

## SCHEDULE 1

Regulation 2(3).

### MEANING OF “CLOSELY LINKED”: MODIFICATIONS OF COMPANIES ACT PROVISIONS

#### Preliminary

1. The modifications of sections 258 to 260 of and Schedule 10A to the Companies Act 1985 which are referred to in regulation 2(3) above are as follows.

#### Ability to appoint majority of directors

2.—(1) After subsection (2) of section 258 the insertion of the following subsection—

“(2A) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—

(a) it is a member of the undertaking and, at all times since the beginning of the undertaking’s immediately preceding financial year, a majority of the undertaking’s board of directors have been directors who were appointed solely as a result of the exercise of its voting rights, and

(b) no other person is the undertaking’s parent undertaking by virtue of paragraph (a), (b) or (c) of subsection (2).”

(2) In subsection (3) of that section, after the words “subsection (2)” the insertion of the words “or (2A)”.

#### Participation without control

3.—(1) After subsection (3) of section 258 the insertion of the following subsections—

“(3A) Subject to subsection (3B) below, an undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking which—

(a) entitles it to 20 per cent or more of the voting rights in the undertaking, or

(b) comprises 20 per cent or more of the shares of the undertaking.

(3B) For the purpose of determining whether a person has a participating interest in an undertaking which is a building society (within the meaning of the Building Societies Act 1986), subsection (3A) above shall have effect as if the reference in paragraph (b) to shares were a reference to deferred shares (within the meaning of that Act).”

(2) After subsection (5) of that section the insertion of the following subsection—

“(5A) An undertaking (“A”) shall not be treated as a parent undertaking of an undertaking (“B”) by reason only that another undertaking which is A’s subsidiary undertaking by virtue of subsection (3A) is a parent undertaking of B.”

(3) After subsection (4) of section 259 the insertion of the following subsection—

“(4A) Two subsidiary undertakings of the same parent undertaking shall not be fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue of section 258(3A).”

(4) In subsection (5) of section 260, for the words “section 258(4)” the substitution of the words “section 258(3A) or (4)”.

(5) In paragraph 2(1) of Schedule 10A, after the words “section 258(2)(a) and (d)” the insertion of the words “and (3A)(a)”.

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## SCHEDULE 2

Regulation 11(3).

### PARAGRAPHS SUBSTITUTED FOR PARAGRAPH 6 OF ARTICLE 25 OF THE INVESTMENT SERVICES DIRECTIVE

**5a.** Notwithstanding paragraphs 1 to 4, Member States may authorize exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first sub-paragraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first sub-paragraph.
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

**5b.** Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first sub-paragraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first sub-paragraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first sub-paragraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first sub-paragraph may be extended to such persons under the conditions stipulated in the second sub-paragraph.

In order to implement the final indent of the second sub-paragraph, the authorities or bodies referred to in the first sub-paragraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.

6. This Article shall not prevent a competent authority from transmitting:
  - to central banks and other bodies with a similar function in their capacity as monetary authorities,
  - where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

### SCHEDULE 3

Regulation 12(3).

#### PARAGRAPHS INSERTED AS PARAGRAPHS 2 TO 11 OF ARTICLE 50 OF THE UCITS DIRECTIVE

2. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that UCITS and management companies and depositaries (hereinafter referred to as undertakings contributing towards their business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

Nevertheless, when an UCITS or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in civil or commercial proceedings.

3. Paragraph 2 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive or other Directives applicable to UCITS or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

4. Member States may conclude cooperation agreements providing for exchanges of information with the competent authorities of third countries only if the information communicated is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

5. Competent authorities receiving confidential information under paragraphs 2 or 3 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of UCITS or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms,
- to impose sanctions,
- in administrative appeals against decisions by the competent authorities, or
- in court proceedings initiated under Article 51(2).

6. Paragraphs 2 and 5 shall not preclude the exchange of information:

- (a) within a member State, where there are two or more competent authorities; or

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- (b) within a Member State or between Member States, between competent authorities; and
- authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organisations and the authorities responsible for the supervision of financial markets,
  - bodies involved in the liquidation or bankruptcy of UCITS and other similar procedures and of undertakings contributing towards their business activity,
  - persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions, in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

7. Notwithstanding paragraphs 2 to 5, Member States may authorise exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first sub-paragraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first sub-paragraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

8. Notwithstanding paragraphs 2 to 5, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first sub-paragraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging

information provided for in the first sub-paragraph may be extended to such persons under the conditions stipulated in the second sub-paragraph.

In order to implement the final indent of the second sub-paragraph, the authorities or bodies referred to in the first sub-paragraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

**9.** This Article shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 5. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

**10.** This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 2 to 5 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2. Member States shall, however, ensure that information received under paragraph 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

**11.** In addition, notwithstanding the provisions referred to in paragraphs 2 and 5, Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of UCITS and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 3 and 6 may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.

#### SCHEDULE 4

Regulation 22.

#### SUBORDINATE LEGISLATION RELATING TO AUDITORS AND ACCOUNTANTS

#### Accountants (Banking Act 1987) Regulations 1994

**1.—(1)** In relation to any time before they are varied or revoked by regulations made under subsection (5) of section 47 of the Banking Act, the Accountants (Banking Act 1987) Regulations 1994<sup>(1)</sup> shall have effect as if they were amended as follows.

(2) In regulation 2—

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(1) S.I.1994/524.

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- (a) for the definition of “auditor” there shall be substituted the following definition—
- “‘auditor’ means an accountant who—
- (a) is an auditor of an authorised institution; or
  - (b) is an auditor of a body with which an authorised institution which is a credit institution is closely linked by control, and is also either an auditor of the institution or a person appointed to make a report under section 8(5) or 39(1) (b) of the Act in respect of the institution;”
- (b) after the definition of “the Bank” there shall be inserted the following definitions—
- “‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;
- ‘the institution concerned’ means—
- (a) in relation to an auditor of an authorised institution, that institution;
  - (b) in relation to an auditor of a body with which a credit institution is closely linked by control, that institution;
  - (c) in relation to a reporting accountant, the institution or authorised institution in relation to which his report is made;
- ‘of material significance’ means of material significance for the exercise of the Bank’s functions under the Act or under the Regulations;”
- (3) In paragraph (1) of regulation 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.
- (4) After that paragraph there shall be inserted the following paragraph—
- “(1A) Where the institution concerned is a credit institution, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—
- (a) to give the auditor or reporting accountant reasonable cause to believe, as regards the institution concerned—
    - (i) that its authorisation could be revoked under section 11 of the Act otherwise than by virtue of subsection (1)(a) of that section;
    - (ii) that there is or has been, or may be or may have been, a failure to fulfil any of the criteria specified in Schedule 3 to the Act and that the failure is likely to be of material significance;
    - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
    - (iv) that its continuous functioning may be affected; or
  - (b) in the case of the auditor of the institution concerned, to preclude him from stating in his report that its annual accounts have been properly prepared in accordance with the Companies Act 1985.”
- (5) In paragraph (2) of that regulation—
- (a) there shall be inserted at the beginning the words “Where the institution concerned is not a credit institution,”;
  - (b) in sub-paragraph (a), for the words from “the authorised institution” to the end there shall be substituted the words “the institution concerned”; and
  - (c) in sub-paragraph (b), the words “for the exercise” to the end shall be omitted.

## Building Societies (Auditors) Order 1994

2.—(1) In relation to any time before it is varied or revoked by an order made under subsection (9) of section 82 of the Building Societies Act, the Building Societies (Auditors) Order 1994(2) shall have effect as if it were amended as follows.

(2) In article 2—

(a) for the definition of “auditor” there shall be substituted the following definition—

“‘auditor’ means—

- (a) an auditor of a building society; or
- (b) an auditor of a body with which a building society is closely linked by control where he is also either an auditor of the society or an accountant appointed by the society to make a report under section 52(5)(d) of the Act.”.

(b) after that definition there shall be inserted the following definitions—

“‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;

‘of material significance’ means of material significance for the exercise of the Commission’s functions under the Act or under the Regulations;”

(c) for the definition of “the Regulations” there shall be substituted the following definition—

“‘reporting accountant’ means an accountant appointed to make a report under section 52(5)(d) of the Act;”

(d) for the word “and” immediately following the definition of “society” there shall be substituted the following definition—

“‘the society concerned’ means—

- (a) in relation to an auditor of a society, that society;
- (b) in relation to an auditor of a body with which a society is closely linked by control, that society;
- (c) in relation to a reporting accountant, the society in relation to which his report is made;”.

(3) In paragraph (1) of article 3, after the words “the auditor” there shall be inserted the words “or reporting accountant”.

(4) For paragraph (2) of that article there shall be substituted the following paragraph—

“(2) The circumstances referred to in paragraph (1) above are circumstances in which the information of the description prescribed by paragraph (3) below is such as—

(a) to give the auditor or reporting accountant reasonable cause to believe, as regards the society concerned—

- (i) that its authorisation could be revoked under section 43 of the Act otherwise than by virtue of section 45 of the Act;
- (ii) that there is or has been, or may be or may have been, a failure to satisfy any of the criteria of prudent management in section 45(3) of the Act and that the failure is likely to be of material significance;
- (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or

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- (iv) that its continuous functioning may be affected; or
- (b) in the case of the auditor of the society concerned, to preclude him from stating in his report that its annual accounts have been prepared—
  - (i) so as to conform with the requirements of Part VIII of the Act and regulations made under it; or
  - (ii) so as to give a true and fair view of the matters specified in section 78(4) of the Act.”
- (5) In paragraph (3) of that article—
  - (a) after the words “the auditor”, in the first place where they occur, there shall be inserted the words “or reporting accountant”; and
  - (b) for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”.

### Auditors (Financial Services Act 1986) Rules 1994

**3.—(1)** In relation to any time before they are varied or revoked by rules made under subsection (2) of section 109 of the Financial Services Act, the Auditors (Financial Services Act 1986) Rules 1994<sup>(3)</sup> shall have effect as if they were amended as follows.

- (2) In rule 2—
  - (a) for the definition of “auditor” there shall be substituted the following definition—
    - “‘auditor’ means—
    - (a) an auditor of an authorised person;
    - (b) an auditor of a body with which a qualifying person is closely linked by control who is also an auditor of that person; or
    - (c) an auditor of qualifying undertaking;”
  - (b) after that definition there shall be inserted the following definitions—
    - “‘closely linked by control’, in relation to a UK investment firm, shall be construed in accordance with regulation 2 of the Financial Institutions (Prudential Supervision) Regulations 1996;
    - ‘contravene’, in relation to any provision of the Act or any rules or regulations made under it, includes fail to comply with the provision, rules or regulations;”
  - (c) after the definition of “disciplinary action” there shall be inserted the following definition—
    - “‘of material significance’ means of material significance for determining either—
    - (a) whether a person is a fit and proper person to carry on investment business; or
    - (b) whether disciplinary action should be taken, or powers of intervention exercised, in order to protect investors from a significant risk of loss;”
  - (d) after the definition of “matter” there shall be inserted the following definition—
    - “‘the person concerned’ means—
    - (a) in relation to an auditor of an authorised person, that person;
    - (b) in relation to an auditor of a body with which a qualifying person is closely linked by control, that person;
    - (c) in relation to an auditor of a qualifying undertaking, that undertaking;”

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(3) S.I. 1994/526.

- (e) after the definition of “powers of intervention” there shall be inserted the following definitions—
- “‘qualifying person’ means a UK investment firm, or a trustee or manager of a qualifying undertaking;
  - ‘qualifying undertaking’ means an undertaking to which the UCITS Directive applies and which is, within the meaning of that Directive, situated in the United Kingdom;”; and
- (f) after the definition of “the relevant regulator” there shall be inserted the following definitions—
- “‘the relevant requirements’ means the requirements of such of the following as are applicable, namely—
    - (a) the Companies Act 1985;
    - (b) regulations made under section 81, 107 or 107A of the Act; and
    - (c) the rules of a recognised self-regulating organisation;  - ‘the UCITS Directive’ means the Council Directive of 20th December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No.85/611/EEC);”
- (3) In paragraph (1) of rule 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.
- (4) After that paragraph there shall be inserted the following paragraphs—
- “(1A) Where the person concerned is a qualifying person or a qualifying undertaking, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—
    - (a) to give the auditor reasonable cause to believe, as regards the person or undertaking—
      - (i) that there is or has been, or may be or may have been, a contravention of any provision of the Act or any rules or regulations made under it and that the contravention is likely to be of material significance;
      - (ii) that, in purported compliance with any such provision, he or it has furnished the Board with false, inaccurate or misleading information;
      - (iii) that there is or has been, or may be or may have been, a contravention of any prohibition or requirement imposed under the Act and that the contravention is likely to be of material significance; or
      - (iv) that his or its continuous functioning may be affected; or    - (b) to preclude the auditor from stating in his report that the annual accounts of the person or undertaking have been properly prepared in accordance with the relevant requirements.  - (1B) The rules, prohibitions and requirements referred to in paragraph (1A) above include—
    - (a) where the person concerned is a member of a recognised self-regulating organisation, the rules of that organisation and any prohibition or requirement imposed by virtue of those rules;
    - (b) where that person is a person certified by a recognised professional body, the rules of that body which regulate the carrying on by that person of investment business and any prohibition or requirement imposed by virtue of those rules.”
- (5) In paragraph (2) of that rule—

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- (a) there shall be inserted at the beginning the words “Where the person concerned is neither a qualifying person nor a qualifying undertaking,”; and
- (b) the words from “for determining” to the end shall be omitted.

#### Friendly Societies (Auditors) Order 1994

4.—(1) In relation to any time before it is varied or revoked by an order made under subsection (9) of section 79 of the Friendly Societies Act, the Friendly Societies (Auditors) Order 1994(4) shall have effect as if it were amended as follows.

(2) In article 2—

- (a) for the definition of “auditor” there shall be substituted the following definition—

“‘auditor’ means—

- (a) an auditor of a society; or
- (b) an auditor of a body with which a society to which section 37(2) or (3) of the Act applies is closely linked by control where he is also either an auditor of the society or an accountant appointed by the society to make a report under section 62(3)(d) of the Act;”;

- (b) after that definition there shall be inserted the following definitions—

“‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;

‘of material significance’ means of material significance for the exercise of the Commission’s functions;”

- (c) after the definition of “relevant information” there shall be inserted the following definition—

“‘reporting accountant’ means an accountant appointed to make a report under section 62(3)(d) of the Act by a friendly society to which section 37(2) or (3) of the Act applies;”

- (d) for the word “and” immediately following the definition of “society” there shall be substituted the following definition—

“‘the society concerned’ means—

- (a) in relation to an auditor of a society, that society;
- (b) in relation to an auditor of a body with which a society to which section 37(2) or (3) of the Act applies is closely linked by control, that society;
- (c) in relation to a reporting accountant, the society in relation to which his report is made;”.

(3) In paragraph (1) of article 3—

- (a) after the words “The auditor” there shall be inserted the words “or reporting accountant”; and
- (b) for the words “paragraph (2) below” there shall be substituted the words “paragraph (1A) or (2) below”.

(4) After that paragraph there shall be inserted the following paragraph—

“(1A) Where the society concerned is one to which section 37(2) or (3) of the Act applies, the circumstances referred to in paragraph (1) above are circumstances in which the information of the description prescribed in paragraph (3) below is such as—

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(4) S.I. 1994/132.

- (a) to give the auditor or reporting accountant reasonable cause to believe, as regards the society concerned—
    - (i) that its authorisation could be withdrawn under section 40(3) of the Act;
    - (ii) that there is or has been, or may be or may have been, a failure to satisfy any of the criteria of prudent management in section 50(3) of the Act and that the failure is likely to be of material significance;
    - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
    - (iv) that its continuous functioning may be affected; or
  - (b) in the case of the auditor of the society concerned, to preclude him from stating in his report that its annual accounts have been prepared—
    - (i) so as to conform with the requirements of Part VI of the Act and regulations made under it; or
    - (ii) so as to give a true and fair view of the matters specified in section 73(5) of the Act.”
- (5) In paragraph (2) of that article—
- (a) there shall be inserted at the beginning the words “Where the institution concerned is not one to which section 37(2) or (3) of the Act applies,”;
  - (b) for the words “an auditor” there shall be substituted the words “the auditor”;
  - (c) in sub-paragraph (a), for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”; and
  - (d) in sub-paragraph (b), the words from “for the exercise” to the end shall be omitted.
- (6) In paragraph (3) of that article—
- (a) after the words “the auditor”, in the first place where they occur, there shall be inserted the words “or reporting accountant”; and
  - (b) for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”.

### Auditors (Insurance Companies Act 1982) Regulations 1994

5.—(1) In relation to any time before they are varied or revoked by regulations made under subsection (2) of section 21A of the Insurance Companies Act, the Auditors (Insurance Companies Act 1982) Regulations 1994(5) shall have effect as if they were amended as follows.

- (2) In regulation 2—
- (a) for the definition of “auditor”, there shall be substituted the following definitions—
    - “‘auditor’ means—
    - (a) auditor of an insurance company to which Part II of the Act applies; or
    - (b) auditor of a body with which a UK or non-EC company is closely linked by control who is also auditor of the company;
- ‘of material significance’ means of material significance for determining whether any of the powers of intervention conferred on the Secretary of State by sections 38 to 45 of the Act should be exercised;”
- (b) after that definition there shall be inserted the following definitions—

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(5) S.I. 1994/449.

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- “‘the company concerned’ means—
- (a) in relation to an auditor of an insurance company to which Part II of the Act applies, that company;
  - (b) in relation to an auditor of a body with which a UK or non-EC company is closely linked by control, that company;
- ‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;”;
- (c) in the definition of “matters”, after the word “applies” there shall be inserted the words “, or of a body with which a UK or non-EC company is closely linked by control,”.
- (3) In paragraph (1) of regulation 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.
- (4) After that paragraph there shall be inserted the following paragraph—
- “(1A) Where the company concerned is a UK or non-EC company, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—
- (a) to give the auditor reasonable cause to believe, as regards the company concerned—
    - (i) that its authorisation could be withdrawn under section 11 of the Act otherwise than by virtue of subsection (2)(ab) of that section;
    - (ii) that there is or has been, or may be or may have been, a failure to fulfil any of the criteria of sound and prudent management and that the failure is likely to be of material significance;
    - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
    - (iv) that its continuous functioning may be affected; or
  - (b) in the case of the auditor of the company concerned, to preclude him from stating in his report that its annual accounts have been properly prepared in accordance with the Companies Act 1985 or section 17 of the Act.”
- (5) In paragraph (2) of that regulation—
- (a) there shall be inserted at the beginning the words “Where the company concerned is not a UK or non-EC company,”; and
  - (b) the words from “for determining” to the end shall be omitted.

## SCHEDULE 5

Regulation 23.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### Banking Act

- 1.** In the Table in subsection (1) of section 84 of the Banking Act (disclosure for facilitating discharge of functions by other supervisory authorities)—
- (a) the entry relating to the Friendly Societies Commission shall be numbered 5A; and
  - (b) in entry 15, the words “or section 84 of the Companies Act 1989” and the words “or section” shall be omitted.

2. After subsection (2A) of section 106 of the Banking Act (interpretation) there shall be inserted the following subsections—

“(2B) Any reference in this Act to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).

(2C) Any reference in this Act—

(a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or

(b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of those Regulations.”

### Building Societies Act

3. In subsection (10) of section 31 of the Building Societies Act (voluntary schemes), for the words “section 26(1)” there shall be substituted the words “section 25A”.

4. In subsections (13A) and (15) of section 53 of the Building Societies Act (confidentiality of information obtained by Commission), for the words “facilitating or assisting”, in each place where they occur, there shall be substituted the words “enabling, facilitating or assisting”.

5. After subsection (2A) of section 119 of the Building Societies Act (interpretation) there shall be inserted the following subsections—

“(2B) Any reference in this Act to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).

(2C) Any reference in this Act—

(a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or

(b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of those Regulations.”

### Friendly Societies Act

6. After subsection (1) of section 119 of the Friendly Societies Act (general interpretation) there shall be inserted the following subsections—

“(1A) References in this Act to the first or third general insurance Directive, or to the first or third life Directive, are references to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).

(1B) References in this Act—

(a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or

(b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of those Regulations.”

### Insurance Companies Act

7. After subsection (3) of section 96 of the Insurance Companies Act (general interpretation) there shall be inserted the following subsection—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

“(2B) Any reference in this Act—

- (a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or
- (b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of the Financial Institutions (Prudential Supervision) Regulations 1996.”

8. After subsection (1B) of section 96A of the Insurance Companies Act (interpretation of expressions derived from insurance Directives) there shall be inserted the following subsection—

“(1C) Any reference in this Act to the first or third general insurance Directive, or to the first or third long term insurance Directive, is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).”

9. In the Table in paragraph 3(1) of Schedule 2B to the Insurance Companies Act (disclosure for facilitating discharge of functions by other regulatory authorities), in entry 14, the words “or section 84 of the Companies Act 1989” and the words “or section” shall be omitted.

#### Banking Coordination (Second Council Directive) Regulations 1992

10. After paragraph (1) of regulation 2 of the Banking Coordination (Second Council Directive) Regulations 1992(6) (interpretation: general) there shall be inserted the following paragraph—

“(2B) Any reference in these Regulations to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).”

#### Investment Services Regulations 1995

11. After paragraph (1) of regulation 2 of the Investment Services Regulations 1995(7) (interpretation: general) there shall be inserted the following paragraph—

“(2B) Any reference in these Regulations to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).”

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(6) S.I. 1992/3218.  
(7) S.I. 1995/3275.