

SCHEDULE 3

Article 4(1)

AMENDMENTS COMING INTO FORCE ON 1ST OCTOBER 2008

**Companies Act 1985 (c.6)**

1. In section 172 of the Companies Act 1985 (availability of profits for private company to redeem or purchase shares out of capital), in subsection (5)(a), omit “or 155”.

2. In section 705(4) of the Companies Act 1985(1) (companies’ registered numbers), for “the requirement of section 351(1)(a)” substitute “any requirement imposed by regulations made under section 82 of the Companies Act 2006”.

**Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))**

3. In Article 182 of the Companies (Northern Ireland) Order 1986 (availability of profits for private company to redeem or purchase shares out of capital), in paragraph (5)(a), omit “or 165”.

4. In Article 654 of the Companies (Northern Ireland) Order 1986 (companies’ registered numbers), in paragraph (4), for “the requirement of Article 359(1)(a)” substitute “any requirement imposed by regulations made under section 82 of the Companies Act 2006”.

**Charities (Northern Ireland) Order 1987 (S.I. 1987/2048 (N.I. 19))**

5. For Article 9B of the Charities (Northern Ireland) Order 1987(2) (status to appear on correspondence etc) substitute—

**“Requirement to disclose charitable status**

**9B.**—(1) Where a company is a charity and its name does not include the word “charity” or “charitable”, the fact that the company is a charity must be stated (in English) in legible characters—

- (a) in every location, and in every description of document or communication, in which it is required by regulations under section 82 of the Companies Act 2006 to state its registered name; and
- (b) in all conveyances purporting to be executed by the company.

(2) In paragraph (1)(b) “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land.

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

**9BA.**—(1) This Article applies to any legal proceedings brought by a company to which Article 9B applies to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with that Article.

- (2) The proceedings shall be dismissed if the defendant to the proceedings shows—
  - (a) that he has a claim against the claimant arising out of the contract or conveyance that he has been unable to pursue by reason of the latter’s failure to comply with Article 9B, or
  - (b) that he has suffered some financial loss in connection with the contract or conveyance by reason of the claimant’s failure to comply with that Article,

(1) Section 705 was substituted by the Companies Act 1989 (c.40), Schedule 19, paragraph 14.

(2) Article 9B was inserted by the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), Article 47.

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) This Article 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.

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

**9BB.**—(1) Where a company fails, without reasonable excuse, to comply with Article 9B, an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

(2) For this purpose a shadow director of the company is treated as an officer of the company if the failure is to comply with Article 9B(1)(a) and that person would be treated as an officer of the company for the purposes of the corresponding requirement of regulations under section 82 of the Companies Act 2006.

(3) A person guilty of such an offence 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) Expressions used in this Article have the same meaning as in section 84 of the Companies Act 2006 (criminal consequences of failure to disclose company's registered name).”.

### **Companies Act 1989 (c.40)**

**6.** In section 112 of the Companies Act 1989 (charitable companies: Scotland), for subsection (8) substitute—

“(8) If a company fails to comply with subsection (6) it commits an offence.

(9) An officer of a company, or a person acting on its behalf, who—

- (a) issues or authorises the issue of any business letter of the company, or any notice or other official publication of the company, in which the statement required by subsection (6) does not appear, or
- (b) issues or authorises the issue of any bill, invoice, receipt or letter of credit in which the statement required by subsection (6) does not appear,

commits an offence.

(10) An officer of a company, or a person acting on its behalf, who signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the statement required by subsection (6) does not appear—

- (a) commits an offence, and
- (b) is personally liable to the holder of the bill of exchange, promissory note, endorsement, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

(11) A person guilty of an offence under subsection (8), (9) or (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

## **Charities Act 1993 (c.10)**

7. For section 68 of the Charities Act 1993(3) (status to appear on correspondence etc) substitute—

### **“Requirement to disclose charitable status**

**68.**—(1) Where a company is a charity and its name does not include the word “charity” or “charitable”, the fact that the company is a charity must be stated in legible characters—

- (a) in every location, and in every description of document or communication, in which it is required by regulations under section 82 of the Companies Act 2006 to state its registered name, and
- (b) in all conveyances purporting to be executed by the company.

(2) Where a company’s name includes the word “elusen” or “elusenol” (the Welsh equivalents of “charity” and “charitable”), subsection (1) does not apply in relation to any document that is wholly in Welsh.

(3) The statement required by subsection (1) must be in English, except that, in the case of a document that is otherwise wholly in Welsh, the statement may be in Welsh if it consists of or includes the word “elusen” or “elusenol”.

(4) In subsection (1)(b) “conveyance” means any instrument creating, transferring, varying or extinguishing an interest in land.

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

**68ZA.**—(1) This section applies to any legal proceedings brought by a company to which section 68 applies to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with that section.

(2) The proceedings shall be dismissed if the defendant to the proceedings shows—

- (a) that he has a claim against the claimant arising out of the contract or conveyance that he has been unable to pursue by reason of the latter’s failure to comply with section 68, or
- (b) that he has suffered some financial loss in connection with the contract or conveyance by reason of the claimant’s failure to comply with that section,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) 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.

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

**68ZB.**—(1) Where a company fails, without reasonable excuse, to comply with section 68, an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

(2) For this purpose a shadow director of the company is treated as an officer of the company if the failure is to comply with section 68(1)(a) and that person would be treated as an officer of the company for the purposes of the corresponding requirement of regulations under section 82 of the Companies Act 2006.

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(3) Section 68 has been amended by the Welsh Language Act 1993 (c.38), section 33 and Schedule 2.

*Status: This is the original version (as it was originally made).*

(3) A person guilty of such an offence 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) Expressions used in this section have the same meaning as in section 84 of the Companies Act 2006 (criminal consequences of failure to disclose company's registered name).".

**8.—(1)** Section 69C of the Charities Act 1993(**4**) (CIOs: disclosure of name and status) is amended as follows.

(2) For subsection (1) substitute—

“(1) The name of a CIO must appear in legible characters—

(a) in every location, and in every description of document or communication, in which a charitable company would be required by regulations under section 82 of the Companies Act 2006 to state its registered name; and

(b) in all conveyances purporting to be executed by the CIO.”.

(3) In subsection (2) for “subsection (1)(d)” substitute “subsection (1)(b)”.

(4) In subsection (5) for “documents” substitute “locations, documents, communications and conveyances”.

**9.** After that section insert—

**“Civil consequences of failure to disclose name and status**

**69CA.—(1)** This section applies to any legal proceedings brought by a CIO to enforce a right arising out of a contract or conveyance in connection with which there was a failure to comply with section 69C.

(2) The proceedings shall be dismissed if the defendant to the proceedings shows—

(a) that he has a claim against the claimant arising out of the contract or conveyance that he has been unable to pursue by reason of the failure to comply with section 69C, or

(b) that he has suffered some financial loss in connection with the contract or conveyance by reason of the failure to comply with that section,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(3) 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.”.

**10.—(1)** Section 69D of the Charities Act 1993(**5**) (CIOs: offences connected with name and status) is amended as follows.

(2) For subsection (1) substitute—

“(1) In the case of failure, without reasonable excuse, to comply with section 69C an offence is committed by—

(a) every charity trustee of the CIO who is in default, and

(b) any other person who on the CIO's behalf—

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(4) Section 69C was inserted by the Charities Act 2006 (c.50), Schedule 7, paragraph 1.

(5) Section 69D was inserted by the Charities Act 2006 (c.50), Schedule 7, paragraph 1.

(i) signs or authorises the signing of the offending document, communication or conveyance, or

(ii) otherwise commits or authorises the offending act or omission.

(1A) A person guilty of an offence under subsection (1) 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.

(1B) The reference in subsection (1) to a charity trustee being “in default”, and the reference in subsection (2) to a daily default fine, have the same meaning as in the Companies Acts (see sections 1121 to 1123 and 1125 of the Companies Act 2006).”.

(3) Omit subsection (2).

**11.** In section 73D of the Charities Act 1993<sup>(6)</sup> (power to relieve trustees, auditors etc from liability for breaches of trust or duty), in subsection (6)—

(a) in paragraph (b), for “section 727 of the Companies Act 1985” substitute “section 1157 of the Companies Act 2006”;

(b) in paragraph (c), for “section 727” substitute “section 1157”.

**12.** In section 73E of the Charities Act 1993<sup>(7)</sup> (court’s power to grant relief to apply to auditors etc of charities that are not companies)—

(a) in subsection (1), for “Section 727 of the Companies Act 1985” substitute “Section 1157 of the Companies Act 2006”;

(b) in subsection (2)(a), for “section 727” substitute “section 1157”.

### **Agriculture Act 1993 (c.37)**

**13.** In section 57 of the Agriculture Act 1993 (power of British Wool Marketing Board to grant relief), for “section 727 of the Companies Act 1985 and Article 675 of the Companies (Northern Ireland) Order 1986” substitute “section 1157 of the Companies Act 2006”.

### **Commonwealth Development Corporation Act 1999 (c.20)**

**14.** In paragraph 15(2) of Schedule 2 to the Commonwealth Development Corporation Act 1999<sup>(8)</sup> (application of provisions of company law: purposes for which Secretary of State or Treasury not to be treated as shadow director)—

(a) for sub-paragraph (c) substitute—

“(c) Chapter 3 of Part 10 of the Companies Act 2006 (declaration of interest in existing transaction or arrangement),”;

(b) in sub-paragraph (d) for “the Companies Act 2006” substitute “that Act”.

### **Postal Services Act 2000 (c.26)**

**15.** In section 80(2) of the Postal Services Act 2000<sup>(9)</sup> (shadow directors)—

(a) for sub-paragraph (c) substitute—

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(6) Section 73D was inserted by the Charities Act 2006 (c.50), section 38.

(7) Section 73E was inserted by the Charities Act 2006 (c.50), section 38.

(8) Paragraph 15(2) was substituted by the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194 (C. 84)), Schedule 4, paragraph 90.

(9) Section 80(2) was substituted by the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194 (C. 84)), Schedule 4, paragraph 94.

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- “(c) Chapter 3 of Part 10 of the Companies Act 2006 (declaration of interest in existing transaction or arrangement),”;
- (b) in sub-paragraph (d) for “the Companies Act 2006” substitute “that Act”.

**Transport Act 2000 (c.38)**

- 16.** In section 56(5) of the Transport Act 2000(**10**) (shadow directors)—
- (a) for sub-paragraph (c) substitute—
    - “(c) Chapter 3 of Part 10 of the Companies Act 2006 (declaration of interest in existing transaction or arrangement),”;
    - (b) in sub-paragraph (d) for “the Companies Act 2006” substitute “that Act”.

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(10) Section 56(5) was substituted by the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194 (C. 84)), Schedule 4, paragraph 95.