued by the applicant in writing.
  - (7) The reference in sub-paragraph (6)(b) to guidance issued by the applicant is a reference to any guidance or recommendation –
    - (a) issued or made by it to all or any class of its members or persons seeking to become members,
    - (b) relevant for the purposes of this Part, and
    - (c) intended to have continuing effect,including any guidance or recommendation relating to the admission or expulsion of members of the body, so far as relevant for the purposes of this Part.

*Grant and refusal of recognition*

- 2 (1) The Secretary of State may, on an application duly made in accordance with paragraph 1 and after being furnished with all such information as he may require under that paragraph, make or refuse to make a recognition order in respect of the applicant.
- (2) The Secretary of State may make a recognition order only if it appears to him, from the information furnished by the body and having regard to any other information in his possession, that the requirements of Part 2 of this Schedule are satisfied in the case of that body.
- (3) The Secretary of State may refuse to make a recognition order in respect of a body if he considers that its recognition is unnecessary having regard to the existence of one or more other bodies which—
- (a) maintain and enforce rules as to the appointment and conduct of statutory auditors, and
  - (b) have been or are likely to be recognised.
- (4) Where the Secretary of State refuses an application for a recognition order he must give the applicant a written notice to that effect—
- (a) specifying which requirements, in the opinion of the Secretary of State, are not satisfied, or
  - (b) stating that the application is refused on the ground mentioned in sub-paragraph (3).
- (5) A recognition order must state the date on which it takes effect.

*Revocation of recognition*

- 3 (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
- (a) that any requirement of Part 2 of this Schedule is not satisfied in the case of the body to which the recognition order relates (“the recognised body”),
  - (b) that the body has failed to comply with any obligation imposed on it by or by virtue of this Part of this Act, or
  - (c) that the continued recognition of the body is undesirable having regard to the existence of one or more other bodies which have been or are to be recognised.
- (2) An order revoking a recognition order must state the date on which it takes effect, which must be after the period of three months beginning with the date on which the revocation order is made.
- (3) Before revoking a recognition order the Secretary of State must—
- (a) give written notice of his intention to do so to the recognised body,
  - (b) take such steps as he considers reasonably practicable for bringing the notice to the attention of the members of the body, and
  - (c) publish the notice in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.
- (4) A notice under sub-paragraph (3) must—
- (a) state the reasons for which the Secretary of State proposes to act, and

- (b) give particulars of the rights conferred by sub-paragraph (5).
- (5) A person within sub-paragraph (6) may, within the period of three months beginning with the date of service or publication of the notice under sub-paragraph (3) or such longer period as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (6) The persons within this sub-paragraph are—
  - (a) the recognised body on which a notice is served under sub-paragraph (3),
  - (b) any member of the body, and
  - (c) any other person who appears to the Secretary of State to be affected.
- (7) The Secretary of State must have regard to any representations made in accordance with sub-paragraph (5) in determining whether to revoke the recognition order.
- (8) If in any case the Secretary of State considers it essential to do so in the public interest he may revoke a recognition order without regard to the restriction imposed by sub-paragraph (2), even if—
  - (a) no notice has been given or published under sub-paragraph (3), or
  - (b) the period of time for making representations in pursuance of such a notice has not expired.
- (9) An order revoking a recognition order may contain such transitional provision as the Secretary of State thinks necessary or expedient.
- (10) A recognition order may be revoked at the request or with the consent of the recognised body and any such revocation is not subject to—
  - (a) the restrictions imposed by sub-paragraphs (1) and (2), or
  - (b) the requirements of sub-paragraphs (3) to (5) and (7).
- (11) On making an order revoking a recognition order in respect of a body the Secretary of State must—
  - (a) give written notice of the making of the order to the body,
  - (b) take such steps as he considers reasonably practicable for bringing the making of the order to the attention of the members of the body, and
  - (c) publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

*Transitional provision*

- 4 A recognition order made and not revoked under—
  - (a) paragraph 2(1) of Schedule 11 to the Companies Act 1989 (c. 40), or
  - (b) paragraph 2(1) of Schedule 11 to the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)),before the commencement of this Chapter of this Part of this Act is to have effect after the commencement of this Chapter as a recognition order made under paragraph 2(1) of this Schedule.

*Orders not statutory instruments*

- 5 Orders under this Part of this Schedule shall not be made by statutory instrument.

PART 2

REQUIREMENTS FOR RECOGNITION OF A SUPERVISORY BODY

*Holding of appropriate qualification*

- 6 (1) The body must have rules to the effect that a person is not eligible for appointment as a statutory auditor unless –
- (a) in the case of an individual, he holds an appropriate qualification,
  - (b) in the case of a firm –
    - (i) each individual responsible for statutory audit work on behalf of the firm is eligible for appointment as a statutory auditor, and
    - (ii) the firm is controlled by qualified persons (see paragraph 7 below).
- (2) Sub-paragraph (1) does not prevent the body from imposing more stringent requirements.
- (3) A firm which has ceased to comply with the conditions mentioned in sub-paragraph (1)(b) may be permitted to remain eligible for appointment as a statutory auditor for a period of not more than three months.
- 7 (1) This paragraph explains what is meant in paragraph 6(1)(b) by a firm being “controlled by qualified persons”.
- (2) In this paragraph references to a person being qualified are –
- (a) in relation to an individual, to his holding –
    - (i) an appropriate qualification, or
    - (ii) a corresponding qualification to audit accounts under the law of a member State, or part of a member State, other than the United Kingdom;
  - (b) in relation to a firm, to its –
    - (i) being eligible for appointment as a statutory auditor, or
    - (ii) being eligible for a corresponding appointment as an auditor under the law of a member State, or part of a member State, other than the United Kingdom.
- (3) A firm is to be treated as controlled by qualified persons if, and only if –
- (a) a majority of the members of the firm are qualified persons, and
  - (b) where the firm’s affairs are managed by a board of directors, committee or other management body, a majority of that body are qualified persons or, if the body consists of two persons only, at least one of them is a qualified person.
- (4) A majority of the members of a firm means –
- (a) where under the firm’s constitution matters are decided upon by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters;

- (b) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
- (5) A majority of the members of the management body of a firm means –
- (a) where matters are decided at meetings of the management body by the exercise of voting rights, members holding a majority of the rights to vote on all, or substantially all, matters at such meetings;
  - (b) in any other case, members having such rights under the constitution of the firm as enable them to direct its overall policy or alter its constitution.
- (6) Paragraphs 5 to 11 of Schedule 7 to this Act (rights to be taken into account and attribution of rights) apply for the purposes of this paragraph.

*Auditors to be fit and proper persons*

- 8
- (1) The body must have adequate rules and practices designed to ensure that the persons eligible under its rules for appointment as a statutory auditor are fit and proper persons to be so appointed.
  - (2) The matters which the body may take into account for this purpose in relation to a person must include –
    - (a) any matter relating to any person who is or will be employed by or associated with him for the purposes of or in connection with statutory audit work;
    - (b) in the case of a body corporate, any matter relating to –
      - (i) any director or controller of the body,
      - (ii) any other body corporate in the same group, or
      - (iii) any director or controller of any such other body; and
    - (c) in the case of a partnership, any matter relating to –
      - (i) any of the partners,
      - (ii) any director or controller of any of the partners,
      - (iii) any body corporate in the same group as any of the partners, or
      - (iv) any director or controller of any such other body.
  - (3) Where the person is a limited liability partnership, in sub-paragraph (2)(b) “director” is to be read as “member”.
  - (4) In sub-paragraph (2)(b) and (c) “controller”, in relation to a body corporate, means a person who either alone or with an associate or associates is entitled to exercise or control the exercise of 15% or more of the rights to vote on all, or substantially all, matters at general meetings of the body or another body corporate of which it is a subsidiary.

*Professional integrity and independence*

- 9
- (1) The body must have adequate rules and practices designed to ensure that –
    - (a) statutory audit work is conducted properly and with integrity, and
    - (b) persons are not appointed as statutory auditors in circumstances in which they have an interest likely to conflict with the proper conduct of the audit.

- (2) The body must participate in arrangements within paragraph 21, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.
- (3) The body must also have adequate rules and practices designed to ensure that no firm is eligible under its rules for appointment as a statutory auditor unless the firm has arrangements to prevent a person to whom sub-paragraph (4) applies from being able to exert any influence over the way in which a statutory audit is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit.
- (4) This sub-paragraph applies to –
  - (a) any individual who is not a qualified person within the meaning of paragraph 7, and
  - (b) any person who is not a member of the firm.

#### *Technical standards*

- 10 (1) The body must have rules and practices as to –
  - (a) the technical standards to be applied in statutory audit work, and
  - (b) the manner in which those standards are to be applied in practice.
- (2) The body must participate in arrangements within paragraph 22, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.

#### *Procedures for maintaining competence*

- 11 The body must have rules and practices designed to ensure that persons eligible under its rules for appointment as a statutory auditor continue to maintain an appropriate level of competence in the conduct of statutory audits.

#### *Monitoring and enforcement*

- 12 (1) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules.
- (2) The arrangements for monitoring may make provision for that function to be performed on behalf of the body (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

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

- 13 (1) The body must –
  - (a) participate in arrangements within paragraph 23(1), and
  - (b) have rules designed to ensure that members of the body who perform any statutory 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 statutory audit functions in respect of major

audits is concerned) as monitoring of compliance with the body’s rules for the purposes of paragraph 12(1).

(3) In this paragraph –

“major audit” means a statutory audit conducted in respect of –

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

“statutory audit function” means any function performed as a statutory auditor.

#### *Membership, eligibility and discipline*

14 The rules and practices of the body relating to –

- (a) the admission and expulsion of members,
- (b) the grant and withdrawal of eligibility for appointment as a statutory auditor, and
- (c) the discipline it exercises over its members,

must be fair and reasonable and include adequate provision for appeals.

#### *Investigation of complaints*

15 (1) The body must have effective arrangements for the investigation of complaints against –

- (a) persons who are eligible under its rules for appointment as a statutory auditor, and
- (b) the body in respect of matters arising out of its functions as a supervisory body.

(2) The arrangements mentioned in sub-paragraph (1) may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the body itself.

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

16 (1) The body must –

- (a) participate in arrangements within paragraph 24(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.

*Meeting of claims arising out of audit work*

- 17 (1) The body must have adequate rules or arrangements designed to ensure that persons eligible under its rules for appointment as a statutory auditor take such steps as may reasonably be expected of them to secure that they are able to meet claims against them arising out of statutory audit work.
- (2) This may be achieved by professional indemnity insurance or other appropriate arrangements.

*Register of auditors and other information to be made available*

- 18 The body must have rules requiring persons eligible under its rules for appointment as a statutory auditor to comply with any obligations imposed on them by –
- (a) requirements under section 1224 (Secretary of State’s power to call for information);
  - (b) regulations under section 1239 (the register of auditors);
  - (c) regulations under section 1240 (information to be made available to the public).

*Taking account of costs of compliance*

- 19 The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

*Promotion and maintenance of standards*

- 20 The body must be able and willing –
- (a) to promote and maintain high standards of integrity in the conduct of statutory audit work, and
  - (b) to co-operate, by the sharing of information and otherwise, with the Secretary of State and any other authority, body or person having responsibility in the United Kingdom for the qualification, supervision or regulation of auditors.

PART 3

ARRANGEMENTS IN WHICH RECOGNISED SUPERVISORY BODIES ARE REQUIRED TO PARTICIPATE

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

- 21 The arrangements referred to in paragraph 9(2) are appropriate arrangements –
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 9(1), and
  - (b) for ensuring that the determination of those standards is done independently of the body.

*Arrangements for setting technical standards*

- 22 The arrangements referred to in paragraph 10(2) are appropriate arrangements –
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 10(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 companies and other major bodies*

- 23 (1) The arrangements referred to in paragraph 13(1) are appropriate arrangements –
- (a) for enabling the performance by members of the body of statutory 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 “major audit” and “statutory audit function” have the same meaning as in paragraph 13.

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

- 24 (1) The arrangements referred to in paragraph 16(1) are appropriate arrangements –
- (a) for the carrying out of investigations into public interest cases arising in connection with the performance of statutory 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 –
- “public interest cases” means matters which raise or appear to raise important issues affecting the public interest;
  - “statutory audit function” means any function performed as a statutory auditor.

*Supplementary: arrangements to operate independently of body*

- 25 (1) This paragraph applies for the purposes of –
- (a) paragraph 21(b),
  - (b) paragraph 22(b),
  - (c) paragraph 23(1)(b), or

- (d) paragraph 24(1)(e).
- (2) Arrangements are not to be regarded as appropriate for the purpose of ensuring that a thing is 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 that thing, and
  - (b) will not otherwise be involved in the doing of that thing.
- (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: funding of arrangements*

- 26 The body must pay any of the costs of maintaining any arrangements within paragraph 21, 22, 23 or 24 which the arrangements provide are to be paid by it.

*Supplementary: scope of arrangement*

- 27 Arrangements may qualify as arrangements within any of paragraphs 21, 22, 23 and 24 even though the matters for which they provide are more extensive in any respect than those mentioned in the applicable paragraph.

## SCHEDULE 11

Section 1220

### RECOGNISED PROFESSIONAL QUALIFICATIONS

#### PART 1

#### GRANT AND REVOCATION OF RECOGNITION OF A PROFESSIONAL QUALIFICATION

*Application for recognition of professional qualification*

- 1 (1) A qualifying body may apply to the Secretary of State for an order declaring a qualification offered by it to be a recognised professional qualification for the purposes of this Part of this Act (“a recognition order”).
- (2) In this Part of this Act “a recognised qualifying body” means a qualifying body offering a recognised professional qualification.
- (3) Any application must be –
  - (a) made in such manner as the Secretary of State may direct, and
  - (b) accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.
- (4) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (5) The directions and requirements given or imposed under sub-paragraphs (3) and (4) may differ as between different applications.

- (6) The Secretary of State may require any information to be furnished under this paragraph to be in such form or verified in such manner as he may specify.
- (7) In the case of examination standards, the verification required may include independent moderation of the examinations over such a period as the Secretary of State considers necessary.
- (8) Every application must be accompanied by –
  - (a) a copy of the applicant's rules, and
  - (b) a copy of any guidance issued by the applicant in writing.
- (9) The reference in sub-paragraph (8)(b) to guidance issued by the applicant is a reference to any guidance or recommendation –
  - (a) issued or made by it to all or any class of persons holding or seeking to hold a qualification, or approved or seeking to be approved by the body for the purposes of giving practical training,
  - (b) relevant for the purposes of this Part of this Act, and
  - (c) intended to have continuing effect,including any guidance or recommendation relating to a matter within sub-paragraph (10).
- (10) The matters within this sub-paragraph are –
  - (a) admission to or expulsion from a course of study leading to a qualification,
  - (b) the award or deprivation of a qualification, and
  - (c) the approval of a person for the purposes of giving practical training or the withdrawal of such an approval,so far as relevant for the purposes of this Part of this Act.

#### *Grant and refusal of recognition*

- 2 (1) The Secretary of State may, on an application duly made in accordance with paragraph 1 and after being furnished with all such information as he may require under that paragraph, make or refuse to make a recognition order in respect of the qualification in relation to which the application was made.
- (2) The Secretary of State may make a recognition order only if it appears to him, from the information furnished by the applicant and having regard to any other information in his possession, that the requirements of Part 2 of this Schedule are satisfied in relation to the qualification.
- (3) Where the Secretary of State refuses an application for a recognition order he must give the applicant a written notice to that effect specifying which requirements, in his opinion, are not satisfied.
- (4) A recognition order must state the date on which it takes effect.

#### *Revocation of recognition*

- 3 (1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him –
  - (a) that any requirement of Part 2 of this Schedule is not satisfied in relation to the qualification to which the recognition order relates, or

- (b) that the qualifying body has failed to comply with any obligation imposed on it by or by virtue of this Part of this Act.
- (2) An order revoking a recognition order must state the date on which it takes effect, which must be after the period of three months beginning with the date on which the revocation order is made.
- (3) Before revoking a recognition order the Secretary of State must—
  - (a) give written notice of his intention to do so to the qualifying body,
  - (b) take such steps as he considers reasonably practicable for bringing the notice to the attention of persons holding the qualification or in the course of studying for it, and
  - (c) publish the notice in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.
- (4) A notice under sub-paragraph (3) must—
  - (a) state the reasons for which the Secretary of State proposes to act, and
  - (b) give particulars of the rights conferred by sub-paragraph (5).
- (5) A person within sub-paragraph (6) may, within the period of three months beginning with the date of service or publication or such longer period as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (6) The persons within this sub-paragraph are—
  - (a) the qualifying body on which a notice is served under sub-paragraph (3),
  - (b) any person holding the qualification or in the course of studying for it, and
  - (c) any other person who appears to the Secretary of State to be affected.
- (7) The Secretary of State must have regard to any representations made in accordance with sub-paragraph (5) in determining whether to revoke the recognition order.
- (8) If in any case the Secretary of State considers it essential to do so in the public interest he may revoke a recognition order without regard to the restriction imposed by sub-paragraph (2), even if—
  - (a) no notice has been given or published under sub-paragraph (3), or
  - (b) the period of time for making representations in pursuance of such a notice has not expired.
- (9) An order revoking a recognition order may contain such transitional provision as the Secretary of State thinks necessary or expedient.
- (10) A recognition order may be revoked at the request or with the consent of the qualifying body and any such revocation is not subject to—
  - (a) the restrictions imposed by sub-paragraphs (1) and (2), or
  - (b) the requirements of sub-paragraphs (3) to (5) and (7).
- (11) On making an order revoking a recognition order the Secretary of State must—
  - (a) give written notice of the making of the order to the qualifying body,

- (b) take such steps as he considers reasonably practicable for bringing the making of the order to the attention of persons holding the qualification or in the course of studying for it, and
- (c) publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

*Transitional provision*

- 4 A recognition order made and not revoked under –
- (a) paragraph 2(1) of Schedule 12 to the Companies Act 1989 (c. 40), or
  - (b) paragraph 2(1) of Schedule 12 to the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)),
- before the commencement of this Chapter of this Part of this Act is to have effect after the commencement of this Chapter as a recognition order made under paragraph 2(1) of this Schedule.

*Orders not statutory instruments*

- 5 Orders under this Part of this Schedule shall not be made by statutory instrument.

## PART 2

## REQUIREMENTS FOR RECOGNITION OF A PROFESSIONAL QUALIFICATION

*Entry requirements*

- 6 (1) The qualification must only be open to persons who –
- (a) have attained university entrance level, or
  - (b) have a sufficient period of professional experience.
- (2) In relation to a person who has not been admitted to a university or other similar establishment in the United Kingdom, “attaining university entrance level” means –
- (a) being educated to such a standard as would entitle him to be considered for such admission on the basis of –
    - (i) academic or professional qualifications obtained in the United Kingdom and recognised by the Secretary of State to be of an appropriate standard, or
    - (ii) academic or professional qualifications obtained outside the United Kingdom which the Secretary of State considers to be of an equivalent standard, or
  - (b) being assessed, on the basis of written tests of a kind appearing to the Secretary of State to be adequate for the purpose (with or without oral examination), as of such a standard of ability as would entitle him to be considered for such admission.
- (3) The assessment, tests and oral examination referred to in sub-paragraph (2)(b) may be conducted by –
- (a) the qualifying body, or
  - (b) some other body approved by the Secretary of State.

- (4) The reference in sub-paragraph (1)(b) to “a sufficient period of professional experience” is to not less than seven years’ experience in a professional capacity in the fields of finance, law and accountancy.

*Requirement for theoretical instruction or professional experience*

- 7 (1) The qualification must be restricted to persons who –
- (a) have completed a course of theoretical instruction in the subjects prescribed for the purposes of paragraph 8, or
  - (b) have a sufficient period of professional experience.
- (2) The reference in sub-paragraph (1)(b) to “a sufficient period of professional experience” is to not less than seven years’ experience in a professional capacity in the fields of finance, law and accountancy.

*Examination*

- 8 (1) The qualification must be restricted to persons who have passed an examination (at least part of which is in writing) testing –
- (a) theoretical knowledge of the subjects prescribed for the purposes of this paragraph by regulations made by the Secretary of State, and
  - (b) ability to apply that knowledge in practice,
- and requiring a standard of attainment at least equivalent to that required to obtain a degree from a university or similar establishment in the United Kingdom.
- (2) The qualification may be awarded to a person without his theoretical knowledge of a subject being tested by examination if he has passed a university or other examination of equivalent standard in that subject or holds a university degree or equivalent qualification in it.
- (3) The qualification may be awarded to a person without his ability to apply his theoretical knowledge of a subject in practice being tested by examination if he has received practical training in that subject which is attested by an examination or diploma recognised by the Secretary of State for the purposes of this paragraph.
- (4) Regulations under this paragraph are subject to negative resolution procedure.

*Practical training*

- 9 (1) The qualification must be restricted to persons who have completed at least three years’ practical training of which –
- (a) part was spent being trained in statutory audit work, and
  - (b) a substantial part was spent being trained in statutory audit work or other audit work of a description approved by the Secretary of State as being similar to statutory audit work.
- (2) For the purpose of sub-paragraph (1) “statutory audit work” includes the work of a person appointed as the auditor of a person under the law of a country or territory outside the United Kingdom where it appears to the Secretary of State that the law and practice with respect to the audit of accounts is similar to that in the United Kingdom.

- (3) The training must be given by persons approved by the body offering the qualification as persons whom the body is satisfied, in the light of undertakings given by them and the supervision to which they are subject (whether by the body itself or some other body or organisation), will provide adequate training.
- (4) At least two-thirds of the training must be given by a person –
  - (a) eligible for appointment as a statutory auditor, or
  - (b) eligible for a corresponding appointment as an auditor under the law of a member State, or part of a member State, other than the United Kingdom.

*Supplementary provision with respect to a sufficient period of professional experience*

- 10 (1) Periods of theoretical instruction in the fields of finance, law and accountancy may be deducted from the required period of professional experience, provided the instruction –
  - (a) lasted at least one year, and
  - (b) is attested by an examination recognised by the Secretary of State for the purposes of this paragraph;
 but the period of professional experience may not be so reduced by more than four years.
- (2) The period of professional experience together with the practical training required in the case of persons satisfying the requirement in paragraph 7 by virtue of having a sufficient period of professional experience must not be shorter than the course of theoretical instruction referred to in that paragraph and the practical training required in the case of persons satisfying the requirement of that paragraph by virtue of having completed such a course.

*The body offering the qualification*

- 11 (1) The body offering the qualification must have –
  - (a) rules and arrangements adequate to ensure compliance with the requirements of paragraphs 6 to 10, and
  - (b) adequate arrangements for the effective monitoring of its continued compliance with those requirements.
- (2) The arrangements must include arrangements for monitoring –
  - (a) the standard of the body’s examinations, and
  - (b) the adequacy of the practical training given by the persons approved by it for that purpose.

SCHEDULE 12

Section 1242

ARRANGEMENTS IN WHICH REGISTERED THIRD COUNTRY AUDITORS ARE REQUIRED TO PARTICIPATE

*Arrangements for independent monitoring of audits of traded non-Community companies*

- 1 (1) The arrangements referred to in section 1242(1)(a) are appropriate arrangements –

- (a) for enabling the performance by the registered third country auditor of third country audit functions 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 registered third country auditor.
- (2) In this paragraph “third country audit function” means any function performed as a third country auditor.

*Arrangements for independent investigations for disciplinary purposes*

- 2 (1) The arrangements referred to in section 1242(1)(b) are appropriate arrangements—
- (a) for the carrying out of investigations into matters arising in connection with the performance of third country audit functions by the registered third country auditor,
  - (b) for the holding of disciplinary hearings relating to the registered third country auditor 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 registered third country auditor, 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 registered third country auditor.
- (2) In this paragraph—  
“disciplinary action” includes the imposition of a fine; and  
“third country audit function” means any function performed as a third country auditor.

*Supplementary: arrangements to operate independently of third country auditor*

- 3 (1) This paragraph applies for the purposes of—
- (a) paragraph 1(1)(b), or
  - (b) paragraph 2(1)(e).
- (2) Arrangements are not to be regarded as appropriate for the purpose of ensuring that a thing is done independently of the registered third country auditor unless they are designed to ensure that the registered third country auditor—
- (a) will have no involvement in the appointment or selection of any of the persons who are to be responsible for doing that thing, and
  - (b) will not otherwise be involved in the doing of that thing.
- (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: funding of arrangements*

- 4 (1) The registered third country auditor must pay any of the costs of maintaining any relevant arrangements which the arrangements provide are to be paid by it.
- (2) For this purpose “relevant arrangements” are arrangements within paragraph 1 or 2 in which the registered third country auditor is obliged to participate.

*Supplementary: scope of arrangements*

- 5 Arrangements may qualify as arrangements within either of paragraphs 1 and 2 even though the matters for which they provide are more extensive in any respect than those mentioned in the applicable paragraph.

*Specification of particular arrangements by the Secretary of State*

- 6 (1) If there exist two or more sets of arrangements within paragraph 1 or within paragraph 2, the obligation of a registered third country auditor under section 1242(1)(a) or (b), as the case may be, is to participate in such set of arrangements as the Secretary of State may by order specify.
- (2) An order under sub-paragraph (1) is subject to negative resolution procedure.

## SCHEDULE 13

Section 1252

## SUPPLEMENTARY PROVISIONS WITH RESPECT TO DELEGATION ORDER

*Operation of this Schedule*

- 1 (1) This Schedule has effect in relation to a body designated by a delegation order under section 1252 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;
  - (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 delegation 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 1252.

*Status*

- 2 The body is not to be regarded as acting on behalf of the Crown and its members, officers and employees are not to be regarded as Crown servants.

*Name, members and chairman*

- 3 (1) The body is to be known by such name as may be specified in the delegation order.
- (2) The body is to consist of such persons (not being less than eight) as the Secretary of State may appoint after such consultation as he thinks appropriate.
- (3) The chairman of the body is to be such person as the Secretary of State may appoint from among its members.
- (4) The Secretary of State may make provision by order as to –
- (a) the terms on which the members of the body are to hold and vacate office;
  - (b) the terms on which a person appointed as chairman is to hold and vacate the office of chairman.

*Financial provisions*

- 4 (1) The body must pay to its chairman and members such remuneration, and such allowances in respect of expenses properly incurred by them in the performance of their duties, as the Secretary of State may determine.
- (2) As regards any chairman or member in whose case the Secretary of State so determines, the body must pay or make provision for the payment of –
- (a) such pension, allowance or gratuity to or in respect of that person on his retirement or death, or
  - (b) such contributions or other payment towards the provision of such a pension, allowance or gratuity,
- as the Secretary of State may determine.
- (3) Where –
- (a) a person ceases to be a member of the body otherwise than on the expiry of his term of office, and
  - (b) it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation,
- the body must make a payment to him by way of compensation of such amount as the Secretary of State may determine.

*Proceedings*

- 5 (1) The delegation order may contain such provision as the Secretary of State considers appropriate with respect to the proceedings of the body.
- (2) The delegation order may, in particular –
- (a) authorise the body to discharge any functions by means of committees consisting wholly or partly of members of the body;
  - (b) provide that the validity of proceedings of the body, or of any such committee, is not affected by any vacancy among the members or any defect in the appointment of any member.

*Fees*

- 6 (1) The body may retain fees payable to it.
- (2) The fees must be applied for –
  - (a) meeting the expenses of the body in discharging its functions, and
  - (b) any purposes incidental to those functions.
- (3) Those expenses include any expenses incurred by the body on such staff, accommodation, services and other facilities as appear to it to be necessary or expedient for the proper performance of its functions.
- (4) In prescribing the amount of fees in the exercise of the functions transferred to it the body must prescribe such fees as appear to it sufficient to defray those expenses, taking one year with another.
- (5) Any exercise by the body of the power to prescribe fees requires the approval of the Secretary of State.
- (6) The Secretary of State may, after consultation with the body, by order vary or revoke any regulations prescribing fees made by the body.

*Legislative functions*

- 7 (1) Regulations or an order made by the body in the exercise of the functions transferred to it must be made by instrument in writing, but not by statutory instrument.
- (2) The instrument must specify the provision of this Part of this Act under which it is made.
- (3) The Secretary of State may by order impose such requirements as he thinks necessary or expedient as to the circumstances and manner in which the body must consult on any regulations or order it proposes to make.
- (4) Nothing in this Part applies to make regulations or an order made by the body subject to negative resolution procedure or affirmative resolution procedure.
- 8 (1) Immediately after an instrument is made it must be printed and made available to the public with or without payment.
- (2) A person is not to be taken to have contravened any regulation or order if he shows that at the time of the alleged contravention the instrument containing the regulation or order had not been made available as required by this paragraph.
- 9 (1) The production of a printed copy of an instrument purporting to be made by the body on which is endorsed a certificate signed by an officer of the body authorised by it for the purpose and stating –
  - (a) that the instrument was made by the body,
  - (b) that the copy is a true copy of the instrument, and
  - (c) that on a specified date the instrument was made available to the public as required by paragraph 8,is evidence (or, in Scotland, sufficient evidence) of the facts stated in the certificate.

- (2) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be deemed to have been duly signed unless the contrary is shown.
- (3) Any person wishing in any legal proceedings to cite an instrument made by the body may require the body to cause a copy of it to be endorsed with such a certificate as is mentioned in this paragraph.

#### *Report and accounts*

- 10 (1) The body must, at least once in each calendar year for which the delegation order is in force, make a report to the Secretary of State on—
  - (a) the discharge of the functions transferred to it, and
  - (b) such other matters as the Secretary of State may by order require.
- (2) The delegation order may modify sub-paragraph (1) as it has effect in relation to the calendar year in which the order comes into force or is revoked.
- (3) The Secretary of State must lay before Parliament copies of each report received by him under this paragraph.
- (4) The following provisions of this paragraph apply as follows—
  - (a) sub-paragraphs (5) and (6) apply only where the body is established by the order, and
  - (b) sub-paragraphs (7) and (8) apply only where the body is an existing body.
- (5) 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.
- (6) A person may only be appointed as auditor of the body if he is eligible for appointment as a statutory auditor.
- (7) Unless the body is a company to which section 394 (duty to prepare individual company accounts) applies, 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.
- (8) Whether or not the body is a company to which section 394 applies, the Secretary of State may direct that any provisions of this Act specified in the directions are to apply to the body, with or without any modifications so specified.

#### *Other supplementary provisions*

- 11 (1) The transfer of a function to a body designated by a delegation order does not affect anything previously done in the exercise of the function transferred; and the resumption of a function so transferred does not affect anything previously done in exercise of the function resumed.
- (2) The Secretary of State may by order make such transitional and other supplementary provision as he thinks necessary or expedient in relation to the transfer or resumption of a function.
- (3) The provision that may be made in connection with the transfer of a function includes, in particular, provision—
  - (a) for modifying or excluding any provision of this Part of this Act in its application to the function transferred;

- (b) for applying to the body designated by the delegation order, in connection with the function transferred, any provision applying to the Secretary of State which is contained in or made under any other enactment;
  - (c) for the transfer of any property, rights or liabilities from the Secretary of State to that body;
  - (d) for the carrying on and completion by that body of anything in the process of being done by the Secretary of State when the order takes effect;
  - (e) for the substitution of that body for the Secretary of State in any instrument, contract or legal proceedings.
- (4) The provision that may be made in connection with the resumption of a function includes, in particular, provision –
- (a) for the transfer of any property, rights or liabilities from that body to the Secretary of State;
  - (b) for the carrying on and completion by the Secretary of State of anything in the process of being done by that body when the order takes effect;
  - (c) for the substitution of the Secretary of State for that body in any instrument, contract or legal proceedings.
- 12 Where a delegation order is revoked, the Secretary of State may by order make provision –
- (a) for the payment of compensation to persons ceasing to be employed by the body established by the delegation order;
  - (b) as to the winding up and dissolution of the body.
- 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.

## SCHEDULE 14

Section 1264

### STATUTORY AUDITORS: CONSEQUENTIAL AMENDMENTS

*Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)*

- 1 (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) –

- (a) in paragraph (f) for “paragraph 17” to the end substitute “paragraph 21, 22, 23(1) or 24(1) of Schedule 10 to the Companies Act 2006;”,
  - (b) in paragraph (g) for “Part 2 of that Act” substitute “Part 42 of that Act”.
- (3) In subsection (5), in the definition of “professional accountancy body” –
- (a) in paragraph (a) for “Part 2 of the Companies Act 1989 (c. 40)” substitute “Part 42 of the Companies Act 2006”, and
  - (b) in paragraph (b) for “section 32” substitute “section 1220”.

## SCHEDULE 15

Section 1272

## TRANSPARENCY OBLIGATIONS AND RELATED MATTERS: MINOR AND CONSEQUENTIAL AMENDMENTS

## PART 1

## AMENDMENTS OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

- 1 Part 6 of the Financial Services and Markets Act 2000 (listing and other matters) is amended as follows.
- 2 In section 73 (general duty of competent authority), after subsection (1) insert –
  - “(1A) To the extent that those general functions are functions under or relating to transparency rules, subsection (1)(c) and (f) have effect as if the references to a regulated market were references to a market.”
- 3 In section 73A (Part 6 Rules), after subsection (5) insert –
  - “(6) Transparency rules and corporate governance rules are not listing rules, disclosure rules or prospectus rules, but are Part 6 rules.”
- 4 For the cross-heading before section 90 substitute “*Compensation for false or misleading statements etc*”.
- 5 For the heading to section 90 substitute “**Compensation for statements in listing particulars or prospectus**”.
- 6 (1) Section 91 (penalties for breach of Part 6 rules) is amended as follows.
  - (2) For subsection (1) substitute –
    - “(1) If the competent authority considers that –
      - (a) an issuer of listed securities, or
      - (b) an applicant for listing,
 has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate.
    - (1ZA) If the competent authority considers that –
      - (a) an issuer who has requested or approved the admission of a financial instrument to trading on a regulated market,
      - (b) a person discharging managerial responsibilities within such an issuer, or

- (c) a person connected with such a person discharging managerial responsibilities,  
has contravened any provision of disclosure rules, it may impose on him a penalty of such amount as it considers appropriate.”.
- (3) After subsection (1A) insert –
- “(1B) If the competent authority considers –
- (a) that a person has contravened –
- (i) a provision of transparency rules or a provision otherwise made in accordance with the transparency obligations directive, or
- (ii) a provision of corporate governance rules, or
- (b) that a person on whom a requirement has been imposed under section 89L (power to suspend or prohibit trading of securities in case of infringement of applicable transparency obligation), has contravened that requirement,  
it may impose on the person a penalty of such amount as it considers appropriate.”.
- (4) In subsection (2) for “(1)(a), (1)(b)(i) or (1A)” substitute “(1), (1ZA)(a), (1A) or (1B)”.
- 7 In section 96B (persons discharging managerial responsibilities and connected persons) –
- (a) for the heading substitute “**Disclosure rules: persons responsible for compliance**”;
- (b) in subsection (1) for “For the purposes of this Part” substitute “for the purposes of the provisions of this Part relating to disclosure rules”.
- 8 In section 97(1) (appointment by the competent authority of persons to carry out investigations), for paragraphs (a) and (b) substitute –
- “(a) there may have been a contravention of –
- (i) a provision of this Part or of Part 6 rules, or
- (ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;
- (b) a person who was at the material time a director of a person mentioned in section 91(1), (1ZA)(a), (1A) or (1B) has been knowingly concerned in a contravention by that person of –
- (i) a provision of this Part or of Part 6 rules, or
- (ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;”.
- 9 In section 99 (fees) after subsection (1B) insert –
- “(1C) Transparency rules may require the payment of fees to the competent authority in respect of the continued admission of financial instruments to trading on a regulated market.”.
- 10 (1) Section 102A (meaning of “securities” etc) is amended as follows.

- (2) After subsection (3) insert—
- “(3A) “Debt securities” has the meaning given in Article 2.1(b) of the transparency obligations directive.”.
- (3) In subsection (3) (meaning of “transferable securities”) for “the investment services directive” substitute “Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments”.
- (4) In subsection (6) (meaning of “issuer”), after paragraph (a) insert—
- “(aa) in relation to transparency rules, means a legal person whose securities are admitted to trading on a regulated market or whose voting shares are admitted to trading on a UK market other than a regulated market, and in the case of depository receipts representing securities, the issuer is the issuer of the securities represented;”.
- 11 (1) Section 103(1) (interpretation of Part 6) is amended as follows.
- (2) In the definition of “regulated market” for “Article 1.13 of the investment services directive” substitute “Article 4.1(14) of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments”.
- (3) At the appropriate place insert—
- ““transparency rules” has the meaning given by section 89A(5);  
“votesholder information” has the meaning given by section 89B(3);”.
- 12 In section 429(2) (Parliamentary control of statutory instruments: affirmative procedure) of the Financial Services and Markets Act 2000 (c. 8) after “section” insert “90B or”.

## PART 2

### AMENDMENTS OF THE COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY ENTERPRISE) ACT 2004

- 13 Chapter 2 of Part 1 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (accounts and reports) is amended as follows.
- 14 (1) Section 14 (supervision of periodic accounts and reports of issuers of listed securities) is amended as follows.
- (2) In subsection (2)(a) —
- (a) for “listed” substitute “transferable”;
- (b) for “listing” substitute “Part 6”.
- (3) In subsection (3)(a) —
- (a) for “listed” substitute “transferable”;
- (b) for “listing” substitute “Part 6”.
- (4) In subsection (7)(b) for “listed” substitute “transferable”.
- (5) In subsection (12) —
- (a) for ““listed securities” and “listing rules” have” substitute ““Part 6 rules” has”;

- (b) for the definition of “issuer” substitute—
    - ““issuer” has the meaning given by section 102A(6) of that Act;”;
  - (c) in the definition of “periodic” for “listing” substitute “Part 6”;
  - (d) at the end add—
    - ““transferable securities” has the meaning given by section 102A(3) of that Act.”.
- 15 (1) Section 15 (application of certain company law provisions to bodies appointed under section 14) is amended as follows.
- (2) In subsection (5)(a)—
    - (a) for “listed” substitute “transferable”;
    - (b) for “listing” substitute “Part 6”.
  - (3) In subsection (5B)(a)—
    - (a) for “listed” substitute “transferable”;
    - (b) for “listing” substitute “Part 6”.
  - (4) In subsection (6)(b) for ““listing rules” and “security”” substitute ““Part 6 rules” and “transferable securities””.

## SCHEDULE 16

Section 1295

## REPEALS

## Company law repeals (Great Britain)

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Companies Act 1985 (c. 6)	<p>Sections 1 to 430F. In section 437 –</p> <ul style="list-style-type: none"> <li>(a) in subsection (1), the second sentence, and</li> <li>(b) subsections (1B) and (1C).</li> </ul> <p>Section 438. In section 439 –</p> <ul style="list-style-type: none"> <li>(a) in subsection (2), “, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438”,</li> <li>(b) subsections (3) and (7), and</li> <li>(c) in subsection (8), “; and any such liability imposed by subsection (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subsection (3)”.</li> </ul> <p>Section 442(2). Section 446. In section 448(7), the words “and liable to a fine.” to the end. Section 449(7). Section 450(4). Section 451(3). In section 453(1A) –</p> <ul style="list-style-type: none"> <li>(a) paragraph (b), and</li> <li>(b) paragraph (d) and the word “and” preceding it.</li> </ul> <p>Section 453A(6). Sections 458 to 461. Sections 651 to 746. Schedules 1 to 15B. Schedules 20 to 25.</p>
Insolvency Act 1985 (c. 65)	Schedule 6.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Insolvency Act 1986 (c. 45)	In Schedule 13, in Part 1, the entries relating to the following provisions of the Companies Act 1985 – (a) section 13(4), (b) section 44(7), (c) section 103(7), (d) section 131(7), (e) section 140(2), (f) section 156(3), (g) section 173(4), (h) section 196, (i) section 380(4), (j) section 461(6), (k) section 462(5), (l) section 463(2), (m) section 463(3), (n) section 464(6), (o) section 657(2), (p) section 658(1), and (q) section 711(2).
Building Societies Act 1986 (c. 53)	Section 102C(5).
Finance Act 1988 (c. 39)	In section 117(3), from the beginning to “that section”; In section 117(4), the words “and (3)”.
Water Act 1989 (c. 15)	In Schedule 25, paragraph 71(3).
Companies Act 1989 (c. 40)	Sections 1 to 22. Section 56(5). Sections 57 and 58. Section 64(2). Section 66(3). Section 71. Sections 92 to 110. Sections 113 to 138. Section 139(1) to (3). Sections 141 to 143. Section 144(1) to (3) and (6). Section 207. Schedules 1 to 9. In Schedule 10, paragraphs 1 to 24. Schedules 15 to 17. In Schedule 18, paragraphs 32 to 38. In Schedule 19, paragraphs 1 to 9 and 11 to 21.
Age of Legal Capacity (Scotland) Act 1991 (c. 50)	In Schedule 1, paragraph 39.
Water Consolidation (Consequential Provisions) Act 1991 (c. 60)	In Schedule 1, paragraph 40(2).
Charities Act 1992 (c. 41)	In Schedule 6, paragraph 11.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Charities Act 1993 (c. 10)	In Schedule 6, paragraph 20.
Criminal Justice Act 1993 (c. 36)	In Schedule 5, paragraph 4.
Welsh Language Act 1993 (c. 38)	Section 30.
Pension Schemes Act 1993 (c. 48)	In Schedule 8, paragraph 16.
Trade Marks Act 1994 (c. 26)	In Schedule 4, in paragraph 1(2), the reference to the Companies Act 1985.
Deregulation and Contracting Out Act 1994 (c. 40)	Section 13(1). Schedule 5. In Schedule 16, paragraphs 8 to 10.
Requirements of Writing (Scotland) Act 1995 (c. 7)	In Schedule 4, paragraphs 51 to 56.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 56(3) and (4).
Disability Discrimination Act 1995 (c. 50)	In Schedule 6, paragraph 4.
Financial Services and Markets Act 2000 (c. 8)	Section 143. Section 263.
Limited Liability Partnerships Act 2000 (c. 12)	In the Schedule, paragraph 1.
Political Parties, Elections and Referendums Act 2000 (c. 41)	Sections 139 and 140. Schedule 19. In Schedule 23, paragraphs 12 and 13.
Criminal Justice and Police Act 2001 (c. 16)	Section 45. In Schedule 2, paragraph 17.
Enterprise Act 2002 (c. 40)	In Schedule 17, paragraphs 3 to 8.
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	Sections 7 to 10. Section 11(1). Sections 12 and 13. Sections 19 and 20. Schedule 1. In Schedule 2, paragraphs 5 to 10, 22 to 24 and 26. In Schedule 6, paragraphs 1 to 9.
Civil Partnership Act 2004 (c. 33)	In Schedule 27, paragraphs 99 to 105.
Constitutional Reform Act 2005 (c. 4)	In Schedule 11, in paragraph 4(3), the reference to the Companies Act 1985.

Repeals and revocations relating to Northern Ireland

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>
Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))	The whole Order.
Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))	The whole Order.
Business Names (Northern Ireland) Order 1986 (S.I. 1986/1033 (N.I. 7))	The whole Order.
Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 N.I. 9))	Article 3.
Finance Act 1988 (c. 39)	In section 117(3), the words from “and for” to the end.
Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18))	The whole Order.
Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))	In Schedule 7, in the entry relating to Article 166(4), the word “office”. In Schedule 9, Part I.
European Economic Interest Groupings Regulations (Northern Ireland) 1989 (S.R. 1989/216)	The whole Regulations.
Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))	The whole Order.
Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))	Parts II to IV. Part VI. Schedules 1 to 6.
Criminal Justice Act 1993 (c. 36)	In Schedule 5, Part 2. Schedule 6.
Financial Provisions (Northern Ireland) Order 1993 (S.I. 1993/1252 (N.I. 5))	Article 15.
Deregulation and Contracting Out Act 1994 (c. 40)	Section 13(2). Schedule 6.
Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))	In Schedule 3, paragraph 7.
Deregulation and Contracting Out (Northern Ireland) Order 1996 (S.I. 1996/1632 (N.I. 11))	Article 11. Schedule 2. In Schedule 5, paragraph 4.

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>
Youth Justice and Criminal Evidence Act 1999 (c. 23)	In Schedule 4, paragraph 18.
Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12 (N.I.))	The whole Act.
Open-Ended Investment Companies Act (Northern Ireland) 2002 (c. 13)	The whole Act.
Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4))	In Schedule 3, paragraphs 3 to 5.
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	Section 11(2). In Schedule 2, paragraphs 11 to 15.
Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 (S.I. 2005/1452 (N.I. 7))	Article 4(2).
Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (S.I. 2005/1967 (N.I. 17))	The whole Order.

## Other repeals

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>
Limited Partnerships Act 1907 (c. 24)	In section 16(1) – (a) the words “, and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding 5p for each inspection”, and (b) the words from “and there shall be paid for such certificate” to the end. In section 17 – (a) the words “(but as to fees with the concurrence of the Treasury)”, and (b) paragraph (a).
Business Names Act 1985 (c. 7)	The whole Act.
Companies Act 1989 (c. 40)	Sections 24 to 54. Schedules 11 to 13.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 74(2).

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>
Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)	Sections 1 to 6. In Schedule 2, Part 1.
Civil Partnership Act 2004 (c. 33)	In Schedule 27, paragraph 128.