

SCHEDULE 1

AMENDMENTS COMING INTO FORCE ON 6TH APRIL 2008

PART 2

OTHER AMENDMENTS

Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27)

232.—(1) In section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (supervision of accounts and reports of issuers of transferable securities), in subsection (12)(1) (expressions defined by reference to the Financial Services and Markets Act 2000), after “In this section” insert “and sections 15A to 15E below”.

(2) For section 15 of the Companies (Audit, Investigations and Community Enterprise) Act 2004(2) (application of certain company law provisions to bodies appointed under section 14) substitute—

“Application of sections 15A to 15E

15.—(1) The provisions of sections 15A to 15E have effect in relation to bodies appointed under section 14 (supervision of accounts and reports of issuers of transferable securities).

(2) In those sections—

- (a) “prescribed body” means a body appointed under that section; and
- (b) references to the functions of a prescribed body are to its functions under that section.

Disclosure of information by tax authorities

15A.—(1) The Commissioners for Her Majesty’s Revenue and Customs may disclose information to a prescribed body for the purposes of its functions.

(2) This section applies despite any statutory or other restriction on the disclosure of information.

Provided that, in the case of personal data within the meaning of the Data Protection Act 1998, information is not to be disclosed in contravention of that Act.

(3) Information disclosed to a prescribed body under this section—

- (a) may only be used for the purposes of its functions, and
- (b) must not be further disclosed except to the person to whom the information relates.

(4) A person who contravenes subsection (3) commits an offence unless—

- (a) the person did not know, and had no reason to suspect, that the information had been disclosed under this section, or
- (b) the person took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(5) A person guilty of an offence under subsection (4) is liable—

(1) Subsection (12) has been amended by regulation 2(3) of, and paragraph 5 of Schedule 3 to, [S.I. 2005/1433](#), and by section 1272 of, and paragraphs 13 and 14(1) and (5) in Part 2 of Schedule 15 to, the Companies Act 2006.

(2) Section 15 has been amended by article 15 of [S.I. 2005/1967 \(N.I. 17\)](#) and by section 1272 of, and paragraphs 13 and 15 in Part 2 of Schedule 15 to, the Companies Act 2006.

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- (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 or Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum (or both).

(6) In subsection (5)(b)(i) as it applies in relation to England and Wales in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, for “twelve months” substitute “six months”.

(7) Sections 400, 401 and 403 of the Financial Services and Markets Act 2000 (supplementary provisions relating to offences) apply in relation to an offence under this section.

Power of prescribed body to require documents, information and explanations

15B.—(1) This section applies where it appears to a prescribed body that there is, or may be, a question whether the periodic accounts and reports produced by an issuer of transferable securities comply with any accounting requirements imposed by Part 6 rules.

(2) The prescribed body may require any of the persons mentioned in subsection (3) to produce any document, or to provide any information or explanations, that the body may reasonably require for the purpose of its functions.

(3) Those persons are—

- (a) the issuer;
- (b) any officer, employee, or auditor of the issuer;
- (c) any persons who fell within paragraph (b) at a time to which the document or information required by the prescribed body relates.

(4) If a person fails to comply with such a requirement, the prescribed body may apply to the court.

(5) If it appears to the court that the person has failed to comply with a requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.

(6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.

(7) Nothing in this section compels any person to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

(8) In this section—

“the court” means the High Court or the Court of Session; and

“document” includes information recorded in any form.

Restrictions on disclosure of information obtained under compulsory powers

15C.—(1) This section applies to information (in whatever form) obtained in pursuance of a requirement or order under section 15B (power of prescribed body to require documents etc) that relates to the private affairs of an individual or to any particular business.

(2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(3) This does not apply—

- (a) to disclosure permitted by section 15D (permitted disclosure of information obtained under compulsory powers), or
- (b) to the disclosure of information that is or has been available to the public from another source.

(4) A person who discloses information in contravention of this section commits an offence, unless—

- (a) the person did not know, and had no reason to suspect, that the information had been disclosed under section 15B, or
- (b) the person took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

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

(6) In subsection (5)(b)(i) as it applies in relation to England and Wales in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, for “twelve months” substitute “six months”.

Permitted disclosure of information obtained under compulsory powers

15D.—(1) The prohibition in section 15C of the disclosure of information obtained in pursuance of a requirement or order under section 15B (power of prescribed body to require documents etc) that relates to the private affairs of an individual or to any particular business has effect subject to the following exceptions.

(2) It does not apply to the disclosure of information for the purpose of facilitating the carrying out by the prescribed body of its functions.

(3) It does not apply to disclosure to—

- (a) the Secretary of State,
- (b) the Department of Enterprise, Trade and Investment for Northern Ireland,
- (c) the Treasury,
- (d) the Bank of England,
- (e) the Financial Services Authority, or
- (f) the Commissioners for Her Majesty’s Revenue and Customs.

(4) It does not apply to disclosure—

- (a) for the purpose of assisting a body designated by an order under section 1252 of the Companies Act 2006 (delegation of functions of the Secretary of State) to exercise its functions under Part 42 of that Act (statutory auditors);

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- (b) with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by an accountant or auditor of his professional duties;
- (c) 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—
 - (i) the Companies Acts (as defined in section 2 of the Companies Act 2006),
 - (ii) Part 5 of the Criminal Justice Act 1993 (insider dealing),
 - (iii) the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989,
 - (iv) the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002,
 - (v) the Financial Services and Markets Act 2000;
- (d) 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, directors' disqualification or insolvency;
- (e) for the purpose of enabling or assisting the Bank of England to exercise its functions;
- (f) for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions;
- (g) for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—
 - (i) the legislation relating to friendly societies or to industrial and provident societies,
 - (ii) the Building Societies Act 1986,
 - (iii) Part 7 of the Companies Act 1989,
 - (iv) the Financial Services and Markets Act 2000; or
- (h) in pursuance of any Community obligation.

(5) It does not apply to disclosure to a body exercising functions of a public nature under legislation in any country or territory outside the United Kingdom that appear to the prescribed body to be similar to its functions for the purpose of enabling or assisting that body to exercise those functions.

(6) In determining whether to disclose information to a body in accordance with subsection (5), the prescribed body must have regard to the following considerations—

- (a) whether the use which the other body is likely to make of the information is sufficiently important to justify making the disclosure;
- (b) whether the other body has adequate arrangements to prevent the information from being used or further disclosed other than—
 - (i) for the purposes of carrying out the functions mentioned in that subsection, or
 - (ii) for other purposes substantially similar to those for which information disclosed to the prescribed body could be used or further disclosed.

(7) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection Act 1998.

Power to amend categories of permitted disclosure

15E.—(1) The Secretary of State may by order amend section 15D(3), (4) and (5).

(2) An order under this section must not—

- (a) amend subsection (3) of that section (UK public authorities) by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
 - (b) amend subsection (4) of that section (purposes for which disclosure permitted) by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature;
 - (c) amend subsection (5) of that section (overseas regulatory authorities) so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
- (3) The power to make an order under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”.