

## SCHEDULES

### SCHEDULE 1

Article 9.

#### POWERS TO IMPROVE ENFORCEMENT PROCEDURES

##### *Explanation of suggested remedial action*

1.—(1) This paragraph confers power to provide that, where an enforcement officer expresses to any person any opinion as to what remedial action should be taken by that person, then, if that person so requests, the officer—

- (a) shall as soon as practicable give to him a written notice which satisfies the requirements of sub-paragraph (2); and
  - (b) shall not take any enforcement action against him until after the end of such period beginning with the giving of the notice as may be determined by or under the order.
- (2) A notice satisfies the requirements of this sub-paragraph if it—
- (a) states the nature of the remedial action which in the officer's opinion should be taken, and explains why and within what period;
  - (b) explains what constitutes the failure to observe the restriction or to comply with the requirement or condition; and
  - (c) states the nature of the enforcement action which could be taken and states whether there is a right to make representations before, or a right of appeal against, the taking of such action.

##### *Explanation of immediate enforcement action, etc.*

2.—(1) This paragraph confers power to provide that, where an enforcement officer—

- (a) takes immediate enforcement action against any person; or
- (b) requires any person to take immediate remedial action,

the officer shall as soon as practicable give to that person a written notice explaining why it appeared to him to be necessary to take such action or impose such a requirement.

(2) The power conferred by this paragraph is not exercisable unless the restriction, requirement or condition is such that observance of or compliance with it would be likely to involve expenditure of a significant amount.

##### *Right to make representations*

3. This paragraph confers power to provide that, before an enforcement officer takes any enforcement action against any person, the officer—

- (a) shall give to that person a written notice stating—
  - (i) that he is considering taking the action and the reasons why he is considering it; and

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- (ii) that the person may, within a period specified in the notice, make written representations to him or, if the person so requests, make oral representations to him in the presence of a person determined by or under the order; and
- (b) shall consider any representations which are duly made and not withdrawn.

*Explanation of right of appeal*

- 4. This paragraph confers power to provide that, where—
  - (a) an enforcement officer has taken enforcement action against any person; and
  - (b) the relevant enactment contains any provision conferring a right of appeal against such action,

the officer shall as soon as practicable give to that person a written notice explaining how, where, within what period, and on what grounds, an appeal may be brought, and whether the enforcement action would be stayed while an appeal were pending.

*Application of provisions to other interested persons*

- 5.—(1) This paragraph confers power to provide that, where—
  - (a) a third person will or may be required to meet or make a significant contribution towards the cost of observing the restriction or complying with the requirement or condition; or
  - (b) the enforcement action which may be or has been taken specifically relates to goods or services which are to be or have been supplied by a third person,

any relevant provision shall, with any modifications specified in the order, apply in relation to that person.

- (2) In this paragraph—
  - “relevant provision” means any provision made by virtue of paragraphs 1 to 4 or any provision of the relevant enactment which is to the like effect;
  - “third person” means any person other than the one against whom enforcement action may be or has been taken.

F1 SCHEDULE 2

Article 11.

FUNCTIONS RELATING TO COMPANIES WHICH MAY BE CONTRACTED OUT

F1 Sch. 2 repealed (prosp.) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16

## PART I

### FUNCTIONS OF THE REGISTRAR OF COMPANIES

*General*

- 1. Any function of receiving—

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- (a) any return, account or other document required to be filed with, delivered or sent, or
  - (b) notice of any matter required to be given,
- to the registrar of companies which is conferred by or under any enactment.

*The Companies (Northern Ireland) Order 1986 (NI 6)*

2. Any functions in relation to—
- (a) the incorporation of companies and the change of name of companies by or under Chapters I and II of Part II of the Companies (Northern Ireland) Order 1986 (company formation and company names);
  - (b) the re-registration and change of status of companies by or under Part III re-registration as a means of altering a company's status) and Articles 148 (registration of order and minute of reduction), 149 and 157 (re-registration of public companies on reduction of capital) of that Order.
3. Functions conferred by or under any of the following provisions of the Companies (Northern Ireland) Order 1986—
- (a) Articles 654 and 654A (companies' registered numbers and registration of branches of Part XXIII companies), except insofar as they relate respectively to the determination of the form of companies' registered numbers and branches' registered numbers;
  - (b) Article 655 (delivery to the registrar of documents in legible form), except insofar as it relates to the specification of requirements for the purpose of enabling the copying of documents delivered to the registrar;
  - (c) Article 656 (delivery to the registrar of documents other than in legible form), except insofar as it relates to the approval of the non-legible form in which information may be conveyed to the registrar;
  - (d) Article 658 (inspection, etc. of records kept by the registrar), except insofar as it relates to the determination of the means of facilitating the exercise of the right of persons to inspect records kept by the registrar, or the form in which copies of the information contained in those records may be made available;
  - (e) Article 659 (certificate of incorporation); and
  - (f) Article 659A (provision and authentication by registrar of documents in non-legible form), except insofar as it relates to the, approval of the means of communication by the registrar of information in non-legible form.

VALID FROM 01/10/2007

*[<sup>F2</sup>The Companies Act 2006*

**F2** Sch. 2 para. 3A inserted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), Sch. 4 para. 89(3) (with saving in art. 12)

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**3A.** Functions conferred by or under sections 1085, 1086 or 1091 of the Companies Act 2006, except in so far as they relate to the determination of the means of facilitating the exercise of the right of persons to inspect records kept by the registrar, or the form in which copies of the information contained in those records may be made available.]

*The Newspaper Libel and Registration Act 1881 (c. 60)*

**4.** Functions conferred by or under section 13 of the Newspaper Libel and m Registration Act 1881 (registrar to enter returns on register).

*The Limited Partnerships Act 1907 (c. 24)*

**5.** Functions conferred by or under section 16 of the Limited Partnerships Act 1907 (inspection of statements registered).

*The Insurance Companies Act 1982 (c. 50)*

**6.** Functions conferred by or under section 47 or 66 of the Insurance Companies Act 1982 (rescission, variation and publication of requirements and documents deposited).

*The European Economic Interest Grouping Regulations (Northern Ireland) 1989 (No. 216)*

**7.** Functions conferred by or under regulation 14 of the EEIG Regulations (inspection of documents).

**8.** Functions conferred by or under any provision of the Companies (Northern Ireland) Order 1986 listed in paragraphs 2 and 3 to the extent specified in those paragraphs where any such provision is applied to EEIGs by regulation 18 of the EEIG Regulations.

## PART II

### FUNCTIONS OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT

*The Companies (Northern Ireland) Order 1986 (NI 6)*

**9.** Functions conferred by or under any of the following provisions of the Companies (Northern Ireland) Order 1986

- (a) Article 36(2) (prohibition on registration of certain names except with the approval of the Department);
- (b) Article 252(5) (extension by Department of the period allowed for laying and delivering accounts and reports); and

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- (c) Article 651(5) (extension by Department of period allowed for delivering accounts and reports of a Part XXIII company).

*The Business Names (Northern Ireland) Order 1986 (NI 7)*

**10.** Functions conferred by or under Article 4 of the Business Names (Northern Ireland) Order 1986.

**11.** Functions conferred by or under Article 4 of the Business Names (Northern Ireland) Order 1986, as applied to EEIGs by regulation 17 of the EEIG Regulations.

## PART III

### INTERPRETATION

**12.** In this Schedule—

“EEIG” (European Economic Interest Grouping) has the meaning assigned by regulation 2 of the EEIG Regulations;

“the EEIG Regulations” means the European Economic Interest Grouping Regulations (Northern Ireland) 1989.

### SCHEDULE 3

Article 12.

#### FUNCTIONS OF OFFICIAL RECEIVER WHICH CANNOT BE CONTRACTED OUT

**1.** The functions of the official receiver as—

- (a) a receiver appointed pursuant to Article 42 (power of the Court to appoint official receiver);
- (b) a provisional liquidator appointed pursuant to Article 115 (appointment and powers of provisional liquidator); or
- (c) an interim receiver appointed pursuant to Article 259 (power of the Court to appoint interim receiver).

**2.** The receipt of any deposit which relates to a bankruptcy or winding-up petition.

**3.** The chairing—

- (a) by virtue of rule 4.062 of the first meeting of creditors (as defined by rule 4.055(7)) or the first meeting of contributories (as so defined) in a winding up by the Court; or
- (b) by virtue of rule 6.080 of the first meeting of creditors (as defined by rule 6.077(7)) in a bankruptcy.

**4.** The making of an application to the Department—

- (a) under Article 117(1) for the appointment of another person as liquidator in the place of the official receiver; or
- (b) under Article 269(1) for the appointment of a person as trustee instead of the official receiver.

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5. The taking of a decision—
  - (a) pursuant to Article 117(2), whether to refer to the Department the need for an appointment of a liquidator in any case where at meetings held in pursuance of a decision under Article 116(5)(a) no person is chosen to be liquidator;
  - (b) pursuant to Article 268(1), whether to refer to the Department the need for an appointment of a trustee in any case where at a meeting summoned under Article 266 or 267 no appointment of a person as trustee is made.
6. The making of a reference to the Department under paragraph (4) of Article 273 of the need for an appointment of a trustee by the Department in the circumstances referred to in that paragraph.
7. The making of a reference to the Court or the Department, as the case may be, under paragraph (5) of Article 273 of the need to fill any vacancy in the circumstances referred to in that paragraph.
8. The functions of the official receiver—
  - (a) exercisable under rule 4.180(2) (functions of liquidation committee exercisable by official receiver), rule 6.163(2) (functions of creditors' committee exercisable by official receiver) or rule 6.230(2) (bankrupt may, with official receiver's consent, travel to Great Britain or the Republic of Ireland); or
  - (b) in relation to the hearing of an application made under—
    - (i) Article 254 (discharge by order of the Court);
    - (ii) rule 4.040(2) (application to the Court for a release or extension of time in respect of statement of affairs in a winding up by the Court); or
    - (iii) rule 6.060(2) (application to the Court by bankrupt for a release or extension of time in respect of statement of affairs).
9. The bringing or the conduct of proceedings under<sup>[F3]</sup> the Company Directors Disqualification (Northern Ireland) Order 2002].

**F3** 2002 NI 4

10. The giving of notice to the Department pursuant to Article 148(3) (release of official receiver in winding up by the Court) or Article 272(2) (release of official receiver as trustee).
11. Considering—
  - (a) pursuant to rule 4.064(3), whether a request by creditors for a meeting of creditors or contributories, or meetings of both, or
  - (b) pursuant to rule 4.064(3), as it applies by virtue of rule 4.064(5), whether a request by contributories for a meeting of contributories, or
  - (c) pursuant to rule 6.081(3), whether a request by creditors for a meeting of creditors,has been properly made in accordance with the Insolvency Order.
12. The making or conduct of any application to the Court—
  - (a) to commit a bankrupt for contempt of court for failure to comply with a duty imposed on him by—
    - (i) Article 261 (statement of affairs);
    - (ii) Article 264 (duties of bankrupt in relation to official receiver);
    - (iii) Article 285 (obligation to surrender control to trustee);
    - (iv) Article 306 (duties of bankrupt in relation to trustee); or

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- (v) Article 334 (general control of the Court); or
  - (b) pursuant to Article 253(3) (suspension of discharge on application by official receiver).
- 13.** The making or conduct of any application to the Court to commit for contempt of court—
- (a) a person who has failed to attend his public examination under Article 113 (public examination of officers, etc.); or
  - (b) a bankrupt who has failed to attend his public examination under Article 263 (public examination of bankrupt).
- 14.** The making of a report to the Court pursuant to—
- (a) Article 112(1) (investigation by official receiver where a winding-up order is made by the Court);
  - (b) Article 262(1) (investigation by official receiver of bankrupt's affairs);
  - (c) Article 262(2) (report to the Court on application by bankrupt for discharge from bankruptcy);
  - (d) rule 4.040(6) (report to the Court, etc. on application by officers of company, etc. for release from duty to submit statement of affairs or for extension of time);
  - (e) rule 6.060(6) (report to the Court, etc. on application by bankrupt for release from duty to submit statement of affairs or for extension of time); or
  - (f) rule 6.213(2) (report in support of application for suspension of discharge).
- 15.** The making or conduct of an application to the Court for a public examination under Article 113(1) or 263(1) and the making or conduct of any application in relation to any public examination.
- 16.** The making or conduct of an application to the Court to relieve the official receiver from an obligation to make an application for a public examination requested pursuant to Article 113(2) or required pursuant to Article 263(2).
- 17.** The taking part in a public examination or the questioning of a person pursuant to Article 113(4)(a) or the taking part in a public examination or the questioning of a bankrupt pursuant to Article 263(4)(a).
- 18.** The making or conduct of an application to the Court—
- (a) pursuant to Article 114(2) for the issue of a warrant for the arrest of a person and for the seizure of any books, papers, records, money or goods in that person's possession; or
  - (b) pursuant to Article 335, for the issue of a warrant for the arrest of a debtor, an undischarged bankrupt or a discharged bankrupt and for the seizure of any books, papers, records, money or goods in the debtor's or bankrupt's possession, as the case may be.
- 19.** The making or conduct of an application to the Court pursuant to Article 135 for the arrest of a contributory and for the seizure of his books, papers and movable personal property.
- 20.** The taking of affidavits and declarations pursuant to rule 7.52(5) (taking of affidavits and declarations).
- 21.** Any function of the official receiver in relation to the hearing of—
- (a) an application by a bankrupt for leave to act as a director of, or directly or indirectly to take part in or be concerned in the promotion, formation or management of, a company; or
  - (b) an application by a director in respect of whom a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989 is in force, for leave—
    - (i) to be a director of a company;
    - (ii) to be a liquidator or administrator of a company;

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- (iii) to be a receiver or manager of a company's property; or
- (iv) to be concerned or to take part in the promotion, formation or management of a company in any way, whether directly or indirectly.

**22.** The making of a report to the Department pursuant to Article 10(3) of the Companies (Northern Ireland) Order 1989.

**23.** Any function corresponding to one referred to in paragraphs 1 to 22 which is exercisable by the official receiver by virtue of the application (with or without modifications) of any provision of the insolvency legislation to insolvent partnerships or unregistered companies.

**24.** The presentation of a winding-up petition pursuant to Article 104(6) (application by official receiver for winding up of company being wound up voluntarily).

**25.** In this Schedule—

except where otherwise expressly provided, an Article referred to by number means that Article in the Insolvency Order;

a rule referred to by number means that rule in the Rules.

#### SCHEDULE 4

Article 16.

### RESTRICTIONS ON DISCLOSURE OF INFORMATION

#### *Preliminary*

**1.—**(1) Paragraphs 2 to 5,7 and 8 apply where—

- (a) a person (“contractor A”) is authorised to exercise any function (“the relevant function”) of a Department, Minister, office holder or district council (“authority A”); and
- (b) the disclosure of relevant information, that is, information obtained, whether before or after the commencement of this Order, in or in connection with the exercise of the relevant function or a related function, is restricted by any enactment or by any obligation of confidentiality.

(2) Paragraphs 6 to 8 apply where—

- (a) a person (“contractor A”) is authorised to exercise any function (“the relevant function”) of a Department, Minister, office-holder or district council (“authority A”); and
- (b) the disclosure of relevant information, that is, information obtained, whether before or after the commencement of this Order, in or in connection with the exercise of any function of another Department, Minister, office-holder or district council (“authority E”), is restricted by any enactment or by any obligation of confidentiality.

#### *Disclosure between contracting parties, etc.*

**2.** The enactment or obligation does not prevent or penalise the disclosure of relevant information—

- (a) between contractor A or an employee of his and authority A or an authorised officer of that authority;
  - (b) between contractor A and an employee of his or between one such employee and another;
- or



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- (c) where the relevant function has been delegated to authority A by another Department, Minister, office-holder or district council ( “authority B”), between contractor A or an employee of his and authority B or an authorised officer of that authority,

if the disclosure is necessary or expedient in or in connection with, or for the purpose of facilitating, the exercise of the relevant function or a related function or the performance of ancillary services.

#### *Disclosures by contracting parties to contractor B*

**3.—(1)** This paragraph applies where another person ( “contractor B”) is authorised to exercise the relevant function or a related function.

(2) The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, or authority A or an authorised officer of that authority, to contractor B or an employee of his, if—

- (a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function or a related function; and
- (b) where the disclosure is by contractor A or an employee of his, the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient.

#### *Disclosures by contracting parties to contractor C*

**4.—(1)** This paragraph applies where another person ( “contractor C”) is authorised to exercise a function of another Department, Minister, office-holder or district council ( “authority C”).

(2) The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, or authority A or an authorised officer of that authority; to contractor C or an employee of his, if—

- (a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority C;
- (b) where the disclosure is by contractor A or an employee of his, the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient; and
- (c) the information could be lawfully disclosed, for that purpose, by authority A to authority C.

#### *Disclosures by contractor A to authority D*

**5.** The enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his to another Department, Minister, office-holder or district council ( “authority D”) or an authorised officer of that authority if—

- (a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority D;
- (b) the disclosure falls within a description of disclosures certified by authority A (whether in the authorisation or otherwise) to be capable of being so necessary or expedient; and
- (c) the information could be lawfully disclosed, for that purpose, by authority A to authority D.

#### *Disclosures to contractor A by authority E*

**6.** The enactment or obligation does not prevent or penalise the disclosure of relevant information by authority E or an authorised officer of that authority to contractor A or an employee of his, if—

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- (a) the disclosure is necessary or expedient for the purpose of facilitating the exercise of the relevant function, a related function or a function of authority E; and
- (b) the information could be lawfully disclosed, for that purpose, by authority E to authority A.

#### *Disclosures for audit purposes*

7.—(1) Where authority A is a Department, Minister or office-holder, the enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, if—

- (a) the disclosure is to the Comptroller, or a person exercising an audit function of his, and the information could be lawfully disclosed to the Comptroller or that person by authority A; or
- (b) the disclosure is to an accounting officer, or a person exercising an audit function of his, and the information could be lawfully disclosed to that officer or person by authority A.

(2) Where authority A is a district council, the enactment or obligation does not prevent or penalise the disclosure of relevant information by contractor A or an employee of his, if—

- (a) the disclosure is to the council's chief financial officer, or a person exercising an audit function of his; and
- (b) the information could be lawfully disclosed to that officer or person by the council.

(3) In this paragraph—

“accounting officer” means—

- (a) an officer appointed as such an officer by the Department of Finance and Personnel;
- (b) an officer appointed by the Treasury under<sup>F4</sup> section 5(6) or (8) of the Government Resources and Accounts Act 2000 (resource accounts)] or section 4 of the Government Trading Funds Act 1973;

“audit function”, in relation to the Comptroller, includes any function under Part III of the Audit (Northern Ireland) Order 1987 or Part II of the National Audit Act 1983 (examinations into economy, efficiency and effectiveness);

“chief financial officer” has the meaning assigned by section 148(1) of the Local Government Act (Northern Ireland) 1972;

“Comptroller” means the Comptroller and Auditor General for Northern Ireland or the Comptroller and Auditor General of the United Kingdom,

**F4** 2001 c. 6 (NI)

#### *Implied term of contractor A's contract*

8. It is an implied term of any contract made between contractor A and authority A and relating to the exercise of the relevant function that contractor A shall take all reasonable steps to secure that any relevant information—

- (a) which is obtained by him or an employee of his; and
- (b) the disclosure of which is restricted by any enactment or obligation,

is not disclosed at any time (whether or not during the subsistence of the contract) to any other person in contravention of the enactment or in breach of the obligation.

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### *Unauthorised disclosures*

- 9.—(1) This paragraph applies where—
- (a) any information is disclosed to any person in accordance with paragraphs 2 to 7 ( “the original disclosure”); and
  - (b) that person, or any other person to whom the information is subsequently so disclosed, discloses the information otherwise than in accordance with paragraphs 2 to 7 ( “the unauthorised disclosure”).
- (2) If the original disclosure was restricted by an enactment, the enactment shall apply in relation to the person making the unauthorised disclosure as if—
- (a) he had obtained the information by virtue of the same provision as the person who made the original disclosure;
  - (b) where the enactment would not have restricted that disclosure if the person who made it had not fallen within a particular class, he fell within that class.
- (3) If the original disclosure was restricted by an obligation, the person making the unauthorised disclosure shall be treated for all purposes as if he were subject to that obligation.

### *Interpretation*

- 10.—(1) In this Schedule—
- “ancillary services” means services certified by authority A (whether in the authorisation or otherwise) to be services appearing to it to be calculated to facilitate, or to be conducive or incidental to, the exercise of the relevant function;
- “authorised officer”, in relation to a Department, Minister, office-holder or district council, means any officer of the Department, Minister, office-holder or council who is authorised by it or him to disclose or (as the case may be) obtain the information in question;
- “employee”, in relation to contractor A, includes any person who performs ancillary services for that contractor, and any employee of such a person;
- “related function” means any function of authority A which is certified by that authority (whether in the authorisation or otherwise) to be a function which is related to the relevant function.
- (2) For the purposes of sub-paragraph (1), a function of authority A is related to another function of that authority if information—
- (a) which is obtained in or in connection with the exercise of either function; and
  - (b) the disclosure of which is restricted by any enactment or by any obligation of confidentiality,
- can lawfully be used by that authority for the purpose of facilitating the exercise of the other function.
- (3) In this Schedule—
- (a) any reference to another person is a reference to a person other than contractor A;
  - (b) any reference to another Department, Minister, office-holder or district council is a reference to a Department, Minister, office-holder or district council other than authority A.

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### *Schedule 5—Amendments*

### *Schedule 6—Repeals*

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