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STATUTORY INSTRUMENTS

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1986 No. 1032 (N.I. 6)

NORTHERN IRELAND

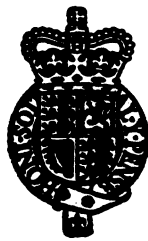
The Companies  
(Northern Ireland)  
Order 1986

*Laid before Parliament in draft*

*Made*

*23rd June 1986*

*Coming into operation in accordance with Article 1(2)*



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At the Court at Buckingham Palace, the 23rd day of June 1986

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

1974 c. 28

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**PART I**

**INTRODUCTORY AND INTERPRETATION**

*Title and commencement*

1.—(1) This Order may be cited as the Companies (Northern Ireland) Order 1986.

(2) Except as provided by Article 251(6), this Order comes into operation on the expiration of three months from the day on which it is made.

*General interpretation*

1954 c. 33 (N.I.)

2.—(1) The Interpretation Act (Northern Ireland) 1954 applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) For the purposes of Articles 218 and 224(3), section 20(2) of that Act of 1954 applies with the omission of the words “the liability of whose members is limited” and, where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

1960 c. 22 (N.I.)

(3) In this Order—

“the Act of 1960” means the Companies Act (Northern Ireland) 1960;

“agent” does not include a person's counsel acting as such;

“annual return” means the return to be made by a company under Article 371 or 372 (as the case may be);

“articles” and “articles of association” mean, in relation to a company, its articles of association, as originally framed or as altered

- by resolution, including (so far as applicable to the company) regulations contained in or annexed to any statutory provision relating to companies passed or made before this Order, as altered by or under any such statutory provision;
- “authorised minimum” has the meaning given by Article 128;
- “bank holiday” means a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971; 1971 c. 80
- “books and papers” and “books or papers” include accounts, deeds, writings and documents;
- “the Companies Orders” means this Order, the Insider Dealing Order and the Consequential Provisions Order;
- “company limited by guarantee” and “company limited by shares” have the meanings assigned to them respectively by Article 12(2);
- “the Consequential Provisions Order” means the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986; 1986 NI 9
- “contributory” has the meaning assigned to it by Article 473;
- “the court”, in relation to a company, means the court having jurisdiction to wind up the company;
- “debenture” includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;
- “the Department” means the Department of Economic Development;
- “document” includes summons, notice, order and other legal process, and registers;
- “equity share capital” means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;
- “expert” has the meaning given by Article 72;
- “former Companies Acts” means the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act (Northern Ireland) 1932 and the Companies Acts (Northern Ireland) 1960 to 1983; 1862 c. 89  
1908 c. 69  
1932 c. 7 (N.I.)
- “hire purchase agreement” has the same meaning as in the Consumer Credit Act 1974; 1974 c. 39
- “the Insider Dealing Order” means the Company Securities (Insider Dealing) (Northern Ireland) Order 1986; 1986 NI 8
- “the Insolvency Account” means the account kept by the Department under Article 502;
- “insurance company” means the same as in the Insurance Companies Act 1982; 1982 c. 50
- “joint stock company” has the meaning given by Article 632;
- “the Joint Stock Companies Acts” means the Joint Stock Companies Act 1856, the Joint Stock Companies Acts 1856, 1857, the Joint Stock Banking Companies Act 1857 and the Act to enable Joint 1856 c. 47  
20 & 21 VICT. c. 14  
1857 c. 49

**THE COMPANIES (NI) ORDER 1986**  
**SI 1986/1032 (NI 6)**

**PART I**

1858 c. 91

1844 c. 110

Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts (as the case may require), but does not include the Joint Stock Companies Act 1844;

“memorandum”, in relation to a company, means its memorandum of association, as originally framed or as altered in pursuance of any statutory provision;

“number”, in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

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

“the Official Assignee” means the officer appointed under Article 488 and, for the purposes of this Order, includes an Assistant Official Assignee;

1978 NI 12

“the Order of 1978” means the Companies (Northern Ireland) Order 1978;

1981 NI 19

“the Order of 1981” means the Companies (Northern Ireland) Order 1981;

1982 NI 17

“the Order of 1982” means the Companies (Northern Ireland) Order 1982;

1983 NI 12

“the Order of 1983” means the Companies (Beneficial Interests) (Northern Ireland) Order 1983;

“Part XXIII company” has the meaning given by Article 640;

“place of business” includes a share transfer or share registration office;

“prescribed” means—

(a) as respects provisions of this Order relating to winding up, prescribed by winding-up rules made under Article 613, and

(b) otherwise, prescribed by regulations made under Article 681;

“prospectus” means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares in or debentures of a company;

“prospectus issued generally” means a prospectus issued to persons who are not existing members of the company or holders of its debentures;

1979 c. 37

“recognised bank” means a company which is recognised as a bank for the purposes of the Banking Act 1979;

1940 c. 9 (N.I.)

“recognised stock exchange” means any body of persons which is for the time being a recognised stock exchange for the purposes of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940;

“the registrar” means the registrar of companies appointed under Article 653, and, for the purposes of this Order, includes an assistant registrar;

“a resolution for reducing share capital” has the meaning assigned to it by Article 145(3);

“a resolution for voluntary winding up” has the meaning assigned to it by Article 529(2);

“share” means share in the share capital of a company and includes stock (except where a distinction between shares and stock is express or implied);

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

1954 c. 33 (N.I.)

“undischarged bankrupt” includes—

(a) a bankrupt who has not obtained the certificate of conformity mentioned in section 56 of the Bankruptcy (Ireland) Amendment Act 1872;

1872 c. 58

(b) a bankrupt who has not been discharged from his bankruptcy by an absolute order of discharge under Article 28 or 30 of the Bankruptcy Amendment (Northern Ireland) Order 1980, or by virtue of the expiration of the period or the satisfaction of any requirement specified in a suspended or conditional order of discharge under either of those Articles, or by virtue of Article 29(2) or (4) (automatic discharge) of that Order;

1980 NI 4

(c) a person who is an undischarged bankrupt under the law of England or Scotland;

“undistributable reserves” has the meaning given by Article 272;

“unlimited company” has the meaning assigned to it by Article 12(2)(c).

(4) For the purposes of section 42 of the Northern Ireland Constitution Act 1973 (validity of Acts of Parliament of Northern Ireland), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland are deemed to be provisions of such an Act.

1973 c. 36

“Company”, etc.

3.—(1) In this Order—

(a) “company” means a company formed and registered under this Order, or an existing company;

(b) “existing company” means a company formed and registered, or deemed to have been registered, in Northern Ireland under the former Companies Acts;

(2) “Public company” and “private company” have the meanings given by Article 12.

“Holding company”, “subsidiary” and “wholly-owned subsidiary”

4.—(1) For the purposes of this Order, a company is deemed to be a subsidiary of another if (but only if)—

(a) that other either—

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital, or

**PART I**

- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

This paragraph is subject to paragraph (4).

(2) For the purposes of paragraph (1), the composition of a company's board of directors is deemed to be controlled by another company if (but only if) that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships.

(3) For the purposes of paragraph (2), the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied—

- (a) that a person cannot be appointed to it without the exercise in his favour by the other company of such a power as is mentioned in that paragraph, or
- (b) that a person's appointment to the directorship follows necessarily from his appointment as director of the other company, or
- (c) that the directorship is held by the other company itself or by a subsidiary of it.

(4) In determining whether one company is a subsidiary of another—

- (a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it,
- (b) subject to sub-paragraphs (c) and (d), any shares held or power exercisable—
  - (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity), or
  - (ii) by, or by a nominee for, a subsidiary of the other (not being a subsidiary which is concerned only in a fiduciary capacity), are to be treated as held or exercisable by the other,
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures are to be disregarded,
- (d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary (not being held or exercisable as mentioned in sub-paragraph (c)) are to be treated as not held or exercisable by the other if the ordinary business of the other or its subsidiary (as the case may be) includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Order—

- (a) a company is deemed to be another's holding company if (but only if) the other is its subsidiary, and
- (b) a body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(6) In this Article "company" includes any body corporate.

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*"Called-up share capital"*

5.—(1) In this Order, "called-up share capital", in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares (whether or not those calls have been paid), together with any share capital paid up without being called and any share capital to be paid on a specified future date under its articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares.

(2) "Uncalled share capital" is to be construed accordingly.

*"Allotment" and "paid up"*

6.—(1) In relation to an allotment of shares in a company, the shares are to be taken for the purposes of this Order to be allotted when a person acquires the unconditional right to be included in the company's register of members in respect of those shares.

(2) For the purposes of this Order, a share in a company is deemed paid up (as to its nominal value or any premium on it) in cash, or allotted for cash, if the consideration for the allotment or payment up is cash received by the company, or is a cheque received by it in good faith which the directors have no reason for suspecting will not be paid, or is a release of a liability of the company for a liquidated sum, or is an undertaking to pay cash to the company at a future date.

(3) In relation to the allotment or payment up of any shares in a company, references in this Order (except Articles 99 to 104) to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include the payment of, or any undertaking to pay, cash to any person other than the company.

(4) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, "cash" includes foreign currency.

*"Non-cash asset"*

7.—(1) In this Order "non-cash asset" means any property or interest in property other than cash; and for this purpose "cash" includes foreign currency.

(2) A reference to the transfer or acquisition of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person's liability, other than a liability for a liquidated sum.

*"Body corporate" and "corporation"*

8. References in this Order to a body corporate or to a corporation do not include a corporation sole, but include a company incorporated elsewhere than in Northern Ireland.

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Such references to a body corporate do not include a Scottish firm.

*“Director” and “shadow director”*

9.—(1) In this Order, “director” includes any person occupying the position of director, by whatever named called.

(2) In relation to a company, “shadow director” means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

However, a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.

(3) For the purposes of the following provisions, namely—

Article 317 (directors’ duty to have regard to interests of employees);

Article 327 (directors’ long-term contracts of employment);

Articles 328 to 330 (substantial property transactions involving directors); and

Articles 338 to 354 (general restrictions on power of companies to make loans, etc. to directors and others connected with them),

(being provisions under which shadow directors are treated as directors), a body corporate is not to be treated as a shadow director of any of its subsidiary companies by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.

*Expressions used in connection with accounts*

10.—(1) In this Order—

(a) “accounting reference period” has the meaning given by Articles 232 to 234;

(b) “accounts” includes a company’s group accounts (within the meaning of Article 237) whether prepared in the form of accounts or not;

(c) “balance sheet date”, in relation to a balance sheet, means the date as at which the balance sheet was prepared;

(d) “financial year”—

(i) in relation to a body corporate to which Part VIII applies, means a period in respect of which a profit and loss account under Article 235 is made up, and

(ii) in relation to any other body corporate, means a period in respect of which a profit and loss account of the body laid before it in general meeting is made up,

(whether, in either case, that period is a year or not);

(e) any reference to a profit and loss account, in the case of a company not trading for profit, is to its income and expenditure account, and references to profit or loss and, if the company has subsidiaries, references to a consolidated profit and loss account are to be construed accordingly.

(2) Except in relation to special category accounts, any reference to a balance sheet or profit and loss account includes any notes to the



account in question giving information which is required by any provision of this Order and required or allowed by any such provision to be given in a note to the company accounts.

(3) In relation to special category accounts, any reference to a balance sheet or profit and loss account includes any notes thereon or document annexed thereto giving information which is required by this Order and is thereby allowed to be so given.

(4) References to special category companies and special category accounts are to be construed in accordance with Chapter II of Part VIII.

(5) For the purposes of Part VIII, a body corporate is to be regarded as publishing any balance sheet or other account if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

(6) Expressions which, when used in Schedule 4, fall to be construed in accordance with any provision of Part VII of that Schedule have the same meaning when used in any provision of this Order.

*“Employees’ share scheme”*

11. For the purposes of this Order, an employees’ share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of—

- (a) the bona fide employees or former employees of the company, the company’s subsidiary or holding company or a subsidiary of the company’s holding company, or
- (b) the wives, husbands, widows, widowers or children, step-children or adopted children under the age of 18 of such employees or former employees.

PART II

FORMATION AND REGISTRATION OF COMPANIES; JURIDICAL STATUS AND MEMBERSHIP

CHAPTER I

COMPANY FORMATION

*Memorandum of association*

*Mode of forming incorporated company*

12.—(1) Any two or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Order in respect of registration, form an incorporated company, with or without limited liability.

(2) A company so formed may be either—

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- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (“a company limited by shares”);
- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (“a company limited by guarantee”); or
- (c) a company not having any limit on the liability of its members (“an unlimited company”).

(3) A “public company” is a company limited by shares or limited by guarantee and having a share capital, being a company—

- (a) the memorandum of which states that it is to be a public company, and
- (b) in relation to which the provisions of this Order or the former Companies Acts as to the registration or re-registration of a company as a public company have been complied with on or after 1st July 1983;

and a “private company” is a company that is not a public company.

(4) With effect from 1st July 1983, a company cannot be formed as, or become, a company limited by guarantee with a share capital.

*Requirements with respect to memorandum*

13.—(1) The memorandum of every company must state—

- (a) the name of the company;
- (b) that the registered office of the company is to be situated in Northern Ireland;
- (c) the objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

- (a) the memorandum must also (unless the company is an unlimited company) state the amount of the share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount;

- (b) no subscriber of the memorandum may take less than one share; and
- (c) there must be shown in the memorandum against the name of each subscriber the number of shares he takes.

(5) The memorandum must be signed by each subscriber in the presence of at least one witness, who must attest the signature.

(6) A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent, for which express provision is made by this Order.

*Forms of memorandum*

14. Subject to the provisions of Articles 12 and 13, the form of the memorandum of association of—

- (a) a public company, being a company limited by shares,
- (b) a public company, being a company limited by guarantee and having a share capital,
- (c) a private company limited by shares,
- (d) a private company limited by guarantee and not having a share capital,
- (e) a private company limited by guarantee and having a share capital, and
- (f) an unlimited company having a share capital,

shall be as prescribed respectively for such companies by regulations, made by the Department, or as near to that form as circumstances admit.

*Resolution to alter objects*

15. A company may by special resolution alter its memorandum with respect to the objects of the company, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its main purpose by new or improved means; or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the objects specified in the memorandum; or
- (f) to sell or dispose of the whole or any part of the undertaking of the company; or
- (g) to amalgamate with any other company or body of persons;

but if an application is made under Article 16, the alteration does not have effect except in so far as it is confirmed by the court.

*Procedure for objecting to alteration*

**16.—(1)** Where a company's memorandum has been altered by special resolution under Article 15, application may be made to the court for the alteration to be cancelled.

(2) Such an application may be made—

- (a) by the holders of not less in the aggregate than 15 per cent. in nominal value of the company's issued share capital or any class of it or, if the company is not limited by shares, not less than 15 per cent. of the company's members; or
- (b) by the holders of not less than 15 per cent. of the company's debentures entitling the holders to object to an alteration of its objects;

but an application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) The application must be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) The court may on such an application make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may—

- (a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and
- (b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(5) The court's order may (if the court thinks fit) provide for the purchase by the company of the shares of any members of the company, and for the reduction accordingly of its capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(6) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company does not then have power without the leave of the court to make any such alteration in breach of that requirement.

(7) An alteration in the memorandum or articles of a company made by virtue of an order under this Article, other than one made by resolution of the company, is of the same effect as if duly made by resolution; and this Order applies accordingly to the memorandum or articles as so altered.

(8) The debentures entitling the holders to object to an alteration of a company's objects are any debentures secured by a floating charge which

were issued or first issued before 1st April 1961 or form part of the same series as any debentures so issued; and a special resolution altering a company's objects requires the same notice to the holders of any such debentures as to members of the company.

In the absence of provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members apply.

*Provisions supplementing Articles 15 and 16*

17.—(1) Where a company passes a resolution altering its objects, then—

- (a) if with respect to the resolution no application is made under Article 16, the company shall within 15 days from the end of the period for making such an application deliver to the registrar a printed copy of its memorandum as altered; and
- (b) if such an application is made, the company shall—
  - (i) forthwith give notice (in the prescribed form) of that fact to the registrar, and
  - (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

(2) The court may by order at any time extend the time for the delivery of documents to the registrar under paragraph (1)(b) for such period as the court may think proper.

(3) If a company makes default in giving notice or delivering any document to the registrar as required by paragraph (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by Article 15, except in proceedings taken for the purpose (whether under Article 16 or otherwise) before the expiration of 21 days after the date of the resolution in that behalf.

(5) Where such proceedings are taken otherwise than under Article 16, paragraphs (1) to (3) apply in relation to the proceedings as if they had been taken under that Article and as if an order declaring the alteration invalid were an order cancelling it, and as if an order dismissing the proceedings were an order confirming the alteration.

*Articles of association*

*Regulation of companies by articles of association*

18.—(1) There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the

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subscribers to the memorandum and making regulations for the company.

(2) In the case of an unlimited company having a share capital, its articles must state the amount of share capital with which the company proposes to be registered.

(3) Articles of association must—

- (a) be printed,
- (b) be divided into paragraphs numbered consecutively, and
- (c) be signed by each subscriber of the memorandum in the presence of at least one witness who must attest the signature.

*Tables A, C, D and E*

19.—(1) Table A is as prescribed by regulations made by the Department; and a company may for its articles adopt the whole or any part of that Table.

(2) In the case of a company limited by shares, if articles are not registered or, if articles are registered, in so far as they do not exclude or modify Table A, that Table (so far as applicable, and as in force at the date of the company's registration) constitutes the company's articles in the same manner and to the same extent as if articles in the form of that Table had been duly registered.

(3) If in consequence of regulations under this Article Table A is altered, the alteration does not affect a company registered before the alteration takes effect, or revoke as respects that company any portion of the Table.

(4) The form of the articles of association of—

- (a) a company limited by guarantee and not having a share capital,
- (b) a company limited by guarantee and having a share capital, and
- (c) an unlimited company having a share capital,

shall be respectively in accordance with Table C, D or E prescribed by regulations made by the Department or as near to that form as circumstances admit.

*Alteration of articles by special resolution*

20.—(1) Subject to the provisions of this Order and to the conditions contained in its memorandum, a company may by special resolution alter its articles.

(2) Alterations so made in the articles are (subject to this Order) as valid as if originally contained in them and are subject in like manner to alteration by special resolution.

*Registration and its consequences*

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*Documents to be sent to registrar*

21.—(1) A company's memorandum and articles (if any) shall be delivered to the registrar.

(2) With the memorandum there shall be delivered a statement in the prescribed form containing the names and requisite particulars of—

- (a) the person who is, or the persons who are, to be the first director or directors of the company; and
- (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company;

and the requisite particulars in each case are those set out in Schedule 1.

(3) The statement shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries, to act in the relevant capacity.

(4) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.

(5) An appointment by a company's articles delivered with the memorandum of a person as director or secretary of the company is void unless he is named as a director or secretary in the statement.

(6) There shall in the statement be specified the intended situation of the company's registered office on incorporation.

*Minimum authorised capital (public companies)*

22. When a memorandum delivered to the registrar under Article 21 states that the association to be registered is to be a public company, the amount of the share capital stated in the memorandum to be that with which the company proposes to be registered must not be less than the authorised minimum.

*Duty of registrar*

23.—(1) The registrar shall not register a company's memorandum delivered under Article 21 unless he is satisfied that all the requirements of this Order in respect of registration and of matters precedent and incidental to it have been complied with.

(2) Subject to this, the registrar shall retain and register the memorandum and articles (if any) delivered to him under that Article.

(3) A statutory declaration in the prescribed form by—

- (a) a solicitor engaged in the formation of a company, or
- (b) a person named as a director or secretary of the company in the statement delivered under Article 21(2),

that those requirements have been complied with shall be delivered to the registrar and the registrar may accept such a declaration as sufficient evidence of compliance.

*Effect of registration*

**24.—(1)** On the registration of a company's memorandum, the registrar shall give a certificate that the company is incorporated and, in the case of a limited company, that it is limited.

(2) The certificate shall be given under the registrar's hand.

(3) From the date of incorporation mentioned in the certificate, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.

(4) That body corporate is then capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets in the event of its being wound up as is provided by this Order.

This is subject, in the case of a public company, to Article 127 (additional certificate as to compliance with share capital requirements).

(5) The persons named in the statement under Article 21 as directors, secretary or joint secretaries are, on the company's incorporation, deemed to have been respectively appointed as its first directors, secretary or joint secretaries.

(6) Where the registrar registers an association's memorandum which states that the association is to be a public company, the certificate of incorporation shall contain a statement that the company is a public company.

(7) A certificate of incorporation given in respect of an association is conclusive evidence—

(a) that the requirements of this Order in respect of registration and of matters precedent and incidental to it have been complied with, and that the association is a company authorised to be registered, and is duly registered, under this Order; and

(b) if the certificate contains a statement that the company is a public company, that the company is such a company.

*Effect of memorandum and articles*

**25.—(1)** Subject to the provisions of this Order, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.



(2) Money payable by a member to the company under the memorandum or articles is a debt due from him to the company.

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*Memorandum and articles of company limited by guarantee*

26.—(1) In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles, or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, is void.

(2) For the purposes of provisions of this Order relating to the memorandum of a company limited by guarantee, and for those of Article 12(4) and this Article, every provision in the memorandum or articles, or in any resolution, of a company so limited purporting to divide the company's undertaking into shares or interests is to be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified by the provision.

*Effect of alteration on company's members*

27.—(1) A member of a company is not bound by an alteration made in its memorandum or articles after the date on which he became a member, if and so far as the alteration—

- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or
- (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.

(2) Paragraph (1) operates notwithstanding anything in the memorandum or articles; but it does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

*Conditions in memorandum which could have been in articles*

28.—(1) A condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration does not have effect except in so far as it is confirmed by the court.

(2) This Article—

- (a) is subject to Article 27, and also to Part XVIII (court order protecting minority), and
- (b) does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions referred to

in paragraph (1), and does not authorise any variation or abrogation of the special rights of any class of members.

(3) Article 16 (except paragraphs (2)(b) and (8)) and Article 17(1) to (3) apply in relation to any alteration and to any application made under this Article as they apply in relation to alterations and applications under Articles 15 to 17.

*Amendments of memorandum or articles to be recorded*

29.—(1) Where an alteration is made in a company's memorandum or articles by any statutory provision, a printed copy of the statutory provision shall, not later than 15 days after that provision comes into operation, be forwarded to the registrar and recorded by him.

(2) Where a company is required (by this Article or otherwise) to send to the registrar any document making or evidencing an alteration in the company's memorandum or articles (other than a special resolution under Article 15) the company shall send with it a printed copy of the memorandum or articles as altered.

(3) If a company fails to comply with this Article, the company and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Copies of memorandum and articles to be given to members*

30.—(1) A company shall, on being so required by any member, send to him a copy of its memorandum and of its articles (if any), and a copy of any statutory provision which alters the memorandum, subject to payment—

- (a) in the case of a copy of the memorandum and of the articles, of 5 pence or such less sum as the company may determine, and
- (b) in the case of a copy of a statutory provision, of such sum not exceeding its published price as the company may require.

(2) If a company makes default in complying with this Article, the company and every officer of it who is in default is liable for each offence to a fine.

*Issued copy of memorandum to embody alterations*

31.—(1) Where an alteration is made in a company's memorandum, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it is liable to a fine, and so too is every officer of the company who is in default.

*A company's membership*

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*Definition of "member"*

32.—(1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration shall be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

*Membership of holding company*

33.—(1) Except in the cases mentioned in this Article, a body corporate cannot be a member of a company which is its holding company; and any allotment or transfer of shares in a company to its subsidiary is void.

(2) This does not prevent a subsidiary which was, on 1st April 1961, a member of its holding company, from continuing to be a member; but (subject to paragraph (4)) the subsidiary has no right to vote at meetings of the holding company or any class of its members.

(3) Subject to paragraph (4), paragraphs (1) and (2) apply in relation to a nominee for a body corporate which is a subsidiary, as if references to such a body corporate included a nominee for it.

(4) Nothing in this Article applies where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary of it is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

Schedule 2 has effect for the interpretation of the reference in this paragraph to a company or its subsidiary being beneficially interested.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in paragraph (1) to shares (whether or not the company has a share capital) includes the interest of its members as such, whatever the form of that interest.

*Minimum membership for carrying on business*

34. If a company carries on business without having at least two members and does so for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months—

(a) is a member of the company, and

(b) knows that it is carrying on business with only one member, is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or, as the case may be, that part of it.

*Name as stated in memorandum*

**35.—(1)** The name of a public company must end with the words “public limited company” and those words may not be preceded by the word “limited”.

(2) In the case of a company limited by shares or by guarantee (not being a public company), the name must have “limited” as its last word, subject to Article 40 (exempting, in certain circumstances, a company from the requirement to have “limited” as part of the name).

*Prohibition on registration of certain names*

**36.—(1)** A company shall not be registered under this Order by a name—

- (a) which includes, otherwise than at the end of the name, any of the following words or expressions, that is to say, “limited”, “unlimited” or “public limited company”;
- (b) which includes otherwise than at the end of the name an abbreviation of any of those words or expressions;
- (c) which is the same as a name appearing in the registrar’s index of company names;
- (d) the use of which by the company would in the opinion of the Department constitute a criminal offence; or
- (e) which in the opinion of the Department is offensive.

(2) Except with the approval of the Department, a company shall not be registered under this Order by a name which—

- (a) in the opinion of the Department would be likely to give the impression that the company is connected in any way with Her Majesty’s Government or with any district council; or
- (b) includes any word or expression for the time being prescribed in regulations under Article 39.

(3) In determining for the purposes of paragraph (1)(c) whether one name is the same as another, there are to be disregarded—

- (a) the definite article, where it is the first word of the name;
- (b) the following words and expressions where they appear at the end of the name, that is to say—  
“company”, “and company”, “company limited”, “and company limited”, “limited”, “unlimited” and “public limited company”;
- (c) abbreviations of any of those words or expressions where they appear at the end of the name; and
- (d) type and case of letters, accents, spaces between letters and punctuation marks;

and “and” and “&” are to be taken as the same.

*Alternatives of statutory designations*

37.—(1) A company which by any provision of this Order is either required or entitled to include in its name, as the last part, any of the words specified in paragraph (4) may, instead of those words, include as the last part of its name the abbreviations there specified as alternatives in relation to those words.

(2) A reference in this Order to the name of a company or to the inclusion of any of those words in a company’s name includes a reference to the name including (in place of any of the words so specified) the appropriate alternative, or to the inclusion of the appropriate alternative, as the case may be.

(3) A provision of this Order requiring a company not to include any of those words in its name also requires it not to include the abbreviated alternative specified in paragraph (4).

(4) For the purposes of this Article—

- (a) the alternative of “limited” is “ltd.”; and
- (b) the alternative of “public limited company” is “p.l.c.”.

*Change of name*

38.—(1) A company may by special resolution change its name (but subject to Article 41 in the case of a company which has received a direction under paragraph (2) of that Article from the Department).

(2) Where a company has been registered by a name which—

- (a) is the same as or, in the opinion of the Department, too like a name appearing at the time of the registration in the registrar’s index of company names, or
- (b) is the same as or, in the opinion of the Department, too like a name which should have appeared in that index at that time,

the Department may within 12 months of that time, in writing, direct the company to change its name within such period as the Department may specify.

Article 36(3) applies in determining under this paragraph whether a name is the same as or too like another.

(3) If it appears to the Department that misleading information has been given for the purpose of a company’s registration with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, the Department may within 5 years of the date of the company’s registration with that name in writing direct the company to change its name within such period as the Department may specify.

(4) Where a direction has been given under paragraph (2) or (3), the Department may by a further direction in writing extend the period

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within which the company is to change its name, at any time before the end of that period.

(5) A company which fails to comply with a direction under this Article, and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

(6) Where a company changes its name under this Article, the registrar shall (subject to Article 36) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(7) A change of name by a company under this Article does not affect any rights or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

*Regulations about names*

**39.—(1)** The Department may by regulations—

- (a) prescribe words or expressions for the registration of which as or as part of a company's corporate name the Department's approval is required under Article 36(2)(b), and
- (b) in relation to any such word or expression, prescribe a government department or other body as the relevant body for the purposes of paragraph (2).

(2) Where a company proposes to have as, or as part of, its corporate name any such word or expression in relation to which a relevant body has been prescribed under paragraph (1)(b), a request shall be made (in writing) to the relevant body to indicate whether (and if so why) it has any objections to the proposal; and the person to make the request is—

- (a) in the case of a company seeking to be registered under this Part, the person making the statutory declaration required by Article 23(3),
- (b) in the case of a company seeking to be registered under Article 629, the persons making the statutory declaration required by Article 635(2), and
- (c) in any other case, a director or secretary of the company concerned.

(3) The person who has made that request to the relevant body shall submit to the registrar a statement that it has been made and a copy of any response received from that body, together with—

- (a) the requisite statutory declaration, or
- (b) a copy of the special resolution changing the company's name, according as the case is the one or the other of those mentioned in paragraph (2).

(4) Articles 658 and 659 (public inspection of documents kept by registrar) do not apply to documents sent under paragraph (3) other than documents mentioned in sub-paragraphs (a) and (b) of that paragraph.

(5) Regulations under this Article may contain such transitional provisions and savings as the Department thinks appropriate.

(6) The regulations shall be laid before the Assembly after being made and shall cease to have effect at the end of the statutory period next after the regulations have been so laid (but without prejudice to anything previously done by virtue of the regulations or to the making of new regulations) unless during that period they are approved by a resolution of the Assembly.

*Exemption from requirement of "limited" as part of the name*

40.—(1) Certain companies are exempt from requirements of this Order relating to the use of the word "limited" as part of the company name.

(2) A private company (including a private company about to be registered) limited by guarantee is exempt from those requirements and so too is a company which on 30th June 1983 was a private company limited by shares with a name which, by virtue of a licence under section 19 of the Act of 1960, did not include the word "limited"; but in either case the company must, to have the exemption, comply with the requirements of paragraph (3).

(3) Those requirements are that—

- (a) the objects of the company are (or, in the case of a company about to be registered, are to be) the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects; and
- (b) the company's memorandum or articles—
  - (i) require its profits (if any) or other income to be applied in promoting its objects,
  - (ii) prohibit the payment of dividends to its members, and
  - (iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto (whether or not the body is a member of the company).

(4) A statutory declaration that a company complies with the requirements of paragraph (3) may be delivered to the registrar, who may accept the declaration as sufficient evidence of the matters stated in it; and the registrar may refuse to register a company by a name which does not

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include the word "limited" unless such a declaration has been delivered to him.

(5) The statutory declaration must be in the prescribed form and be made—

- (a) in the case of a company to be formed, by a solicitor engaged in its formation or by a person named as director or secretary in the statement delivered under Article 21(2);
- (b) in the case of a company to be registered in pursuance of Article 629, by two or more directors or other principal officers of the company; and
- (c) in the case of a company proposing to change its name so that it ceases to have the word "limited" as part of its name, by a director or secretary of the company.

(6) References in this Article to the word "limited" include the appropriate alternative.

(7) A company which is exempt from requirements relating to the use of the word "limited" and does not include that word as part of its name, is also exempt from the requirements of this Order relating to the publication of its name and the sending of lists of members to the registrar.

*Provisions applying to company exempt under Article 40*

**41.—(1)** A company which is exempt under Article 40 and whose name does not include the word "limited" shall not alter its memorandum or articles so that it ceases to comply with the requirements of paragraph (3) of that Article.

(2) If it appears to the Department that such a company—

- (a) has carried on any business other than the promotion of any of the objects mentioned in that paragraph; or
- (b) has applied any of its profits or other income otherwise than in promoting such objects; or
- (c) has paid a dividend to any of its members,

the Department may, in writing, direct the company to change its name by resolution of the directors within such period as may be specified in the direction, so that its name ends with the word "limited".

A resolution passed by the directors in compliance with a direction under this paragraph is subject to Article 388 (copy to be forwarded to the registrar within 15 days).

(3) A company which has received a direction under paragraph (2) shall not thereafter be registered by a name which does not include the word "limited", without the approval of the Department.

(4) References in this Article to the word "limited" include the appropriate alternative.



(5) A company which contravenes paragraph (1), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

(6) A company which fails to comply with a direction by the Department under paragraph (2), and any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

*Power to require company to abandon misleading name*

42.—(1) If in the opinion of the Department the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the Department may direct it to change its name.

(2) The direction must, if not duly made the subject of an application to the court under paragraph (3), be complied with within a period of 6 weeks from the date of the direction or such longer period as the Department may think fit to allow.

(3) The company may, within a period of 3 weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify a period within which it must be complied with.

(4) If a company makes default in complying with a direction under this Article, it is liable to a fine and, for continued contravention, to a daily default fine.

(5) Where a company changes its name under this Article, the registrar shall (subject to Article 36) enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.

(6) A change of name by a company under this Article does not affect any of its rights or obligations or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

*Prohibition on trading under misleading name*

43.—(1) A person who is not a public company is guilty of an offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “public limited company” or any contraction or imitation of those words.

(2) A public company is guilty of an offence if, in circumstances in which the fact that it is a public company is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a private company.

(3) A person guilty of an offence under paragraph (1) or (2) and, if that person is a company, any officer of the company who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

*Penalty for improper use of "limited"*

44. If any person trades or carries on business under a name or title of which the word "limited", or any contraction or imitation of that word, is the last word, that person, unless duly incorporated with limited liability, is liable to a fine and, for continued contravention, to a daily default fine.

CHAPTER III

A COMPANY'S CAPACITY; FORMALITIES OF CARRYING ON BUSINESS

*Company's capacity; power of directors to bind it*

45.—(1) In favour of a person dealing with a company in good faith, any transaction decided on by the directors is deemed to be one which it is within the capacity of the company to enter into, and the power of the directors to bind the company is deemed to be free of any limitation under its memorandum or articles.

(2) A party to a transaction so decided on is not bound to enquire as to the capacity of the company to enter into it or as to any such limitation on the powers of the directors, and is presumed to have acted in good faith unless the contrary is proved.

*Form of company contracts*

46.—(1) Contracts on behalf of a company may be made as follows—

- (a) a contract which if made between private persons would be by law required to be in writing under seal, may be made on behalf of the company in writing under the company's common seal;
- (b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;
- (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this Article—

- (a) is effectual in law, and binds the company and its successors and all other parties to it;
- (b) may be varied or discharged in the same manner in which it is authorised by this Article to be made.

(3) Where a contract purports to be made by a company, or by a person as agent for a company, at a time when the company has not been formed, then subject to any agreement to the contrary the contract has effect as one entered into by the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

*Bills of exchange and promissory notes*

47. A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority.

*Execution of deeds abroad*

48.—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom.

(2) A deed signed by such an attorney on behalf of the company and under his seal binds the company and has the same effect as if it were under the company's common seal.

*Power of company to have official seal for use abroad*

49.—(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place elsewhere than in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A deed or other document to which the official seal is duly affixed binds the company as if it had been sealed with the company's common seal.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) As between the company and a person dealing with such an agent, the agent's authority continues during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing the official seal shall certify in writing on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.

PART II  
CHAPTER III

*Official seal for share certificates, etc.*

50. A company may have, for use for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of the company's common seal with the addition on its face of the word "Securities".

*Authentication of documents*

51. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under the company's common seal.

*Events affecting a company's status*

52.—(1) A company is not entitled to rely against other persons on the happening of any of the following events—

- (a) the making of a winding-up order in respect of the company, or the appointment of a liquidator in a voluntary winding up of the company, or
- (b) any alteration of the company's memorandum or articles, or
- (c) any change among the company's directors, or
- (d) (as regards service of any document on the company) any change in the situation of the company's registered office,

if the event had not been officially notified at the material time and is not shown by the company to have been known at that time to the person concerned, or if the material time fell on or before the 15th day after the date of official notification (or, where the 15th day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

(2) In paragraph (1)—

- (a) "official notification" has the meaning given by Article 660(2) (registrar to give public notice of the issue or receipt by him of certain documents), and
- (b) "non-business day" means a Saturday or Sunday, or a bank holiday.

**PART III**

**RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY'S STATUS**

*Private company becoming public*

*Re-registration of private company as public*

53.—(1) Subject to this Article and Articles 54 to 58, a private company (other than a company not having a share capital) may be re-registered as a public company if—

- (a) a special resolution that it should be so re-registered is passed; and
- (b) an application for re-registration is delivered to the registrar, together with the necessary documents.

A company cannot be re-registered under this Article if it has previously been re-registered as unlimited.

(2) The special resolution must—

- (a) alter the company's memorandum so that it states that the company is to be a public company; and
- (b) make such other alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Order with respect to the memorandum of a public company (the alterations to include compliance with Article 35(1) as regards the company's name); and
- (c) make such alterations in the company's articles as are requisite in the circumstances.

(3) The application must be in the prescribed form and be signed by a director or secretary of the company; and the documents to be delivered with it are the following—

- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;
- (b) a copy of a written statement by the company's auditors that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company's net assets (within the meaning given to that expression by Article 272(2)) was not less than the aggregate of its called-up share capital and undistributable reserves;
- (c) a copy of the relevant balance sheet, together with a copy of an unqualified report (as defined in Article 56) by the company's auditors in relation to that balance sheet;
- (d) if Article 54 applies, a copy of the valuation report under paragraph (2)(b) of that Article; and
- (e) a statutory declaration in the prescribed form by a director or secretary of the company—
  - (i) that the special resolution required by this Article has been passed and that the conditions of Articles 54 and 55 (so far as applicable) have been satisfied, and
  - (ii) that, between the balance sheet date and the application for re-registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

(4) In this Article and Articles 54 and 56, "relevant balance sheet" means a balance sheet prepared as at a date not more than 7 months before the company's application under this Article.

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(5) A resolution that a company be re-registered as a public company may change the company name by deleting the word “company” or the words “and company”, including any abbreviation of them.

*Consideration for shares recently allotted to be valued*

**54.—**(1) This Article applies if shares have been allotted by the company between the relevant balance sheet date and the passing of the special resolution under Article 53, and those shares were allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.

(2) Subject to the following provisions of this Article, the registrar shall not entertain an application by the company under Article 53 unless beforehand—

- (a) the consideration for the allotment has been valued in accordance with Article 118, and
- (b) a report with respect to the value of the consideration has been made to the company (in accordance with that Article) during the 6 months immediately preceding the allotment of the shares.

(3) Where an amount standing to the credit of any of the company’s reserve accounts, or of its profit and loss account, has been applied in paying up (to any extent) any of the shares allotted to members of the company or any premium on those shares, the amount applied does not count as consideration for the allotment, and accordingly paragraph (2) does not apply to it.

(4) Paragraph (2) does not apply if the allotment is in connection with an arrangement providing for it to be on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to the company applying under Article 53 of shares, or of shares of any particular class, in that other company).

(5) But paragraph (4) does not exclude the application of paragraph (2), unless under the arrangement it is open to all the holders of the shares in the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of the other company’s shares of that class) to take part in the arrangement.

In determining whether that is the case, shares held by or by a nominee of the company allotting shares in connection with the arrangement, or by or by a nominee of a company which is that company’s holding company or subsidiary or a company which is a subsidiary of its holding company, are to be disregarded.

(6) Paragraph (2) does not apply to preclude an application under Article 53, if the allotment of the company’s shares is in connection with its proposed merger with another company; that is, where one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in that one

to shareholders of the other, with or without any cash payment to those shareholders.

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(7) In this Article—

- (a) “arrangement” means any agreement, scheme or arrangement, including an arrangement sanctioned in accordance with Article 418 (company compromise with creditors and members) or Article 539 (liquidator in winding up accepting shares as consideration for sale of a company’s property), and
- (b) “another company” includes any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837.

1837 c. 73.

*Additional requirements relating to share capital*

55.—(1) For a private company to be re-registered under Article 53 as a public company, the following conditions with respect to its share capital must be satisfied at the time the special resolution under that Article is passed.

(2) Subject to paragraphs (5) to (7)—

- (a) the nominal value of the company’s allotted share capital must be not less than the authorised minimum, and
- (b) each of the company’s allotted shares must be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it.

(3) Subject to paragraph (5), if any shares in the company or any premium payable on them have been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services (whether for the company or any other person), the undertaking must have been performed or otherwise discharged.

(4) Subject to paragraph (5), if shares have been allotted as fully or partly paid up as to their nominal value or any premium payable on them otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which paragraph (3) applies) to the company, then either—

- (a) the undertaking must have been performed or otherwise discharged, or
- (b) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within 5 years from the time the special resolution under Article 53 is passed.

(5) For the purpose of determining whether paragraphs (2)(b), (3) and (4) are complied with, certain shares in the company may be disregarded; and these are—

- (a) subject to paragraph (6), any share which was allotted on or before 31st December 1984, or
- (b) any share which was allotted in pursuance of an employees’ share scheme and by reason of which the company would, but

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for this paragraph, be precluded under paragraph (2)(b) (but not otherwise) from being re-registered as a public company.

(6) A share is not to be disregarded under paragraph (5)(a) if the aggregate in nominal value of that share and other shares proposed to be so disregarded is more than one-tenth of the nominal value of the company's allotted share capital; but for this purpose the allotted share capital is treated as not including any shares disregarded under paragraph (5)(b).

(7) Any shares disregarded under paragraph (5) are treated as not forming part of the allotted share capital for the purposes of paragraph (2)(a).

*Meaning of "unqualified report" in Article 53(3)*

**56.—**(1) The following paragraphs explain the reference in Article 53(3)(c) to an unqualified report of the company's auditors on the relevant balance sheet.

(2) If the balance sheet was prepared as at the end of an accounting reference period of the company, that reference is to a report made by the auditors and stating without material qualification that in their opinion the balance sheet—

- (a) has been properly prepared in accordance with this Order, and
- (b) gives a true and fair view of the state of the company's affairs as at the balance sheet date.

(3) In any other case the reference is to a report by the auditors stating without material qualification that in their opinion the balance sheet—

- (a) complies with the applicable accounting provisions, and
- (b) without prejudice to that (but subject to paragraph (4)), gives a true and fair view of the state of the company's affairs as at the balance sheet date;

and the accounting provisions referred to in sub-paragraph (a) are Articles 236 and 246(1) and (where applicable) Article 266.

(4) Where the balance sheet is prepared under Chapter II of Part VIII (special category companies), and the company is entitled to avail itself, and has availed itself, of any of the provisions of Part III of Schedule 9, the auditors' report is not required to state that the balance sheet gives a true and fair view of the company's state of affairs as at the balance sheet date.

(5) For the purposes of references in this Article to the auditors' report, a qualification is not material if, but only if, the auditors in their report state that the thing giving rise to the qualification is not material for the purpose of determining (by reference to the balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.

(6) For the purposes of a report of the auditors falling within paragraph (3)—



- (a) Article 236 and Schedule 4 (form and content of company accounts), and
- (b) (where applicable) Article 266 and Schedule 9 (the same, in relation to special category companies),

are deemed to have effect in relation to the balance sheet with such modifications as are necessary by reason of the fact that the balance sheet is prepared otherwise than as at the end of an accounting reference period.

*Certificate of re-registration under Article 53*

57.—(1) If the registrar is satisfied, on an application under Article 53, that a company may be re-registered under that Article as a public company, he shall—

- (a) retain the application and other documents delivered to him under that Article; and
- (b) issue the company with a certificate of incorporation stating that the company is a public company.

(2) The registrar may accept a declaration under Article 53(3)(e) as sufficient evidence that the special resolution required by that Article has been passed and the other conditions of re-registration have been satisfied.

(3) The registrar shall not issue a certificate of incorporation if it appears to him that the court has made an order confirming a reduction of the company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.

(4) Upon the issue to a company of a certificate of incorporation under this Article—

- (a) the company by virtue of the issue of that certificate becomes a public company; and
- (b) any alterations in the memorandum and articles of association set out in the resolution take effect accordingly.

(5) A certificate of incorporation is conclusive evidence—

- (a) that the requirements of this Order in respect of re-registration and of matters precedent and incidental thereto have been complied with; and
- (b) that the company is a public company.

*Modification for unlimited company re-registering*

58.—(1) In their application to unlimited companies, Articles 53 to 57 are modified as follows.

(2) The special resolution required by paragraph (1) of Article 53 must, in addition to the matters mentioned in paragraph (2) of that Article—

- (a) state that the liability of the members is to be limited by shares, and what the company's share capital is to be; and

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(b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of this Order with respect to the memorandum of a company limited by shares.

(3) The certificate of incorporation issued under paragraph (1) of Article 57 shall, in addition to containing the statement required by subparagraph (b) of that paragraph, state that the company has been incorporated as a company limited by shares; and—

(a) the company by virtue of the issue of the certificate becomes a public company so limited; and

(b) the certificate is conclusive evidence of the fact that it is such a company.

*Limited company becoming unlimited*

*Re-registration of limited company as unlimited*

59.—(1) Subject as follows, a company which is registered as limited may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this Article.

(2) A company is excluded from re-registering under this Article if it is limited by virtue of re-registration under Article 119 of the Order of 1978 or Article 61 of this Order.

(3) A public company cannot be re-registered under this Article; nor can a company which has previously been re-registered as unlimited.

(4) An application under this Article must be in the prescribed form and be signed by a director or the secretary of the company, and be lodged with the registrar, together with the documents specified in paragraph (8).

(5) The application must set out such alterations in the company's memorandum as—

(a) if it is to have a share capital, are requisite to bring it (in substance and in form) into conformity with the requirements of this Order with respect to the memorandum of a company to be formed as an unlimited company having a share capital; or

(b) if it is not to have a share capital, are requisite in the circumstances.

(6) If articles of association have been registered, the application must set out such alterations in them as—

(a) if the company is to have a share capital, are requisite to bring its articles (in substance and in form) into conformity with the requirements of this Order with respect to the articles of a company to be formed as an unlimited company having a share capital; or

(b) if the company is not to have a share capital, are requisite in the circumstances.

(7) If articles of association have not been registered, the application must have annexed to it, and request the registration of, printed articles; and these must, if the company is to have a share capital, comply with the requirements mentioned in paragraph (6)(a) and, if not, be articles appropriate to the circumstances.

(8) The documents to be lodged with the registrar are—

- (a) the prescribed form of assent to the company's being registered as unlimited, subscribed by or on behalf of all the members of the company;
- (b) a statutory declaration made by the directors of the company—
  - (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and
  - (ii) that if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do so;
- (c) a printed copy of the memorandum incorporating the alterations in it set out in the application; and
- (d) if articles of association have been registered, a printed copy of them incorporating the alterations set out in the application.

(9) For the purposes of this Article—

- (a) subscription to a form of assent by the personal representative of a deceased member of a company is deemed a subscription by him; and
- (b) the assignees or trustee in bankruptcy of a member of a company is, to the exclusion of that member, deemed a member of the company.

*Certificate of re-registration under Article 59*

**60.**—(1) The registrar shall retain the application and other documents lodged with him under Article 59 and shall—

- (a) if articles of association are annexed to the application, register them; and
- (b) issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of that Article.

(2) On the issue of the certificate—

- (a) the status of the company, by virtue of the issue, is changed from limited to unlimited; and
- (b) the alterations in the memorandum set out in the application and (if articles of association have been previously registered) any alterations to the articles so set out take effect as if duly made by resolution of the company; and

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(c) the provisions of this Order apply accordingly to the memorandum and articles as altered by virtue of Article 59.

(3) The certificate is conclusive evidence that the requirements of Article 59 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered under this Order in pursuance of that Article and was duly so re-registered.

*Unlimited company becoming limited*

*Re-registration of unlimited company as limited*

**61.—(1)** Subject as follows, a company which is registered as unlimited may be re-registered as limited if a special resolution that it should be so re-registered is passed, and the requirements of this Article are complied with in respect of the resolution and otherwise.

(2) A company cannot under this Article be re-registered as a public company; and a company is excluded from re-registering under it if it is unlimited by virtue of re-registration under Article 118 of the Order of 1978 or Article 59 of this Order.

(3) The special resolution must state whether the company is to be limited by shares or by guarantee and—

(a) if it is to be limited by shares, must state what the share capital is to be and provide for the making of such alterations in the memorandum as are necessary to bring it (in substance and in form) into conformity with the requirements of this Order with respect to the memorandum of a company so limited, and such alterations in the articles of association as are requisite in the circumstances;

(b) if it is to be limited by guarantee, must provide for the making of such alterations in its memorandum and articles as are necessary to bring them (in substance and in form) into conformity with the requirements of this Order with respect to the memorandum and articles of a company so limited.

(4) The special resolution is subject to Article 388 (copy to be forwarded to registrar within 15 days); and an application for the company to be re-registered as limited, framed in the prescribed form and signed by a director or by the secretary of the company, must be lodged with the registrar, together with the necessary documents, not earlier than the day on which the copy of the resolution forwarded under Article 388 is received by him.

(5) The documents to be lodged with the registrar are—

(a) a printed copy of the memorandum as altered in pursuance of the resolution; and

(b) a printed copy of the articles as so altered.

(6) This Article does not apply in relation to the re-registration of an unlimited company as a public company under Article 53.

*Certificate of re-registration under Article 61*

62.—(1) The registrar shall retain the application and other documents lodged with him under Article 61, and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of that Article.

(2) On the issue of the certificate—

- (a) the status of the company is, by virtue of the issue, changed from unlimited to limited; and
- (b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified take effect.

(3) The certificate is conclusive evidence that the requirements of Article 61 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered in pursuance of that Article and was duly so re-registered.

*Public company becoming private*

*Re-registration of public company as private*

63.—(1) A public company may be re-registered as a private company if—

- (a) a special resolution complying with paragraph (2) that it should be so re-registered is passed and has not been cancelled by the court under Article 64;
- (b) an application for the purpose in the prescribed form and signed by a director or the secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles of the company as altered by the resolution; and
- (c) the period during which an application for the cancellation of the resolution under Article 64 may be made has expired without any such application having been made; or
- (d) where such an application has been made, the application has been withdrawn or an order has been made under Article 64(5) confirming the resolution and a copy of that order has been delivered to the registrar.

(2) The special resolution must alter the company's memorandum so that it no longer states that the company is to be a public company and must make such other alterations in the company's memorandum and articles as are requisite in the circumstances.

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(3) A company cannot under this Article be re-registered otherwise than as a company limited by shares or by guarantee.

*Litigated objection to resolution under Article 63*

**64.—(1)** Where a special resolution by a public company to be re-registered under Article 63 as a private company has been passed, an application may be made to the court for the cancellation of that resolution.

(2) The application may be made—

- (a) by the holders of not less in the aggregate than 5 per cent. in nominal value of the company's issued share capital or any class thereof;
- (b) if the company is not limited by shares, by not less than 5 per cent. of its members; or
- (c) by not less than 50 of its members;

but not by a person who has consented to or voted in favour of the resolution.

(3) The application must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) If such an application is made, the company shall forthwith give notice in the prescribed form of that fact to the registrar.

(5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and—

- (a) may make that order on such terms and conditions as it thinks fit, and may (if it thinks fit) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and
- (b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(6) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(7) The company shall, within 15 days from the making of the court's order, or within such longer period as the court may at any time by order direct, deliver to the registrar an office copy of the order.

(8) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without the leave of the court to make any such alteration in breach of that requirement.

(9) An alteration in the memorandum or articles made by virtue of an order under this Article, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Order applies accordingly to the memorandum or articles as so altered.

(10) A company which fails to comply with paragraph (4) or paragraph (7), and any officer of it who is in default, is liable to a fine and, for continued contravention, to a daily default fine.

*Certificate of re-registration under Article 63*

65.—(1) If the registrar is satisfied that a company may be re-registered under Article 63, he shall—

- (a) retain the application and other documents delivered to him under that Article; and
  - (b) issue the company with a certificate of incorporation appropriate to a private company.
- (2) On the issue of the certificate—
- (a) the company by virtue of the issue becomes a private company; and
  - (b) the alterations in the memorandum and articles set out in the resolution under Article 63 take effect accordingly.
- (3) The certificate is conclusive evidence—
- (a) that the requirements of Article 63 in respect of re-registration and of matters precedent and incidental to it have been complied with; and
  - (b) that the company is a private company.

PART IV

CAPITAL ISSUES

CHAPTER I

ISSUES BY COMPANIES REGISTERED, OR TO BE REGISTERED, IN NORTHERN IRELAND

*The prospectus*

*Matters to be stated, and reports to be set out, in prospectus*

66.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must comply—

- (a) with Part I of Schedule 3, as respects the matters to be stated in the prospectus, and
- (b) with Part II of that Schedule, as respects the reports to be set out.

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(2) It is unlawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this Article.

(3) Paragraph (2) does not apply if it is shown that the form of application was issued either—

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or

(b) in relation to shares or debentures which were not offered to the public.

(4) If a person acts in contravention of paragraph (2), he is liable to a fine.

(5) This Article does not apply—

(a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a prescribed stock exchange;

but subject to this, it applies to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

*Attempted evasion of Article 66 to be void*

67. A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of Article 66, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

*Document offering shares, etc. for sale deemed a prospectus*

68.—(1) If a company allots or agrees to allot its shares or debentures with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made is deemed for all purposes a prospectus issued by the company.

(2) All statutory provisions and rules of law as to the contents of prospectuses, and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures.

This is without prejudice to the liability (if any) of the persons by whom the offer is made, in respect of mis-statements in the document or otherwise in respect of it.



(3) For the purposes of this Order it is evidence (unless the contrary is proved) that an allotment of, or an agreement to allot, shares or debentures was made with a view to their being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures (or of any of them) for sale to the public was made within 6 months after the allotment or agreement to allot, or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(4) Article 66 as applied by this Article has effect as if it required a prospectus to state, in addition to the matters required by that Article—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and
- (b) the place and time at which the contract under which those shares or debentures have been or are to be allotted may be inspected.

*Rule governing what is an "offer to the public"*

69.—(1) Subject to Article 70, any reference in this Order to offering shares or debentures to the public is to be read (subject to any provision to the contrary) as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned, or as clients of the person issuing the prospectus, or in any other manner.

(2) The same applies to any reference in this Order, or in a company's articles, to an invitation to the public to subscribe for shares or debentures.

*Exceptions from rule in Article 69*

70.—(1) Article 69 does not require an offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it.

(2) In particular, a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures is not to be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as falling within paragraph (1).

(3) For the purposes of paragraph (1), an offer of shares in or debentures of a private company, or an invitation to subscribe for such shares or debentures, is to be regarded (unless the contrary is proved) as

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being a domestic concern of the persons making and receiving the offer or invitation if it falls within any of the following descriptions.

(4) It is to be so regarded if it is made to—

- (a) an existing member of the company making the offer or invitation,
- (b) an existing employee of that company,
- (c) a member of the family of such a member or employee, or
- (d) an existing debenture holder.

(5) For the purposes of paragraph (4)(c), the members of a person's family are—

- (a) the person's husband or wife, widow or widower and children (including step-children and adopted children) and their descendants, and
- (b) any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself, or any of those relatives.

(6) The offer or invitation is also to be so regarded if it is to subscribe for shares or debentures to be held under an employees' share scheme.

(7) The offer or invitation is also to be so regarded if it falls within paragraph (4) or (6) and it is made on terms which permit the person to whom it is made to renounce his right to the allotment of shares or issue of debentures, but only in favour—

- (a) of such a person as is mentioned in any of the sub-paragraphs of paragraph (4), or
- (b) where there is an employees' share scheme, of a person entitled to hold shares or debentures under the scheme.

(8) Where application has been made to the Council of The Stock Exchange for admission of any securities to the Official List of The Stock Exchange, then an offer of those securities for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not deemed an offer to the public for the purposes of this Part.

*Prospectus containing statement by expert*

**71.—(1)** A prospectus inviting persons to subscribe for a company's shares or debentures and including a statement purporting to be made by an expert shall not be issued unless—

- (a) he (the expert) has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to its issue with the statement included in the form and context in which it is in fact included; and
- (b) a statement that he has given and not withdrawn that consent appears in the prospectus.

(2) If a prospectus is issued in contravention of this Article the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine.

*Meaning of "expert"*

72. In this Part, "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

*Prospectus to be dated*

73. A prospectus issued by or on behalf of a company, or in relation to an intended company, shall be dated; and that date shall, unless the contrary is proved, be taken as its date of publication.

*Registration of prospectus*

*Registration requirement applicable in all cases*

74.—(1) No prospectus shall be issued by or on behalf of a company, or in relation to an intended company, unless on or before the date of its publication there has been delivered to the registrar for registration a copy of the prospectus—

- (a) signed by every person who is named in it as a director or proposed director of the company, or by his agent authorised in writing, and
- (b) having endorsed on or attached to it any consent to its issue required by Article 71 from any person as an expert.

(2) Where the prospectus is such a document as is referred to in Article 68, the signatures required by paragraph (1) include those of every person making the offer, or his agent authorised in writing.

Where the offer is made by a company or a firm, it is sufficient for the purposes of this paragraph if the document is signed on its behalf by 2 directors or (as the case may be) not less than half of the partners; and a director or partner may sign by his agent authorised in writing.

(3) Every prospectus shall on its face—

- (a) state that a copy has been delivered for registration as required by this Article, and
- (b) specify, or refer to statements in the prospectus specifying, any documents required by this Article or Article 75 to be endorsed on or attached to the copy delivered.

(4) The registrar shall not register a prospectus unless it is dated and the copy of it signed as required by this Article and unless it has endorsed on or attached to it the documents (if any) specified in paragraph (3)(b).

(5) If a prospectus is issued without a copy of it being delivered to the registrar as required by this Article, or without the copy so delivered having the required documents endorsed on or attached to it, the company and every person who is knowingly a party to the issue of the

prospectus is liable to a fine and, for continued contravention, to a daily default fine.

*Additional requirements in case of prospectus issued generally*

75.—(1) In the case of a prospectus issued generally the following provisions apply in addition to those of Article 74.

(2) The copy of the prospectus delivered to the registrar must also have endorsed on or attached to it a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it.

(3) In the case of a contract wholly or partly in a foreign language—

- (a) the copy required by paragraph (2) to be endorsed on or attached to the prospectus must be a copy of a translation of the contract into English or (as the case may be) a copy embodying a translation into English of the parts in a foreign language, and
- (b) the translation must be certified in the prescribed manner to be a correct translation.

(4) If the persons making any report required by Part II of Schedule 3 have made in the report, or have (without giving reasons) indicated in it, any such adjustments as are mentioned in paragraph 21 of that Schedule (profits, losses, assets, liabilities), the copy of the prospectus delivered to the registrar must have endorsed on or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for them.

*Liabilities and offences in connection with prospectus*

*Directors, etc. exempt from liability in certain cases*

76.—(1) In the event of contravention of Article 66, a director or other person responsible for the prospectus does not incur any liability by reason of that contravention if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant of it, or
- (b) he proves that the contravention arose from an honest mistake of fact on his part, or
- (c) the contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or was otherwise such as ought (in the court's opinion, having regard to all the circumstances of the case) reasonably to be excused.

(2) In the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 13 of Schedule 3 (disclosure of directors' interests), no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(3) Nothing in Article 66 or 67 or this Article limits or diminishes any liability which a person may incur under the general law or this Order apart from those provisions.

*Compensation for subscribers misled by statement in prospectus*

77.—(1) Where a prospectus invites persons to subscribe for a company's shares or debentures, compensation is payable to all those who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage which they may have sustained by reason of any untrue statement included in it.

(2) The persons liable to pay the compensation are—

- (a) every person who is a director of the company at the time of the issue of the prospectus,
- (b) every person who authorised himself to be named, and is named, in the prospectus as a director or as having agreed to become a director (either immediately or after an interval of time),
- (c) every person being a promoter of the company, and
- (d) every person who has authorised the issue of the prospectus.

(3) Paragraphs (1) and (2) have effect subject to Articles 78 and 79; and here and in those Articles "promoter" means a promoter who was party to the preparation of the prospectus, or of the portion of it containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

*Exemption from Article 77 for those acting with propriety*

78.—(1) A person is not liable under Article 77 if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent, or
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent, or
- (c) that after issue of the prospectus and before allotment under it he, on becoming aware of any untrue statement in it, withdrew his consent to its issue and gave reasonable public notice of the withdrawal and of the reason for it.

(2) A person is not liable under that Article if he proves that—

- (a) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true; and
- (b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or

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extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by Article 71 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment under it; and

- (c) as regards every untrue statement purporting to be made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) Paragraphs (1) and (2) do not apply in the case of a person liable, by reason of his having given a consent required of him by Article 71, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(4) Where under Article 71 the consent of a person is required to the issue of a prospectus and he has given that consent, he is not by reason of his having given it liable under Article 77 as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(5) A person who, apart from this paragraph, would under Article 77 be liable, by reason of his having given a consent required of him by Article 71, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves—

- (a) that, having given his consent under Article 71 to the issue of the prospectus, he withdrew it in writing before the delivery of a copy of the prospectus for registration; or
- (b) that, after delivery of a copy of the prospectus for registration and before allotment under it, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for it; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true.

*Indemnity for innocent director or expert*

79.—(1) This Article applies where—

- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director of it, and he has not consented to become a director, or has withdrawn his

consent before the issue of the prospectus, and has not authorised or consented to its issue, or

- (b) the consent of a person is required under Article 71 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus.

(2) The directors of the company (except any without whose knowledge or consent the prospectus was issued) and any other person who authorised its issue are liable to indemnify the person named, or whose consent was required under Article 71 (as the case may be), against all damages, costs and expenses to which he may be liable by reason of his name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him as an expert (as the case may be), or in defending himself against any action or legal proceeding brought against him in respect of it.

(3) A person is not deemed for the purposes of this Article to have authorised the issue of a prospectus by reason only of his having given the consent required by Article 71 to the inclusion of a statement purporting to be made by him as an expert.

#### *Criminal liability for untrue statements*

80.—(1) If a prospectus is issued with an untrue statement included in it, any person who authorised the issue of the prospectus is guilty of an offence and liable to imprisonment or a fine, or both, unless he proves either—

- (a) that the statement was immaterial, or
- (b) that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person is not deemed for the purposes of this Article to have authorised the issue of a prospectus by reason only of his having given the consent required by Article 71 to the inclusion in it of a statement purporting to be made by him as an expert.

#### *Supplementary*

#### *Interpretation for Articles 66 to 80*

81. For the purposes of Articles 66 to 80—

- (a) a statement included in a prospectus is deemed to be untrue if it is misleading in the form and context in which it is included, and
- (b) a statement is deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

ISSUES BY COMPANIES INCORPORATED, OR TO BE INCORPORATED,  
OUTSIDE THE UNITED KINGDOM

*Prospectus of non-United Kingdom company*

**82.—(1)** It is unlawful for a person to issue, circulate or distribute in Northern Ireland any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom) unless the prospectus complies with the requirements of paragraphs (2) and (3).

(2) The prospectus must be dated and contain particulars with respect to the following matters—

- (a) the instrument constituting or defining the constitution of the company;
- (b) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (c) an address in the United Kingdom where that instrument, and those enactments or provisions, or copies of them (and, if they are in a foreign language, a translation of them certified in the prescribed manner), can be inspected;
- (d) the date on which, and the country in which, the company was incorporated; and
- (e) whether the company has established a place of business in the United Kingdom and, if so, the address of its principal office in the United Kingdom.

(3) Subject to the following provisions, the prospectus must comply—

- (a) with Part I of Schedule 3, as respects the matters to be stated in the prospectus, and
- (b) with Part II of that Schedule, as respects the reports to be set out.

(4) Sub-paragraphs (a) to (c) of paragraph (2) do not apply in the case of a prospectus issued more than 2 years after the company is entitled to commence business.

(5) It is unlawful for a person to issue to any person in Northern Ireland a form of application for shares in or debentures of such a company or intended company as is mentioned in paragraph (1) unless the form is issued with a prospectus which complies with this Chapter and the issue of which in Northern Ireland does not contravene Article 84 or 85.

This paragraph does not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a



person to enter into an underwriting agreement with respect to the shares or debentures.

(6) This Article—

- (a) does not apply to the issue to a company's existing members or debenture holders of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and
- (b) except in so far as it requires a prospectus to be dated, does not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being listed on a prescribed stock exchange;

but subject to this, it applies to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

*Attempted evasion of Article 82 to be void*

83. A condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed—

- (a) by paragraph (2) of Article 82, as regards the particulars to be contained in the prospectus, or
- (b) by paragraph (3) of that Article, as regards compliance with Schedule 3,

or purporting to affect an applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

*Prospectus containing statement by expert*

84.—(1) This Article applies in the case of a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether it has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), if the prospectus includes a statement purporting to be made by an expert.

(2) It is unlawful for any person to issue, circulate or distribute in Northern Ireland such a prospectus if—

- (a) the expert has not given, or has before the delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included; or
- (b) there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as mentioned in subparagraph (a).

(3) For the purposes of this Article, a statement is deemed to be included in a prospectus if it is contained in it, or in any report or

memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.

*Restrictions on allotment to be secured in prospectus*

**85.**—(1) It is unlawful for a person to issue, circulate or distribute in Northern Ireland a prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), unless the prospectus complies with the following condition.

(2) The prospectus must have the effect, where an application is made in pursuance of it, of rendering all persons concerned bound by all the provisions (other than penal provisions) of Articles 92, 96 and 97 (restrictions on allotment), so far as applicable.

*Stock exchange certificate exempting from compliance with Schedule 3*

**86.**—(1) This Article applies where—

- (a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), and
- (b) application is made to a prescribed stock exchange for permission for those shares or debentures to be listed on that stock exchange.

(2) There may on the applicant's request be given by or on behalf of that stock exchange a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with Schedule 3 would be unduly burdensome.

(3) If a certificate is given under paragraph (2), and if the proposals mentioned in that paragraph are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—

- (a) a prospectus giving the particulars and information in the form in which they are so required to be published is deemed to comply with Schedule 3, and
- (b) except as respects the requirement for the prospectus to be dated, Article 82 does not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

*Registration of prospectus before issue*

**87.**—(1) It is unlawful for a person to issue, circulate or distribute in Northern Ireland a prospectus offering for subscription shares in or

debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), unless before the issue, circulation or distribution of the prospectus in Northern Ireland the requirements of this Article have been complied with.

(2) A copy of the prospectus, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, must have been delivered for registration to the registrar or the registrar of companies as defined in the Companies Act 1985.

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(3) The prospectus must state on the face of it that a copy has been so delivered and the following must be endorsed on or attached to that copy of the prospectus—

- (a) any consent to the issue of the prospectus which is required by Article 84;
- (b) a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it; and
- (c) where the persons making any report required by Part II of Schedule 3 have made in it or have, without giving the reasons, indicated in it any such adjustments as are mentioned in paragraph 21 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.

(4) If in the case of a prospectus deemed by virtue of a certificate under Article 86 to comply with Schedule 3, a contract or a copy of it, or a memorandum of a contract, is required to be available for inspection in connection with the application under that Article to the stock exchange, a copy or (as the case may be) a memorandum of the contract must be endorsed on or attached to the copy of the prospectus delivered to the registrar for registration.

(5) References in paragraphs (3)(b) and (4) to the copy of a contract are, in the case of a contract wholly or partly in a foreign language, to a copy of a translation of the contract into English, or a copy embodying a translation into English of the parts in a foreign language (as the case may be); and—

- (a) the translation must in either case be certified in the prescribed manner to be a correct translation, and
- (b) the reference in paragraph (4) to a copy of a contract required to be available for inspection includes a copy of a translation of it or a copy embodying a translation of parts of it.

*Consequences (criminal and civil) of contravention of Articles 82 to 87*

88.—(1) A person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of

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**CHAPTER II**

application for shares or debentures, in contravention of any of the provisions of Articles 82 to 87 is liable to a fine.

(2) Articles 77, 78 and 79 extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the United Kingdom (whether the company has or has not established, or when formed will or will not establish, a place of business in the United Kingdom), substituting for any reference to Article 71 a reference to Article 84.

(3) In the event of contravention of any of the requirements of Article 82(2) as regards the particulars to be contained in the prospectus, or Article 82(3) as regards compliance with Schedule 3, a director or other person responsible for the prospectus incurs no liability by reason of the contravention if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant of it, or
- (b) he proves that the contravention arose from an honest mistake of fact on his part, or
- (c) the contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or was otherwise such as ought, in the court's opinion, having regard to all the circumstances of the case, reasonably to be excused.

(4) In the event of failure to include in a prospectus to which this Chapter applies a statement with respect to the matters contained in paragraph 13 of Schedule 3, no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(5) Nothing in Article 82 or 83 or this Article limits or diminishes any liability which a person may incur under the general law or this Order, apart from those provisions.

*Supplementary*

**89.—(1)** Where a document by which the shares in or debentures of a company incorporated outside the United Kingdom are offered for sale to the public would, if the company had been a company incorporated under this Order, have been deemed by virtue of Article 68 to be a prospectus issued by the company, that document is deemed, for the purposes of this Chapter, a prospectus so issued.

(2) An offer of shares or debentures for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not deemed an offer to the public for those purposes.

(3) In this Chapter “shares” and “debentures” have the same meaning as when those expressions are used, elsewhere in this Order, in relation to a company incorporated under this Order.

PART V

PART V

ALLOTMENT OF SHARES AND DEBENTURES

*General provisions as to allotment*

*Authority of company required for certain allotments*

90.—(1) The directors of a company shall not exercise any power of the company to allot relevant securities unless they are, in accordance with this Article, authorised to do so by—

- (a) the company in general meeting; or
- (b) the company's articles.

(2) In this Article "relevant securities" means—

- (a) shares in the company other than shares shown in the memorandum to have been taken by the subscribers to it or shares allotted in pursuance of an employees' share scheme, and
- (b) any right to subscribe for, or to convert any security into, shares in the company (other than shares so allotted);

and a reference to the allotment of relevant securities includes the grant of such a right but (subject to paragraph (6)) not the allotment of shares pursuant to such a right.

(3) Authority under this Article may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(4) The authority must state the maximum amount of relevant securities that may be allotted under it and the date on which it will expire, which must be not more than 5 years from whichever is relevant of the following dates—

- (a) in the case of an authority contained in the company's articles at the time of its original incorporation, the date of that incorporation; and
- (b) in any other case, the date on which the resolution is passed by virtue of which the authority is given;

but such an authority (including an authority contained in the company's articles) may be previously revoked or varied by the company in general meeting.

(5) The authority may be renewed or further renewed by the company in general meeting for a further period not exceeding 5 years; but the resolution must state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and must specify the date on which the renewed authority will expire.

(6) In relation to an authority under this Article for the grant of such rights as are mentioned in paragraph (2)(b), the reference in paragraph (4) (as also the corresponding reference in paragraph (5)) to the maximum amount of relevant securities that may be allotted under the

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authority is to the maximum amount of shares which may be allotted pursuant to the rights.

(7) The directors may allot relevant securities, notwithstanding that any authority under this Article has expired, if they are allotted in pursuance of an offer or agreement made by the company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.

(8) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the company's articles, be an ordinary resolution; but it is in any case subject to Article 388 (copy to be forwarded to registrar within 15 days).

(9) A director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this Article is liable to a fine.

(10) Nothing in this Article affects the validity of any allotment.

(11) This Article does not apply to any allotment of relevant securities by a company, other than a public company registered as such on its original incorporation, if it is made in pursuance of an offer or agreement made before the earlier of the following two dates—

(a) the date of the holding of the first general meeting of the company after its registration or re-registration as a public company, and

(b) 1st January 1985;

but any resolution to give, vary or revoke an authority for the purposes of Article 16 of the Order of 1981 or this Article has effect for those purposes if passed at any time on or after 10th June 1981.

*Restriction on public offers by private company*

**91.—(1)** A private limited company (other than a company limited by guarantee and not having a share capital) commits an offence if it—

(a) offers to the public (whether for cash or otherwise) any shares in or debentures of the company; or

(b) allots or agrees to allot (whether for cash or otherwise) any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public (within the meaning given to that expression by Articles 68 to 70).

(2) A company guilty of an offence under this Article, and any officer of it who is in default, is liable to a fine.

(3) Nothing in this Article affects the validity of any allotment or sale of shares or debentures, or of any agreement to allot or sell shares or debentures.

*Application for, and allotment of, shares and debentures*

**92.—(1)** No allotment shall be made of a company's shares or debentures in pursuance of a prospectus issued generally, and no

proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

(2) The beginning of that third day, or that later time, is "the time of the opening of the subscription lists".

(3) In paragraph (1), the reference to the day on which the prospectus is first issued generally is to the day when it is first so issued as a newspaper advertisement; and if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the reference is to the day on which it is first so issued in any manner.

(4) In reckoning for this purpose the third day after another day—

- (a) any intervening day which is a Saturday or Sunday, or which is a bank holiday, is to be disregarded; and
- (b) if the third day (as so reckoned) is itself a Saturday or Sunday, or a bank holiday, there is to be substituted the first day after that which is none of them.

(5) The validity of an allotment is not affected by any contravention of paragraphs (1) to (4); but in the event of contravention, the company and every officer of it who is in default is liable to a fine.

(6) As applying to a prospectus offering shares or debentures for sale, paragraphs (1) to (5) are modified as follows—

- (a) for references to allotment, substitute references to sale; and
- (b) for the reference to the company and every officer of it who is in default, substitute a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(7) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally is not revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of that day of the appropriate public notice; and that notice is one given by some person responsible under Articles 77 to 79 for the prospectus and having the effect under those Articles of excluding or limiting the responsibility of the giver.

*No allotment unless minimum subscription received*

93.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless—

- (a) there has been subscribed the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 2 of Schedule 3 (preliminary expenses, purchase of property, working capital, etc.); and
- (b) the sum payable on application for the amount so stated has been paid to and received by the company.

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(2) For the purposes of paragraph (1)(b), a sum is deemed paid to the company, and received by it, if a cheque for that sum has been received in good faith by the company and the directors have no reason for suspecting that the cheque will not be paid.

(3) The amount so stated in the prospectus is to be reckoned exclusively of any amount payable otherwise than in cash and is known as "the minimum subscription".

(4) If the above conditions have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(5) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent. per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this Article is void.

(7) This Article does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

*Allotment where issue not fully subscribed*

**94.—(1)** No allotment shall be made of any share capital of a public company offered for subscription unless—

(a) that capital is subscribed for in full; or

(b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied;

and, where conditions are so specified, no allotment of the capital shall be made by virtue of sub-paragraph (b) unless those conditions are satisfied.

This is without prejudice to Article 93.

(2) If shares are prohibited from being allotted by paragraph (1) and 40 days have elapsed after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest.

(3) If any of the money is not repaid within 48 days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay it with interest at the rate of 5 per cent. per annum from the expiration of the 48th day; except that a director is not so liable if he proves that the default in repayment was not due to any misconduct or negligence on his part.

(4) This Article applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered



for subscription (the word "subscribed" in paragraph (1) being construed accordingly).

(5) In paragraphs (2) and (3) as they apply to the case of shares offered as wholly or partly payable otherwise than in cash, references to the repayment of money received from applicants for shares include—

- (a) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking), or
- (b) if it is not reasonably practicable to return the consideration, the payment of money equal to its value at the time it was so received,

and references to interest apply accordingly.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this Article is void.

*Effect of irregular allotment*

95.—(1) An allotment made by a company to an applicant in contravention of Article 93 or 94 is voidable at the instance of the applicant within one month after the date of the allotment, and not later, and is so voidable notwithstanding that the company is in the course of being wound up.

(2) If a director of a company knowingly contravenes, or permits or authorises the contravention of, any provision of either of those Articles with respect to allotment, he is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred by the contravention.

(3) But proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

*Allotment of shares, etc. to be listed on a stock exchange*

96.—(1) This Article applies where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered by it to be listed on any stock exchange.

(2) An allotment made on an application in pursuance of the prospectus is, whenever made, void if the permission has not been applied for before the third day after the first issue of the prospectus or, if the permission has been refused, before the expiration of 3 weeks from the date of the closing of the subscription lists or such longer period (not exceeding 6 weeks) as may, within those 3 weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(3) In reckoning for this purpose the third day after another day—

- (a) any intervening day which is a Saturday or Sunday, or which is a bank holiday, is to be disregarded; and

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(b) if the third day (as so reckoned) is itself a Saturday or Sunday or a bank holiday, there is to be substituted the first day after that which is none of them.

(4) Where permission has not been applied for as mentioned in paragraph (2), or has been refused as so mentioned, the company shall forthwith repay (without interest) all money received from applicants in pursuance of the prospectus.

(5) If any of the money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company are jointly and severally liable to repay the money with interest at the rate of 5 per cent. per annum from the expiration of the 8th day, except that a director is not liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) All money received from applicants in pursuance of the prospectus shall be kept in a separate bank account so long as the company may become liable to repay it under paragraph (4); and if default is made in complying with this paragraph, the company and every officer of it who is in default is liable to a fine.

(7) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this Article is void.

(8) For the purposes of this Article, permission is not deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(9) This Article has effect in relation to shares or debentures agreed to be taken by a person underwriting an offer of them by a prospectus as if he had applied for them in pursuance of the prospectus.

*Operation of Article 96 where prospectus offers shares for sale*

97.—(1) This Article has effect as regards the operation of Article 96 in relation to a prospectus offering shares for sale.

(2) Paragraphs (1) and (2) of that Article apply, but with the substitution for the reference in paragraph (2) to allotment of a reference to sale.

(3) Paragraphs (4) and (5) of that Article do not apply; but—

(a) if the permission referred to in paragraph (2) of that Article has not been applied for as there mentioned, or has been refused as there mentioned, the offeror of the shares shall forthwith repay (without interest) all money received from applicants in pursuance of the prospectus, and

(b) if any such money has not been repaid within 8 days after the offeror becomes liable to repay it, he becomes liable to pay interest on the money due, at the rate of 5 per cent. per annum from the end of the 8th day.

(4) Paragraphs (6) to (9) of that Article apply, except that in paragraph (6)—

(a) for the first reference to the company there is substituted a reference to the offeror, and

- (b) for the reference to the company and every officer of the company who is in default there is substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

*Return as to allotments, etc.*

98.—(1) This Article applies to a company limited by shares and to a company limited by guarantee and having a share capital.

(2) When such a company makes an allotment of its shares, the company shall within one month thereafter deliver to the registrar for registration—

- (a) a return of the allotments (in the prescribed form) stating the number and nominal amount of the shares comprised in the allotment, the names and addresses of the allottees, and the amount (if any) paid or due and payable on each share, whether on account of the nominal value of the share or by way of premium; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash—
- (i) a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made (such contracts being duly stamped), and
- (ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(3) Where such a contract as mentioned in paragraph (2) is not reduced to writing, the company shall within one month after the allotment deliver to the registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

(4) Those particulars are deemed an instrument within the meaning of the Stamp Act 1891; and the registrar may, as a condition of filing the particulars, require that the duty payable on them be adjudicated under section 12 of that Act.

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(5) If default is made in complying with this Article, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine, but subject as follows.

(6) In the case of default in delivering to the registrar within one month after the allotment any document required by this Article to be delivered, the company, or any officer liable for the default, may apply to the court for relief; and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court thinks proper.

*Offers to shareholders to be on pre-emptive basis*

**99.—(1)** Subject to the provisions of this Article and Articles 100 to 106, a company proposing to allot equity securities (as defined in Article 104)—

- (a) shall not allot any of them on any terms to a person unless it has made an offer to each person who holds relevant shares or relevant employee shares to allot to him on the same or more favourable terms a proportion of those securities which is as nearly as practicable equal to the proportion in nominal value held by him of the aggregate of relevant shares and relevant employee shares, and
- (b) shall not allot any of those securities to a person unless the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.

(2) Paragraph (3) applies to any provision of a company's memorandum or articles which requires the company, when proposing to allot equity securities consisting of relevant shares of any particular class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in paragraph (1) to each person who holds relevant shares or relevant employee shares of that class.

(3) If in accordance with a provision to which this paragraph applies—

- (a) a company makes an offer to allot securities to such a holder, and
- (b) he or anyone in whose favour he has renounced his right to their allotment accepts the offer,

paragraph (1) does not apply to the allotment of those securities, and the company may allot them accordingly; but this is without prejudice to the application of paragraph (1) in any other case.

(4) Paragraph (1) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash; and securities which a company has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening paragraph (1)(b).

(5) Paragraph (1) does not apply to the allotment of securities which would, apart from a renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

*Communication of pre-emption offers to shareholders*

**100.—(1)** This Article has effect as to the manner in which offers required by Article 99(1), or by a provision to which Article 99(3) applies, are to be made to holders of a company's shares.

(2) Subject to paragraphs (3) to (7), an offer shall be in writing and shall be made to a holder of shares either personally or by sending it by post (that is to say, prepaying and posting a letter containing the offer) to him or to his registered address or, if he has no registered address in the United Kingdom, to the address in the United Kingdom supplied by him to the company for the giving of notice to him.

If sent by post, the offer is deemed to be made at the time at which the letter would be delivered in the ordinary course of post.

(3) Where shares are held by 2 or more persons jointly, the offer may be made to the joint holder first named in the register of members in respect of the shares.

(4) In the case of a holder's death or bankruptcy, the offer may be made—

- (a) by sending it by post in a prepaid letter addressed to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by the title of representatives of the deceased, or assignee in bankruptcy, or by any like description, at the address in the United Kingdom supplied for the purpose by those so claiming, or
- (b) until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

(5) If the holder—

- (a) has no registered address in the United Kingdom and has not given to the company an address in the United Kingdom for the service of notices on him, or
- (b) is the holder of a share warrant,

the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the *Belfast Gazette*.

(6) The offer must state a period of not less than 21 days during which it may be accepted; and the offer shall not be withdrawn before the end of that period.

(7) This Article does not invalidate a provision to which Article 99(3) applies by reason that that provision requires or authorises an offer under it to be made in contravention of any of paragraphs (1) to (6); but, to the extent that the provision requires or authorises such an offer to be so made, it is of no effect.

*Exclusion of Articles 99 and 100 by private company*

101.—(1) Article 99(1), 100(1) to (5) or 100(6) may, as applying to allotments by a private company of equity securities or to such allotments of a particular description, be excluded by a provision contained in the memorandum or articles of that company.

(2) A requirement or authority contained in the memorandum or articles of a private company, if it is inconsistent with any of those Articles, has effect as a provision excluding that Article; but a provision

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to which Article 99(3) applies is not to be treated as inconsistent with Article 99(1).

*Consequences of contravening Articles 99 and 100*

**102.—**(1) If there is a contravention of Article 99(1), or of Article 100(1) to (5) or of Article 100(6), or of a provision to which Article 99(3) applies, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the Article or provision contravened for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

(2) However, no proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years from the delivery to the registrar of the return of allotments in question or, where equity securities other than shares are granted, from the date of the grant.

*Saving for other restrictions as to offers*

**103.—**(1) Articles 99 to 102 are without prejudice to any statutory provision by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.

(2) Where a company cannot by virtue of such a statutory provision offer or allot equity securities to a holder of relevant shares or relevant employee shares, those Articles have effect as if the shares held by that holder were not relevant shares or relevant employee shares.

*Interpretation for Articles 99 to 106*

**104.—**(1) The following paragraphs apply for the interpretation of Articles 99 to 106.

(2) "Equity security", in relation to a company, means a relevant share in the company (other than a share shown in the memorandum to have been taken by a subscriber to the memorandum or a bonus share), or a right to subscribe for, or to convert securities into, relevant shares in the company.

(3) A reference to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class includes the grant of a right to subscribe for, or to convert any securities into, relevant shares in the company or (as the case may be) relevant shares of a particular class; but such a reference does not include the allotment of relevant shares pursuant to such a right.

(4) "Relevant employee shares", in relation to a company, means shares of the company which would be relevant shares in it but for the fact that they are held by a person who acquired them in pursuance of an employees' share scheme.

(5) "Relevant shares", in relation to a company, means shares in the company other than—

- (a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution, and
- (b) shares which are held by a person who acquired them in pursuance of an employees' share scheme or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme.

(6) A reference to a class of shares is to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.

(7) In relation to an offer to allot securities required by Article 99(1) or by any provision to which Article 99(3) applies, a reference in Articles 99 to 103 and this Article (however expressed) to the holder of shares of any description is to whoever was at the close of business on a date, to be specified in the offer and to fall in the period of 28 days immediately before the date of the offer, the holder of shares of that description.

*Disapplication of pre-emption rights*

105.—(1) Where the directors of a company are generally authorised for the purposes of Article 90, they may be given power by the articles of association, or by a special resolution of the company, to allot equity securities pursuant to that authority as if—

- (a) Article 99(1) did not apply to the allotment, or
- (b) that Article applied to the allotment with such modifications as the directors may determine;

and where the directors make an allotment under this paragraph, Articles 99 to 104 have effect accordingly.

(2) Where the directors of a company are authorised for the purposes of Article 90 (whether generally or otherwise), the company may by special resolution resolve either—

- (a) that Article 99(1) shall not apply to a specified allotment of equity securities to be made pursuant to that authority, or
- (b) that that Article shall apply to the allotment with such modifications as may be specified in the resolution;

and where such a resolution is passed, Articles 99 to 104 have effect accordingly.

(3) The power conferred by paragraph (1) or a special resolution under paragraph (2) ceases to have effect when the authority to which it relates is revoked or would (if not renewed) expire; but if the authority is renewed, the power or (as the case may be) the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.

(4) Notwithstanding that any such power or resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company, if the power or resolution

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enabled the company to make an offer or agreement which would or might require equity securities to be allotted after it expired.

(5) A special resolution under paragraph (2), or a special resolution to renew such a resolution, shall not be proposed unless it is recommended by the directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the members entitled to have that notice a written statement by the directors setting out—

- (a) their reasons for making the recommendation,
- (b) the amount to be paid to the company in respect of the equity securities to be allotted, and
- (c) the directors' justification of that amount.

(6) A person who knowingly or recklessly authorises or permits the inclusion in a statement circulated under paragraph (5) of any matter which is misleading, false or deceptive in a material particular is liable to imprisonment or a fine, or both.

*Saving for company's pre-emption procedure operative before 1985*

**106.**—(1) Where a company which is re-registered or registered as a public company is or, but for the provisions of the Order of 1981 and the statutory provisions replacing it, would be subject at the time of re-registration or (as the case may be) registration to a pre-1985 pre-emption requirement, Articles 99 to 105 do not apply to an allotment of the equity securities which are subject to that requirement.

(2) A "pre-1985 pre-emption requirement" is a requirement imposed (whether by the company's memorandum or articles, or otherwise) before the relevant date by virtue of which the company must, when making an allotment of equity securities, make an offer to allot those securities or some of them in a manner which (otherwise than because involving a contravention of Article 100(1) to (5) or 100(6)) is inconsistent with Articles 99 to 104; and "the relevant date" is—

- (a) except in a case falling within sub-paragraph (b), 1st January 1985, and
  - (b) in the case of a company which was re-registered or registered as a public company on an application made before that date, the date on which the application was made.
- (3) A requirement which—
- (a) is imposed on a private company (having been so imposed before the relevant date) otherwise than by the company's memorandum or articles, and
  - (b) if contained in the company's memorandum or articles, would have effect under Article 101 to the exclusion of any provisions of Articles 99 to 104,

has effect, so long as the company remains a private company as if it were contained in its memorandum or articles.

(4) If on the relevant date a company, other than a public company registered as such on its original incorporation, was subject to such a



requirement as is mentioned in Article 99(2) imposed otherwise than by its memorandum or articles, the requirement is to be treated for the purposes of Articles 99 to 104 as if it were contained in the company's memorandum or articles.

*Commissions and discounts*

*Power of company to pay commissions*

**107.**—(1) It is lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the following conditions are satisfied.

(2) The payment of the commission must be authorised by the company's articles; and—

- (a) the commission paid or agreed to be paid must not exceed 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and
- (b) the amount or rate per cent. of commission paid or agreed to be paid, and the number of shares which persons have agreed for a commission to subscribe absolutely, must be disclosed in the manner required by paragraph (3).

(3) Those matters must, in the case of shares offered to the public for subscription, be disclosed in the prospectus; and in the case of shares not so offered—

- (a) they must be disclosed in a statement in the prescribed form signed by every director of the company or by his agent authorised in writing, and delivered (before payment of the commission) to the registrar for registration; and
- (b) where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, they must also be disclosed in that circular or notice.

(4) If default is made in complying with paragraph (3)(a) as regards delivery to the registrar of the statement in prescribed form, the company and every officer of it who is in default is liable to a fine.

*Apart from Article 107, commissions and discounts barred*

**108.**—(1) Except as permitted by Article 107, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company.

(2) This applies whether the shares or money be so applied by being added to the purchase money of any property acquired by the company

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or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in Article 107 or this Article affects the power of a company to pay such brokerage as has heretofore been lawful.

(4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has and is deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under Article 107 and this Article.

*Amount to be paid for shares; the means of payment*

*General rules as to payment for shares on allotment*

**109.**—(1) Subject to the following provisions of this Part, shares allotted by a company, and any premium on them, may be paid up in money or money's worth (including goodwill and know-how).

(2) A public company shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.

(3) If a public company accepts such an undertaking in payment up of its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up (in whole or in part) by the undertaking is liable—

- (a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and
- (b) to pay interest at the appropriate rate on the amount payable under sub-paragraph (a).

(4) This Article does not prevent a company from allotting bonus shares to its members or from paying up, with sums available for the purpose, any amounts for the time being unpaid on any of its shares (whether on account of the nominal value of the shares or by way of premium).

(5) The reference in paragraph (3) to the holder of shares includes any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of them executed in his favour.

*Prohibition on allotment of shares at a discount*

**110.**—(1) A company's shares shall not be allotted at a discount.

(2) If shares are allotted in contravention of this Article, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

*Shares to be allotted as at least one-quarter paid-up*

**111.**—(1) A public company shall not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.

(2) Paragraph (1) does not apply to shares allotted in pursuance of an employees' share scheme.

(3) If a company allots a share in contravention of paragraph (1), the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received.

(4) But the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under paragraph (1) (less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it), with interest at the appropriate rate.

(5) Paragraphs (3) and (4) do not apply to the allotment of bonus shares, unless the allottee knew or ought to have known that the shares were allotted in contravention of paragraph (1).

*Restriction on payment by long-term undertaking*

**112.**—(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be, or may be, performed more than 5 years after the date of the allotment.

(2) If a company allots shares in contravention of paragraph (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

(3) Where a contract for the allotment of shares does not contravene paragraph (1), any variation of the contract which has the effect that the contract would have contravened that paragraph, if the terms of the contract as varied had been its original terms, is void.

(4) Paragraph (3) applies also to the variation by a public company of the terms of a contract entered into before the company was re-registered as a public company.

(5) Paragraph (6) applies where a public company allots shares for a consideration which consists of or includes (in accordance with paragraph (1)) an undertaking which is to be performed within 5 years of the allotment, but the undertaking is not performed within the period allowed by the contract for the allotment of the shares.

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(6) The allottee is then liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking), with interest at the appropriate rate.

(7) A reference in this Article to a contract for the allotment of shares includes an ancillary contract relating to payment in respect of them.

*Non-cash consideration to be valued before allotment*

**113.—(1)** A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—

- (a) the consideration for the allotment has been independently valued under Article 118; and
- (b) a report with respect to its value has been made to the company by a person appointed by the company (in accordance with that Article) during the 6 months immediately preceding the allotment of the shares; and
- (c) a copy of the report has been sent to the proposed allottee.

(2) Where an amount standing to the credit of any of a company's reserve accounts, or of its profit and loss account, is applied in paying up (to any extent) any shares allotted to members of the company or any premiums on shares so allotted, the amount applied does not count as consideration for the allotment, and accordingly paragraph (1) does not apply in that case.

(3) Paragraph (1) does not apply to the allotment of shares by a company in connection with an arrangement providing for the allotment of shares in that company on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that company (or the cancellation) of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that company of shares, or of shares of any particular class, in that other company).

(4) But paragraph (3) does not exclude the application of paragraph (1) unless under the arrangement it is open to all the holders of the shares in the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of shares in that other company, being holders of shares of that class) to take part in the arrangement.

In determining whether that is the case, shares held by or by a nominee of the company proposing to allot the shares in connection with the arrangement, or by or by a nominee of a company which is that company's holding company or subsidiary or a company which is a subsidiary of its holding company, shall be disregarded.

(5) Paragraph (1) also does not apply to the allotment of shares by a company in connection with its proposed merger with another company; that is, where one of the companies proposes to acquire all the assets and

liabilities of the other in exchange for the issue of shares or other securities in that one to shareholders of the other, with or without any cash payment to those shareholders.

(6) If a company allots shares in contravention of paragraph (1) and either—

- (a) the allottee has not received the valuer's report required by that paragraph to be sent to him; or
- (b) there has been some other contravention of this Article or Article 118 which the allottee knew or ought to have known amounted to a contravention,

the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

(7) In this Article—

- (a) "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with Article 418 (company compromise with creditors and members) or Article 539 (liquidator in winding up accepting shares as consideration for sale of company property)), and
- (b) any reference to a company, except where it is or is to be construed as a reference to a public company, includes any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837.

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*Transfer to public company of non-cash asset in initial period*

114.—(1) A public company formed as such shall not, unless the conditions of this Article have been complied with, enter into an agreement with a person for the transfer by him during the initial period of one or more non-cash assets to the company or another, if—

- (a) that person is a subscriber to the company's memorandum; and
- (b) the consideration for the transfer to be given by the company is equal in value at the time of the agreement to one-tenth or more of the nominal value of the company's share capital issued at that time.

(2) "The initial period" for this purpose is 2 years beginning with the date of the company being issued with a certificate under Article 127 (or the previous corresponding provision) that it was entitled to do business.

(3) This Article applies also to a company re-registered as a public company (except one re-registered under Article 10 of the Order of 1981 or Article 4 of the Consequential Provisions Order), or registered under Article 634 (joint stock company) or the previous corresponding provision; but in that case—

- (a) there is substituted a reference in paragraph (1)(a) to a person who is a member of the company on the date of registration or re-registration, and

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(b) the initial period is then 2 years beginning with that date.

In this paragraph the reference to a company re-registered as a public company includes a private company so re-registered which was a public company before it was a private company.

(4) The conditions of this Article are as follows—

- (a) the consideration to be received by the company, and any consideration other than cash to be given by the company, must have been independently valued under Article 119;
- (b) a report with respect to the consideration to be so received and given must have been made to the company in accordance with that Article during the 6 months immediately preceding the date of the agreement;
- (c) the terms of the agreement must have been approved by an ordinary resolution of the company; and
- (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report must have been circulated to the members of the company entitled to receive the notice and, if the person with whom the agreement in question is proposed to be made is not then a member of the company so entitled, to that person.

(5) In paragraph (4)(a)—

- (a) the reference to the consideration to be received by the company is to the asset to be transferred to it or the advantage to the company of the asset's transfer to another person; and
- (b) the specified condition is without prejudice to any requirement to value any consideration for the purposes of Article 113.

(6) In the case of the following agreements, this Article does not apply—

- (a) where it is part of the company's ordinary business to acquire, or arrange for others to acquire, assets of a particular description, an agreement entered into by the company in the ordinary course of its business for the transfer of an asset of that description to it or to such a person, as the case may be; or
- (b) an agreement entered into by the company under the supervision of the court, or of an officer authorised by the court for the purpose, for the transfer of an asset to the company or to another.

*Agreements contravening Article 114*

**115.**—(1) Paragraph (2) applies if a public company enters into an agreement contravening Article 114, the agreement being made with the person referred to in paragraph (1)(a) or (as the case may be) paragraph (3) of that Article, and either—

- (a) that person has not received the valuer's report required for compliance with the conditions of that Article, or

(b) there has been some other contravention of that Article or of Article 118(1), (2) or (5) or Article 119, which he knew or ought to have known amounted to a contravention.

(2) The company is then entitled to recover from that person any consideration given by it under the agreement, or an amount equal to the value of the consideration at the time of the agreement; and the agreement, so far as not carried out, is void.

(3) However, if the agreement is or includes an agreement for the allotment of shares in the company, then—

(a) whether or not the agreement also contravenes Article 113, paragraph (2) does not apply to it in so far as it is for the allotment of shares; and

(b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

#### *Shares issued to subscribers of memorandum*

116. Shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, shall be paid up in cash.

#### *Meaning of "the appropriate rate"*

117. In Articles 109 to 115 "the appropriate rate", in relation to interest, means 5 per cent. per annum or such other rate as may be specified by order made by the Department subject to negative resolution.

#### *Valuation provisions*

##### *Valuation and report (Articles 54 and 113)*

118.—(1) The valuation and report required by Article 113 (or, where applicable, Article 54) shall be made by an independent person, that is to say a person qualified at the time of the report to be appointed, or continue to be, an auditor of the company.

(2) However, where it appears to the independent person (from here on referred to as "the valuer") to be reasonable for the valuation of the consideration, or part of it, to be made (or for him to accept such a valuation) by another person who—

(a) appears to him to have the requisite knowledge and experience to value the consideration or that part of it; and

(b) is not an officer or servant of the company or any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company or a partner or employee of such an officer or servant,

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he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this Article and provide the note required by paragraph (6).

(3) The reference in paragraph (2)(b) to an officer or servant does not include an auditor.

(4) The valuer's report shall state—

- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
- (b) the amount of any premium payable on the shares;
- (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;
- (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
  - (i) by the consideration;
  - (ii) in cash.

(5) Where the consideration or part of it is valued by a person other than the valuer himself, the latter's report shall state that fact and shall also—

- (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
- (b) describe so much of the consideration as was valued by the other person, and the method used to value it, and specify the date of the valuation.

(6) The valuer's report shall contain or be accompanied by a note by him—

- (a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made;
- (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;
- (c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation; and
- (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

(7) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, Article 113 (and, where applicable, Article 54) and the foregoing provisions of this Article apply as if references to the consideration accepted by the company included



the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and—

- (a) the valuer shall carry out, or arrange for, such other valuations as will enable him to determine that proportion; and
- (b) his report shall state what valuations have been made under this paragraph and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

*Valuation and report (Article 114)*

**119.**—(1) Article 118(1) to (3) and (5) applies also as respects the valuation and report for the purposes of Article 114.

(2) The valuer's report for those purposes shall—

- (a) state the consideration to be received by the company, describing the asset in question (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash);
- (b) state the method and date of valuation;
- (c) contain or be accompanied by a note as to the matters mentioned in Article 118(6)(a) to (c); and
- (d) contain or be accompanied by a note that on the basis of the valuation the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

(3) A reference in Article 114 or this Article to consideration given for the transfer of an asset includes consideration given partly for its transfer; but—

- (a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer;
- (b) the valuer shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and
- (c) his report for the purposes of Article 114 shall state what valuation has been made under this paragraph and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination.

*Entitlement of valuer to full disclosure*

**120.**—(1) A person carrying out a valuation or making a report under Article 113 or 114, with respect to any consideration proposed to be accepted or given by a company, is entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide a note under Article 118(6) or (as the case may be) Article 119(2)(c).

(2) A person who knowingly or recklessly makes a statement which—

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(a) is misleading, false or deceptive in a material particular, and  
(b) is a statement to which this paragraph applies,  
is guilty of an offence and liable to imprisonment or a fine, or both.

(3) Paragraph (2) applies to any statement made (whether orally or in writing) to a person carrying out a valuation or making a report under Article 118 or 119, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under paragraph (1).

*Matters to be communicated to registrar*

**121.—**(1) A company to which a report is made under Article 118 as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the registrar for registration at the same time that it files the return of the allotments of those shares under Article 98.

(2) A company which has passed a resolution under Article 114 with respect to the transfer of an asset shall, within 15 days of so doing, deliver to the registrar a copy of the resolution together with the valuer's report required by that Article.

(3) If default is made in complying with paragraph (1), every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine; but this is subject to the same exception as is made by Article 98(6) (relief on application to the court) in the case of default in complying with that Article.

(4) If a company fails to comply with paragraph (2), it and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Other matters arising out of allotment, etc.*

*Liability of subsequent holders of shares allotted*

**122.—**(1) If a person becomes a holder of shares in respect of which—

(a) there has been a contravention of Article 109, 110, 111 or 113;  
and

(b) by virtue of that contravention, another is liable to pay any amount under the Article contravened,

that person is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by paragraph (3).

(2) If a company enters into an agreement in contravention of Article 114 and—

(a) the agreement is or includes an agreement for the allotment of shares in the company; and

(b) a person becomes a holder of shares allotted under the agreement; and

(c) by virtue of the agreement and allotment under it, another person is liable to pay any amount under Article 115,

the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless he is exempted from liability by paragraph (3); and this applies whether or not the agreement also contravenes Article 113.

(3) A person otherwise liable under paragraph (1) or (2) is exempted from that liability if either—

- (a) he is a purchaser for value and, at the time of the purchase, he did not have actual notice of the contravention concerned; or
- (b) he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under paragraph (1) or (as the case may be) paragraph (2).

(4) References in this Article to a holder, in relation to shares in a company, include any person who has an unconditional right to be included in the company's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his favour.

(5) As paragraphs (1) and (3) apply in relation to the contraventions there mentioned, they also apply—

- (a) to a contravention of Article 112; and
- (b) to a failure to carry out a term of a contract as mentioned in paragraphs (5) and (6) of that Article.

*Relief in respect of certain liabilities under Articles 109ff.*

123.—(1) Where a person is liable to a company under—

- (a) Article 109, 112, 113 or 115;
- (b) Article 122(1) by reference to a contravention of Article 109 or 113; or
- (c) Article 122(2) or (5),

in relation to payment in respect of any shares in the company, or is liable by virtue of an undertaking given to it in, or in connection with, payment for any such shares, the person so liable may make an application to the court to be exempted in whole or in part from the liability.

(2) If the liability mentioned in paragraph (1) arises in relation to payment in respect of any shares, the court may, on an application under that paragraph, exempt the applicant from the liability only—

- (a) if and to the extent that it appears to the court just and equitable to do so having regard to the matters mentioned in paragraph (3);
- (b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he is liable to pay to the company under any of the relevant Articles.

(3) The matters to be taken into account by the court under paragraph (2)(a) are—

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- (a) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of the relevant Articles, or of any liability arising by virtue of any undertaking given in or in connection with a payment for those shares;
  - (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and
  - (c) whether the applicant or any other person has performed in whole or in part, or is likely so to perform, any such undertaking, or has done or is likely to do any other thing in payment or part payment for the shares.
- (4) Where the liability arises by virtue of an undertaking given to the company in, or in connection with, payment for shares in it, the court may, on an application under paragraph (1), exempt the applicant from the liability only if and to the extent that it appears to the court just and equitable to do so having regard to—
- (a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any of the provisions mentioned in that paragraph; and
  - (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.
- (5) In determining whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—
- (a) that a company which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and
  - (b) subject to this, that where such a company would, if the court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.
- (6) If a person brings proceedings against another ("the contributor") for a contribution in respect of liability to a company arising under any of Articles 109 to 115 or 122 and it appears to the court that the contributor is liable to make such a contribution, the court may exercise the powers of paragraph (7).
- (7) The court may, if and to the extent that it appears to it, having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings, that it is just and equitable to do so—
- (a) exempt the contributor in whole or in part from his liability to make such a contribution; or

(b) order the contributor to make a larger contribution than, but for this paragraph, he would be liable to make.

(8) Where a person is liable to a company under paragraph (2) of Article 115, the court may, on application, exempt him in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the company by virtue of anything done by him towards the carrying out of the agreement mentioned in that paragraph.

*Penalty for contravention*

124. If a company contravenes any of the provisions of Articles 109 to 114 and 116 the company and any officer of it who is in default is liable to a fine.

*Undertakings to do work, etc.*

125.—(1) Subject to Article 123, an undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Order, is so enforceable notwithstanding that there has been a contravention in relation to it of Article 109, 112 or 113.

(2) Where such an undertaking is given in contravention of Article 114 in respect of the allotment of shares, it is so enforceable notwithstanding the contravention.

*Application of Articles 109ff. to special cases*

126. Except as provided by Article 11 of the Consequential Provisions Order (transitional cases dealt with by Article 33 of the Order of 1981), Articles 109, 111 to 113, 116, 118 and 120 to 125 apply—

(a) to a company which has passed and not revoked a resolution to be re-registered under Article 53 as a public company, and

(b) to a joint stock company which has passed, and not revoked, a resolution that the company be a public company,

as those Articles apply to a public company.

PART VI

SHARE CAPITAL, ITS INCREASE, MAINTENANCE AND REDUCTION

CHAPTER I

GENERAL PROVISIONS ABOUT SHARE CAPITAL

*Public company share capital requirements*

127.—(1) A company registered as a public company on its original incorporation shall not do business or exercise any borrowing powers

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unless the registrar has issued it with a certificate under this Article or the company is re-registered as a private company.

(2) The registrar shall issue a company with such a certificate if, on an application made to him by the company in the prescribed form, he is satisfied that the nominal value of the company's allotted share capital is not less than the authorised minimum, and there is delivered to him a statutory declaration complying with paragraph (3).

(3) The statutory declaration must be in the prescribed form and be signed by a director or secretary of the company; and it must—

- (a) state that the nominal value of the company's allotted share capital is not less than the authorised minimum;
- (b) specify the amount paid up, at the time of the application, on the allotted share capital of the company;
- (c) specify the amount, or estimated amount, of the company's preliminary expenses and the persons by whom any of those expenses have been paid or are payable; and
- (d) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit.

(4) For the purposes of paragraph (2), a share allotted in pursuance of an employees' share scheme may not be taken into account in determining the nominal value of the company's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.

(5) The registrar may accept a statutory declaration delivered to him under this Article as sufficient evidence of the matters stated in it.

(6) A certificate under this Article in respect of a company is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

(7) If a company does business or exercises borrowing powers in contravention of this Article, the company and any officer of it who is in default is liable to a fine.

(8) Nothing in this Article affects the validity of any transaction entered into by a company; but, if a company enters into a transaction in contravention of this Article and fails to comply with its obligations in that connection within 21 days from being called upon to do so, the directors of the company are jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with those obligations.

*The authorised minimum*

**128.**—(1) In this Order, "the authorised minimum" means £50,000, or such other sum as the Department may by order specify.

(2) An order under this Article which increases the authorised minimum may—

- (a) require any public company having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum to increase that value to not less than that amount or make application to be re-registered as a private company;
  - (b) make, in connection with any such requirement, provision for any of the matters for which provision is made by this Order relating to a company's registration, re-registration or change of name, to payment for any share comprised in a company's capital and to offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and
  - (c) contain such supplemental and transitional provisions as the Department thinks appropriate.
- (3) An order shall not be made under this Article unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

*Provision for different amounts to be paid on shares*

129. A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

*Reserve liability of limited company*

130. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up; and that portion of its share capital is then not capable of being called up except in that event and for those purposes.

*Alteration of share capital (limited companies)*

131.—(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum in any of the following ways.

(2) The company may—

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

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- (c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum (but subject to paragraph (3));
- (e) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.

(3) In any sub-division under paragraph (2)(d) the proportion between the amount paid and the amount, if any, unpaid on each reduced share must be the same as it was in the case of the share from which the reduced share is derived.

(4) The powers conferred by this Article must be exercised by the company in general meeting.

(5) A cancellation of shares under this Article does not for the purposes of this Order constitute a reduction of share capital.

*Notice to registrar of alteration*

**132.—**(1) If a company having a share capital has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (b) converted any shares into stock; or
- (c) re-converted stock into shares; or
- (d) sub-divided its shares or any of them; or
- (e) redeemed any redeemable shares; or
- (f) cancelled any shares (otherwise than in connection with a reduction of share capital under Article 145);

it shall within one month after so doing give notice in the prescribed form to the registrar, specifying (as the case may be) the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Notice to registrar of increased share capital*

**133.—**(1) If a company having a share capital (whether or not its shares have been converted into stock) increases its share capital beyond the registered capital, it shall, within 15 days after the passing of the resolution authorising the increase, give to the registrar notice in the prescribed form of the increase, and the registrar shall record the increase.

(2) The notice must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued.



(3) There shall be forwarded to the registrar together with the notice a printed copy of the resolution authorising the increase, or a copy of the resolution in some other form approved by the registrar.

(4) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Reserve capital of unlimited company*

134. An unlimited company having a share capital may by its resolution for re-registration as a public company under Article 53, or as a limited company under Article 61—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares (but subject to the condition that no part of the increased capital is to be capable of being called up except in the event and for the purpose of the company being wound up), and
- (b) alternatively or in addition, provide that a specified portion of its uncalled share capital is not to be capable of being called up except in that event and for that purpose.

CHAPTER II

CLASS RIGHTS

*Variation of class rights*

135.—(1) This Article is concerned with the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

(2) Where the rights are attached to a class of shares otherwise than by the company's memorandum, and the company's articles do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—

- (a) the holders of three-quarters in nominal value of the issued shares of that class consent in writing to the variation; or
- (b) an extraordinary resolution passed at a separate general meeting of the holders of that class sanctions the variation;

and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in subparagraphs (a) and (b).

(3) Where—

- (a) the rights are attached to a class of shares by the memorandum or otherwise;
- (b) the memorandum or articles contain provision for the variation of those rights; and
- (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for allotment

under Article 90 or with a reduction of the company's share capital under Article 145;

those rights shall not be varied unless—

- (i) the condition mentioned in paragraph (2)(a) or (b) is satisfied; and
- (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.

(4) If the rights are attached to a class of shares in the company by the memorandum or otherwise and—

- (a) where they are so attached by the memorandum, its articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or
- (b) where they are so attached otherwise, its articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in paragraph (3)(c), those rights may only be varied in accordance with that provision of the company's articles.

(5) If the rights are attached to a class of shares by the memorandum, and the memorandum and articles do not contain provision with respect to the variation of those rights, those rights may be varied if all the members of the company agree to the variation.

(6) The provisions of Article 377 (length of notice for calling company meetings), Article 378 (general provisions as to meetings and votes), and Articles 384 and 385 (circulation of members' resolutions) and the provisions of the company's articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this Article or otherwise to take place in connection with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following provisions, namely—

- (a) the necessary quorum at any such meeting other than an adjourned meeting shall be 2 persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his proxy;
- (b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into its articles, is itself to be treated as a variation of those rights.

(8) In this Article and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles, references to the

variation of those rights are to be read as including references to their abrogation.

*Saving for court's powers under other provisions*

136. Nothing in Article 135(2) to (5) derogates from the powers of the court under the following Articles, namely—

- Articles 15 to 17 (company resolution to alter objects),
- Article 64 (litigated objection to public company becoming private by re-registration),
- Article 418 (court control of company compromising with creditors and members),
- Article 420 (company reconstruction or amalgamation),
- Articles 452 to 454 (protection of minorities).

*Shareholders' right to object to variation*

137.—(1) This Article applies if, in the case of a company whose share capital is divided into different classes of shares—

- (a) provision is made by its memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to—
  - (i) the consent of any specified proportion of the holders of the issued shares of that class, or
  - (ii) the sanction of a resolution passed at a separate meeting of the holders of those shares,and in pursuance of that provision the rights attached to any such class of shares are at any time varied; or
- (b) the rights attached to any class of shares in the company are varied under Article 135(2).

(2) The holders of not less in the aggregate than 15 per cent. of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation), may apply to the court to have the variation cancelled; and if such an application is made, the variation has no effect unless and until it is confirmed by the court.

(3) Application to the court must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) The court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm it.

The decision of the court on any such application is final.

(5) The company shall within 15 days after the making of an order by the court on such an application forward an office copy of the order to the registrar; and, if default is made in complying with this provision, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) "Variation", in this Article, includes abrogation.

*Registration of particulars of special rights*

**138.**—(1) If a company allots shares with rights which are not stated in its memorandum or articles, or in any resolution or agreement which is required by Article 388 to be sent to the registrar, the company shall deliver to the registrar within one month from allotting the shares a statement in the prescribed form containing particulars of those rights.

(2) This does not apply if the shares are in all respects uniform with shares previously allotted; and shares are not for this purpose to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the 12 months immediately following the former's allotment.

(3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company's memorandum or articles or by a resolution or agreement subject to Article 388, the company shall within one month from the date on which the variation is made deliver to the registrar a statement in the prescribed form containing particulars of the variation.

(4) Where a company (otherwise than by any such amendment, resolution or agreement as is mentioned in paragraph (3)) assigns a name or other designation, or a new name or other designation, to any class of its shares, it shall within one month from doing so deliver to the registrar a notice in the prescribed form giving particulars of the name or designation so assigned.

(5) If a company fails to comply with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Registration of newly created class rights*

**139.**—(1) If a company not having a share capital creates a class of members with rights which are not stated in its memorandum or articles or in a resolution or agreement to which Article 388 applies, the company shall deliver to the registrar within one month from the date on which the new class is created a statement in the prescribed form containing particulars of the rights attached to that class.

(2) If the rights of any class of members of the company are varied otherwise than by an amendment of the memorandum or articles or by a resolution or agreement subject to Article 388, the company shall within one month from the date on which the variation is made deliver to the registrar a statement in the prescribed form containing particulars of the variation.

(3) If a company (otherwise than by such an amendment, resolution or agreement as is mentioned in paragraph (2)) assigns a name or other designation, or a new name or other designation, to any class of its members, it shall within one month from doing so deliver to the registrar a notice in the prescribed form giving particulars of the name or designation so assigned.

(4) If a company fails to comply with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

### CHAPTER III

#### SHARE PREMIUMS

##### *Application of share premiums*

140.—(1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called “the share premium account”.

(2) The share premium account may be applied by the company in paying up unissued shares to be allotted to members as fully paid bonus shares, or in writing off—

- (a) the company’s preliminary expenses; or
- (b) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company,

or in providing for the premium payable on redemption of debentures of the company.

(3) Subject to this, the provisions of this Order relating to the reduction of a company’s share capital apply as if the share premium account were part of its paid-up share capital.

(4) Articles 141 and 142 give relief from the requirements of this Article, and in those Articles references to the issuing company are to the company issuing shares as mentioned in paragraph (1).

##### *Merger relief*

141.—(1) With the exception made by Article 142(8) (group reconstruction) this Article applies where the issuing company has secured at least a 90 per cent. equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—

- (a) by the issue or transfer to the issuing company of equity shares in the other company, or
- (b) by the cancellation of any such shares not held by the issuing company.

(2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, Article 140 does not apply to the premiums on those shares.

(3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, relief under paragraph (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.

(4) Subject to paragraph (5), the issuing company is to be regarded for the purposes of this Article as having secured at least a 90 per cent. equity holding in another company in pursuance of such an arrangement as is mentioned in paragraph (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement or not) of an aggregate nominal value equal to 90 per cent. or more of the nominal value of that company's equity share capital.

(5) Where the equity share capital of the other company is divided into different classes of shares, this Article does not apply unless the requirements of paragraph (1) are satisfied in relation to each of those classes of shares taken separately.

(6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for the purposes of this Article as held by the issuing company.

(7) In relation to a company and its shares and capital, the following definitions apply for the purposes of this Article—

- (a) "equity shares" means shares comprised in the company's equity share capital;
- (b) "non-equity shares" means shares (of any class) not so comprised;

and "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned under Article 418 (company compromise with creditors and members) or Article 539 (liquidator accepting shares, etc. as consideration for sale of company property)).

(8) The relief allowed by this Article does not apply if the issue of shares took place before 4th February 1981.

*Relief in respect of group reconstructions*

**142.**—(1) This Article applies where the issuing company—

- (a) is a wholly-owned subsidiary of another company ("the holding company"), and
- (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for

the transfer to the issuing company of assets other than cash, being assets of any company ("the transferor company") which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries.

(2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by Article 140 to transfer any amount in excess of the minimum premium value to the share premium account.

(3) In paragraph (2), "the minimum premium value" means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.

(4) For the purposes of paragraph (3), the base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.

(5) For the purposes of paragraph (4)—

(a) the base value of the assets transferred is to be taken as—

- (i) the cost of those assets to the transferor company, or
- (ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer,

whichever is the less; and

(b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

(6) The relief allowed by this Article does not apply (subject to paragraph (7)) if the issue of shares took place before the date of the coming into operation of this Article.

(7) To the extent that the relief allowed by this Article would have been allowed by Article 39 of the Order of 1982 as originally enacted (the text of which Article is set out in Schedule 24), the relief applies where the issue of shares took place before the date of the coming into operation of this Article, but not if it took place before 4th February 1981.

(8) Article 141 does not apply in a case falling within this Article.

*Provisions supplementing Articles 141 and 142*

**143.**—(1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by a company which by virtue of Article 141 or 142 of this Order or Article 14 of the Consequential Provisions Order is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

(2) References in this Chapter (however expressed) to—

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- (a) the acquisition by a company of shares in another company;  
and
- (b) the issue or allotment of shares to, or the transfer of shares to or  
by, a company,

include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company; and the reference in Article 142 to the company transferring the shares is to be construed accordingly.

(3) References in this Chapter to the transfer of shares in a company include the transfer of a right to be included in the company's register of members in respect of those shares.

(4) In Articles 141, 142 and this Article "company", except in references to the issuing company, includes any body corporate.

*Provision for extending or restricting relief from Article 140*

**144.**—(1) The Department may by regulations make such provision as appears to it to be appropriate—

- (a) for relieving companies from the requirements of Article 140 in relation to premiums other than cash premiums, or
- (b) for restricting or otherwise modifying any relief from those requirements provided by this Chapter.

(2) No such regulations shall be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

CHAPTER IV

REDUCTION OF SHARE CAPITAL

*Special resolution for reduction of share capital*

**145.**—(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.

(2) In particular, and without prejudice to paragraph (1), the company may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants;



and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(3) A special resolution under this Article is in this Order referred to as "a resolution for reducing share capital".

*Application to court for order of confirmation*

146.—(1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.

(2) If the proposed reduction of share capital involves either—

- (a) diminution of liability in respect of unpaid share capital; or
- (b) the payment to a shareholder of any paid-up share capital,

and in any other case if the court so directs, paragraphs (3) to (5) shall have effect, but subject throughout to paragraph (6).

(3) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, is entitled to object to the reduction of capital.

(4) The court shall settle a list of creditors entitled to object, and for that purpose—

- (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
- (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

(5) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount—

- (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

(6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so,

direct that paragraphs (3) to (5) shall not apply as regards any class or any classes of creditors.

*Court order confirming reduction*

**147.**—(1) The court, if satisfied with respect to every creditor of the company who under Article 146 is entitled to object to the reduction of capital that either—

- (a) his consent to the reduction has been obtained; or
- (b) his debt or claim has been discharged or has determined, or has been secured,

may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court so orders, it may also—

- (a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words the words “and reduced”; and
- (b) make an order requiring the company to publish (as the court directs) the reasons for reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words “and reduced”, those words are, until the expiration of the period specified in the order, deemed to be part of the company’s name.

*Registration of order and minute of reduction*

**148.**—(1) The registrar, on production to him of an order of the court confirming the reduction of a company’s share capital, and the delivery to him of an office copy of the order and of a minute (approved by the court) showing, with respect to the company’s share capital as altered by the order—

- (a) the amount of the share capital;
- (b) the number of shares into which it is to be divided, and the amount of each share; and
- (c) the amount (if any) at the date of the registration deemed to be paid up on each share,

shall register the order and minute (but subject to Article 149).

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered takes effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute; and the certificate is conclusive evidence that all the

requirements of this Order with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minute.

(5) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum, and is valid and alterable as if it had been originally contained therein.

(6) The substitution of such a minute for part of the company's memorandum is deemed an alteration of the memorandum for the purposes of Article 31.

*Public company reducing capital below authorised minimum*

149.—(1) This Article applies where the court makes an order confirming a reduction of a public company's capital which has the effect of bringing the nominal value of its allotted share capital below the authorised minimum.

(2) The registrar shall not register the order under Article 148 unless the court otherwise directs, or the company is first re-registered as a private company.

(3) The court may authorise the company to be so re-registered without its having passed the special resolution required by Article 63; and where that authority is given, the court shall specify in the order the alterations in the company's memorandum and articles to be made in connection with that re-registration.

(4) The company may then be re-registered as a private company, if an application in the prescribed form and signed by a director or secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles as altered by the court's order.

(5) On receipt of such an application, the registrar shall retain it and the other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—

- (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the court's order take effect; and
- (b) the certificate is conclusive evidence that the requirements of this Article in respect of re-registration and of matters precedent and incidental thereto have been complied with, and that the company is a private company.

*Liability of members on reduced shares*

150.—(1) Where a company's share capital is reduced, a member of the company (past or present) is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount (if any), which is deemed to have been paid on it, as the case may be.

(2) But paragraphs (3) and (4) apply if—

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(a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and

(b) after the reduction of capital, the company is unable (within the meaning of Article 480) to pay the amount of his debt or claim.

(3) Every person who was a member of the company at the date of the registration of the order for reduction and minute is then liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he would have been liable to contribute if the company had commenced to be wound up on the day before that date.

(4) If the company is wound up, the court, on the application of the creditor in question and proof of ignorance referred to in paragraph (2)(a), may (if it thinks fit) settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(5) Nothing in this Article affects the rights of the contributories among themselves.

*Penalty for concealing name of creditor, etc.*

**151.** If an officer of the company—

(a) wilfully conceals the name of a creditor entitled to object to the reduction of capital;

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation,

he is guilty of an offence and liable to a fine.

**CHAPTER V**

**MAINTENANCE OF CAPITAL**

*Duty of directors on serious loss of capital*

**152.—(1)** Where the net assets of a public company are half or less of its called-up share capital, the directors shall, not later than 28 days from the earliest day on which that fact is known to a director of the company, duly convene an extraordinary general meeting of the company for a date not later than 56 days from that day for the purpose of considering whether any, and if so what, steps should be taken to deal with the situation.

(2) In paragraph (1), “net assets” means the aggregate of the company’s assets less the aggregate of its liabilities (“liabilities” to include any provision for liabilities or charges within paragraph 88 of Schedule 4).

- (3) If there is a failure to convene an extraordinary general meeting as required by paragraph (1), each of the directors of the company who—
- (a) knowingly and wilfully authorises or permits the failure, or
  - (b) after the expiry of the period during which that meeting should have been convened, knowingly and wilfully authorises or permits the failure to continue,

is liable to a fine.

(4) Nothing in this Article authorises the consideration, at a meeting convened in pursuance of paragraph (1), of any matter which could not have been considered at that meeting apart from this Article.

*General rule against company acquiring own shares*

153.—(1) Subject to the following provisions, a company limited by shares or limited by guarantee and having a share capital shall not acquire its own shares, whether by purchase, subscription or otherwise.

(2) If a company purports to act in contravention of this Article, the company is liable to a fine, and every officer of the company who is in default is liable to imprisonment or a fine, or both; and the purported acquisition is void.

(3) A company limited by shares may acquire any of its own fully paid shares otherwise than for valuable consideration; and paragraph (1) does not apply in relation to—

- (a) the redemption or purchase of shares in accordance with Chapter VII,
- (b) the acquisition of shares in a reduction of capital duly made,
- (c) the purchase of shares in pursuance of an order of the court under Article 16 (alteration of objects), Article 64 (litigated objection to resolution for company to be re-registered as private) or Part XVIII (relief to members unfairly prejudiced), or
- (d) the forfeiture of shares, or the acceptance of shares surrendered in lieu, in pursuance of the company's articles, for failure to pay any sum payable in respect of the shares.

*Acquisition of shares by company's nominee*

154.—(1) Subject to Article 155, where shares are issued to a nominee of a company mentioned in Article 153(1), or are acquired by a nominee of such a company from a third person as partly paid up, then, for all purposes—

- (a) the shares are to be treated as held by the nominee on his own account; and
- (b) the company is to be regarded as having no beneficial interest in them.

(2) Subject to that Article, if a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in such a company which were issued to him, or which he otherwise

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acquired, as the company's nominee and he fails to pay that amount within 21 days from being called on to do so, then—

- (a) if the shares were issued to him as subscriber to the memorandum by virtue of an undertaking of his in the memorandum, the other subscribers to the memorandum, or
  - (b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition,
- are jointly and severally liable with him to pay that amount.

(3) If in proceedings for the recovery of any such amount from any such subscriber or director under this Article it appears to the court—

- (a) that he is or may be liable to pay that amount, but
- (b) that he has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused from liability,

the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

(4) Where any such subscriber or director has reason to apprehend that a claim will or might be made for the recovery of any such amount from him, he may apply to the court for relief; and the court has the same power to relieve him as it would have had in proceedings for the recovery of that amount.

*Exceptions from Article 154*

**155.**—(1) Article 154(1) does not apply to shares acquired otherwise than by subscription by a nominee of a public company, where a person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition and the company has a beneficial interest in the shares.

(2) Article 154(1) and (2) does not apply—

- (a) to shares acquired by a nominee of a company when the company has no beneficial interest in those shares, or
- (b) to shares issued in consequence of an application made before 1st July 1983, or transferred in pursuance of an agreement to acquire them made before that date.

(3) Schedule 2 has effect for the interpretation of references in this Article to a company having, or not having, a beneficial interest in shares.

*Treatment of shares held by or for public company*

**156.**—(1) Except as provided by Article 158, the following applies to a public company—

- (a) where shares in the company are forfeited, or surrendered to the company in lieu, in pursuance of its articles, for failure to pay any sum payable in respect of the shares;

- (b) where shares in the company are acquired by it (otherwise than by any of the methods mentioned in Article 153 (3)(a) to (d)) and the company has a beneficial interest in the shares;
- (c) where the nominee of the company acquires shares in the company from a third person without financial assistance being given directly or indirectly by the company and the company has a beneficial interest in the shares; or
- (d) where a person acquires shares in the company with financial assistance given to him directly or indirectly by the company for the purpose of or in connection with the acquisition, and the company has a beneficial interest in the shares.

Schedule 2 has effect for the interpretation of references in this paragraph to the company having a beneficial interest in shares.

(2) Unless the shares or any interest of the company in them are previously disposed of, the company must, not later than the end of the relevant period from their forfeiture or surrender or, in a case within paragraph (1)(b), (c) or (d), their acquisition—

- (a) cancel them and diminish the amount of the share capital by the nominal value of the shares cancelled; and
- (b) where the effect of cancelling the shares will be that the nominal value of the company's allotted share capital is brought below the authorised minimum, apply for re-registration as a private company, stating the effect of the cancellation.

(3) For this purpose "the relevant period" is—

- (a) 3 years in the case of shares forfeited or surrendered to the company in lieu of forfeiture, or acquired as mentioned in paragraph (1)(b) or (c);
- (b) one year in the case of shares acquired as mentioned in paragraph (1)(d).

(4) The company and, in a case within paragraph (1)(c) or (d), the company's nominee or (as the case may be) the other shareholder must not exercise any voting rights in respect of the shares; and any purported exercise of those rights is void.

*Matters arising out of compliance with Article 156(2)*

**157.**—(1) The directors may take such steps as are requisite to enable the company to carry out its obligations under Article 156(2) without complying with Articles 145 and 146 (resolution to reduce share capital; application to court for approval).

(2) The steps taken may include the passing of a resolution to alter the company's memorandum so that it no longer states that the company is to be a public company; and the resolution may make such other alterations in the memorandum as are requisite in the circumstances.

Such a resolution is subject to Article 388 (copy to be forwarded to registrar within 15 days).

(3) The application for re-registration required by Article 156(2)(b) must be in the prescribed form and be signed by a director or secretary of

the company, and must be delivered to the registrar together with a printed copy of the memorandum and articles of the company as altered by the resolution.

(4) If the registrar is satisfied that the company may be re-registered under Article 156, he shall retain the application and other documents delivered with it and issue the company with a certificate of incorporation appropriate to a company that is not a public company; and—

- (a) the company by virtue of the issue of the certificate becomes a private company, and the alterations in the memorandum and articles set out in the resolution take effect accordingly, and
- (b) the certificate is conclusive evidence that the requirements of Articles 156 to 158 in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company is a private company.

*Further provisions supplementing Articles 156 and 157*

**158.**—(1) Where, after shares in a private company—

- (a) are forfeited in pursuance of the company's articles or are surrendered to the company in lieu of forfeiture, or
- (b) are acquired by the company (otherwise than by such surrender or forfeiture, and otherwise than by any of the methods mentioned in Article 153(3)), the company having a beneficial interest in the shares, or
- (c) are acquired by the nominee of a company in the circumstances mentioned in Article 156(1)(c), or
- (d) are acquired by any person in the circumstances mentioned in Article 156(1)(d),

the company is re-registered as a public company, Articles 156 and 157, and also Article 159, apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, but with the modification required by paragraph (2).

(2) That modification is to treat any reference to the relevant period from the forfeiture, surrender or acquisition as referring to the relevant period from the re-registration of the company as a public company.

(3) Schedule 2 has effect for the interpretation of the reference in paragraph (1)(b) to the company having a beneficial interest in shares.

(4) Where a public company or a nominee of a public company acquires shares in the company or an interest in such shares, and those shares are or that interest is shown in a balance sheet of the company as an asset, an amount equal to the value of the shares or (as the case may be) the value to the company of its interest in them shall be transferred out of profits available for dividend to a reserve fund and shall not then be available for distribution.

*Sanctions for non-compliance*

**159.**—(1) If a public company required by paragraph (2) of Article 156 to apply to be re-registered as a private company fails to do so before the



end of the relevant period referred to in that paragraph, Article 91 (restriction on public offers) applies to it as if it were a private company such as is mentioned in that Article; but, subject to this, the company continues to be treated for the purposes of this Order as a public company until it is so re-registered.

(2) If a company when required to do so by paragraph (2) of Article 156 (including that paragraph as applied by Article 158(1)) fails to cancel any shares in accordance with sub-paragraph (a) of that paragraph or to make an application for re-registration in accordance with sub-paragraph (b) of that paragraph, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Charges of public companies on own shares*

**160.**—(1) A lien or other charge of a public company on its own shares (whether taken expressly or otherwise), except a charge permitted by any of the following paragraphs, is void.

This is subject to Article 8 of the Consequential Provisions Order (saving for charges of old public companies on their own shares).

(2) In the case of any description of company, a charge on its own shares is permitted if the shares are not fully paid and the charge is for any amount payable in respect of the shares.

(3) In the case of a company whose ordinary business—

(a) includes the lending of money, or

(b) consists of the provision of credit or the bailment of goods under a hire purchase agreement, or both,

a charge of the company on its own shares is permitted (whether the shares are fully paid or not) if it arises in connection with a transaction entered into by the company in the ordinary course of its business.

(4) In the case of a company which is re-registered or is registered under Article 629 as a public company, a charge on its own shares is permitted if the charge was in existence immediately before the company's application for re-registration or (as the case may be) registration.

This paragraph does not apply in the case of such a company as is referred to in Article 8(3) of the Consequential Provisions Order (old public company remaining such after 31st December 1984 not having applied to be re-registered as a public company).

CHAPTER VI

FINANCIAL ASSISTANCE BY A COMPANY FOR ACQUISITION  
OF ITS OWN SHARES

*Provisions applying to both public and private companies*

*Financial assistance generally prohibited*

**161.**—(1) Subject to the following provisions of this Chapter, where a person is acquiring or is proposing to acquire shares in a company, it is

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not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.

(2) Subject to those provisions, where a person has acquired shares in a company and any liability has been incurred (by that or any other person) for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(3) If a company acts in contravention of this Article, it is liable to a fine, and every officer of it who is in default is liable to imprisonment or a fine, or both.

*Interpretation for this Chapter*

**162.—(1) In this Chapter—**

(a) “financial assistance” means—

- (i) financial assistance given by way of gift;
- (ii) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier’s own neglect or default, or by way of release or waiver;
- (iii) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under a loan or such other agreement; or
- (iv) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets;

(b) “distributable profits”, in relation to the giving of any financial assistance—

- (i) means those profits out of which the company could lawfully make a distribution equal in value to that assistance, and
- (ii) includes, in a case where the financial assistance is or includes a non-cash asset, any profit which, if the company were to make a distribution of that asset, would under Article 284 (distributions in kind) be available for that purpose, and

(c) “distribution” has the meaning given by Article 271(2).

(2) In paragraph (1)(a)(iv) “net assets” means the aggregate of the company’s assets, less the aggregate of its liabilities (“liabilities” to include any provision for liabilities or charges within paragraph 88 of Schedule 4).

(3) In this Chapter—

- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement

(whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and

- (b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring his financial position to what it was before the acquisition took place.

*Transactions not prohibited by Article 161*

163.—(1) Article 161(1) does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or its holding company if—

- (a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and
- (b) the assistance is given in good faith in the interests of the company.

(2) Article 161(2) does not prohibit a company from giving financial assistance if—

- (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of any such liability is but an incidental part of some larger purpose of the company, and
- (b) the assistance is given in good faith in the interests of the company.

(3) Article 161 does not prohibit—

- (a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up,
- (b) the allotment of bonus shares,
- (c) a reduction of capital confirmed by order of the court under Article 147,
- (d) a redemption or purchase of shares made in accordance with Chapter VII,
- (e) anything done in pursuance of an order of the court under Article 418 (compromises and arrangements with creditors and members),
- (f) anything done under an arrangement made in pursuance of Article 539 (acceptance of shares by liquidator in winding up as consideration for sale of property), or

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- (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of Article 559 (winding up imminent or in progress).
- (4) Article 161 does not prohibit—
- (a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business,
  - (b) the provision by a company in accordance with an employees' share scheme of money for the acquisition of fully paid shares in the company or its holding company,
  - (c) the making by a company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

*Special restriction for public companies*

**164.**—(1) In the case of a public company, Article 163(4) authorises the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.

(2) For this purpose the following definitions apply—

- (a) "net assets" means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities (taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given);
- (b) "liabilities" includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred, but uncertain as to amount or as to the date on which it will arise.

*Private companies*

*Relaxation of Article 161 for private companies*

**165.**—(1) Article 161 does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this Article, and Articles 166 to 168, are complied with as respects the giving of that assistance.

(2) The financial assistance may only be given if the company has net assets which are not thereby reduced or, to the extent that they are reduced, if the assistance is provided out of distributable profits.

Article 164(2) applies for the interpretation of this paragraph.

(3) This Article does not permit financial assistance to be given by a subsidiary in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.

(4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this Article must be approved by special resolution of the company in general meeting.

(5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company's holding company and a subsidiary of that other holding company (except, in any case, a company which is a wholly-owned subsidiary) shall also approve by special resolution in general meeting the giving of the financial assistance.

(6) The directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall before the financial assistance is given make a statutory declaration in the prescribed form complying with Article 166.

*Statutory declaration under Article 165*

**166.**—(1) A statutory declaration made by a company's directors under Article 165(6) shall contain such particulars of the financial assistance to be given, and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.

(2) The declaration shall state that the directors have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts; and either—

- (a) if it is intended to commence the winding up of the company within 12 months of that date, that the company will be able to pay its debts in full within 12 months of the commencement of the winding up, or
- (b) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.

(3) In forming their opinion for the purposes of paragraph (2), the directors shall take into account the same liabilities (including contingent and prospective liabilities) as would be relevant under Article 479 (winding up by the court) to the question whether the company is unable to pay its debts.

(4) The directors' statutory declaration shall have annexed to it a report addressed to them by their company's auditors stating that—

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- (a) they have enquired into the state of affairs of the company, and
  - (b) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in paragraph (2) is unreasonable in all the circumstances.
- (5) The statutory declaration and auditors' report shall be delivered to the registrar—
- (a) together with a copy of any special resolution passed by the company under Article 165 and delivered to the registrar in compliance with Article 388, or
  - (b) where no such resolution is required to be passed, within 15 days after the making of the declaration.
- (6) If a company fails to comply with paragraph (5), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (7) A director of a company who makes a statutory declaration under Article 165 without having reasonable grounds for the opinion expressed in it is liable to imprisonment or a fine, or both.

*Special resolution under Article 165*

167.—(1) A special resolution required by Article 165 to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that company make the statutory declaration required by that Article in connection with the giving of that assistance, or within the week immediately following that date.

(2) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution—

- (a) by the holders of not less in the aggregate than 10 per cent. in nominal value of the company's issued share capital or any class of it, or
- (b) if the company is not limited by shares, by not less than 10 per cent. of the company's members;

but the application shall not be made by a person who has consented to or voted in favour of the resolution.

(3) Article 64(3) to (10) (litigation to cancel resolution under Article 63) applies to applications under this Article as to applications under Article 64.

(4) A special resolution passed by a company is not effective for the purposes of Article 165—

- (a) unless the declaration made under paragraph (6) of that Article by the directors of the company, together with the auditors' report annexed to it, is available for inspection by members of the company at the meeting at which the resolution is passed,

- (b) if it is cancelled by the court on an application under this Article.

*Time for giving financial assistance under Article 165*

168.—(1) This Article applies as to the time before and after which financial assistance may not be given by a company in pursuance of Article 165.

(2) Where a special resolution is required by that Article to be passed approving the giving of the assistance, the assistance shall not be given before the expiry of the period of 4 weeks beginning with—

- (a) the date on which the special resolution is passed, or  
(b) where more than one such resolution is passed, the date on which the last of them is passed,

unless, as respects that resolution (or, if more than one, each of them) every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.

(3) If application for the cancellation of any such resolution is made under Article 167, the financial assistance shall not be given before the final determination of the application unless the court otherwise orders.

(4) The assistance shall not be given after the expiry of the period of 8 weeks beginning with—

- (a) the date on which the directors of the company proposing to give the assistance made their statutory declaration under Article 165, or  
(b) where that company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration, the date on which the earliest of the declarations is made,

unless the court, on an application under Article 167, otherwise orders.

CHAPTER VII

REDEEMABLE SHARES; PURCHASE BY A COMPANY OF ITS OWN SHARES

*Redemption and purchase generally*

*Power to issue redeemable shares*

169.—(1) Subject to the provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder.

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(2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid; and the terms of redemption must provide for payment on redemption.

*Financing, etc. of redemption*

**170.**—(1) Subject to paragraph (2) and to Articles 181 (private companies redeeming or purchasing own shares out of capital) and 188(4) (terms of redemption or purchase enforceable in a winding up)—

- (a) redeemable shares may only be redeemed out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and
- (b) any premium payable on redemption must be paid out of distributable profits of the company.

(2) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—

- (a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or
- (b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares),

whichever is the less; and in that case the amount of the company's share premium account shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this paragraph out of the proceeds of the issue of the new shares.

(3) Subject to the following provisions of this Chapter, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

(4) Shares redeemed under this Article shall be treated as cancelled on redemption, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.

(5) Without prejudice to paragraph (4), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.

*Stamp duty on redemption of shares*

**171.**—(1) For the purposes of Article 8 of the Finance (Miscellaneous Provisions) (Northern Ireland) Order 1973 (stamp duty on documents relating to chargeable transactions of capital companies), the issue of shares by a company in place of shares redeemed under Article 170 constitutes a chargeable transaction if, and only if, the actual value of the



shares so issued exceeds the value of the shares redeemed at the date of their redemption.

(2) Where the issue of the shares does constitute a chargeable transaction for those purposes the amount on which stamp duty on the relevant document relating to that transaction is chargeable under Article 8(5) of that Order is the difference between—

- (a) the amount on which that duty would be so chargeable if the shares had not been issued in place of shares redeemed under Article 170; and
- (b) the value of the shares redeemed at the date of their redemption.

(3) Subject to paragraph (4), for the purposes of paragraphs (1) and (2) shares issued by a company—

- (a) up to the nominal amount of any shares which the company has redeemed under Article 170; or
- (b) in pursuance of Article 170(5) before the redemption of shares which the company is about to redeem under that Article,

are to be regarded as issued in place of the shares redeemed or (as the case may be) about to be redeemed.

(4) Shares issued in pursuance of Article 170(5) are not to be regarded for the purposes of paragraphs (1) and (2) as issued in place of the shares about to be redeemed, unless those shares are redeemed within one month after the issue of the new shares.

*Power of company to purchase own shares*

172.—(1) Subject to the following provisions of this Chapter, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

(2) Articles 169 to 171 apply to the purchase by a company under this Article of its own shares as they apply to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the company's articles as required by Article 170(3).

(3) A company may not under this Article purchase its own shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

*Definitions of "off-market" and "market" purchase*

173.—(1) A purchase by a company of its own shares is "off-market" if the shares either—

- (a) are purchased otherwise than on a recognised stock exchange,  
or
- (b) are purchased on a recognised stock exchange but are not subject to a marketing arrangement on that stock exchange.

(2) For this purpose, a company's shares are subject to a marketing arrangement on a recognised stock exchange if either—

- (a) they are listed on that stock exchange; or

(b) the company has been afforded facilities for dealings in those shares to take place on that stock exchange without prior permission for individual transactions from the authority governing that stock exchange and without limit as to the time during which those facilities are to be available.

(3) A purchase by a company of its own shares is a "market" purchase if it is a purchase made on a recognised stock exchange, other than a purchase which is an off-market purchase by virtue of paragraph (1)(b).

*Authority for off-market purchase*

**174.**—(1) A company may only make an off-market purchase of its own shares in pursuance of a contract approved in advance in accordance with this Article or Article 175.

(2) The terms of the proposed contract must be authorised by a special resolution of the company before the contract is entered into; and the following paragraphs apply with respect to that authority and to resolutions conferring it.

(3) Subject to paragraph (4), the authority may be varied, revoked or from time to time renewed by special resolution of the company.

(4) In the case of a public company the authority conferred by the resolution must specify a date on which the authority is to expire; and in a resolution conferring or renewing authority that date must not be later than 18 months after that on which the resolution is passed.

(5) A special resolution to confer, vary, revoke or renew authority is not effective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

For this purpose—

(a) a member who holds shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;

(b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and

(c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

(6) Such a resolution is not effective for the purposes of this Article unless (if the proposed contract is in writing) a copy of the contract or (if not) a written memorandum of its terms is available for inspection by members of the company both—

(a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed, and

(b) at the meeting itself.

A memorandum of contract terms so made available must include the names of any members holding shares to which the contract relates; and a copy of the contract so made available must have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.

(7) A company may agree to a variation of an existing contract so approved, but only if the variation is authorised by a special resolution of the company before it is agreed to; and paragraphs (3) to (6) apply to the authority for a proposed variation as they apply to the authority for a proposed contract, save that a copy of the original contract or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with paragraph (6).

*Authority for contingent purchase contract*

175.—(1) A contingent purchase contract is a contract entered into by a company and relating to any of its shares—

- (a) which does not amount to a contract to purchase those shares, but
- (b) under which the company may (subject to any conditions) become entitled or obliged to purchase those shares.

(2) A company may only make a purchase of its own shares in pursuance of a contingent purchase contract if the contract is approved in advance by a special resolution of the company before the contract is entered into; and paragraphs (3) to (7) of Article 174 apply to the contract and its terms.

*Authority for market purchase*

176.—(1) A company shall not make a market purchase of its own shares unless the purchase has first been authorised by the company in general meeting.

(2) That authority—

- (a) may be general for that purpose, or limited to the purchase of shares of any particular class or description, and
- (b) may be unconditional or subject to conditions.

(3) The authority must—

- (a) specify the maximum number of shares authorised to be acquired,
- (b) determine both the maximum and the minimum prices which may be paid for the shares, and
- (c) specify a date on which it is to expire.

(4) The authority may be varied, revoked or from time to time renewed by the company in general meeting, but this is subject to paragraph (3); and in a resolution to confer or renew authority, the date on which the authority is to expire must not be later than 18 months after that on which the resolution is passed.

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(5) A company may under this Article make a purchase of its own shares after the expiry of the time limit imposed to comply with paragraph (3)(c), if the contract of purchase was concluded before the authority expired and the terms of the authority permitted the company to make a contract of purchase which would or might be executed wholly or partly after its expiration.

(6) A resolution to confer or vary authority under this Article may determine either or both the maximum and minimum prices for purchase by—

- (a) specifying a particular sum, or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(7) A resolution of a company conferring, varying, revoking or renewing authority under this Article is subject to Article 388 (copy of resolution to be sent to registrar within 15 days).

*Assignment or release of company's right to purchase own shares*

177.—(1) The rights of a company under a contract approved under Article 174 or 175, or under a contract for a purchase authorised under Article 176, are not capable of being assigned.

(2) An agreement by a company to release its rights under a contract approved under Article 174 or 175 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into; and paragraphs (3) to (7) of Article 174 apply to approval for a proposed release agreement as to authority for a proposed variation of an existing contract.

*Payments apart from purchase price to be made out of distributable profits*

178.—(1) A payment made by a company in consideration of—

- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract approved under Article 175, or
- (b) the variation of a contract approved under Article 174 or 175, or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under Article 174 or 175 or under a contract for a purchase authorised under Article 176,

must be made out of the company's distributable profits.

(2) If the requirements of paragraph (1) are not satisfied in relation to a contract—

- (a) in a case within paragraph (1)(a), no purchase by the company of its own shares in pursuance of that contract is lawful under this Chapter,

- (b) in a case within paragraph (1)(b), no such purchase following the variation is lawful under this Chapter, and
- (c) in a case within paragraph (1)(c), the purported release is void.

*Disclosure by company of purchase of own shares*

179.—(1) Within the period of 28 days beginning with the date on which any shares purchased by a company under this Chapter are delivered to it, the company shall deliver to the registrar for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

(2) In the case of a public company, the return shall also state—

- (a) the aggregate amount paid by the company for the shares; and
- (b) the maximum and minimum prices paid in respect of shares of each class purchased.

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the registrar; and in such a case the amount required to be stated under paragraph (2)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

(4) Where a company enters into a contract approved under Article 174 or 175, or a contract for a purchase authorised under Article 176, the company shall keep at its registered office—

- (a) if the contract is in writing, a copy of it; and
- (b) if not, a memorandum of its terms,

from the conclusion of the contract until the end of the period of 10 years beginning with the date on which the purchase of all the shares in pursuance of the contract is completed or (as the case may be) the date on which the contract otherwise determines.

(5) Every copy and memorandum so required to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection) be open to inspection without charge—

- (a) by any member of the company, and
- (b) if it is a public company, by any other person.

(6) If default is made in delivering to the registrar any return required by this Article, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) If default is made in complying with paragraph (4), or if an inspection required under paragraph (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the case of a refusal of an inspection required under paragraph (5) of a copy or memorandum, the court may by order compel an immediate inspection of it.

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(9) The obligation of a company under paragraph (4) to keep a copy of any contract or (as the case may be) a memorandum of its terms applies to any variation of the contract so long as it applies to the contract.

*The capital redemption reserve*

**180.**—(1) Where under this Chapter shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with Article 170(4) on cancellation of the shares redeemed or purchased shall be transferred to a reserve, called "the capital redemption reserve".

(2) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) But paragraph (2) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under Article 181.

(4) The provisions of this Order relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

*Redemption or purchase of own shares out of capital*  
*(private companies only)*

*Power of private companies to redeem or purchase own shares out of capital*

**181.**—(1) Subject to the following provisions of this Chapter, a private company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles, make a payment in respect of the redemption or purchase under Article 170 or (as the case may be) Article 172, of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

(2) References in this Chapter to payment out of capital are (subject to paragraph (6)) to any payment so made, whether or not it would be regarded apart from this Article as a payment out of capital.

(3) The payment which may (if authorised in accordance with the following provisions of this Chapter) be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with—

- (a) any available profits of the company, and
- (b) the proceeds of any fresh issue of shares made for the purposes of the redemption or purchase,

is equal to the price of redemption or purchase; and the payment permissible under this paragraph is referred to in this Chapter as the permissible capital payment for the shares.

(4) Subject to paragraph (6), if the permissible capital payment for shares redeemed or purchased is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(5) Subject to paragraph (6), if the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased—

- (a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and
- (b) any amount representing unrealised profits of the company for the time being standing to the credit of any reserve maintained by the company in accordance with paragraph 34 of Schedule 4 (revaluation reserve),

may be reduced by a sum not exceeding (or by sums not in the aggregate exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.

(6) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this Article, the references in paragraphs (4) and (5) to the permissible capital payment are to be read as referring to the aggregate of that payment and those proceeds.

*Availability of profits for the purposes of Article 181*

182.—(1) The reference in Article 181(3)(a) to available profits of the company is to the company's profits which are available for distribution (within the meaning of Part IX); but the question whether a company has any profits so available and the amount of any such profits are to be determined for the purposes of that Article in accordance with the following paragraphs, instead of Articles 278 to 283.

(2) Subject to paragraph (3), that question is to be determined by reference to—

- (a) profits, losses, assets and liabilities;
- (b) provisions of any of the kinds mentioned in paragraphs 87 and 88 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.); and
- (c) share capital and reserves (including undistributable reserves),

as stated in the relevant accounts for determining the permissible capital payment for shares.

(3) The relevant accounts for this purpose are such accounts, prepared as at any date within the period for determining the amount of the permissible capital payment, as are necessary to enable a reasonable judgment to be made as to the amounts of any of the items mentioned in paragraph (2)(a) to (c).

(4) For the purposes of determining the amount of the permissible capital payment for shares, the amount of the company's available

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profits (if any) determined in accordance with paragraphs (2) and (3) is treated as reduced by the amount of any distributions lawfully made by the company after the date of the relevant accounts and before the end of the period for determining the amount of that payment.

(5) The reference in paragraph (4) to distributions lawfully made by the company includes—

- (a) financial assistance lawfully given out of distributable profits in a case falling within Article 164 or 165,
- (b) any payment lawfully made by the company in respect of the purchase by it of any shares in the company (except a payment lawfully made otherwise than out of distributable profits), and
- (c) a payment of any description specified in Article 178(1) lawfully made by the company.

(6) References in this Article to the period for determining the amount of the permissible capital payment for shares are to the period of 3 months ending with the date on which the statutory declaration of the directors purporting to specify the amount of that payment is made in accordance with Article 183(3).

*Conditions for payment out of capital*

**183.**—(1) Subject to any order of the court under Article 187, a payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of this Article and Articles 184 and 185 are satisfied.

(2) The payment out of capital must be approved by a special resolution of the company.

(3) The company's directors must make a statutory declaration specifying the amount of the permissible capital payment for the shares in question and stating that, having made full inquiry into the affairs and prospects of the company, they have formed the opinion—

- (a) as regards its initial situation immediately following the date on which the payment out of capital is proposed to be made, that there will be no grounds on which the company could then be found unable to pay its debts, and
- (b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(4) In forming their opinion for the purposes of paragraph (3)(a), the directors shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under Article 479 (winding up by the court) to the question whether a company is unable to pay its debts.



(5) The directors' statutory declaration must be in the prescribed form and contain such information with respect to the nature of the company's business as may be prescribed, and must in addition have annexed to it a report addressed to the directors by the company's auditors stating that—

- (a) they have inquired into the company's state of affairs; and
- (b) the amount specified in the declaration as the permissible capital payment for the shares in question is in their view properly determined in accordance with Articles 181 and 182; and
- (c) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in paragraph (3) is unreasonable in all the circumstances.

(6) A director who makes a declaration under this Article without having reasonable grounds for the opinion expressed in the declaration is liable to imprisonment or a fine, or both.

*Procedure for special resolution under Article 183*

**184.**—(1) The resolution required by Article 183 must be passed on, or within the week immediately following, the date on which the directors make the statutory declaration required by that Article; and the payment out of capital must be made no earlier than 5 nor more than 7 weeks after the date of the resolution.

(2) The resolution is ineffective if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(3) For the purposes of paragraph (2), a member who holds such shares is to be regarded as exercising the voting rights carried by them in voting on the resolution not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll; and, notwithstanding anything in a company's articles, any member of the company may demand a poll on that question.

(4) The resolution is ineffective unless the statutory declaration and auditors' report required by Article 183 are available for inspection by members of the company at the meeting at which the resolution is passed.

(5) For the purposes of this Article a vote and a demand for a poll by a person as proxy for a member are the same (respectively) as a vote and demand by the member.

*Publicity for proposed payment out of capital*

**185.**—(1) Within the week immediately following the date of the resolution for payment out of capital the company must cause to be published in the Belfast Gazette a notice—

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- (a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase or both (as the case may be);
- (b) specifying the amount of the permissible capital payment for the shares in question and the date of the resolution under Article 183;
- (c) stating that the statutory declaration of the directors and the auditors' report required by that Article are available for inspection at the company's registered office; and
- (d) stating that any creditor of the company may at any time within the 5 weeks immediately following the date of the resolution for payment out of capital apply to the court under Article 186 for an order prohibiting the payment.

(2) Within the week immediately following the date of the resolution the company must also either cause a notice to the same effect as that required by paragraph (1) to be published in a newspaper circulating throughout Northern Ireland or give notice in writing to that effect to each of its creditors.

(3) References in this Article to the first notice date are to the day on which the company first publishes the notice required by paragraph (1) or first publishes or gives the notice required by paragraph (2) (whichever is the earlier).

(4) Not later than the first notice date the company must deliver to the registrar a copy of the statutory declaration of the directors and of the auditors' report required by Article 183.

(5) The statutory declaration and auditors' report—

- (a) shall be kept at the company's registered office throughout the period beginning with the first notice date and ending 5 weeks after the date of the resolution for payment out of capital, and
- (b) shall during business hours on any day during that period be open to the inspection of any member or creditor of the company without charge.

(6) If an inspection required under paragraph (5) is refused, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(7) In the case of refusal of an inspection required under paragraph (5) of a declaration or report, the court may by order compel an immediate inspection of that declaration or report.

*Objections by company's members or creditors*

**186.**—(1) Where a private company passes a special resolution approving for the purposes of this Chapter any payment out of capital for the redemption or purchase of any of its shares—

- (a) any member of the company other than one who consented to or voted in favour of the resolution; and

(b) any creditor of the company,  
may within 5 weeks of the date on which the resolution was passed apply to the court for cancellation of the resolution.

(2) The application may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint in writing for the purpose.

(3) If an application is made, the company shall—

(a) forthwith give notice in the prescribed form of that fact to the registrar; and

(b) within 15 days from the making of any order of the court on the hearing of the application, or such longer period as the court may by order direct, deliver an office copy of the order to the registrar.

(4) A company which fails to comply with paragraph (3) and any officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Powers of court on application under Article 186*

187.—(1) On the hearing of an application under Article 186 the court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the court's satisfaction for the purchase of the interests of dissentient members or for the protection of dissentient creditors (as the case may be); and the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(2) Without prejudice to its powers under paragraph (1), the court shall make an order on such terms and conditions as it thinks fit either confirming or cancelling the resolution; and, if the court confirms the resolution, it may in particular by order alter or extend any date or period of time specified in the resolution or in any provision in this Chapter which applies to the redemption or purchase of shares to which the resolution refers.

(3) The court's order may, if the court thinks fit, provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital, and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(4) If the court's order requires the company not to make any, or any specified, alteration in its memorandum or articles, the company has not then power without leave of the court to make any such alteration in breach of the requirement.

(5) An alteration in the memorandum or articles made by virtue of an order under this Article, if not made by resolution of the company, is of the same effect as if duly made by resolution; and this Order applies accordingly to the memorandum or articles as so altered.

*Effect of company's failure to redeem or purchase*

**188.—(1)** This Article has effect where a company has, on or after 1st July 1983—

- (a) issued shares on terms that they are or are liable to be redeemed,  
or
- (b) agreed to purchase any of its own shares.

(2) The company is not liable in damages in respect of any failure on its part to redeem or purchase any of the shares.

(3) Paragraph (2) is without prejudice to any right of the holder of the shares other than his right to sue the company for damages in respect of its failure; but the court shall not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares in question out of distributable profits.

(4) If the company is wound up and at the commencement of the winding up any of the shares have not been redeemed or purchased, the terms of redemption or purchase may be enforced against the company; and when shares are redeemed or purchased under this paragraph they are treated as cancelled.

(5) However, paragraph (4) does not apply if—

- (a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up, or
- (b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(6) There shall be paid in priority to any amount which the company is liable under paragraph (4) to pay in respect of any shares—

- (a) all other debts and liabilities of the company (other than any due to members in their character as such),
- (b) if other shares carry rights (whether as to capital or as to income) which are preferred to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights;

but, subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

(7) Where by virtue of Article 25 of the Bankruptcy Amendment (Northern Ireland) Order 1980 (payment of interest on debts) as applied by Article 569 (application of bankruptcy rules to insolvent companies) a creditor of a company is entitled to payment of any interest only after

payment of all other debts of the company, the company's debts and liabilities for the purposes of paragraph (6) include the liability to pay that interest.

*Power of Department to modify this Chapter*

**189.**—(1) The Department may by regulations modify the provisions of this Chapter with respect to any of the following matters—

- (a) the authority required for a purchase by a company of its own shares,
- (b) the authority required for the release by a company of its rights under a contract for the purchase of its own shares or a contract under which the company may (subject to any conditions) become entitled or obliged to purchase its own shares,
- (c) the information to be included in a return delivered by a company to the registrar in accordance with Article 179(1),
- (d) the matters to be dealt with in the statutory declaration of the directors under Article 183 with a view to indicating their opinion of their company's ability to make a proposed payment out of capital with due regard to its financial situation and prospects, and
- (e) the contents of the auditors' report required by that Article to be annexed to that declaration.

(2) The Department may also by regulations make such provision (including modification of the provisions of this Chapter) as appears to it to be appropriate—

- (a) for wholly or partly relieving companies from the requirement of Article 181(3)(a) that any available profits must be taken into account in determining the amount of the permissible capital payment for shares under that Article, or
- (b) for permitting a company's share premium account to be applied, to any extent appearing to the Department to be appropriate, in providing for the premiums payable on the redemption or purchase by the company of any of its own shares.

(3) Regulations under this Article may make such further modification of any provisions of this Chapter as appears to the Department to be reasonably necessary in consequence of any provision made under such regulations by virtue of paragraph (1) or (2).

(4) No regulations shall be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

*Transitional cases arising under this Chapter; and savings*

**190.**—(1) Any preference shares issued by a company before 1st July 1983 which could but for the repeal by the Order of 1982 of section 58 of the Act of 1960 (power to issue redeemable preference shares) have been

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redeemed under that section are subject to redemption in accordance with the provisions of this Chapter.

(2) In a case to which Articles 169 and 170 apply by virtue of this Article, any premium payable on redemption may, notwithstanding the repeal by the Order of 1982 of any provision of the Act of 1960, be paid out of the share premium account instead of out of profits, or partly out of that account and partly out of profits (but subject to the provisions of this Chapter so far as payment is out of profits).

(3) Any capital redemption reserve fund established before 1st July 1983 by a company for the purposes of section 58 of the Act of 1960 is to be known as the company's capital redemption reserve and to be treated as if it had been established for the purposes of Article 180; and accordingly, a reference in any statutory provision or in the articles of any company, or in any other instrument, to a company's capital redemption reserve fund is to be construed as a reference to the company's capital redemption reserve.

*Interpretation for Chapter VII*

**191.** In this Chapter—

- (a) "distributable profits", in relation to the making of any payment by a company, means those profits out of which it could lawfully make a distribution (within the meaning given by Article 271(2)), equal in value to the payment, and
- (b) "permissible capital payment" means the payment permitted by Article 181;

and references to payment out of capital are to be construed in accordance with Article 181.

**CHAPTER VIII**

**MISCELLANEOUS PROVISIONS ABOUT SHARES AND DEBENTURES**

*Share and debenture certificates, transfers and warrants*

*Nature, transfer and numbering of shares*

**192.**—(1) The shares or other interest of any member in a company—

- (a) are personal estate and are not in the nature of real estate,
- (b) are transferable in manner provided by the company's articles, but subject to the Stock Transfer Act (Northern Ireland) 1963 (which enables securities of certain descriptions to be transferred by a simplified process).

(2) Each share in a company having a share capital shall be distinguished by its appropriate number; except that, if at any time all the issued shares in a company, or all the issued shares in it of a particular

class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

*Transfer and registration*

**193.**—(1) It is not lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to it, or the transfer is an exempt transfer within the Stock Transfer Act 1982.

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This applies notwithstanding anything in the company's articles.

(2) Paragraph (1) does not prejudice any power of the company to register as shareholder or debenture holder a person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(3) A transfer of the share or other interest of a deceased member of a company made by his personal representative, although the personal representative is not himself a member of the company, is as valid as if he had been such a member at the time of the execution of the instrument of transfer.

(4) On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(5) If a company refuses to register a transfer of shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

(6) If default is made in complying with paragraph (5), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Certification of transfers*

**194.**—(1) The certification by a company of any instrument of transfer of any shares in, or debentures of, the company is to be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on their face show a *prima facie* title to the shares or debentures in the transferor named in the instrument.

However, the certification is not to be taken as a representation that the transferor has any title to the shares or debentures.

(2) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this Article—

(a) an instrument of transfer is deemed certificated if it bears the words "certificate lodged" (or words to the like effect);

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- (b) the certification of an instrument of transfer is deemed made by a company if—
  - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf, and
  - (ii) the certification is signed by a person authorised to certify transfers on the company's behalf or by an officer or servant either of the company or of a body corporate so authorised;
- (c) a certification is deemed signed by a person if—
  - (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and
  - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by a person authorised to use the signature or initials for the purpose of certifying transfers on the company's behalf.

*Duty of company as to issue of certificates*

**195.—(1)** Subject to the following provisions, every company shall—

- (a) within 2 months after the allotment of any of its shares, debentures or debenture stock, and
- (b) within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company,

complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred (unless the conditions of issue of the shares, debentures or debenture stock otherwise provide).

(2) For this purpose, "transfer" means a transfer duly stamped and otherwise valid, or an exempt transfer within the Stock Transfer Act 1982, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) Paragraph (1) does not apply in the case of a transfer to any person where, by virtue of regulations under section 3 of the Stock Transfer Act 1982, he is not entitled to a certificate or other document of or evidencing title in respect of the securities transferred; but if in such a case the transferee—

- (a) subsequently becomes entitled to such a certificate or other document by virtue of any provision of those regulations, and
- (b) gives notice in writing of that fact to the company,

this Article has effect as if the reference in paragraph (1)(b) to the date of the lodging of the transfer were a reference to the date of the notice.

(4) A company of which shares or debentures are allotted or debenture stock is allotted to a stock exchange nominee, or with which a transfer is



lodged for transferring any shares, debentures or debenture stock of the company to a stock exchange nominee, is not required, in consequence of the allotment or the lodging of the transfer, to comply with paragraph (1).

“Stock exchange nominee” means any person whom the Department designates by order as a nominee of The Stock Exchange for the purposes of this Article.

(5) If default is made in complying with paragraph (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) If a company on which a notice has been served requiring it to make good any default in complying with paragraph (1) fails to make good the default within 10 days after service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, exercise the power of paragraph (7).

(7) The court may make an order directing the company and any officer of it to make good the default within such time as may be specified in the order; and the order may provide that all costs of and incidental to the application shall be borne by the company or by an officer of it responsible for the default.

*Certificate to be evidence of title*

196. A certificate, under the common seal of the company or the seal kept by the company by virtue of Article 50, specifying any shares held by a member, is prima facie evidence of his title to the shares.

*Evidence of grant of representation or confirmation as executor*

197. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company as sufficient evidence of the grant.

This has effect notwithstanding anything in the company's articles.

*Issue and effect of share warrant to bearer*

198.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares specified in it, and may provide (by coupons or otherwise) for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant is termed a “share warrant” and entitles the bearer to the shares specified in it; and the shares may be transferred by delivery of the warrant.

*Register of debenture holders*

**199.**—(1) Neither a register of holders of debentures of a company nor a duplicate of any such register or part of any such register which is kept outside Northern Ireland shall, if kept in Northern Ireland, be kept elsewhere than—

- (a) at the company's registered office; or
- (b) at any office of the company at which the work of making it up is done; or
- (c) if the company arranges with some other person for the making up of the register or duplicate to be undertaken on its behalf by that other person, at the office of that other person at which the work is done.

(2) Where a company keeps in Northern Ireland both such a register and such a duplicate, it shall keep them at the same place.

(3) Every company which keeps any such register or duplicate in Northern Ireland shall send to the registrar notice (in the prescribed form) of the place where the register or duplicate is kept and of any change in that place.

(4) But a company is not bound to send notice under paragraph (3) where the register or duplicate has, at all times since it came into existence, been kept at the company's registered office.

(5) Where a company makes default in complying with paragraph (1) or (2) or makes default for 14 days in complying with paragraph (3), the company and every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) Where the register of holders of debentures of the company is kept at the office of some person other than the company and by reason of any default of his the company makes default in complying with paragraph (1), (2) or (3), that other person is liable to the same penalty as if he were an officer of the company who was in default.

*Right to inspect register*

**200.**—(1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may impose in general meeting, but so that not less than 2 hours in each day are allowed for inspection), be open to the inspection—

- (a) of the registered holder of any such debentures or any holder of shares in the company without fee; and
- (b) of any other person on payment of a fee of 5 pence or such less sum as may be determined by the company.

(2) Any such registered holder of debentures or holder of shares, or any other person, may require a copy of the register of the holders of

debentures of the company or any part of it, on payment of 10 pence (or such less sum as may be determined by the company) for every 100 words, or fractional part of 100 words, required to be copied.

(3) A copy of any trust deed for securing an issue of debentures shall be forwarded to every holder of any such debentures at his request on payment—

- (a) in the case of a printed trust deed, of 20 pence (or such less sum as may be determined by the company), or
- (b) where the trust deed has not been printed, of 10 pence (or such less sum as may be so determined), for every 100 words, or fractional part of 100 words, required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) Where a company is in default as mentioned in paragraph (4), the court may by order compel an immediate inspection of the register or direct that the copies required be sent to the person requiring them.

(6) For the purposes of this Article, a register is deemed to be duly closed if closed in accordance with provisions contained in the company's articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.

(7) Liability incurred by a company from the making or deletion of an entry in its register of debenture holders, or from a failure to make or delete any such entry, is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred.

This is without prejudice to any lesser period of limitation.

#### *Liability of trustees of debentures*

201.—(1) Subject to this Article, any provision contained—

- (a) in a trust deed for securing an issue of debentures, or
- (b) in any contract with the holders of debentures secured by a trust deed,

is void in so far as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Paragraph (1) does not invalidate—

- (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given—

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- (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and
  - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Paragraph (1) does not operate—
- (a) to invalidate any provision in force on 1st April 1961 so long as any person then entitled to the benefit of that provision or afterwards given the benefit of that provision under paragraph (4) remains a trustee of the deed in question, or
  - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by paragraph (3), the benefit of that provision may be given either—
- (a) to all trustees of the deed, present and future; or
  - (b) to any named trustees or proposed trustees of it,
- by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

*Perpetual debentures*

**202.** A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency (however remote), or on the expiration of a period (however long), any rule of equity to the contrary notwithstanding.

This applies to debentures whenever issued, and to deeds whenever executed.

*Power to re-issue redeemed debentures*

**203.—(1)** Where (at any time) a company has redeemed debentures previously issued, then—

- (a) unless provision to the contrary, whether express or implied, is contained in its articles or in any contract entered into by the company; or
- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company has, and is deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures, the person entitled to the debentures has, and is deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has (at any time) deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not deemed to have been redeemed by reason only of the company's account having ceased to be in debit while the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power which by this Article is given to or deemed to be possessed by a company is to be treated as the issue of a new debenture for the purposes of stamp duty; but it is not to be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

This applies whenever the issue or re-issue was made.

(5) A person lending money on the security of a debenture re-issued under this Article which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect of it, unless he had notice (or, but for his negligence, might have discovered) that the debenture was not duly stamped; but in that case the company is liable to pay the proper stamp duty and penalty.

#### *Contract to subscribe for debentures*

**204.** A contract with a company to take up and pay for debentures of the company may be enforced by an order for specific performance.

#### *Payment of debts out of assets subject to floating charge*

**205.**—(1) This Article applies where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge.

(2) If the company is not at the time in course of being wound up, the debts which in a winding up are, under the relevant provisions of Chapter V of Part XX relating to preferential payments, to be paid in priority to all other debts shall be paid out of assets coming to the hands of the receiver or other person taking possession, in priority to any claims for principal or interest in respect of the debentures.

(3) In the application of those provisions of Part XX, Article 570 and Schedule 18 are to be read as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the

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termination of employment before or by the effect of the appointment of the receiver or possession being taken as mentioned in paragraph (1).

(4) The periods of time mentioned in those provisions of Part XX are to be reckoned from the date of the appointment of the receiver or possession being taken as aforesaid, as the case may be; and in Schedule 18 as it applies for the purposes of this Article "the relevant date" means that date.

(5) Payments made under this Article shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

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**DISCLOSURE OF INTERESTS IN SHARES**

*Individual and group acquisitions*

*Obligation of disclosure; the cases in which it may arise and "the relevant time"*

**206.—**(1) Where a person either—

- (a) to his knowledge acquires an interest in shares comprised in a public company's relevant share capital, or ceases to be interested in shares so comprised (whether or not retaining an interest in other shares so comprised), or
- (b) becomes aware that he has acquired an interest in shares so comprised or that he has ceased to be interested in shares so comprised in which he was previously interested,

then in certain circumstances he comes under an obligation ("the obligation of disclosure") to make notification to the company of the interests which he has, or had, in its shares.

(2) In relation to a public company, "relevant share capital" means the company's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company; and it is hereby declared for the avoidance of doubt that—

- (a) where a company's share capital is divided into different classes of shares, references in this Part to a percentage of the nominal value of its relevant share capital are to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately, and
- (b) the temporary suspension of voting rights in respect of shares comprised in issued share capital of a company of any such class does not affect the application of this Part in relation to interests in those or any other shares comprised in that class.

(3) Where, otherwise than in circumstances within paragraph (1), a person—

- (a) is aware at the time when it occurs of any change of circumstances affecting facts relevant to the application of Article 207 to an existing interest of his in shares comprised in a company's share capital of any description, or
- (b) otherwise becomes aware of any such facts (whether or not arising from any such change of circumstances),

then in certain circumstances he comes under the obligation of disclosure.

(4) The existence of the obligation in a particular case depends (in part) on circumstances obtaining before and after whatever is in that case the relevant time; and that is—

- (a) in a case within paragraph (1)(a) or (3)(a), the time of the event or change of circumstances there mentioned, and
- (b) in a case within paragraph (1)(b) or (3)(b), the time at which the person became aware of the facts in question.

#### *Interests to be disclosed*

207.—(1) For the purposes of the obligation of disclosure, the interests to be taken into account are those in relevant share capital of the company concerned.

(2) A person has a notifiable interest at any time when he is interested in shares comprised in that share capital of an aggregate nominal value equal to or more than the percentage of the nominal value of that share capital which is for the time being the notifiable percentage.

(3) All facts relevant to determining whether a person has a notifiable interest at any time (or the percentage level of his interest) are taken to be what he knows the facts to be at that time.

(4) The obligation of disclosure arises under Article 206(1) or (3) where the person has a notifiable interest immediately after the relevant time, but did not have such an interest immediately before that time.

(5) The obligation also arises under Article 206(1) where—

- (a) the person had a notifiable interest immediately before the relevant time, but does not have such an interest immediately after it, or
- (b) he had a notifiable interest immediately before that time, and has such an interest immediately after it, but the percentage levels of his interest immediately before and immediately after that time are not the same.

#### *"Percentage level" in relation to notifiable interests*

208.—(1) Subject to the qualification mentioned in paragraph (2), "percentage level", in Article 207(5)(b), means the percentage figure found by expressing the aggregate nominal value of all the shares

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comprised in the share capital concerned in which the person is interested immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number.

(2) Where the nominal value of the share capital is greater immediately after the relevant time than it was immediately before, the percentage level of the person's interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.

*The notifiable percentage*

**209.**—(1) The reference in Article 207(2) to the notifiable percentage is to 5 per cent. or such other percentage as may be prescribed by regulations under this Article.

(2) The Department may by regulations prescribe the percentage to apply in determining whether a person's interest in a company's shares is notifiable under Article 206.

No regulations shall be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(3) Where in consequence of a reduction in the percentage made by such regulations a person's interest in a company's shares becomes notifiable, he then comes under the obligation of disclosure in respect of it; and the obligation must be performed within the period of 10 days next following the day on which it arises.

*Particulars to be contained in notification*

**210.**—(1) Where notification is required by Article 206 with respect to a person's interest (if any) in shares comprised in relevant share capital of a public company, the obligation to make the notification must (except where Article 209(3) applies) be performed within the period of 5 days next following the day on which that obligation arises; and the notification must be in writing to the company.

(2) The notification must specify the share capital to which it relates, and must also—

- (a) state the number of shares comprised in that share capital in which the person making the notification knows he was interested immediately after the time when the obligation arose, or
- (b) in a case where the person no longer has a notifiable interest in shares comprised in that share capital, state that he no longer has that interest.

(3) A notification with respect to a person's interest in a company's relevant share capital (other than one stating that he no longer has a notifiable interest in shares comprised in that share capital) shall include particulars of—



(a) the identity of each registered holder of shares to which the notification relates, and

(b) the number of those shares held by each such registered holder, so far as known to the person making the notification at the date when the notification is made.

(4) A person who has an interest in shares comprised in a company's relevant share capital, that interest being notifiable, is under obligation to notify the company in writing—

(a) of any particulars in relation to those shares which are specified in paragraph (3), and

(b) of any change in those particulars,

of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he comes under any further obligation of disclosure with respect to his interest in shares comprised in that share capital.

An obligation arising under this paragraph must be performed within the period of 5 days next following the day on which it arises.

(5) The reference in paragraph (4) to an interest notification date, in relation to a person's interest in shares comprised in a public company's relevant share capital, is to either of the following—

(a) the date of any notification made by him with respect to his interest under this Part, and

(b) where he has failed to make a notification, the date on which the period allowed for making it came to an end.

(6) A person who at any time has an interest in shares which is notifiable is to be regarded under paragraph (4) as continuing to have a notifiable interest in them unless and until he comes under obligation to make a notification stating that he no longer has such an interest in those shares.

#### *Notification of family and corporate interests*

211.—(1) For the purposes of Articles 206 to 210, a person is taken to be interested in any shares in which his spouse or any infant child, step-child or adopted child of his is interested.

(2) For those purposes, a person is taken to be interested in shares if a body corporate is interested in them and—

(a) that body or its directors are accustomed to act in accordance with his directions or instructions, or

(b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(3) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body

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corporate (“the effective voting power”) then, for the purposes of paragraph (2)(b), the effective voting power is taken as exercisable by that person.

(4) For the purposes of paragraphs (2) and (3), a person is entitled to exercise or control the exercise of voting power if—

- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
- (b) he is under an obligation (whether or not so subject) the fulfilment of which would make him so entitled.

*Agreement to acquire interests in a particular company*

**212.**—(1) In certain circumstances the obligation of disclosure may arise from an agreement between 2 or more persons which includes provision for the acquisition by any one or more of them of interests in shares of a particular public company (“the target company”), being shares comprised in the relevant share capital of that company.

(2) This Article applies to such an agreement if—

- (a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in that company’s shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the company’s shares to which the agreement relates), and
- (b) any interest in the company’s shares is in fact acquired by any of the parties in pursuance of the agreement;

and in relation to such an agreement references in this Article and in Articles 213 and 214, to the target company are to the company which is the target company for that agreement in accordance with this paragraph and paragraph (1).

(3) The reference in paragraph (2)(a) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into any agreement for the exercise, or for control of the exercise, of any of those rights by another person).

(4) Once any interest in shares in the target company has been acquired in pursuance of such an agreement as is mentioned in paragraph (1), this Article continues to apply to that agreement irrespective of—

- (a) whether or not any further acquisitions of interests in the company’s shares take place in pursuance of the agreement, and
- (b) any change in the persons who are for the time being parties to it, and
- (c) any variation of the agreement,

so long as the agreement continues to include provisions of any description mentioned in paragraph (2)(a).

References in this paragraph to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

(5) In this Article and also in references elsewhere in this Part to an agreement to which this Article applies, "agreement" includes any agreement or arrangement; and references in this Article to provisions of an agreement—

(a) accordingly include undertakings, expectations or understandings operative under any arrangement, and

(b) (without prejudice to sub-paragraph (a)) also include any provisions, whether express or implied and whether absolute or not.

(6) However, this Article does not apply to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; nor does the Article apply to an agreement to underwrite or sub-underwrite any offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

*Obligation of disclosure arising under Article 212*

213.—(1) In the case of an agreement to which Article 212 applies, each party to the agreement is taken (for the purposes of the obligation of disclosure) to be interested in all shares in the target company in which any other party to it is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

(2) For those purposes, and also for those of Article 214, an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of Article 212 and this Article in relation to the agreement.

(3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under Article 211 or by the application of Article 212 and this Article in relation to any other agreement with respect to shares in the target company to which he is a party.

(4) A notification with respect to his interest in shares in the target company made to that company under this Part by a person who is for the time being a party to an agreement to which Article 212 applies shall—

(a) state that the person making the notification is a party to such an agreement,

(b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and

(c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of Article 212 and this Article and, if so, the number of those shares.

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(5) Where a person makes a notification to a company under this Part in consequence of ceasing to be interested in any shares of that company by virtue of the fact that he or any other person has ceased to be a party to an agreement to which Article 212 applies, the notification shall include a statement that he or that other person has ceased to be a party to the agreement (as the case may require) and also (in the latter case) the name and (if known to him) the address of that other.

*Obligation of persons acting together to keep each other informed*

**214.—(1)** A person who is a party to an agreement to which Article 212 applies is subject to the requirements of this Article at any time when—

- (a) the target company is a public company, and he knows it to be so, and
- (b) the shares in that company to which the agreement relates consist of or include shares comprised in relevant share capital of the company, and he knows that to be the case; and
- (c) he knows the facts which make the agreement one to which Article 212 applies.

(2) Such a person is under obligation to notify every other party to the agreement, in writing, of the relevant particulars of his interest (if any) apart from the agreement in shares comprised in relevant share capital of the target company—

- (a) on his first becoming subject to the requirements of this Article, and
- (b) on each occurrence after that time while he is still subject to those requirements of any event or circumstances within Article 206(1) (as it applies to his case otherwise than by reference to interests treated as his under Article 213 as applying to that agreement).

(3) The relevant particulars to be notified under paragraph (2) are—

- (a) the number of shares (if any) comprised in the target company's relevant share capital in which the person giving the notice would be required to state his interest if he were under the obligation of disclosure with respect to that interest (apart from the agreement) immediately after the time when the obligation to give notice under paragraph (2) arose, and
- (b) the relevant particulars with respect to the registered ownership of those shares, so far as known to him at the date of the notice.

(4) A person who is for the time being subject to the requirements of this Article is also under obligation to notify every other party to the agreement, in writing—

- (a) of any relevant particulars with respect to the registered ownership of any shares comprised in relevant share capital of the target company in which he is interested apart from the agreement, and

(b) of any change in those particulars,  
of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he becomes subject to any further obligation to give notice under paragraph (2) with respect to his interest in shares comprised in that share capital.

(5) The reference in paragraph (4) to an interest notification date, in relation to a person's interest in shares comprised in the target company's relevant share capital, is to either of the following—

- (a) the date of any notice given by him with respect to his interest under paragraph (2), and
- (b) where he has failed to give that notice, the date on which the period allowed by this Article for giving the notice came to an end.

(6) A person who is a party to an agreement to which Article 212 applies is under an obligation to notify each other party to the agreement, in writing, of his current address—

- (a) on his first becoming subject to the requirements of this Article, and
- (b) on any change in his address occurring after that time and while he is still subject to those requirements.

(7) A reference to the relevant particulars with respect to the registered ownership of shares is to such particulars in relation to those shares as are mentioned in Article 210(3)(a) or (b).

(8) A person's obligation to give any notice required by this Article to any other person must be performed within the period of 5 days next following the day on which that obligation arose.

#### *Interests in shares by attribution*

215.—(1) Where Article 206 or 207 refers to a person acquiring an interest in shares or ceasing to be interested in shares, that reference in certain cases includes his becoming or ceasing to be interested in those shares by virtue of another person's interest.

(2) Such is the case where he becomes or ceases to be interested by virtue of Article 211 or (as the case may be) Article 213 whether—

- (a) by virtue of the fact that the person who is interested in the shares becomes or ceases to be a person whose interests (if any) fall by virtue of either Article to be treated as his, or
- (b) in consequence of the fact that such a person has become or ceased to be interested in the shares, or
- (c) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which Article 212 applies to which the person interested in the shares is for the time being a party, or

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(d) in consequence of the fact that an agreement to which both he and that person are parties becomes or ceases to be one to which that Article applies.

(3) The person is then to be treated as knowing he has acquired an interest in the shares or (as the case may be) that he has ceased to be interested in them, if and when he knows both—

(a) the relevant facts with respect to the other person's interest in the shares, and

(b) the relevant facts by virtue of which he himself has become or ceased to be interested in them in accordance with Article 211 or 213.

(4) He has the knowledge referred to in paragraph (3)(a) if he knows (whether contemporaneously or not) either of the subsistence of the other person's interest at any material time or of the fact that the other has become or ceased to be interested in the shares at any such time; and "material time" is any time at which the other's interests (if any) fall or fell to be treated as his under Article 211 or 213.

(5) A person is to be regarded as knowing of the subsistence of another's interest in shares or (as the case may be) that another has become or ceased to be interested in shares if he has been notified under Article 214 of facts with respect to the other's interest which indicate that he is or has become or ceased to be interested in the shares (whether on his own account or by virtue of a third party's interest in them).

*Interests in shares which are to be notified*

**216.**—(1) This Article applies, subject to Article 217, in determining for the purposes of Articles 206 to 210 whether a person has a notifiable interest in shares.

(2) A reference to an interest in shares is to be read as including an interest of any kind whatsoever in the shares; and accordingly there are to be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

(3) Where property is held on trust and an interest in shares is comprised in the property, a beneficiary of the trust who apart from this paragraph does not have an interest in the shares is to be taken as having such an interest.

(4) A person is taken to have an interest in shares if—

(a) he enters into a contract for their purchase by him (whether for cash or other consideration), or

(b) not being the registered holder, he is entitled to exercise any right conferred by the holding of the shares or is entitled to control the exercise of any such right.

(5) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust—

- (a) he has a right to call for delivery of the shares to himself or to his order, or
- (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares,

whether in any case the right or obligation is conditional or absolute.

(6) For the purposes of paragraph (4)(b), a person is entitled to exercise or control the exercise of any right conferred by the holding of shares if he—

- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
- (b) is under an obligation (whether so subject or not) the fulfilment of which would make him so entitled.

(7) Persons having a joint interest are taken each of them to have that interest.

(8) It is immaterial that shares in which a person has an interest are unidentifiable.

*Interests to be disregarded*

217.—(1) The following interests in shares are disregarded for the purposes of Articles 206 to 210—

- (a) where property is held on trust according to the law of any part of the United Kingdom and an interest in shares is comprised in that property, an interest in reversion or remainder or of a bare trustee or a custodian trustee and any discretionary interest (and where the property is held on trust according to the law of Scotland, an interest in fee or of a simple trustee);
- (b) an interest which subsists by virtue of an authorised unit trust scheme within the meaning of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 or of the Prevention of Fraud (Investments) Act 1958, a scheme made under section 25 of the Charities Act (Northern Ireland) 1964, section 22 of the Charities Act 1960, section 11 of the Trustee Investments Act 1961 or section 1 of the Administration of Justice Act 1965;
- (c) an interest for the life of himself or another of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the conditions mentioned in paragraph (3) are satisfied;
- (d) an exempt interest held by a recognised jobber;
- (e) an exempt security interest;
- (f) an interest of the Probate Judge subsisting by virtue of section 3 of the Administration of Estates Act (Northern Ireland) 1955;
- (g) an interest of the Accountant General of the Supreme Court in shares held by him;

1940 c. 9 (N.I.)  
1958 c. 45  
1964 c. 33 (N.I.)  
1960 c. 58  
1961 c. 62  
1965 c. 2

1955 c. 24 (N.I.)

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(h) such interests, or interests of such a class, as may be prescribed for the purposes of this sub-paragraph by regulations made by the Department.

(2) A person is not by virtue of Article 216(4)(b) taken to be interested in shares by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting, or has been appointed by a corporation to act as its representative at any meeting of a company or of any class of its members.

(3) The conditions referred to in paragraph (1)(c) are, in relation to a settlement—

(a) that it is irrevocable, and

(b) that the settlor (within the meaning of section 444 of the Income and Corporation Taxes Act 1970) has no interest in any income arising under, or property comprised in, the settlement.

1970 c. 10

(4) A person is a recognised jobber for the purposes of paragraph (1)(d) if he is a member of The Stock Exchange recognised by the Council of The Stock Exchange as carrying on the business of a jobber; and an interest of such a person in shares is an exempt interest for those purposes if—

(a) he carries on that business in the United Kingdom, and

(b) he holds the interest for the purposes of that business.

(5) An interest in shares is an exempt security interest for the purposes of paragraph (1)(e) if—

(a) it is held by a person who is—

(i) a recognised bank or licensed institution within the meaning of the Banking Act 1979 or an insurance company to which Part II of the Insurance Companies Act 1982 applies, or

1979 c. 37

1982 c. 50

(ii) a trustee savings bank (within the meaning of the Trustee Savings Banks Act 1981), or

1981 c. 65

(iii) a member of The Stock Exchange carrying on business in the United Kingdom as a stockbroker, and

(b) it is held by way of security only for the purposes of a transaction entered into in the ordinary course of his business as such a person,

or if it is held by way of security only either by the Bank of England or by the Post Office for the purposes of a transaction entered into in the ordinary course of that part of the business of the Post Office which consists of the provision of banking services.

*Other provisions about notification under this Part*

**218.—(1)** Where a person authorises another (“the agent”) to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a public company, he shall secure that the agent notifies



him immediately of acquisitions or disposals effected by the agent which will or may give rise to any obligation of disclosure imposed on him by this Part with respect to his interest in that share capital.

(2) An obligation of disclosure imposed on a person by any provision of Articles 206 to 210 is treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies him and gives his address and, in a case where he is a director of the company, is expressed to be given in fulfilment of that obligation.

(3) A person who—

- (a) fails to fulfil, within the proper period, an obligation of disclosure imposed on him by this Part, or
- (b) in purported fulfilment of any such obligation makes to a company a statement which he knows to be false, or recklessly makes to a company a statement which is false, or
- (c) fails to fulfil, within the proper period, an obligation to give another person a notice required by Article 214, or
- (d) fails without reasonable excuse to comply with paragraph (1),

is guilty of an offence and liable to imprisonment or a fine, or both.

(4) It is a defence for a person charged with an offence under paragraph (3)(c) to prove that it was not possible for him to give the notice to the other person required by Article 214 within the proper period, and either—

- (a) that it has not since become possible for him to give the notice so required, or
- (b) that he gave the notice as soon after the end of that period as it became possible for him to do so.

(5) Where a person is convicted of an offence under this Article (other than an offence relating to his ceasing to be interested in a company's shares), the Department may by order direct that the shares in relation to which the offence was committed shall, until further order, be subject to the restrictions of Part XVI; and an order under this paragraph may be made notwithstanding any power in the company's memorandum or articles enabling the company to impose similar restrictions on those shares.

(6) Article 680 (restriction on prosecutions) applies to offences under this Article.

### *Registration and investigation of share acquisitions and disposals*

#### *Register of interests in shares*

219.—(1) Every public company shall keep a register for the purposes of Articles 206 to 210, and whenever the company receives information

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from a person in consequence of the fulfilment of an obligation imposed on him by any of those Articles, it is under obligation to enter in the register, against that person's name, that information and the date of the entry.

(2) Without prejudice to paragraph (1), where a company receives a notification under this Part which includes a statement that the person making the notification, or any other person, has ceased to be a party to an agreement to which Article 212 applies, the company is under obligation to record that information against the name of that person in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).

(3) An obligation imposed by paragraph (1) or (2) must be fulfilled within the period of 3 days next following the day on which it arises.

(4) The company is not, by virtue of anything done for the purposes of this Article, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares.

(5) The register must be so made up that the entries against the several names entered in it appear in chronological order.

(6) Unless the register is in such form as to constitute in itself an index, the company shall keep an index of the names entered in the register which shall in respect of each name contain a sufficient indication to enable the information entered against it to be readily found; and the company shall, within 10 days after the date on which a name is entered in the register, make any necessary alteration in the index.

(7) If the company ceases to be a public company it shall continue to keep the register and any associated index until the end of the period of 6 years beginning with the day next following that on which it ceases to be such a company.

(8) The register and any associated index—

(a) shall be kept at the place at which the register required to be kept by the company by Article 333 (register of directors' interests) is kept, and

(b) subject to paragraph (9), shall be available for inspection in accordance with Article 227.

(9) Neither the register nor any associated index shall be available for inspection in accordance with that Article in so far as it contains information with respect to a company for the time being entitled to avail itself of the benefit conferred by paragraph 3 or 10 of Schedule 5 (disclosure of shareholdings not required if it would be harmful to company's business).

(10) If default is made in complying with paragraph (1) or (2), or with any of paragraphs (5) to (7), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(11) Any register kept by a company immediately before 1st July 1983 under Article 117 of the Order of 1978 shall continue to be kept by the company under and for the purposes of this Article.

*Company investigations*

**220.—(1)** A public company may by notice in writing require a person whom the company knows or has reasonable cause to believe to be or, at any time during the 3 years immediately preceding the date on which the notice is issued, to have been interested in shares comprised in the company's relevant share capital—

- (a) to confirm that fact or, as the case may be, to indicate whether or not it is the case, and
- (b) where he holds or has during that time held an interest in shares so comprised, to give such further information as may be required in accordance with paragraph (2).

(2) A notice under this Article may require the person to whom it is addressed—

- (a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company (held by him at any time during the 3-year period mentioned in paragraph (1)),
- (b) where the interest is a present interest and any other interest in the shares subsists or, in any case, where another interest in the shares subsisted during that 3-year period at any time when his own interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other interest as may be required by the notice,
- (c) where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.

(3) The particulars referred to in paragraph (2)(a) and (b) include particulars of the identity of persons interested in the shares in question and of whether persons interested in the same shares are or were parties to any agreement to which Article 212 applies or to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(4) A notice under this Article shall require any information given in response to the notice to be given in writing within such reasonable time as may be specified in the notice.

(5) Articles 211 to 213 and 216 apply for the purpose of construing references in this Article to persons interested in shares and to interests in shares respectively, as they apply in relation to Articles 206 to 209 (but with the omission of any reference to Article 217).

(6) This Article applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a public company which would on issue be comprised in relevant share capital of that company as it applies in relation to a person who is or was

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interested in shares so comprised; and references in this Article to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including respectively any such right and shares which would on issue be so comprised.

*Registration of interests disclosed under Article 220*

**221.—(1)** Whenever in pursuance of a requirement imposed on a person under Article 220 a company receives information to which this Article applies relating to shares comprised in its relevant share capital, it is under obligation to enter against the name of the registered holder of those shares, in a separate part of its register of interests in shares—

- (a) the fact that the requirement was imposed and the date on which it was imposed, and
- (b) any information to which this Article applies received in pursuance of the requirement.

(2) This Article applies to any information received in pursuance of a requirement imposed by Article 220 which relates to the present interests held by any persons in shares comprised in relevant share capital of the company in question.

(3) Paragraphs (3) to (10) of Article 219 apply in relation to any part of the register maintained in accordance with paragraph (1) as they apply in relation to the remainder of the register, reading references to paragraph (1) of that Article to include paragraph (1) of this Article.

(4) In the case of a register kept by a company immediately before 1st July 1983 under Article 117 of the Order of 1978, any part of the register so kept for the purposes of paragraph (3) of that Article shall continue to be kept by the company under and for the purposes of this Article.

*Company investigation on requisition by members*

**222.—(1)** A company may be required to exercise its powers under Article 220 on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company.

(2) The requisition must—

- (a) state that the requisitionists are requiring the company to exercise its powers under Article 220,
- (b) specify the manner in which they require those powers to be exercised, and
- (c) give reasonable grounds for requiring the company to exercise those powers in the manner specified,

and must be signed by the requisitionists and deposited at the company's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this Article it is the company's duty to exercise its powers under Article 220 in the manner specified in the requisition.

(5) If default is made in complying with paragraph (4), the company and every officer of it who is in default is liable to a fine.

*Company report to members*

223.—(1) On the conclusion of an investigation carried out by a company in pursuance of a requisition under Article 222, it is the company's duty to cause a report of the information received in pursuance of that investigation to be prepared, and the report shall be made available at the company's registered office within a reasonable period after the conclusion of that investigation.

(2) Where—

- (a) a company undertakes an investigation in pursuance of a requisition under Article 222, and
- (b) the investigation is not concluded before the end of 3 months beginning with the date immediately following the date of the deposit of the requisition,

it is the duty of the company to cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation. Each such report shall be made available at the company's registered office within a reasonable period after the end of the period to which it relates.

(3) The period for making any report prepared under this Article available as required by paragraph (1) or (2) shall not exceed 15 days.

(4) Such a report shall not include any information with respect to a company entitled to avail itself of the benefit conferred by paragraph 3 or 10 of Schedule 5 (disclosure of shareholdings not required if it would be harmful to company's business); but where any such information is omitted, that fact shall be stated in the report.

(5) The company shall, within 3 days of making any report prepared under this Article available at its registered office, notify the requisitionists that the report is so available.

(6) An investigation carried out by a company in pursuance of a requisition under Article 222 is regarded for the purposes of this Article as concluded when the company has made all such inquiries as are necessary or expedient for the purposes of the requisition and in the case of each such inquiry, either a response has been received by the company or the time allowed for a response has elapsed.

(7) A report prepared under this Article—

- (a) shall be kept at the company's registered office from the day on which it is first available there in accordance with paragraph (1) or (2) until the expiration of 6 years beginning with the day next following that day, and

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(b) shall be available for inspection in accordance with Article 227 so long as it is so kept.

(8) If default is made in complying with paragraph (1), (2), (5) or (7)(a), the company and every officer of it who is in default is liable to a fine.

*Penalty for failure to provide information*

**224.—(1)** Where notice is served by a company under Article 220 on a person who is or was interested in shares in the company and that person fails to give the company any information required by the notice within the time specified in it, the company may apply to the court for an order directing that the shares in question be subject to the restrictions of Part XVI.

(2) Such an order may be made by the court notwithstanding any power contained in the applicant company's memorandum or articles enabling the company itself to impose similar restrictions on the shares in question.

(3) Subject to paragraphs (4) and (5), a person who fails to comply with a notice under Article 220 or who, in purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular is guilty of an offence and liable to imprisonment or a fine, or both.

(4) A person is not guilty of an offence by virtue of failing to comply with a notice under Article 220 if he proves that the requirement to give the information was frivolous or vexatious.

(5) A person is not obliged to comply with a notice under Article 220 if he is for the time being exempted by the Department from the operation of that Article; but the Department shall not grant any such exemption unless—

- (a) it has consulted with the Governor of the Bank of England, and
- (b) the Department is satisfied that, having regard to any undertaking given by the person in question with respect to any interest held or to be held by him in any shares, there are special reasons why that person should not be subject to the obligations imposed by that Article.

*Removal of entries from register*

**225.—(1)** A company may remove an entry against a person's name from its register of interests in shares if more than 6 years have elapsed since the date of the entry being made, and either—

- (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under this Part in relevant share capital of the company, or
- (b) it has been superseded by a later entry made under Article 219 against the same person's name;

and in a case within sub-paragraph (a) the company may also remove that person's name from the register.

(2) If a person in pursuance of an obligation imposed on him by any provision of this Part gives to a company the name and address of another person as being interested in shares in the company, the company shall, within 15 days of the date on which it was given that information, notify the other person that he has been so named and shall include in that notification—

- (a) particulars of any entry relating to him made, in consequence of its being given that information, by the company in its register of interests in shares, and
- (b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this Article.

(3) A person who has been notified by a company in pursuance of paragraph (2) that an entry relating to him has been made in the company's register of interests in shares may apply in writing to the company for the removal of that entry from the register; and the company shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If a person who is identified in a company's register of interests in shares as being a party to an agreement to which Article 212 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as mentioned in paragraph (2)(a)) ceases to be a party to that agreement, he may apply in writing to the company for the inclusion of that information in the register; and if the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.

(5) If an application under paragraph (3) or (4) is refused (in a case within paragraph (4) otherwise than on the ground that the information has already been recorded) the applicant may apply to the court for an order directing the company to remove the entry in question from the register or (as the case may be) to include the information in question in the register; and the court may, if it thinks fit, make such an order.

(6) Where a name is removed from a company's register of interests in shares in pursuance of paragraph (1) or (3) or an order under paragraph (5), the company shall within 14 days of the date of that removal make any necessary alteration in any associated index.

(7) If default is made in complying with paragraph (2) or (6), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Otherwise, entries not to be removed*

**226.**—(1) Entries in a company's register of interests in shares shall not be deleted except in accordance with Article 225.

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(2) If an entry is deleted from a company's register of interests in shares in contravention of paragraph (1), the company shall restore that entry to the register as soon as is reasonably practicable.

(3) If default is made in complying with paragraph (1) or (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention of paragraph (2), to a daily default fine.

*Inspection of register and reports*

**227.**—(1) Any register of interests in shares and any report which is required by Article 223(7) to be available for inspection in accordance with this Article shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection) be open to the inspection of any member of the company or of any other person without charge.

(2) Any such member or other person may require a copy of any such register or report, or any part of it, on payment of 10 pence or such less sum as the company may determine, for every 100 words or fractional part of 100 words required to be copied; and the company shall cause any copy so required by a person to be sent to him before the expiration of the period of 10 days beginning with the day next following that on which the requirement is received by the company.

(3) If an inspection required under this Article is refused or a copy so required is not sent within the proper period, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) In the case of a refusal of an inspection required under this Article of any register or report, the court may by order compel an immediate inspection of it; and in the case of failure to send the copy required under this Article, the court may by order direct that the copy required shall be sent to the person requiring it.

(5) The Department may by regulations substitute a sum specified in the regulations for the sum mentioned in paragraph (2).

*Supplementary*

*Interpretation for Part VII*

**228.**—(1) In this Part—

“associated index”, in relation to a register, means the index kept in relation to that register in pursuance of Article 219(6),

“register of interests in shares” means the register kept in pursuance of Article 219 including, except where the context otherwise requires, that part of the register kept in pursuance of Article 221, and

“relevant share capital” has the meaning given by Article 206(2).

(2) Where the period allowed by any provision of this Part for fulfilling any obligation is expressed as a number of days, any day that is



a Saturday or Sunday or a bank holiday is to be disregarded in reckoning that period.

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PART VIII

ACCOUNTS AND AUDIT

CHAPTER I

PROVISIONS APPLYING TO COMPANIES GENERALLY

*Accounting records*

*Companies to keep accounting records*

**229.**—(1) Every company shall cause accounting records to be kept in accordance with this Article.

(2) The accounting records shall be sufficient to show and explain the company's transactions, and shall be such as to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
- (b) enable the directors to ensure that any balance sheet and profit and loss account prepared under this Part comply with the requirements of this Order as to the form and content of company accounts and otherwise.

(3) The accounting records shall in particular contain—

- (a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure take place, and
- (b) a record of the assets and liabilities of the company.

(4) If the company's business involves dealing in goods, the accounting records shall contain—

- (a) statements of stock held by the company at the end of each financial year of the company,
- (b) all statements of stocktakings from which any such statement of stock as is mentioned in sub-paragraph (a) has been or is to be prepared, and
- (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

*Where and for how long records to be kept*

**230.**—(1) Subject as follows, a company's accounting records shall be kept at its registered office or such other place as the directors think fit, and shall at all times be open to inspection by the company's officers.

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(2) If accounting records are kept at a place outside Northern Ireland, accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at a place in, Northern Ireland, and shall at all times be open to such inspection.

(3) The accounts and returns to be sent to Northern Ireland in accordance with paragraph (2) shall be such as to—

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months, and
- (b) enable the directors to ensure that the company's balance sheet and profit and loss account comply with the requirements of this Order as to the form and content of company accounts and otherwise.

(4) Accounting records which a company is required by Article 229 to keep shall be preserved by it—

- (a) in the case of a private company, for 3 years from the date on which they are made, and
- (b) in the case of a public company, for 6 years from that date.

This is subject to any direction with respect to the disposal of records given under winding-up rules under Article 613.

*Penalties for non-compliance with Articles 229 and 230*

**231.**—(1) If a company fails to comply with any provision of Article 229 or 230(1) or (2), every officer of the company who is in default is guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(2) An officer of a company is guilty of an offence if he fails to take all reasonable steps for securing compliance by the company with Article 230(4), or has intentionally caused any default by the company under it.

(3) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

*A company's accounting reference periods and financial year*

*Accounting reference period and date*

**232.**—(1) A company's accounting reference periods are determined according to its accounting reference date.

(2) A company may give notice in the prescribed form to the registrar specifying a date in the calendar year as being the date on which in each successive calendar year an accounting reference period of the company is to be treated as coming to an end; and the date specified in the notice is then the company's accounting reference date.

(3) However, no such notice has effect unless it is given before the end of 6 months beginning with the date of the company's incorporation;

and, failing such notice, the company's accounting reference date is 31st March.

(4) A company's first accounting reference period is such period ending with its accounting reference date as begins on the date of its incorporation and is a period of more than 6 months and not more than 18 months; and each successive period of 12 months beginning after the end of the first accounting reference period and ending with the accounting reference date is also an accounting reference period of the company.

(5) This Article is subject to Article 233, under which in certain circumstances a company may alter its accounting reference date and accounting reference periods.

*Alteration of accounting reference period*

233.—(1) At any time during a period which is an accounting reference period of a company by virtue of Article 232 or 234 the company may give notice in the prescribed form to the registrar specifying a date in the calendar year ("the new accounting reference date") on which that accounting reference period ("the current accounting reference period") and each subsequent accounting reference period of the company is to be treated as coming to an end or (as the case may require) as having come to an end.

(2) At any time after the end of a period which was an accounting reference period of a company by virtue of Article 232 or 234 the company may give notice in the prescribed form to the registrar specifying a date in the calendar year ("the new accounting reference date") on which that accounting reference period ("the previous accounting reference period") and each subsequent accounting reference period of the company is to be treated as coming or (as the case may require) as having come to an end.

(3) But a notice under paragraph (2)—

- (a) has no effect unless the company is a subsidiary or holding company of another company and the new accounting reference date coincides with the accounting reference date of that other company, and
- (b) has no effect if the period allowed (under Article 250) for laying and delivering accounts in relation to the previous accounting reference period has already expired at the time when the notice is given.

(4) A notice under this Article shall state whether the current or previous accounting reference period of the company—

- (a) is to be treated as shortened, so as to come to an end or (as the case may require) be treated as having come to an end on the new accounting reference date on the first occasion on which that date falls or fell after the beginning of that accounting reference period, or

(b) is to be treated as extended, so as to come to an end or (as the case may require) be treated as having come to an end on the new accounting reference date on the second occasion on which that date falls or fell after the beginning of that accounting reference period.

(5) A notice which states that the current or previous accounting reference period is to be extended has no effect if the current or previous accounting reference period, as extended in accordance with the notice, would exceed 18 months.

(6) Subject to any direction given by the Department under paragraph (7), a notice which states that the current or previous accounting reference period is to be extended has no effect unless—

- (a) no earlier accounting reference period of the company has been extended by virtue of a previous notice given by the company under this Article, or
- (b) the notice is given not less than 5 years after the date on which any earlier accounting reference period of the company which was so extended came to an end, or
- (c) the company is a subsidiary or holding company of another company and the new accounting reference date coincides with the accounting reference date of that other company.

(7) The Department may, if it thinks fit, direct that paragraph (6) shall not apply to a notice already given by a company under this Article or (as the case may be) in relation to a notice which may be so given.

*Consequence of giving notice under Article 233*

**234.—(1)** Where a company has given notice which has effect in accordance with Article 233, and that notice has not been superseded by a subsequent notice by the company which has such effect, the new date specified in the notice is the company's accounting reference date, in substitution for that which, by virtue of Article 232 or this Article, was its accounting reference date at the time when the notice was given.

(2) Where by virtue of such a notice one date is substituted for another as the accounting reference date of a company—

- (a) the current or previous accounting reference period, shortened or extended (as the case may be) in accordance with the notice, and
- (b) each successive period of 12 months beginning after the end of that accounting reference period (as so shortened or extended) and ending with the new accounting reference date,

is or (as the case may require) is to be treated as having been an accounting reference period of the company, instead of any period which would be an accounting reference period of the company if the notice had not been given.

(3) Article 233 and this Article do not affect any accounting reference period of the company which—

- (a) in the case of a notice under Article 233(1), is earlier than the current accounting reference period, or
- (b) in the case of a notice under Article 233(2), is earlier than the previous accounting reference period.

*Directors' duty to prepare annual accounts*

**235.**—(1) In the case of every company, the directors shall in respect of each accounting reference period of the company prepare a profit and loss account for the financial year or, if it is a company not trading for profit, an income and expenditure account.

(2) Where it is the company's first accounting reference period, the financial year begins with the first day of that period and ends with—

- (a) the date on which the accounting reference period ends, or
- (b) such other date, not more than 7 days before or more than 7 days after the end of that period, as the directors may determine;

and after that the financial year begins with the day after the date to which the last preceding profit and loss account was made up and ends as mentioned in sub-paragraphs (a) and (b).

(3) The directors shall prepare a balance sheet as at the last day of the financial year.

(4) In the case of a holding company, the directors shall secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries coincides with the company's own financial year.

*Form and content of company individual and group accounts*

*Form and content of individual accounts*

**236.**—(1) A company's accounts prepared under Article 235 shall comply with the requirements of Schedule 4 (so far as applicable) with respect to the form and content of the balance sheet and profit and loss account and any additional information to be provided by way of notes to the accounts.

(2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the financial year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the financial year.

(3) Paragraph (2) overrides—

- (a) the requirements of Schedule 4, and
- (b) all other requirements of this Order as to the matters to be included in a company's accounts or in notes to those accounts;

and accordingly paragraphs (4) and (5) have effect.

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(4) If the balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with paragraph (2), any necessary additional information must be provided in that balance sheet or profit and loss account, or in a note to the accounts.

(5) If, owing to special circumstances in the case of any company, compliance with any such requirement in relation to the balance sheet or profit and loss account would prevent compliance with paragraph (2) (even if additional information were provided in accordance with paragraph (4)), the directors shall depart from that requirement in preparing the balance sheet or profit and loss account (so far as necessary in order to comply with paragraph (2)).

(6) If the directors depart from any such requirement, particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.

(7) Paragraphs (1) to (6) do not apply to group accounts prepared under Article 237; and paragraphs (1) and (2) do not apply to a company's profit and loss account (or require the notes otherwise required in relation to that account) if—

- (a) the company has subsidiaries, and
- (b) the profit and loss account is framed as a consolidated account dealing with all or any of the company's subsidiaries as well as the company, and—
  - (i) complies with the requirements of this Order relating to consolidated profit and loss accounts, and
  - (ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the company's individual accounts.

If group accounts are prepared and advantage is taken of this paragraph, that fact shall be disclosed in a note to the group accounts.

*Group accounts of holding company*

**237.—**(1) If at the end of its financial year a company has subsidiaries, the directors shall, as well as preparing individual accounts for that year, also prepare group accounts, being accounts or statements which deal with the state of affairs and profit or loss of the company and the subsidiaries.

(2) This does not apply if the company is at the end of the financial year the wholly-owned subsidiary of another body corporate incorporated in Northern Ireland.

(3) Group accounts need not deal with a subsidiary if the company's directors are of opinion that—

- (a) it is impracticable, or would be of no real value to the company's members, in view of the insignificant amounts involved, or

- (b) it would involve expense or delay out of proportion to the value to members, or
- (c) the result would be misleading, or harmful to the business of the company or any of its subsidiaries, or
- (d) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be considered as a single undertaking;

and, if the directors are of that opinion about each of the company's subsidiaries, group accounts are not required.

(4) However, the approval of the Department is required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of difference between the business of the holding company and that of the subsidiary.

(5) A holding company's group accounts shall be consolidated accounts comprising—

- (a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts, and
- (b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(6) However, if the directors are of opinion that it is better for the purpose of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries, and of so presenting it that it may be readily appreciated by the company's members, the group accounts may be prepared in other than consolidated form, and in particular may consist—

- (a) of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries, or
- (b) of separate accounts dealing with each of the subsidiaries, or
- (c) of statements expanding the information about the subsidiaries in the company's individual accounts,

or of any combination of those forms.

(7) The group accounts may be wholly or partly incorporated in the holding company's individual balance sheet and profit and loss account.

#### *Form and content of group accounts*

**238.**—(1) A holding company's group accounts shall comply with the requirements of Schedule 4 (so far as applicable to group accounts in the form in which those accounts are prepared) with respect to the form and content of those accounts and any additional information to be provided by way of notes to those accounts.

(2) Group accounts (together with any notes to them) shall give a true and fair view of the state of affairs and profit or loss of the company and

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the subsidiaries dealt with by those accounts as a whole, so far as concerns members of the company.

(3) Paragraph (2) overrides—

(a) the requirements of Schedule 4, and

(b) all other requirements of this Order as to the matters to be included in group accounts or in notes to those accounts;

and accordingly paragraphs (4) and (5) have effect.

(4) If group accounts drawn up in accordance with those requirements would not provide sufficient information to comply with paragraph (2), any necessary additional information must be provided in, or in a note to, the group accounts.

(5) If, owing to special circumstances in the case of any company, compliance with any such requirement in relation to its group accounts would prevent those accounts from complying with paragraph (2) (even if additional information were provided in accordance with paragraph (4)), the directors shall depart from that requirement in preparing the group accounts (so far as necessary to comply with paragraph (2)).

(6) If the directors depart from any such requirement, particulars of that departure, the reasons for it and its effect shall be given in a note to the group accounts.

(7) If the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall (unless the Department, on the application or with the consent of the holding company's directors, otherwise directs) deal with the subsidiary's state of affairs as at the end of its relevant financial year, that is—

(a) if its financial year ends with that of the holding company, that financial year, and

(b) if not, the subsidiary's financial year ending last before the end of the financial year of the holding company dealt with in the group accounts,

and with the subsidiary's profit or loss for its relevant financial year.

(8) The Department may, on the application or with the consent of a company's directors, modify the requirements of Schedule 4 as they have effect in relation to that company by virtue of paragraph (1), for the purpose of adapting them to the company's circumstances; and references in this Article to the requirements of Schedule 4 are then to be read in relation to that company as references to those requirements as modified.

*Additional disclosure required in notes to accounts*

239.—(1) Schedule 5 has effect with respect to additional matters which must be disclosed in company accounts for a financial year; and in that Schedule, where a thing is required to be stated or shown, or information is required to be given, it means that the thing is to be stated or shown, or the information is to be given, in a note to those accounts.



(2) In Schedule 5—

- (a) Parts I and II are concerned, respectively, with the disclosure of particulars of the company's subsidiaries and of its other shareholdings,
- (b) Part III is concerned with the disclosure of financial information relating to subsidiaries,
- (c) Part IV requires a company which is itself a subsidiary to disclose its ultimate holding company,
- (d) Part V is concerned with the emoluments of directors (including emoluments waived), pensions of directors and past directors and compensation for loss of office to directors and past directors, and
- (e) Part VI is concerned with disclosure of the number of the company's employees who are remunerated at higher rates.

(3) Whenever it is stated in Schedule 5 that this paragraph applies to certain particulars or information, it means that the particulars or information shall be annexed to the annual return first made by the company after copies of its accounts have been laid before it in general meeting; and if a company fails to satisfy an obligation thus imposed, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) It is the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part V of Schedule 5; and this applies to persons who are or have at any time in the preceding 5 years been officers, as it applies to directors.

A person who makes default in complying with this paragraph is liable to a fine.

*Loans in favour of directors and connected persons*

**240.**—(1) A holding company's group accounts for a financial year shall comply with Part I of Schedule 6 (so far as applicable) as regards the disclosure of transactions, arrangements and agreements there mentioned (loans, quasi-loans and other dealings in favour of directors).

(2) In the case of a company other than a holding company, its individual accounts shall comply with Part I of Schedule 6 (so far as applicable) as regards disclosure of those matters.

(3) Particulars which are required by Part I of Schedule 6 to be contained in any accounts shall be given by way of notes to the accounts and are required in respect of shadow directors as well as directors.

(4) Where by virtue of Article 237(2) or (3) a company does not prepare group accounts for a financial year, paragraph (1) requires disclosure of such matters in its individual accounts as would have been disclosed in group accounts.

(5) The requirements of this Article apply with such exceptions as are mentioned in Part I of Schedule 6 (including in particular exceptions for and in respect of recognised banks).

*Loans, etc. to company's officers; statement of amounts outstanding*

**241.**—(1) A holding company's group accounts for a financial year shall comply with Part II of Schedule 6 (so far as applicable) as regards transactions, arrangements and agreements made by the company or a subsidiary of it for persons who at any time during that financial year were officers of the company (but not directors).

(2) In the case of a company other than a holding company, its individual accounts shall comply with Part II of Schedule 6 (so far as applicable) as regards those matters.

(3) Paragraphs (1) and (2) do not apply in relation to any transaction, arrangement or agreement made by a recognised bank for any of its officers or for any of the officers of its holding company.

(4) Particulars required by Part II of Schedule 6 to be contained in any accounts shall be given by way of notes to the accounts.

(5) Where by virtue of Article 237(2) or (3) a company does not prepare group accounts for a financial year, paragraph (1) requires such matters to be stated in its individual accounts as would have been stated in group accounts.

*Recognised banks; disclosure of dealings with and for directors*

**242.**—(1) The group accounts of a company which is, or is the holding company of, a recognised bank, and the individual accounts of any other company which is a recognised bank, shall comply with Part III of Schedule 6 (so far as applicable) as regards transactions, arrangements and agreements made by the company preparing the accounts (if it is a recognised bank) and, in the case of a holding company, by any of its subsidiaries which is a recognised bank, for persons who at any time during the financial year were directors of the company or connected with a director of it.

(2) Particulars required by Part III of Schedule 6 to be contained in any accounts shall be given by way of notes to those accounts, and are required in respect of shadow directors as well as directors.

(3) Where by virtue of Article 237(2) or (3) a company does not prepare group accounts for a financial year, paragraph (1) requires such matters to be stated in its individual accounts as would have been stated in group accounts.

*Directors' and auditors' reports*

*Directors' report*

**243.**—(1) In the case of every company there shall for each financial year be prepared a report by the directors—

- (a) containing a fair review of the development of the business of the company and its subsidiaries during the financial year and of their position at the end of it, and
- (b) stating the amount (if any) which they recommend should be paid as dividend and the amount (if any) which they propose to carry to reserves.

(2) The directors' report shall state the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.

(3) The report shall also state the matters, and give the particulars, required by Part I of Schedule 7 (changes in asset values, directors' shareholdings and other interests, contributions for political and charitable purposes, etc.).

(4) Part II of Schedule 7 applies as regards the matters to be stated in the directors' report in the circumstances there specified (company acquiring its own shares or a permitted charge on them).

(5) Parts III and IV of Schedule 7 apply respectively as regards the matters to be stated in the directors' report relative to the employment, training and advancement of disabled persons and the health, safety and welfare at work of the company's employees.

(6) If the company's individual accounts are accompanied by group accounts which are special category, the directors' report shall, in addition to complying with Schedule 7, also comply with paragraphs 2 to 6 of Schedule 10 (turnover and profitability; size of labour force and wages paid).

(7) In respect of any failure to comply with the requirements of this Order as to the matters to be stated, and the particulars to be given, in the directors' report, every person who was a director of the company immediately before the end of the relevant period (meaning whatever is under Article 250 the period for laying and delivering accounts) is guilty of an offence and liable to a fine.

In proceedings for an offence under this paragraph, it is a defence for the person to prove that he took all reasonable steps for securing compliance with the requirements in question.

#### *Auditors' report*

244.—(1) A company's auditors shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss account, and on all group accounts, copies of which are to be laid before the company in general meeting during the auditors' tenure of office.

(2) The auditors' report shall state—

- (a) whether in the auditors' opinion the balance sheet and profit and loss account and (if it is a holding company submitting

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group accounts) the group accounts have been properly prepared in accordance with this Order; and

- (b) without prejudice to the foregoing, whether in their opinion a true and fair view is given—
  - (i) in the balance sheet, of the state of the company's affairs at the end of the financial year,
  - (ii) in the profit and loss account (if not framed as a consolidated account), of the company's profit or loss for the financial year, and
  - (iii) in the case of group accounts, of the state of affairs and profit or loss of the company and its subsidiaries dealt with by those accounts, so far as concerns members of the company.

*Auditors' duties and powers*

**245.—(1)** It is the duty of the company's auditors, in preparing their report, to carry out such investigations as will enable them to form an opinion as to the following matters—

- (a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them,
- (b) whether the company's balance sheet and (if not consolidated) its profit and loss account are in agreement with the accounting records and returns.

(2) If the auditors are of opinion that proper accounting records have not been kept or that proper returns adequate for their audit have not been received from branches not visited by them, or if the balance sheet and (if not consolidated) the profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) Every auditor of a company has a right of access at all times to the company's books, accounts and vouchers, and is entitled to require from the company's officers such information and explanations as he thinks necessary for the performance of the auditor's duties.

(4) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(5) If the requirements of Parts V and VI of Schedule 5 and Parts I to III of Schedule 6 are not complied with in the accounts, it is the auditors' duty to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

(6) It is the auditors' duty to consider whether the information given in the directors' report for the financial year for which the accounts are prepared is consistent with those accounts; and if they are of opinion that it is not, they shall state that fact in their report.

*Procedure on completion of accounts*

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*Signing of balance sheet; documents to be annexed*

**246.**—(1) A company's balance sheet, and every copy of it which is laid before the company in general meeting or delivered to the registrar, shall be signed on behalf of the board by 2 of the directors of the company or, if there is only one director, by that one.

(2) If a copy of the balance sheet—

- (a) is laid before the company or delivered to the registrar without being signed as required by this Article, or
- (b) not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signatures or signature, as the case may be,

the company and every officer of it who is in default is liable to a fine.

(3) A company's profit and loss account and , so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company shall be annexed to the balance sheet, and the auditors' report shall be attached to it.

(4) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

*Documents to be included in company's accounts*

**247.** For the purposes of this Part, a company's accounts for a financial year are to be taken as comprising the following documents—

- (a) the company's profit and loss account and balance sheet,
- (b) the directors' report,
- (c) the auditors' report, and
- (d) where the company has subsidiaries and Article 237 applies, the company's group accounts.

*Persons entitled to receive accounts as of right*

**248.**—(1) In the case of every company, a copy of the company's accounts for the financial year shall, not less than 21 days before the date of the meeting at which they are to be laid in accordance with Article 249, be sent to each of the following persons—

- (a) every member of the company (whether or not entitled to receive notice of general meetings),
- (b) every holder of the company's debentures (whether or not so entitled), and
- (c) all persons other than members and debenture holders, being persons so entitled.

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(2) In the case of a company not having a share capital, paragraph (1) does not require a copy of the accounts to be sent to a member of the company who is not entitled to receive notices of general meetings of the company, or to a holder of the company's debentures who is not so entitled.

(3) Paragraph (1) does not require copies of the accounts to be sent—

(a) to a member of the company or a debenture holder, being in either case a person who is not entitled to receive notices of general meetings, and of whose address the company is unaware, or

(b) to more than one of the joint holders of any shares or debentures none of whom is entitled to receive such notices, or

(c) in the case of joint holders of shares or debentures some of whom are and some not entitled to receive such notices, to those who are not so entitled.

(4) If copies of the accounts are sent less than 21 days before the date of the meeting, they are, notwithstanding that fact, deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) If default is made in complying with paragraph (1), the company and every officer of it who is in default is liable to a fine.

*Directors' duty to lay and deliver accounts*

**249.—**(1) In respect of each financial year of a company the directors shall lay before the company in general meeting copies of the accounts of the company for that year.

(2) The auditors' report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) In respect of each financial year the directors—

(a) shall deliver to the registrar a copy of the accounts for the year, and

(b) if any document comprised in the accounts is in a language other than English, shall annex to the copy of that document so delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(4) In the case of an unlimited company, the directors are not required by paragraph (3) to deliver a copy of the accounts if—

(a) at no time during the accounting reference period has the company been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge, have there been held or been exercisable, by or on behalf of two or more companies that were then limited, shares or powers which, if they had been held or been exercisable by one of them, would have made the company its subsidiary, and

- (b) at no such time has the company been the holding company of a company which was then limited, and
- (c) at no such time has the company been carrying on business as the promoter of a trading stamp scheme within the Trading Stamps Act (Northern Ireland) 1965.

1965 c. 6 (N.I.)

References here to a company that was limited at a particular time are to a body corporate (under whatever law incorporated) the liability of whose members was at that time limited.

*Period allowed for laying and delivery*

**250.**—(1) The period allowed for laying and delivering a company's accounts for a financial year is as follows in this Article, being determined by reference to the end of the relevant accounting reference period (that is, the accounting reference period in respect of which the financial year of the company is ascertained).

(2) Subject to paragraphs (3) to (6), the period allowed is—

- (a) for a private company, 10 months after the end of the relevant accounting reference period, and
- (b) for a public company, 7 months after the end of that period.

(3) If a company carries on business, or has interests, outside the United Kingdom, the Channel Islands and the Isle of Man and in respect of a financial year the directors (before the end of the period allowed by paragraph (2)) give to the registrar notice in the prescribed form—

- (a) stating that the company so carries on business or has such interests, and
- (b) claiming an extension of the period so allowed by a further 3 months,

the period allowed in relation to that financial year is then so extended.

(4) Where a company's first accounting reference period—

- (a) begins on the date of its incorporation, and
- (b) is a period of more than 12 months,

the period otherwise allowed for laying and delivering accounts is reduced by the number of days by which the relevant accounting reference period is longer than 12 months.

However, the period allowed is not by this provision reduced to less than 3 months after the end of that accounting reference period.

(5) Where a company's relevant accounting reference period has been shortened under Article 234 (in consequence of notice by the company under Article 233), the period allowed for laying and delivering accounts is—

- (a) the period allowed in accordance with paragraphs (2) to (4), or
- (b) the period of 3 months beginning with the date of the notice under Article 233,

whichever of those periods last expires.

(6) If for any special reason the Department thinks fit to do so, it may by notice in writing to a company extend, by such further period as may be specified in the notice, the period otherwise allowed for laying and delivering accounts for any financial year of the company.

*Penalty for non-compliance with Article 249*

**251.—**(1) If for a financial year of a company any of the requirements of paragraph (1) or (3) of Article 249 is not complied with before the end of the period allowed for laying and delivering accounts, every person who immediately before the end of that period was a director of the company is, in respect of each of those paragraphs which is not so complied with, guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) If a person is charged with that offence in respect of any of the requirements of Article 249(1) or (3), it is a defence for him to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of the period for laying and delivering accounts.

(3) If in respect of the company's financial year any of the requirements of Article 249(3) is not complied with before the end of the period for laying and delivering accounts, the company is liable to a penalty, recoverable in civil proceedings by the Department.

(4) The amount of the penalty is determined by reference to the length of the period between the end of the period allowed for laying and delivering accounts and the earliest day by which all those requirements have been complied with, and is—

- (a) £20 where the period is not more than 1 month,
- (b) £50 where the period is more than 1 month but not more than 3 months,
- (c) £100 where the period is more than 3 months but not more than 6 months,
- (d) £200 where the period is more than 6 months but not more than 12 months, and
- (e) £450 where the period is more than 12 months.

(5) In proceedings under this Article with respect to a requirement to lay a copy of a document before a company in general meeting, or to deliver a copy of a document to the registrar, it is not a defence to prove that the document in question was not in fact prepared as required by this Part.

(6) Paragraphs (3) and (4) do not come into operation until such day or days as the Head of the Department may by order appoint.

*Default order in case of non-compliance*

**252.—**(1) If—



- (a) in respect of a company's financial year any of the requirements of Article 249(3) has not been complied with before the end of the period allowed for laying and delivering accounts, and
- (b) the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance,

the court may, on application by any member or creditor of the company, or by the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all the costs of and incidental to the application shall be borne by the directors.

(3) Nothing in this Article prejudices Article 251.

*Penalty for laying or delivering defective accounts*

**253.**—(1) If any accounts of a company of which a copy is laid before the company in general meeting or delivered to the registrar do not comply with the requirements of this Order as to the matters to be included in, or in a note to, those accounts, every person who at the time when the copy is so laid or delivered is a director of the company is guilty of an offence and, in respect of each offence, liable to a fine.

This paragraph does not apply to a company's group accounts.

(2) If any group accounts of which a copy is laid before a company in general meeting or delivered to the registrar do not comply with Article 237(5) or (7) or Article 238, and with the other requirements of this Order as to the matters to be included in, or in a note to, those accounts, every person who at the time when the copy was so laid or delivered was a director of the company is guilty of an offence and liable to a fine.

(3) In proceedings against a person for an offence under this Article it is a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

*Shareholders' right to obtain copies of accounts*

**254.**—(1) Any member of a company, whether or not he is entitled to have sent to him copies of the company's accounts, and any holder of the company's debentures (whether or not so entitled) is entitled to be furnished (on demand and without charge) with a copy of its last accounts.

(2) If, when a person makes a demand for a document with which he is entitled by this Article to be furnished, default is made in complying with the demand within 7 days after its making, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine (unless it is proved that the person has already made a demand for, and been furnished with, a copy of the document).

*Modified accounts*

*Entitlement to deliver accounts in modified form*

**255.**—(1) In certain cases a company's directors may, in accordance with Part I of Schedule 8, deliver modified accounts in respect of a financial year; and whether they may do so depends on the company qualifying, in particular financial years, as small or medium-sized.

(2) Modified accounts for a financial year may not be delivered in the case of a company which is, or was at any time in that year—

- (a) a public company,
- (b) a special category company (Chapter II), or
- (c) subject to paragraph (4), a member of a group which is ineligible for this purpose.

(3) "Group" here means a holding company and its subsidiaries together; and a group is ineligible if any of its members is—

- (a) a public company or a special category company, or
- (b) a body corporate (other than a company) which has power under its constitution to offer its shares or debentures to the public and may lawfully exercise that power, or
- (c) a body corporate (other than a company) which is either a recognised bank or licensed institution within the meaning of the Banking Act 1979 or an insurance company to which Part II of the Insurance Companies Act 1982 applies.

(4) Notwithstanding paragraph (2)(c), modified accounts for a financial year may be delivered if the company is exempt under Article 260 (dormant companies) from the obligation to appoint auditors and either—

- (a) was so exempt throughout that year, or
- (b) became so exempt by virtue of a special resolution under Article 260 passed during that year.

(5) For the purposes of Articles 255 to 258 and Schedule 8, "deliver" means deliver to the registrar under this Chapter; and for the purposes of paragraph (3)(b), "shares" and "debentures" have the same meaning as when used in relation to a company.

*Qualification of company as small or medium-sized*

**256.**—(1) A company qualifies as small in a financial year if for that year two or more of the following conditions are satisfied—

- (a) the amount of its turnover for the year is not more than £1.4 million;
- (b) its balance sheet total is not more than £700,000;
- (c) the average number of persons employed by the company in the year (determined on a weekly basis) does not exceed 50.

(2) A company qualifies as medium-sized in a financial year if for that year two or more of the following conditions are satisfied—

- (a) the amount of its turnover for the year is not more than £5.75 million;
- (b) its balance sheet total is not more than £2.8 million;
- (c) the average number of persons employed by the company in the year (determined on a weekly basis) does not exceed 250.

(3) In paragraphs (1) and (2) of this Article and in paragraphs (3) and (4) of Article 258, “balance sheet total” means, in relation to a company’s financial year—

- (a) where in the company’s accounts Format 1 of the balance sheet formats set out in Part I of Schedule 4 is adopted, the aggregate of the amounts shown in the balance sheet under the headings corresponding to items A to D in that Format, and
- (b) where Format 2 is adopted, the aggregate of the amounts shown under the general heading “Assets”.

(4) The average number of persons employed as mentioned in paragraphs (1)(c) and (2)(c) is determined by applying the method of calculation set out in paragraph 56(2) and (3) of Schedule 4 for determining the number required by sub-paragraph (1)(a) of that paragraph to be stated in a note to the company’s accounts.

(5) In applying paragraphs (1) and (2) to a period which is a company’s financial year but not in fact a year, the maximum figures for turnover in paragraphs (1)(a) and (2)(a) are to be proportionately adjusted.

#### *Modified individual accounts*

257.—(1) This Article specifies the cases in which a company’s directors may (subject to Article 258, where the company has subsidiaries) deliver individual accounts modified as for a small or a medium-sized company; and Part I of Schedule 8 applies with respect to the delivery of accounts so modified.

(2) In respect of the company’s first financial year the directors may—

- (a) deliver accounts modified as for a small company, if in that year it qualifies as small,
- (b) deliver accounts modified as for a medium-sized company, if in that year it qualifies as medium-sized.

(3) Paragraphs (4) to (6) are concerned only with a company’s financial year subsequent to the first.

(4) The directors may in respect of a financial year—

- (a) deliver accounts modified as for a small company if in that year the company qualifies as small and it also so qualified in the preceding year,

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- (b) deliver accounts modified as for a medium-sized company if in that year the company qualifies as medium-sized and it also so qualified in the preceding year.
- (5) The directors may in respect of a financial year—
  - (a) deliver accounts modified as for a small company (although not qualifying in that year as small), if in the preceding year it so qualified and the directors were entitled to deliver accounts so modified in respect of that year, and
  - (b) deliver accounts modified as for a medium-sized company (although not qualifying in that year as medium-sized), if in the preceding year it so qualified and the directors were entitled to deliver accounts so modified in respect of that year.
- (6) The directors may in respect of a financial year—
  - (a) deliver accounts modified as for a small company, if in that year the company qualifies as small and the directors were entitled under paragraph (5)(a) to deliver accounts so modified for the preceding year (although the company did not in that year qualify as small), and
  - (b) deliver accounts modified as for a medium-sized company if in that year the company qualifies as medium-sized and the directors were entitled under paragraph (5)(b) to deliver accounts so modified for the preceding year (although the company did not in that year qualify as medium-sized).

*Modified accounts of holding company*

**258.—**(1) This Article applies to a company (“the holding company”) where in respect of a financial year Article 237 requires the preparation of group accounts for the company and its subsidiaries.

- (2) The directors of the holding company may not under Article 257—
  - (a) deliver accounts modified as for a small company, unless the group (meaning the holding company and its subsidiaries together) is in that year a small group,
  - (b) deliver accounts modified as for a medium-sized company, unless in that year the group is medium-sized;

and the group is small or medium-sized if it would so qualify under Article 256 (applying that Article as directed by paragraphs (3) and (4) of this Article), if it were all one company.

(3) The figures to be taken into account in determining whether the group is small or medium-sized (or neither) are the group account figures, that is—

- (a) where the group accounts are prepared as consolidated accounts, the figures for turnover, balance sheet total and numbers employed which are shown in those accounts, and
- (b) where not, the corresponding figures given in the group accounts, with such adjustments as would have been made if the accounts had been prepared in consolidated form,

aggregated in either case with the relevant figures for the subsidiaries (if any) omitted from the group accounts (excepting those for any subsidiary omitted under Article 237(3)(a) on the ground of impracticability).

(4) In the case of each subsidiary omitted from the group accounts, the figures relevant as regards turnover, balance sheet total and numbers employed are those which are included in the accounts of that subsidiary prepared in respect of its relevant financial year (with such adjustments as would have been made if those figures had been included in group accounts prepared in consolidated form).

(5) For the purposes of paragraph (4), the relevant financial year of the subsidiary is—

- (a) if its financial year ends with that of the holding company to which the group accounts relate, that financial year, and
- (b) if not, the subsidiary's financial year ending last before the end of the financial year of the holding company.

(6) If the directors are entitled to deliver modified accounts (whether as for a small or a medium-sized company), they may also deliver modified group accounts; and this means that the group accounts—

- (a) if consolidated, may be in accordance with Part II of Schedule 8 (while otherwise comprising or corresponding with group accounts prepared under Article 237), and
- (b) if not consolidated, may be such as (together with any notes) give the same or equivalent information as required by subparagraph (a);

and Part III of that Schedule applies to modified group accounts, whether consolidated or not.

*Power of Department to modify Articles 255 to 258 and Schedule 8*

259.—(1) The Department may by regulations modify the provisions of Articles 255(1) to (3), 256 to 258 and Schedule 8; and those provisions then apply as modified by regulations for the time being in force.

(2) Regulations under this Article reducing the classes of companies which have the benefit of those provisions or rendering the requirements of those provisions more onerous shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

*Dormant companies*

*Company resolution not to appoint auditors*

260.—(1) In certain circumstances a company may, with a view to the subsequent laying and delivery of unaudited accounts, pass a special resolution making itself exempt from the obligation to appoint auditors as otherwise required by Article 392.

(2) Such a resolution may be passed at a general meeting of the company at which its accounts for a financial year are laid as required by

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Article 249 (if it is not a year for which the directors are required to lay group accounts); but the following conditions must be satisfied—

- (a) the directors must be entitled under Article 257 to deliver, in respect of that financial year, accounts modified as for a small company (or would be so entitled but for the company being, or having at any time in the financial year been, a member of an ineligible group within Article 255(3)), and
- (b) the company must have been dormant since the end of the financial year.

(3) A company may by such a resolution make itself exempt from the obligation to appoint auditors if the resolution is passed at some time before the first general meeting of the company at which accounts are laid as required by Article 249, provided that the company has been dormant from the time of its formation until the resolution is passed.

(4) A company may not under paragraph (3) pass such a resolution if it is a public company or a special category company.

(5) For the purposes of this Article and Article 261, a company is “dormant” during any period in which no transaction occurs which is for the company a significant accounting transaction; and—

- (a) this means a transaction which is required by Article 229 to be entered in the company’s accounting records (disregarding any which arises from the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum), and
- (b) a company which has been dormant for any period ceases to be so on the occurrence of any such transaction.

(6) A company which has under this Article made itself exempt from the obligation to appoint auditors loses that exemption if—

- (a) it ceases to be dormant, or
- (b) it would no longer qualify (for any other reason) to exclude that obligation by passing a resolution under this Article.

(7) Where the exemption is lost, the directors may, at any time before the next meeting of the company at which accounts are to be laid, appoint an auditor or auditors, to hold office until the conclusion of that meeting; and if they fail to exercise that power, the company in general meeting may exercise it.

*Laying and delivery of unaudited accounts*

**261.**—(1) The following applies in respect of a company’s accounts for a financial year if the company is exempt under Article 260 from the obligation to appoint auditors and either—

- (a) was so exempt throughout that year, or
- (b) became so exempt by virtue of a special resolution passed during that year, and retained the exemption until the end of that year.

(2) A report by the company's auditors need not be included (as otherwise required by preceding provisions of this Chapter) with the accounts laid before the company in general meeting and delivered to the registrar.

(3) If the auditors' report is omitted from the accounts so delivered, then—

- (a) the balance sheet shall contain a statement by the directors (in a position immediately above their signatures to the balance sheet) that the company was dormant throughout the financial year, and
- (b) if the accounts delivered to the registrar are modified as permitted by Articles 255 to 257—
  - (i) the modified balance sheet need not contain the statement otherwise required by paragraph 9 of Schedule 8, and
  - (ii) the modified accounts need not include the special report of the auditors otherwise required by paragraph 10 of that Schedule.

#### *Publication of accounts*

##### *Publication of full company accounts*

262.—(1) This Article applies to the publication by a company of full individual or group accounts, that is to say the accounts required by Article 249 to be laid before the company in general meeting and delivered to the registrar (including the directors' report, unless dispensed with under paragraph 3 of Schedule 8).

(2) If a company publishes individual accounts (modified or other) for a financial year, it shall publish with them the relevant auditors' report.

(3) If a company required by Article 237 to prepare group accounts for a financial year publishes individual accounts for that year, it shall also publish with them its group accounts (which may be modified group accounts, but only if the individual accounts are modified).

(4) If a company publishes group accounts (modified or other), otherwise than together with its individual accounts, it shall publish with them the relevant auditors' report.

(5) References in this Article to the relevant auditors' report are to the auditors' report under Article 244 or, in the case of modified accounts (individual or group), the auditors' special report under paragraph 10 of Schedule 8.

(6) A company which contravenes any provision of this Article and any officer of it who is in default is liable to a fine.

##### *Publication of abridged accounts*

263.—(1) This Article applies to the publication by a company of abridged accounts, that is to say any balance sheet or profit and loss

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account relating to a financial year of the company or purporting to deal with any such financial year, otherwise than as part of full accounts (individual or group) to which Article 262 applies.

(2) The reference in paragraph (1) to a balance sheet or profit and loss account, in relation to accounts published by a holding company, includes an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the holding company and its subsidiaries.

(3) If the company publishes abridged accounts, it shall publish with those accounts a statement indicating—

- (a) that the accounts are not full accounts,
- (b) whether full individual or full group accounts (according as the abridged accounts deal solely with the company's own affairs or with the affairs of the company and any subsidiaries) have been delivered to the registrar or, in the case of an unlimited company exempt under Article 249(4) from the requirement to deliver accounts, that the company is so exempt,
- (c) whether the company's auditors have made a report under Article 244 on the company's accounts for any financial year with which the abridged accounts purport to deal, and
- (d) whether any report so made was unqualified (meaning that it was a report, without qualification, to the effect that in the opinion of the person making it the company's accounts had been properly prepared).

(4) Where a company publishes abridged accounts, it shall not publish with those accounts any such report of the auditors as is mentioned in paragraph (3)(c).

(5) A company which contravenes any provision of this Article and any officer of it who is in default is liable to a fine.

*Supplementary*

*Power of Department to alter accounting requirements*

**264.**—(1) The Department may by regulations—

- (a) add to the classes of documents—
  - (i) to be comprised in a company's accounts for a financial year to be laid before the company in general meeting as required by Article 249, or
  - (ii) to be delivered to the registrar under that Article, and make provision as to the matters to be included in any document to be added to either class;
- (b) modify the requirements of this Order as to the matters to be stated in a document of any such class;
- (c) reduce the classes of documents to be delivered to the registrar under Article 249.



(2) In particular, the Department may by such regulations alter or add to the requirements of Schedules 4 and 9; and any reference in this Order to a provision then refers to that provision as it has effect subject to regulations in force under this Article.

(3) Where regulations made under paragraph (1)(a) add to either class of documents there mentioned documents dealing with the state of affairs and profit or loss of a company and other bodies, the regulations may also—

- (a) extend the provisions of this Order relating to group accounts (or such of those provisions as may be specified) to such documents,
- (b) exempt that company from the requirement to prepare group accounts in respect of any period for which it has prepared such a document.

(4) Regulations under paragraph (1)(a), or extending the classes of company to which any requirement mentioned in paragraph (1)(b) applies or rendering those requirements more onerous, shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

## CHAPTER II

### ACCOUNTS OF BANKING, SHIPPING AND INSURANCE COMPANIES

#### *Special category companies and their accounts*

**265.**—(1) For the purposes of this Order, “special category companies” are banking companies, shipping companies and insurance companies; and—

- (a) “banking company” means a company which is a recognised bank for the purposes of the Banking Act 1979 or is a licensed institution within the meaning of that Act; 1979 c. 37
- (b) “insurance company” means an insurance company to which Part II of the Insurance Companies Act 1982 applies; and 1982 c. 50
- (c) “shipping company” means a company which, or a subsidiary of which, owns ships or includes among its activities the management or operation of ships and which satisfies the Department that it ought in the national interest to be treated under this Part as a shipping company.

(2) Except as otherwise provided, Chapter I applies to a special category company and its accounts as it applies to, and to the accounts of, any other company.

(3) The individual accounts of a special category company, and the group accounts of a holding company which is, or has as its subsidiary, a special category company, may be prepared under this Chapter and not under Chapter I, and contain a statement that they are so prepared; and a reference in this Order to a company’s accounts (individual or group)

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being "special category" is to their being so prepared and containing that statement.

(4) Subject as follows, a reference in any statutory provision or other document to Article 236 or 238 or to Schedule 4 is, in relation to special category accounts, to be read as a reference to Article 266 or 267 or Schedule 9 (as the case may require); but this is subject to any contrary context.

*Special category individual accounts*

**266.**—(1) Where a company's individual accounts are special category, Article 236 and Schedule 4 do not apply, but—

- (a) the balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the financial year, and
- (b) the profit and loss account shall give a true and fair view of the company's profit or loss for the financial year.

(2) The balance sheet and profit and loss account shall comply with the requirements of Schedule 9, so far as applicable.

(3) Except as expressly provided by this Article or Part III of Schedule 9, the requirements of paragraph (2) and that Schedule are without prejudice to the general requirements of paragraph (1) or to any other requirements of this Order.

(4) The Department may, on the application or with the consent of the company's directors, modify in relation to that company any of the requirements of this Chapter as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of paragraph (1)), for the purpose of adapting them to the circumstances of the company.

(5) So much of paragraphs (1) and (2) as relates to the profit and loss account does not apply if—

- (a) the company has subsidiaries, and
- (b) the profit and loss account is framed as a consolidated account dealing with all or any of the company's subsidiaries as well as the company and—
  - (i) complies with the requirements of this Order relating to consolidated profit and loss accounts (as those requirements apply in the case of special category companies), and
  - (ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the company's accounts.

*Special category group accounts*

**267.**—(1) Where a holding company's group accounts are special category, those accounts shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with by those accounts as a whole, so far as concerns members of the company.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall (unless the Department on the application or with the consent of the holding company's directors otherwise directs) deal with the subsidiary's state of affairs as at the end of its relevant financial year, that is—

- (a) if its financial year ends with that of the holding company, that financial year, and
- (b) if not, the subsidiary's financial year ending last before the end of the financial year of the holding company dealt with in the group accounts,

and with the subsidiary's profit or loss for its relevant financial year.

(3) Without prejudice to paragraph (1), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of Schedule 9 (so far as applicable), and if not so prepared shall give the same or equivalent information.

(4) However, the Department may, on the application or with the consent of the holding company's directors, modify the requirements of Schedule 9 in relation to that company for the purpose of adapting them to the company's circumstances.

#### *Notes to special category accounts*

268.—(1) In Schedule 5 (matters to be dealt with in notes to accounts)—

- (a) paragraph 8 in Part II (disclosure of shareholdings in other bodies corporate, not being subsidiaries), and
- (b) Part III (financial information about subsidiaries),

do not apply in the case of special category accounts.

(2) Where an item is given in a note to special category accounts, to comply with Part V or VI of Schedule 5 (directors' emoluments, pensions, etc.; emoluments of higher-paid employees), the corresponding amount for the immediately preceding financial year shall be included in the note.

(3) If a person, being a director of a company preparing special category accounts, fails to take all reasonable steps to secure compliance with paragraph (2), he is in respect of each offence liable to a fine; but in proceedings against a person for that offence it is a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that paragraph (2) was complied with and was in a position to discharge that duty.

#### *Directors' report*

269.—(1) Where a company's individual accounts are special category, the following applies with respect to the directors' report accompanying the accounts.

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(2) Article 243(1)(a) and (b) does not apply as regards the contents of the report; but the report shall deal with the company's state of affairs, the amount (if any) which the directors recommend should be paid as dividend, and the amount (if any) which they propose to carry to reserves (within the meaning of Schedule 9).

(3) Information which is otherwise required to be given in the accounts, and allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts.

If any information is so given, the report is treated as forming part of the accounts for the purposes of audit, except that the auditors shall report on it only so far as it gives that information.

(4) Where advantage is taken of paragraph (3) to show an item in the directors' report instead of in the accounts, the report shall also show the corresponding amount for (or, as the case may require, as at the end of) the immediately preceding financial year of that item, except where the amount would not have had to be shown had the item been shown in the accounts.

(5) Schedule 7 applies to the directors' report only in respect of the matters to be stated, and the information to be given, under paragraphs 1 to 5 (but excluding paragraph 2(3)) and 9 and 10; and paragraph 1 of that Schedule does not apply if the company has the benefit of any provision of Part III of Schedule 9.

(6) The report shall, in addition to complying with those paragraphs of Schedule 7, also comply with Schedule 10, where and so far as applicable (disclosure of recent share and debenture issues; turnover and profitability; size of labour force and wages paid; and other general matters); but in that Schedule, paragraphs 2 to 4 and 6 do not apply to a directors' report attached to any accounts unless the documents required to be comprised in those accounts include group accounts which are special category.

(7) Article 245(6) does not apply.

*Auditors' report*

**270.—(1)** The following applies where a company is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part III of Schedule 9.

(2) In that case Article 244(2) does not apply; and the auditors' report shall state whether in their opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with this Order.

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PART IX

DISTRIBUTION OF PROFITS AND ASSETS

*Limits of company's power of distribution*

*Certain distributions prohibited*

271.—(1) A company shall not make a distribution except out of profits available for the purpose.

(2) In this Part, "distribution" means every description of distribution of a company's assets to its members, whether in cash or otherwise, except distribution by way of—

- (a) an issue of shares as fully or partly paid bonus shares,
- (b) the redemption or purchase of any of the company's own shares out of capital (including the proceeds of any fresh issue of shares) or out of unrealised profits in accordance with Chapter VII of Part VI,
- (c) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or by paying off paid-up share capital, and
- (d) a distribution of assets to members of the company on its winding up.

(3) For the purposes of this Part, a company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.

This is subject to the provision made by Articles 273 and 274 for investment and other companies.

(4) A company shall not apply an unrealised profit in paying up debentures, or any amounts unpaid on its issued shares.

(5) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before 1st July 1983 is realised or unrealised, they may treat the profit as realised; and where after making such enquiries they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.

*Restriction on distribution of assets*

272.—(1) A public company may only make a distribution at any time—

- (a) if at that time the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves, and

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- (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

This is subject to the provision made by Articles 273 and 274 for investment and other companies.

(2) In paragraph (1), "net assets" means the aggregate of the company's assets less the aggregate of its liabilities ("liabilities" to include any provision for liabilities or charges within paragraph 88 of Schedule 4).

(3) A company's undistributable reserves are—

- (a) the share premium account,
- (b) the capital redemption reserve,
- (c) the amount by which the company's accumulated, unrealised profits, so far as not previously utilised by capitalisation of a description to which this sub-paragraph applies, exceed its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made), and
- (d) any other reserve which the company is prohibited from distributing by any statutory provision (other than one contained in this Part) or by its memorandum or articles,

and, sub-paragraph (c) applies to every description of capitalisation except a transfer of profits of the company to its capital redemption reserve on or after 1st July 1983.

(4) A public company shall not include any uncalled share capital as an asset in any accounts relevant for the purposes of this Article.

*Other distributions by investment companies*

**273.**—(1) Subject to the following provisions of this Article, an investment company (defined in Article 274) may also make a distribution at any time out of its accumulated, realised revenue profits, so far as not previously utilised by distribution or capitalisation, less its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made—

- (a) if at that time the amount of its assets is at least equal to one and a half times the aggregate of its liabilities, and
- (b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.

(2) In paragraph (1)(a) "liabilities" includes any provision for liabilities or charges (within the meaning of paragraph 88 of Schedule 4).

(3) The company shall not include any uncalled share capital as an asset in any accounts relevant for the purposes of this Article.

(4) An investment company may not make a distribution by virtue of paragraph (1) unless—

- (a) its shares are listed on a recognised stock exchange, and
- (b) during the relevant period it has not—

- (i) distributed any of its capital profits, or
- (ii) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or amounts unpaid on its issued shares.

(5) The "relevant period" under paragraph (4) is the period beginning with—

- (a) the first day of the accounting reference period immediately preceding that in which the proposed distribution is to be made, or
- (b) where the distribution is to be made in the company's first accounting reference period, the first day of that period,

and ending with the date of the distribution.

(6) An investment company may not make a distribution by virtue of paragraph (1) unless the company gave to the registrar the requisite notice (that is, notice under Article 274 (1)) of the company's intention to carry on business as an investment company—

- (a) before the beginning of the relevant period under paragraph (4), or
- (b) in the case of a company incorporated on or after 1st July 1983, as soon as may have been reasonably practicable after the date of its incorporation.

*Meaning of "investment company"*

**274.—**(1) In Article 273 "investment company" means a public company which has given notice in the prescribed form (which has not been revoked) to the registrar of its intention to carry on business as an investment company, and has since the date of that notice complied with the requirements specified in paragraph (2).

(2) Those requirements are—

- (a) that the business of the company consists of investing its funds mainly in securities, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds,
- (b) that none of the company's holdings in companies (other than those which are for the time being investment companies) represents more than 15 per cent. by value of the investing company's investments,
- (c) that distribution of the company's capital profits is prohibited by its memorandum or articles,
- (d) that the company has not retained, otherwise than in compliance with this Part, in respect of any accounting reference period more than 15 per cent. of the income it derives from securities.

(3) Notice to the registrar under paragraph (1) may be revoked at any time by the company on giving notice in the prescribed form to the

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registrar that it no longer wishes to be an investment company within the meaning of this Article; and, on giving such notice, the company ceases to be such a company.

1970 c. 10  
1972 c. 41

(4) Section 359(2) and (3) of the Income and Corporation Taxes Act 1970 and section 93(6)(b) of the Finance Act 1972 apply for the purposes of paragraph (2)(b) as for those of section 359(1)(b) of the Act first mentioned.

*Extension of Articles 273 and 274 to other companies*

**275.—**(1) The Department may by regulations extend the provisions of Articles 273 and 274 (with or without modifications) to companies whose principal business consists of investing their funds in securities, land or other assets with the aim of spreading investment risk and giving their members the benefit of the results of the management of the assets.

(2) Regulations under this Article shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

*Realised profits of insurance company with long term business*

1982 c. 50

**276.—**(1) Where an insurance company to which Part II of the Insurance Companies Act 1982 applies carries on long term business—

- (a) any amount properly transferred to the profit and loss account of the company from a surplus in the fund or funds maintained by it in respect of that business, and
- (b) any deficit in that fund or those funds,

are to be (respectively) treated, for the purposes of this Part, as a realised profit and a realised loss; and, subject to this, any profit or loss arising in that business is to be left out of account for those purposes.

(2) In paragraph (1)—

- (a) the reference to a surplus in any fund or funds of an insurance company is to an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its long term business, as shown by an actuarial investigation, and
- (b) the reference to a deficit in any such fund or funds is to the excess of those liabilities over those assets, as so shown.

(3) In this Article—

- (a) “actuarial investigation” means an investigation to which section 18 of the Insurance Companies Act 1982 (periodic actuarial investigation of company with long term business) applies or which is made in pursuance of a requirement imposed by section 42 of that Act (actuarial investigation required by the Secretary of State); and



(b) "long term business" has the same meaning as in that Act.

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*Treatment of development costs*

277.—(1) Subject as follows, where development costs are shown as an asset in a company's accounts, any amount shown in respect of those costs is to be treated—

- (a) under Article 271, as a realised loss, and
- (b) under Article 273, as a realised revenue loss.

(2) This does not apply to any part of that amount representing an unrealised profit made on revaluation of those costs; nor does it apply if—

- (a) there are special circumstances in the company's case justifying the directors in deciding that the amount there mentioned is not to be treated as required by paragraph (1), and
- (b) the note to the accounts required by paragraph 20 of Schedule 4 (reasons for showing development costs as an asset) states that the amount is not to be so treated and explains the circumstances relied upon to justify the decision of the directors to that effect.

*Relevant accounts*

*Distribution to be justified by reference to company's accounts*

278.—(1) This Article and Articles 279 to 284 are for determining the question whether a distribution may be made by a company without contravening Article 271, 272 or 273.

(2) The amount of a distribution which may be made is determined by reference to the following items as stated in the company's accounts—

- (a) profits, losses, assets and liabilities,
- (b) provisions of any of the kinds mentioned in paragraphs 87 and 88 of Schedule 4 (depreciation, diminution in value of assets, retentions to meet liabilities, etc.), and
- (c) share capital and reserves (including undistributable reserves).

(3) Except in a case falling within paragraph (4), the company's accounts which are relevant for this purpose are its last annual accounts, that is to say those prepared under Part VIII which were laid in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid; and for this purpose accounts are laid if Article 249(1) has been complied with in relation to them.

(4) In the following two cases—

- (a) where the distribution would be found to contravene the relevant Article if reference were made only to the company's last annual accounts, or
- (b) where the distribution is proposed to be declared during the company's first accounting reference period, or before any accounts are laid in respect of that period,

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the accounts relevant under this Article (called “interim accounts” in the first case, and “initial accounts” in the second) are those necessary to enable a reasonable judgment to be made as to the amounts of the items mentioned in paragraph (2).

(5) The relevant Article is treated as contravened in the case of a distribution unless the statutory requirements about the relevant accounts (that is, the requirements of this Article and Articles 279 to 281 as and where applicable) are complied with in relation to that distribution.

*Requirements for last annual accounts*

**279.**—(1) If the company’s last annual accounts constitute the only accounts relevant under Article 278, the statutory requirements in respect of them are as follows.

(2) The accounts must have been properly prepared in accordance with this Order, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in Article 278(2), whether the distribution would contravene the relevant Article; and, without prejudice to the foregoing—

- (a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company’s affairs as at the balance sheet date, and
- (b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company’s profit or loss for the period in respect of which the accounts were prepared.

(3) The auditors must have made their report on the accounts under Article 244; and paragraph (4) applies if the report is a qualified report, that is to say, it is not a report without qualification to the effect that in the auditors’ opinion the accounts have been properly prepared in accordance with this Order.

(4) The auditors must in that case also have stated in writing (either at the time of their report or subsequently) whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in Article 278(2), whether the distribution would contravene the relevant Article; and a copy of the statement must have been laid before the company in general meeting.

(5) A statement under paragraph (4) suffices for the purposes of a particular distribution not only if it relates to a distribution which has been proposed but also if it relates to distributions of any description which includes that particular distribution, notwithstanding that at the time of the statement it has not been proposed.

*Requirements for interim accounts*

**280.**—(1) The following are the statutory requirements in respect of interim accounts prepared for a proposed distribution by a public company.

(2) The accounts must have been properly prepared, or have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in Article 278(2), whether the proposed distribution would contravene the relevant Article.

(3) "Properly prepared" means that the accounts must comply with Article 236 (applying that Article and Schedule 4 with such modifications as are necessary because the accounts are prepared otherwise than in respect of an accounting reference period) and any balance sheet comprised in the accounts must have been signed in accordance with Article 246; and, without prejudice to the foregoing—

- (a) so much of the accounts as consists of a balance sheet must give a true and fair view of the state of the company's affairs as at the balance sheet date, and
- (b) so much of the accounts as consists of a profit and loss account must give a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared.

(4) A copy of the accounts must have been delivered to the registrar.

(5) If the accounts are in a language other than English and Article 249(3)(b) (translation) does not apply, a translation into English of the accounts, certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

*Requirements for initial accounts*

**281.**—(1) The following are the statutory requirements in respect of initial accounts prepared for a proposed distribution by a public company.

(2) The accounts must have been properly prepared, or they must have been so prepared subject only to matters which are not material for determining, by reference to items mentioned in Article 278(2), whether the proposed distribution would contravene the relevant Article.

(3) Article 280(3) applies as respects the meaning of "properly prepared".

(4) The company's auditors must have made a report stating whether in their opinion the accounts have been properly prepared; and paragraph (5) applies if their report is a qualified report, that is to say, it is not a report without qualification to the effect that in the auditors' opinion the accounts have been so prepared.

(5) The auditors must in that case also have stated in writing whether, in their opinion, the matter in respect of which their report is qualified is material for determining, by reference to items mentioned in Article 278(2), whether the distribution would contravene the relevant Article.

(6) A copy of the accounts, of the auditors' report under paragraph (4) and of the auditors' statement (if any) under paragraph (5) must have been delivered to the registrar.

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(7) If the accounts are, or the auditors' report under paragraph (4) or their statement (if any) under paragraph (5) is, in a language other than English and Article 249(3)(b) (translation) does not apply, a translation into English of the accounts, the report or the statement (as the case may be), certified in the prescribed manner to be a correct translation, must also have been delivered to the registrar.

*Method of applying Article 278 to successive distributions*

**282.**—(1) For the purpose of determining by reference to particular accounts whether a proposed distribution may be made by a company, Article 278 has effect, in a case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of the distributions so made.

(2) Paragraph (1) applies (if it would not otherwise do so) to—

- (a) financial assistance lawfully given by a public company out of its distributable profits in a case where the assistance is required to be so given by Article 164,
- (b) financial assistance lawfully given by a private company out of its distributable profits in a case where the assistance is required to be so given by Article 165(2),
- (c) financial assistance given by a company in contravention of Article 161, in a case where the giving of that assistance reduces the company's net assets or increases its net liabilities,
- (d) a payment made by a company in respect of the purchase by it of shares in the company (except by payment lawfully made otherwise than out of distributable profits), and
- (e) a payment of any description specified in Article 178 (company's purchase of right to acquire its own shares, etc.),

being financial assistance given or payment made since the relevant accounts were prepared, as if any such financial assistance or payment were a distribution already made in pursuance of a determination made by reference to those accounts.

(3) In this Article—

“financial assistance” means the same as in Chapter VI of Part VI,

“net assets” has the meaning given by Article 164(2)(a), and

“net liabilities”, in relation to the giving of financial assistance by a company, means the amount by which the aggregate amount of the company's liabilities within the meaning of Article 164(2)(b) exceeds the aggregate amount of its assets, taking the amount of the assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given.

(4) Paragraphs (2) and (3) are deemed to be included in Chapter VII of Part VI for the purposes of the Department's power to make regulations under Article 189.

*Treatment of assets in the relevant accounts*

283.—(1) For the purposes of Articles 271 and 272, a provision of any kind mentioned in paragraphs 87 and 88 of Schedule 4, other than one in respect of a diminution in value of a fixed asset appearing on a revaluation of all the fixed assets of the company, or of all of its fixed assets other than goodwill, is treated as a realised loss.

(2) If, on the revaluation of a fixed asset, an unrealised profit is shown to have been made and, on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period, then an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for the depreciation of that asset over that period, if that profit had not been made, is treated for the purposes of Articles 271 and 272 as a realised profit made over that period.

(3) Where there is no record of the original cost of an asset, or a record cannot be obtained without unreasonable expense or delay, then for the purpose of determining whether the company has made a profit or loss in respect of that asset, its cost is taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.

(4) Subject to paragraph (6), any consideration by the directors of the value at a particular time of a fixed asset is treated as a revaluation of the asset for the purposes of determining whether any such revaluation of the company's fixed assets as is required for the purposes of the exception from paragraph (1) has taken place at that time.

(5) But where any such assets which have not actually been revalued are treated as revalued for those purposes under paragraph (4), that exception applies only if the directors are satisfied that their aggregate value at the time in question is not less than the aggregate amount at which they are for the time being stated in the company's accounts.

(6) Where Article 279(2), 280(2) or 281(2) applies to the relevant accounts, paragraphs (4) and (5) do not apply for the purpose of determining whether a revaluation of the company's fixed assets affecting the amount of the relevant items (that is, the items mentioned in Article 278(2)) as stated in those accounts has taken place, unless it is stated in a note to the accounts—

- (a) that the directors have considered the value at any time of any fixed assets of the company, without actually revaluing those assets,
- (b) that they are satisfied that the aggregate value of those assets at the time in question is or was not less than the aggregate amount at which they are or were for the time being stated in the company's accounts, and

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- (c) that the relevant items in question are accordingly stated in the relevant accounts on the basis that a revaluation of the company's fixed assets which by virtue of paragraphs (4) and (5) included the assets in question took place at that time.

*Distributions in kind*

**284.** Where a company makes a distribution of or including a non-cash asset, and any part of the amount at which that asset is stated in the accounts relevant for the purposes of the distribution in accordance with Articles 278 to 283 represents an unrealised profit, that profit is to be treated as a realised profit—

- (a) for the purpose of determining the lawfulness of the distribution in accordance with this Part (whether before or after the distribution takes place), and
- (b) for the purpose of the application of paragraphs 12(a) and 34(4)(b) of Schedule 4 (only realised profits to be included in or transferred to the profit and loss account) in relation to anything done with a view to or in connection with the making of that distribution.

*Supplementary*

*Consequences of unlawful distribution*

**285.—**(1) Where a distribution, or part of one, made by a company to one of its members is made in contravention of this Part and, at the time of the distribution, he knows or has reasonable grounds for believing that it is so made, he is liable to repay it (or that part of it, as the case may be) to the company or (in the case of a distribution made otherwise than in cash) to pay the company a sum equal to the value of the distribution (or part) at that time.

(2) Paragraph (1) is without prejudice to any obligation imposed apart from this Article on a member of a company to repay a distribution unlawfully made to him; but this Article does not apply in relation to—

- (a) financial assistance given by a company in contravention of Article 161, or
- (b) any payment made by a company in respect of the redemption or purchase by the company of shares in itself.

(3) This Article is deemed to be included in Chapter VII of Part VI for the purposes of the Department's power to make regulations under Article 189.

*Saving for provision in a company's articles operative before the Order of 1981*

**286.** Where immediately before 1st July 1983 a company was authorised by a provision of its articles to apply its unrealised profits in paying up in full or in part unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision

continues (subject to any alteration of the articles) as authority for those profits to be so applied after that date.

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*Distributions by special category companies*

287. Where a company's accounts relevant for the purposes of this Part are special category, Articles 273 to 283 apply with the modifications shown in Schedule 11.

*Interpretation for Part IX*

288.—(1) The following has effect for the interpretation of this Part.

(2) "Capitalisation", in relation to a company's profits, means any of the following operations (whenever carried out)—

- (a) applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares, or
- (b) transferring the profits to capital redemption reserve.

(3) References to profits and losses of any description are (respectively) to profits and losses of that description made at any time and, except where the context otherwise requires, are (respectively) to revenue and capital profits and revenue and capital losses.

*Saving for other restraints on distribution*

289. The provisions of this Part are without prejudice to any statutory provision or rule of law, or any provision of a company's memorandum or articles, restricting the sums out of which, or the cases in which, a distribution may be made.

PART X

A COMPANY'S MANAGEMENT; DIRECTORS AND SECRETARIES; THEIR  
QUALIFICATIONS, DUTIES AND RESPONSIBILITIES

*Officers and registered office*

*Directors*

290.—(1) Every company registered on or after 1st January 1933 (other than a private company) shall have at least two directors.

(2) Every company registered before that date (other than a private company) shall have at least one director.

(3) Every private company shall have at least one director.

*Secretary*

291.—(1) Every company shall have a secretary.

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(2) A sole director shall not also be secretary.

(3) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

(4) No company shall—

- (a) have as secretary to the company a body corporate the sole director of which is the sole director of the company;
- (b) have as sole director of the company a body corporate the sole director of which is secretary to the company.

*Acts done by person in dual capacity*

**292.** A provision requiring or authorising a thing to be done by or to a director and the secretary is not satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

*Validity of acts of directors*

**293.** The acts of a director are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification; and this provision is not excluded by Article 300(2) (void resolution to appoint).

*Qualifications of company secretaries*

**294.—(1)** It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who—

- (a) on 1st July 1983 held the office of secretary or assistant or deputy secretary of the company; or
- (b) for at least 3 of the 5 years immediately preceding his appointment as secretary held the office of secretary of a company other than a private company; or
- (c) is a member of any of the bodies specified in paragraph (2); or
- (d) is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom; or
- (e) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.

(2) The bodies referred to in paragraph (1)(c) are—

- (a) the Institute of Chartered Accountants in Ireland;



- (b) the Institute of Chartered Accountants in England and Wales;
- (c) the Institute of Chartered Accountants of Scotland;
- (d) the Chartered Association of Certified Accountants;
- (e) the Institute of Chartered Secretaries and Administrators;
- (f) the Institute of Cost and Management Accountants;
- (g) the Chartered Institute of Public Finance and Accountancy.

*Registered office*

**295.**—(1) A company shall at all times have a registered office to which all communications and notices may be addressed.

(2) Notice in the prescribed form of any change in the situation of a company's registered office shall be given within 14 days of the change to the registrar, who shall record the new situation.

(3) If default is made in complying with paragraph (1) or (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Register of directors and secretaries*

**296.**—(1) Every company shall keep, at the same office as its register of members is kept, a register of its directors and secretaries; and the register shall, with respect to the particulars to be contained in it of those persons, comply with Articles 297 and 298.

(2) The company shall, within the period of 14 days from the occurrence of—

- (a) any change among its directors or in its secretary, or
- (b) any change in the particulars contained in the register,

send to the registrar a notification in the prescribed form of the change and of the date on which it occurred; and a notification of a person having become a director or secretary, or one of joint secretaries, of the company shall contain a consent, signed by that person, to act in the relevant capacity.

(3) The register shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of 5 pence, or such less sum as the company may determine, for each inspection.

(4) If an inspection required under this Article is refused, or if default is made in complying with paragraph (1) or (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

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(6) For the purposes of this Article and Article 297, a shadow director of a company is deemed a director and officer of it.

*Particulars of directors to be registered under Article 296*

**297.**—(1) Subject to the provisions of this Article, the register kept by a company under Article 296 shall contain the following particulars with respect to each director—

- (a) in the case of an individual—
  - (i) his present Christian name and surname,
  - (ii) any former Christian name or surname,
  - (iii) his usual residential address,
  - (iv) his nationality,
  - (v) his business occupation (if any),
  - (vi) particulars of any other directorships held by him or which have been held by him, and
  - (vii) where the company is subject to Article 301 (age-limit), the date of his birth;
- (b) in the case of a corporation, its corporate name and registered or principal office, and particulars of any other directorships held by it or which have been held by it.

(2) In paragraph (1)—

- (a) “Christian name” includes a forename,
- (b) “surname”, in the case of a peer or a person usually known by a title different from his surname, means that title, and
- (c) the reference to a former Christian name or surname does not include—
  - (i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title, or
  - (ii) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18, or has been changed or disused for a period of not less than 20 years, or
  - (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

(3) It is not necessary for the register to contain on any day particulars of a directorship—

- (a) which has not been held by a director at any time during the 5 years preceding that day,
- (b) which is held by a director in a company which—
  - (i) is dormant or grouped with the company keeping the register, and

- (ii) if he also held that directorship for any period during those 5 years, was for the whole of that period either dormant or so grouped,
  - (c) which was held by a director for any period during those 5 years in a company which for the whole of that period was either dormant or grouped with the company keeping the register.
- (4) For the purposes of paragraph (3), "company" includes any body corporate incorporated in Northern Ireland; and—
- (a) Article 260(5) applies as regards whether and when a company is or has been dormant, and
  - (b) a company is to be regarded as being or having been grouped with another at any time if at that time it is or was a company of which the other is or was a wholly-owned subsidiary, or if it is or was a wholly-owned subsidiary of the other or of another company of which that other is or was a wholly-owned subsidiary.

*Particulars of secretaries to be registered under Article 296*

298.—(1) The register to be kept by a company under Article 296 shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them—

- (a) in the case of an individual, his present Christian name and surname, any former Christian name or surname and his usual residential address, and
- (b) in the case of a body corporate or a Scottish firm, its corporate or firm name and registered or principal office.

(2) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the particulars mentioned in paragraph (1).

(3) Article 297(2) applies as regards the meaning of "Christian name", "surname" and "former Christian name or surname".

*Provisions governing appointment of directors*

*Share qualification of directors*

299.—(1) It is the duty of every director who is by the company's articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within 2 months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision of the company's articles requiring a director to hold any specified share qualification, the bearer of a share warrant is not deemed the holder of the shares specified in the warrant.

(3) The office of director of a company is vacated if the director does not within 2 months from the date of his appointment (or within such

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shorter time as may be fixed by its articles) obtain his qualification, or if after the expiration of that period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this Article is incapable of being reappointed a director of the company until he has obtained his qualification.

(5) If after the expiration of that period or shorter time any unqualified person acts as a director of the company, he is liable to a fine and, for continued contravention, to a daily default fine.

*Appointment of directors to be voted on individually*

**300.**—(1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of this Article is void, whether or not its being so moved was objected to at the time; but where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment applies.

(3) For the purposes of this Article, a motion for approving a person's appointment, or for nominating a person for appointment, is to be treated as a motion for his appointment.

(4) Nothing in this Article applies to a resolution altering the company's articles.

*Age limit for directors*

**301.**—(1) A company is subject to this Article if—

- (a) it is a public company, or
- (b) being a private company, it is a subsidiary of a public company or of a body corporate registered under the law relating to companies for the time being in force in Great Britain as a public company.

(2) No person is capable of being appointed a director of a company which is subject to this Article if at the time of his appointment he has attained the age of 70.

(3) A director of such a company shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of 70; but acts done by a person as director are valid notwithstanding that it is afterwards discovered that his appointment had terminated under this paragraph.

(4) Where a person retires under paragraph (3), no provision for the automatic reappointment of retiring directors in default of another

appointment applies; and if at the meeting at which he retires the vacancy is not filled, it may be filled as a casual vacancy.

(5) Nothing in paragraphs (2) to (4) prevents the appointment of a director at any age, or requires a director to retire at any time, if his appointment is or was made or approved by the company in general meeting; but special notice is required of a resolution appointing or approving the appointment of a director for it to have effect under this paragraph, and the notice of the resolution given to the company, and by the company to its members, must state, or have stated, the age of the person to whom it relates.

(6) A person reappointed director on retiring under paragraph (3), or appointed in place of a director so retiring, is to be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the retiring director was last appointed before his retirement.

Subject to this, the retirement of a director out of turn under paragraph (3) is to be disregarded in determining when any other directors are to retire.

(7) In the case of a company first registered on or after 1st April 1961, this Article has effect subject to the provisions of the company's articles; and in the case of a company first registered before that date—

- (a) this Article has effect subject to any alterations of the company's articles made on or after that date; and
- (b) if on that date the company's articles contained provision for retirement of directors under an age limit or for preventing or restricting appointments of directors over a given age, this Article does not apply to directors to whom that provision applies.

*Duty of director to disclose his age*

**302.**—(1) A person who is appointed or to his knowledge proposed to be appointed director of a company subject to Article 301 at a time when he has attained any retiring age applicable to him under that Article or under the company's articles shall give notice of his age to the company.

(2) For the purposes of this Article, a company is deemed subject to Article 301 notwithstanding that all or any of the provisions of that Article are excluded or modified by the company's articles.

(3) Paragraph (1) does not apply in relation to a person's reappointment on the termination of a previous appointment as director of the company.

(4) A person who—

- (a) fails to give notice of his age as required by this Article; or
- (b) acts as director under any appointment which is invalid or has terminated by reason of his age,

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is liable to a fine and, for continued contravention, to a daily default fine.

(5) For the purposes of paragraph (4), a person who has acted as director under an appointment which is invalid or has terminated is deemed to have continued so to act throughout the period from the invalid appointment, or the date on which the appointment terminated (as the case may be), until the last day on which he is shown to have acted thereunder.

*Disqualification*

*Disqualification orders; introductory*

**303.**—(1) In the circumstances specified in Articles 304 to 308 a court may make against a person a disqualification order, that is to say an order that he shall not, without leave of the court—

- (a) be a director of a company, or
- (b) be a liquidator of a company, or
- (c) be a receiver or manager of a company's property, or
- (d) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company,

for such period as is specified in the order.

(2) The maximum period to be so specified is—

- (a) in the case of an order made under Article 305 or made by a court of summary jurisdiction, 5 years, and
- (b) in any other case, 15 years.

(3) In this Article and Articles 304 to 308 "company" includes any company which may be wound up under Part XXI.

(4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

(5) In Articles 304 to 307, any reference to provisions, or to a particular provision, of this Order or the Consequential Provisions Order includes the corresponding provision or provisions of the former Companies Acts.

(6) Parts I and II of Schedule 12 have effect with regard to the procedure for obtaining a disqualification order, and to applications for leave under such an order; and Part III of that Schedule has effect—

- (a) in connection with certain transitional cases arising under Articles 93 and 94 of the Order of 1982, so as to limit the power to make a disqualification order, or to restrict the duration of an order, by reference to events occurring or things done before those Articles came into force, and

(b) to preserve orders made under Articles 53 and 54 of the Order of 1978 (Article 53 repealed by the Order of 1982).

(7) If a person acts in contravention of a disqualification order, he is in respect of each offence liable to imprisonment or a fine, or both.

*Disqualification on conviction of indictable offence*

304.—(1) The court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management or liquidation of a company, or with the receivership or management of a company's property.

(2) "The court" for this purpose means—

- (a) the High Court, or
- (b) the court by or before which the person is convicted of the offence, or
- (c) in the case of a summary conviction, any other court of summary jurisdiction acting for the same petty sessions district.

*Disqualification for persistent default under the Companies Orders*

305.—(1) The court may make a disqualification order against a person where it appears to it that he has been persistently in default in relation to provisions of this Order or the Consequential Provisions Order requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar.

(2) On an application to the court for an order to be made under this Article, the fact that a person has been persistently in default in relation to such provisions as are mentioned in paragraph (1) may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of three or more defaults in relation to those provisions.

(3) A person is treated under paragraph (2) as being adjudged guilty of a default in relation to any such provision if—

- (a) he is convicted (whether on indictment or summarily) of an offence consisting in a contravention of that provision (whether on his own part or on the part of any company), or
- (b) a default order is made against him, that is to say an order under—
  - (i) Article 252 (order requiring delivery of company accounts), or
  - (ii) Article 465 (enforcement of receiver's or manager's duty to make returns), or
  - (iii) Article 589 (corresponding provision for liquidator in winding up), or

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- (iv) Article 662 (enforcement of company's duty to make returns),  
in respect of any such contravention of that provision (whether on his own part or on the part of any company).

*Disqualification for fraud, etc. in winding up*

**306.**—(1) The court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he—

- (a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under Article 451 (fraudulent trading), or  
(b) has otherwise been guilty, while an officer or liquidator of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or manager.

(2) In this Article “officer” includes a shadow director.

*Disqualification on summary conviction*

**307.**—(1) An offence counting for the purposes of this Article is one of which a person is convicted (either on indictment or summarily) in consequence of a contravention of any provision of this Order or the Consequential Provisions Order requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar (whether the contravention is on the person's own part or on the part of any company).

(2) Where a person is convicted of a summary offence counting for those purposes, the court by which he is convicted or any other court of summary jurisdiction acting for the same petty sessions district may make a disqualification order against him if the circumstances specified in paragraph (3) are present.

(3) Those circumstances are that, during the 5 years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than 3 default orders and offences counting for the purposes of this Article; and those offences may include that of which he is convicted as mentioned in paragraph (2) and any other offence of which he is convicted on the same occasion.

(4) For the purposes of this Article “default order” means the same as in Article 305 (3)(b).

*Disqualification by reference to association with insolvent companies*

**308.**—(1) The court may make a disqualification order against a person where, on an application under this Article, it appears to it that he—



- (a) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or subsequently) and was insolvent at that time, and
- (b) is or has been a director of another such company which has gone into liquidation within 5 years of the date on which the first-mentioned company went into liquidation,

and that his conduct as director of any of those companies makes him unfit to be concerned in the management of a company.

(2) In the case of a person who is or has been a director of a company which has gone into liquidation as mentioned in paragraph (1) and is being wound up by the court, any application under this Article shall be made by the Official Assignee and in any other case any application under this Article shall be made by the Department.

(3) The Department may require the liquidator or former liquidator of a company—

- (a) to furnish it with such information with respect to the company's affairs, and
- (b) to produce and permit inspection of such books or documents of, or relevant to, the company,

as the Department may reasonably require for the purpose of determining whether to make an application under this Article in respect of a person who is or has been a director of that company; and if a person makes default in complying with such a requirement, the court may, on the Department's application, make an order requiring that person to make good the default within such time as may be specified.

(4) For the purposes of this Article, a shadow director of a company is deemed a director of it; and a company goes into liquidation—

- (a) if it is wound up by the court, on the date of the winding-up order, and
- (b) in any other case, on the date of the passing of the resolution for voluntary winding up.

#### *Register of disqualification orders*

**309.**—(1) The Department may make regulations requiring officers of courts to furnish it with such particulars as the regulations may prescribe of cases in which—

- (a) a disqualification order is made under any of Articles 304 to 308, or
- (b) any action is taken by a court in consequence of which such an order is varied or ceases to be in force, or
- (c) leave is granted by the court for a person subject to such an order to do anything which otherwise the order prohibits him from doing;

and the regulations may prescribe the time within which, and the form and manner in which, such particulars are to be furnished.

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(2) The Department shall, from the particulars so furnished, maintain a register of orders, and of cases in which leave has been granted as mentioned in paragraph (1)(c).

(3) When an order of which entry is made in the register ceases to be in force, the Department shall delete the entry from the register and all particulars relating to it which have been furnished to the Department under this Article.

(4) The register shall be open to inspection on payment of such fee as may be prescribed by the Department.

*Provision against undischarged bankrupt acting as director, etc.*

310.—(1) If any person being an undischarged bankrupt acts as director or liquidator of, or directly or indirectly takes part in or is concerned in the promotion, formation or management of, a company except with the leave of the court by which the person was adjudged bankrupt, he is liable to imprisonment or a fine, or both.

(2) The leave of the court shall not be given unless notice of intention to apply for it has been served on the Official Assignee in Bankruptcy; and it is the latter's duty, if he is of opinion that it is contrary to the public interest that the application should be granted, to attend on the hearing of the application and oppose it.

(3) In this Article "company" includes an unregistered company and a company incorporated outside Northern Ireland which has an established place of business in Northern Ireland.

*Removal of directors*

*Resolution to remove director*

311.—(1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.

(2) Special notice is required of a resolution to remove a director under this Article or to appoint somebody instead of a director so removed at the meeting at which he is removed.

(3) A vacancy created by the removal of a director under this Article, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(4) A person appointed director in place of a person removed under this Article is treated, for the purpose of determining the time at which

he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed director.

(5) This Article is not to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this Article.

*Director's right to protest removal*

312.—(1) On receipt of notice of an intended resolution to remove a director under Article 311, the company shall forthwith send a copy of the notice to the director concerned; and he (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.

(2) Where notice is given of an intended resolution to remove a director under that Article, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).

(3) If a copy of the representations is not sent as required by paragraph (2) because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(4) But copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this Article are being abused to secure needless publicity for defamatory matter.

(5) The court may order the company's costs on an application under this Article to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

*Other provisions about directors and officers*

*Directors' names on company correspondence, etc.*

313.—(1) A company to which this Article applies shall not state, in any form, the name of any of its directors (otherwise than in the text or as a signatory) on any business letter on which the company's name appears unless it states on the letter in legible characters the Christian

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name (or its initials) and surname of every director of the company who is an individual and the corporate name of every corporate director.

(2) This Article applies to—

- (a) every company registered under this Order or under the former Companies Acts (except a company registered before 23rd November 1916); and
- (b) every company incorporated outside Northern Ireland which has an established place of business within Northern Ireland unless it had established such a place of business before that date.

(3) If a company makes default in complying with this Article, every officer of the company who is in default is liable for each offence to a fine; and for this purpose, where a corporation is an officer of the company, any officer of the corporation is deemed an officer of the company.

(4) For the purposes of this Article—

- (a) “director” includes shadow director, and “officer” is to be construed accordingly;
- (b) “Christian name” includes a forename;
- (c) “initials” includes a recognised abbreviation of a Christian name; and
- (d) in the case of a peer or a person usually known by a title different from his surname, “surname” includes that title.

*Limited company may have directors with unlimited liability*

**314.**—(1) In the case of a limited company, the liability of the directors or of the managing director may, if so provided by the memorandum, be unlimited.

(2) In the case of a limited company in which the liability of a director is unlimited, the directors of the company and the member who proposes any person for election or appointment to the office of director, shall add to that proposal a statement that the liability of the person holding that office will be unlimited.

(3) Before the person accepts the office or acts in it, notice in writing that his liability will be unlimited shall be given to him by the following or one of the following persons, namely—

- (a) the promoters of the company,
- (b) the directors of the company,
- (c) the company secretary.

(4) If a director or proposer makes default in adding such a statement, or if a promoter, director or secretary makes default in giving the notice required by paragraph (3), then—

- (a) he is liable to a fine, and
- (b) he is also liable for any damage which the person so elected or appointed may sustain from the default;

but the liability of the person elected or appointed is not affected by the default.

*Special resolution making liability of directors unlimited*

**315.**—(1) A limited company, if so authorised by its articles, may by special resolution alter its memorandum so as to render unlimited the liability of its directors or of any managing director.

(2) When such a special resolution is passed, its provisions are as valid as if they had been originally contained in the memorandum.

*Assignment of office by directors*

**316.** If provision is made by a company's articles, or by any agreement entered into between any person and the company, for empowering a director of the company to assign his office as such to another person, any assignment of office made in pursuance of that provision is (notwithstanding anything to the contrary contained in the provision) of no effect unless and until it is approved by a special resolution of the company.

*Directors to have regard to interests of employees*

**317.**—(1) The matters to which the directors of a company are to have regard in the performance of their functions include the interests of the company's employees in general, as well as the interests of its members.

(2) Accordingly, the duty imposed by this Article on the directors is owed by them to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(3) This Article applies to shadow directors as it does to directors.

*Provisions exempting officers and auditors from liability*

**318.**—(1) This Article applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise, for exempting any officer of the company or any person (whether an officer or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

(2) Except as provided by paragraph (3) any such provision is void.

(3) A company may, in pursuance of such a provision, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted, or in connection with any application under Article 154(3) or (4) (acquisition of shares by innocent nominee) or Article 675 (director in default, but not dishonest or unreasonable), in which relief is granted to him by the court.

**ENFORCEMENT OF FAIR DEALING BY DIRECTORS**

*Restrictions on directors taking financial advantage*

*Prohibition on tax-free payments to directors*

**319.—(1)** It is not lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax.

(2) Any provision contained in a company's articles, or in any contract or in any resolution of a company or a company's directors, for payment to a director of remuneration as mentioned in paragraph (1) has effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which it actually provides.

*Payment to director for loss of office, etc.*

**320.** It is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its amount) being disclosed to members of the company and the proposal being approved by the company.

*Company approval for property transfer*

**321.—(1)** It is not lawful, in connection with the transfer of the whole or any part of the undertaking or property of a company, for any payment to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars of the proposed payment (including its amount) have been disclosed to members of the company and the proposal approved by the company.

(2) Where a payment unlawful under this Article is made to a director, the amount received is deemed to be received by him in trust for the company.

*Director's duty of disclosure on takeover, etc.*

**322.—(1)** This Article applies where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders; or
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent,

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(2) It is in those circumstances the director's duty to take all reasonable steps to secure that particulars of the proposed payment (including its amount) are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(3) If—

- (a) the director fails to take those steps, or
- (b) any person who has been properly required by the director to include those particulars in or send them with the notice required by paragraph (2) fails to do so,

he is liable to a fine.

*Consequences of non-compliance with Article 322*

323.—(1) If in the case of any such payment to a director as is mentioned in Article 322(1)—

- (a) his duty under that Article is not complied with, or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting (summoned for the purpose) of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares,

any sum received by the director on account of the payment is deemed to have been received by him in trust for persons who have sold their shares as a result of the offer made; and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(2) Where—

- (a) the shareholders referred to in paragraph (1)(b) are not all the members of the company, and
- (b) no provision is made by the company's articles for summoning or regulating the meeting referred to in that paragraph,

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the provisions of this Order and of the company's articles relating to general meetings of the company apply (for that purpose) to the meeting either without modification or with such modifications as the Department on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(3) If at a meeting summoned for the purpose of approving any payment as required by paragraph (1)(b) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment is deemed for the purposes of that paragraph to have been approved.

*Provisions supplementing Articles 320 to 323*

**324.—**(1) Where in proceedings for the recovery of any payment as having, by virtue of Article 321(2) or 323(1), been received by any person in trust, it is shown that—

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading to it; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment is deemed, except in so far as the contrary is shown, to be one to which the provisions mentioned in this paragraph apply.

(2) If in connection with any such transfer as is mentioned in any of Articles 321 to 323—

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or
- (b) any valuable consideration is given to any such director,

the excess or the money value of the consideration (as the case may be) is deemed for the purposes of that Article to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) References in Articles 320 to 323 to payments made to a director by way of compensation for loss of office or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services.

“Pension” here includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in Articles 321 to 323 prejudices the operation of any rule of law requiring disclosure to be made with respect to such payments as



are there mentioned, or with respect to any other like payments made or to be made to a company's directors.

*Directors to disclose interest in contracts*

**325.**—(1) It is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration shall be made—

- (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration; or
- (b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested;

and, in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes so interested.

(3) For the purposes of this Article, a general notice given to the directors of a company by a director to the effect that—

- (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm; or
- (b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him (within the meaning of Article 354),

is deemed a sufficient declaration of interest in relation to any such contract.

(4) However, no such notice is of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(5) A reference in this Article to a contract includes any transaction or arrangement (whether or not constituting a contract) made or entered into on or after 1st July 1983.

(6) For the purposes of this Article, a transaction or arrangement of a kind described in Article 338 (prohibition of loans, quasi-loans, etc. to directors) made by a company for a director of the company or a person connected with such a director is treated (if it would not otherwise be so treated, and whether or not it is prohibited by that Article) as a transaction or arrangement in which that director is interested.

(7) A director who fails to comply with this Article is liable to a fine.

(8) This Article applies to a shadow director as it applies to a director, except that a shadow director shall declare his interest, not at a meeting of directors, but by a notice in writing to the directors which is either—

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- (a) a specific notice given before the date of the meeting at which, if he had been a director, the declaration would be required by paragraph (2) to be made; or
- (b) a notice which under paragraph (3) falls to be treated as a sufficient declaration of that interest (or would fall to be so treated apart from paragraph (4)).

(9) Nothing in this Article prejudices the operation of any rule of law restricting directors of a company from having an interest in contracts with the company.

*Directors' service contracts to be open to inspection*

**326.—(1)** Subject to the following provisions of this Article, every company shall keep at an appropriate place—

- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract;
- (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms; and
- (c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out its terms.

(2) All copies and memoranda kept by a company in pursuance of paragraph (1) shall be kept at the same place.

(3) The following are appropriate places for the purposes of paragraph (1)—

- (a) the company's registered office;
- (b) the place where its register of members is kept (if other than its registered office);
- (c) its principal place of business, provided that it is situated in Northern Ireland.

(4) Every company shall send to the registrar notice in the prescribed form of the place where copies of contracts and memoranda are kept in compliance with paragraph (1), and of any change in that place (save in a case in which they have at all times been kept at the company's registered office).

(5) Paragraph (1) does not apply to a director's contract of service with the company or with a subsidiary of it if that contract required him to work wholly or mainly outside the United Kingdom; but the company shall keep a memorandum—

- (a) in the case of a contract of service with the company, giving the director's name and setting out the provisions of the contract relating to its duration;
- (b) in the case of a contract of service with a subsidiary, giving the director's name and the name and place of incorporation of the

subsidiary, and setting out the provisions of the contract relating to its duration,

at the same place as copies and memoranda are kept by the company in pursuance of paragraph (1).

(6) A shadow director is treated for the purposes of this Article as a director.

(7) Every copy and memorandum required by paragraph (1) or (5) to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection of any member of the company without charge.

(8) If—

(a) default is made in complying with paragraph (1) or (5), or

(b) an inspection required under paragraph (7) is refused, or

(c) default is made for 14 days in complying with paragraph (4),

the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(9) In the case of a refusal of an inspection required under paragraph (7) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(10) Paragraphs (1) and (5) apply to a variation of a director's contract of service as they apply to the contract.

(11) This Article does not require that there be kept a copy of, or memorandum setting out the terms of, a contract (or its variation) at a time when the unexpired portion of the term for which the contract is to be in force is less than 12 months, or at a time at which the contract can, within the next ensuing 12 months, be terminated by the company without payment of compensation.

*Director's contract of employment for more than 5 years*

327.—(1) This Article applies in respect of any term of an agreement whereby a director's employment with the company of which he is a director or, where he is the director of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), for a period of more than 5 years during which the employment—

(a) cannot be terminated by the company by notice; or

(b) can be so terminated only in specified circumstances.

(2) In any case where—

(a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and

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(b) more than 6 months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it) under which he is to be employed with the company or, where he is a director of a holding company, within the group, this Article applies as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(3) A company shall not incorporate in an agreement such a term as is mentioned in paragraph (1), unless the term is first approved by a resolution of the company in general meeting and, in the case of a director of a holding company, by a resolution of that company in general meeting.

(4) No approval is required to be given under this Article by any body corporate unless it is a company within the meaning of this Order, or is registered under Article 629, or if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.

(5) A resolution of a company approving such a term as is mentioned in paragraph (1) shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both—

- (a) at the company's registered office for not less than 15 days ending with the date of the meeting; and
- (b) at the meeting itself.

(6) A term incorporated in an agreement in contravention of this Article is, to the extent that it contravenes the Article, void; and that agreement and, in a case where paragraph (2) applies, the original agreement are deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(7) In this Article—

- (a) "employment" includes employment under a contract for services; and
  - (b) "group", in relation to a director of a holding company, means the group which consists of that company and its subsidiaries;
- and for the purposes of this Article a shadow director is treated as a director.

*Substantial property transactions involving directors, etc.*

**328.—**(1) With the exceptions provided by Article 329, a company shall not enter into an arrangement—

- (a) whereby a director of the company or its holding company, or a person connected with such a director, acquires or is to acquire one or more non-cash assets of the requisite value from the company; or

- (b) whereby the company acquires or is to acquire one or more non-cash assets of the requisite value from such a director or a person so connected,

unless the arrangement is first approved by a resolution of the company in general meeting and, if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

(2) For this purpose a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than £1,000 but (subject to that) exceeds £50,000 or 10 per cent. of the company's asset value, that is—

- (a) except in a case falling within sub-paragraph (b), the value of the company's net assets determined by reference to the accounts prepared and laid under Part VIII in respect of the last preceding financial year in respect of which such accounts were so laid; and
- (b) where no accounts have been so prepared and laid before that time, the amount of the company's called-up share capital.

(3) For the purposes of this Article and Articles 329 and 330, a shadow director is treated as a director.

#### *Exceptions from Article 328*

329.—(1) No approval is required to be given under Article 328 by any body corporate unless it is a company within the meaning of this Order, or registered under Article 629 or, if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.

(2) Article 328(1) does not apply to an arrangement for the acquisition of a non-cash asset—

- (a) if the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiaries, or by one wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company, or
- (b) if the arrangement is entered into by a company which is being wound up, unless the winding up is a members' voluntary winding up.

(3) Article 328(1)(a) does not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

#### *Liabilities arising from contravention of Article 328*

330.—(1) An arrangement entered into by a company in contravention of Article 328, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person) is voidable at the instance of the company unless one or more of the conditions specified in paragraph (2) is satisfied.

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(2) Those conditions are that—

- (a) restitution of any money or other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of this Article by any other person for the loss or damage suffered by it; or
- (b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or
- (c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is so affirmed with the approval of the holding company given by a resolution in general meeting.

(3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of Article 328, that director and the person so connected, and any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement, is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction, and
- (b) (jointly and severally with any other person liable under this paragraph) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(4) Paragraph (3) is without prejudice to any liability imposed otherwise than by that paragraph, and is subject to paragraphs (5) and (6); and the liability under paragraph (3) arises whether or not the arrangement or transaction entered into has been avoided in pursuance of paragraph (1).

(5) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of Article 328, that director is not liable under paragraph (3) if he shows that he took all reasonable steps to secure the company's compliance with that Article.

(6) In any case, a person so connected and any such other director as is mentioned in paragraph (3) is not so liable if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

*Share dealings by directors and their families*

*Prohibition on directors dealing in share options*

**331.—(1)** It is an offence for a director of a company to buy—

- (a) a right to call for delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or
  - (b) a right to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or
  - (c) a right (as he may elect) to call for delivery at a specified price and within a specified time or to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment or a fine, or both.
- (3) In paragraph (1)—
- (a) “relevant shares”, in relation to a director of a company, means shares in the company or in any other body corporate, being the company’s subsidiary or holding company, or a subsidiary of the company’s holding company, being shares as respects which there has been granted a listing on a stock exchange (whether within the United Kingdom or elsewhere);
  - (b) “relevant debentures”, in relation to a director of a company, means debentures of the company or of any other body corporate, being the company’s subsidiary or holding company or a subsidiary of the company’s holding company, being debentures as respects which there has been granted such a listing; and
  - (c) “price” includes any consideration other than money.
- (4) This Article applies to a shadow director as to a director.
- (5) This Article is not to be taken as penalising a person who buys a right to subscribe for shares in, or debentures of, a body corporate or buys debentures of a body corporate that confer upon the holder of them a right to subscribe for, or to convert the debentures (in whole or in part) into, shares of that body.

*Duty of director to disclose shareholdings in own company*

332.—(1) A person who becomes a director of a company and at the time when he does so is interested in shares in, or debentures of, the company or any other body corporate, being the company’s subsidiary or holding company or a subsidiary of the company’s holding company, is under obligation to notify the company in writing—

- (a) of the subsistence of his interests at that time; and
- (b) of the number of shares of each class in, and the amount of debentures of each class of, the company or other such body corporate in which each interest of his subsists at that time.

(2) A director of a company is under obligation to notify the company in writing of the occurrence, while he is a director, of any of the following events—

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- (a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;
- (b) the entering into by him of a contract to sell any such shares or debentures;
- (c) the assignment by him of a right granted to him by the company to subscribe for shares in, or debentures of, the company; and
- (d) the grant to him by another body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for shares in, or debentures of, that other body corporate, the exercise of such a right granted to him and the assignment by him of such a right so granted;

and notification to the company must state the number or amount, and class, of shares or debentures involved.

(3) Schedule 13 has effect in connection with paragraphs (1) and (2); and of that Schedule—

- (a) Part I contains rules for the interpretation of, and otherwise in relation to, those paragraphs and applies in determining, for the purposes of those paragraphs, whether a person has an interest in shares or debentures;
- (b) Part II applies with respect to the periods within which obligations imposed by those paragraphs must be fulfilled; and
- (c) Part III specifies certain circumstances in which obligations arising from paragraph (2) are to be treated as not discharged;

and paragraphs (1) and (2) are subject to any exceptions for which provision may be made by regulations made by the Department.

(4) Paragraph (2) does not require the notification by a person of the occurrence of an event whose occurrence comes to his knowledge after he has ceased to be a director.

(5) An obligation imposed by this Article is treated as not discharged unless the notice by means of which it purports to be discharged is expressed to be given in fulfilment of that obligation.

(6) This Article applies to shadow directors as to directors; but nothing in it operates so as to impose an obligation with respect to shares in a body corporate which is the wholly-owned subsidiary of another body corporate.

(7) A person who—

- (a) fails to discharge, within the proper period, an obligation to which he is subject under paragraph (1) or (2), or
- (b) in purported discharge of an obligation to which he is so subject, makes to the company a statement which he knows to be false, or recklessly makes to it a statement which is false,



is guilty of an offence and liable to imprisonment or a fine, or both.

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(8) Article 680 (restriction on prosecutions) applies to an offence under this Article.

*Register of directors' interests notified under Article 332*

**333.**—(1) Every company shall keep a register for the purposes of Article 332.

(2) Whenever a company receives information from a director given in fulfilment of an obligation imposed on him by that Article, it is under obligation to enter in the register, against the director's name, the information received and the date of the entry.

(3) The company is also under obligation, whenever it grants to a director a right to subscribe for shares in, or debentures of, the company, to enter in the register against his name—

- (a) the date on which the right is granted,
- (b) the period during which, or time at which, it is exercisable,
- (c) the consideration for the grant (or, if there is no consideration, that fact), and
- (d) the description of shares or debentures involved and the number or amount of them, and the price to be paid for them (or the consideration, if otherwise than in money).

(4) Whenever such a right as is mentioned in paragraph (3) is exercised by a director, the company is under obligation to enter in the register against his name that fact (identifying the right), the number or amount of shares or debentures in respect of which it is exercised and, if they were registered in his name, that fact and, if not, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of two persons or more) with the number or amount of the shares or debentures registered in the name of each of them.

(5) Part IV of Schedule 13 has effect with respect to the register to be kept under this Article, to the way in which entries in it are to be made, to the right of inspection, and generally.

(6) For the purposes of this Article, a shadow director is deemed a director.

*Sanctions for non-compliance*

**334.**—(1) This Article applies with respect to defaults in complying with, and to contraventions of, Article 333 and Part IV of Schedule 13.

(2) If default is made in complying with any of the following provisions—

- (a) Article 333(1), (2), (3) or (4), or
- (b) Schedule 13, paragraph 20, 21 or 27,

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the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(3) If an inspection of the register required under paragraph 24 of that Schedule is refused, or a copy required under paragraph 25 is not sent within the proper period, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) If default is made for 14 days in complying with paragraph 26 of that Schedule (notice to registrar of where register is kept), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) If default is made in complying with paragraph 28 of that Schedule (register to be produced at annual general meeting), the company and every officer of it who is in default is liable to a fine.

(6) In the case of a refusal of an inspection of the register required under paragraph 24 of that Schedule, the court may by order compel an immediate inspection of it; and in the case of failure to send within the proper period a copy required under paragraph 25, the court may by order direct that the copy be sent to the person requiring it.

*Extension of Article 331 to spouses and children*

**335.—**(1) Article 331 applies to—

- (a) the wife or husband of a director of a company (not being herself or himself a director of it), and
- (b) an infant son or infant daughter of a director (not being himself or herself a director of the company),

as it applies to the director; but it is a defence for a person charged by virtue of this Article with an offence under Article 331 to prove that he (she) had no reason to believe that his (her) spouse or, as the case may be, parent was a director of the company in question.

(2) For the purposes of this Article—

- (a) “son” includes step-son and adopted son, and “daughter” includes step-daughter and adopted daughter (“parent” being construed accordingly), and
- (b) a shadow director of a company is deemed a director of it.

*Extension of Article 332 to spouses and children*

**336.—**(1) For the purposes of Article 332—

- (a) an interest of the wife or husband of a director of a company (not being herself or himself a director of it) in shares or debentures is to be treated as the director’s interest; and
- (b) the same applies to an interest of an infant son or infant daughter of a director of a company (not being himself or herself a director of it) in shares or debentures.

(2) For those purposes—

- (a) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the wife or husband of a director of a company (not being herself or himself a director of it) is to be treated as having been entered into, exercised or made by, or (as the case may be) as having been made to the director; and
- (b) the same applies to a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an infant son or infant daughter of a director of a company (not being himself or herself a director of it).
- (3) A director of a company is under obligation to notify the company in writing of the occurrence while he or she is a director, of either of the following events, namely—
- (a) the grant by the company to his (her) spouse, or to his or her infant son or infant daughter, of a right to subscribe for shares in, or debentures of, the company; and
- (b) the exercise by his (her) spouse or by his or her infant son or infant daughter of such a right granted by the company to the wife, husband, son or daughter.
- (4) In a notice given to the company under paragraph (3) there shall be stated—
- (a) in the case of the grant of a right, the like information as is required by Article 332 to be stated by the director on the grant to him by another body corporate of a right to subscribe for shares in, or debentures of, that other body corporate; and
- (b) in the case of the exercise of a right, the like information as is required by that Article to be stated by the director on the exercise of a right granted to him by another body corporate to subscribe for shares in, or debentures of, that other body corporate.
- (5) An obligation imposed by paragraph (3) on a director must be fulfilled by him before the end of 5 days beginning with the day following that on which the occurrence of the event giving rise to it comes to his knowledge; but in reckoning that period of days there is disregarded any Saturday or Sunday, and any day which is a bank holiday.
- (6) A person who—
- (a) fails to fulfil, within the proper period, an obligation to which he is subject under paragraph (3), or
- (b) in purported fulfilment of such an obligation, makes to a company a statement which he knows to be false, or recklessly makes to a company a statement which is false,
- is guilty of an offence and liable to imprisonment or a fine, or both.
- (7) The rules set out in Part I of Schedule 13 have effect for the interpretation of, and otherwise in relation to, paragraphs (1) and (2); and paragraphs (5), (6) and (8) of Article 332 apply with any requisite modification.

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(8) In this Article, "son" includes step-son and adopted son and "daughter" includes step-daughter and adopted daughter.

(9) For the purposes of Article 333, an obligation imposed on a director by this Article is to be treated as if imposed by Article 332.

*Duty to notify stock exchange of matters notified under Articles 332 to 336*

**337.—(1)** Whenever a company whose shares or debentures are listed on a recognised stock exchange is notified of any matter by a director in consequence of the fulfilment of an obligation imposed by Article 332 or 336, and that matter relates to shares or debentures so listed, the company is under obligation to notify that stock exchange of that matter; and the stock exchange may publish, in such manner as it may determine, any information received by it under this paragraph.

(2) An obligation imposed by paragraph (1) must be fulfilled before the end of the day next following that on which it arises; but there is disregarded for this purpose a day which is a Saturday or a Sunday or a bank holiday.

(3) If default is made in complying with this Article, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

Article 680 (restriction on prosecutions) applies to an offence under this Article.

*Restrictions on a company's power to make loans, etc. to directors and persons connected with them*

*General restriction on loans, etc. to directors and persons connected with them*

**338.—(1)** The prohibitions listed in this Article are subject to the exceptions in Articles 340 to 346.

(2) A company shall not—

- (a) make a loan to a director of the company or of its holding company;
- (b) enter into any guarantee or provide any security in connection with a loan made by any person to such a director.

(3) A relevant company shall not—

- (a) make a quasi-loan to a director of the company or of its holding company; or
- (b) make a loan or a quasi-loan to a person connected with such a director; or
- (c) enter into a guarantee or provide any security in connection with a loan or quasi-loan made by any other person for such a director or a person so connected.

(4) A relevant company shall not—

- (a) enter into a credit transaction as creditor for such a director or a person so connected;
- (b) enter into any guarantee or provide any security in connection with a credit transaction made by any other person for such a director or a person so connected.

(5) For the purposes of this Article and Articles 339 to 354, a shadow director is treated as a director.

(6) A company shall not arrange for the assignment to it, or the assumption by it, of any rights, obligations or liabilities under any transaction which, if it had been entered into by the company, would have contravened paragraph (2), (3) or (4); but for the purposes of this Article and Articles 339 to 355 the transaction is to be treated as having been entered into on the date of the arrangement.

(7) A company shall not take part in any arrangement whereby—

- (a) another person enters into a transaction which, if it had been entered into by the company, would have contravened any of paragraphs (2), (3), (4) and (6); and
- (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.

*Interpretation for Articles 338ff.*

339.—(1) This Article applies for the interpretation of Articles 338 to 354.

(2) “Guarantee” includes indemnity.

(3) A quasi-loan is a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (“the borrower”)—

- (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
- (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.

(4) Any reference to the person to whom a quasi-loan is made is a reference to the borrower; and the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

(5) “Relevant company” means a company which—

- (a) is a public company, or
- (b) is a subsidiary of a public company, or
- (c) is a subsidiary of a company which has as another subsidiary a public company, or
- (d) has a subsidiary which is a public company.

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(6) A credit transaction is a transaction under which one party ("the creditor")—

- (a) supplies any goods or sells any land under a hire purchase agreement or a conditional sale agreement;
- (b) leases or hires any land or goods in return for periodical payments;
- (c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.

(7) "Services" means anything other than goods or land.

(8) A transaction or arrangement is made "for" a person if—

- (a) in the case of a loan or quasi-loan, it is made to him;
- (b) in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;
- (c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or a credit transaction made for him;
- (d) in the case of an arrangement within Article 338(6) or (7), the transaction to which the arrangement relates was made for him; and
- (e) in the case of any other transaction or arrangement for the supply or transfer of, or of any interest in, goods, land or services, he is the person to whom the goods, land or services (or the interest) are supplied or transferred.

(9) "Conditional sale agreement" means the same as in the Consumer Credit Act 1974.

1974 c. 39

*Short-term quasi-loans*

**340.**—(1) Article 338(3) does not prohibit a company ("the creditor") from making a quasi-loan to one of its directors or to a director of its holding company if—

- (a) the quasi-loan contains a term requiring the director or a person on his behalf to reimburse the creditor his expenditure within 2 months of its being incurred; and
- (b) the aggregate of the amount of that quasi-loan and of the amount outstanding under each relevant quasi-loan does not exceed £1,000.

(2) A quasi-loan is relevant for this purpose if it was made to the director by virtue of this Article by the creditor or its subsidiary or, where the director is a director of the creditor's holding company, any other subsidiary of that company; and "the amount outstanding" is the

amount of the outstanding liabilities of the person to whom the quasi-loan was made.

*Inter-company loans in the same group*

**341.** In the case of a relevant company which is a member of a group of companies (meaning a holding company and its subsidiaries), Article 338(3)(b) and (c) does not prohibit the company from—

- (a) making a loan or quasi-loan to another member of that group; or
- (b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to another member of the group,

by reason only that a director of one member of the group is associated with another.

*Loans of small amounts*

**342.** Without prejudice to any other provision of Articles 340 to 346, Article 338(2)(a) does not prohibit a company from making a loan to a director of the company or of its holding company if the aggregate of the relevant amounts does not exceed £2,500.

*Minor and business transactions*

**343.—**(1) Article 338(4) does not prohibit a company from entering into a transaction for a person if the aggregate of the relevant amounts does not exceed £5,000.

(2) Article 338(4) does not prohibit a company from entering into a transaction for a person if—

- (a) the transaction is entered into by the company in the ordinary course of its business; and
- (b) the value of the transaction is not greater, and the terms on which it is entered into are no more favourable, in respect of the person for whom the transaction is made, than that or those which it is reasonable to expect the company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

*Transactions at behest of holding company*

**344.** The following transactions are excepted from the prohibitions in Article 338—

- (a) a loan or quasi-loan by a company to its holding company or a company entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to its holding company;
- (b) a company entering into a credit transaction as creditor for its holding company, or entering into a guarantee or providing any

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security in connection with a credit transaction made by any other person for its holding company.

*Funding of director's expenditure on duty to company*

**345.**—(1) A company is not prohibited by Article 338 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company.

(2) Nor does that Article prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

(3) Paragraphs (1) and (2) apply only if one of the following conditions is satisfied—

- (a) the thing in question is done with prior approval of the company given at a general meeting at which there are disclosed all the matters mentioned in paragraph (4);
- (b) that thing is done on condition that, if the approval of the company is not so given at or before the next annual general meeting, the loan is to be repaid, or any other liability arising under any such transaction discharged, within 6 months from the conclusion of that meeting;

but those paragraphs do not authorise a relevant company to enter into any transaction if the aggregate of the relevant amounts exceeds £10,000.

(4) The matters to be disclosed under paragraph (3)(a) are—

- (a) the purpose of the expenditure incurred or to be incurred, or which would otherwise be incurred, by the director;
- (b) the amount of the funds to be provided by the company; and
- (c) the extent of the company's liability under any transaction which is or is connected with the thing in question.

*Loan or quasi-loan by money-lending company*

**346.**—(1) There is excepted from the prohibitions in Article 338—

- (a) a loan or quasi-loan made by a money-lending company to any person; or
- (b) a money-lending company entering into a guarantee in connection with any other loan or quasi-loan.

(2) "Money-lending company" means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees in connection with loans or quasi-loans.

(3) Paragraph (1) applies only if both the following conditions are satisfied—

- (a) the loan or quasi-loan in question is made by the company, or it enters into the guarantee, in the ordinary course of the company's business; and



(b) the amount of the loan or quasi-loan, or the amount guaranteed, is not greater, and the terms of the loan, quasi-loan or guarantee are not more favourable, in the case of the person to whom the loan or quasi-loan is made or in respect of whom the guarantee is entered into, than that or those which it is reasonable to expect that company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

(4) But paragraph (1) does not authorise a relevant company (unless it is a recognised bank) to enter into any transaction if the aggregate of the relevant amounts exceeds £50,000.

(5) In determining that aggregate, a company which a director does not control is deemed not to be connected with him.

(6) The condition specified in paragraph 3(b) does not of itself prevent a company from making a loan to one of its directors or a director of its holding company—

- (a) for the purpose of facilitating the purchase, for use as that director's only or main residence, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it;
- (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it;
- (c) in substitution for any loan made by any person and falling within sub-paragraph (a) or (b);

if loans of that description are ordinarily made by the company to its employees and on terms no less favourable than those on which the transaction in question is made, and the aggregate of the relevant amounts does not exceed £50,000.

*"Relevant amounts" for the purposes of Articles 342ff.*

347.—(1) This Article has effect for defining the "relevant amounts" to be aggregated under Articles 342, 343(1), 345(3) and 346(4); and in relation to any proposed transaction or arrangement and the question whether it falls within one or other of the exceptions provided by those Articles, "the relevant exception" is that exception; but where the relevant exception is the one provided by Article 342 (loan of small amount), references in this Article to a person connected with a director are to be disregarded.

(2) Subject as follows, the relevant amounts in relation to a proposed transaction or arrangement are—

- (a) the value of the proposed transaction or arrangement,
- (b) the value of any existing arrangement which—
  - (i) falls within Article 338(6) or (7), and
  - (ii) also falls within paragraph (3) of this Article, and

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- (iii) was entered into by virtue of the relevant exception by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries;
- (c) the amount outstanding under any other transaction—
  - (i) falling within paragraph (3), and
  - (ii) made by virtue of the relevant exception, and
  - (iii) made by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries.
- (3) A transaction falls within this paragraph if it was made—
  - (a) for the director for whom the proposed transaction or arrangement is to be made, or for any person connected with that director; or
  - (b) where the proposed transaction or arrangement is to be made for a person connected with a director of a company, for that director or any person connected with him;

and an arrangement also falls within this paragraph if it relates to a transaction which does so.

(4) But where the proposed transaction falls within Article 346 and is one which a recognised bank proposes to enter into under Article 346(6) (housing loans, etc.), any other transaction or arrangement which apart from this paragraph would fall within paragraph (3) does not do so unless it was entered into in pursuance of Article 346(6).

(5) A transaction entered into by a company which is (at the time of that transaction being entered into) a subsidiary of the company which is to make the proposed transaction, or is a subsidiary of that company's holding company, does not fall within paragraph (3) if at the time when the question arises (that is to say, the question whether the proposed transaction or arrangement falls within any relevant exception), it no longer is such a subsidiary.

(6) Values for the purposes of paragraph (2) are to be determined in accordance with Article 348 and "the amount outstanding" for the purposes of paragraph (2)(c) is the value of the transaction less any amount by which that value has been reduced.

*"Value" of transactions and arrangements*

**348.—(1)** This Article has effect for determining the value of a transaction or arrangement for the purposes of Articles 338 to 347.

(2) The value of a loan is the amount of its principal.

(3) The value of a quasi-loan is the amount, or maximum amount, which the person to whom the quasi-loan is made is liable to reimburse the creditor.

(4) The value of a guarantee or security is the amount guaranteed or secured.

(5) The value of an arrangement to which Article 338(6) or (7) applies is the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.

(6) The value of a transaction or arrangement not falling within paragraphs (2) to (5) is the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied (at the time the transaction or arrangement is entered into) in the ordinary course of business and on the same terms (apart from price) as they have been supplied, or are to be supplied, under the transaction or arrangement in question.

(7) For the purposes of this Article, the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason), whether or not any liability under the transaction or arrangement has been reduced, is deemed to exceed £50,000.

*Civil remedies for breach of Article 338*

**349.**—(1) If a company enters into a transaction or arrangement in contravention of Article 338, the transaction or arrangement is voidable at the instance of the company unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of paragraph (2)(b) for the loss or damage suffered by it; or
- (b) any rights acquired bona fide for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

(2) Where an arrangement or transaction is made by a company for a director of the company or its holding company or a person connected with such a director in contravention of Article 338, that director and the person so connected and any other director of the company who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of paragraph (1)) is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and
- (b) (jointly and severally with any other person liable under this paragraph) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

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(3) Paragraph (2) is without prejudice to any liability imposed otherwise than by that paragraph, but is subject to paragraphs (4) and (5).

(4) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding company in contravention of Article 338, that director is not liable under paragraph (2) if he shows that he took all reasonable steps to secure the company's compliance with that Article.

(5) In any case, a person so connected and any such other director as is mentioned in paragraph (2) is not so liable if he shows that, at the time the arrangement or transaction was entered into, he did not know the relevant circumstances constituting the contravention.

*Criminal penalties for breach of Article 338*

**350.**—(1) A director of a relevant company who authorises or permits the company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening Article 338 is guilty of an offence.

(2) A relevant company which enters into a transaction or arrangement for one of its directors or for a director of its holding company in contravention of Article 338 is guilty of an offence.

(3) A person who procures a relevant company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening Article 338 is guilty of an offence.

(4) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

(5) A relevant company is not guilty of an offence under paragraph (2) if it shows that, at the time the transaction or arrangement was entered into, it did not know the relevant circumstances.

*Record of transactions not disclosed in company accounts*

**351.**—(1) The following provisions of this Article—

(a) apply in the case of a company which is, or is the holding company of, a recognised bank, and

(b) are subject to the exceptions provided by Article 352.

(2) Such a company shall maintain a register containing a copy of every transaction, arrangement or agreement of which particulars would, but for paragraph 4 of Schedule 6, be required by Article 240 to be disclosed in the company's accounts or group accounts for the current financial year and for each of the preceding 10 financial years.

(3) In the case of a transaction, arrangement or agreement which is not in writing, there shall be contained in the register a written memorandum setting out its terms.

(4) Such a company shall before its annual general meeting make available at its registered office for not less than 15 days ending with the date of the meeting a statement containing the particulars of transactions, arrangements and agreements which the company would, but for paragraph 4 of Schedule 6, be required by Article 240 to disclose in its accounts or group accounts for the last complete financial year preceding that meeting.

(5) The statement shall be so made available for inspection by members of the company; and such a statement shall also be made available for their inspection at the annual general meeting.

(6) It is the duty of the company's auditors to examine the statement before it is made available to members of the company and to make a report to the members on it; and the report shall be annexed to the statement before it is made so available.

(7) The auditors' report shall state whether in their opinion the statement contains the particulars required by paragraph (4); and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.

(8) If a company fails to comply with any provision of paragraphs (2) to (5), every person who at the time of the failure is a director of it is guilty of an offence and liable to a fine; but—

- (a) it is a defence in proceedings against a person for this offence to prove that he took all reasonable steps for securing compliance with the paragraph concerned, and
- (b) a person is not guilty of the offence by virtue only of being a shadow director of the company.

(9) For the purposes of the application of this Article to loans and quasi-loans made by a company to persons connected with a person who at any time is a director of the company or of its holding company, a company which a person does not control is not connected with him.

*Exceptions from Article 351*

352.—(1) Article 351 does not apply in relation to—

- (a) transactions or arrangements made or subsisting during a financial year by a company or by a subsidiary of a company for a person who was at any time during that year a director of the company or of its holding company or was connected with such a director, or
- (b) an agreement made or subsisting during that year to enter into such a transaction or arrangement,

if the aggregate of the values of each transaction or arrangement made for that person, and of each agreement for such a transaction or arrangement, less the amount (if any) by which the value of those transactions, arrangements and agreements has been reduced, did not exceed £1,000 at any time during the financial year.

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For the purposes of this paragraph, values are to be determined as under Article 348.

(2) Article 351(4) and (5) does not apply to a recognised bank which is the wholly-owned subsidiary of a company incorporated in the United Kingdom.

*Supplementary*

*Power to increase financial limits*

**353.**—(1) The Department may by order subject to negative resolution substitute for any sum of money specified in this Part a larger sum specified in the order.

(2) An order under this Article does not have effect in relation to anything done or not done before its coming into operation; and accordingly, proceedings in respect of any liability (whether civil or criminal) incurred before that time may be continued or instituted as if the order had not been made.

*“Connected persons”, etc.*

**354.**—(1) This Article has effect with respect to references in this Part to a person being “connected” with a director of a company, and to a director being “associated with” or “controlling” a body corporate.

(2) A person is connected with a director of a company if, but only if, he (not being himself a director of it) is—

- (a) that director’s spouse, child, step-child or adopted child; or
- (b) except where the context otherwise requires, a body corporate with which the director is associated; or
- (c) a person acting in his capacity as trustee of any trust the beneficiaries of which include—
  - (i) the director, his spouse or any children, step-children or adopted children of his, or
  - (ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse, or any children, step-children or adopted children of his, or any such body corporate; or
- (d) a person acting in his capacity as partner of that director or of any person who, by virtue of sub-paragraph (a), (b), or (c), is connected with that director; or
- (e) a Scottish firm in which—
  - (i) that director is a partner,
  - (ii) a partner is a person who, by virtue of a sub-paragraph (a), (b), or (c), is connected with that director, or

- (iii) a partner is a Scottish firm in which that director is a partner or in which there is a partner who, by virtue of sub-paragraph (a), (b) or (c), is connected with that director.
- (3) In paragraph (2)—
- (a) a reference to the child, step-child or adopted child of any person includes an illegitimate child of his, but does not include any person who has attained the age of 18; and
  - (b) sub-paragraph (c) does not apply to a person acting in his capacity as trustee under an employees' share scheme or a pension scheme.
- (4) A director of a company is associated with a body corporate if, but only if, he and the persons connected with him, together—
- (a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least one-fifth of that share capital; or
  - (b) are entitled to exercise or control the exercise of more than one-fifth of the voting power at any general meeting of that body.
- (5) A director of a company is deemed to control a body corporate if, but only if—
- (a) he or any person connected with him is interested in any part of the equity share capital of that body or is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body; and
  - (b) that director, the persons connected with him and the other directors of that company, together, are interested in more than one-half of that share capital or are entitled to exercise or control the exercise of more than one-half of that voting power.
- (6) For the purposes of paragraphs (4) and (5)—
- (a) a body corporate with which a director is associated is not to be treated as connected with that director unless it is also connected with him by virtue of paragraph (2)(c) or (d); and
  - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is associated is not to be treated as connected with a director by reason only of that fact.
- (7) The rules set out in Part I of Schedule 13 apply for the purposes of paragraphs (4) and (5).
- (8) References in those paragraphs to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him; but this is without prejudice to other provisions of paragraphs (4) and (5).

*Transactions under foreign law*

355. For the purposes of Articles 327 to 330 and 338 to 351, it is immaterial whether the law which (apart from this Order) governs any

PART XI arrangement or transaction is the law of the United Kingdom, or of a part of it, or not.

**PART XII**

**COMPANY ADMINISTRATION AND PROCEDURE**

**CHAPTER I**

**COMPANY IDENTIFICATION**

*Company name to appear outside place of business*

**356.**—(1) Every company shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible.

(2) If a company does not paint or affix its name as required by paragraph (1), the company and every officer of it who is in default is liable to a fine; and if a company does not keep its name painted or affixed as so required, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Company's name to appear in its correspondence, etc.*

**357.**—(1) Every company shall have its name mentioned in legible characters—

- (a) in all business letters of the company,
- (b) in all its notices and other official publications,
- (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and
- (d) in all its bills of parcels, invoices, receipts and letters of credit.

(2) If a company fails to comply with paragraph (1) it is liable to a fine.

(3) If an officer of a company or a person on its behalf—

- (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 company's name is not mentioned as required by paragraph (1), or
- (b) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company in which its name is not so mentioned,

he is liable to a fine.

(4) If an officer of a company or a person on its behalf 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 company's name is not mentioned as required by paragraph (1), he is liable to a fine; and he is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

*Company seal*

358.—(1) Every company shall have its name engraved in legible characters on its seal; and if a company fails to comply with this paragraph, it is liable to a fine.

(2) If an officer of a company or a person on its behalf uses or authorises the use of any seal purporting to be a seal of the company on which its name is not engraved as required by paragraph (1), he is liable to a fine.

*Particulars in correspondence, etc.*

359.—(1) Every company shall have the following particulars mentioned in legible characters in all business letters and order forms of the company, namely—

- (a) the company's place of registration and the number with which it is registered,
- (b) the address of its registered office,
- (c) in the case of an investment company (as defined in Article 274), the fact that it is such a company, and
- (d) in the case of a limited company exempt from the obligation to use the word "limited" as part of its name, the fact that it is a limited company.

(2) If in the case of a company having a share capital there is on the stationery used for any such letters, or on the company's order forms, a reference to the amount of share capital, the reference must be to paid-up share capital.

(3) As to contraventions of this Article, the following applies—

- (a) if a company fails to comply with paragraph (1) or (2), it is liable to a fine, and
- (b) if an officer of a company or a person on its behalf issues or authorises the issue of any business letter or order form not complying with those paragraphs, he is liable to a fine.

CHAPTER II

REGISTER OF MEMBERS

*Obligation to keep and enter up register*

360.—(1) Every company shall keep a register of its members and enter in it the particulars required by this Article.

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**CHAPTER II**

- (2) There shall be entered in the register—
- (a) the names and addresses of the members;
  - (b) the date on which each person was registered as a member; and
  - (c) the date at which any person ceased to be a member.
- (3) This paragraph applies in the case of a company having a share capital—
- (a) with the names and addresses of the members there shall be entered a statement—
    - (i) of the shares held by each member, distinguishing each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by its class, and
    - (ii) of the amount paid or agreed to be considered as paid on the shares of each member;
  - (b) where the company has converted any of its shares into stock and given notice of the conversion to the registrar, the register shall show the amount and class of stock held by each member, instead of the amount of shares and the particulars relating to shares specified in sub-paragraph (a).
- (4) In the case of a company which does not have a share capital but has more than one class of members, there shall be entered in the register, with the names and addresses of the members, the class to which each member belongs.
- (5) If a company makes default in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) An entry relating to a former member of a company may be removed from the register after the expiration of 20 years from the date on which he ceased to be a member.
- (7) Liability incurred by a company from the making or deletion of an entry in its register of members or debenture holders, or from a failure to make or delete any such entry, is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred.

This is without prejudice to any lesser period of limitation.

*Location of register*

**361.**—(1) A company's register of members shall be kept at its registered office, except that—

- (a) if the work of making it up is done at another office of the company, it may be kept there; and
  - (b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other, it may be kept at the office of the other at which the work is done;
- but it must not be kept at a place outside Northern Ireland.

(2) Subject to paragraph (3), every company shall send notice in the prescribed form to the registrar of the place where its register of members is kept, and of any change in that place.

(3) The notice need not be sent if the register has, at all times since it came into existence (or, in the case of a register in existence on 1st April 1961, at all times since then) been kept at the company's registered office.

(4) If a company makes default for 14 days in complying with paragraph (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

#### *Index of members*

362.—(1) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) The index shall be at all times kept at the same place as the register of members.

(4) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default-fine.

#### *Entries in register in relation to share warrants*

363.—(1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely—

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and
- (c) the date of the issue of the warrant.

(2) Subject to the company's articles, the bearer of a share warrant is entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in paragraph (1) are deemed to be those required by this Order to be

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entered in the register of members; and, on the surrender, the date of the surrender must be entered.

(5) Except as provided by Article 299(2) (director's share qualification), the bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Order, either to the full extent or for any purposes defined in its articles.

*Inspection of register and index*

**364.**—(1) Except when the register of members is closed under the provisions of this Order, the register and the index of members' names shall during business hours be open to the inspection of any member of the company without charge, and of any other person on payment of the appropriate charge.

(2) The reference to business hours is subject to such reasonable restrictions as the company in general meeting may impose, but so that not less than 2 hours in each day are allowed for inspection.

(3) Any member of the company or other person may require a copy of the register, or of any part of it, on payment of the appropriate charge; and the company shall cause any copy so required by a person to be sent to him within 10 days beginning with the day next following that on which the requirement is received by the company.

(4) The appropriate charge is—

(a) under paragraph (1), 5 pence or such less sum as the company may determine, for each inspection; and

(b) under paragraph (3), 10 pence or such less sum as the company may determine, for every 100 words (or fraction of 100 words) required to be copied.

(5) If an inspection required under this Article is refused, or if a copy so required is not sent within the proper period, the company and every officer of it who is in default is liable in respect of each offence to a fine.

(6) In the case of such refusal or default, the court may by order compel an immediate inspection of the register and index, or direct that the copies required be sent to the persons requiring them.

*Non-compliance with Articles 361, 362 and 364; agent's default*

**365.** Where under Article 361(1)(b) the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with—

Article 361(2) (notice to registrar),

Article 362(3) (index to be kept with register), or

Article 364 (inspection),

or with any requirement of this Order as to the production of the register, that other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the court

under Article 364(6) extends to the making of orders against that other and his officers and servants.

*Power to close register*

366. A company may, on giving notice by advertisement in a newspaper circulating in the district in which the company's registered office is situated, close the register of members for any time or times not exceeding in the whole 30 days in each year.

*Power of court to rectify register*

367.—(1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Order to send a list of its members to the registrar, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

*Trusts not to be entered on register*

368. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

*Register to be evidence*

369. The register of members is prima facie evidence of any matters which are by this Order directed or authorised to be inserted in it.

*External branch registers*

370.—(1) A company having a share capital whose objects comprise the transaction of business in any of the countries or territories specified in Part I of Schedule 14 may cause to be kept in any such country or

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territory in which it transacts business a branch register of members resident in that country or territory.

(2) Such a branch register is to be known as an “external branch register”; and—

- (a) any dominion register kept by a company under section 116 of the Act of 1960 is to become known as an external branch register of the company;
- (b) where any statutory provision or instrument (including in particular a company’s articles) refers to a company’s dominion register, that reference is to be read (unless the context otherwise requires) as being to an external branch register kept under this Article; and
- (c) references to a colonial register occurring in articles registered before 1st January 1933 are to be read as referring to an external branch register.

(3) Part II of Schedule 14 has effect with respect to external branch registers kept under this Article.

**CHAPTER III**

**ANNUAL RETURN**

*Annual return (company having a share capital)*

**371.—**(1) Subject to the provisions of this Article, every company having a share capital shall, at least once in every calendar year, make a return containing with respect to the company’s registered office, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Schedule 15.

(2) The annual return shall be in the prescribed form.

(3) A company need not make a return under paragraph (1) either in the calendar year of its incorporation or, if it is not required by this Order to hold an annual general meeting during the following calendar year, in that year.

(4) Where the company has converted any of its shares into stock and given notice of the conversion to the registrar, the list referred to in paragraph 5 of Schedule 15 must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph.

(5) The return may in any calendar year, if the return for either of the two immediately preceding calendar years has given (as at the date of that return) the full particulars required by that paragraph of the Schedule, give only such of those particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares

transferred since that date or to changes as compared with that date in the amount of stock held by a member.

(6) The following applies to a company keeping an external branch register—

- (a) references in paragraph (5) of this Article to the particulars required by paragraph 5 of Schedule 15 are to be taken as not including any such particulars contained in the external branch register, in so far as copies of the entries containing those particulars are not received at the company's registered office before the date when the return in question is made; and
- (b) if an annual return is made between the date when entries are made in the external branch register and the date when copies of those entries are received at the company's registered office, the particulars contained in those entries (so far as relevant to an annual return) shall be included in the next or a subsequent annual return, as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

(7) If a company fails to comply with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(8) For the purposes of this Article and Schedule 15, a shadow director is deemed a director and officer.

*Annual return (company not having a share capital)*

372.—(1) Every company not having a share capital shall once at least in every calendar year make a return in the prescribed form stating—

- (a) the address of the company's registered office;
- (b) if the register of members is under provisions of this Order kept elsewhere than at that office, the address of the place where it is kept;
- (c) if any register of holders of debentures of the company or any duplicate of any such register or part of it is under the provisions of this Order kept elsewhere than at the company's registered office, the address of the place where it is kept;
- (d) all such particulars with respect to the persons who at the date of the return are the directors of the company, and any person who at that date is its secretary, as are by this Order required to be contained (with respect to directors and the secretary respectively) in the company's register of directors and secretaries.

(2) A company need not make a return under paragraph (1) either in the calendar year of its incorporation or, if it is not required by this Order to hold an annual general meeting during the following calendar year, in that year.

(3) There shall be included in the return a statement containing particulars of the total amount of the company's indebtedness in respect

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**CHAPTER III**

of all mortgages and charges (whenever created) of any description specified in Article 403(1).

(4) If a company fails to comply with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) For the purposes of this Article, a shadow director is deemed a director and officer.

*Time for completion of annual return*

373.—(1) A company's annual return must be completed within 42 days after the annual general meeting for the calendar year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting of the company in that calendar year.

(2) The company must forthwith forward to the registrar a copy of the return signed both by a director and by the secretary of the company.

(3) If a company fails to comply with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine; and for this purpose a shadow director is deemed an officer.

**CHAPTER IV**

**MEETINGS AND RESOLUTIONS**

*Meetings*

*Annual general meeting*

374.—(1) Every company shall in each calendar year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.

(2) However, so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the calendar year of its incorporation or in the following calendar year.

(3) Not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next.

(4) If default is made in holding a meeting in accordance with this Article, the company and every officer of it who is in default is liable to a fine.

*Department's power to call meeting in default*

375.—(1) If default is made in holding a meeting in accordance with Article 374, the Department may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as it thinks



expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles.

(2) The directions that may be given under paragraph (1) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) If default is made in complying with directions of the Department under paragraph (1), the company and every officer of it who is in default is liable to a fine.

(4) A general meeting held under this Article shall, subject to any directions of the Department, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the calendar year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the calendar year in which it is held unless at that meeting the company resolves that it be so treated.

(5) Where a company so resolves, a copy of the resolution shall, within 15 days after its passing, be forwarded to the registrar and recorded by him; and if default is made in complying with this paragraph, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Extraordinary general meeting on members' requisition*

**376.**—(1) The directors of a company shall, on a members' requisition, forthwith proceed duly to convene an extraordinary general meeting of the company.

This applies notwithstanding anything in the company's articles.

(2) A members' requisition is a requisition of—

- (a) members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting at general meetings of the company; or
- (b) in the case of a company not having a share capital, members of it representing not less than one-tenth of the total voting rights of all the members having at the date of deposit of the requisition a right to vote at general meetings.

(3) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.

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(5) A meeting convened under this Article by requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(7) In the case of a meeting at which a resolution is to be proposed as a special resolution, the directors are deemed not to have duly convened the meeting if they do not give the notice required for special resolutions by Article 386(2).

*Length of notice for calling meetings*

377.—(1) A provision of a company's articles is void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—

- (a) in the case of the annual general meeting, 21 days' notice in writing; and
- (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution—
  - (i) 7 days' notice in writing in the case of an unlimited company, and
  - (ii) otherwise, 14 days' notice in writing.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by paragraph (1)), a meeting of the company (other than an adjourned meeting) may be called—

- (a) in the case of the annual general meeting, by 21 days' notice in writing; and
- (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution—
  - (i) by 7 days' notice in writing in the case of an unlimited company, and
  - (ii) otherwise, 14 days' notice in writing.

(3) Notwithstanding that a meeting is called by shorter notice than that specified in paragraph (2) or in the company's articles (as the case may be), it is deemed to have been duly called if it is so agreed—

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote at it; and
- (b) otherwise, by the requisite majority.

(4) The requisite majority for this purpose is a majority in number of the members having a right to attend and vote at the meeting, being a majority—

- (a) together holding not less than 95 per cent. in nominal value of the shares giving a right to attend and vote at the meeting; or
- (b) in the case of a company not having a share capital, together representing not less than 95 per cent. of the total voting rights at that meeting of all the members.

*General provisions as to meetings and votes*

378.—(1) This Article has effect in so far as the articles of the company do not make other provision in that behalf.

(2) Notice of the meeting of a company shall be served on every member of it in the manner in which notices are required to be served by Table A (as for the time being in force).

(3) Two or more members holding not less than one-tenth of the issued share capital or, if the company does not have a share capital, not less than 5 per cent. in number of the members of the company may call a meeting.

(4) Two members personally present are a quorum.

(5) Any member elected by the members present at a meeting may be chairman of it.

(6) In the case of a company originally having a share capital, every member has one vote in respect of each share or each £10 of stock held by him; and in any other case every member has one vote.

*Power of court to order meeting*

379.—(1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting in the manner determined by its articles or this Order, the court may, either of its own motion or on the application—

- (a) of any director of the company; or
- (b) of any member of the company who would be entitled to vote at the meeting,

order a meeting to be called, held and conducted in any manner the court thinks fit.

(2) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting.

(3) A meeting called, held and conducted in accordance with an order under paragraph (1) is deemed for all purposes a meeting of the company duly called, held and conducted.

*Proxies*

380.—(1) Any member of a company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or

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not) as his proxy to attend and vote instead of him; and in the case of a private company a proxy appointed to attend and vote instead of a member has also the same right as the member to speak at the meeting.

(2) But, unless the company's articles otherwise provide—

- (a) paragraph (1) does not apply in the case of a company not having a share capital;
- (b) a member of a private company is not entitled to appoint more than one proxy to attend on the same occasion; and
- (c) a proxy is not entitled to vote except on a poll.

(3) In the case of a company having a share capital, in every notice calling a meeting of the company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies, to attend and vote instead of him, and that a proxy need not also be a member.

(4) If default is made in complying with paragraph (3) as respects any meeting, every officer of the company who is in default is liable to a fine.

(5) A provision contained in a company's articles is void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person in Northern Ireland more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective.

(6) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at it by proxy, then every officer of the company who knowingly and wilfully authorises or permits their issue in that manner is liable to a fine.

However, an officer is not so liable by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(7) This Article applies to meetings of any class of members of a company as it applies to general meetings of the company.

*Right to demand a poll*

**381.—**(1) A provision contained in a company's articles is void in so far as it would have the effect either—

- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made—

- (i) by not less than 5 members having the right to vote at the meeting; or
- (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company is deemed also to confer authority to demand or join in demanding a poll; and for the purposes of paragraph (1) a demand by a person as proxy for a member is the same as a demand by the member.

#### *Voting on a poll*

382. On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

#### *Representation of bodies corporate at meetings*

383.—(1) A body corporate may—

- (a) if it is a member of a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
- (b) if it is a creditor (including a holder of debentures) of a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of creditors of the company held in pursuance of this Order or of rules made under it, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person so authorised is entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual shareholder, creditor or debenture holder of the other company.

#### *Resolutions*

##### *Circulation of members' resolutions*

384.—(1) Subject to Article 385, it is the duty of a company, on the requisition in writing of such number of members as is specified in paragraph (2) and (unless the company otherwise resolves) at the expense of the requisitionists—

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- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;
- (b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.
- (2) The number of members necessary for a requisition under paragraph (1) is—
- (a) any number representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than £100.
- (3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting.
- (4) Notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.
- (5) For compliance with paragraphs (3) and (4), the copy must be served, or notice of the effect of the resolution be given (as the case may be) in the same manner, and (so far as practicable) at the same time as notice of the meeting; and, where it is not practicable for it to be served or given at the same time, it must be served or given as soon as practicable thereafter.
- (6) The business which may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this Article; and for the purposes of this paragraph notice is deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.
- This has effect notwithstanding anything in the company's articles.
- (7) In the event of default in complying with this Article every officer of the company who is in default is liable to a fine.

*In certain cases, compliance with Article 384 not required*

**385.**—(1) A company is not bound under Article 384 to give notice of a resolution or to circulate a statement unless—

- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all

the requisitionists) is deposited at the registered office of the company—

- (i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting, and
  - (ii) otherwise, not less than one week before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to it.

(2) But if, after a copy of a requisition requiring notice of a resolution has been deposited at the company's registered office, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy (though not deposited within the time required by paragraph (1)) is deemed properly deposited for the purposes of that paragraph.

(3) The company is also not bound under Article 384 to circulate a statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by that Article are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

#### *Extraordinary and special resolutions*

**386.**—(1) A resolution is an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as (being entitled to do so) vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution is a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at such a meeting, being a majority—

- (a) together holding not less than 95 per cent. in nominal value of the shares giving that right; or
- (b) in the case of a company not having a share capital, together representing not less than 95 per cent. of the total voting rights at that meeting of all the members,

a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration by the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence

of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(5) In computing the majority on a poll demanded on the question that an extraordinary resolution or a special resolution be passed, reference is to be had to the number of votes cast for and against the resolution.

(6) For the purposes of this Article, notice of a meeting is deemed duly given, and the meeting duly held, when the notice is given and the meeting held in the manner provided by this Order or the company's articles.

*Resolution requiring special notice*

387.—(1) Where by any provision of this Order special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the meeting at which it is moved.

(2) The company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the company's articles, at least 21 days before the meeting.

(3) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed properly given, though not given within the time required.

*Registration, etc. of resolutions and agreements*

388.—(1) A copy of every resolution or agreement to which this Article applies shall, within 15 days after it is passed or made, be forwarded to the registrar and recorded by him; and it must be either a printed copy or else a copy in some other form approved by the registrar.

(2) Where a company's articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where a company's articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of 5 pence or such less sum as the company may direct.

(4) This Article applies to—

(a) special resolutions;

(b) extraordinary resolutions;

(c) resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have been effective for their purpose unless (as the case may be)



they had been passed as special resolutions or as extraordinary resolutions;

- (d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;
- (e) a resolution passed by the directors of a company in compliance with a direction under Article 41(2) (change of name on Department's direction);
- (f) a resolution of a company to give, vary, revoke or renew an authority to the directors for the purposes of Article 90 (allotment of relevant securities);
- (g) a resolution of the directors passed under Article 157(2) (alteration of memorandum on company ceasing to be a public company, following acquisition of its own shares);
- (h) a resolution conferring, varying or revoking authority under Article 176 (market purchase of company's own shares);
- (j) a resolution for voluntary winding up, passed under Article 529(1)(a); and
- (k) a resolution passed by the directors of an old public company, under Article 4(1) of the Consequential Provisions Order, that the company should be re-registered as a public company.

(5) If a company fails to comply with paragraph (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) If a company fails to comply with paragraph (2) or (3), the company and every officer of it who is in default is liable to a fine.

(7) For the purposes of paragraphs (5) and (6), a liquidator of a company is deemed an officer of it.

*Resolution passed at adjourned meeting*

389. Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company;
- (c) the directors of a company;

the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

*Records of proceedings*

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*Minutes of meetings*

**390.**—(1) Every company shall cause minutes of all proceedings at general meetings and all proceedings at meetings of its directors to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, is evidence of the proceedings.

(3) Where a shadow director by means of a notice required by paragraph (8) of Article 325 declares an interest in a contract or proposed contract, this Article applies—

(a) if it is a specific notice under sub-paragraph (a) of that paragraph, as if the declaration had been made at the meeting there referred to, and

(b) otherwise, as if it had been made at the meeting of the directors next following the giving of the notice;

and the making of the declaration is in either case deemed to form part of the proceedings at the meeting.

(4) Where minutes have been made in accordance with this Article of the proceedings at any general meeting of the company or meeting of directors, then, until the contrary is proved, the meeting is deemed duly held and convened, and all proceedings had at the meeting to have been duly had; and all appointments of directors or liquidators are deemed valid.

(5) If a company fails to comply with paragraph (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Inspection of minute books*

**391.**—(1) The books containing the minutes of proceedings at any general meeting of a company held on or after 1st January 1933 shall be kept at the same office as its register of members is kept, and shall during business hours be open to the inspection of any member without charge.

(2) The reference to business hours is subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection.

(3) Any member shall be entitled to be furnished, within 7 days after he has made a request in that behalf to the company, with a copy of any such minutes as are referred to in paragraph (1) at a charge of not more than 3 pence for every 100 words.

(4) If an inspection required under this Article is refused or if a copy required under this Article is not sent within the proper time, the

company and every officer of it who is in default is liable in respect of each offence to a fine.

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(5) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required be sent to the persons requiring them.

## CHAPTER V

### AUDITORS

#### *Annual appointment of auditors*

392.—(1) Every company shall, at each general meeting of the company at which accounts are laid in accordance with Article 249, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which the requirements of Article 249 are complied with.

This is subject to Article 260 (exemption for dormant companies).

(2) The first auditors of a company may be appointed by the directors at any time before the first general meeting of the company at which accounts are laid; and auditors so appointed shall hold office until the conclusion of that meeting.

(3) If the directors fail to exercise their powers under paragraph (2), those powers may be exercised by the company in general meeting.

(4) The directors, or the company in general meeting, may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(5) If at any general meeting of a company at which accounts are laid as required by Article 249 no auditors are appointed or reappointed, the Department may appoint a person to fill the vacancy; and the company shall, within one week of that power of the Department becoming exercisable, give to the Department notice of that fact.

(6) If a company fails to give the notice required by paragraph (5), the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

#### *Remuneration of auditors*

393.—(1) The remuneration of a company's auditors shall be fixed by the company in general meeting, or in such manner as the company in general meeting may determine.

(2) This does not apply in the case of auditors appointed by the directors or by the Department; and in that case the remuneration may be fixed by the directors or by the Department, as the case may be.

(3) For the purpose of this Article, "remuneration" includes any sums paid by the company in respect of the auditor's expenses.

*Removal of auditors*

**394.—(1)** A company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the registrar.

If a company fails to give the notice required by this paragraph, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Nothing in this Article is to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

*Auditors' right to attend company meetings*

**395.—(1)** A company's auditors are entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(2) An auditor of a company who has been removed is entitled to attend—

- (a) the general meeting at which his term of office would otherwise have expired, and
- (b) any general meeting at which it is proposed to fill the vacancy caused by his removal,

and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

*Supplementary provisions as to auditors*

**396.—(1)** Special notice is required for a resolution at a general meeting of a company—

- (a) appointing as auditor a person other than a retiring auditor; or
- (b) filling a casual vacancy in the office of auditor; or

- (c) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or
  - (d) removing an auditor before the expiration of his term of office.
- (2) On receipt of notice of such an intended resolution as is mentioned in paragraph (1) the company shall forthwith send a copy of it—
- (a) to the person proposed to be appointed or removed, as the case may be;
  - (b) in a case within paragraph (1)(a), to the retiring auditor; and
  - (c) where, in a case within paragraph (1)(b) or (c), the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(3) Where notice is given of such a resolution as is mentioned in paragraph (1)(a) or (d), and the retiring auditor or (as the case may be) the auditor proposed to be removed makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so)—

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations is not sent out as required by paragraph (3) because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this Article are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

#### *Qualification for appointment as auditor*

397.—(1) A person is not qualified for appointment as auditor of a company unless—

- (a) he is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Department; or
- (b) he is for the time being authorised by the Department to be so appointed as having similar qualifications obtained outside the United Kingdom or else he retains an authorisation formerly

granted by the Department under section 155 of the Act of 1960 or Article 26 of the Order of 1978 (adequate knowledge and experience, or pre-27th October 1959 practice).

(2) Subject to paragraph (3), the bodies of accountants recognised for the purposes of paragraph (1)(a) are—

- (a) the Institute of Chartered Accountants in Ireland,
- (b) the Institute of Chartered Accountants in England and Wales,
- (c) the Institute of Chartered Accountants of Scotland, and
- (d) the Chartered Association of Certified Accountants.

(3) The Department may by regulations amend paragraph (2) by adding or deleting any body, but shall not make regulations—

- (a) adding any body, or
- (b) deleting any body which has not consented in writing to its deletion,

unless the Department has published notice of its intention to do so in the Belfast Gazette at least 4 months before making the regulations.

(4) The Department may refuse an authorisation under paragraph (1)(b) to a person having qualifications obtained outside the United Kingdom if it appears to the Department that the country in which the qualifications were obtained does not confer on persons qualified in the United Kingdom privileges corresponding to those conferred by that paragraph.

(5) None of the following persons is qualified for appointment as auditor of a company—

- (a) an officer or servant of the company;
- (b) a person who is a partner of or in the employment of an officer or servant of the company;
- (c) a body corporate;

and for this purpose an auditor of a company is not to be regarded as either officer or servant of it.

(6) A person is also not qualified for appointment as auditor of a company if he is, under paragraph (5), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(7) Notwithstanding paragraphs (1), (5) and (6), a Scottish firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors of it.

(8) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office; and if an auditor of a company to his knowledge becomes so disqualified during his term of office he shall thereupon vacate his office and give notice in

writing to the company that he has vacated it by reason of that disqualification.

(9) A person who acts as auditor in contravention of paragraph (8), or fails without reasonable excuse to give notice of vacating his office as required by that paragraph, is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

*Resignation of auditors*

**398.**—(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office; and any such notice operates to bring his term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.

(2) An auditor's notice of resignation is not effective unless it contains either—

- (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or
- (b) a statement of any such circumstances as are mentioned in subparagraph (a).

(3) Where a notice under this Article is deposited at a company's registered office, the company shall within 14 days send a copy of the notice—

- (a) to the registrar; and
- (b) if the notice contained a statement under paragraph (2)(b), to every person who under Article 248 is entitled to be sent copies of the accounts.

(4) The company or any person claiming to be aggrieved may, within 14 days of the receipt by the company of a notice containing a statement under paragraph (2)(b), apply to the court for an order under paragraph (5).

(5) If on such an application the court is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may by order direct that copies of the notice need not be sent out; and the court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(6) The company shall, within 14 days of the court's decision, send to the persons mentioned in paragraph (3)—

- (a) if the court makes an order under paragraph (5), a statement setting out the effect of the order;
- (b) if not, a copy of the notice containing the statement under paragraph (2)(b).

(7) If default is made in complying with paragraph (3) or (6), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Right of resigning auditor to requisition company meeting*

**399.**—(1) Where an auditor's notice of resignation contains a statement under Article 398(2)(b) there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extraordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(2) Where an auditor's notice of resignation contains such a statement, the auditor may request the company to circulate to its members—

- (a) before the general meeting at which his term of office would otherwise have expired; or
- (b) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(3) The company shall in that case (unless the statement is received by it too late for it to comply)—

- (a) in any notice of the meeting given to members of the company state the fact of the statement having been made, and
- (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(4) If the directors do not within 21 days from the date of the deposit of a requisition under this Article proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable to a fine.

(5) If a copy of the statement mentioned in paragraph (2) is not sent out as required by paragraph (3) because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement shall be read out at the meeting.

(6) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this Article are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.



(7) An auditor who has resigned his office is entitled to attend any such meeting as is mentioned in paragraph (2)(a) or (b) and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

*Powers of auditors in relation to subsidiaries*

**400.**—(1) Where a company (“the holding company”) has a subsidiary, then—

- (a) if the subsidiary is a body corporate incorporated in Northern Ireland, it is the duty of the subsidiary and its auditors to give to the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company;
- (b) in any other case, it is the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as are mentioned in sub-paragraph (a).

(2) If a subsidiary or holding company fails to comply with paragraph (1), the subsidiary or holding company and every officer of it who is in default is guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with paragraph (1)(a), he is guilty of an offence and so liable.

*False statements to auditors*

**401.** An officer of a company commits an offence if he knowingly or recklessly makes to a company’s auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company, and
- (b) is misleading, false or deceptive in a material particular.

A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

PART XIII

REGISTRATION OF CHARGES

*Certain charges void if not registered*

**402.**—(1) Subject to the provisions of this Part, a charge created by a company and being a charge to which this Article applies is, so far as any

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security on the company's property or undertaking is conferred by the charge, void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the registrar for registration in the manner required by this Part, within 21 days after the date of the charge's creation.

(2) Paragraph (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this Article, the money secured by it immediately becomes payable.

*Charges which have to be registered*

**403.**—(1) Article 402 applies to the following charges—

- (a) a charge for the purposes of securing any issue of debentures,
- (b) a charge on uncalled share capital of the company,
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale,
- (d) a charge on land (wherever situated) or any interest in it, but not including a charge for any rent or other periodical sum issuing out of land,
- (e) a charge on book debts of the company,
- (f) a floating charge on the company's undertaking or property,
- (g) a charge on calls made but not paid,
- (h) a charge on a ship or aircraft, or any share in a ship,
- (j) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

(2) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company is not, for the purposes of Article 402 and this Article, to be treated as a charge on those book debts.

(3) The holding of debentures entitling the holder to a charge on land is not for the purposes of this Article deemed to be an interest in land.

(4) In this Part, "charge" includes mortgage.

*Formalities of registration (debentures)*

**404.**—(1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it is for the purposes of Article 402 sufficient if there are delivered to or received by the registrar, within 21 days after the execution of the deed containing the charge (or, if there is no such deed,

after the execution of any debentures of the series), the following particulars in the prescribed form—

- (a) the total amount secured by the whole series, and
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and
- (c) a general description of the property charged, and
- (d) the names of the trustees (if any) for the debenture holders,

together with the deed containing the charge or, if there is no such deed, one of the debentures of the series, so, however, that there shall be sent to the registrar for entry in the register particulars in the prescribed form of the date and amount of each issue of debentures of the series, but any omission to do this does not affect the validity of any of those debentures.

(2) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to a person in consideration of his—

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures of the company, or
- (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for such debentures,

the particulars required to be sent for registration under Article 402 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but omission to do this does not affect the validity of the debentures issued.

(3) The deposit of debentures as security for a debt of the company is not, for the purposes of paragraph (2), treated as the issue of the debentures at a discount.

#### *Verification of charge on property outside Northern Ireland*

405.—(1) In the case of a charge created out of the United Kingdom comprising property situated outside the United Kingdom, the delivery to and the receipt by the registrar of a copy (verified in the prescribed manner) of the instrument by which the charge is created or evidenced has the same effect for the purposes of Articles 402 to 404 and this Article as the delivery and receipt of the instrument itself.

(2) In that case, 21 days after the date on which the instrument or copy could, in due course of post (and if despatched with due diligence), have been received in Northern Ireland are substituted for the 21 days mentioned in Article 402(1) (or as the case may be, Article 404(1)) as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(3) Where a charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the charge may be sent for registration under Article

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402 notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(4) Where a charge comprises property situated in Great Britain and registration in the country where the property is situated is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy (verified in the prescribed manner) of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in the country in which the property is situated on the date on which it was so presented has, for the purposes of Articles 402 to 404 and this Article, the same effect as the delivery and receipt of the instrument itself.

*Company's duty to notify registrar of charges it creates*

**406.**—(1) It is a company's duty to send to the registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under Articles 402 to 405; but registration of any such charge may be effected on the application of any person interested in it.

(2) Where registration is effected on the application of some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(3) If a company fails to comply with paragraph (1), then, unless the registration has been effected on the application of some other person, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Charges existing on property acquired*

**407.**—(1) This Article applies where a company acquires property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part.

(2) The company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument (if any) by which the charge was created or is evidenced, to be delivered to the registrar for registration in the manner required by this Part within 21 days after the date on which the acquisition is completed.

(3) However, if the property is situated and the charge was created outside Northern Ireland, 21 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Northern Ireland is substituted for the 21 days mentioned in paragraph (2) as the time within which the particulars and copy of the instrument are to be delivered to the registrar.

(4) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Registration of orders charging land, etc.*

408.—(1) Where—

- (a) a charge imposed under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981 or notice thereof is registered in the Land Registry against registered land or any estate in registered land of a company; or
- (b) any such order is registered in the Registry of Deeds against any unregistered land or estate in land of a company;

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the Registrar of Titles in the case of sub-paragraph (a) and the Registrar of Deeds in the case of sub-paragraph (b) shall as soon as may be cause 2 copies of the order made under Article 46 of that Order or of any notice registered under Article 48 of that Order to be delivered to the registrar.

(2) The registrar shall on receipt of such copies—

- (a) register one of them in accordance with the provisions of Article 409; and
- (b) not later than 7 days from the date of such receipt, cause the other copy together with a certificate of registration under Article 409(3) to be sent to the company against which the judgment was given.

(3) Where any charge to which paragraph (1) applies is vacated, the Registrar of Titles or, as the case may be, the Registrar of Deeds shall cause a certified copy of the certificate of satisfaction lodged under Article 132(1) of the Judgments Enforcement (Northern Ireland) Order 1981 to be delivered to the registrar for entry of a memorandum of satisfaction pursuant to Article 411.

*Register of charges to be kept by registrar*

409.—(1) The registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part.

(2) He shall enter in the register with respect to such charges the following particulars—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, the particulars specified in Article 404(1);
- (b) in the case of a charge imposed by the Enforcement of Judgments Office under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981, the date on which the charge became effective;
- (c) in the case of any other charge—

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- (i) if it is a charge created by the company, the date of its creation, and if it is a charge which was existing on property acquired by the company, the date of the acquisition of the property, and
- (ii) the amount secured by the charge, and
- (iii) short particulars of the property charged, and
- (iv) the persons entitled to the charge.

(3) The registrar shall give a certificate of the registration of any charge registered in pursuance of this Part, stating the amount secured by the charge.

The certificate—

- (a) shall be signed by the registrar, and
- (b) is conclusive evidence that the requirements of this Part as to registration have been satisfied.

(4) The register kept in pursuance of this Article shall be open to inspection by any person.

*Endorsement of certificate on debentures*

**410.**—(1) The company shall cause a copy of every certificate of registration given under Article 409 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered.

(2) But this does not require a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(3) If a person knowingly and wilfully authorises or permits the delivery of a debenture or certificate of debenture stock which under this Article is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he is liable (without prejudice to any other liability) to a fine.

*Entries of satisfaction and release*

**411.**—(1) The registrar, on receipt of a statutory declaration in the prescribed form verifying, with respect to a registered charge—

- (a) that the debt for which the charge was created has been paid or satisfied in whole or in part, or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be).

(2) Where the registrar enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy of it.

*Rectification of register of charges*

**412.**—(1) This Article applies if the court is satisfied that the omission to register a charge within the time required by this Part or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief.

(2) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

*Registration of enforcement of security*

**413.**—(1) If a person obtains an order for the appointment of a receiver or manager of a company's property, or appoints such a receiver or manager under powers contained in an instrument, he shall within 7 days of the order or of the appointment under those powers, give notice of the fact to the registrar; and the registrar shall enter the fact in the register of charges.

(2) Where a person appointed receiver or manager of a company's property under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the registrar notice to that effect, and the registrar shall enter the fact in the register of charges.

(3) A notice under this Article shall be in the prescribed form.

(4) If a person makes default in complying with the requirements of this Article, he is liable to a fine and, for continued contravention, to a daily default fine.

*Companies to keep copies of instruments creating charges*

**414.**—(1) Every company shall cause a copy of every instrument creating a charge requiring registration under this Part, including every order or notice a copy of which has been delivered to the company under Article 408, to be kept at the same office as its register of members is kept.

(2) In the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

*Company's register of charges*

**415.**—(1) Every limited company shall keep at the same office as its register of members is kept a register of charges and enter in it all charges

**PART XIII** specifically affecting property of the company and all floating charges on the company's undertaking or any of its property.

(2) The entry shall in each case give a short description of the property charged, the amount of the charge and, except in the case of securities to bearer, the names of the persons entitled to the charge.

(3) If an officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this Article, he is liable to a fine.

*Right to inspect instruments which create charges, etc.*

**416.**—(1) The copies of instruments referred to in Article 414 and the register of charges kept in pursuance of Article 415, shall be open during business hours (subject to such reasonable restrictions as the company in general meeting may impose, but so that not less than 2 hours each day are allowed for inspection) to the inspection of any creditor or member of the company without fee.

(2) The register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding 5 pence for each inspection, as the company may determine.

(3) If inspection of the copies referred to, or of the register, is refused, every officer of the company who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) If such a refusal occurs the court may by order compel an immediate inspection of the copies or register.

*Application of this Part to companies incorporated outside Northern Ireland*

**417.**—(1) This Part extends to charges on property in Northern Ireland which are created, and to charges on property in Northern Ireland which is acquired, by a company (whether a company within the meaning of this Order or not) incorporated outside Northern Ireland which has an established place of business in Northern Ireland.

(2) In relation to such a company, Articles 414 and 415 apply with the substitution, for the reference to the office at which the register of members is kept, of a reference to the company's principal place of business in Northern Ireland.

**PART XIV**

**ARRANGEMENTS AND RECONSTRUCTIONS**

*Power of company to compromise with creditors and members*

**418.**—(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company



and its members, or any class of them, the court may on the application of the company or any creditor or member of it or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all the creditors or the class of creditors, or on the members or class of members (as the case may be), and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) The court's order under paragraph (2) has no effect until an office copy of it has been delivered to the registrar for registration; and a copy of every such order shall be annexed to every copy of the company's memorandum issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting the company or defining its constitution.

(4) If a company makes default in complying with paragraph (3), the company and every officer of it who is in default is liable to a fine.

(5) In this Article and Article 419—

- (a) "company" means any company liable to be wound up under this Order, and
- (b) "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

*Information as to compromise to be circulated*

**419.**—(1) This Article applies where a meeting of creditors or any class of creditors, or of members or any class of members, is summoned under Article 418.

(2) With every notice summoning the meeting which is sent to a creditor or member there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise) and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) In every notice summoning the meeting which is given by advertisement there shall be included either such a statement as is mentioned in paragraph (2) or a notification of the place at which, and the manner in

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which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(4) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(6) If a company makes default in complying with any requirement of this Article, the company and every officer of it who is in default is liable to a fine; and for this purpose a liquidator of the company and a trustee of a deed for securing the issue of debentures of the company is deemed an officer of it.

However, a person is not liable under this paragraph if he shows that the default was due to the refusal of another person, being a director or trustee for debenture holders, to supply the necessary particulars of his interests.

(7) It is the duty of any director of the company, and of any trustee for its debenture holders, to give notice to the company of such matters relating to himself as may be necessary for the purposes of this Article; and any person who makes default in complying with this paragraph is liable to a fine.

*Provisions for facilitating company reconstruction or amalgamation*

**420.**—(1) This Article applies where application is made to the court under Article 418 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that Article.

(2) If it is shown—

- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and
- (b) that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”),

the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters.

(3) The matters for which the court's order may make provision are—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company,
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person,
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company,
- (d) the dissolution, without winding up, of any transferor company,
- (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement,
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(4) If an order under this Article provides for the transfer of property or liabilities, then—

- (a) that property is by virtue of the order transferred to, and vests in, the transferee company, and
- (b) those liabilities are, by virtue of the order, transferred to and become liabilities of that company;

and property (if the order so directs) vests freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(5) Where an order is made under this Article, every company in relation to which the order is made shall cause an office copy of the order to be delivered to the registrar for registration within 7 days after its making; and if default is made in complying with this paragraph, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) In this Article “property” includes property, rights and powers of every description; “liabilities” includes duties and “company” includes only a company as defined in Article 3(1).

#### *Power to acquire shares of dissenting minority*

**421.**—(1) This Article applies where a scheme or contract involving the transfer of shares or any class of shares in a company (“the transferor company”) to another company, whether or not a company as defined in Article 3(1) (“the transferee company”), has, within 4 months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary).

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(2) In those circumstances, the transferee company may, at any time within 2 months after the expiration of the 4 months mentioned in paragraph (1), give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(3) "Dissenting shareholder" includes a shareholder who has not assented to the scheme or contract, and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(4) If such a notice is given, the transferee company is then (unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, the court thinks fit to order otherwise) entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(5) But where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held (at the date of the offer) by, or by a nominee for, the transferee company or its subsidiary to a value greater than one-tenth of the aggregate of their value and that of the shares (other than those already so held) whose transfer is involved, paragraphs (2) and (4) do not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares (other than those already so held) whose transfer is involved or, where those shares include shares of different classes, of each class of them, and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those so held) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

*Dissentient's right to compel acquisition of his shares*

**422.**—(1) This Article applies where, in pursuance of such a scheme or contract as is mentioned in Article 421(1), shares in a company are transferred to another company or its nominee, and those shares (together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer) comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares.

(2) The transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class (as the case may be) who have not assented to the scheme or contract.

(3) Any such holder may, within 3 months from the giving of that notice to him, himself give notice (in the prescribed form) requiring the transferee company to acquire the shares in question.

(4) If a shareholder gives notice under paragraph (3) with respect to any shares, the transferee company is then entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

*Provisions supplementing Articles 421 and 422*

423.—(1) Where notice has been given by the transferee company under Article 421(2) and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, paragraphs (2) and (3) apply.

(2) The transferee company shall, on expiration of one month from the date on which the notice has been given (or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of), transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company.

An instrument of transfer is not required for any share for which a share warrant is for the time being outstanding.

(3) The transferee company shall also pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of Article 421(4) that company is entitled to acquire; and the transferor company shall thereupon register the transferee company as the holder of those shares.

(4) Any sums received by the transferor company under this Article shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which those sums, or that other consideration, were respectively received.

PART XV

INVESTIGATION OF COMPANIES AND THEIR AFFAIRS;  
REQUISITION OF DOCUMENTS

*Appointment and functions of inspectors*

*Investigation of a company on its own application or that of its members*

424.—(1) The Department may appoint one or more competent inspectors to investigate the affairs of a company and to report on them to the Department in such manner as the Department may direct.

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(2) The appointment may be made—

- (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued;
- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and
- (c) in any case, on application of the company.

(3) The application shall be supported by such evidence as the Department may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(4) The Department may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as it may by order, subject to negative resolution, specify, for payment of the costs of the investigation.

*Other company investigations*

**425.—**(1) The Department shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as the Department directs, if the court by order declares that the company's affairs ought to be so investigated.

(2) The Department may make such an appointment if it appears to the Department that there are circumstances suggesting—

- (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or
- (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
- (c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
- (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

(3) Paragraphs (1) and (2) are without prejudice to the powers of the Department under Article 424; and the power conferred by paragraph (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4) The reference in paragraph (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

*Inspectors' powers during investigation*

**426.**—(1) If inspectors appointed under Article 424 or 425 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned.

(2) Inspectors appointed under either Article may at any time in the course of their investigation, without the necessity of making an interim report, inform the Department of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

*Production of documents and evidence to inspectors*

**427.**—(1) When inspectors are appointed under Article 424 or 425, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under Article 426(1)—

- (a) to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
- (b) to attend before the inspectors when required to do so, and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) If the inspectors consider that a person other than an officer or agent of the company (or other body corporate) is or may be in possession of information concerning its affairs, they may require that person to produce to them any books or documents in his custody or power relating to the company or other body corporate, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in paragraph (2), in relation to the affairs of the company or other body, and may administer an oath accordingly.

(4) In this Article, a reference to officers or to agents includes past as well as present, officers or agents (as the case may be); and "agents", in relation to a company or other body corporate, includes its bankers and

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solicitors and persons employed by it as auditors, whether those persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this Article (whether as it has effect in relation to an investigation under any of Articles 424 to 426, or as applied by any other Article in this Part) may be used in evidence against him.

*Power of inspector to call for directors' bank accounts*

**428.**—(1) If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Northern Ireland or elsewhere), into or out of which there has been paid—

- (a) the emoluments or part of the emoluments of his office as such director particulars of which have not been disclosed in the accounts of the company or other body corporate for any financial year, contrary to paragraphs 24 to 26 of Schedule 5, or
- (b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement, or
- (c) any money which has been in any way connected with an act or omission, or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

(2) For the purposes of paragraph (1)(b), an "undisclosed" transaction, arrangement or agreement is one—

- (a) particulars of which have not been disclosed in the notes to the accounts of any company for any financial year, contrary to Article 240 and Part I of Schedule 6 (disclosure of contracts between companies and their directors, etc.), or
- (b) in respect of which an amount outstanding was not included in the aggregate amounts required to be disclosed in the notes to the accounts of any company for any financial year by Article 242 and Part III of Schedule 6, contrary to that Article (transactions between banks and their directors), or
- (c) particulars of which were not included in the register of transactions, arrangements and agreements required to be maintained by Article 351, contrary to that Article.

*Obstruction of inspectors treated as contempt of court*

**429.**—(1) When inspectors are appointed under Article 424 or 425 to investigate the affairs of a company, the following applies in the case of—



- (a) any officer or agent of the company,
- (b) any officer or agent of another body corporate whose affairs are investigated under Article 426, and
- (c) any such person as is mentioned in Article 427(2).

Article 427(4) applies with regard to references in this paragraph to an officer or agent.

(2) If that person—

- (a) refuses to produce any book or document which it is his duty under Article 427 or 428 to produce, or
- (b) refuses to attend before the inspectors when required to do so, or
- (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the company or other body corporate (as the case may be),

the inspectors may certify the refusal in writing to the court.

(3) The court may thereupon inquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

#### *Inspectors' reports*

**430.**—(1) The inspectors may, and if so directed by the Department shall, make interim reports to the Department, and on the conclusion of their investigation shall make a final report to the Department.

Any such report shall be written or printed, as the Department directs.

(2) If the inspectors were appointed under Article 425 in pursuance of an order of the court, the Department shall furnish a copy of any report of theirs to the court.

(3) In any case the Department may, if it thinks fit—

- (a) forward a copy of any report made by the inspectors to the company's registered office,
- (b) furnish a copy on request and on payment of the prescribed fee to—
  - (i) any member of the company or other body corporate which is the subject of the report,
  - (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of that company or body corporate,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear to the Department to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and

(c) cause any such report to be printed and published.

*Power to bring civil proceedings on company's behalf*

**431.**—(1) If, from any report made under Article 430 or from information or documents obtained under Article 440 or 441, it appears to the Department that any civil proceedings ought in the public interest to be brought by any body corporate, the Department may itself bring such proceedings in the name and on behalf of the body corporate.

(2) The Department shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this Article.

*Expenses of investigating a company's affairs*

**432.**—(1) The expenses of and incidental to an investigation by inspectors appointed by the Department shall be defrayed in the first instance by the Department; but the persons mentioned in paragraphs (2) to (5) are, to the extent there specified, liable to make repayment to the Department.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under Article 431, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A body corporate in whose name proceedings are brought under that Article is liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this paragraph is a first charge on the sums or property recovered.

(4) A body corporate dealt with by the inspectors' report, where the inspectors were appointed otherwise than of the Department's own motion, is liable except where it was the applicant for the investigation and except so far as the Department otherwise directs.

(5) The applicant or applicants for the investigation, where the inspectors were appointed under Article 424, is or are liable to such extent (if any) as the Department may direct.

(6) The report of inspectors appointed otherwise than of the Department's own motion may, if they think fit, and shall if the Department so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under paragraph (4) or (5).

(7) For the purposes of this Article, any costs or expenses incurred by the Department in or in connection with proceedings brought under Article 431 (including expenses incurred under paragraph (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.

(8) Any liability to repay the Department imposed by paragraphs (2) and (3) is (subject to satisfaction of the Department's right to repayment)

a liability also to indemnify all persons against liability under paragraphs (4) and (5); and any such liability imposed by paragraph (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under paragraph (3).

(9) A person liable under any one of paragraphs (2) to (5) is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

*Power of the Department to present winding-up petition*

**433.** If in the case of a body corporate liable to be wound up under this Order it appears to the Department from a report made by inspectors under Article 430, or from information or documents obtained under Article 440 or 441, that it is expedient in the public interest that the body should be wound up, the Department may (unless the body is already being wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable for it to be so.

*Inspectors' report to be evidence*

**434.**—(1) A copy of any report of inspectors appointed under Article 424 or 425 certified by the Department to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

(2) A document purporting to be such a certificate as is mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

*Other powers of investigation available to the Department*

*Power to investigate company ownership*

**435.**—(1) Where it appears to the Department that there is good reason to do so, the Department may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of inspectors under this Article may define the scope of their investigation (whether as respects the matters or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) If application for an investigation under this Article with respect to particular shares or debentures of a company is made to the Department by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of inspectors under Article 424(2)(a) and (b)—

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- (a) the Department shall appoint inspectors to conduct the investigation (unless the Department is satisfied that the application is vexatious), and
- (b) the inspectors' appointment shall not exclude from the scope of their investigation any matter which the application seeks to have included, except in so far as the Department is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

*Provisions applicable on investigation under Article 435*

**436.**—(1) For the purposes of an investigation under Article 435, Articles 426(1), 427, 429 and 430 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to paragraphs (2) to (4).

(2) Those Articles apply to—

- (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and
- (b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,

as they apply in relation to officers and agents of the company or other body corporate (as the case may be).

(3) If the Department is of opinion that there is good reason for not divulging any part of a report made by virtue of Article 435 and this Article, the Department may under Article 430 disclose the report with the omission of that part; and the Department may cause to be kept by the registrar a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

*Power to obtain information as to those interested in shares, etc.*

**437.**—(1) If it appears to the Department that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, the Department may require any person whom the Department has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who

act or have acted on their behalf in relation to the shares or debentures to give any such information to the Department.

(2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

(3) A person who fails to give information required of him under this Article, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is liable to imprisonment or a fine, or both.

*Power to impose restrictions on shares and debentures*

438.—(1) If in connection with an investigation under either Article 435 or 437 it appears to the Department that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), the Department may by order direct that the shares shall until further order be subject to the restrictions imposed by Part XVI.

(2) This Article, and Part XVI in its application to orders under it, apply in relation to debentures as in relation to shares.

*Investigation of share dealings*

439.—(1) If it appears to the Department that there are circumstances suggesting that contraventions may have occurred, in relation to a company's shares or debentures, of Article 331 or 332 (taken with Schedule 13), or of Article 336(3) to (5) (restrictions on share dealings by directors and their families; obligation of director to disclose shareholding in his own company), the Department may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of their investigations to the Department.

(2) The appointment of inspectors under this Article may limit the period to which their investigation is to extend or confine it to shares or debentures of a particular class, or both.

(3) For the purposes of an investigation under this Article, Articles 427 to 429 apply—

(a) with the substitution, for references to any other body corporate whose affairs are investigated under Article 426(1), of a reference to any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company, or a subsidiary of its holding company, and

(b) with the necessary modification of references in Article 429(1) to the affairs of the company or other body corporate.

(4) Articles 427 to 429 apply under paragraph (3)—

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1940 c. 9 (N.I.)  
1958 c. 45

- (a) to members of a recognised stock exchange or of a recognised association of dealers in securities who are individuals and to officers (past as well as present) of members of such an exchange or association being bodies corporate,
- (b) to holders of licences granted under section 3 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 or section 3 of the Prevention of Fraud (Investments) Act 1958 who are individuals and to officers (past as well as present) of holders of licences so granted being bodies corporate, and
- (c) to any individual declared by an order for the time being in force to be an exempted dealer for the purposes of those Acts and to officers (past as well as present) of any body corporate declared by an order for the time being in force to be such a dealer,

as they apply to officers of the company or of the other body corporate.

(5) The inspectors may, and if so directed by the Department shall, make interim reports to the Department; and, on conclusion of the investigation, they shall make to the Department a final report.

Any such report shall be written or printed, as the Department may direct; and the Department may cause it to be published.

(6) "Recognised association of dealers in securities" means any body of persons which is for the time being such an association for the purposes of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 or the Prevention of Fraud (Investments) Act 1958.

*Requisition and seizure of books and papers*

*Department's power to require production of documents*

**440.**—(1) The powers of this Article are exercisable in relation to the following bodies—

- (a) a company, as defined by Article 3(1);
- (b) a company to which this Order applies by virtue of Article 626 or which is registered under Article 629;
- (c) a body corporate incorporated in, and having a principal place of business in Northern Ireland, being a body to which any of the provisions of this Order with respect to prospectuses and allotments apply by virtue of Article 667 (unregistered companies); and
- (d) a body corporate incorporated outside Northern Ireland which is carrying on business in Northern Ireland or has at any time carried on business there.

(2) The Department may at any time, if it thinks there is good reason to do so, give directions to any such body requiring it, at such time and place as may be specified in the directions, to produce such books or papers as may be so specified.

(3) The Department may at any time, if it thinks there is good reason to do so, authorise an officer of the Department, on producing (if so required) evidence of his authority, to require any such body to produce to him forthwith any books or papers which the officer may specify.

(4) Where by virtue of paragraph (2) or (3) the Department or an officer of the Department has power to require the production of books or papers from any body, the Department or the officer has the like power to require production of those books or papers from any person who appears to the Department or the officer to be in possession of them; but where any such person claims a lien on books or papers produced by him, the production is without prejudice to the lien.

(5) The power under this Article to require a body or other person to produce books or papers includes power—

(a) if the books or papers are produced—

(i) to take copies of them or extracts from them, and

(ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, the body in question, to provide an explanation of any of them;

(b) if the books or papers are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If the requirement to produce books or papers or provide an explanation or make a statement is not complied with, the body or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine.

Article 680 (restriction on prosecutions) applies to this offence.

(7) However, where a person is charged with an offence under paragraph (6) in respect of a requirement to produce any books or papers, it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

#### *Entry and search of premises*

441.—(1) This Article applies if a justice of the peace is satisfied on information on oath laid by an officer of the Department, or laid under the Department's authority, that there are reasonable grounds for suspecting that there are on any premises any books or papers of which production has been required under Article 440 and which have not been produced in compliance with that requirement.

(2) The justice may issue a warrant authorising any constable, together with any other persons named in the warrant and any other constables, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and

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take possession of any books or papers appearing to be such books or papers as are mentioned in paragraph (1) or to take, in relation to any books or papers so appearing, any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) A warrant so issued continues in force until the end of one month after the date on which it is issued.

(4) Any books or papers of which possession is taken under this Article may be retained—

(a) for a period of 3 months, or

(b) if within that period there are commenced any such criminal proceedings as are mentioned in Article 442(1)(a) or (b) (being proceedings to which the books or papers are relevant), until the conclusion of those proceedings.

(5) A person who obstructs the exercise of a right of entry or search conferred by a warrant issued under this Article, or who obstructs the exercise of a right so conferred to take possession of any books or papers, is guilty of an offence and liable to a fine.

Article 680 (restriction on prosecutions) applies to this offence.

*Provision for security of information obtained*

**442.**—(1) No information or document relating to a body which has been obtained under Article 440 or 441 shall, without the previous consent in writing of that body, be published or disclosed, except to a competent authority, unless the publication or disclosure is required—

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of, this Order, the Insider Dealing Order or the Insurance Companies Act 1982 or any criminal proceedings for an offence entailing misconduct in connection with the management of the body's affairs or misapplication or wrongful retainer of its property;

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of, the Exchange Control Act 1947;

(c) for the purposes of the examination of any person by inspectors appointed under Article 424, 425, 435 or 439 in the course of their investigation;

(d) for the purpose of enabling the Department to exercise, in relation to that or any other body, any of its functions under this Order, the Insider Dealing Order, the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 and the Insurance Companies Act 1982; or

(e) for the purposes of proceedings under Article 441.

1982 c. 50

1947 c. 14

1940 c. 9



(2) A person who publishes or discloses any information or document in contravention of this Article is guilty of an offence and liable to imprisonment or a fine, or both.

Article 680 (restriction on prosecutions) applies to this offence.

(3) For the purposes of this Article—

(a) in relation to information or a document relating to a body other than one carrying on industrial assurance business (as defined by Article 3(1) of the Industrial Assurance (Northern Ireland) Order 1979), each of the following is a competent authority—

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(i) the Department and any officer of the Department,

(ii) an inspector appointed under this Part by the Department,

(iii) the Department of Finance and Personnel and any officer of the Department of Finance and Personnel,

(iv) the Director of Public Prosecutions for Northern Ireland, and

(v) any constable;

(b) in relation to information or a document relating to a body carrying on industrial assurance business (as so defined), all the same persons as mentioned in sub-paragraph (a) are competent authorities, and also the Industrial Assurance Commissioner for Northern Ireland and any officer of his.

*Punishment for destroying, mutilating, etc. company documents*

443.—(1) A person, being an officer of any such body as is mentioned in Article 440(1)(a) to (d) or a body other than as there mentioned, being an insurance company to which Part II of the Insurance Companies Act 1982 applies, who—

1982 c. 50

(a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the body's property or affairs, or

(b) makes, or is privy to the making of, a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of the body or to defeat the law.

(2) Such a person as is mentioned in paragraph (1) who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

(3) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

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(4) Article 680 (restriction on prosecutions) applies to an offence under this Article.

*Punishment for furnishing false information*

**444.** A person who, in purported compliance with a requirement imposed under Article 440 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, is guilty of an offence and liable to imprisonment or a fine, or both.

Article 680 (restriction on prosecutions) applies to this offence.

*Supplementary*

*Privileged information*

**445.—**(1) Nothing in Articles 424 to 439 requires the disclosure to the Department or to an inspector appointed by the Department—

- (a) by any person of information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client,
- (b) by a company's bankers (as such) of information as to the affairs of any of their customers other than the company.

(2) Nothing in Articles 440 to 444 compels the production by any person of a document which he would in an action in the High Court be entitled to refuse on grounds of legal privilege, or authorises the taking of possession of any such document which is in the person's possession.

(3) The Department shall not under Article 440 require, or authorise an officer of the Department to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Department that it is necessary to do so for the purpose of investigating the affairs of the first-mentioned person or the customer is a person on whom a requirement has been imposed under that Article, or under section 44(2) to (4) of the Insurance Companies Act 1982 (provision corresponding to Article 440).

1982 c. 50

*Investigation of certain bodies incorporated outside Northern Ireland*

**446.** Articles 425 to 430, 432, 434 and 445(1) apply to all bodies corporate incorporated outside Northern Ireland which are carrying on business in Northern Ireland or have at any time carried on business there as if they were companies under this Order, but subject to such (if any) adaptations and modifications as may be prescribed by regulations made by the Department.

PART XVI

PART XVI

ORDERS IMPOSING RESTRICTIONS  
ON SHARES (ARTICLES 218, 224, 438)

*Consequence of order imposing restrictions*

**447.**—(1) So long as any shares are directed to be subject to the restrictions of this Part—

- (a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of them, is void;
- (b) no voting rights are exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; and
- (d) except in a liquidation, no payment shall be made of any sums due from the company on the shares, whether in respect of capital or otherwise.

(2) Where shares are subject to the restrictions of paragraph (1)(a), any agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them is void (except an agreement to sell the shares on the making of an order under Article 449(3)(b)).

(3) Where shares are subject to the restrictions of paragraph (1)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation) is void (except an agreement to transfer any such right on the sale of the shares on the making of an order under Article 449(3)(b)).

*Punishment for attempted evasion of restrictions*

**448.**—(1) A person is liable to a fine if he—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the restrictions of this Part or of any right to be issued with any such shares, or
- (b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them, or
- (c) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy, or
- (d) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them or to receive

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any payment on them (otherwise than in a liquidation), enters into any agreement which is void under Article 447(2) or (3).

(2) If shares in a company are issued in contravention of the restrictions, the company and every officer of it who is in default is liable to a fine.

(3) Article 680 (restriction on prosecutions) applies to an offence under this Article.

*Relaxation and removal of restrictions*

**449.**—(1) Where shares in a company are by order made subject to the restrictions of this Part, application may be made to the court for an order directing that the shares be no longer so subject.

(2) If the order applying the restrictions was made by the Department, or it has refused to make an order disapplying them, the application may be made by any person aggrieved; and if the order was made by the court under Article 224 (non-disclosure of shareholding), it may be made by any such person or by the company.

(3) Subject as follows, an order of the court or the Department directing that shares shall cease to be subject to the restrictions may be made only if—

- (a) the court or (as the case may be) the Department is satisfied that the relevant facts about the shares have been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or
- (b) the shares are to be sold and the court (in any case) or the Department (if the order was made under Article 218 or 438) approves the sale.

(4) Where shares in a company are subject to the restrictions, the court may on application order the shares to be sold, subject to the court's approval as to the sale, and may also direct that the shares shall cease to be subject to the restrictions.

An application to the court under this paragraph may be made by the Department (unless the restrictions were imposed by court order under Article 224), or by the company.

(5) Where an order has been made under paragraph (4), the court may on application make such further order relating to the sale or transfer of the shares as it thinks fit.

An application to the court under this paragraph may be made—

- (a) by the Department (unless the restrictions on the shares were imposed by court order under Article 224), or
- (b) by the company, or
- (c) by the person appointed by or in pursuance of the order to effect the sale, or

(d) by any person interested in the shares.

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(6) An order (whether of the Department or the court) directing that shares shall cease to be subject to the restrictions of this Part, if it is—

(a) expressed to be made with a view to permitting a transfer of the shares, or

(b) made under paragraph (4),

may continue the restrictions mentioned in Article 447(1)(c) and (d), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(7) Paragraph (3) does not apply to an order directing that shares shall cease to be subject to any restrictions which have been continued in force in relation to those shares under paragraph (6).

*Further provisions on sale by court order of restricted shares*

450.—(1) Where shares are sold in pursuance of an order of the court under Article 449(4) the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons who are beneficially interested in the shares; and any such person may apply to the court for the whole or part of those proceeds to be paid to him.

(2) On application under paragraph (1) the court shall (subject to paragraph (3)) order the payment to the applicant of the whole of the proceeds of sale together with any interest thereon or, if any other person had a beneficial interest in the shares at the time of their sale, such proportion of those proceeds and interest as is equal to the proportion which the value of the applicant's interest in the shares bears to the total value of the shares.

(3) On granting an application for an order under Article 449(4) or (5) the court may order that the applicant's costs be paid out of the proceeds of sale; and if that order is made, the applicant is entitled to payment of his costs out of those proceeds before any person interested in the shares in question receives any part of those proceeds.

PART XVII

FRAUDULENT TRADING BY A COMPANY

*Punishment for fraudulent trading*

451. If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner is liable to imprisonment or a fine, or both.

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This applies whether or not the company has been, or is in the course of being, wound up.

**PART XVIII**

**PROTECTION OF COMPANY'S MEMBERS AGAINST UNFAIR PREJUDICE**

*Order on application of company member*

**452.**—(1) A member of a company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of some part of the members (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.

*Order on application of the Department*

**453.**—(1) If in the case of any company—

- (a) the Department has received a report under Article 430 or exercised its powers under Article 440 or 441 or the Secretary of State has exercised his powers under section 44(2) to (6) of the Insurance Companies Act 1982 (inspection of company's books and papers), and
- (b) it appears to the Department that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of some part of the members, or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial,

the Department may itself (in addition to or instead of presenting a petition under Article 433 for the winding up of the company) apply to the court by petition for an order under this Part.

(2) In this Article (and, so far as applicable for its purposes, in Article 454) "company" means any body corporate which is liable to be wound up under this Order.

*Provisions as to petitions and orders under this Part*

**454.**—(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of paragraph (1), the court's order may—

- (a) regulate the conduct of the company's affairs in the future,
- (b) require the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do,
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct,
- (d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) If an order under this Part requires the company not to make any, or any specified, alteration in its memorandum or articles, the company does not then have power without leave of the court to make any such alteration in breach of that requirement.

(4) Any alteration in the company's memorandum or articles made by virtue of an order under this Part is of the same effect as if duly made by resolution of the company, and the provisions of this Order apply to the memorandum or articles as so altered accordingly.

(5) An office copy of an order under this Part altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the registrar for registration; and if a company makes default in complying with this paragraph, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(6) Article 613 (winding-up rules) applies in relation to a petition under this Part as in relation to a winding-up petition.

## PART XIX

### RECEIVERS AND MANAGERS

#### *Disqualification of body corporate for acting as receiver*

**455.** A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver is liable to a fine.

#### *Disqualification of undischarged bankrupt*

**456.** If a person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he is liable to imprisonment or a fine, or both.

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This does not apply to a receiver or manager acting under an appointment made by the court.

*Power of court to appoint Official Assignee as receiver*

**457.** Where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the Official Assignee may be so appointed.

*Receivers and managers appointed out of court*

**458.—(1)** A receiver or manager of the property of a company appointed under powers contained in an instrument may apply to the court for directions in relation to any particular matter arising in connection with the performance of his functions.

(2) On such an application, the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as it thinks just.

(3) A receiver or manager so appointed is, to the same extent as if he had been appointed by order of a court—

(a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides), and

(b) entitled in respect of that liability to indemnity out of the assets;

but this paragraph does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

*Notification that receiver or manager appointed*

**459.—(1)** When a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with this Article, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

*Court's power to fix remuneration of receiver or manager*

**460.—(1)** The court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.



(2) The court's power under paragraph (1), where no previous order has been made with respect thereto under that paragraph—

- (a) extends to fixing the remuneration for any period before the making of the order or the application for it, and
- (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
- (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

But the power conferred by sub-paragraph (c) shall not be exercised as respects any period before the making of the application for the order under this Article, unless in the court's opinion there are special circumstances making it proper for the power to be exercised.

(3) The court may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under paragraph (1).

*Information to be given by and to receiver on appointment*

461.—(1) This Article applies where a receiver or manager of the whole (or substantially the whole) of the company's property is appointed on behalf of the holders of any debentures of the company secured by a floating charge.

In this Article and Articles 462 and 463, he is referred to as "the receiver".

(2) Subject to this Article, and to Articles 462 and 463—

- (a) the receiver shall forthwith send to the company notice in the prescribed form of his appointment, and
- (b) there shall within 14 days after receipt of the notice (or such longer period as may be allowed by the court or by the receiver) be made out and submitted to the receiver in accordance with Article 462 a statement in the prescribed form as to the affairs of the company.

(3) The receiver shall, within 2 months after receipt of the statement, send—

- (a) to the registrar and to the court, a copy of the statement and of any comments he sees fit to make on it and, in the case of the registrar, also a summary of the statement and of his comments (if any) on it; and
- (b) to the company, a copy of any such comments as mentioned in sub-paragraph (a) or, if he does not see fit to make any comments, a notice to that effect; and

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(c) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the summary.

(4) If the receiver is appointed under powers contained in an instrument, paragraphs (2) and (3) have effect with the omission of references to the court; and in any other case references to the court are to the court by which the receiver was appointed.

(5) This Article does not apply in relation to the appointment of a receiver or manager to act—

(a) with an existing receiver or manager, or

(b) in place of a receiver or manager dying or ceasing to act,

except that, where it applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (2)(b) and (3) to the receiver include (subject to paragraph (6)) his successor and any continuing receiver or manager.

(6) If the company is being wound up, this Article and Article 462 apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(7) If the receiver makes default in complying with this Article he is liable to a fine and, for continued contravention, to a daily default fine.

*Company's statement of affairs*

**462.**—(1) The company's statement of affairs required by Article 461 to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment—

(a) the particulars of the company's assets, debts and liabilities,

(b) the names and residences of its creditors,

(c) the securities held by them respectively,

(d) the dates when the securities were respectively given, and

(e) such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons mentioned in paragraph (3) as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement.

(3) The persons referred to in paragraph (2) are those—

(a) who are or have been officers of the company,

(b) who have taken part in the company's formation at any time within one year before the date of the receiver's appointment,

(c) who are in the company's employment, or have been in its employment during that year, and are in the receiver's opinion capable of giving the information required,

- (d) who are or have been during that year officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates.

(4) A person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(5) Where the receiver is appointed under powers contained in an instrument, this Article applies with the substitution for references to the court of references to the Department, and for references to an affidavit of references to a statutory declaration; and in any other case references to the court are to the court by which the receiver was appointed.

(6) If a person without reasonable excuse makes default in complying with the requirements of this Article, he is liable to a fine and, for continued contravention, to a daily default fine.

(7) References in this Article to the receiver's successor include a continuing receiver or manager.

*Subsequent returns by receiver*

463.—(1) In the case mentioned in Article 461(1), the receiver shall—

- (a) within 2 months (or such longer period as the court may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 12 months, and
- (b) within 2 months (or such longer period as the court may allow) after he ceases to act as receiver or manager of the company's property,

send the requisite accounts of his receipts and payments to the registrar, to any trustees for the debenture holders on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders.

(2) The requisite accounts shall be an abstract in the prescribed form showing—

- (a) receipts and payments during the relevant period of 12 months, or
- (b) where the receiver ceases to act, receipts and payments during the period from the end of the period of 12 months to which the last preceding abstract related (or, if no preceding abstract has been sent under this Article, from the date of his appointment) up to the date of his so ceasing, and the aggregate amounts of receipts and payments during all preceding periods since his appointment.

(3) Nothing in Article 461(5) is to be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, paragraph (1) or (2).

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(4) Where the receiver is appointed under powers contained in an instrument, this Article has effect with the substitution of the Department for the court; and in any other case references to the court are to the court by which the receiver was appointed.

(5) This Article applies, where the company is being wound up, notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) This Article does not prejudice the receiver's duty to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from this Article.

(7) If the receiver makes default in complying with the requirements of this Article, he is liable to a fine and, for continued contravention, to a daily default fine.

*Receivership accounts to be delivered to registrar*

**464.**—(1) Except where Article 463 applies, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar for registration the requisite accounts of his receipts and payments.

(2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 6 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.

(3) The requisite accounts shall be an abstract in the prescribed form showing—

(a) receipts and payments during the relevant period of 6 months, or

(b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this Article, from the date of his appointment) up to the date of his so ceasing, and the aggregate amounts of receipts and payments during all preceding periods since his appointment.

(4) A receiver or manager who makes default in complying with this Article is liable to a fine and, for continued contravention, to a daily default fine.

*Enforcement of duty of receivers to make returns*

**465.**—(1) If a receiver or manager of a company's property—

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, or

- (b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

(2) In the case of the default mentioned in paragraph (1)(a), application to the court may be made by any member or creditor of the company or by the registrar; and in the case of the default mentioned in paragraph (1)(b), the application shall be made by the liquidator.

In either case the court's order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on receivers in respect of any such default as is mentioned in paragraph (1).

*Construction of references to receivers and managers*

466. It is hereby declared that, except where the context otherwise requires—

- (a) any reference in this Order to a receiver or manager of the property of a company, or to a receiver of it, includes a reference to a receiver or manager, or (as the case may be) to a receiver of part only of that property and to a receiver only of the income arising from the property or from part of it, and
- (b) any reference in this Order to the appointment of a receiver or manager under powers contained in an instrument includes a reference to an appointment made under powers which, by virtue of any statutory provision, are implied in and have effect as if contained in an instrument.

PART XX

WINDING UP OF COMPANIES REGISTERED  
UNDER THIS ORDER OR THE FORMER COMPANIES ACTS

CHAPTER I

PRELIMINARY

*Modes of winding up*

*The three modes in which a company may be wound up*

467.—(1) The winding up of a company may be—

- (a) by the court, or
- (b) voluntary, or
- (c) subject to the supervision of the court.

(2) This Part applies, unless the contrary appears, to the winding up of a company in any of those modes.

### *Contributories*

#### *Liability as contributories of present and past members*

**468.**—(1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) This is subject as follows—

- (a) a past member is not liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member is not liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Order;
- (d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;
- (e) nothing in this Order invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be

contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

*Directors with unlimited liability*

**469.**—(1) In the winding up of a limited company, any director (whether past or present) whose liability is under this Order unlimited is liable, in addition to his liability (if any) to contribute as an ordinary member, to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company.

(2) However—

- (a) a past director is not liable to make such further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;
- (b) a past director is not liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the company's articles, a director is not liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the company's debts and liabilities and the costs, charges and expenses of the winding up.

*Liability of past directors and shareholders*

**470.**—(1) This Article applies where a company is being wound up and—

- (a) it has under Chapter VII of Part VI made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to in this Article as "the relevant payment"), and
- (b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this Article) is not sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up.

(2) If the winding up commenced within one year of the date on which the relevant payment was made, then—

- (a) the person from whom the shares were redeemed or purchased, and
- (b) the directors who signed the statutory declaration made in accordance with Article 183(3) for the purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration),

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed any amount to the assets in pursuance of this Article may apply to the court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the court thinks just and equitable.

(5) Articles 468 and 469 do not apply in relation to liability accruing by virtue of this Article.

(6) This Article is deemed included in Chapter VII of Part VI for the purposes of the Department's power to make regulations under Article 189.

*Limited company formerly unlimited*

**471.**—(1) This Article applies in the case of a company being wound up which was at some former time registered as unlimited but has re-registered—

- (a) as a public company under Article 53 (or the former corresponding provision, Article 7 of the Order of 1981), or
- (b) as a limited company under Article 61 (or the former corresponding provision, Article 119 of the Order of 1978).

(2) Notwithstanding Article 468(2)(a), a past member of the company who was a member of it at the time of re-registration, if the winding up commences within the period of 3 years beginning with the day on which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) If no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as mentioned in paragraph (2) notwithstanding that the existing members have satisfied the contributions required to be made by them under this Order.

This applies subject to Article 468(2)(a) and to paragraph (2), but notwithstanding Article 468(2)(c).

(4) Notwithstanding Article 468(2)(d) and (3), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as mentioned in paragraph (2).

*Unlimited company formerly limited*

**472.**—(1) This Article applies in the case of a company being wound up which was at some former time registered as limited but has been re-



registered as unlimited under Article 59 (or the former corresponding provision, Article 118 of the Order of 1978).

(2) A person who, at the time when the application for the company to be re-registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re-registered.

*Meaning of "contributory"*

**473.**—(1) In this Order "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2) A reference in a company's articles to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of Article 470.

This paragraph is deemed included in Chapter VII of Part VI for the purposes of the Department's power to make regulations under Article 189.

*Nature of contributory's liability*

**474.** The liability of a contributory creates a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

*Contributories in case of death of a member*

**475.**—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

*Effect of contributory's bankruptcy*

**476.**—(1) The following applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.

(2) His assignees or trustee in bankruptcy shall represent him for all purposes of the winding up, and is a contributory accordingly.

(3) The assignees or trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.

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(4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

*Companies registered under Part XXII, Chapter II*

477.—(1) The following applies in the event of a company being wound up which has been registered under Article 629 (or the previous corresponding provision).

(2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable—

- (a) to pay or contribute to the payment of any debt or liability so contracted, or
- (b) to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or
- (c) to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to the debts or liabilities aforesaid.

(3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as is mentioned in paragraph (2).

(4) In the event of the death, bankruptcy or insolvency of any contributory, provisions of this Order with respect to the personal representatives of deceased contributories and to the trustees or assignees of bankrupt or insolvent contributories respectively apply.

**CHAPTER II**

**WINDING UP BY THE COURT**

*Jurisdiction*

*Jurisdiction to wind up companies*

478. The High Court has jurisdiction to wind up any company.

*Grounds and effect of winding-up petition*

*Circumstances in which company may be wound up by the court*

479. A company may be wound up by the court if—

- (a) the company has by special resolution resolved that the company be wound up by the court,
- (b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate under Article 127 (public company share capital requirements) and more than a year has expired since it was so registered,

- (c) it is an old public company, within the meaning of Article 3 of the Consequential Provisions Order,
- (d) the company does not commence its business within a year from its incorporation or suspends its business for a whole year,
- (e) the number of members is reduced below 2,
- (f) the company is unable to pay its debts,
- (g) the court is of the opinion that it is just and equitable that the company should be wound up.

*Definition of inability to pay debts*

**480.**—(1) A company is deemed unable to pay its debts—

- (a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
- (b) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981, or
- (c) if, in England, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
- (d) if, in Scotland, the *induciae* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
- (e) if it is proved to the satisfaction of the court that the company is unable to pay its debts (and, in determining that question, the court shall take into account the company's contingent and prospective liabilities).

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(2) The money sum for the time being specified in paragraph (1)(a) is subject to increase or reduction by order under Article 614; but no increase of it affects any case in which the winding-up petition was presented before the coming into operation of the increase.

*Application for winding up*

**481.**—(1) Subject to the provisions of this Article, an application to the court for the winding up of a company shall be by petition presented either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately.

(2) Except as mentioned in paragraph (3), a contributory is not entitled to present a winding-up petition unless either—

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- (a) the number of members is reduced below 2, or
- (b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3) A person who is liable under Article 470 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in Article 479(1)(f) and (g), and paragraph (2) does not then apply; but unless the person is a contributory otherwise than under Article 470 he may not in his character as contributory petition on any other ground.

This paragraph is deemed included in Chapter VII of Part VI for the purposes of the Department's power to make regulations under Article 189.

(4) If the ground of the petition is that in Article 479(1)(b) or (c), a winding-up petition may be presented by the Department.

(5) The court shall not hear a petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court.

(6) In a case falling within Article 433 (expedient in the public interest, following report of inspectors, etc.) a winding-up petition may be presented by the Department.

(7) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the Official Assignee as well as by any other person authorised in that behalf under the other provisions of this Article; but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

*Powers of court on hearing of petition*

**482.** On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

*Power to stay or restrain proceedings against company*

**483.—(1)** At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal, apply to the court in

which the action or proceeding is pending for a stay of proceedings therein, and

- (b) where any other action or proceeding is pending against the company, apply to the court to restrain further proceedings in the action or proceeding,

and the court to which application is so made may (as the case may be) stay or restrain the proceedings accordingly on such terms as it thinks fit.

(2) In the case of a company registered under Article 629, where the application to stay or restrain is by a creditor, this Article extends to actions and proceedings against any contributory of the company.

*Avoidance of property dispositions, etc.*

**484.** In a winding up by the court, any disposition of the company's property, including things in action, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

*Avoidance of attachment, etc.*

**485.** Where a company is being wound up by the court, any sequestration or distress put in force against the estate or effects of the company after the commencement of the winding up is void.

*Commencement of winding up*

*Commencement of winding up by the court*

**486.**—(1) If, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

*Consequences of winding-up order*

**487.**—(1) On the making of a winding-up order, an office copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar for registration.

(2) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

(3) When an order has been made for winding up a company registered under Article 629, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

(4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

*The Official Assignee for company liquidations*

*The Official Assignee and Assistant Official Assignee*

**488.**—(1) The Department shall appoint an officer as Official Assignee for company liquidations for Northern Ireland.

(2) The Department may appoint one or more than one officer as Assistant Official Assignee for company liquidations for Northern Ireland and anything which is required or authorised to be done by or to the Official Assignee under this Order may be done by or to any officer appointed under this paragraph.

(3) The Official Assignee and any Assistant Official Assignee shall act under the general authority and direction of the Department but shall also be officers of the court.

*Statement of company's affairs*

**489.**—(1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall (unless the court otherwise orders) be made out and submitted to the Official Assignee a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit and show particulars of the company's assets, its debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Official Assignee may require.

(3) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who at that date is the secretary of the company, or by such of the persons mentioned in paragraph (4) as the Official Assignee (subject to the direction of the court) may require to submit and verify the statement.

(4) The persons referred to in paragraph (3) are—

- (a) those who are or have been officers of the company,
- (b) those who have taken part in the formation of the company at any time within one year before the relevant date,
- (c) those who are in the employment of the company, or have been in its employment within the year mentioned in sub-paragraph

- (b), and are in the opinion of the Official Assignee capable of giving the information required, and
- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates.
- (5) For the purposes of this Article, "the relevant date" is—
- (a) in a case where a provisional liquidator is appointed, the date of his appointment, and
- (b) in a case where no such appointment is made, the date of the winding-up order.
- (6) The statement of affairs required by this Article shall be submitted within 14 days from the relevant date or within such extended time as the Official Assignee or the court may for special reasons appoint.
- (7) If a person, without reasonable excuse, makes default in complying with the requirements of this Article, he is liable to a fine and, for continued contravention, to a daily default fine.

*Further provisions as to statement under Article 489*

490.—(1) A person making or concurring in the making of the statement and affidavit required by Article 489 shall be allowed, and shall be paid by the Official Assignee or provisional liquidator (as the case may be) out of the company's assets, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Assignee may consider reasonable, subject to an appeal to the court.

(2) A person stating himself in writing to be a creditor or contributory of the company is entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted under Article 489, and to a copy of or extract from it.

(3) A person untruthfully so stating himself to be a creditor or contributory is guilty of a contempt of court and, on the application of the Official Assignee or the liquidator, punishable accordingly.

(4) The statement required by Article 489 may be used in evidence against any person making or concurring in making it.

*Report by Official Assignee*

491.—(1) When a winding-up order is made, the Official Assignee shall, as soon as practicable after the receipt of the statement to be submitted under Article 489 (or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order of the court) submit a report to the court—

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities, and
- (b) if the company has failed, as to the causes of the failure, and

(c) whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of its business.

(2) The Official Assignee may also, if he thinks fit, make a further report or further reports stating any matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the Official Assignee states in any such further report as is mentioned in paragraph (2) that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by an officer of the company in relation to the company since its formation, the court has the further powers provided in Article 523.

### *Liquidators*

#### *Power of court to appoint liquidators*

**492.** For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

#### *Appointment and powers of provisional liquidator*

**493.**—(1) Subject to paragraph (2), the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order, and either the Official Assignee or any other fit person may be appointed.

(2) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him.

#### *Appointment, style, etc. of liquidators*

**494.**—(1) The following provisions with respect to liquidators have effect on a winding-up order being made.

(2) The Official Assignee by virtue of his office becomes the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(3) Subject to paragraph (4), the Official Assignee shall summon separate meetings of the company's creditors and contributories for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the Official Assignee.

(4) Where the winding-up order has been made on the ground that the company is unable to pay its debts, it shall not be necessary for the Official Assignee to summon a meeting of the contributories unless the court, on the application of a contributory, otherwise directs.

(5) The court may make any appointment and order required to give effect to a determination under paragraph (3) and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter in question, the court shall decide the difference and make such order thereon as it may think fit.



(6) If a liquidator is not appointed by the court, the Official Assignee shall be the liquidator of the company.

(7) The Official Assignee is, *ex officio*, the liquidator during any vacancy.

(8) A liquidator shall be described, where a person other than the Official Assignee is liquidator, by the style of "the liquidator" and, where the Official Assignee is liquidator, by the style of "the Official Assignee and liquidator", of the particular company in respect of which he is appointed (and not by his individual name).

*Liquidator other than Official Assignee*

495. If in the winding up of a company by the court a person other than the Official Assignee is appointed liquidator, that person—

- (a) cannot act as liquidator until he has notified his appointment to the registrar and given security in the prescribed manner to the satisfaction of the Department;
- (b) shall give the Official Assignee such information, and such access to and facilities for inspecting the company's books and documents, and generally such aid as may be requisite for enabling that officer to perform his duties under this Order.

*General provisions as to liquidators*

496.—(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the Official Assignee is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act required or authorised by this Order to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to Article 587 (disqualification of bodies corporate for appointment as liquidator), the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

*Custody of company's property*

497. When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control

all the property and things in action to which the company is or appears to be entitled.

*Vesting of company property in liquidator*

**498.**—(1) When a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.

(2) The liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

*Powers of liquidator*

**499.**—(1) The liquidator in a winding up by the court has power, with the sanction either of the court or of the committee of inspection—

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company,
- (b) to carry on the business of the company so far as may be necessary for its beneficial winding up,
- (c) to pay any class of creditors in full,
- (d) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable,
- (e) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

(2) The liquidator in a winding up by the court has power—

- (a) to sell any of the company's property and things in action by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in lots,
- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal,

- (c) where any contributory has been adjudged bankrupt or has presented a petition for arrangement with his creditors in pursuance of the Bankruptcy Acts (Northern Ireland) 1857 to 1980, to prove, rank and claim in the bankruptcy or arrangement, for any balance against his estate, and to receive dividends in the bankruptcy or arrangement in respect of that balance, as a separate debt due from the bankrupt or arranging debtor, and rateably with the other separate creditors,
  - (d) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business,
  - (e) to raise on the security of the assets of the company any money requisite,
  - (f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company (and in all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself),
  - (g) to appoint an agent to do any business which the liquidator is unable to do himself,
  - (h) to appoint a solicitor to assist him in the performance of his duties,
  - (j) to do all such other things as may be necessary for investigating and winding up the company's affairs and distributing its assets.
- (3) The exercise by the liquidator in a winding up by the court of the powers conferred by this Article is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

*Exercise and control of liquidator's powers*

500.—(1) Subject to the provisions of this Order, the liquidator of a company which is being wound up by the court shall, in the administration of the company's assets and their distribution among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection.

(2) Directions given by the creditors or contributories at any general meeting are, in case of conflict, deemed to override any directions given by the committee of inspection.

(3) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).

(4) The liquidator may apply to the court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(5) Subject to the provisions of this Order, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(6) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

*Books to be kept by liquidator*

**501.** Every liquidator of a company which is being wound up by the court shall keep, in such manner as may be prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

*Insolvency Account*

**502.—(1)** An account, to be called the Insolvency Account, shall continue to be kept by the Department with such bank as may be agreed with the Department of Finance and Personnel.

(2) The Department may, with the agreement of the Department of Finance and Personnel, invest any money from time to time standing to the credit of the Insolvency Account.

(3) All payments out of money standing to the credit of the Department in the Insolvency Account shall be made in such manner as may be prescribed.

(4) The Department shall in respect of each year ending on 31st March prepare an account, in such form and manner as the Department of Finance and Personnel may direct, of sums credited and debited to the Insolvency Account during that year.

(5) On or before 31st August in each year the Department shall transmit to the Comptroller and Auditor General for Northern Ireland the account prepared under paragraph (4) in respect of the year ending on the preceding 31st March and the Comptroller and Auditor General shall examine and certify such account and the Department shall lay

copies thereof, together with the report of the Comptroller and Auditor General thereon, before the Assembly.

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*Payments into Insolvency Account or bank*

503.—(1) This Article applies to a liquidator of a company which is being wound up by the court.

(2) Subject to paragraph (3), the liquidator shall, in such manner and at such times as may be prescribed, pay the money received by him as liquidator to the Department which shall lodge that money into the Insolvency Account.

(3) However, if the committee of inspection satisfies the Department that for the purpose of carrying on the company's business or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should pay the money received by him as liquidator or part of that money into a bank account other than the Insolvency Account, the Department shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other account as the committee may select, and thereupon those payments shall be made in such manner and at such times as the Department may direct.

(4) If the liquidator at any time retains for more than 10 days a sum exceeding £100 or such other amount as the Department in any particular case authorises him to retain, then unless he explains the retention to the Department's satisfaction, he shall pay interest on the amount so retained in excess at the rate of 20 per cent. per annum, and is liable to disallowance of all or such part of his remuneration as the Department thinks just, and to be removed from his office by the court on the application of the Department, and is liable to pay any expenses occasioned by reason of his default.

(5) The liquidator shall not pay any sums received by him as liquidator into his private banking account.

(6) The money sum for the time being specified in paragraph (4) is subject to increase or reduction by order under Article 614.

*Audit of liquidator's accounts*

504.—(1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed, send to the Department, or as it directs, an account in the prescribed form and made in triplicate of his receipts and payments as liquidator.

(2) Subject to paragraph (3), the liquidator shall verify by a statutory declaration in the prescribed form the account mentioned in paragraph (1).

(3) Where the Official Assignee is liquidator he shall certify the account in the prescribed manner.

(4) The liquidator shall furnish the Department with such vouchers and information as the Department may require, and the Department

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may at any time, whether at the premises of the liquidator or elsewhere, require the production of and inspect any books or accounts kept by the liquidator.

(5) The Department may cause any account sent to it under this Article to be audited.

(6) When the audit of an account has been completed, one copy of the account shall be filed and kept by the Department, one copy shall be delivered to the registrar for filing and the third copy shall be delivered to the court for filing.

(7) Where the Department determines not to cause an account to be audited, paragraph (6) applies as if it required copies of the accounts to be filed or delivered for filing forthwith.

(8) Subject to paragraph (9), the liquidator shall, either when the account has been audited or when he has been notified by the Department of its determination not to cause the account to be audited, send a copy of the account or a summary thereof by post to every creditor and contributory.

(9) The Department may in any case dispense with compliance with paragraph (8).

*Control of liquidators by Department*

**505.**—(1) The Department shall take cognizance of the conduct of liquidators of companies which are being wound up by the court; and—

(a) if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any statutory provision or otherwise with respect to the performance of his duties, or

(b) if any complaint is made to the Department by any creditor or contributory in regard thereto,

the Department shall inquire into the matter, and take such action on it as the Department thinks expedient.

(2) The Department may at any time require the liquidator to answer any inquiry in relation to a winding up in which he is engaged and may, if the Department thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Department may also direct a local investigation to be made of the liquidator's books and vouchers.

*Release of liquidators*

**506.**—(1) When the liquidator of a company which is being wound up by the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories among themselves, and made a final return (if any) to the contributories, or has

resigned, or has been removed from his office, the following paragraph has effect.

(2) The Department shall, on the liquidator's application, cause a report on his accounts to be prepared and, on his complying with all the requirements of the Department, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the court.

(3) If the release of the liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Department releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(5) If the liquidator has not previously resigned or been removed, his release operates as removal of him from his office.

#### *Committees of inspection*

##### *Decision whether committee of inspection to be appointed*

507.—(1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned in accordance with the provisions of Article 494(3) and (4) for the purpose of determining whether or not an application should be made to the court for the appointment of a liquidator in place of the Official Assignee, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to such determination; and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters mentioned in paragraph (1), the court shall decide the difference and make such order on those matters as the court may think fit.

##### *Constitution and proceedings of committee of inspection*

508.—(1) Subject as follows, the committee of inspection (if appointed) shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of

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creditors and contributories or as, in case of difference, may be determined by the court.

(2) Schedule 16 has effect with respect to the committee of inspection and its proceedings.

*Powers of Department where no committee of inspection*

**509.** If in the case of a winding up there is no committee of inspection, the Department may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Order authorised or required to be done or given by the committee.

*General powers of court in case of winding up by the court*

*Power to stay winding up*

**510.**—(1) The court may at any time after an order for winding up, on the application either of the liquidator or the Official Assignee or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) The court may, before making an order, require the Official Assignee to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) An office copy of every order made under this Article shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

*Settlement of list of contributories and application of assets*

**511.**—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Order, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

*Delivery of property to liquidator*

**512.** The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories



and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith (or within such time as the court directs) to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled.

*Debts due from contributory to company*

513.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him (or from the estate of the person whom he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Order.

(2) The court in making such an order may—

- (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and
- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

*Power to make calls*

514.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the company's debts and liabilities, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

*Payment into bank of money due to company*

515.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the court may appoint for the purpose to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All money and securities paid or delivered into any such bank as is mentioned in paragraph (1) in the event of a winding up by the court are

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subject in all respects to the orders of the court.

*Order on contributory to be conclusive evidence*

**516.**—(1) An order made by the court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings.

*Appointment of special manager*

**517.**—(1) Where the Official Assignee becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the company's estate or business, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business other than himself, apply to the court.

(2) The court may on the application appoint a special manager of the company's estate or business to act during such time as the court may direct, with such powers (including any of the powers of a receiver or manager) as may be entrusted to him by the court.

(3) The special manager shall give such security and account in such manner as the Department directs, and shall receive such remuneration as may be fixed by the court.

*Power to exclude creditors not proving in time*

**518.** The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

*Adjustment of rights of contributories*

**519.** The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

*Inspection of books by creditors and contributories*

**520.**—(1) The court may, at any time after making a winding-up order, make such order for inspection of the company's books and papers by creditors and contributories as the court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article excludes or restricts any statutory rights of—

(a) a Northern Ireland department; or

(b) a department of the Government of the United Kingdom; or

(c) a person acting under the authority of either such department.

*Costs of winding up may be made payable out of assets*

521. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just.

*Summoning of persons suspected of having company property, etc.*

522.—(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine the officer or other person summoned on oath concerning those matters either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but if he claims any lien on books or papers produced by him, the production is without prejudice to that lien, and the court has jurisdiction in the winding up to determine all questions relating to that lien.

(4) If a person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

*Public examination of promoters and officers*

523.—(1) Where an order has been made for winding up a company by the court, and the Official Assignee has made a further report under Article 491(2) stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to it since its formation, the following applies.

(2) The court may, after consideration of the report, direct that that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation of the company, or the conduct of its business, or as to the conduct or dealings of that person as an officer of it.

(3) The Official Assignee shall take part in the examination and for that purpose may, if specially authorised by the Department in that behalf, employ a solicitor with or without counsel.

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(4) The liquidator (where the Official Assignee is not the liquidator) and any creditor or contributory may also take part in the examination either personally or by solicitor or counsel.

*Procedure under Article 523*

**524.**—(1) On a public examination ordered by the court under Article 523, the court may put such questions to the person examined as it thinks fit.

(2) The person examined shall be examined on oath and shall answer all such questions as the court may put or allow to be put to him.

(3) Subject to paragraph (4), the person shall at his own cost, before his examination, be furnished with a copy of the Official Assignee's report, and may at his own cost employ a solicitor with or without counsel, who is at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(4) If the person applies to the court to be exculpated from any charges made or suggested against him, it is the duty of the Official Assignee to appear on the hearing of the application and call the court's attention to any matters which appear to him to be relevant; and if the court, after hearing evidence given or witnesses called by the Official Assignee, grants the application, the court may allow the applicant such costs as in its discretion it thinks fit.

(5) Notes of a person's public examination shall be taken down in writing, and shall be read over to or by, and signed by, him and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(6) The court may, if it thinks fit, adjourn the examination from time to time.

*Power to arrest absconding contributory*

**525.** The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the company's affairs, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the court may order.

*Powers of court to be cumulative*

**526.** Powers conferred by this Order on the court are in addition to and not in restriction of any existing powers of instituting proceedings

against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

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CHAPTER II

*Delegation to liquidator of certain powers of court*

527.—(1) Provision may be made by winding-up rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Order in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
- (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,
- (d) the making of calls,
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the court's control.

(2) But the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the committee of inspection.

*Dissolution of company*

528.—(1) When the company's affairs have been completely wound up, the court (if the liquidator makes an application in that behalf) shall make an order that the company be dissolved from the date of the order, and the company is then dissolved accordingly.

(2) An office copy of the order shall within 14 days from its date be forwarded by the liquidator to the registrar for registration.

(3) If the liquidator makes default in complying with the requirements of paragraph (2), he is liable to a fine and, for continued contravention, to a daily default fine.

CHAPTER III

VOLUNTARY WINDING UP

*Resolutions for, and commencement of, voluntary winding up*

*Circumstances in which company may be wound up voluntarily*

529.—(1) A company may be wound up voluntarily—

- (a) when the period (if any) fixed for the duration of the company by its articles expires, or the event (if any) occurs, on the

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occurrence of which its articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily;

- (b) if the company resolves by special resolution that it be wound up voluntarily;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Order "a resolution for voluntary winding up" means a resolution passed under any of the sub-paragraphs of paragraph (1).

(3) A resolution passed under sub-paragraph (a) of paragraph (1), as well as a special resolution under sub-paragraph (b) and an extraordinary resolution under sub-paragraph (c), is subject to Article 388 (copy of resolution to be forwarded to registrar within 15 days).

*Notice of resolution to wind up voluntarily*

**530.**—(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Belfast Gazette.

(2) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

For the purposes of this paragraph the liquidator is deemed an officer of the company.

*Commencement of voluntary winding up*

**531.** A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

*Consequences of voluntary winding up*

*Effect on business and status of company*

**532.**—(1) In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

*Avoidance of share transfers, etc. after winding-up resolution*

**533.** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the

company's members, made after the commencement of a voluntary winding up is void.

*Declaration of solvency*

*Statutory declaration of solvency*

534.—(1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than two directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for the purposes of this Order unless—

- (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) The declaration shall be delivered to the registrar before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.

(4) A director making a declaration under this Article without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified is liable to imprisonment or a fine, or both.

(5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by paragraph (3) to be delivered to the registrar is not so delivered within the time specified by that paragraph, the company and every officer of it in default is liable to a fine and, for continued contravention, to a daily default fine.

*Distinction between "members" and "creditors" voluntary winding up*

535. A winding up in the case of which a directors' statutory declaration in accordance with Article 534 has been made is a "members' voluntary winding up"; and a winding up in the case of which such a declaration has not been made is a "creditors' voluntary winding up".

*Provisions applicable to a members' voluntary winding up*

*Introduction to next 8 Articles*

**536.** Articles 537 to 544 apply in relation to a members' voluntary winding up.

*Company's power to appoint and fix remuneration of liquidator*

**537.**—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

*Power to fill vacancy in office of liquidator*

**538.**—(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Order or by the company's articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

*Power of liquidator to accept shares, etc. as consideration for sale of company property*

**539.**—(1) This Article and Article 540 apply where a company is proposed to be, or is being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company ("the transferee company"), whether or not this latter is a company within the meaning of this Order.

(2) The liquidator of the company to be, or being, wound up ("the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on himself or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company.



(3) Alternatively, the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto), participate in the profits of, or receive any other benefit from, the transferee company.

(4) A sale or arrangement in pursuance of this Article is binding on members of the transferor company.

(5) A special resolution is not invalid for the purposes of this Article by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution is not valid unless sanctioned by the court.

*Purchase of interest of a dissenting member*

**540.**—(1) If a member of the transferor company who did not vote in favour of the special resolution mentioned in Article 539(2) expresses his dissent from it in writing addressed to the liquidator, and left at the company's registered office within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this Article.

(2) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(3) For the purposes of an arbitration under this Article, the provisions of the Companies Clauses Consolidation Act 1845, with respect to the settlement of disputes by arbitration, are incorporated with this Order, and—

1845 c. 16

- (a) in the construction of those provisions this Order is deemed the special Act and "the company" means the transferor company, and
- (b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any two or more of them).

*Duty of liquidator to call creditors' meeting in case of insolvency*

**541.**—(1) If the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the directors' declaration under Article 534, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the company's assets and liabilities.

(2) If the liquidator fails to comply with this Article, he is liable to a fine.

*Duty of liquidator to call general meeting at each year's end*

**542.**—(1) Subject to Article 544, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Department may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this Article, he is liable to a fine.

*Final meeting and dissolution*

**543.**—(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.

(2) The meeting shall be called by advertisement in the Belfast Gazette, specifying its time, place and object and published at least one month before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date; and if the copy is not sent or the return is not made in accordance with this paragraph the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(4) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of paragraph (3) as to the making of the return are deemed complied with.

(5) The registrar on receiving the account and either of those returns shall forthwith register them, and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved; but the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(6) It is the duty of the person on whose application an order of the court under this Article is made within 7 days after the making of the order to deliver to the registrar an office copy of the order for registration; and if that person fails to do so he is liable to a fine and, for continued contravention, to a daily default fine.

(7) If the liquidator fails to call a general meeting of the company as required by paragraph (1), he is liable to a fine.

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*Alternative provision as to company meetings in case of insolvency*

**544.**—(1) Where Article 541 has effect, Articles 552 and 553 apply to the winding up to the exclusion of Articles 542 and 543, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up.

(2) However, the liquidator is not required to summon a meeting of creditors under Article 552 at the end of the first year from the commencement of the winding up, unless the meeting held under Article 541 is held more than 3 months before the end of that year.

*Provisions applicable to a creditors' voluntary winding up*

*Introduction to next 8 Articles*

**545.** Articles 546 to 553 apply in relation to a creditors' voluntary winding up.

*Meeting of creditors*

**546.**—(1) The company shall give at least 7 days' notice of the company meeting at which the resolution for voluntary winding up is to be proposed.

This applies notwithstanding any power of the members, or of any particular majority of the members, to exclude or waive any other requirement of this Order or the company's articles with respect to the period of notice to be given of any company meeting.

(2) The company shall in addition—

- (a) cause a meeting of its creditors to be summoned for the day, or the day next following the day, on which the company meeting is to be held,
- (b) cause the notices of the creditors' meeting to be sent by post to the creditors simultaneously with the sending of the notices of the company meeting, and
- (c) cause notice of the creditors' meeting to be advertised once in the Belfast Gazette and once at least in two local newspapers circulating in the district in which the company's registered office or its principal place of business is situated.

(3) The directors of the company shall—

- (a) cause a full statement of the position of the company's affairs, together with a list of its creditors and the estimated amount of their claims, to be laid before the creditors' meeting, and
- (b) appoint one of their number to preside at the meeting;

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and it is the duty of the director so appointed to attend the meeting and preside at it.

(4) If the company meeting at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the creditors' meeting held under paragraph (2) has effect as if it had been passed immediately after the passing of the resolution for voluntary winding up.

(5) If default is made—

- (a) by the company in complying with paragraphs (1) and (2),
- (b) by the directors in complying with paragraph (3),
- (c) by any director in complying with that paragraph, so far as requiring him to attend and preside at the creditors' meeting,

the company, the directors or the director (as the case may be) is or are liable to a fine; and, in the case of default by the company, every officer of the company who is in default is also so liable.

(6) Failure to give notice of the company meeting as required by paragraph (1) does not affect the validity of any resolution passed or other thing done at that meeting which would be valid apart from that paragraph.

*Appointment of liquidator*

**547.**—(1) The creditors and the company at their respective meetings mentioned in Article 546 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.

(2) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator; and if no person is nominated by the creditors the person (if any) nominated by the company shall be liquidator.

(3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—

- (a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or
- (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

*Appointment of committee of inspection*

**548.**—(1) The creditors at the meeting to be held in pursuance of Article 546 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at

any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding 5.

(3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection; and if the creditors so resolve—

- (a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee, and
- (b) on any application to the court under this paragraph the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) Schedule 16 has effect with respect to a committee of inspection appointed under this Article and its proceedings.

*Remuneration of liquidator; cesser of directors' powers*

549.—(1) The committee of inspection or, if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors cease, except so far as the committee of inspection (or, if there is no such committee, the creditors) sanction their continuance.

*Vacancy in office of liquidator*

550. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the court), the creditors may fill the vacancy.

*Application of Articles 539 and 540 to creditors' voluntary winding up*

551. Articles 539 and 540 apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the liquidator's powers under those Articles are not to be exercised except with the sanction either of the court or of the committee of inspection.

*Meetings of company and creditors at end of each year*

552.—(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Department may allow, and shall lay before the meetings

an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this Article, he is liable to a fine.

*Final meeting and dissolution*

**553.—(1)** As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the Belfast Gazette specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that paragraph as to the making of the return are, in respect of that meeting, deemed complied with.

(6) The registrar on receiving the account and, in respect of each such meeting, either of the returns mentioned in paragraph (3) or (5) shall forthwith register them, and on the expiration of 3 months from their registration the company is deemed to be dissolved; but the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(7) It is the duty of the person on whose application an order of the court under this Article is made, within 7 days after the making of the order, to deliver to the registrar an office copy of the order for registration; and if that person fails to do so he is liable to a fine and, for continued contravention, to a daily default fine.

(8) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this Article, he is liable to a fine.

*Provisions applicable to every voluntary winding up*

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*Introduction to next 8 Articles*

**554.** Articles 555 to 562 apply to every voluntary winding up, whether a members' or a creditors' winding up.

*Distribution of company's property*

**555.** Subject to the provisions of this Order as to preferential payments, the company's property shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the company's articles otherwise provide) be distributed among the members according to their rights and interests in the company.

*Powers and duties of liquidator in voluntary winding up*

**556.**—(1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and
- (b) in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection (or, if there is no such committee, a meeting of the creditors),

exercise any of the powers given by Article 499(1)(c), (d) and (e) to a liquidator in a winding up by the court.

(2) The liquidator may, without sanction, exercise any of the other powers given by this Order to the liquidator in a winding up by the court.

(3) The liquidator may—

- (a) exercise the court's power of settling a list of contributories (and the list of contributories is *prima facie* evidence of the liability of the persons named in it to be contributories),
- (b) exercise the court's power of making calls,
- (c) summon general meetings of the company for the purpose of obtaining its sanction by special or extraordinary resolution or for any other purpose he may think fit.

(4) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(5) When several liquidators are appointed, any power given by this Order may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two.

*Appointment or removal of liquidator by the court*

**557.**—(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another.

*Notice by liquidator of his appointment*

**558.**—(1) The liquidator shall, within 14 days after his appointment, publish in the Belfast Gazette and deliver to the registrar for registration a notice of his appointment in the form prescribed under Article 681.

(2) If the liquidator fails to comply with this Article he is liable to a fine and, for continued contravention, to a daily default fine.

*Arrangement when binding on creditors*

**559.**—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors is (subject to the right of appeal under this Article) binding—

- (a) on the company, if sanctioned by an extraordinary resolution, and
- (b) on the creditors, if acceded to by three-fourths in number and value of them.

(2) Any creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the court against it; and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

*Power to apply to court to have questions determined or powers exercised*

**560.**—(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) An office copy of an order made by virtue of this Article staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

*Costs of voluntary winding up*

**561.** All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

*Saving for rights of creditors and contributories*

**562.** The winding up of a company does not bar the right of any creditor or contributory to have it wound up by the court; but in the case



of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

#### CHAPTER IV

#### WINDING UP SUBJECT TO SUPERVISION OF COURT

##### *Power to order winding up under supervision*

**563.** When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

##### *Effect of petition for court supervision*

**564.** A petition for the continuance of a voluntary winding up subject to the supervision of the court is deemed, for the purpose of giving jurisdiction to the court over actions, to be a petition for winding up by the court.

##### *Application of Articles 484 and 485*

**565.** A winding up subject to the supervision of the court is deemed for the purposes of Articles 484 and 485 (avoidance of dispositions of property, etc.) to be a winding up by the court.

##### *Power of court to appoint or remove liquidators*

**566.—(1)** Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

(2) A liquidator so appointed has the same powers, is subject to the same obligations, and in all respects stands in the same position, as if he had been duly appointed in accordance with the provisions of this Order with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove a liquidator so appointed by the court, or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

##### *Effect of supervision order*

**567.—(1)** Where an order is made for a winding up subject to supervision, the liquidator may (subject to any restrictions imposed by the court) exercise all his powers, without the court's sanction or intervention, in the same manner as if the company were being wound up altogether voluntarily.

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(2) However, the powers specified in Article 499(1)(c), (d) and (e) shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors.

(3) A winding up subject to the supervision of the court is not a winding up by the court for the purposes of the provisions of this Order specified in Schedule 17, nor for those of Article 457 (power to appoint Official Assignee as receiver for the debenture holders or creditors); but, subject to this, an order for a winding up subject to supervision is deemed to be for all purposes an order for winding up by the court.

(4) But where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order is deemed an order for winding up by the court for the purposes of Schedule 16, except in so far as the operation of those provisions is excluded in a voluntary winding up by winding-up rules.

**CHAPTER V**

**PROVISIONS APPLICABLE TO EVERY MODE OF  
WINDING UP**

*Proof and ranking of claims*

*Debts of all descriptions may be proved*

**568.—**(1) In every winding up (subject, in the case of insolvent companies, to the application in accordance with this Order of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to proof against the company.

(2) A just estimate is to be made (so far as possible) of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

*Application of bankruptcy rules*

**569.—**(1) In the winding up of an insolvent company the same rules prevail and are to be observed with regard to the respective rights of secured and unsecured creditors, and to debts provable and to the valuation of annuities and future and contingent liabilities, as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt.

(2) All those who in any such case would be entitled to prove for and receive dividends out of the company's assets may come in under the

winding up and make such claims against the company as they respectively are entitled to by virtue of this Article.

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*Preferential payments*

570.—(1) In a winding up the preferential debts listed in Schedule 18 shall be paid in priority to all other debts, but with the exceptions and reservations specified in that Schedule.

(2) The preferential debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them in which case they shall abate in equal proportions, and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the preferential debts shall be discharged forthwith so far as the assets are sufficient to meet them; and in the case of the debts to which priority is given by paragraph 8 of Schedule 18 (social security payments), formal proof of them is not required except in so far as is otherwise prescribed.

*Effect of winding up on antecedent and other transactions*

*Fraudulent preference*

571.—(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within 6 months before the commencement of its winding up which, had it been made or done by or against an individual within 6 months before he became bankrupt, would be deemed in his bankruptcy a fraudulent preference, is in the event of the company being wound up deemed a fraudulent preference of its creditors and invalid accordingly.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors is void to all intents.

*Liabilities and rights of those fraudulently preferred*

572.—(1) Where in the case of a company which is being wound up anything made or done is void under Article 571 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred is subject to the same liabilities, and has the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

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(2) The value of the person's interest is determined as at the date of the transaction constituting the fraudulent preference, and as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.

(3) On an application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court has jurisdiction to determine any question with respect to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect of it.

(4) The court's jurisdiction under paragraph (3) is exercisable notwithstanding that the determination of the question is not necessary for the purposes of the winding up; and the court may for the purposes of that paragraph give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(5) Paragraphs (3) and (4) apply, with the necessary modifications, in relation to transactions other than the payment of money as they apply in relation to payments.

*Effect of floating charge*

**573.**—(1) Where a company is being wound up, a floating charge on its undertaking or property created within 12 months of the commencement of the winding up is invalid (unless it is proved that the company immediately after the creation of the charge was solvent), except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount.

(2) Interest under this Article is at the rate of 5 per cent. per annum or such other rate as may for the time being be fixed by order of the Department of Finance and Personnel made subject to negative resolution.

*Disclaimer of onerous property*

**574.**—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding its possessor to the performance of any onerous act or to the payment of any sum of money, the liquidator may, with the leave of the court and subject to the provisions of this Article and Article 575 disclaim the property.

(2) The power to disclaim is exercisable notwithstanding that the liquidator has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation to it; and the disclaimer must be in writing signed by him.

(3) The power is exercisable at any time within 12 months after the commencement of the winding up or such extended period as may be

allowed by the court; but where any such property has not come to the liquidator's knowledge within one month after the commencement of the winding up, he may disclaim at any time within 12 months after he has become aware of it or such extended period as may be so allowed.

(4) The disclaimer operates to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the company's property, in or in respect of the property disclaimed; but it does not (except so far as is necessary for the purpose of releasing the company and its property from liability) affect the rights or liabilities of any other person.

*Further provisions about disclaimer under Article 574*

**575.**—(1) The court, before or on granting leave to disclaim under Article 574, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter, as the court thinks just.

(2) The liquidator is not entitled to disclaim property under Article 574 in a case where application in writing has been made to him by persons interested in the property requiring him to decide whether he will or will not disclaim and he has not within 28 days after the receipt of the application (or such further period as may be allowed by the court) given notice to the applicant that he intends to apply to the court for leave to disclaim.

(3) In the case of a contract, if the liquidator after such an application does not within that period or further period disclaim the contract, the company is deemed to have adopted it.

(4) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just; and any damages payable under the order to such a person may be proved by him as a debt in the winding up.

(5) The court may, on an application by a person who either claims an interest in disclaimed property or is under a liability not discharged by this Order in respect of disclaimed property, and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or its delivery to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just.

(6) On such a vesting order being made, the property comprised in it vests accordingly in the person named in that behalf in the order, without conveyance or assignment for that purpose.

(7) Schedule 19 has effect for the protection of third parties where the property disclaimed is of a leasehold nature.

(8) A person injured by the operation of a disclaimer under Article 574 and this Article is deemed a creditor of the company to the amount of the injury, and may accordingly prove the debt in the winding up.

*Liability for rentcharge on company's land after disclaimer*

**576.**—(1) Where on a disclaimer under Article 574 land vests subject to a rentcharge in the Crown or any other person, that does not impose on the Crown or that other person, or on its or his successors in title, any personal liability in respect of the rentcharge.

(2) But this Article does not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation of it.

(3) This Article applies to land whenever vesting and to sums whenever accrued.

*Offences of fraud, deception, etc. before and in course of winding up;  
fraudulent trading and its consequences*

*Fraud, etc. in anticipation or in course of winding up*

**577.**—(1) When a company is ordered to be wound up by, or is being wound up under the supervision of, the court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the company, is deemed to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up, he has—

- (a) concealed any part of the company's property to the value of £120 or more, or concealed any debt due to or from the company,
- (b) fraudulently removed any part of the company's property to the value of £120 or more, or
- (c) concealed, destroyed, mutilated or falsified any books or papers affecting or relating to the company's property or affairs, or
- (d) made any false entry in any books or papers affecting or relating to the company's property or affairs, or
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or
- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(2) Such a person is deemed to have committed an offence if within the period mentioned in paragraph (1) he has been privy to the doing by others of any of the things mentioned in sub-paragraphs (c), (d), and (e) of paragraph (1); and he commits an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in sub-paragraphs (a) to (f) of that paragraph, or is privy to the doing by others of any of the things mentioned in sub-paragraphs (c) to (e) of it.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence—

- (a) for a person charged under sub-paragraph (a) or (f) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub-paragraphs) to prove that he had no intent to defraud, and
- (b) for a person charged under sub-paragraph (c) or (d) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub-paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(5) A person guilty of an offence under the foregoing provisions of this Article is liable to imprisonment or a fine, or both.

(6) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (1)(f), every person who takes in pawn or pledge, or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence and is on conviction on indictment liable to the same penalty as if he had been convicted of handling stolen goods.

(7) The money sums specified in sub-paragraphs (a) and (b) of paragraph (1) are subject to increase or reduction by order under Article 614.

#### *Transactions in fraud of creditors*

**578.**—(1) When a company is ordered to be wound up by the court or passes a resolution for voluntary winding up, a person is deemed to have committed an offence if he, being at the time an officer of the company—

- (a) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property, or
- (b) with that intent, has concealed or removed any part of the company's property since, or within 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company.

(2) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

*Misconduct in course of winding up*

**579.**—(1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or
- (b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or
- (c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
- (d) knowing or believing that a false debt has been proved by any person in the winding up, fails for the period of a month to inform the liquidator of it, or
- (e) after the commencement of the winding up prevents the production of any books or papers affecting or relating to the company's property or affairs.

(2) Such a person commits an offence if after the commencement of the winding up he attempts to account for any part of the company's property by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence—

- (a) for a person charged under paragraph (1)(a), (b) or (c) to prove that he had no intent to defraud, and
- (b) for a person charged under paragraph (1)(e) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(5) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

*Falsification of company's books*

**580.**—(1) When a company is being wound up, an officer or contributory of the company commits an offence if he destroys, mutilates,



alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, accounting record or document belonging to the company with intent to defraud or deceive any person.

(2) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

*Material omissions from statements relating to company affairs*

581.—(1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he makes any material omission in any statement relating to the company's affairs.

(2) When a company has been ordered to be wound up by or under the supervision of the court, or has passed a resolution for voluntary winding up, any such person is deemed to have committed that offence if, prior to the winding up, he has made any material omission in any such statement.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence for a person charged under this Article to prove that he had no intent to defraud.

(5) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

*False representations to creditors*

582.—(1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company—

(a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up, and

(b) is deemed to have committed that offence if, prior to the winding up, he has made any false representation, or committed any other fraud, for that purpose.

(2) For the purposes of this Article, "officer" includes a shadow director.

(3) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

*Responsibility of individuals for company's fraudulent trading*

583.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to

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defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the Official Assignee, or the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in paragraph (1) are to be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(3) On the hearing of the application, the Official Assignee or the liquidator (as the case may be) may himself give evidence or call witnesses.

(4) Where the court makes such a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the court may—

(a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and

(b) from time to time make such further order as may be necessary for enforcing any charge imposed under this paragraph.

(5) For the purposes of paragraph (4), “assignee”—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground on which the declaration is made.

(6) Where, on making a declaration under paragraph (2), the court so directs, the liability of any person under the declaration shall be deemed to be a debt payable to the liquidator or to a creditor, as the court may determine.

(7) This Article has effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground on which the declaration under paragraph (2) is to be made.

*Power of court to assess damages against delinquent directors, etc.*

**584.—**(1) The following applies if in the course of winding up a company it appears that a person who has taken part in its formation or promotion, or any past or present director or liquidator, or an officer of the company, has misapplied or retained or become liable or accountable

for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company.

(2) The court may, on the application of the Official Assignee or the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, liquidator or officer and compel him—

- (a) to repay or restore the money or property, or any part of it, respectively with interest at such rate as the court thinks just, or
- (b) to contribute such sum to the company's assets by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(3) This Article has effect notwithstanding that the offence is one for which the offender may be criminally liable.

*Prosecution of delinquent officers and members of company*

585.—(1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to the Director of Public Prosecutions for Northern Ireland, in this Article and Article 586 referred to as "the prosecuting authority".

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, he shall—

- (a) forthwith report the matter to the prosecuting authority, and
- (b) furnish to that authority such information and give to him such access to and facilities for inspecting and taking copies of documents, (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the authority requires.

(3) Where a report is made to him under paragraph (2), the prosecuting authority may, if he thinks fit, refer the matter to the Department for further enquiry; and the Department—

- (a) shall thereupon investigate the matter, and
- (b) for the purpose of its investigation may exercise any of the powers which are exercisable by inspectors appointed under Article 424 or 425 to investigate a company's affairs.

(4) If it appears to the court in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the prosecuting authority under paragraph (2), the court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make

such a report; and on a report being made accordingly this Article has effect as though the report had been made in pursuance of paragraph (2).

*Obligations arising under Article 585*

**586.**—(1) For the purpose of an investigation by the Department under paragraph (3) of Article 585, any obligation imposed on a person by any provision of this Order to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that paragraph is to be regarded as an obligation similarly to assist the Department in its investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by Article 585(3) may be used in evidence against him.

(3) Where criminal proceedings are instituted by the prosecuting authority or the Department following any report or reference under Article 585, it is the duty of the liquidator and every officer and agent of the company past and present (other than the defendant) to give to that authority or the Department (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(4) If a person fails or neglects to give assistance in the manner required by paragraph (3), the court may, on the application of the prosecuting authority or the Department (as the case may be) direct the person to comply with that paragraph; and if the application is made with respect to a liquidator, the court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

*Supplementary provisions as to winding up*

*Disqualification for appointment as liquidator*

**587.**—(1) A body corporate is not qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up.

(2) Any appointment made in contravention of this Article is void; and a body corporate which acts as liquidator of a company is liable to a fine.

*Corrupt inducement affecting appointment as liquidator*

**588.** A person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the

appointment or nomination of some person other than himself, as the company's liquidator is liable to a fine.

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*Enforcement of liquidator's duty to make returns, etc.*

**589.**—(1) If a liquidator who has made any default—

- (a) in filing, delivering or making any return, account or other document, or
- (b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court has the following powers.

(2) On an application made by any creditor or contributory of the company, or by the registrar, the court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on a liquidator in respect of any such default as is mentioned in paragraph (1).

*Notification that company is in liquidation*

**590.**—(1) When a company is being wound up, whether by or under supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company, or a liquidator of the company, or a receiver or manager of the company's property, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this Article, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

*In a winding up, certain documents exempt from stamp duty*

**591.**—(1) In the case of a winding up by the court, or of a creditors' voluntary winding up—

- (a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the company's assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets; and
- (b) every power of attorney, proxy paper, writ, order, certificate, or other instrument or writing relating solely to the property of any company which is being wound up or to any proceeding under such a winding up,

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shall be exempt from duties chargeable under the statutory provisions relating to stamp duties.

(2) In paragraph (1) "assurance" includes deed, conveyance, assignment and surrender.

*Company's books to be evidence*

**592.** Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

*Disposal of books and papers*

**593.**—(1) When a company has been wound up and is about to be dissolved, its books and papers and those of the liquidators may be disposed of as follows—

- (a) in the case of a winding up by or subject to the supervision of the court, in such way as the court directs;
- (b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and
- (c) in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, the company's creditors may direct.

(2) After 5 years from the company's dissolution no responsibility rests on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to a person claiming to be interested in it.

(3) Provision may be made by winding-up rules—

- (a) for enabling the Department to prevent, for such period as the Department thinks proper (but not exceeding 5 years from the company's dissolution), the destruction of the books and papers of a company which has been wound up, and
- (b) for enabling any creditor or contributory of the company to make representations to the Department and to appeal to the court from any direction which may be given by the Department in the matter.

(4) If a person acts in contravention of winding-up rules made for the purposes of this Article, or of any direction of the Department under them, he is liable to a fine.

*Information as to pending liquidations*

**594.**—(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, at such intervals as

may be prescribed, until the winding up is concluded, send to the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator fails to comply with this Article, he is liable to a fine, and for continued contravention, to a daily default fine.

*Unclaimed dividends, etc. to be lodged in Insolvency Account*

**595.**—(1) Where a company has been wound up voluntarily or by the court and is about to be dissolved, the liquidator shall, in such manner as may be prescribed, pay the whole unclaimed dividends and unapplied or undistributed balances to the Department which shall lodge that money into the Insolvency Account.

(2) Any person claiming to be entitled to any dividend or payment out of a lodgment made in pursuance of paragraph (1) may apply to the Department for payment thereof and the Department may, on a certificate by the liquidator that the person claiming is entitled, or on other evidence of entitlement, make an order for the payment to that person of the sum due.

(3) On or before 31st March in each year the Department shall pay into the Consolidated Fund the amount of any lodgment made in pursuance of paragraph (1) which has remained unclaimed for a period of at least two years from the date of lodgment, but where the Department is satisfied that any person claiming is entitled to any dividend or payment of the money paid into the Consolidated Fund it may order payment of the same and the Department of Finance and Personnel shall issue out of the Consolidated Fund such sum as may appear to that Department to be necessary to provide for that payment.

(4) Any person dissatisfied with a decision of the Department in respect of a claim made under paragraph (2) or (3) may appeal to the court against that decision.

*Resolutions passed at adjourned meetings*

**596.** Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

*Supplementary powers of court*

*Meetings to ascertain wishes of creditors or contributories*

**597.**—(1) The court may—

- (a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and

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(b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Order or the company's articles.

*Judicial notice of signature of court officers*

**598.** In all proceedings under this Part, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

(a) of the signature of any officer of the High Court in Northern Ireland or of a county court or the High Court in England or of the Court of Session in Scotland, and also

(b) of the official seal or stamp of the several offices of the High Court in Northern Ireland or England, or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Order, or any official copy of such a document.

*Special commission for receiving evidence*

**599.—(1)** When a company is being wound up in Northern Ireland, the court may refer the whole or any part of the examination of witnesses—

(a) to a specified county court in Northern Ireland, or

(b) to a specified county court in England, or

(c) to the sheriff principal for a specified sheriffdom in Scotland,

(“specified” meaning specified in the order of the winding-up court).

(2) Any person exercising jurisdiction as a judge of the court to which the reference is made under paragraph (1)(a) shall be a commissioner for the purposes of this Article.

(3) The judge of the county court to which the reference is made under paragraph (1)(a) has in the matter referred the same power of summoning and examining witnesses, of requiring the production and delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

These powers are in addition to any which the judge might lawfully exercise apart from this Article.



(4) The examination so taken in a matter referred under paragraph (1)(a) shall be returned or reported to the court which made the order in such manner as that court requests.

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*Court order for examination of persons in Scotland*

**600.**—(1) The court may direct the examination of any person for the time being in Scotland (whether a contributory of the company or not), in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested by reason of his being a contributory.

(2) The order or commission to take the examination shall be directed to the sheriff principal of the sheriffdom in which the person to be examined is residing or happens to be for the time.

*Affidavits, etc. in United Kingdom and elsewhere*

**601.**—(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Northern Ireland before any court, judge or person lawfully authorised to take and receive affidavits and shall, if sworn in Great Britain or elsewhere in Her Majesty's dominions before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice-consuls in any place outside Her Majesty's dominions, be treated as an affidavit sworn under or for the purposes of this Part.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

CHAPTER VI

PROVISIONS AS TO DISSOLUTION

*Power of court to declare dissolution of company void*

**602.**—(1) Where a company has been dissolved, the court may at any time within 2 years of the date of the dissolution, on an application made for the purpose by the liquidator of the company or by any other person appearing to the court to be interested, make an order, on such terms as the court thinks fit, declaring the dissolution to have been void.

(2) Thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(3) It is the duty of the person on whose application the order was made, within 7 days after its making (or such further time as the court

may allow), to deliver to the registrar for registration an office copy of the order.

If the person fails to do so, he is liable to a fine and, for continued contravention, to a daily default fine.

*Registrar may strike defunct company off register*

**603.**—(1) If the registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer to it, he shall within 14 days after the expiration of that month send to the company by registered post or recorded delivery service a letter referring to the first letter, and stating that no answer to it has been received, and that if an answer is not received to the second letter within one month from its date, a notice will be published in the Belfast Gazette with a view to striking the company's name off the register.

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Belfast Gazette, and send to the company by post, a notice that at the expiration of 3 months from the date of that notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in a case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the registrar shall publish in the Belfast Gazette and send to the company or the liquidator (if any) a like notice as is provided in paragraph (3).

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice of this in the Belfast Gazette; and on the publication of that notice in the Belfast Gazette the company is dissolved.

(6) However—

(a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and

(b) nothing in paragraph (5) or sub-paragraph (a) affects the power of the court to wind up a company the name of which has been struck off the register.

(7) A notice to be sent to a liquidator under this Article may be addressed to him at his last known place of business; and a letter or

notice to be sent under this Article to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company.

If there is no officer of the company whose name and address are known to the registrar, the letter or notice may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

*Objection to striking off by person aggrieved*

**604.**—(1) This Article applies if a company or any member or creditor of it feels aggrieved by the company having been struck off the register.

(2) The court, on an application by the company or the member or creditor made before the expiration of 20 years from publication in the Belfast Gazette of notice under Article 603, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the company's name to be restored.

(3) On an office copy of the order being delivered to the registrar for registration the company is deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position (as nearly as may be) as if the company's name had not been struck off.

*Property of dissolved company to be bona vacantia*

**605.**—(1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for any other person) are deemed to be bona vacantia and—

- (a) accordingly belong to the Crown, and
- (b) vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown.

(2) Except as provided by Article 606, the foregoing provisions of this Article have effect subject and without prejudice to any order made by the court under Article 602 or 604.

*Effect on Article 605 of company's revival after dissolution*

**606.**—(1) The Crown, in whom any property or right is vested by Article 605, may dispose of, or of an interest in, that property or right notwithstanding that an order may be made under Article 602 or 604.

- (2) Where such an order is made—
  - (a) it does not affect the disposition (but without prejudice to the order so far as it relates to any other property or right previously vested in or held on trust for the company), and

- (b) the Crown shall pay to the company an amount equal to—
- (i) the amount of any consideration received for the property or right, or interest therein, or
  - (ii) the value of any such consideration at the time of the disposition,

or, if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.

(3) This Article applies in relation to the disposition of any property, right or interest on or after 1st July 1983, whether the company concerned was dissolved before, on or after that day.

*Crown disclaimer of property vesting as bona vacantia*

**607.**—(1) Where any property vests in the Crown under Article 605 the Crown's title to it under that Article may be disclaimed by a notice signed by the Treasury Solicitor.

(2) The right to execute a notice of disclaimer under this Article may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.

(3) A notice of disclaimer under this Article is of no effect unless it is executed—

- (a) within 12 months of the date on which the vesting of the property under Article 605 came to the notice of the Treasury Solicitor, or
- (b) if an application in writing is made to the Treasury Solicitor by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of 3 months after the receipt of the application or such further period as may be allowed by the court.

(4) A statement in a notice of disclaimer of any property under this Article that the vesting of it came to the notice of the Treasury Solicitor on a specified date, or that no such application as is mentioned in paragraph (3)(b) was received by him with respect to the property before a specified date, is sufficient evidence of the fact stated, until the contrary is proved.

(5) A notice of disclaimer under this Article shall be delivered to the registrar for registration; and copies of it shall be published in the Belfast Gazette and sent to any persons who have given the Treasury Solicitor notice that they claim to be interested in the property.

*Effect of Crown disclaimer under Article 607*

**608.** Where notice of disclaimer is executed under Article 607 as respects any property, that property is deemed not to have vested in the Crown under Article 605 and as regards that property, the following provisions, namely—

- (a) Article 574(4) (effect of disclaimer by liquidator),
- (b) Article 575(1) to (7) (court's power to vest property in the person entitled) with Part I of Schedule 19 (protection of third parties where property is leasehold), and
- (c) Article 576 (liability for rentcharge following disclaimer),

apply as if the property had been disclaimed by the liquidator under Article 574(1) immediately before the dissolution of the company.

*Liability for rentcharge on company's land after dissolution*

609.—(1) Article 576 applies to land which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under Article 574.

(2) In this Article "company" includes any body corporate.

CHAPTER VII

MISCELLANEOUS PROVISIONS ABOUT WINDING UP

*Power to make over assets to employees*

610.—(1) On the winding up of a company (whether by the court or voluntarily), the liquidator may, subject to this Article, make any payment which the company has, before the commencement of the winding up, decided to make under Article 668 (power to provide for employees or former employees on cessation or transfer of business).

(2) The power which a company may exercise by virtue only of that Article may be exercised by the liquidator after the winding up has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the costs of the winding up, the exercise of that power has been sanctioned by such a resolution of the company as would be required of the company itself by paragraph (3) of Article 668 before that commencement, if sub-paragraph (b) of that paragraph were omitted and any other requirement applicable to its exercise by the company had been met.

(3) Any payment which may be made by a company under this Article (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the court, the exercise by the liquidator of his powers under this Article is subject to the court's control, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of the power.

(5) Paragraphs (1) and (2) have effect notwithstanding anything in any rule of law or in Article 555 (property of company after satisfaction of liabilities to be distributed among members).

*Separate accounts of particular companies*

611.—(1) The Department shall maintain an account of the sums credited and debited to the Insolvency Account in respect of every company for which money has been received.

(2) Subject to paragraph (3), whenever the cash balance standing to the credit of the account of any company is in excess of £2,000 or such other sum as may be prescribed, the Department shall credit to the account of the company interest on the excess at such rate as the Department of Finance and Personnel may determine.

(3) On or before 31st March in each year all sums standing to the credit of the account of a company which has been dissolved for a period of at least 2 years (other than sums falling to be dealt with under Article 595) shall be paid to the Department and applied as the Department of Finance and Personnel may direct.

*Returns by officers of the High Court*

612. Officers of the High Court shall make to the Department such returns of that part of the business of the High Court which relates to the winding up of companies at such times, and in such manner and form, as may be prescribed, and from those returns the Department shall cause records to be prepared which shall be kept by the registrar.

*Winding-up rules and fees*

613.—(1) The Lord Chancellor may, with the concurrence of the Department and after consultation with the committee appointed under paragraph (4), make rules (to be known as winding-up rules) for carrying into effect the objects of this Order so far as relates to the winding up of companies.

(2) Without prejudice to the generality of paragraph (1) winding-up rules may, in relation to the exercise by the High Court of its jurisdiction under this Order, make such provision as has been made or might lawfully be made by rules of court in relation to the exercise by the High Court of any other jurisdiction.

(3) An answer given by a person to a question put to him in exercise of powers conferred by winding-up rules may be used in evidence against him.

(4) There shall continue to be a committee appointed by the Lord Chancellor to keep under review the winding-up rules for the time being in force under this Article and to make recommendations to the Lord Chancellor as to any changes in the rules that may from time to time appear to the committee to be desirable.

(5) The committee shall consist of—

- (a) the Chancery Judge;
- (b) the Master (Bankruptcy);
- (c) a practising barrister-at-law;
- (d) a practising solicitor of the Supreme Court;
- (e) a practising accountant; and
- (f) such additional persons, if any, as appear to the Lord Chancellor to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.

(6) There shall be paid to the Department in respect of proceedings under this Order in relation to the winding up of companies such fees as the Department may, with the concurrence of the Department of Finance and Personnel, prescribe; and the Department may direct in what manner such fees are to be accounted for and applied.

(7) Rules under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

1946 c. 36

*Power to increase monetary limits*

614.—(1) The Department may by order increase or reduce any of the sums for the time being specified in the following provisions of this Order—

Article 480(1)(a),

Article 503(4),

Article 577(1)(a) and (b), and  
paragraph 13 of Schedule 18.

(2) No order shall be made under this Article unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

PART XXI

WINDING UP OF UNREGISTERED COMPANIES

*Meaning of “unregistered company”*

615. For the purposes of this Part, “unregistered company” includes any partnership (whether limited or not), any association and any company, with the following exceptions—

- (a) a railway company incorporated by a statutory provision, except in so far as is provided by the Abandonment of Railways Act 1850 and the Abandonment of Railways Act 1869 and any statutory provisions amending them,

1850 c. 83

1869 c. 114

**PART XXI**

- (b) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the legislation (past or present) relating to companies in Northern Ireland,
- (c) a partnership, association or company which consists of less than 8 members and is not a foreign partnership, association or company, and
- (d) a limited partnership registered in Northern Ireland or England.

*Winding up of unregistered companies*

**616.**—(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Order; and all the provisions of this Order about winding up apply to an unregistered company, with the exceptions and additions mentioned in paragraphs (2) to (6).

(2) If an unregistered company has a principal place of business situated in England or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland, and the principal place of business in Northern Ireland is, for all purposes of the winding up, deemed to be the registered office of the company.

(3) No unregistered company shall be wound up under this Order voluntarily or subject to supervision.

(4) The circumstances in which an unregistered company may be wound up are as follows—

- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
- (b) if the company is unable to pay its debts;
- (c) if the court is of opinion that it is just and equitable that the company should be wound up.

(5) Subject to such modifications as may be made by rules of court, the Bankruptcy Acts (Northern Ireland) 1857 to 1980 apply to limited partnerships as if limited partnerships were ordinary partnerships, and, upon all the partners of a limited partnership being adjudged bankrupt, the assets of the limited partnership vest in the assignees.

*Inability to pay debts: unpaid creditor for £750 or more*

**617.**—(1) An unregistered company is deemed (for the purposes of Article 616) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—

- (a) the creditor has served on the company, by leaving at its principal place of business in Northern Ireland, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a written demand requiring the company to pay the sum due, and



- (b) the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) The Department may by order increase or reduce the money sum for the time being specified in paragraph (1) but such order shall not be made unless a draft of it has been laid before, and approved by a resolution of, the Assembly.

(3) However, no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into operation of the increase.

*Inability to pay debts: debt remaining unsatisfied after action brought*

**618.** An unregistered company is deemed (for the purposes of Article 616) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and—

- (a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's principal place of business in Northern Ireland, or by delivering it to the secretary, or some director or principal officer of the company, or by otherwise serving it in such manner as the court may approve or direct, and
- (b) the company has not within 10 days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

*Inability to pay debts: other cases*

**619.** An unregistered company is deemed (for the purposes of Article 616) unable to pay its debts—

- (a) if in Northern Ireland a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981;
- (b) if in England execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
- (c) if in Scotland the *induciae* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

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(d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

*Part XXIII company may be wound up though dissolved*

**620.** Where a company incorporated outside Northern Ireland which has been carrying on business in Northern Ireland ceases to carry on business in Northern Ireland, it may be wound up as an unregistered company under this Order, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

*Contributories in winding up of unregistered company*

**621.**—(1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company.

(2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned in paragraph (1).

(3) In the event of the death, bankruptcy or insolvency of any contributory, the provisions of this Order with respect to the personal representatives of deceased contributories, and to the assignees of bankrupt or insolvent contributories, respectively apply.

*Power of court to stay or restrain proceedings*

**622.** The provisions of this Order with respect to staying or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order extend, in the case of an unregistered company, where the application to stay or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

*Actions stayed on winding-up order*

**623.** Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

*Provisions of this Part to be cumulative*

**624.**—(1) The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part XX with respect to winding up companies by the court; and the court or liquidator may exercise any powers or do any act in the case of

unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Order.

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(2) However, an unregistered company is not, except in the event of its being wound up, deemed to be a company under this Order, and then only to the extent provided by this Part.

## PART XXII

### BODIES CORPORATE SUBJECT, OR BECOMING SUBJECT, TO THIS ORDER (OTHERWISE THAN BY ORIGINAL FORMATION UNDER PART II)

#### CHAPTER I

#### COMPANIES FORMED OR REGISTERED UNDER FORMER COMPANIES ACTS

##### *Companies formed and registered under former Companies Acts*

625.—(1) In its application to existing companies, this Order applies in the same manner—

- (a) in the case of a limited company (other than a company limited by guarantee) as if the company had been formed and registered under Part II as a company limited by shares,
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under that Part as a company limited by guarantee, and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under that Part as an unlimited company.

(2) But reference, express or implied, to the date of registration is to be read as the date at which the company was registered under the former Companies Acts.

##### *Companies registered but not formed under former Companies Acts*

626.—(1) This Order applies to every company registered but not formed under the former Companies Acts, in the same manner as it is in Chapter II declared to apply to companies registered but not formed under this Order.

(2) But reference, express or implied, to the date of registration is to be read as referring to the date at which the company was registered under the former Companies Acts.

##### *Companies re-registered with altered status under former Companies Acts*

627.—(1) This Order applies to every unlimited company registered or re-registered as limited in pursuance of the Companies Act 1879, section 57 of the Companies (Consolidation) Act 1908, section 16 of the

1879 c. 76  
1908 c. 69  
1932 c. 7 (N.I.)

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CHAPTER I

Companies Act (Northern Ireland) 1932, section 16 of the Act of 1960 or Article 119 of the Order of 1978 as it (this Order) applies to an unlimited company re-registered as limited in pursuance of Part III.

(2) But reference, express or implied, to the date of registration or re-registration is to be read as referring to the date at which the company was registered or re-registered as a limited company under the relevant statutory provision.

*Companies registered under Joint Stock Companies Acts*

**628.**—(1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

(2) The power of altering a company's articles under Article 20 extends, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

CHAPTER II

COMPANIES NOT FORMED UNDER COMPANIES LEGISLATION,  
BUT AUTHORISED TO REGISTER

*Companies capable of being registered under this Chapter*

**629.**—(1) With the exceptions and subject to the provisions contained in this Article and Article 630—

- (a) any company consisting of 2 or more members, which was in existence on 2nd November 1862, including any company registered under the Joint Stock Companies Acts, and
- (b) any company formed after that date (whether before or after the commencement of this Order), in pursuance of any statutory provision (other than this Order), or of letters patent, or being otherwise duly constituted according to law, and consisting of 2 or more members,

may at any time, on making application in the prescribed form, register under this Order as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration is not invalid by reason that it has taken place with a view to the company's being wound up.

(2) A company registered under the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act (Northern Ireland) 1932 or the Act of 1960 shall not register under this Article.

1862 c. 89  
1908 c. 69  
1932 c. 7 (N.I.)

(3) A company having the liability of its members limited by a statutory provision or letters patent, and not being a joint stock company, shall not register under this Article.

(4) A company having the liability of its members limited by a statutory provision or letters patent shall not register under this Article as an unlimited company or as a company limited by guarantee.

(5) A company that is not a joint stock company shall not register under this Article as a company limited by shares.

*Procedural requirements for registration*

**630.**—(1) A company shall not register under Article 629 without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed) at a general meeting summoned for the purpose.

(2) Where a company not having the liability of its members limited by a statutory provision or letters patent is about to register as a limited company, the majority required to assent as required by paragraph (1) shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.

(3) In computing any majority under this Article when a poll is demanded, regard is to be had to the number of votes to which each member is entitled according to the company's regulations.

(4) Where a company is about to register (under Article 629) as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the company's assets, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the company's debts and liabilities contracted before he ceased to be a member, and of the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(5) Before a company is registered under Article 629, it shall deliver to the registrar a statement in the prescribed form—

- (a) that the registered office of the company is to be situated in Northern Ireland, and
- (b) specifying the intended situation of the company's registered office after registration.

*Change of name on registration*

**631.**—(1) Where the name of a company seeking registration under Article 629 is a name by which it is precluded from registration by Article 36, either because it falls within paragraph (1) of that Article or, if it falls within paragraph (2) of that Article, because the Department would not approve the company being registered with that name, the company may

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change its name with effect from the date on which it is registered under this Chapter.

(2) A change of name under this Article requires the like assent of the company's members as is required by Article 630 for registration.

*Definition of "joint stock company"*

**632.**—(1) For the purposes of this Chapter, as far as relates to registration of companies as companies limited by shares, "joint stock company" means a company—

- (a) having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and
- (b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(2) Such a company when registered with limited liability under this Order is deemed a company limited by shares.

*Requirements for registration by joint stock companies*

**633.**—(1) Before the registration under Article 629 of a joint stock company, there shall be delivered to the registrar the following documents—

- (a) a statement in the prescribed form specifying the name with which the company is proposed to be registered;
- (b) a list in the prescribed form showing the names and addresses of all persons who on a day named in the list (not more than 6 clear days before the day of registration) were members of the company, with the addition of the shares or stock held by them respectively (distinguishing in cases, where the shares are numbered, each share by its number), and
- (c) a copy of any statutory provision, royal charter, letters patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company.

(2) If the company is intended to be registered as a limited company, there shall also be delivered to the registrar a statement in the prescribed form specifying the following particulars—

- (a) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists, and
- (b) the number of shares taken and the amount paid on each share.

*Registration of joint stock company as public company*

**634.**—(1) A joint stock company applying to be registered under Article 629 as a company limited by shares may, subject to—

(a) satisfying the conditions set out in Article 54(2)(a) and (b) (where applicable) and Article 55(2) to (4) as applied by this Article, and

(b) complying with paragraph (4),

apply to be so registered as a public company.

(2) Articles 54 and 55 apply for this purpose as in the case of a private company applying to be re-registered under Article 53, but as if a reference to the special resolution required by Article 53 were to the joint stock company's resolution that it be a public company.

(3) The resolution may change the company's name by deleting the word "company" or the words "and company", including any abbreviation of them.

(4) The joint stock company's application shall be made in the form prescribed for the purpose, and shall be delivered to the registrar together with the following documents (as well as those required by Article 633), namely—

- (a) a copy of the resolution that the company be a public company,
- (b) a copy of a written statement by an accountant with the appropriate qualifications that in his opinion a relevant balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves,
- (c) a copy of the relevant balance sheet, together with a copy of an unqualified report (by an accountant with such qualifications) in relation to that balance sheet,
- (d) a copy of any valuation report prepared under Article 54(2)(b) as applied by this Article, and
- (e) a statutory declaration in the prescribed form by a director or secretary of the company—
  - (i) that the conditions set out in Article 54(2)(a) and (b) (where applicable) and Article 55(2) to (4) have been satisfied, and
  - (ii) that, between the balance sheet date referred to in subparagraph (b) and the joint stock company's application, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

(5) The registrar may accept a declaration under paragraph (4)(e) as sufficient evidence that the conditions referred to in that paragraph have been satisfied.

(6) In this Article—

"accountant with the appropriate qualifications" means a person who would be qualified under Article 397 for appointment as the company's auditor, if it were a company registered under this Order,

“relevant balance sheet” means a balance sheet prepared as at a date not more than 7 months before the joint stock company’s application to be registered as a public company limited by shares, and “undistributable reserves” has the meaning given by Article 272(3); and Article 56 applies (with the necessary modifications) for the interpretation of the reference in paragraph (4)(c) to an unqualified report by the accountant.

*Other requirements for registration*

**635.**—(1) Before the registration in pursuance of this Chapter of any company (not being a joint stock company), there shall be delivered to the registrar—

- (a) a statement in the prescribed form specifying the name with which the company is proposed to be registered,
- (b) a list showing the names, addresses and occupations of the directors of the company,
- (c) a copy of any statutory provision, letters patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company, and
- (d) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

(2) The lists of members and directors and any other particulars relating to the company which are required by this Chapter to be delivered to the registrar shall be verified by a statutory declaration in the prescribed form made by any 2 or more directors or other principal officers of the company.

(3) The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether a company proposing to be registered is or is not a joint stock company as defined by Article 632.

*Name of company registering*

**636.**—(1) This Article applies with respect to a company registering under this Chapter (whether a joint stock company or not).

(2) If the company is to be registered as a public company, its name must end with the words “public limited company”; and those words may not be preceded by the word “limited”.

(3) In the case of a company limited by shares or by guarantee (not being a public company), the name must have “limited” as its last word; but this is subject to Article 40 (exempting a company, in certain circumstances, from having “limited” as part of its name).

(4) If the company is registered with limited liability, then any additions to the company’s name set out in the statements delivered



under Article 633(1)(a) or 635(1)(a) shall form and be registered as the last part of the company's name.

*Certificate of registration under this Chapter*

637.—(1) On compliance with the requirements of this Chapter with respect to registration, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Order and, in the case of a limited company, that it is limited.

(2) On the issue of the certificate, the company shall be so incorporated.

(3) The certificate is conclusive evidence that the requirements of this Chapter in respect of registration, and of matters precedent and incidental to it, have been complied with.

(4) Where on an application by a joint stock company to register as a public company limited by shares the registrar is satisfied that the company may be registered as a public company so limited, the certificate of incorporation given under this Article shall state that the company is a public company; and that statement is conclusive evidence that the requirements of Article 634 have been complied with and that the company is a public company so limited.

*Effect of registration*

638. Schedule 20 has effect with respect to the consequences of registration under this Chapter, the vesting of property, savings for existing liabilities, continuation of existing actions, status of the company following registration, and other connected matters.

*Power to substitute memorandum and articles for deed of settlement*

639.—(1) Subject as follows, a company registered in pursuance of this Chapter may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of Articles 15 to 17 with respect to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations (so far as applicable) apply, but with the following modifications—

- (a) there is substituted for the printed copy of the altered memorandum required to be delivered to the registrar a printed copy of the substituted memorandum and articles, and
- (b) on the delivery to the registrar of the substituted memorandum and articles or the date when the alteration is no longer liable to be cancelled by order of the court (whichever is the later)—
  - (i) the substituted memorandum and articles apply to the company in the same manner as if it were a company registered under Part II with that memorandum and those articles, and
  - (ii) the company's deed of settlement ceases to apply to the company.

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**CHAPTER II**

(3) An alteration under this Article may be made either with or without alteration of the company's objects.

(4) In this Article "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being a statutory provision, a royal charter or letters patent.

**PART XXIII**

**COMPANIES INCORPORATED OUTSIDE NORTHERN IRELAND**  
**CARRYING ON BUSINESS IN NORTHERN IRELAND**

**CHAPTER I**

**REGISTRATION, ETC.**

*Application of this Part*

**640.**—(1) This Part applies to—

- (a) a company incorporated outside Northern Ireland which after the commencement of this Order, establishes a place of business in Northern Ireland, and
- (b) a company so incorporated which has, before the commencement of this Order, established a place of business in Northern Ireland and continues to have an established place of business in Northern Ireland at the commencement of this Order.

(2) A company to which this Part applies is in this Order referred to as a "Part XXIII company".

*Documents to be delivered to registrar*

**641.**—(1) When a company incorporated outside Northern Ireland establishes a place of business in Northern Ireland, it shall within one month of doing so deliver to the registrar for registration—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the company's constitution, and, if the instrument is not written in the English language, a certified translation of it; and
- (b) a return in the prescribed form containing—
  - (i) a list of the company's directors and secretary, containing the particulars specified in paragraph (2),
  - (ii) a list of the names and addresses of some one or more persons resident in Northern Ireland authorised to accept on the company's behalf service of process and any notices required to be served on it,
  - (iii) a list of the documents delivered in compliance with subparagraph (a), and

- (iv) a statutory declaration (made by a director or secretary of the company or by any person whose name and address are given in the list required by head (ii)), stating the date on which the company's place of business in Northern Ireland was established.

(2) The list referred to in paragraph (1)(b)(i) shall contain the following particulars—

- (a) with respect to each director—
  - (i) in the case of an individual, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and his business occupation (if any), or, if he has no business occupation but holds other directorships, particulars of any of them,
  - (ii) in the case of a body corporate, its corporate name and registered or principal office;
- (b) with respect to the secretary (or, where there are joint secretaries, with respect to each of them)—
  - (i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address, and
  - (ii) in the case of a body corporate or a Scottish firm, its corporate or firm name and registered or principal office.

Where all the partners in a firm are joint secretaries of the company the name and principal office of the firm may be stated instead of the particulars mentioned in sub-paragraph (b).

Article 297(2) applies for the purposes of the construction of references to present and former Christian names and surnames.

#### *Registration of altered particulars*

**642.**—(1) If any alteration is made in—

- (a) the charter, statutes, or memorandum and articles of a Part XXIII company or any such instrument as is mentioned in Article 641, or
- (b) the directors or secretary of a Part XXIII company or the particulars contained in the list of the directors and secretary, or
- (c) the names or addresses of the persons authorised to accept service on behalf of a Part XXIII company,

the company shall, within the time specified in paragraph (3), deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

(2) If any change is made in the corporate name of a Part XXIII company, the company shall within the time specified in paragraph (3) deliver to the registrar for registration a return containing the prescribed particulars of the change.

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**CHAPTER I**

(3) The time for delivery of the returns required by paragraphs (1) and (2) is—

- (a) in the case of an alteration to which paragraph (1)(c) applies, 21 days after the making of the alteration, and
- (b) otherwise, 21 days after the date on which notice of the alteration or change in question could have been received in Northern Ireland in due course of post (if despatched with due diligence).

*Obligation to state name and other particulars*

**643.**—(1) Every Part XXIII company shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in Northern Ireland, state the country in which the company is incorporated,
- (b) conspicuously exhibit on every place where it carries on business in Northern Ireland the company's name and the country in which it is incorporated,
- (c) cause the company's name and the country in which it is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company,
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as is mentioned in sub-paragraph (a) and in all bill-heads, letter paper, notices and other official publications of the company in Northern Ireland, and to be affixed on every place where it carries on its business.

(2) Paragraph (1)(b) and (c) does not apply to a company incorporated in Great Britain.

*Regulation of Part XXIII companies in respect of their names*

**644.**—(1) If it appears to the Department that the corporate name of a Part XXIII company is a name by which the company, had it been formed under this Order, would on the relevant date (defined in paragraph (3)) have been precluded from being registered by Article 36 either—

- (a) because it falls within paragraph (1) of that Article, or
- (b) if it falls within paragraph (2) of that Article, because the Department would not approve the company's being registered by that name,

the Department may serve a notice on the company, stating why the name would not have been registered.

(2) If the corporate name of a Part XXIII company is in the Department's opinion too like a name appearing on the relevant date in the

index of names kept by the registrar under Article 663 or which should have appeared in that index on that date, or is the same as a name which should have so appeared, the Department may serve a notice on the company specifying the name in the index which the company's name is too like or which is the same as the company's name.

(3) No notice shall be served on a company under paragraph (1) or (2) later than 12 months after the relevant date, being the date on which the company has complied with—

- (a) Article 641, or
- (b) if there has been a change in the company's corporate name, Article 642(2).

(4) A Part XXIII company on which a notice is served under paragraph (1) or (2)—

- (a) may deliver to the registrar for registration a statement in the prescribed form specifying a name approved by the Department other than its corporate name under which it proposes to carry on business in Northern Ireland, and
- (b) may, after that name has been registered, at any time deliver to the registrar for registration a statement in the prescribed form specifying a name approved by the Department (other than its corporate name) in substitution for the name previously registered.

(5) The name by which a Part XXIII company is for the time being registered under paragraph (4) is, for all purposes of the law applying in Northern Ireland (including this Order and the Business Names (Northern Ireland) Order 1986), deemed to be the company's corporate name; but—

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- (a) this does not affect references to the corporate name in this Article, or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and
- (b) any legal proceedings that might have been continued or commenced against the company by its corporate name or its name previously registered under this Article may be continued or commenced against it by its name for the time being so registered.

(6) A Part XXIII company on which a notice is served under paragraph (1) or (2) shall not at any time after the expiration of 2 months from the service of that notice (or such longer period as may be specified in that notice) carry on business in Northern Ireland under its corporate name.

Nothing in this paragraph, or in Article 647(2) (which imposes penalties for its contravention) invalidates any transaction entered into by the company.

(7) The Department may withdraw a notice served under paragraph (1) or (2) at any time before the end of the period mentioned in

paragraph (6); and that paragraph does not apply to a company served with a notice which has been withdrawn.

*Service of documents on a Part XXIII company*

**645.**—(1) Any process or notice required to be served on a Part XXIII company is sufficiently served if addressed to any person whose name has been delivered to the registrar under the foregoing provisions of this Part and left at or sent by post to the address which has been so delivered.

(2) However—

- (a) where such a company makes default in delivering to the registrar the name and address of a person resident in Northern Ireland who is authorised to accept on behalf of the company service of process or notices, or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on the company's behalf, or for any reason cannot be served,

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Northern Ireland.

*Documents to be filed on cessation of business*

**646.** If a Part XXIII company ceases to have a place of business in Northern Ireland, it shall forthwith give notice of that fact to the registrar; and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar ceases.

*Penalties for non-compliance*

**647.**—(1) If a Part XXIII company fails to comply with any of Articles 641 to 643 and 646 the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the default, is liable to a fine and, in the case of a continuing offence, to a daily default fine for continued contravention.

(2) If a Part XXIII company contravenes Article 644(6), the company and every officer or agent of it who knowingly and wilfully authorises or permits the contravention is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

*Interpretation for this Chapter*

**648.** For the purposes of this Chapter—

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“director”, in relation to a Part XXIII company, includes a shadow director; and

“secretary” includes any person occupying the position of secretary by whatever name called.

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CHAPTER I

## CHAPTER II

### DELIVERY OF ACCOUNTS

#### *Preparation and delivery of accounts by Part XXIII companies*

649.—(1) Every Part XXIII company shall in respect of each accounting reference period of the company prepare such accounts, made up by reference to such date or dates, and in such form, containing such particulars and having annexed to them such documents, as would have been required if it were a company formed and registered under this Order.

(2) A Part XXIII company shall, in respect of each accounting reference period of the company, deliver to the registrar copies of the accounts and other documents required by paragraph (1); and, if such an account or other document is in a language other than English, there shall be annexed to the copy so delivered a translation of it into English certified in the prescribed manner to be a correct translation.

(3) If in relation to an accounting reference period the company's directors would be exempt under paragraph (4) of Article 249 from compliance with paragraph (3) of that Article (independent company with unlimited liability), if the company were otherwise subject to that Article, compliance with this Article is not required in respect of that accounting reference period.

(4) The Department may by order—

- (a) modify the requirements referred to in paragraph (1) for the purpose of their application to Part XXIII companies,
- (b) exempt any Part XXIII companies from those requirements or from such of them as may be specified in the order.

(5) An order under paragraph (4) shall be subject to negative resolution and may contain such incidental and supplementary provisions as the Department thinks fit.

#### *Part XXIII company's accounting reference period and date*

650.—(1) A Part XXIII company's accounting reference periods are determined according to its accounting reference date.

(2) The company may give notice in the prescribed form to the registrar specifying a date in the calendar year as being the date on which in each successive calendar year an accounting reference period of the company is to be treated as coming to an end; and the date specified in the notice is then the company's accounting reference date.

(3) No such notice has effect unless it is given before the end of 6 months beginning with the date on which a place of business in Northern

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**CHAPTER II**

Ireland is or was established by the company; and, failing such a notice, the company's accounting reference date is 31st March.

(4) The company's first accounting reference period is such period ending with its accounting reference date as—

(a) begins or began on a date determined by the company, but not later than that on which a place of business is or was established in Northern Ireland, and

(b) is a period exceeding 6 months and not exceeding 18 months.

(5) Each successive period of 12 months beginning after the end of the first accounting reference period and ending with the company's accounting reference date is also an accounting reference period of the company.

(6) Paragraphs (2) to (5) are subject to Article 233 under which in certain circumstances a company's accounting reference period may be altered, and which applies to Part XXIII companies as well as to companies subject to Part VIII, but omitting paragraphs (6) and (7).

*Period allowed for delivering accounts*

**651.**—(1) In the case of a Part XXIII company, the period allowed for delivering accounts in relation to an accounting reference period is 13 months after the end of the period.

(2) Where the company's first accounting reference period—

(a) begins or began on the date determined by the company for the purposes of Article 650(4)(a), and

(b) is or was a period of more than 12 months,

the period which would otherwise be allowed for delivering accounts in relation to that accounting reference period is treated as reduced by the number of days by which the accounting reference period is or was longer than 12 months.

(3) But the period allowed in relation to a company's first accounting reference period is not by paragraph (2) reduced to less than 3 months after the end of that accounting reference period.

(4) In relation to an accounting reference period of a Part XXIII company as respects which notice is given by the company under Article 233 (as applied) and which by virtue of that Article is treated as shortened in accordance with the notice, the period allowed for delivering accounts is—

(a) the period allowed in relation to that accounting reference period in accordance with the preceding provisions of this Article, or

(b) the period of 3 months beginning with the date of the notice, whichever of those periods last expires.

(5) If for any special reason the Department thinks fit to do so, it may by notice in writing to a Part XXIII company extend, by such further period as may be specified in the notice, the period which in accordance



with the preceding provisions of this Article is the period allowed for delivering accounts in relation to any accounting reference period of the company.

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*Penalty for non-compliance*

652.—(1) If in respect of an accounting reference period of a Part XXIII company any of the requirements of Article 649(2) is not complied with before the end of the period allowed for delivering accounts, the company and every officer or agent of it who knowingly and wilfully authorises or permits the default is, in respect of the company's failure to comply with the requirements in question, guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(2) For the purposes of any proceedings under this Article with respect to a requirement to deliver a copy of a document to the registrar, it is not a defence to prove that the document in question was not in fact prepared as required by Article 649.

PART XXIV

THE REGISTRAR OF COMPANIES, HIS FUNCTIONS AND OFFICE

*Registration office and registrar*

653.—(1) For the purposes of the registration of companies under the Companies Orders, the Department shall continue to maintain and administer an office of the Department in Northern Ireland at such place as the Department thinks fit.

(2) The Department may for those purposes appoint an officer as registrar of companies and one or more than one officer as assistant registrar of companies.

(3) The Department may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the registration of companies.

*Companies' registered numbers*

654.—(1) The registrar shall allocate to every company a number which shall be known as the company's registered number; and he may in addition allocate to any such company a letter, which is then deemed for all purposes to be part of the registered number.

(2) "Company" here includes—

- (a) a Part XXIII company which has complied with Article 641 (delivery of statutes, etc. to registrar) and which does not appear to the registrar not to have a place of business in Northern Ireland;

- (b) any incorporated or unincorporated body to which any provision of this Order applies by virtue of Article 667 (unregistered companies).

*Size, durability, etc. of documents delivered to registrar*

**655.**—(1) For the purpose of securing that documents delivered to the registrar under any provision of the Companies Orders are of standard size, durable and easily legible, regulations made by the Department may prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colouring of lettering, or otherwise) as the Department may consider appropriate.

(2) If under any such provision there is delivered to the registrar a document (whether an original document or a copy) which in the registrar's opinion does not comply with such requirements prescribed under this Article as are applicable to it, the registrar may serve on any person by whom under that provision the document was required to be delivered (or, if there are two or more such persons, may serve on any of them) a notice stating his opinion to that effect and indicating the requirements so prescribed with which in his opinion the document does not comply.

(3) Where the registrar serves such a notice with respect to a document delivered under any such provision, then, for the purposes of any statutory provision which enables a penalty to be imposed in respect of any omission to deliver to the registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such statutory provision whereby such a penalty may be imposed by reference to each day during which the omission continues)—

- (a) any duty imposed by that provision to deliver such a document to the registrar is to be treated as not having been discharged by the delivery of that document, but
- (b) no account is to be taken of any days falling within the period mentioned in paragraph (4).

(4) That period begins with the day on which the document was delivered to the registrar as mentioned in paragraph (2) and ends with the 14th day after the date of service of the notice under paragraph (2) by virtue of which paragraph (3) applies.

(5) In this Article any reference to delivering a document includes sending, forwarding, producing or (in the case of a notice) giving it.

*Power of registrar to accept information on microfilm, etc.*

**656.**—(1) The registrar may, if he thinks fit, accept under any provision of the Companies Orders requiring a document to be delivered to him any material other than a document which contains the information in question and is of a kind approved by him.

(2) The delivery to the registrar of material so accepted is sufficient compliance with the provision in question.

(3) In this Article any reference to delivering a document includes sending, forwarding, producing or (in the case of a notice) giving it.

*Fees payable to registrar*

657.—(1) The Department may by regulations require the payment to the registrar of such fees as may be specified in the regulations in respect of—

- (a) the performance by the registrar of such functions under the Companies Orders as may be so specified, including the receipt by him of any notice or other document which under those Orders is required to be given, delivered, sent or forwarded to him;
- (b) the inspection of documents or other material kept by him under those Orders.

(2) Regulations made under paragraph (1)(a) requiring the payment of a fee in respect of a matter for which no fee was previously payable or increasing a fee shall be subject to affirmative resolution.

(3) Fees paid to the registrar under the Companies Orders shall be applied as the Department of Finance and Personnel may direct.

(4) It is hereby declared that the registrar may charge a fee for any services provided by him otherwise than in pursuance of any obligation imposed on him by law.

*Inspection of documents kept by registrar*

658.—(1) Subject to the provisions of this Article, any person may—

- (a) inspect a copy of any document kept by the registrar or, if the copy is illegible or unavailable, the document itself,
- (b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, certified by the registrar.

(2) In relation to documents delivered to the registrar with a prospectus in pursuance of Article 75(2), the rights conferred by paragraph (1) are exercisable only during the 14 days beginning with the date of publication of the prospectus, or with the permission of the Department.

(3) In relation to documents so delivered in pursuance of Article 87(3)(b) and (4) (prospectus of company incorporated outside the United Kingdom), those rights are exercisable only during the 14 days beginning with the date of the prospectus, or with that permission.

(4) The right conferred by paragraph (1)(a) does not extend to any copy sent to the registrar under Article 461 (information to be given by receiver or manager following his appointment) of a statement as to the affairs of a company, or of any comments of the receiver or his successor, or a continuing receiver or manager, on the statement, but only to the summary of it, except where the person claiming the right either is or is

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the agent of a person stating himself in writing to be a member or creditor of the company to which the statement relates.

The rights conferred by paragraph (1)(b) are similarly limited.

*Additional provisions about inspection*

**659.**—(1) No process for compelling the production of any document kept by the registrar shall issue from any court except with the leave of that court; and any such process if issued shall bear on it a statement that it is issued with leave of the court.

(2) A copy of, or extract from, any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the registrar (whose official position it is unnecessary to prove), is in all legal proceedings admissible in evidence as of equal validity with the original document.

(3) Any person untruthfully stating himself in writing for the purposes of Article 658(4) to be a member or creditor of a company is liable to a fine.

(4) For the purposes of Article 658 and this Article, a copy is taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original; and in both Articles “document” includes any material which contains information kept by the registrar for the purposes of the Companies Orders.

*Public notice by registrar of receipt or issue of certain documents*

**660.**—(1) The registrar shall cause to be published in the Belfast Gazette notice of the issue or receipt by him of documents of any of the following descriptions (stating in the notice the name of the company, the description of document and the date of issue or receipt)—

- (a) any certificate of incorporation of a company,
- (b) any document making or evidencing an alteration in a company’s memorandum or articles,
- (c) any notification of a change among the directors of a company,
- (d) any copy of a resolution of a public company which gives, varies, revokes or renews an authority for the purposes of Article 90 (allotment of relevant securities),
- (e) any copy of a special resolution of a public company passed under Article 105(1), (2) or (3) (disapplication of pre-emption rights),
- (f) any report under Article 113 or 114 as to the value of a non-cash asset,
- (g) any statutory declaration delivered under Article 127 (public company share capital requirements),
- (h) any notification (given under Article 132) of the redemption of shares,

- (j) any statement or notice delivered by a public company under Article 138 (registration of particulars of special rights),
  - (k) any documents delivered by a company under Article 249 (annual accounts),
  - (l) a copy of any resolution or agreement to which Article 388 applies and which—
    - (i) states the rights attached to any shares in a public company, other than shares which are in all respects uniform (for the purposes of Article 138) with shares previously allotted, or
    - (ii) varies rights attached to any shares in a public company, or
    - (iii) assigns a name or other designation, or a new name or designation, to any class of shares in a public company,
  - (m) any return of allotments of a public company,
  - (n) any notice of a change in the situation of a company's registered office,
  - (p) any copy of a winding-up order in respect of a company,
  - (q) any order for the dissolution of a company on a winding up,
  - (r) any return by a liquidator of the final meeting of a company on a winding up.
- (2) In Article 52 "official notification" means—
- (a) in relation to anything stated in a document of any of those descriptions, the notification of that document in the Belfast Gazette under this Article, and
  - (b) in relation to the appointment of a liquidator in a voluntary winding up, the notification of it in the Belfast Gazette under Article 558.

*Removal of documents to Public Record Office*

**661.** Where a company has been dissolved, whether under this Order or otherwise, the registrar may, at any time after the expiration of 2 years from the date of the dissolution, direct that any documents in his custody relating to that company may, subject to the approval of the Department of the Environment and to any rules made under the Public Records Act (Northern Ireland) 1923, be removed to the Public Record Office of Northern Ireland; and documents in respect of which such a direction is given shall be disposed of in accordance with that Act relating to that Office and the rules made under it.

1923 c. 20 (N.I.)

*Enforcement of company's duty to make returns*

**662.—**(1) If a company, having made default in complying with any provision of the Companies Orders which requires it to file with, deliver or send to the registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the court may, on an application made to it by any member or creditor of the company or by the registrar, make an order directing the company and

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any officer of it to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of it responsible for the default.

(3) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on a company or its officers in respect of any such default as is mentioned in paragraph (1).

*Registrar's index of company and corporate names*

**663.**—(1) The registrar shall keep an index of the names of the following bodies—

- (a) companies as defined by this Order,
- (b) companies incorporated outside Northern Ireland which have complied with Article 641 and which do not appear to the registrar not to have a place of business in Northern Ireland,
- (c) incorporated and unincorporated bodies to which any provision of this Order applies by virtue of Article 667 (unregistered companies),
- (d) limited partnerships registered under the Limited Partnerships Act 1907,
- (e) companies within the meaning of the Companies Act 1985,
- (f) companies incorporated outside Great Britain which have complied with section 691 of the Companies Act 1985 (which corresponds with Article 641 of this Order) and which do not appear to the registrar not to have a place of business in Great Britain, and
- (g) societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 or the Industrial and Provident Societies Act 1965.

1907 c. 24

1985 c. 6

1969 c. 24 (N.I.)

1965 c. 12

(2) The Department may by order subject to negative resolution vary paragraph (1) by the addition or deletion of any class of body, except any within paragraph (1)(a) or (b) whether incorporated or unincorporated.

*Destruction of old records*

**664.**—(1) The registrar may destroy any documents or other material which he has kept for over 10 years and which were, or were comprised in or annexed or attached to, the accounts or annual returns of any company.

(2) The registrar shall retain a copy of any document or other material destroyed in pursuance of paragraph (1); and Articles 658 and 659 apply in relation to any such copy as if it were the original.

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MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

*Prohibition of partnerships with more than 20 members*

**665.**—(1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by its individual members, unless it is registered as a company under this Order, or is formed in pursuance of some other statutory provision, or of letters patent.

(2) However, paragraph (1) does not prohibit the formation—

- (a) for the purpose of carrying on practice as solicitors, of a partnership consisting of persons each of whom is a solicitor;
- (b) for the purpose of carrying on practice as accountants, of a partnership consisting of persons each of whom falls within Article 397(1)(a) or (b) (qualifications of company auditors);
- (c) for the purpose of carrying on business as members of a recognised stock exchange, of a partnership consisting of persons each of whom is a member of that stock exchange.

(3) The Department may by regulations provide that paragraph (1) shall not apply to the formation (otherwise than as permitted by paragraph (2)), for a purpose specified in the regulations, of a partnership of a description so specified.

*Limited partnerships; limit on number of members*

**666.**—(1) So much of the Limited Partnerships Act 1907 as provides that a limited partnership shall not consist of more than 20 persons does not apply—

- (a) to a partnership carrying on practice as solicitors and consisting of persons each of whom is a solicitor;
- (b) to a partnership carrying on practice as accountants and consisting of persons each of whom falls within Article 397(1)(a) or (b) (qualifications of company auditors);
- (c) to a partnership carrying on business as members of a recognised stock exchange and consisting of persons each of whom is a member of that stock exchange.

(2) The Department may by regulations provide that so much of section 4(2) of that Act of 1907 as provides that a limited partnership

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shall not consist of more than 20 persons shall not apply to a partnership (other than one permitted by paragraph (1)) carrying on business of a description specified in the regulations, being a partnership of a description so specified.

*Unregistered companies*

**667.—(1)** The provisions of this Order specified in the first column of Schedule 21 (relating respectively to the matters specified in the second column of the Schedule) apply to all bodies corporate incorporated in and having a principal place of business in Northern Ireland, other than those mentioned in paragraph (2), as if they were companies registered under this Order, but subject to any limitations mentioned in relation to those provisions respectively in the third column and to such adaptations and modifications (if any) as may be specified by regulations made by the Department.

(2) The said provisions do not apply by virtue of this Article to any of the following—

- (a) any body incorporated by or registered under any statutory provision,
- (b) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or its individual members,
- (c) any body for the time being exempted by direction of the Department.

(3) Where against any provision of this Order specified in the first column of Schedule 21 there appears in the third column the entry "Subject to Article 667(3)", it means that the provision is to apply by virtue of this Article so far only as may be specified by regulations made by the Department and to such bodies corporate as may be so specified.

(4) The provisions specified in the first column of the Schedule also apply in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act 1837 and not registered under any other statutory provision, but subject to the like exceptions as are provided for in the case of bodies corporate by paragraph (2)(b) and (c).

(5) This Article does not repeal or revoke in whole or in part any statutory provision, royal charter or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this Article or restrict the power of Her Majesty to grant a charter in lieu of or supplementary to any such charter as aforesaid; but, in relation to any such body, the operation of any such statutory provision, charter or instrument is suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.



*Power of company to provide for employees on cessation or transfer of business*

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668.—(1) The powers of a company include (if they would not otherwise do so apart from this Article) power to make the following provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

(2) The power conferred by paragraph (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.

(3) The power which a company may exercise by virtue only of paragraph (1) shall only be exercised by the company if sanctioned—

- (a) in a case not falling within sub-paragraph (b) or (c), by an ordinary resolution of the company, or
- (b) if so authorised by its memorandum or articles, by a resolution of the directors, or
- (c) if its memorandum or articles require the exercise of the power to be sanctioned by a resolution of the company of some other description for which more than a simple majority of the members voting is necessary, with the sanction of a resolution of that description;

and in any case after compliance with any other requirements of its memorandum or articles applicable to its exercise.

(4) Any payment which may be made by a company under this Article may, if made before the commencement of any winding up of the company, be made out of profits of the company which are available for dividend.

*Certain companies to publish periodical statement*

669.—(1) Every company, being an insurance company or a deposit, provident or benefit society, shall before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in Schedule 22.

(2) A copy of the statement shall be put up in a conspicuous place in the company's registered office, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company is entitled to a copy of the statement, on payment of a sum not exceeding 3 pence.

(4) If default is made in complying with this Article, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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(5) For the purposes of this Order, a company which carries on the business of insurance in common with any other business or businesses is deemed an insurance company.

1982 c. 50

(6) In the case of an insurance company to which Part II of the Insurance Companies Act 1982 applies, this Article does not apply if the company complies with the provisions of that Act as to the accounts and balance sheet to be prepared annually and deposited by such a company.

(7) The Department may, by regulations, alter the form in Schedule 22.

*Production and inspection of books where offence suspected*

**670.**—(1) This Article applies if, on an application made in accordance with rules of court to the High Court by the Director of Public Prosecutions for Northern Ireland, the Department or a chief superintendent of the Royal Ulster Constabulary there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company.

(2) An order may be made—

- (a) authorising any person named in it to inspect the books or papers in question, or any of them, for the purpose of investigating and obtaining evidence of the offence, or
- (b) requiring the secretary of the company or such other officer of it as may be named in the order to produce the books or papers (or any of them) to a person named in the order at a place so named.

(3) Paragraph (2) applies also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (2)(b) shall be made by virtue of this paragraph.

(4) The decision of the High Court on an application under this Article is not appealable.

*Form of company registers, etc.*

**671.**—(1) Any register, index, minute book or accounting records required by the Companies Orders to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) If default is made in complying with paragraph (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

*Use of computers for company records*

672.—(1) The power conferred on a company by Article 671 to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those matters otherwise than in a legible form, so long as the recording is capable of being reproduced in a legible form.

(2) Any provision of an instrument made by a company before 1st January 1982 which requires a register of holders of the company's debentures to be kept in a legible form is to be read as requiring the register to be kept in a legible or non-legible form.

(3) If any such register or other record of a company as is mentioned in Article 671(1), or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by this Order to allow inspection of, or to furnish a copy of, the register or other record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) The Department may by regulations make such provision in addition to paragraph (3) as it considers appropriate in connection with such registers or other records as are mentioned in that paragraph and are kept as there mentioned; and the regulations may make modifications of provisions of this Order relating to such registers or other records.

*Service of documents*

673. A document may be served on a company by leaving it at, or sending it by post to, the company's registered office.

*Costs and expenses in actions by certain limited companies*

674. Where a limited company is plaintiff in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the defendant's costs if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

*Power of court to grant relief in certain cases*

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

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

(2) If any such officer or person as mentioned in paragraph (1) has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief; and the court on the application has the same power to relieve him as under this Article it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

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

*Enforcement of High Court orders*

676. Orders made by the High Court under this Order may be enforced in the same manner as orders made in an action pending in that court.

*Annual report by the Department*

677. The Department shall cause a general annual report of matters within the Companies Orders to be prepared and laid before the Assembly.

*Punishment of offences*

678.—(1) Schedule 23 has effect with respect to the way in which offences under this Order are punishable on conviction.

(2) In relation to an offence under a provision of this Order specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Order which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on

indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent summary conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) For the purpose of any provision of the Companies Orders which provides that an officer of a company who is in default is liable to a fine or penalty, the expression "officer who is in default" means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in that provision.

#### *Summary proceedings*

679.—(1) Summary proceedings for any offence under the Companies Orders may (without prejudice to any jurisdiction exercisable apart from this paragraph) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, a magistrates' court shall have jurisdiction to hear and determine a complaint charging the commission of a summary offence under the Companies Orders provided that the complaint is made within 3 years from the time when the offence was committed and within 12 months from the date on which evidence, sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or the Department (as the case may be) to justify the proceedings, comes to his or the Department's knowledge.

1981 NI 26

(3) For the purposes of this Article, a certificate of the Director of Public Prosecutions for Northern Ireland or the Department (as the case may be) as to the date on which such evidence as is referred to in paragraph (2) came to his or its knowledge is conclusive evidence.

#### *Prosecution by public authorities*

680.—(1) In respect of an offence under any of Articles 218, 332, 337, 440 to 444 and 448 proceedings shall not be instituted except by or with the consent of the appropriate authority.

(2) That authority is—

- (a) for an offence under any of Articles 218, 332 and 337, the Department or the Director of Public Prosecutions for Northern Ireland,
- (b) for an offence under any of Articles 440 to 444, either one of those two persons or the Industrial Assurance Commissioner for Northern Ireland, and

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(c) for an offence under Article 448, the Department.

(3) Where proceedings are instituted under the Companies Orders against any person by the Director of Public Prosecutions for Northern Ireland or by or on behalf of the Department, nothing in those Orders is to be taken to require any person to disclose any information which he is entitled to refuse to disclose on grounds of legal professional privilege.

*Regulations*

**681.**—(1) Subject to paragraph (4), the Department may make regulations for prescribing anything which is authorised or required by the Companies Orders to be prescribed.

(2) Regulations under those Orders may contain such consequential, incidental or supplementary provisions as the Department thinks appropriate.

(3) Save as otherwise expressly provided by those Orders, all regulations under them shall be subject to negative resolution.

(4) Nothing in paragraph (1) applies to any matter in respect of which winding-up rules may be made.

*G. I. de DENEY,*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 21

#### PARTICULARS OF DIRECTORS, ETC. TO BE CONTAINED IN STATEMENT UNDER ARTICLE 21

##### *Directors*

1. Subject to paragraph 2, the statement under Article 21(2) shall contain the following particulars with respect to each person named as director—

- (a) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, his business occupation (if any), particulars of any other directorships held by him, or which have been held by him and, where the company is subject to Article 301, the date of his birth; and
- (b) in the case of a corporation, its corporate name and registered or principal office, and particulars of any other directorships held by it or which have been held by it.

2.—(1) It is not necessary for the statement to contain particulars of a directorship—

- (a) which has not been held by a director at any time during the 5 years preceding the date on which the statement is delivered to the registrar,
- (b) which is held by a director in a company which—
  - (i) is dormant or grouped with the company delivering the statement, and
  - (ii) if he also held that directorship for any period during those 5 years, was for the whole of that period either dormant or so grouped,
- (c) which was held by a director for any period during those 5 years in a company which for the whole of that period was either dormant or grouped with the company delivering the statement.

(2) For these purposes, “company” includes any body corporate incorporated in Northern Ireland; and—

- (a) Article 260(5) applies as regards whether and when a company is or has been “dormant”, and
- (b) a company is treated as being or having been at any time grouped with another company if at that time it is or was a company of which that other is or was a wholly-owned subsidiary, or if it is or was a wholly-owned subsidiary of the other or of another company of which that other is or was a wholly-owned subsidiary.

##### *Secretaries*

3.—(1) The statement shall contain the following particulars with respect to the person named as secretary or, where there are to be joint secretaries, with respect to each person named as one of them—

- (a) in the case of an individual, his present Christian name and surname, any former Christian name or surname and his usual residential address,
- (b) in the case of a body corporate or a Scottish firm, its corporate or firm name and registered or principal office.

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(2) However, if all the partners in the firm are joint secretaries, the name and principal office of the firm may be stated instead of the particulars otherwise required by this paragraph.

*Interpretation*

4. In paragraphs 1 and 3—

- (a) "Christian name" includes a forename,
- (b) "surname", in the case of a peer or a person usually known by a title different from his surname, means that title,
- (c) the reference to a former Christian name or surname does not include—
  - (i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title, or
  - (ii) in the case of any person, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18 or has been changed or disused for a period of not less than 20 years; or
  - (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

Articles 33, 155, 156,  
158

**SCHEDULE 2**

**INTERPRETATION OF REFERENCES TO "BENEFICIAL INTEREST"**

*Residual interests under pension and employees' share schemes*

1.—(1) Where shares in a company are held on trust for the purposes of a pension scheme or an employees' share scheme, there is to be disregarded any residual interest which has not vested in possession, being an interest of the company or, as respects—

Article 33(4),  
paragraph 60(2) of Schedule 4, or  
paragraph 19(3) of Schedule 9,  
of any subsidiary of the company.

(2) In this paragraph, "a residual interest" means a right of the company or subsidiary in question ("the residual beneficiary") to receive any of the trust property in the event of—

- (a) all the liabilities arising under the scheme having been satisfied or provided for, or
- (b) the residual beneficiary ceasing to participate in the scheme, or
- (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.

(3) In sub-paragraph (2), references to a right include a right dependent on the exercise of a discretion vested by the scheme in the trustee or any other person; and references to liabilities arising under a scheme include liabilities that have resulted or may result from the exercise of any such discretion.

(4) For the purposes of this paragraph, a residual interest vests in possession—

- (a) in a case within head (a) of sub-paragraph (2), on the occurrence of the event there mentioned, whether or not the amount of the property



receivable pursuant to the right mentioned in that sub-paragraph is then ascertained; and

(b) in a case within head (b) or (c) of that sub-paragraph, when the residual beneficiary becomes entitled to require the trustee to transfer to that beneficiary any of the property receivable pursuant to that right.

(5) As respects paragraph 60(2) of Schedule 4 and paragraph 19(3) of Schedule 9, sub-paragraph (1) has effect as if references to shares included debentures.

2.—(1) This paragraph has effect as regards the operation of Articles 33, 154, 155, 156 and 158 in cases where a residual interest vests in possession.

(2) Where by virtue of the vesting in possession of a residual interest a subsidiary ceases to be exempt from Article 33, that Article does not prevent the subsidiary from continuing to be a member of its holding company; but subject to Article 33(4), the subsidiary has no right from the date of vesting to vote at meetings of the holding company or any class of its members.

(3) Where by virtue of paragraph 1 any shares are exempt from Article 154 or 155 at the time when they are issued or acquired but the residual interest in question vests in possession before they are disposed of or fully paid up, those Articles apply to the shares as if they had been issued or acquired on the date on which that interest vests in possession.

(4) Where by virtue of paragraph 1 any shares are exempt from Articles 156 to 159 at the time when they are acquired but the residual interest in question vests in possession before they are disposed of, those Articles apply to the shares as if they had been acquired on the date on which that interest vests in possession.

(5) Sub-paragraphs (1) to (4) apply irrespective of the date on which the residual interest vests or vested in possession; but where the date on which it vested was before 3rd August 1983 (the date on which the Order of 1983 came into operation), they have effect as if the vesting had occurred on that date.

*Employer's charges and other rights of recovery*

3.—(1) Where shares in a company are held on trust, there are to be disregarded—

- (a) if the trust is for the purposes of a pension scheme, any such rights as are mentioned in sub-paragraph (2), and
- (b) if the trust is for the purposes of an employees' share scheme, any such rights as are mentioned in sub-paragraph (2)(a),

being rights of the company or, as respects Article 33(4), paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9, of any subsidiary of the company.

(2) The rights referred to in sub-paragraph (1) are—

- (a) any charge or lien on, or set-off against any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member, and
- (b) any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained under Article 48 of the Social Security Pensions (Northern Ireland) Order 1975 (deduction of premium from refund of contributions) or otherwise as reimbursement or partial reimbursement for any state scheme premium paid in connection with the scheme under Part IV of that Order.

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Sch. 2

(3) As respects paragraph 60(2) of Schedule 4 and paragraph 19(3) of Schedule 9, sub-paragraph (1) has effect as if references to shares included debentures.

*Trustee's right to expenses, remuneration, indemnity, etc.*

4.—(1) Where a company is a trustee (whether as personal representative or otherwise), there are to be disregarded any rights which the company has in its capacity as trustee including, in particular, any right to recover its expenses or be remunerated out of the trust property and any right to be indemnified out of that property for any liability incurred by reason of any act or omission of the company in the performance of its duties as trustee.

(2) As respects Article 33(4), paragraph 60(2) of Schedule 4 and paragraph 19(3) of Schedule 9, sub-paragraph (1) has effect as if references to a company included any body corporate which is a subsidiary of a company.

*Supplementary*

5.—(1) This paragraph applies for the interpretation of this Schedule.

(2) "Pension scheme" means any scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees; and "relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death.

(3) In sub-paragraph (2) and in paragraph 3(2)(a), "employer" and "employee" are to be read as if a director of a company were employed by it.

Article 67. et passim  
in Part IV

**SCHEDULE 3**

**MANDATORY CONTENTS OF PROSPECTUS**

**PART I**

**MATTERS TO BE STATED**

*The company's proprietorship, management and its capital requirement*

1.—(1) The prospectus must state—

- (a) the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company;
- (b) the number of shares (if any) fixed by the company's articles as the qualification of a director, and any provision in its articles as to the remuneration of directors; and
- (c) the names, descriptions and addresses of the directors or proposed directors.

(2) As this paragraph applies for the purposes of Article 82(3), sub-paragraph (1)(b) is to be read with the substitution for the reference to the company's articles of a reference to its constitution.

(3) Sub-paragraphs (1)(b) and (1)(c) do not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

2. Where shares are offered to the public for subscription, the prospectus must give particulars as to—

- (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following—
- (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,
  - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company,
  - (iii) the repayment of any money borrowed by the company in respect of any of the foregoing matters,
  - (iv) working capital, and
- (b) the amounts to be provided in respect of the matters mentioned in subparagraph (a) otherwise than out of the proceeds of the issue and the sources of which those amounts are to be provided.

*Details relating to the offer*

3.—(1) The prospectus must state—

- (a) the time of the opening of the subscription lists, and
- (b) the amount payable on application and allotment on each share (including the amount, if any, payable by way of premium).

(2) In the case of a second or subsequent offer of shares, there must also be stated the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted and the amount (if any) paid on the shares so allotted, including the amount (if any) paid by way of premium.

4.—(1) There must be stated the number, description and amount of any shares in or debentures of the company for which any person has, or is entitled to be given, an option to subscribe.

(2) The following particulars of the option must be given—

- (a) the period during which it is exercisable,
- (b) the price to be paid for shares or debentures subscribed for under it,
- (c) the consideration (if any) given or to be given for it or the right to it,
- (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

(3) References in this paragraph to subscribing for shares or debentures include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

5. The prospectus must state the number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash; and—

- (a) in the latter case the extent to which they are so paid up, and
- (b) in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

*Property acquired or to be acquired by the company*

6.—(1) For the purposes of paragraphs 7 and 8, “relevant property” is property purchased or acquired by the company, or proposed so to be purchased or acquired,

- (a) which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or
- (b) the purchase or acquisition of which has not been completed at the date of the issue of the prospectus.

(2) But those two paragraphs do not apply to property—

- (a) the contract for whose purchase or acquisition was entered into in the ordinary course of the company’s business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract, or
- (b) as respects which the amount of the purchase money is not material.

7. As respects any relevant property, the prospectus must state—

- (a) the names and addresses of the vendors,
- (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor,
- (c) short particulars of any transaction relating to the property completed within the 2 preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

8. There must be stated the amount (if any) paid or payable as purchase money in cash, shares or debentures for any relevant property, specifying the amount (if any) payable for goodwill.

9.—(1) This paragraph applies for the interpretation of paragraphs 6, 7 and 8.

(2) Every person is deemed a vendor who has entered into any contract (absolute or conditional) for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus,
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus,
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any property to be acquired by the company is to be taken on lease, paragraphs 6, 7 and 8 apply as if “vendor” included the lessor, “purchase money” included the consideration for the lease, and “sub-purchaser” included a sub-lessee.

(4) For the purposes of paragraph 7, where the vendors or any of them are a firm, the members of the firm are not to be treated as separate vendors.

*Commissions, preliminary expenses, etc.*

10.—(1) The prospectus must state—

- (a) the amount (if any) paid within the 2 preceding years, or payable, as commission (but not including commission to sub-underwriters) for

subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission,

- (b) the amount or estimated amount of any preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable,
- (c) any amount or benefit paid or given within the 2 preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

(2) Sub-paragraph (1)(b), so far as it relates to preliminary expenses, does not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

#### *Contracts*

11.—(1) The prospectus must give the dates of, parties to and general nature of every material contract.

(2) This does not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or a contract entered into more than 2 years before the date of issue of the prospectus.

#### *Auditors*

12. The prospectus must state the names and addresses of the company's auditors (if any).

#### *Interests of directors*

13.—(1) The prospectus must give full particulars of—

- (a) the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or
- (b) where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm.

(2) With the particulars under sub-paragraph (1)(b) must be provided a statement of all sums paid or agreed to be paid to the director or the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or the firm in connection with the promotion or formation of the company.

(3) This paragraph does not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

#### *Other matters*

14. If the prospectus invites the public to subscribe for shares in the company and the company's share capital is divided into different classes of shares, the prospectus must state the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

15. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the prospectus must

state the length of time during which the business of the company (or the business to be acquired, as the case may be) has been carried on.

**PART II**

**AUDITORS' AND ACCOUNTANTS' REPORTS TO BE SET OUT IN PROSPECTUS**

*Auditors' report*

16.—(1) The prospectus shall set out a report by the company's auditors with respect to—

- (a) profits and losses and assets and liabilities, in accordance with sub-paragraphs (2) and (3), as the case requires, and
- (b) the rates of the dividends (if any) paid by the company in respect of each class of shares in respect of each of the 5 financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years.

If no accounts have been made up in respect of any part of the 5 years ending on a date 3 months before the issue of the prospectus, the report shall contain a statement of that fact.

(2) If the company has no subsidiaries, the report shall—

- (a) deal with profits and losses of the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus, and
- (b) deal with the assets and liabilities of the company at the last date to which the company's accounts were made up.

(3) If the company has subsidiaries, the report shall—

- (a) deal separately with the company's profits or losses as provided by sub-paragraph (2), and in addition deal either—
  - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company, or
  - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company,

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and (so far as they concern members of the company) with the combined profits and losses of its subsidiaries; and

- (b) deal separately with the company's assets and liabilities as provided by sub-paragraph (2), and in addition deal either—
  - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities, or
  - (ii) individually with the assets and liabilities of each subsidiary, indicating, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

*Accountants' reports*

17. If the proceeds of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, or any part of the proceeds of the issue is to be so applied, there shall be set out in the prospectus a report made by accountants upon—

- (a) the profits or losses of the business in respect of each of the 5 financial years immediately preceding the issue of the prospectus, and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

18.—(1) This paragraph applies if—

- (a) the proceeds of the issue are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate, or any part of the proceeds is to be so applied, and
- (b) by reason of that acquisition or anything to be done in consequence of or in connection with it, that body corporate will become a subsidiary of the company.

(2) There shall be set out in the prospectus a report made by accountants upon—

- (a) the profits or losses of the other body corporate in respect of each of the 5 financial years immediately preceding the issue of the prospectus, and
- (b) the assets and liabilities of the other body corporate at the last date to which its accounts were made up.

(3) The accountants' report required by this paragraph shall—

- (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired, and
- (b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by paragraph 16(3) in relation to the company and its subsidiaries.

*Provisions interpreting preceding paragraphs, and modifying them in certain cases*

19. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 5 years, the accounts of the company or business have only been made up in respect of 4 years, 3 years, 2 years or one year, the preceding paragraphs of this Part have effect as if references to 4 years, 3 years, 2 years or one year (as the case may be) were substituted for references to 5 years.

20. "Financial year" in this Part means the year in respect of which the accounts of the company or of the business (as the case may be) are made up; and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts have been made up for a period greater or less than one year, that greater or less period is for the purposes of this Part deemed to be a financial year.

21. Any report required by this Part shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary, or shall make those adjustments and indicate that adjustments have been made.

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PART II

22.—(1) A report required by paragraph 17 or 18 shall be made by accountants qualified under this Order for appointment as auditors of a company.

(2) Such a report shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or the company's subsidiary or holding company or of a subsidiary of the company's holding company.

In this paragraph, "officer" includes a proposed director, but not an auditor.

(3) The accountants making any report required for the purposes of paragraph 17 or 18 shall be named in the prospectus.

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## SCHEDULE 4

### FORM AND CONTENT OF COMPANY ACCOUNTS

#### PART I

#### GENERAL RULES AND FORMATS

#### SECTION A

#### GENERAL RULES

1.—(1) Subject to the following provisions of this Schedule—

- (a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out in section B ; and
- (b) every profit and loss account of a company shall show the items listed in any one of the profit and loss account formats so set out;

in either case in the order and under the headings and sub-headings given in the format adopted.

(2) Sub-paragraph (1) is not to be read as requiring the heading or sub-heading for any item to be distinguished by any letter or number assigned to that item in the format adopted.

2.—(1) Where in accordance with paragraph 1 a company's balance sheet or profit and loss account for any financial year has been prepared by reference to one of the formats set out in section B, the directors of the company shall adopt the same format in preparing the accounts for subsequent financial years of the company unless in their opinion there are special reasons for a change.

(2) Particulars of any change in the format adopted in preparing a company's balance sheet or profit and loss account in accordance with paragraph 1 shall be disclosed, and the reasons for the change shall be explained, in a note to the accounts in which the new format is first adopted.

3.—(1) Any item required in accordance with paragraph 1 to be shown in a company's balance sheet or profit and loss account may be shown in greater detail than required by the format adopted.

(2) A company's balance sheet or profit and loss account may include an item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the format adopted, but the following shall not be treated as assets in any company's balance sheet—

- (a) preliminary expenses;
- (b) expenses of and commission on any issue of shares or debentures; and
- (c) costs of research.



(3) In preparing a company's balance sheet or profit and loss account the directors of the company shall adapt the arrangement and headings and sub-headings otherwise required by paragraph 1 in respect of items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company's business requires such adaptation.

(4) Items to which Arabic numbers are assigned in any of the formats set out in section B may be combined in a company's accounts for any financial year if either—

- (a) their individual amounts are not material to assessing the state of affairs or profit or loss of the company for that year; or
- (b) the combination facilitates that assessment;

but in a case within head (b) the individual amounts of any items so combined shall be disclosed in a note to the accounts.

(5) Subject to paragraph 4(3), a heading or sub-heading corresponding to an item listed in the format adopted in preparing a company's balance sheet or profit and loss account shall not be included if there is no amount to be shown for that item in respect of the financial year to which the balance sheet or profit and loss account relates.

(6) Every profit and loss account of a company shall show the amount of the company's profit or loss on ordinary activities before taxation.

(7) Every profit and loss account of a company shall show separately as additional items—

- (a) any amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves; and
- (b) the aggregate amount of any dividends paid and proposed.

4.—(1) In respect of every item shown in a company's balance sheet or profit and loss account the corresponding amount for the financial year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts.

(3) Paragraph 3(5) does not apply in any case where an amount can be shown for the item in question in respect of the financial year immediately preceding that to which the balance sheet or profit and loss account relates, and that amount shall be shown under the heading or sub-heading required by paragraph 1 for that item.

5. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

## SECTION B

### THE REQUIRED FORMATS FOR ACCOUNTS

#### Preliminary

6. References in this Part to the items listed in any of the formats set out below are to those items read together with any of the notes following the formats

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PART I

which apply to any of those items, and the requirement imposed by paragraph 1 to show the items listed in any such format in the order adopted in the format is subject to any provision in those notes for alternative positions for any particular items.

7. A number in brackets following any item in any of the formats set out below is a reference to the note of that number in the notes following the formats.

8. In the notes following the formats—

- (a) the heading of each note gives the required heading or sub-heading for the item to which it applies and a reference to any letters and numbers assigned to that item in the formats set out below (taking a reference in the case of Format 2 of the balance sheet formats to the item listed under "Assets" or under "Liabilities" as the case may require); and
- (b) references to a numbered format are references to the balance sheet format or (as the case may require) to the profit and loss account format of that number set out below.

**Balance Sheet Formats**

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*Format 1*

PART I

- A. Called-up share capital not paid (1)
- B. Fixed assets
  - I Intangible assets
    - 1. Development costs
    - 2. Concessions, patents, licences, trade marks and similar rights and assets (2)
    - 3. Goodwill (3)
    - 4. Payments on account
  - II Tangible assets
    - 1. Land and buildings
    - 2. Plant and machinery
    - 3. Fixtures, fittings, tools and equipment
    - 4. Payments on account and assets in course of construction
  - III Investments
    - 1. Shares in group companies
    - 2. Loans to group companies
    - 3. Shares in related companies
    - 4. Loans to related companies
    - 5. Other investments other than loans
    - 6. Other loans
    - 7. Own shares (4)
- C. Current assets
  - I Stocks
    - 1. Raw materials and consumables
    - 2. Work in progress
    - 3. Finished goods and goods for resale
    - 4. Payments on account
  - II Debtors (5)
    - 1. Trade debtors
    - 2. Amounts owed by group companies
    - 3. Amounts owed by related companies
    - 4. Other debtors
    - 5. Called-up share capital not paid (1)
    - 6. Prepayments and accrued income (6)
  - III Investments
    - 1. Shares in group companies
    - 2. Own shares (4)
    - 3. Other investments
  - IV Cash at bank and in hand
- D. Prepayments and accrued income (6)
- E. Creditors: amounts falling due within one year
  - 1. Debenture loans (7)
  - 2. Bank loans and overdrafts
  - 3. Payments received on account (8)
  - 4. Trade creditors
  - 5. Bills of exchange payable
  - 6. Amounts owed to group companies
  - 7. Amounts owed to related companies

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PART I

8. Other creditors including taxation and social security (9)
9. Accruals and deferred income (10)
- F. Net current assets (liabilities) (11)
- G. Total assets less current liabilities
- H. Creditors: amounts falling due after more than one year
  1. Debenture loans (7)
  2. Bank loans and overdrafts
  3. Payments received on account (8)
  4. Trade creditors
  5. Bills of exchange payable
  6. Amounts owed to group companies
  7. Amounts owed to related companies
  8. Other creditors including taxation and social security (9)
  9. Accruals and deferred income (10)
- I. Provisions for liabilities and charges
  1. Pensions and similar obligations
  2. Taxation, including deferred taxation
  3. Other provisions
- J. Accruals and deferred income (10)
- K. Capital and reserves
  - I Called-up share capital (12)
  - II Share premium account
  - III Revaluation reserve
  - IV Other reserves
    1. Capital redemption reserve
    2. Reserve for own shares
    3. Reserves provided for by the articles of association
    4. Other reserves
  - V Profit and loss account

**Balance Sheet Formats**

*Format 2*

SCH. 4

PART I

**ASSETS**

- A. Called-up share capital not paid (1)
- B. Fixed assets
  - I Intangible assets
    - 1. Development costs
    - 2. Concessions, patents, licences, trade marks and similar rights and assets (2)
    - 3. Goodwill (3)
    - 4. Payments on account
  - II Tangible assets
    - 1. Land and buildings
    - 2. Plant and machinery
    - 3. Fixtures, fittings, tools and equipment
    - 4. Payments on account and assets in course of construction
  - III Investments
    - 1. Shares in group companies
    - 2. Loans to group companies
    - 3. Shares in related companies
    - 4. Loans to related companies
    - 5. Other investments other than loans
    - 6. Other loans
    - 7. Own shares (4)
- C. Current assets
  - I Stocks
    - 1. Raw materials and consumables
    - 2. Work in progress
    - 3. Finished goods and goods for resale
    - 4. Payments on account
  - II Debtors (5)
    - 1. Trade debtors
    - 2. Amounts owed by group companies
    - 3. Amounts owed by related companies
    - 4. Other debtors
    - 5. Called-up share capital not paid (1)
    - 6. Prepayments and accrued income (6)
  - III Investments
    - 1. Shares in group companies
    - 2. Own shares (4)
    - 3. Other investments
  - IV Cash at bank and in hand
- D. Prepayments and accrued income (6)

**LIABILITIES**

- A. Capital and reserves
  - I Called-up share capital (12)
  - II Share premium account

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III Revaluation reserve

PART I

IV Other reserves

1. Capital redemption reserve
2. Reserve for own shares
3. Reserves provided for by the articles of association
4. Other reserves

V Profit and loss account

B. Provisions for liabilities and charges

1. Pensions and similar obligations
2. Taxation including deferred taxation
3. Other provisions

C. Creditors (13)

1. Debenture loans (7)
2. Bank loans and overdrafts
3. Payments received on account (8)
4. Trade creditors
5. Bills of exchange payable
6. Amounts owed to group companies
7. Amounts owed to related companies
8. Other creditors including taxation and social security (9)
9. Accruals and deferred income (10)

D. Accruals and deferred income (10)

**Notes on the balance sheet formats**

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PART I

**(1) *Called-up share capital not paid***

(Formats 1 and 2, items A and C.II.5.)

This item may be shown in either of the two positions given in Formats 1 and 2.

**(2) *Concessions, patents, licences, trade marks and similar rights and assets***

(Formats 1 and 2, item B.I.2.)

Amounts in respect of assets shall only be included in a company's balance sheet under this item if either—

- (a) the assets were acquired for valuable consideration and are not required to be shown under goodwill; or
- (b) the assets in question were created by the company itself.

**(3) *Goodwill***

(Formats 1 and 2, item B.I.3.)

Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.

**(4) *Own shares***

(Formats 1 and 2, items B.III.7 and C.III.2.)

The nominal value of the shares held shall be shown separately.

**(5) *Debtors***

(Formats 1 and 2, items C.II.1 to 6.)

The amount falling due after more than one year shall be shown separately for each item included under debtors.

**(6) *Prepayments and accrued income***

(Formats 1 and 2, items C.II.6 and D.)

This item may be shown in either of the two positions given in Formats 1 and 2.

**(7) *Debenture loans***

(Format 1, items E.1 and H.1 and Format 2, item C.1.)

The amount of any convertible loans shall be shown separately.

**(8) *Payments received on account***

(Format 1, items E.3 and H.3 and Format 2, item C.3.)

Payments received on account of orders shall be shown for each of these items in so far as they are not shown as deductions from stocks.

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PART I

**(9) *Other creditors including taxation and social security***

(Format 1, items E.8 and H.8 and Format 2, item C.8.)

The amount for creditors in respect of taxation and social security shall be shown separately from the amount for other creditors.

**(10) *Accruals and deferred income***

(Format 1, items E.9, H.9 and J and Format 2, items C.9 and D.)

The two positions given for this item in Format 1 at E.9 and H.9 are an alternative to the position at J, but if the item is not shown in a position corresponding to that at J it may be shown in either or both of the other two positions (as the case may require).

The two positions given for this item in Format 2 are alternatives.

**(11) *Net current assets (liabilities)***

(Format 1, item F.)

In determining the amount to be shown for this item any amounts shown under "prepayments and accrued income" shall be taken into account wherever shown.

**(12) *Called-up share capital***

(Format 1, item K.I and Format 2, item A.I.)

The amount of allotted share capital and the amount of called-up share capital which has been paid up shall be shown separately.

**(13) *Creditors***

(Format 2, items C.1 to 9.)

Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.



**Profit and loss account formats**

SCH. 4

PART I

*Format 1*

(see note (17) below)

1. Turnover
2. Cost of sales (14)
3. Gross profit or loss
4. Distribution costs (14)
5. Administrative expenses (14)
6. Other operating income
7. Income from shares in group companies
8. Income from shares in related companies
9. Income from other fixed asset investments (15)
10. Other interest receivable and similar income (15)
11. Amounts written off investments
12. Interest payable and similar charges (16)
13. Tax on profit or loss on ordinary activities
14. Profit or loss on ordinary activities after taxation
15. Extraordinary income
16. Extraordinary charges
17. Extraordinary profit or loss
18. Tax on extraordinary profit or loss
19. Other taxes not shown under the above items
20. Profit or loss for the financial year

**Profit and loss account formats**

*Format 2*

1. Turnover
2. Change in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5. (a) Raw materials and consumables  
(b) Other external charges
6. Staff costs:
  - (a) wages and salaries
  - (b) social security costs
  - (c) other pension costs
7. (a) Depreciation and other amounts written off tangible and intangible fixed assets  
(b) Exceptional amounts written off current assets
8. Other operating charges
9. Income from shares in group companies
10. Income from shares in related companies
11. Income from other fixed asset investments (15)
12. Other interest receivable and similar income (15)
13. Amounts written off investments
14. Interest payable and similar charges (16)
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after taxation
17. Extraordinary income
18. Extraordinary charges
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss
21. Other taxes not shown under the above items
22. Profit or loss for the financial year

**Profit and loss account formats**

SCH. 4

*Format 3*

PART I

(see note (17) below)

**A. Charges**

1. Cost of sales (14)
2. Distribution costs (14)
3. Administrative expenses (14)
4. Amounts written off investments
5. Interest payable and similar charges (16)
6. Tax on profit or loss on ordinary activities
7. Profit or loss on ordinary activities after taxation
8. Extraordinary charges
9. Tax on extraordinary profit or loss
10. Other taxes not shown under the above items
11. Profit or loss for the financial year

**B. Income**

1. Turnover
2. Other operating income
3. Income from shares in group companies
4. Income from shares in related companies
5. Income from other fixed asset investments (15)
6. Other interest receivable and similar income (15)
7. Profit or loss on ordinary activities after taxation
8. Extraordinary income
9. Profit or loss for the financial year

**Profit and loss account formats**

*Format 4*

- A. Charges
1. Reduction in stocks of finished goods and in work in progress
  2. (a) Raw materials and consumables  
(b) Other external charges
  3. Staff costs:
    - (a) wages and salaries
    - (b) social security costs
    - (c) other pension costs
  4. (a) Depreciation and other amounts written off tangible and intangible fixed assets  
(b) Exceptional amounts written off current assets
  5. Other operating charges
  6. Amounts written off investments
  7. Interest payable and similar charges (16)
  8. Tax on profit or loss on ordinary activities
  9. Profit or loss on ordinary activities after taxation
  10. Extraordinary charges
  11. Tax on extraordinary profit or loss
  12. Other taxes not shown under the above items
  13. Profit or loss for the financial year
- B. Income
1. Turnover
  2. Increase in stocks of finished goods and in work in progress
  3. Own work capitalised
  4. Other operating income
  5. Income from shares in group companies
  6. Income from shares in related companies
  7. Income from other fixed asset investments (15)
  8. Other interest receivable and similar income (15)
  9. Profit or loss on ordinary activities after taxation
  10. Extraordinary income
  11. Profit or loss for the financial year

Notes on the profit and loss account formats

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PART I

(14) *Cost of sales: distribution costs: administrative expenses*

(Format 1, items 2, 4 and 5 and Format 3, items A.1, 2 and 3.)

These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.

(15) *Income from other fixed asset investments: other interest receivable and similar income*

(Format 1, items 9 and 10: Format 2, items 11 and 12: Format 3, items B.5 and 6: Format 4, items B.7 and 8.)

Income and interest derived from group companies shall be shown separately from income and interest derived from other sources.

(16) *Interest payable and similar charges*

(Format 1, item 12: Format 2, item 14: Format 3, item A.5: Format 4, item A.7.)

The amount payable to group companies shall be shown separately.

(17) *Formats 1 and 3*

The amount of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under items 7(a) and A.4(a) respectively in Formats 2 and 4 shall be disclosed in a note to the accounts in any case where the profit and loss account is prepared by reference to Format 1 or Format 3.

PART II

ACCOUNTING PRINCIPLES AND RULES

SECTION A

ACCOUNTING PRINCIPLES

Preliminary

9. Subject to paragraph 15, the amounts to be included in respect of all items shown in a company's accounts shall be determined in accordance with the principles set out in paragraphs 10 to 14.

Accounting principles

10. The company shall be presumed to be carrying on business as a going concern.

11. Accounting policies shall be applied consistently from one financial year to the next.

12. The amount of any item shall be determined on a prudent basis, and in particular—

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PART II

- (a) only profits realised at the balance sheet date shall be included in the profit and loss account; and
- (b) all liabilities and losses which have arisen or are likely to arise in respect of the financial year to which the accounts relate or a previous financial year shall be taken into account, including those which only become apparent between the balance sheet date and the date on which it is signed on behalf of the board of directors in pursuance of Article 246.

13. All income and charges relating to the financial year to which the accounts relate shall be taken into account, without regard to the date of receipt or payment.

14. In determining the aggregate amount of any item the amount of each individual asset or liability that falls to be taken into account shall be determined separately.

#### **Departure from the accounting principles**

15. If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's accounts in respect of any financial year they may do so, but particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.

#### **SECTION B**

#### **HISTORICAL COST ACCOUNTING RULES**

#### **Preliminary**

16. Subject to section C, the amounts to be included in respect of all items shown in a company's accounts shall be determined in accordance with the rules set out in paragraphs 17 to 28.

#### **Fixed assets**

##### *General rules*

17. Subject to any provision for depreciation or diminution in value made in accordance with paragraph 18 or 19, the amount to be included in respect of any fixed asset shall be its purchase price or production cost.

18. In the case of any fixed asset which has a limited useful economic life, the amount of—

- (a) its purchase price or production cost; or
- (b) where it is estimated that any such asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value;

shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

19.—(1) Where a fixed asset investment of a description falling to be included under item B.III of either of the balance sheet formats set out in Part I has diminished in value provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and any such provisions which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

(2) Provisions for diminution in value shall be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be

permanent (whether its useful economic life is limited or not), and the amount to be included in respect of it shall be reduced accordingly; and any such provisions which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

(3) Where the reasons for which any provision was made in accordance with sub-paragraph (1) or (2) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary; and any amounts written back in accordance with this sub-paragraph which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

*Rules for determining particular fixed asset items*

20.—(1) Notwithstanding that an item in respect of “development costs” is included under “fixed assets” in the balance sheet formats set out in Part I, an amount may only be included in a company’s balance sheet in respect of development costs in special circumstances.

(2) If any amount is included in a company’s balance sheet in respect of development costs the following information shall be given in a note to the accounts—

- (a) the period over which the amount of those costs originally capitalised is being or is to be written off; and
- (b) the reasons for capitalising the development costs in question.

21.—(1) The application of paragraphs 17 to 19 in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.

(2) Subject to sub-paragraph (3), the amount of the consideration for any goodwill acquired by a company shall be reduced by provisions for depreciation calculated to write off that amount systematically over a period chosen by the directors of the company.

(3) The period chosen shall not exceed the useful economic life of the goodwill in question.

(4) In any case where any goodwill acquired by a company is shown or included as an asset in the company’s balance sheet the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the accounts.

**Current assets**

22. Subject to paragraph 23, the amount to be included in respect of any current asset shall be its purchase price or production cost.

23.—(1) If the net realisable value of any current asset is lower than its purchase price or production cost the amount to be included in respect of that asset shall be the net realisable value.

(2) Where the reasons for which any provision for diminution in value was made in accordance with sub-paragraph (1) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

**Miscellaneous and supplementary provisions**

*Excess of money owed over value received as an asset item*

24.—(1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.

(2) Where any such amount is so treated—

- (a) it shall be written off by reasonable amounts each year and must be completely written off before repayment of the debt; and
- (b) if the current amount is not shown as a separate item in the company's balance sheet it must be disclosed in a note to the accounts.

*Assets included at a fixed amount*

25.—(1) Subject to sub-paragraph (2), assets which fall to be included—

- (a) amongst the fixed assets of a company under the item "tangible assets";  
or
- (b) amongst the current assets of a company under the item "raw materials and consumables";

may be included at a fixed quantity and value.

(2) Sub-paragraph (1) applies to assets of a kind which are constantly being replaced, where—

- (a) their overall value is not material to assessing the company's state of affairs; and
- (b) their quantity, value and composition are not subject to material variation.

*Determination of purchase price or production cost*

26.—(1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.

(2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

(3) In addition, there may be included in the production cost of an asset—

- (a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and
- (b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production;

so, however, that in a case within head (b) the inclusion of the interest in determining the cost of that asset and the amount of the interest so included shall be disclosed in a note to the accounts.

(4) In the case of current assets distribution costs may not be included in production costs.

27.—(1) Subject to the qualification mentioned below, the purchase price or production cost of—



- (a) any assets which fall to be included under any item shown in a company's balance sheet under the general item "stocks"; and
- (b) any assets which are fungible assets (including investments);

may be determined by the application of any of the methods mentioned in sub-paragraph (2) in relation to any such assets of the same class.

The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

(2) Those methods are—

- (a) the method known as "first in, first out" (FIFO);
- (b) the method known as "last in, first out" (LIFO);
- (c) a weighted average price; and
- (d) any other method similar to any of the methods mentioned above.

(3) Where in the case of any company—

- (a) the purchase price or production cost of assets falling to be included under any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph; and
- (b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph;

the amount of that difference shall be disclosed in a note to the accounts.

(4) Subject to sub-paragraph (5), for the purposes of sub-paragraph (3)(b), the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the balance sheet date.

(5) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the balance sheet date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate standard of comparison in the case of assets of that class.

(6) For the purposes of this paragraph, assets of any description shall be regarded as fungible if assets of that description are substantially indistinguishable one from another.

*Substitution of original stated amount where price or cost unknown*

28. Where there is no record of the purchase price or production cost of any asset of a company or of any price, expenses or costs relevant for determining its purchase price or production cost in accordance with paragraph 26, or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of paragraphs 17 to 23 to be the value ascribed to it in the earliest available record of its value made on or after its acquisition or production by the company.

SECTION C  
ALTERNATIVE ACCOUNTING RULES

**Preliminary**

29.—(1) The rules set out in section B are referred to below in this Schedule as the historical cost accounting rules.

(2) Those rules, with the omission of paragraphs 16, 21 and 25 to 28, are referred to below in this Part as the depreciation rules; and references below in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of paragraph 32.

30. Subject to paragraphs 32 to 34, the amounts to be included in respect of assets of any description mentioned in paragraph 31 may be determined on any basis so mentioned.

**Alternative accounting rules**

31.—(1) Intangible fixed assets, other than goodwill, may be included at their current cost.

(2) Tangible fixed assets may be included at a market value determined as at the date of their last valuation or at their current cost.

(3) Investments of any description falling to be included under item B.III of either of the balance sheet formats set out in Part I may be included either—

- (a) at a market value determined as at the date of their last valuation; or
- (b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company;

but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the accounts.

(4) Investments of any description falling to be included under item C.III of either of the balance sheet formats set out in Part I may be included at their current cost.

(5) Stocks may be included at their current cost.

**Application of the depreciation rules**

32.—(1) Where the value of any asset of a company is determined on any basis mentioned in paragraph 31, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company's accounts, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in paragraph 31.

(2) The amount of any provision for depreciation required in the case of any fixed asset by paragraph 18 or 19 as it applies by virtue of sub-paragraph (1) is referred to in this paragraph as the adjusted amount, and the amount of any provision which would be required by that paragraph in the case of that asset according to the historical cost accounting rules is referred to as the historical cost amount.

(3) Where sub-paragraph (1) applies in the case of any fixed asset the amount of any provision for depreciation in respect of that asset—

- (a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or
- (b) taken into account in stating any item so shown which is required by note (14) of the notes on the profit and loss account formats set out in Part I to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it;

may be the historical cost amount instead of the adjusted amount, so, however, that the amount of any difference between the two shall be shown separately in the profit and loss account or in a note to the accounts.

**Additional information to be provided in case of departure  
from historical cost accounting rules**

33.—(1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's accounts have been determined on any basis mentioned in paragraph 31.

(2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item shall be disclosed in a note to the accounts.

(3) In the case of each balance sheet item affected (except stocks) either—

- (a) the comparable amounts determined according to the historical cost accounting rules; or
- (b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item;

shall be shown separately in the balance sheet or in a note to the accounts.

(4) In sub-paragraph (3), references in relation to any item to the comparable amounts determined as there mentioned are references to—

- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
- (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

**Revaluation reserve**

34.—(1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 31, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value so determined and any adjustments of any such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve ("the revaluation reserve").

(2) The amount of the revaluation reserve shall be shown in the company's balance sheet under a separate sub-heading in the position given for the item "revaluation reserve" in Format 1 or 2 of the balance sheet formats set out in Part I, but need not be shown under that name.

(3) The revaluation reserve shall be reduced to the extent that the amounts standing to the credit of the reserve are in the opinion of the directors of the

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company no longer necessary for the purpose of the accounting policies adopted by the company; but an amount may only be transferred from the reserve to the profit and loss account if either—

- (a) the amount in question was previously charged to that account; or
- (b) it represents realised profit.

(4) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve shall be disclosed in a note to the accounts.

### PART III

#### NOTES TO THE ACCOUNTS

##### Preliminary

35. Any information required in the case of any company by the following provisions of this Part shall (if not given in the company's accounts) be given by way of a note to those accounts.

##### Disclosure of accounting policies

36. The accounting policies adopted by the company in determining the amounts to be included in respect of items shown in the balance sheet and in determining the profit or loss of the company shall be stated (including such policies with respect to the depreciation and diminution in value of assets).

##### Information supplementing the balance sheet

37. Paragraphs 38 to 51 require information which either supplements the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company's state of affairs in the light of the information so given.

##### *Share capital and debentures*

38.—(1) The following information shall be given with respect to the company's share capital—

- (a) the authorised share capital; and
- (b) where shares of more than one class have been allotted, the number and aggregate nominal value of shares of each class allotted.

(2) In the case of any part of the allotted share capital that consists of redeemable shares, the following information shall be given—

- (a) the earliest and latest dates on which the company has power to redeem those shares;
- (b) whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or of the shareholder, and
- (c) whether any (and, if so, what) premium is payable on redemption.

39. If the company has allotted any shares during the financial year, the following information shall be given—

- (a) the reason for making the allotment;
- (b) the classes of shares allotted; and
- (c) as respects each class of shares, the number allotted, their aggregate nominal value, and the consideration received by the company for the allotment.

40.—(1) With respect to any contingent right to the allotment of shares in the company the following particulars shall be given—

- (a) the number, description and amount of the shares in relation to which the right is exercisable;
- (b) the period during which it is exercisable; and
- (c) the price to be paid for the shares allotted.

(2) In sub-paragraph (1) “contingent right to the allotment of shares” means any option to subscribe for shares and any other right to require the allotment of shares to any person whether arising on the conversion into shares of securities of any other description or otherwise.

41.—(1) If the company has issued any debentures during the financial year to which the accounts relate, the following information shall be given—

- (a) the reason for making the issue;
- (b) the classes of debentures issued; and
- (c) as respects each class of debentures, the amount issued and the consideration received by the company for the issue.

(2) Particulars of any redeemed debentures which the company has power to reissue shall also be given.

(3) Where any of the company’s debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance with Article 229 shall be stated.

*Fixed assets*

42.—(1) In respect of each item which is or would but for paragraph 3(4)(b) be shown under the general item “fixed assets” in the company’s balance sheet the following information shall be given—

- (a) the appropriate amounts in respect of that item as at the date of the beginning of the financial year and as at the balance sheet date respectively;
- (b) the effect on any amount shown in the balance sheet in respect of that item of—
  - (i) any revision of the amount in respect of any assets included under that item made during that year on any basis mentioned in paragraph 31;
  - (ii) acquisitions during that year of any assets;
  - (iii) disposals during that year of any assets; and
  - (iv) any transfers of assets of the company to and from that item during that year.

(2) The reference in sub-paragraph (1)(a) to the appropriate amounts in respect of any item as at any date there mentioned is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that item on either of the following bases, that is to say—

- (a) on the basis of purchase price or production cost (determined in accordance with paragraphs 26 and 27); or
- (b) on any basis mentioned in paragraph 31,

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(leaving out of account in either case any provisions for depreciation or diminution in value).

(3) In respect of each item within sub-paragraph (1)—

- (a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in sub-paragraph (1)(a);
- (b) the amount of any such provisions made in respect of the financial year;
- (c) the amount of any adjustments made in respect of any such provisions during that year in consequence of the disposal of any assets; and
- (d) the amount of any other adjustments made in respect of any such provisions during that year;

shall also be stated.

43. Where any fixed assets of the company (other than listed investments) are included under any item shown in the company's balance sheet at an amount determined on any basis mentioned in paragraph 31, the following information shall be given—

- (a) the years (so far as they are known to the directors) in which the assets were severally valued and the several values; and
- (b) in the case of assets that have been valued during the financial year, the names of the persons who valued them or particulars of their qualifications for doing so and (whichever is stated) the bases of valuation used by them.

44. In relation to any amount which is or would but for paragraph 3(4)(b) be shown in respect of the item "land and buildings" in the company's balance sheet there shall be stated—

- (a) how much of that amount is ascribable to land of freehold tenure and how much to land of leasehold tenure; and
- (b) how much of the amount ascribable to land of leasehold tenure is ascribable to land held on long lease and how much to land held on short lease.

*Investments*

45.—(1) In respect of the amount of each item which is or would but for paragraph 3(4)(b) be shown in the company's balance sheet under the general item "investments" (whether as fixed assets or as current assets) there shall be stated—

- (a) how much of that amount is ascribable to listed investments; and
- (b) how much of any amount so ascribable is ascribable to investments as respects which there has been granted a listing on a recognised stock exchange and how much to other listed investments.

(2) Where the amount of any listed investments is stated for any item in accordance with sub-paragraph (1)(a), the following amounts shall also be stated—

- (a) the aggregate market value of those investments where it differs from the amount so stated; and
- (b) both the market value and the stock exchange value of any investments of which the former value is, for the purposes of the accounts, taken as being higher than the latter.

*Reserves and provisions*

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46.—(1) Where any amount is transferred—

- (a) to or from any reserves; or
- (b) to any provisions for liabilities and charges; or
- (c) from any provision for liabilities and charges otherwise than for the purpose for which the provision was established;

and the reserves or provisions are or would but for paragraph 3(4)(b) be shown as separate items in the company's balance sheet, the information mentioned in sub-paragraph (2) shall be given in respect of the aggregate of reserves or provisions included in the same item.

(2) That information is—

- (a) the amount of the reserves or provisions as at the date of the beginning of the financial year and as at the balance sheet date respectively;
- (b) any amounts transferred to or from the reserves or provisions during that year; and
- (c) the source and application respectively of any amounts so transferred.

(3) Particulars shall be given of each provision included in the item "other provisions" in the company's balance sheet in any case where the amount of that provision is material.

*Provision for taxation*

47. The amount of any provisions for taxation other than deferred taxation shall be stated.

*Details of indebtedness*

48.—(1) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated—

- (a) the aggregate amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of 5 years beginning with the day next following the end of the financial year; and
- (b) the aggregate amount of any debts so included which are payable or repayable by instalments any of which fall due for payment after the end of that period;

and in the case of debts within head (b) the aggregate amount of instalments falling due after the end of that period shall also be disclosed for each such item.

(2) Subject to sub-paragraph (3), in relation to each debt falling to be taken into account under sub-paragraph (1), the terms of payment or repayment and the rate of any interest payable on the debt shall be stated.

(3) If the number of debts is such that, in the opinion of the directors, compliance with sub-paragraph (2) would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts.

(4) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated—

- (a) the aggregate amount of any debts included under that item in respect of which any security has been given by the company; and

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(b) an indication of the nature of the securities so given.

(5) References above in this paragraph to an item shown under "creditors" in the company's balance sheet include references, where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet—

(a) in a case within sub-paragraph (1), to an item shown under the latter of those categories; and

(b) in a case within sub-paragraph (4), to an item shown under either of those categories;

and references to items shown under "creditors" include references to items which would but for paragraph 3(4)(b) be shown under that heading.

49. If any fixed cumulative dividends on the company's shares are in arrear, there shall be stated—

(a) the amount of the arrears; and

(b) the period for which the dividends or, if there is more than one class, each class of them are in arrear.

*Guarantees and other financial commitments*

50.—(1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for—

(a) the amount or estimated amount of that liability,

(b) its legal nature; and

(c) whether any valuable security has been provided by the company in connection with that liability and if so, what.

(3) There shall be stated, where practicable—

(a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and

(b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.

(4) Particulars shall be given of—

(a) any pension commitments included under any provision shown in the company's balance sheet; and

(b) any such commitments for which no provision has been made;

and where any such commitment relates wholly or partly to pensions payable to past directors of the company separate particulars shall be given of that commitment so far as it relates to such pensions.

(5) Particulars shall also be given of any other financial commitments which—

(a) have not been provided for; and

(b) are relevant to assessing the company's state of affairs.

(6) Commitments within any of the preceding sub-paragraphs undertaken on behalf of or for the benefit of—

(a) any holding company or fellow subsidiary of the company; or

(b) any subsidiary of the company;



shall be stated separately from the other commitments within that sub-paragraph (and commitments within head (a) shall also be stated separately from those within head (b)).

*Miscellaneous matters*

51.—(1) Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under paragraph 28.

(2) Where any outstanding loans made under the authority of Article 163(4)(b) or (c) (loans to employees for acquisition of company's shares) or 165 (private companies) are included under any item shown in the company's balance sheet, the aggregate amount of those loans shall be disclosed for each item in question.

(3) The aggregate amount which is recommended for distribution by way of dividend shall be stated.

**Information supplementing the profit and loss account**

52. Paragraphs 53 to 57 require information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account.

*Separate statement of certain items of income and expenditure*

53.—(1) Subject to the following provisions of this paragraph, each of the amounts mentioned below shall be stated.

- (2) The amount of the interest on or any similar charges in respect of—
- (a) bank loans and overdrafts, and loans made to the company (other than bank loans and overdrafts) which—
    - (i) are repayable otherwise than by instalments and fall due for repayment before the end of the period of 5 years beginning with the day next following the end of the financial year; or
    - (ii) are repayable by instalments the last of which falls due for payment before the end of that period; and
  - (b) loans of any other kind made to the company.

This sub-paragraph does not apply to interest or charges on loans to the company from group companies, but, with that exception, it applies to interest or charges on all loans, whether made on the security of debentures or not.

(3) The amounts respectively set aside for redemption of share capital and for redemption of loans.

(4) The amount of income from listed investments.

(5) The amount of rents from land (after deduction of ground rents, rates and other outgoings).

This amount need only be stated if a substantial part of the company's revenue for the financial year consists of rents from land.

(6) The amount charged to revenue in respect of sums payable in respect of the hire of plant and machinery.

(7) The amount of the remuneration of the auditors (taking "remuneration", for the purposes of this sub-paragraph, as including any sums paid by the company in respect of the auditors' expenses).

*Particulars of tax*

54.—(1) The basis on which the charge for United Kingdom corporation tax and United Kingdom income tax is computed shall be stated.

(2) Particulars shall be given of any special circumstances which affect liability in respect of taxation of profits, income or capital gains for the financial year or liability in respect of taxation of profits, income or capital gains for succeeding financial years.

(3) The following amounts shall be stated—

- (a) the amount of the charge for United Kingdom corporation tax;
- (b) if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief;
- (c) the amount of the charge for United Kingdom income tax; and
- (d) the amount of the charge for taxation imposed outside the United Kingdom of profits, income and (so far as charged to revenue) capital gains.

These amounts shall be stated separately in respect of each of the amounts which is or would but for paragraph 3(4)(b) be shown under the following items in the profit and loss account, that is to say "tax on profit or loss on ordinary activities" and "tax on extraordinary profit or loss".

*Particulars of turnover*

55.—(1) If in the course of the financial year the company has carried on business of two or more classes that, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each class (describing it)—

- (a) the amount of the turnover attributable to that class; and
- (b) the amount of the profit or loss of the company before taxation which is in the opinion of the directors attributable to that class.

(2) If in the course of the financial year the company has supplied markets that, in the opinion of the directors, differ substantially from each other, the amount of the turnover attributable to each such market shall also be stated.

In this paragraph "market" means a market delimited by geographical bounds.

(3) In analysing for the purposes of this paragraph the source (in terms of business or in terms of market) of turnover or (as the case may be) of profit or loss, the directors of the company shall have regard to the manner in which the company's activities are organised.

(4) For the purposes of this paragraph—

- (a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and
- (b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market;

and any amounts properly attributable to one class of business or (as the case may be) to one market which are not material may be included in the amount stated in respect of another.

(5) Where in the opinion of the directors the disclosure of any information required by this paragraph would be seriously prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed must be stated.

*Particulars of staff*

56.—(1) The following information shall be given with respect to the employees of the company—

- (a) the average number of persons employed by the company in the financial year; and
- (b) the average number of persons so employed within each category of persons employed by the company.

(2) The average number required by sub-paragraph (1)(a) or (b) shall be determined by dividing the relevant annual number by the number of weeks in the financial year.

(3) The relevant annual number shall be determined by ascertaining for each week in the financial year—

- (a) for the purposes of sub-paragraph (1)(a), the number of persons employed under contracts of service by the company in that week (whether throughout the week or not);
- (b) for the purposes of sub-paragraph (1)(b), the number of persons in the category in question of persons so employed;

and, in either case, adding together all the weekly numbers.

(4) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of sub-paragraph (1)(a) there shall also be stated the aggregate amounts respectively of—

- (a) wages and salaries paid or payable in respect of that year to those persons;
- (b) social security costs incurred by the company on their behalf; and
- (c) other pension costs so incurred;

save in so far as those amounts or any of them are stated in the profit and loss account.

(5) The categories of persons employed by the company by reference to which the number required to be disclosed by sub-paragraph (1)(b) is to be determined shall be such as the directors may select, having regard to the manner in which the company's activities are organised.

*Miscellaneous matters*

57.—(1) Where any amount relating to any preceding financial year is included in any item in the profit and loss account, the effect shall be stated.

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(2) Particulars shall be given of any extraordinary income or charges arising in the financial year.

(3) The effect shall be stated of any transactions that are exceptional by virtue of size or incidence though they fall within the ordinary activities of the company.

#### **General**

58.—(1) Where sums originally denominated in foreign currencies have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into sterling shall be stated.

(2) Subject to sub-paragraph (3), in respect of every item stated in a note to the accounts the corresponding amount for the financial year immediately preceding that to which the accounts relate shall also be stated and where the corresponding amount is not comparable, it shall be adjusted and particulars of the adjustment and the reasons for it shall be given.

(3) Sub-paragraph (2) does not apply in relation to any amounts stated by virtue of any of the following provisions—

- (a) Article 239 and Parts I and II of Schedule 5 (proportion of share capital of subsidiaries and other bodies corporate held by the company, etc.),
- (b) Articles 240 to 242 and Schedule 6 (particulars of loans to directors, etc.), and
- (c) paragraphs 42 and 46.

#### **PART IV**

#### **SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR SUBSIDIARY COMPANY**

##### **Company's own accounts**

59. Where a company is a holding company or a subsidiary of another body corporate and any item required by Part I to be shown in the company's balance sheet in relation to group companies includes—

- (a) amounts attributable to dealings with or interests in any holding company or fellow subsidiary of the company; or
- (b) amounts attributable to dealings with or interests in any subsidiary of the company;

the aggregate amounts within heads (a) and (b) respectively shall be shown as separate items, either by way of subdivision of the relevant item in the balance sheet or in a note to the company's accounts.

60.—(1) Subject to sub-paragraph (2), where the company is a holding company, the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees shall be disclosed in a note to the company's accounts.

(2) Sub-paragraph (1) does not apply in relation to any shares or debentures—

- (a) in the case of which the subsidiary is concerned as personal representative; or
- (b) in the case of which it is concerned as trustee;

if in the latter case neither the company nor any subsidiary of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

Schedule 2 has effect for the interpretation of the reference in this subparagraph to a beneficial interest under a trust.

**Consolidated accounts of holding company and subsidiaries**

61. Subject to paragraphs 63 and 66, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

62. Subject to paragraphs 63 to 66 and to Part V, the consolidated accounts shall, in giving the information required by paragraph 61, comply so far as practicable with the requirements of this Schedule and with the other requirements of this Order as if they were the accounts of an actual company.

63. The following provisions, namely—

- (a) Article 239 as applying Schedule 5, but only Parts II, III, V and VI of that Schedule, and
- (b) Articles 240 to 242 and Schedule 6, so far as relating to accounts other than group accounts,

do not, by virtue of paragraphs 61 and 62, apply for the purposes of the consolidated accounts.

64. Paragraph 62 is without prejudice to any requirement of this Order which applies (otherwise than by virtue of paragraph 61 or 62) to group accounts.

65.—(1) Notwithstanding paragraph 62, the consolidated accounts prepared by a holding company may deal with an investment of any member of the group in the shares of any other body corporate by way of the equity method of accounting in any case where it appears to the directors of the holding company that that body corporate is so closely associated with any member of the group as to justify the use of that method in dealing with investments by that or any other member of the group in the shares of that body corporate.

(2) In this paragraph, references to the group, in relation to consolidated accounts prepared by a holding company, are references to the holding company and the subsidiaries dealt with by the accounts.

66. Notwithstanding paragraphs 61 and 62, paragraphs 17 to 19 and 21 do not apply to any amount shown in the consolidated balance sheet in respect of goodwill arising on consolidation.

67. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts paragraphs 59 and 60 apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries.

**Group accounts not prepared as consolidated accounts**

68. Group accounts which are not prepared as consolidated accounts, together with any notes to those accounts, shall give the same or equivalent information as that required to be given by consolidated accounts by virtue of paragraphs 61 to 67.

**Provisions of general application**

69.—(1) This paragraph applies where the company is a holding company and either—

- (a) does not prepare group accounts; or
- (b) prepares group accounts which do not deal with one or more of its subsidiaries;

and references in this paragraph to the company's subsidiaries shall be read in a case within head (b) as references to such of the company's subsidiaries as are excluded from the group accounts.

(2) Subject to the following provisions of this paragraph—

- (a) the reasons why the subsidiaries are not dealt with in group accounts; and
- (b) a statement showing any qualifications contained in the reports of the auditors of the subsidiaries on their accounts for their respective financial years ending with or during the financial year of the company, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members;

shall be given in a note to the company's accounts.

(3) Subject to the following provisions of this paragraph, the aggregate amount of the total investment of the holding company in the shares of the subsidiaries shall be stated in a note to the company's accounts by way of the equity method of valuation.

(4) Sub-paragraph (3) does not apply where the company is a wholly-owned subsidiary of another body corporate incorporated in Northern Ireland if there is included in a note to the company's accounts a statement that in the opinion of the directors of the company the aggregate value of the assets of the company consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries is not less than the aggregate of the amounts at which those assets are stated or included in the company's balance sheet.

(5) In so far as information required by any of the preceding provisions of this paragraph to be stated in a note to the company's accounts is not obtainable, a statement to that effect shall be given instead in a note to those accounts.

(6) The Department may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary sub-paragraphs (2) and (3) shall not apply, or shall apply only to such extent as may be provided by the direction.

(7) Where in any case within sub-paragraph (1)(b) the group accounts are consolidated accounts, references in this paragraph to the company's accounts and the company's balance sheet respectively shall be read as references to the consolidated accounts and the consolidated balance sheet.

70. Where a company has subsidiaries whose financial years did not end with that of the company, the following information shall be given in relation to each such subsidiary (whether or not dealt with in any group accounts prepared by the company) by way of a note to the company's accounts or (where group accounts are prepared) to the group accounts, that is to say—

- (a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and
- (b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

#### PART V

##### SPECIAL PROVISIONS WHERE THE COMPANY IS AN INVESTMENT COMPANY

71.—(1) Paragraph 34 does not apply to the amount of any profit or loss arising from a determination of the value of any investments of an investment company on any basis mentioned in paragraph 31(3).

(2) Any provisions made by virtue of paragraph 19(1) or (2) in the case of an investment company in respect of any fixed asset investments need not be charged to the company's profit and loss account if they are either—

- (a) charged against any reserve account to which any amount excluded by sub-paragraph (1) from the requirements of paragraph 34 has been credited; or
- (b) shown as a separate item in the company's balance sheet under the sub-heading "other reserves".

(3) For the purposes of this paragraph, as it applies in relation to any company, "fixed asset investment" means any asset falling to be included under any item shown in the company's balance sheet under the subdivision "investments" under the general item "fixed assets".

72.—(1) Any distribution made by an investment company which reduces the amount of its net assets to less than the aggregate of its called-up share capital and undistributable reserves shall be disclosed in a note to the company's accounts.

(2) For the purposes of this paragraph, a company's net assets are the aggregate of its assets less the aggregate of its liabilities (including any provision for liabilities or charges within paragraph 88); and "undistributable reserves" has the meaning given by Article 272(3).

73. A company shall be treated as an investment company for the purposes of this Part in relation to any financial year of the company if—

- (a) during the whole of that year it was an investment company as defined by Article 274, and
- (b) it was not at any time during that year prohibited under Article 273(4) (no distribution where capital profits have been distributed, etc.) from making a distribution by virtue of that Article.

74. Where a company entitled to the benefit of any provision contained in this Part is a holding company, the reference in paragraph 62 to consolidated accounts complying with the requirements of this Order shall, in relation to consolidated accounts of that company, be construed as referring to those requirements in so far only—

- (a) as they apply to the individual accounts of that company; and
- (b) as they apply otherwise than by virtue of paragraphs 61 and 62 to any group accounts prepared by that company.

**SPECIAL PROVISIONS WHERE THE COMPANY HAS ENTERED INTO  
ARRANGEMENTS SUBJECT TO MERGER RELIEF**

75.—(1) Where during the financial year the company has allotted shares in consideration for the issue, transfer or cancellation of shares in another body corporate ("the other company") in circumstances where by virtue of Article 141(2) (merger relief) Article 140 did not apply to the premiums on those shares, the following information shall be given by way of a note to the company's accounts—

- (a) the name of the other company;
- (b) the number, nominal value and class of shares so allotted;
- (c) the number, nominal value and class of shares in the other company so issued, transferred or cancelled;
- (d) particulars of the accounting treatment adopted in the company's accounts (including any group accounts) in respect of such issue, transfer or cancellation; and
- (e) where the company prepares group accounts, particulars of the extent to which and manner in which the profit or loss for the year of the group which appears in those accounts is affected by any profit or loss of the other company or any of its subsidiaries which arose at any time before the allotment.

(2) Where the company has during the financial year or during either of the 2 financial years immediately preceding it made such an allotment of shares as is mentioned in sub-paragraph (1) and there is included in the company's consolidated profit and loss account, or, if it has no such account, in its individual profit and loss account, any profit or loss (or part thereof) to which this sub-paragraph applies then the net amount of any such profit or loss (or part thereof) shall be shown in a note to the accounts together with an explanation of the transactions to which that information relates.

(3) Sub-paragraph (2) applies—

- (a) to any profit or loss realised during the financial year by the company, or any of its subsidiaries, on the disposal of any shares in the other company or of any assets which were fixed assets of the other company, or of any of its subsidiaries, at the time of the allotment; and
- (b) to any part of any profit or loss realised during the financial year by the company, or any of its subsidiaries, on the disposal of any shares (not being shares in the other company), which was attributable to the fact that at the time of the disposal there were amongst the assets of the company which issued those shares, or any of its subsidiaries, such shares or assets as are described in head (a).

(4) Where in pursuance of the arrangement in question shares are allotted on different dates, the time of allotment for the purposes of sub-paragraphs (1)(e) and (3)(a) is taken to be—

- (a) if the other company becomes a subsidiary of the company as a result of the arrangement—
  - (i) if the arrangement becomes binding only upon the fulfilment of a condition, the date on which that condition is fulfilled, and
  - (ii) in any other case, the date on which the other company becomes a subsidiary of the company;



- (b) if the other company is a subsidiary of the company when the arrangement is proposed, the date of the first allotment pursuant to that arrangement.

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INTERPRETATION OF SCHEDULE

76. The following paragraphs apply for the purposes of this Schedule and its interpretation.

*Assets: fixed or current*

77. Assets of a company are taken to be fixed assets if they are intended for use on a continuing basis in the company's activities, and any assets not intended for such use shall be taken to be current assets.

*Capitalisation*

78. References to capitalising any work or costs are to treating that work or those costs as a fixed asset.

*Fellow subsidiary*

79. A body corporate is treated as a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

*Group companies*

80. "Group company", in relation to any company, means any body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company.

*Historical cost accounting rules*

81. References to the historical cost accounting rules shall be read in accordance with paragraph 29.

*Leases*

82.—(1) "Long lease" means a lease in the case of which the portion of the term for which it was granted remaining unexpired at the end of the financial year is not less than 50 years.

(2) "Short lease" means a lease which is not a long lease.

(3) "Lease" includes an agreement for a lease.

*Listed investments*

83. "Listed investment" means an investment as respects which there has been granted a listing on a recognised stock exchange, or on any stock exchange of repute (other than a recognised stock exchange) outside Northern Ireland.

*Loans*

84. A loan is treated as falling due for repayment, and an instalment of a loan is treated as falling due for payment, on the earliest date on which the lender

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could require repayment or (as the case may be) payment, if he exercised all options and rights available to him.

*Materiality*

85. Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

*Notes to the accounts*

86. Notes to a company's accounts may be contained in the accounts or in a separate document annexed to the accounts.

*Provisions*

87.—(1) References to provisions for depreciation or diminution in value of assets are to any amount written off by way of providing for depreciation or diminution in value of assets.

(2) Any reference in the profit and loss account formats set out in Part I to the depreciation of, or amounts written off, assets of any description is to any provision for depreciation or diminution in value of assets of that description.

88. References to provisions for liabilities or charges are to any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

*Purchase price*

89. References (however expressed) to the purchase price of any asset of a company or of any raw materials or consumables used in the production of any such asset include any consideration (whether in cash or otherwise) given by the company in respect of that asset or in respect of those materials or consumables (as the case may require).

*Realised profits*

90. Without prejudice to—

- (a) the construction of any other expression (where appropriate) by reference to accepted accounting principles or practice, or
- (b) any specific provision for the treatment of profits of any description as realised,

it is hereby declared for the avoidance of doubt that references in this Schedule to realised profits, in relation to a company's accounts, are to such profits of the company as fall to be treated as realised profits for the purposes of those accounts in accordance with principles generally accepted with respect to the determination for accounting purposes of realised profits at the time when those accounts are prepared.

*Related companies*

91.—(1) "Related company", in relation to any company, means any body corporate (other than one which is a group company in relation to that company) in which that company holds on a long-term basis a qualifying capital

interest for the purpose of securing a contribution to that company's own activities by the exercise of any control or influence arising from that interest.

(2) In this paragraph "qualifying capital interest" means, in relation to any body corporate, an interest in shares comprised in the equity share capital of that body corporate of a class carrying rights to vote in all circumstances at general meetings of that body corporate.

(3) Where—

- (a) a company holds a qualifying capital interest in a body corporate; and
- (b) the nominal value of any relevant shares in that body corporate held by that company is equal to 20 per cent. or more of the nominal value of all relevant shares in that body corporate;

it shall be presumed to hold that interest on the basis and for the purpose mentioned in sub-paragraph (1), unless the contrary is shown.

In this sub-paragraph "relevant shares" means, in relation to any body corporate, any such shares in that body corporate as are mentioned in sub-paragraph (2).

*Staff costs*

92.—(1) "Social security costs" means any contributions by the company to any state social security or pension scheme, fund or arrangement.

(2) "Pension costs" includes any other contributions by the company for the purposes of any pension scheme established for the purpose of providing pensions for persons employed by the company, any sums set aside for that purpose and any amounts paid by the company in respect of pensions without first being so set aside.

(3) Any amount stated in respect of either of the above items or in respect of the item "wages and salaries" in the company's profit and loss account shall be determined by reference to payments made or costs incurred in respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of paragraph 56(1)(a).

*Turnover*

93. "Turnover" in relation to a company, means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of—

- (a) trade discounts,
- (b) value added tax, and
- (c) any other taxes based on the amounts so derived.

SCHEDULE 5

Article 239

MISCELLANEOUS MATTERS TO BE DISCLOSED  
IN NOTES TO COMPANY ACCOUNTS

PART I

PARTICULARS OF SUBSIDIARIES

1. If at the end of the financial year the company has subsidiaries, there shall in the case of each subsidiary be stated—

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- (a) the name of the subsidiary;
- (b) if it is incorporated outside Northern Ireland, the country in which it is incorporated; and
- (c) in relation to shares of each class of the subsidiary held by the company, the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held.

2. The particulars required by paragraph 1 include, with reference to the proportion of the nominal value of the allotted shares of a class represented by shares held by the company, a statement of the extent (if any) to which it consists in shares held by, or by a nominee for, a subsidiary of the company and the extent (if any) to which it consists in shares held by, or by a nominee for, the company itself.

3. Paragraph 1 does not require the disclosure of information with respect to a body corporate which is the subsidiary of another and is incorporated outside the United Kingdom or, being incorporated in the United Kingdom, carries on business outside it if the disclosure would, in the opinion of the directors of that other, be harmful to the business of that other or of any of its subsidiaries and the Department agrees that the information need not be disclosed.

4. If at the end of the financial year the company has subsidiaries and the directors are of the opinion that the number of them is such that compliance with paragraph 1 would result in particulars of excessive length being given, compliance with that paragraph is required only in the case of the subsidiaries carrying on the businesses the results of the carrying on of which (in the opinion of the directors) principally affected the amount of the profit or loss of the company and its subsidiaries or the amount of the assets of the company and its subsidiaries.

5. If advantage is taken of paragraph 4, there must be included in the statement required by this Part the information that it deals only with the subsidiaries carrying on such businesses as are referred to in that paragraph; and in that case Article 239(3) (subsequent disclosure with annual return) applies to the particulars given in compliance with paragraph 1, together with those which (but for the fact that advantage is so taken) would have to be so given.

6. For the purposes of this Part, shares of a body corporate are treated as held, or not held, by another such body if they would, by virtue of Article 4(4), be treated as being held or (as the case may be) not held by that other body for the purpose of determining whether the first-mentioned body is its subsidiary.

**PART II**

**SHAREHOLDINGS IN COMPANIES, ETC. OTHER THAN SUBSIDIARIES**

7. If at the end of its financial year the company holds shares of any class comprised in the equity share capital of another body corporate (not being its subsidiary) exceeding in nominal value one-tenth of the nominal value of the allotted shares of that class, there shall be stated—

- (a) the name of that other body corporate and, if it is incorporated outside Northern Ireland, the country in which it is incorporated;
- (b) the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held; and

- (c) if the company also holds shares in that other body corporate of another class (whether or not comprised in its equity share capital), or of other classes (whether or not so comprised), the like particulars as respects that other class or (as the case may be) those other classes.

8. If at the end of its financial year the company holds shares comprised in the share capital of another body corporate (not being its subsidiary) exceeding in nominal value one-tenth of the allotted share capital of that other body, there shall be stated—

- (a) with respect to that other body corporate, the same information as is required by paragraph 7(a), and  
(b) the identity of each class of such shares held and the proportion of the nominal value of the allotted shares of that class represented by the shares of that class held by the company.

9. If at the end of its financial year the company holds shares in another body corporate (not being its subsidiary) and the amount of all the shares in it which the company holds (as stated or included in the company's accounts) exceeds one-tenth of the amount of its assets (as so stated), there shall be stated—

- (a) with respect to the other body corporate, the same information as is required by paragraph 7(a), and  
(b) in relation to shares in that other body corporate of each class held, the identity of the class and the proportion of the nominal value of the allotted shares of that class represented by the shares held.

10. None of the foregoing provisions of this Part requires the disclosure by a company of information with respect to another body corporate if that other is incorporated outside the United Kingdom or, being incorporated in the United Kingdom, carries on business outside it if the disclosure would, in the opinion of the company's directors, be harmful to the business of the company or of that other body and the Department agrees that the information need not be disclosed.

11. If at the end of its financial year the company falls within paragraph 7 or 8 in relation to more bodies corporate than one, and the number of them is such that, in the directors' opinion, compliance with either or both of those paragraphs would result in particulars of excessive length being given, compliance with paragraph 7 or (as the case may be) paragraph 8 is not required except in the case of the bodies carrying on the businesses the results of the carrying on of which (in the directors' opinion) principally affected the amount of the profit or loss of the company or the amount of its assets.

12. If advantage is taken of paragraph 11, there must be included in the statement dealing with the bodies last mentioned in that paragraph the information that it deals only with them; and Article 239(3) (subsequent disclosure in annual return) applies to the particulars given in compliance with paragraph 7 or 8 (as the case may be), together with those which, but for the fact that advantage is so taken, would have to be so given.

13. For the purposes of this Part, shares of a body corporate are treated as held, or not held, by another such body if they would, by virtue of paragraph (4) of Article 4 (but on the assumption that sub-paragraph (b)(ii) was omitted from that paragraph) be treated as being held or (as the case may be), not held by that other body for the purpose of determining whether the first-mentioned body is its subsidiary.

14. If—

- (a) at the end of its financial year the company has subsidiaries, and
- (b) it is required by paragraph 1 to disclose particulars with respect to any of those subsidiaries,

the additional information specified in paragraph 16 shall be given with respect to each subsidiary to which the requirement under paragraph 1 applies.

15. If—

- (a) at the end of its financial year the company holds shares in another body corporate, and
- (b) it is required by paragraph 8 to disclose particulars with respect to that body corporate, and
- (c) the shares held by the company in that body corporate exceed in nominal value one-fifth of the allotted share capital of that body,

the additional information specified in paragraph 16 shall be given with respect to that body corporate.

16. The information required by paragraphs 14 and 15 is, in relation to any body corporate (whether a subsidiary of the company or not), the aggregate amount of the capital and reserves of that body corporate as at the end of its relevant financial year and its profit or loss for that year; and for this purpose the relevant financial year is—

- (a) if the financial year of the body corporate ends with that of the company giving the information in a note to its accounts, that financial year, and
- (b) if not, the body corporate's financial year ending last before the end of the financial year of the company giving that information.

This is subject to the exceptions and other provisions in paragraph 17.

17.—(1) The information otherwise required by paragraph 16 need not be given in respect of a subsidiary of a company if either—

- (a) the company is exempt under this Order from the requirement to prepare group accounts, as being at the end of its financial year the wholly-owned subsidiary of another body corporate incorporated in Northern Ireland, or
- (b) the company prepares group accounts and—
  - (i) the accounts of the subsidiary are included in the group accounts, or
  - (ii) the investment of the company in the shares of the subsidiary is included in, or in a note to, the company's accounts by way of the equity method of valuation.

(2) That information need not be given in respect of another body corporate in which the company holds shares if the company's investment in those shares is included in or in a note to its accounts by way of the equity method of valuation.

(3) That information need not be given in respect of any body corporate if—

- (a) that body is not required by any provision of this Order to deliver to the registrar a copy of its balance sheet for its relevant financial year mentioned in paragraph 16, and does not otherwise publish that balance sheet in Northern Ireland or elsewhere, and

(b) the shares held by the company in that body do not amount to at least one half in nominal value of the body's allotted share capital.

(4) Information otherwise required by paragraph 16 need not be given if it is not material.

18. Where with respect to any subsidiary of the company or any other body corporate particulars which would otherwise be required by paragraph 1 or 8 to be stated in a note to the company's accounts are omitted by virtue of paragraph 4 or (as the case may be) paragraph 11, Article 239(3) (subsequent disclosure in next annual return) applies—

(a) to any information with respect to any other subsidiary or body corporate which is given in or in a note to the company's accounts in accordance with this Part, and

(b) to any information which would have been required by this Part to be given in relation to a subsidiary or other body corporate but for the exemption under paragraph 4 or 11.

19. For the purposes of this Part, shares of a body corporate are treated as held, or not held, by the company if they would, by virtue of paragraph (4) of Article 4 (but on the assumption that sub-paragraph (b)(ii) were omitted from that paragraph), be treated as being held or (as the case may be) not held by the company for the purpose of determining whether that body corporate is the company's subsidiary.

#### PART IV

##### IDENTIFICATION OF ULTIMATE HOLDING COMPANY

20. If at the end of its financial year the company is the subsidiary of another body corporate, there shall be stated the name of the body corporate regarded by the directors as being the company's ultimate holding company and, if known to them, the country in which it is incorporated.

21. Paragraph 20 does not require the disclosure by a company which carries on business outside the United Kingdom of information with respect to the body corporate regarded by the directors as being its ultimate holding company if the disclosure would, in their opinion, be harmful to the business of that holding company or of the first-mentioned company or any other of that holding company's subsidiaries and the Department agrees that the information need not be disclosed.

#### PART V

##### CHAIRMAN'S AND DIRECTORS' EMOLUMENTS, PENSIONS AND COMPENSATION FOR LOSS OF OFFICE

###### *Emoluments*

22.—(1) There shall be shown the aggregate amount of the directors' emoluments.

(2) This amount—

(a) includes any emoluments paid to or receivable by a person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary of it or

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otherwise in connection with the management of the affairs of the company or any subsidiary of it; and

- (b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments.

(3) For the purposes of this paragraph "emoluments", in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance (insofar as those sums are charged to United Kingdom income tax), any contributions paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash.

23. A company which is neither a holding company nor a subsidiary of another body corporate need not comply with paragraphs 24 to 27 as respects a financial year in the case of which the amount shown in compliance with paragraph 22 does not exceed £60,000.

24.—(1) This paragraph applies as respect the emoluments of the company's chairman; and for this purpose "chairman" means the person elected by the directors to be chairman of their meetings and includes a person who, though not so elected, holds any office (however designated) which in accordance with the company's constitution carries with it functions substantially similar to those discharged by a person so elected.

(2) If one person has been chairman throughout the financial year, there shall be shown his emoluments, unless his duties as chairman were wholly or mainly discharged outside the United Kingdom.

(3) Otherwise, there shall be shown with respect to each person who has been chairman during the year his emoluments so far as attributable to the period during which he was chairman, unless his duties as chairman were wholly or mainly discharged outside the United Kingdom.

25.—(1) This paragraph applies as respect the emoluments of directors.

(2) With respect to all the directors (other than any who discharged their duties as such wholly or mainly outside the United Kingdom), there shall be shown—

- (a) the number (if any) who had no emoluments or whose several emoluments amounted to not more than £5,000; and  
(b) by reference to each pair of adjacent points on a scale whereon the lowest point is £5,000 and the succeeding ones are successive integral multiples of £5,000 the number (if any) whose several emoluments exceeded the lower point but did not exceed the higher.

(3) If, of the directors (other than any who discharged their duties as such wholly or mainly outside the United Kingdom), the emoluments of one only exceed the relevant amount, his emoluments shall also be shown.

(4) If, of the directors (other than any who discharged their duties as such wholly or mainly outside the United Kingdom), the emoluments of each of two or more exceed the relevant amount, the emoluments of him (or them, in the case of equality) who had the greater or, as the case may be, the greatest shall also be shown.

(5) "The relevant amount"—

- (a) if one person has been chairman throughout the year, means the amount of his emoluments; and  
(b) otherwise, means an amount equal to the aggregate of the emoluments, so far as attributable to the period during which he was chairman, of each person who has been chairman during the year.



26. There shall under paragraphs 24 and 25 be brought into account as emoluments of a person all such amounts (other than contributions paid in respect of him under a pension scheme) as in his case are to be included in the amount shown under paragraph 22.

*Emoluments waived*

27.—(1) There shall be shown—

- (a) the number of directors who have waived rights to receive emoluments which, but for the waiver, would have fallen to be included in the amount shown under paragraph 22, and
- (b) the aggregate amount of those emoluments.

(2) For these purposes—

- (a) it is assumed that a sum not receivable in respect of a period would have been paid at the time at which it was due to be paid,
- (b) a sum not so receivable that was payable only on demand, being a sum the right to receive which has been waived, is deemed to have been due to be paid at the time of the waiver.

*Pensions of directors and past directors*

28.—(1) There shall be shown the aggregate amount of directors' or past directors' pensions.

(2) This amount does not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions under it are substantially adequate for the maintenance of the scheme; but, subject to this, it includes any pension paid or receivable in respect of any such services of a director or past director as are mentioned in paragraph 22(2), whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person.

(3) The amount shown shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions.

*Compensation to directors for loss of office*

29.—(1) There shall be shown the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) This amount—

- (a) includes any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of it, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary of the company; and
- (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices.

(3) References to compensation for loss of office include sums paid as consideration for or in connection with a person's retirement from office.

*Supplementary*

30.—(1) The following applies with respect to the amounts to be shown under paragraphs 22, 28 and 29.

(2) The amount in each case includes all relevant sums paid by or receivable from—

- (a) the company; and
- (b) the company's subsidiaries; and
- (c) any other person.

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of Articles 322 and 323 (duty of directors to make disclosure on company takeover; consequence of non-compliance), to past or present members of the company or any of its subsidiaries or any class of those members.

(3) The amount to be shown under paragraph 29 shall distinguish between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

31.—(1) The amounts to be shown for any financial year under paragraphs 22, 28 and 29 are the sums receivable in respect of that year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.

(2) But where—

- (a) any sums are not shown in a note to the accounts for the relevant financial year on the ground that the person receiving them is liable to account for them as mentioned in paragraph 30(2), but the liability is thereafter wholly or partly released or is not enforced within a period of 2 years; or
- (b) any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year,

those sums shall, to the extent to which the liability is released or not enforced or they are charged as aforesaid (as the case may be), be shown in a note to the first accounts in which it is practicable to show them and shall be distinguished from the amounts to be shown apart from this provision.

32. Where it is necessary to do so for the purpose of making any distinction required by paragraphs 28 to 31 in an amount to be shown in compliance with this Part, the directors may apportion any payments between the matters in respect of which these have been paid or are receivable in such manner as they think appropriate.

*Interpretation*

33.—(1) This paragraph applies for the interpretation of paragraphs 22 to 32.

(2) A reference to the company's subsidiary—

- (a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination (direct or indirect) of any other body corporate, includes (subject to head (b)) that body corporate, whether or not it is or was in fact the company's subsidiary, and
- (b) for the purposes of paragraphs 22 to 28 (including any provision of this Part referring to paragraph 22) is to a subsidiary at the time the services

were rendered, and for the purposes of paragraph 29 to a subsidiary immediately before the loss of office as director.

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(3) The following definitions apply—

- (a) "pension" includes any superannuation allowance, superannuation gratuity or similar payment,
- (b) "pension scheme" means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and
- (c) "contribution", in relation to a pension scheme, means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

*Supplementary*

34. This Part requires information to be given only so far as it is contained in the company's books and papers or the company has the right to obtain it from the persons concerned.

PART VI

PARTICULARS RELATING TO NUMBER OF EMPLOYEES REMUNERATED  
AT HIGHER RATES

35.—(1) There shall be shown by reference to each pair of adjacent points on a scale whereon the lowest point is £30,000 and the succeeding ones are successive integral multiples of £5,000 beginning with that in the case of which the multiplier is 7, the number (if any) of persons in the company's employment whose several emoluments exceeded the lower point but did not exceed the higher.

(2) The persons whose emoluments are to be taken into account for this purpose do not include—

- (a) directors of the company; or
- (b) persons (other than directors of the company) who—
  - (i) if employed by the company throughout the financial year, worked wholly or mainly during that year outside the United Kingdom, or
  - (ii) if employed by the company for part only of that year, worked wholly or mainly during that part outside the United Kingdom.

36.—(1) For these purposes, a person's emoluments include any paid to or receivable by him from the company, the company's subsidiaries and any other person in respect of his services as a person in the employment of the company or a subsidiary of it or as a director of a subsidiary of the company (except sums to be accounted for to the company or any of its subsidiaries).

(2) "Emoluments" here includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to United Kingdom income tax, and the estimated money value of any other benefits received by a person otherwise than in cash.

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PART VI

(3) The amounts to be brought into account for the purpose of complying with paragraph 35 are the sums receivable in respect of the financial year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.

(4) But where—

- (a) any sums are not brought into account for the financial year on the ground that the person receiving them is liable to account for them as mentioned in sub-paragraph (1), but the liability is wholly or partly released or is not enforced within a period of 2 years; or
- (b) any sums paid to a person by way of expenses allowance are charged to United Kingdom income tax after the end of the financial year,

those sums shall, to the extent to which the liability is released or not enforced or they are charged as aforesaid (as the case may be), be brought into account for the purpose of complying with paragraph 35 on the first occasion on which it is practicable to do so.

37. References in paragraph 36 to a company's subsidiary—

- (a) in relation to a person who is or was, while employed by the company a director, by virtue of the company's nomination (direct or indirect), of any other body corporate, include that body corporate (but subject to sub-paragraph (b)), whether or not it is or was in fact the company's subsidiary; and
- (b) are to be taken as referring to a subsidiary at the time the services were rendered.

Articles 240, 241, 242

**SCHEDULE 6**

**PARTICULARS IN COMPANY ACCOUNTS OF LOAN AND OTHER  
TRANSACTIONS FAVOURING DIRECTORS AND OFFICERS**

**PART I**

**MATTERS TO BE DISCLOSED UNDER ARTICLE 240**

1. Group accounts shall contain the particulars required by this Schedule of—

- (a) any transaction or arrangement of a kind described in Article 338 entered into by the company or by a subsidiary of the company for a person who at any time during the financial year was a director of the company or its holding company, or was connected with such a director;
- (b) an agreement by the company or by a subsidiary of the company to enter into any such transaction or arrangement for a person who was at any time during the financial year a director of the company or its holding company, or was connected with such a director; and
- (c) any other transaction or arrangement with the company or a subsidiary of it in which a person who at any time during the financial year was a director of the company or its holding company had, directly or indirectly, a material interest.

2. The accounts prepared by a company other than a holding company shall contain the particulars required by this Schedule of—

- (a) any transaction or arrangement of a kind described in Article 338 entered into by the company for a person who at any time during the

financial year was a director of it or of its holding company or was connected with such a director;

- (b) an agreement by the company to enter into any such transaction or arrangement for a person who at any time during the financial year was a director of the company or its holding company or was connected with such a director; and
- (c) any other transaction or arrangement with the company in which a person who at any time during the financial year was a director of the company or of its holding company had, directly or indirectly, a material interest.

3.—(1) For the purposes of paragraphs 1(c) and 2(c), a transaction or arrangement between a company and a director of it or of its holding company, or a person connected with such a director, is to be treated (if it would not otherwise be so) as a transaction, arrangement or agreement in which that director is interested.

(2) An interest in such a transaction or arrangement is not “material” for the purposes of paragraphs 1(c) and 2(c) if in the board’s opinion it is not so; but this is without prejudice to the question whether or not such an interest is material in a case where the board have not considered the matter.

“The board” here means the directors of the company preparing the accounts, or a majority of those directors, but excluding in either case the director whose interest it is.

4. Paragraphs 1 and 2 do not apply, for the purposes of accounts prepared by a company which is, or is the holding company of, a recognised bank in relation to a transaction or arrangement of a kind described in Article 338 or an agreement to enter into such a transaction or arrangement, to which that recognised bank is a party.

5. Paragraphs 1 and 2 do not apply in relation to the following transactions, arrangements and agreements—

- (a) a transaction, arrangement or agreement between one company and another in which a director of the former or of its subsidiary or holding company is interested only by virtue of his being a director of the latter;
- (b) a contract of service between a company and one of its directors or a director of its holding company, or between a director of a company and any of that company’s subsidiaries;
- (c) a transaction, arrangement or agreement which was not entered into during the financial year and which did not subsist at any time during that year.

6. Paragraphs 1 and 2 apply whether or not—

- (a) the transaction or arrangement was prohibited by Article 338;
- (b) the person for whom it was made was a director of the company or was connected with a director of it at the time it was made;
- (c) in the case of a transaction or arrangement made by a company which at any time during a financial year is a subsidiary of another company, it was a subsidiary of that other company at the time the transaction or arrangement was made.

7. Neither paragraph 1(c) nor paragraph 2(c) applies in relation to any transaction or arrangement if—

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- (a) each party to the transaction or arrangement which is a member of the same group of companies (meaning a holding company and its subsidiaries) as the company entered into the transaction or arrangement in the ordinary course of business, and
- (b) the terms of the transaction or arrangement are not less favourable to any such party than it would be reasonable to expect if the interest mentioned in either of those paragraphs had not been an interest of a person who was a director of the company or of its holding company.

8. Neither paragraph 1(c) nor paragraph 2(c) applies in relation to any transaction or arrangement if—

- (a) the company is a member of a group of companies (meaning a holding company and its subsidiaries), and
- (b) either the company is a wholly-owned subsidiary or no body corporate (other than the company or a subsidiary of the company) which is a member of the group of companies which includes the company's ultimate holding company was a party to the transaction or arrangement, and
- (c) the director in question was at some time during the relevant period associated with the company, and
- (d) the material interest of the director in question in the transaction or arrangement would not have arisen if he had not been associated with the company at any time during the relevant period.

*The particulars required by this Part*

9.—(1) Subject to paragraph 10, the particulars required by this Part are those of the principal terms of the transaction, arrangement or agreement.

(2) Without prejudice to the generality of sub-paragraph (1), the following particulars are required—

- (a) a statement of the fact either that the transaction, arrangement or agreement was made or subsisted (as the case may be) during the financial year;
- (b) the name of the person for whom it was made and, where that person is or was connected with a director of the company or of its holding company, the name of that director;
- (c) in a case where paragraph 1(c) or 2(c) applies, the name of the director with the material interest and the nature of that interest;
- (d) in the case of a loan or an agreement for a loan or an arrangement within Article 338(6) or (7) relating to a loan—
  - (i) the amount of the liability of the person to whom the loan was or was agreed to be made, in respect of principal and interest, at the beginning and at the end of the financial year;
  - (ii) the maximum amount of that liability during that year;
  - (iii) the amount of any interest which, having fallen due, has not been paid; and
  - (iv) the amount of any provision (within the meaning of Schedule 4) made in respect of any failure or anticipated failure by the borrower to repay the whole or part of the loan or to pay the whole or part of any interest on it;
- (e) in the case of a guarantee or security or an arrangement within Article 338(6) relating to a guarantee or security—

- (i) the amount for which the company (or its subsidiary) was liable under the guarantee or in respect of the security both at the beginning and at the end of the financial year;
- (ii) the maximum amount for which the company (or its subsidiary) may become so liable; and
- (iii) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee or discharging the security (including any loss incurred by reason of the enforcement of the guarantee or security); and
- (f) in the case of any transaction, arrangement or agreement, other than those mentioned in heads (d) and (e) the value of the transaction or arrangement or (as the case may be) the value of the transaction or arrangement to which the agreement relates.

10. In paragraph 9(2), heads (c) to (f) do not apply in the case of a loan or quasi-loan made or agreed to be made by a company to or for a body corporate which is either—

- (a) a body corporate of which that company is a wholly-owned subsidiary, or
- (b) a wholly-owned subsidiary of a body corporate of which that company is a wholly-owned subsidiary, or
- (c) a wholly-owned subsidiary of that company,

if particulars of that loan, quasi-loan or agreement for it would not have been required to be included in that company's annual accounts if the first-mentioned body corporate had not been associated with a director of that company at any time during the relevant period.

*Transactions excluded from Article 240*

11.—(1) In relation to a company's accounts for a financial year, compliance with this Part is not required in the case of transactions of a kind mentioned in sub-paragraph (2) which are made by the company or a subsidiary of it for a person who at any time during that financial year was a director of the company or of its holding company, or was connected with such a director, if the aggregate of the values of each transaction, arrangement or agreement so made for that director or any person connected with him, less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made has been reduced, did not at any time during the financial year exceed £5,000.

(2) The transactions in question are—

- (a) credit transactions,
- (b) guarantees provided or securities entered into in connection with credit transactions,
- (c) arrangements within Article 338 (6) or (7) relating to credit transactions, and
- (d) agreements to enter into credit transactions.

12. In relation to a company's accounts for a financial year, compliance with this Part is not required by virtue of paragraph 1(c) or 2(c) in the case of any transaction or arrangement with a company or any of its subsidiaries in which a director of the company or its holding company had, directly or indirectly, a material interest if—

- (a) the value of each transaction or arrangement within paragraph 1(c) or 2(c) (as the case may be) in which that director had (directly or

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indirectly) a material interest and which was made after the commencement of the financial year with the company or any of its subsidiaries, and

- (b) the value of each such transaction or arrangement which was made before the commencement of the financial year less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made have been reduced,

did not at any time during the financial year exceed in the aggregate £1,000 or, if more, did not exceed £5,000 or one per cent. of the value of the net assets of the company preparing the accounts in question as at the end of the financial year, whichever is the less.

For this purpose a company's net assets are the aggregate of its assets less the aggregate of its liabilities ("liabilities" to include any provision for liabilities or charges within paragraph 88 of Schedule 4). -

13. Article 353 (power of Department to alter sums by order subject to negative resolution) applies as if the money sums specified in paragraph 11 or 12 were specified in Part XI of this Order.

*Interpretation*

14. The following provisions apply for the purposes of this Part—

- (a) Article 339(2), (5) and (7), as regards the meaning of "guarantee", "recognised bank" and "credit transaction";
- (b) Article 339(8), as to the interpretation of references to a transaction or arrangement being made "for" a person;
- (c) Article 348, in assigning values to transactions and arrangements, and
- (d) Article 354, as to the interpretation of references to a person being "connected with" a director of a company.

**PART II**

**MATTERS TO BE DISCLOSED UNDER ARTICLE 241**

15. This Part applies in relation to the following classes of transactions, arrangements and agreements—

- (a) loans, guarantees and securities relating to loans, arrangements of a kind described in paragraph (6) or (7) of Article 338 relating to loans and agreements to enter into any of the foregoing transactions and arrangements;
- (b) quasi-loans, guarantees and securities relating to quasi-loans, arrangements of a kind described in either of those paragraphs relating to quasi-loans and agreements to enter into any of the foregoing transactions and arrangements;
- (c) credit transactions, guarantees and securities relating to credit transactions, arrangements of a kind described in either of those paragraphs relating to credit transactions and agreements to enter into any of the foregoing transactions and arrangements.

16.—(1) To comply with this Part, the accounts must contain a statement, in relation to transactions, arrangements and agreements made as mentioned in Article 241(1), of—



- (a) the aggregate amounts outstanding at the end of the financial year under transactions, arrangements and agreements within sub-paragraphs (a), (b) and (c) respectively of paragraph 15, and
- (b) the numbers of officers for whom the transactions, arrangements and agreements falling within each of those sub-paragraphs were made.

(2) This paragraph does not apply to transactions, arrangements and agreements made by the company or any of its subsidiaries for an officer of the company if the aggregate amount outstanding at the end of the financial year under the transactions, arrangements and agreements so made for that officer does not exceed £2,500.

(3) Article 353 (power of Department to alter money sums by order subject to negative resolution) applies as if the money sum specified in this paragraph were specified in Part XI of this Order.

17. The following provisions apply for the purposes of this Part—

- (a) Article 339(2), (3), (5) and (7), as regards the meaning of "guarantee", "quasi-loan", "recognised bank" and "credit transaction", and
- (b) Article 339(8), as to the interpretation of references to a transaction or arrangement being made "for" a person;

and "amount outstanding" means the amount of the outstanding liabilities of the person for whom the transaction, arrangement or agreement was made or, in the case of a guarantee or security, the amount guaranteed or secured.

### PART III

#### MATTERS TO BE DISCLOSED UNDER ARTICLE 242 (RECOGNISED BANKS)

18. This Part applies in relation to the same classes of transactions, arrangements and agreements as does Part II.

19. To comply with this Part, the accounts must contain a statement, in relation to such transactions, arrangements and agreements made as mentioned in Article 242(1) of—

- (a) the aggregate amounts outstanding at the end of the financial year under transactions, arrangements and agreements within sub-paragraphs (a), (b) and (c) respectively of paragraph 15, and
- (b) the numbers of persons for whom the transactions, arrangements and agreements falling within each of those sub-paragraphs were made.

20. For the purposes of the application of paragraph 19 in relation to loans and quasi-loans made by a company to persons connected with a person who at any time is a director of the company or of its holding company, a company which a person does not control is not connected with him.

21. The following provisions apply for the purposes of this Part—

- (a) Article 339(3), as regards the meaning of "quasi-loan";
- (b) Article 339(8) as to the interpretation of references to a transaction or arrangement being made "for" a person; and
- (c) Article 354, as to the interpretation of references to a person being connected with a director, or to a director controlling a company;

and "amount outstanding" means the amount of the outstanding liabilities of the person for whom the transaction, arrangement or agreement was made or, in the case of a guarantee or security, the amount guaranteed or secured.

SCHEDULE 7

MATTERS TO BE DEALT WITH IN DIRECTORS' REPORT

PART I

MATTERS OF A GENERAL NATURE

*Asset values*

1.—(1) If significant changes in the fixed assets of the company or of any of its subsidiaries have occurred in the financial year, the report shall contain particulars of the changes.

(2) If, in the case of such of those assets as consist in interests in land, their market value (as at the end of the financial year) differs substantially from the amount at which they are included in the balance sheet, and the difference is, in the directors' opinion, of such significance as to require that the attention of members of the company or of holders of its debentures should be drawn to it, the report shall indicate the difference with such degree of precision as is practicable.

*Directors' interests*

2.—(1) The report shall state the following, with respect to each person who, at the end of the financial year, was a director of the company—

(a) whether or not, according to the register kept by the company for the purposes of Articles 332 to 336 (director's obligation to notify his interests in the company and companies in the same group), he was at the end of that year interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;

(b) if he was so interested—

(i) the number and amount of shares in and debentures of each body (specifying it) in which, according to that register, he was then interested,

(ii) whether or not (according to that register) he was, at the beginning of that year (or, if he was not then a director, when he became one), interested in shares in, or debentures of, the company or any other such body corporate, and

(iii) if he was, the number and amount of shares in and debentures of each body (specifying it) in which, according to that register, he was interested at the beginning of the financial year or (as the case may be) when he became a director.

(2) An interest in shares or debentures which, under Articles 332 to 336, falls to be treated as being the interest of a director is so treated for the purposes of this paragraph; and the references in sub-paragraph (1) to the time when a person became a director, in the case of a person who became a director on more than one occasion, is to the time when he first became a director.

(3) The particulars required by this paragraph may be given by way of notes to the company's accounts in respect of the financial year, instead of being stated in the directors' report.

*Political and charitable gifts*

3.—(1) The following applies if the company (not being the wholly-owned subsidiary of a company incorporated in Northern Ireland) has in the financial year given money for political purposes or charitable purposes or both.

(2) If the money given exceeded £200 in amount, there shall be contained in the directors' report for the year—

- (a) in the case of each of the purposes for which money has been given, a statement of the amount of money given for that purpose, and
- (b) in the case of political purposes for which money has been given, the following particulars (so far as applicable)—
  - (i) the name of each person to whom money has been given for those purposes exceeding £200 in amount and the amount of money given,
  - (ii) if money exceeding £200 in amount has been given by way of donation or subscription to a political party, the identity of the party and the amount of money given.

4.—(1) Paragraph 3 does not apply to a company which, at the end of the financial year, has subsidiaries which have, in that year, given money as mentioned in that paragraph, but is not itself the wholly-owned subsidiary of a company incorporated in Northern Ireland.

(2) But in such a case there shall (if the amount of money so given in that year by the company and the subsidiaries between them exceeds £200) be contained in the directors' report for the year—

- (a) in the case of each of the purposes for which money has been given by the company and the subsidiaries between them, a statement of the amount of money given for that purpose, and
- (b) in the case of political purposes for which money has been given, the like particulars (so far as applicable) as are required by paragraph 3.

5.—(1) This paragraph applies for the interpretation of paragraphs 3 and 4.

(2) A company is to be treated as giving money for political purposes if, directly or indirectly—

- (a) it gives a donation or subscription to a political party of the United Kingdom or any part of it; or
- (b) it gives a donation or subscription to a person who, to the company's knowledge, is carrying on, or proposing to carry on, any activities which can, at the time at which the donation or subscription was given, reasonably be regarded as likely to affect public support for such a political party as is mentioned in head (a).

(3) Money given for charitable purposes to a person who, when it was given, was ordinarily resident outside the United Kingdom is to be left out of account.

(4) "Charitable purposes" means purposes which are exclusively charitable.

*Miscellaneous*

6. The directors' report shall contain—

- (a) particulars of any important events affecting the company or any of its subsidiaries which have occurred since the end of the financial year,
- (b) an indication of likely future developments in the business of the company and of its subsidiaries, and

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- (c) an indication of the activities (if any) of the company and its subsidiaries in the field of research and development.

**PART II**

**DISCLOSURE REQUIRED BY COMPANY ACQUIRING  
ITS OWN SHARES, ETC.**

7. This Part applies where shares in a company—
- (a) are purchased by the company or are acquired by it by forfeiture or surrender in lieu of forfeiture, or in pursuance of Article 153(3) (acquisition of own shares by limited company),
  - (b) are acquired by another person in circumstances where Article 156(1) (c) or (d) applies (acquisition by company's nominee, or by another with company financial assistance, the company having a beneficial interest), or
  - (c) are made subject to a lien or other charge taken (whether expressly or otherwise) by the company and permitted by Article 160(2) or (4), or Article 8(3) of the Consequential Provisions Order (exceptions from general rule against a company having a lien or charge on its own shares).
8. The directors' report with respect to a financial year shall state—
- (a) the number and nominal value of the shares so purchased, the aggregate amount of the consideration paid by the company for such shares and the reasons for their purchase;
  - (b) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances and so charged respectively during the financial year;
  - (c) the maximum number and nominal value of shares which, having been so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) are held at any time by the company or that other person during that year;
  - (d) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) which are disposed of by the company or that other person or cancelled by the company during that year;
  - (e) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding subparagraphs, the percentage of the called-up share capital which shares of that description represent;
  - (f) where any of the shares have been so charged, the amount of the charge in each case; and
  - (g) where any of the shares have been disposed of by the company or the person who acquired them in such circumstances for money or money's worth, the amount or value of the consideration in each case.

PART III

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PART III

DISCLOSURE CONCERNING EMPLOYMENT, ETC.  
OF DISABLED PERSONS

9.—(1) This Part applies to the directors' report where the average number of persons employed by the company in each week during the financial year exceeded 250.

(2) That average number is the quotient derived by dividing, by the number of weeks in the financial year, the number derived by ascertaining, in relation to each of those weeks, the number of persons who, under contracts of service, were employed in the week (whether throughout it or not) by the company, and adding up the numbers ascertained.

(3) The directors' report shall in that case contain a statement describing such policy as the company has applied during the financial year—

- (a) for giving full and fair consideration to applications for employment by the company made by disabled persons, having regard to their particular aptitudes and abilities,
- (b) for continuing the employment of, and for arranging appropriate training for, employees of the company who have become disabled persons during the period when they were employed by the company, and
- (c) otherwise for the training, career development and promotion of disabled persons employed by the company.

(4) In this Part—

- (a) "employment" means employment other than employment to work wholly or mainly outside the United Kingdom, and
- (b) "disabled person" means a disabled person within the meaning of the Disabled Persons (Employment) Act (Northern Ireland) 1945.

1945 c. 6 (N.I.)

PART IV

HEALTH, SAFETY AND WELFARE AT WORK  
OF COMPANY'S EMPLOYEES

10.—(1) In the case of companies of such classes as may be prescribed by regulations made by the Department, the directors' report shall contain such information as may be prescribed about the arrangements in force in the financial year for securing the health, safety and welfare at work of employees of the company and its subsidiaries, and for protecting other persons against risks to health or safety arising out of or in connection with the activities at work of those employees.

(2) Regulations under this Part may—

- (a) enable any requirements of the regulations to be dispensed with or modified in particular cases by any specified person or by any person authorised in that behalf by a specified authority,
- (b) contain such transitional provisions as the Department thinks necessary or expedient in connection with any provision made by the regulations.

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(3) Any expression used in sub-paragraph (1) and in Part II of the Health and Safety at Work (Northern Ireland) Order 1978 has the same meaning here as it has in that Part of that Order; Article 3(3) of that Order applies for interpreting that sub-paragraph; and in sub-paragraph (2) "specified" means specified in regulations made under that sub-paragraph.

Articles 255, 257, 258,  
261, 262

**SCHEDULE 8**

**MODIFIED ACCOUNTS OF COMPANIES QUALIFYING  
AS SMALL OR MEDIUM SIZED**

**PART I**

**MODIFIED INDIVIDUAL ACCOUNTS**

*Introductory*

1. In this Part—

- (a) paragraphs 2 to 6 relate to a company's individual accounts modified as for a small company,
- (b) paragraphs 7 and 8 relate to a company's individual accounts modified as for a medium-sized company, and
- (c) paragraphs 9 to 11 relate to both cases.

*Accounts modified as for a small company*

2.—(1) In respect of the relevant financial year, there may be delivered a copy of a modified balance sheet, instead of the full balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full balance sheet, showing only those items to which a letter or Roman numeral is assigned in the balance sheet format adopted under Schedule 4, Part I, but in other respects corresponding to the full balance sheet.

(3) The copy of the modified balance sheet shall be signed as required by Article 246.

3. A copy of the company's profit and loss account need not be delivered, nor a copy of the directors' report otherwise required by Article 249.

4. The information required by Parts V and VI of Schedule 5 need not be given.

5. The information required by Schedule 4 to be given in notes to the accounts need not be given, with the exception of any information required by the following provisions of that Schedule—

- paragraph 36 (accounting policies),
- paragraph 38 (share capital),
- paragraph 39 (particulars of allotments),
- paragraph 48(1) and (4) (particulars of debts),
- paragraph 58(1) (basis of translation of foreign currency amounts into sterling), and
- paragraph 58(2) (corresponding amounts for preceding financial year);

and the reference here to sub-paragraph (2) of paragraph 58 includes that sub-paragraph as applied to any item stated in a note to the company's accounts, whether by virtue of a requirement of Schedule 4 or under any other provision of this Order.

6. If a modified balance sheet is delivered, there shall be disclosed in it (or in a note to the company's accounts delivered)—

- (a) the aggregate of the amounts required by note (5) of the notes on the balance sheet formats set out in Schedule 4, Part I, to be shown separately for each item included under debtors (amounts falling due after one year), and
- (b) the aggregate of the amounts required by note (13) of those notes to be shown separately for each item included under creditors in Format 2 (amounts falling due within one year or after more than one year).

*Accounts modified as for a medium-sized company*

7.—(1) There may be delivered a copy of a modified profit and loss account, instead of the company's full profit and loss account (that is, the profit and loss account prepared as under Article 235).

(2) The modified profit and loss account shall, save for one exception, correspond to the full profit and loss account; and that exception is the combination as one item, under the heading "gross profit or loss", of the following items listed in the profit and loss account formats set out in Schedule 4, Part I—

- Items 1, 2, 3 and 6 in Format 1;
- Items 1 to 5 in Format 2;
- Items A.1, B.1 and B.2 in Format 3; and
- Items A.1, A.2 and B.1 to B.4 in Format 4.

8. The information required by paragraph 55 of Schedule 4 (particulars of turnover) need not be given.

*Both cases*

9. The company's balance sheet shall contain a statement by the directors that—

- (a) they rely on Articles 255 to 257 as entitling them to deliver modified accounts, and
- (b) they do so on the ground that the company is entitled to the benefit of those Articles as a small or (as the case may be) a medium-sized company;

and the statement shall appear in the balance sheet immediately above the signatures of the directors.

10.—(1) The accounts delivered shall be accompanied by a special report of the auditors stating that in their opinion—

- (a) the directors are entitled to deliver modified accounts in respect of the financial year, as claimed in the directors' statement, and
- (b) any accounts comprised in the documents delivered as modified accounts are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors' report under Article 244 need not be delivered; but the full text of it shall be reproduced in the special report under this paragraph.

(3) If the directors propose to rely on Articles 255 to 257 as entitling them to deliver modified accounts, it is the auditors' duty to provide them with a report stating whether in their opinion the directors are so entitled, and whether the

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PART I

documents to be delivered as modified accounts are properly prepared in accordance with this Order.

11. Subject to paragraphs 9 and 10, where the directors rely on Articles 255 to 257 in delivering any documents, and—

- (a) the company is entitled to the benefit of those Articles on the ground claimed by the directors in their statement under paragraph 9, and
- (b) the accounts comprised in the documents delivered as modified accounts are properly prepared in accordance with this Schedule,

then Article 249(3) has effect as if any document which by virtue of this Part is included in or omitted from the documents delivered as modified accounts were (or, as the case may be, were not) required by this Order to be comprised in the company's accounts in respect of the financial year.

## PART II

### MODIFIED GROUP ACCOUNTS (IN CONSOLIDATED FORM)

#### *Introductory*

12. In this Part—

- (a) paragraphs 13 to 17 relate to modified accounts for a small group, and
- (b) paragraphs 18 and 19 relate to modified accounts for a medium-sized group.

#### *Small groups*

13.—(1) In respect of the relevant financial year, there may be delivered a copy of a modified balance sheet, instead of the full consolidated balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full consolidated balance sheet, showing only those items to which a letter or Roman numeral is assigned in the balance sheet format adopted under Schedule 4, Part I, but in other respects corresponding to the full consolidated balance sheet.

14. A copy of the profit and loss account need not be delivered, nor a copy of the directors' report otherwise required by Article 249.

15. The information required by Schedule 4 to be given in notes to group accounts need not be given, with the exception of any information required by provisions of that Schedule listed in paragraph 5.

16. There shall be disclosed in the modified balance sheet, or in a note to the group accounts delivered, aggregate amounts corresponding to those specified in paragraph 6.

17. The information required by Parts V and VI of Schedule 5 need not be given.

#### *Medium-sized groups*

18.—(1) There may be delivered a copy of a modified profit and loss account, instead of a full consolidated profit and loss account prepared as under Article 237.

(2) The modified profit and loss account shall, save for one exception, correspond to the full consolidated profit and loss account; and that exception is the combination as one item, under the heading "gross profit or loss", of the items listed in the profit and loss account formats set out in Schedule 4, Part I, which are specified in paragraph 7(2).



19. The information required by paragraph 55 of Schedule 4 (particulars of turnover) need not be given.

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PART III

MODIFIED GROUP ACCOUNTS (CONSOLIDATED OR OTHER)

20. If modified group accounts are delivered, paragraphs 21 to 23 apply.

21. The directors' statement required by paragraph 9 to be contained in the balance sheet shall include a statement that the documents delivered include modified group accounts, in reliance on Article 258.

22.—(1) The auditors' special report under paragraph 10 shall include a statement that in their opinion—

- (a) the directors are entitled to deliver modified group accounts, as claimed in their statement in the balance sheet, and
- (b) any accounts comprised in the documents delivered as modified group accounts are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors' report under Article 244 need not be delivered; but the full text of it shall be reproduced in the special report under paragraph 10.

(3) If the directors propose to rely on Article 258 as entitling them to deliver modified group accounts, it is the auditors' duty to provide them with a report stating whether in their opinion the directors are so entitled, and whether the documents to be delivered as modified group accounts are properly prepared in accordance with this Schedule.

23. Subject to paragraphs 21 and 22, where the directors rely on Article 258 in delivering any documents, and

- (a) the company is entitled to the benefit of that Article on the ground claimed by the directors in their statement in the balance sheet, and
- (b) the accounts comprised in the documents delivered as modified accounts are properly prepared in accordance with this Schedule,

then Article 249(3) has effect as if any document which by virtue of this Schedule is included in or omitted from the documents delivered as modified group accounts were (or, as the case may be, were not) required by this Order to be comprised in the company's accounts in respect of the financial year.

SCHEDULE 9

Article 266

FORM AND CONTENT OF SPECIAL CATEGORY ACCOUNTS

*Preliminary*

1. Paragraphs 2 to 13 apply to the balance sheet and 14 to 18 to the profit and loss account, and are subject to the exceptions and modifications provided for by Part II in the case of a holding or subsidiary company and by Part III in the case of companies of the classes there mentioned.

GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS  
ACCOUNT

*Balance sheet*

2. The authorised share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified—

- (a) any part of the issued capital that consists of redeemable shares, the earliest and latest dates on which the company has power to redeem those shares, whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or of the shareholder and whether any (and, if so, what) premium is payable on redemption;
- (b) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;
- (c) the amount of the share premium account;
- (d) particulars of any redeemed debentures which the company has power to re-issue.

3. There shall be stated under separate headings, so far as they are not written off—

- (a) the preliminary expenses;
- (b) any expenses incurred in connection with any issue of share capital or debentures;
- (c) any sums paid by way of commission in respect of any shares or debentures;
- (d) any sums allowed by way of discount in respect of any debentures; and
- (e) the amount of the discount allowed on any issue of shares at a discount.

4.—(1) The reserves, provisions, liabilities and assets shall be classified under headings appropriate to the company's business, so, however, that—

- (a) where the amount of any class is not material, it may be included under the same heading as some other class; and
- (b) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(2) Fixed assets, current assets and assets that are neither fixed nor current shall be separately identified.

(3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5.—(1) The method of arriving at the amount of any fixed asset shall, subject to sub-paragraph (2), be to take the difference between—

- (a) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and
- (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value;

and for the purposes of this paragraph the net amount at which any asset stood in the company's books on 1st April 1961 (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before that date cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at that date and, where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(2) Sub-paragraph (1) shall not apply—

- (a) to assets for which the figures relating to the period beginning with 1st April 1961 cannot be obtained without unreasonable expense or delay; or
- (b) to assets the replacement of which is provided for wholly or partly—
  - (i) by making provision for renewals and charging the cost of replacement against the provision so made; or
  - (ii) by charging the cost of replacement direct to revenue; or
- (c) to any listed investments or to any unlisted investments of which the value as estimated by the directors is shown either as the amount of the investments or by way of note; or
- (d) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1) there shall be shown—

- (a) the aggregate of the amounts referred to in head (a) of that sub-paragraph; and
- (b) the aggregate of the amounts referred to in head (b) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2)(b), there shall be stated—

- (a) the means by which their replacement is provided for; and
- (b) the aggregate amount of the provision (if any) made for renewals and not used.

6. In the case of unlisted investments consisting in equity share capital of other bodies corporate (other than any whose values as estimated by the directors are separately shown, either individually or collectively or as to some individually and as to the rest collectively, and are so shown either as the amount thereof, or by way of note), the matters referred to in the following sub-paragraphs shall, if not otherwise shown, be stated by way of note or in a statement or report annexed—

- (a) the aggregate amount of the company's income for the financial year that is ascribable to the investments;
- (b) the amount of the company's share before taxation, and the amount of that share after taxation, of the net aggregate amount of the profits of the bodies in which the investments are held, being profits for the several periods to which accounts sent by them during the financial year to the company related, after deducting those bodies' losses for those periods (or vice versa);
- (c) the amount of the company's share of the net aggregate amount of the undistributed profits accumulated by the bodies in which the investments are held since the time when the investments were acquired after

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- deducting the losses accumulated by them since that time (or vice versa);
- (d) the manner in which any losses incurred by the bodies mentioned in sub-paragraphs (b) and (c) have been dealt with in the company's accounts.

7. The aggregate amounts respectively of reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings, so, however, that—

- (a) this paragraph shall not require a separate statement of either of the said amounts which is not material; and
- (b) the Department may direct that a separate statement shall not be required of the amount of provisions where the Department is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

8.—(1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material)—

- (a) where the amount of the reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and
- (b) where—
- (i) the amount of the reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or
- (ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof;
- the application of the amounts derived from the difference.

(2) Where the heading showing the reserves or any of the provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the sub-headings instead of applying to the aggregate amount thereof.

9. If an amount is set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation, it shall be stated.

10.—(1) There shall be shown under separate headings—

- (a) the aggregate amounts respectively of the company's listed investments and unlisted investments;
- (b) if the amount of the goodwill and of any patents and trade marks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the said amount so shown or ascertained so far as not written off or, as the case may be, the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;

- (c) the aggregate amount of any outstanding loans made under the authority of Article 163(4)(b) or (c) or 165;
- (d) the aggregate amount of bank loans and overdrafts and the aggregate amount of loans made to the company which—
  - (i) are repayable otherwise than by instalments and fall due for repayment after the expiration of the period of 5 years beginning with the day next following the expiration of the financial year; or
  - (ii) are repayable by instalments any of which fall due for payment after the expiration of that period;not being, in either case, bank loans or overdrafts;
- (e) the aggregate amount which is recommended for distribution by way of dividend.

(2) Nothing in head (b) of sub-paragraph (1) shall be taken as requiring the amount of the goodwill, patents and trade marks to be stated otherwise than as a single item.

(3) The heading showing the amount of the listed investments shall be subdivided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a listing on a recognised stock exchange.

(4) Subject to sub-paragraph (5), in relation to each loan falling within head (d) of sub-paragraph (1) (other than a bank loan or overdraft), there shall be stated by way of note (if not otherwise stated) the terms on which it is repayable and the rate at which interest is payable thereon.

(5) If the number of loans is such that, in the opinion of the directors, compliance with sub-paragraph (4) would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms on which the loans are repayable and the rates at which interest is payable thereon.

11. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

12. Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

13.—(1) The matters referred to in sub-paragraphs (2) to (18) shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the options—

- (a) the period during which it is exercisable;
- (b) the price to be paid for shares subscribed for under it.

(3) Where shares in a public company (other than an old public company within the meaning of Article 3 of the Consequential Provisions Order) are purchased or are acquired by the company by forfeiture or surrender in lieu of forfeiture, or as expressly permitted by Article 153(3) or are acquired by another person in circumstances where sub-paragraph (c) or (d) of Article 156(1) applies or are made subject to a lien or charge taken (whether expressly or otherwise) by the company and permitted by Article 160(2) or (4) of this Order or Article 8(3) of the Consequential Provisions Order—

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- (a) the number and nominal value of the shares so purchased, the aggregate amount of the consideration paid by the company for such shares and the reasons for their purchase;
- (b) the number and nominal value of the shares so acquired by the company, acquired by another person in such circumstances and so charged respectively during the financial year;
- (c) the maximum number and nominal value of shares which, having been so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during the financial year) are held at any time by the company or that other person during that year;
- (d) the number and nominal value of shares so acquired by the company, acquired by another person in such circumstances or so charged (whether or not during that year) which are disposed of by the company or that other person or cancelled by the company during that year;
- (e) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding heads, the percentage of the called-up share capital which shares of that description represent;
- (f) where any of the shares have been so charged, the amount of the charge in each case;
- (g) where any of the shares have been disposed of by the company or the person who acquired them in such circumstances for money or money's worth, the amount or value of the consideration in each case.

(4) Any distribution made by an investment company within the meaning of Part IX of this Order which reduces the amount of its net assets to less than the aggregate of its called-up share capital and undistributable reserves.

For the purposes of this sub-paragraph, a company's net assets are the aggregate of its assets less the aggregate of its liabilities; and "undistributable reserves" has the meaning given by Article 272(3).

(5) The amount of any arrears of fixed cumulative dividends on the company's shares and the period for which the dividends or, if there is more than one class, each class of them are in arrear.

(6) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(7) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(8) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for and, where practicable, the aggregate amount or estimated amount, if it is material, of capital expenditure authorised by the directors which has not been contracted for.

(9) In the case of fixed assets under any heading whose amount is required to be arrived at in accordance with paragraph 5(1) (other than unlisted investments) and is so arrived at by reference to a valuation, the years (so far as they are known to the directors) in which the assets were severally valued and the several values, and, in the case of assets that have been valued during the financial year,

the names of the persons who valued them or particulars of their qualifications for doing so and (whichever is stated) the bases of valuation used by them.

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(10) If there are included amongst fixed assets under any heading (other than investments) assets that have been acquired during the financial year, the aggregate amount of the assets acquired as determined for the purpose of making up the balance sheet, and if during that year any fixed assets included under a heading in the balance sheet made up with respect to the immediately preceding financial year (other than investments) have been disposed of or destroyed, the aggregate amount thereof as determined for the purpose of making up that balance sheet.

(11) Of the amount of fixed assets consisting of land, how much is ascribable to land of freehold tenure and how much to land of leasehold tenure, and, of the latter, how much is ascribable to land held on long lease and how much to land held on short lease.

(12) If in the opinion of the directors any of the current assets have not a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(13) The aggregate market value of the company's listed investments where it differs from the amount of the investments as stated and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(14) If a sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation has been used during the financial year for another purpose, the amount thereof and the fact that it has been so used.

(15) If the amount carried forward for stock in trade or work in progress is material for the appreciation by its members of the company's state of affairs or of its profit or loss for the financial year, the manner in which that amount has been computed.

(16) The basis on which foreign currencies have been converted into sterling, where the amount of the assets or liabilities affected is material.

(17) The basis on which the amount, if any, set aside for United Kingdom corporation tax is computed.

(18) The corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet other than any item the amount for which is shown—

- (a) in pursuance of sub-paragraph (10), or
- (b) as an amount the source or application of which is required by paragraph 8 to be shown.

*Profit and loss account*

14.—(1) There shall be shown—

- (a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;
- (b) the amount of the interest on loans of the following kinds made to the company (whether on the security of debentures or not), namely, bank loans, overdrafts and loans which, not being bank loans or overdrafts—



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- (i) are repayable otherwise than by instalments and fall due for repayment before the expiration of the period of 5 years beginning with the day next following the expiration of the financial year; or
  - (ii) are repayable by instalments the last of which falls due for payment before the expiration of that period;
- and the amount of the interest on loans of other kinds so made (whether on the security of debentures or not);
- (c) the amount of the charge to revenue for United Kingdom corporation tax and, if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief, the amount of the charge for United Kingdom income tax, and the amount of the charge for taxation imposed outside the United Kingdom of profits, income and (so far as charged to revenue) capital gains;
  - (d) the amounts respectively set aside for redemption of share capital and for redemption of loans;
  - (e) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;
  - (f) subject to sub-paragraph (2), the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;
  - (g) the amounts respectively of income from listed investments and income from unlisted investments;
  - (h) if a substantial part of the company's revenue for the financial year consists in rents from land, the amount thereof (after deduction of ground-rents, rates and other outgoings);
  - (j) the amount, if material, charged to revenue in respect of sums payable in respect of the hire of plant and machinery; and
  - (k) the aggregate amount of the dividends paid and proposed.

(2) The Department may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with sub-paragraph (1)(f) if the Department is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

(3) If, in the case of any assets in whose case an amount is charged to revenue by way of provision for depreciation or diminution in value, an amount is also so charged by way of provision for renewal thereof, the last-mentioned amount shall be shown separately.

(4) If the amount charged to revenue by way of provision for depreciation or diminution in value of any fixed assets (other than investments) has been determined otherwise than by reference to the amount of those assets as determined for the purpose of making up the balance sheet, that fact shall be stated.

15. The amount of any charge arising in consequence of the occurrence of an event in a preceding financial year and of any credit so arising shall, if not included in a heading relating to other matters, be stated under a separate heading.



16. The amount of the remuneration of the auditors shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

17.—(1) The following matters shall be stated by way of note, if not otherwise shown.

(2) The turnover for the financial year, except in so far as it is attributable to the business of banking or discounting or to business of such other class as may be prescribed for the purposes of this sub-paragraph.

(3) If some or all of the turnover is omitted by reason of its being attributable as aforesaid, the fact that it is so omitted.

(4) The method by which turnover stated is arrived at.

(5) A company shall not be subject to the requirements of this paragraph if it is neither a holding company nor a subsidiary of another body corporate and the turnover which, apart from this sub-paragraph, would be required to be stated does not exceed £1 million.

18.—(1) The following matters shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) The basis on which the charge for United Kingdom corporation tax and United Kingdom income tax is computed.

(4) Any special circumstances which affect liability in respect of taxation of profits, income or capital gains for the financial year or liability in respect of taxation of profits, income or capital gains for succeeding financial years.

(5) The corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(6) Any material respects in which items shown in the profit and loss account are affected—

(a) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature;  
or

(b) by any change in the basis of accounting.

## PART II

### SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR SUBSIDIARY COMPANY

#### *Modifications of and additions to requirements as to company's own accounts*

19.—(1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet

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PART II

separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and—

- (a) the references in Part I to the company's investments (except those in paragraphs 13(10) and 14(4)) shall not include investments in its subsidiaries required by this sub-paragraph to be separately set out; and
- (b) paragraph 5, sub-paragraph (1)(a) of paragraph 14, and sub-paragraph (2) of paragraph 18 shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

Schedule 2 has effect for the interpretation of the reference in this sub-paragraph to a beneficial interest under a trust.

(4) Where group accounts are not submitted, there shall, subject to sub-paragraph (5), be annexed to the balance sheet a statement showing—

- (a) the reasons why subsidiaries are not dealt with in group accounts;
- (b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)—
  - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and
  - (ii) for their previous financial years since they respectively became the holding company's subsidiary;
- (c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)—
  - (i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and
  - (ii) for their other financial years since they respectively became the holding company's subsidiary;so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;
- (d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as mentioned in heads (b) and (c), and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members;

or, in so far as the information required by this sub-paragraph is not obtainable, a statement that it is not obtainable.

(5) The Department may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary sub-paragraph (4) shall not apply or shall apply only to such extent as may be provided by the direction.

(6) Heads (b) and (c) of sub-paragraph (4) shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for the purposes of those heads) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where—

- (a) the company is itself the subsidiary of another body corporate; and
- (b) the shares were acquired from that body corporate or a subsidiary of it;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

The amendment of the previous corresponding provision by Article 41(3) of the Order of 1982 (substituting "(for the purposes of those paragraphs)" for "(for that or any other purpose)") is without prejudice to any other restriction with respect to the manner in which a holding company may treat pre-acquisition profits or losses of a subsidiary in its accounts.

(7) Heads (b) and (c) of sub-paragraph (4) shall not apply where the company is a wholly-owned subsidiary of another body corporate incorporated in Northern Ireland if there is annexed to the balance sheet a statement that in the opinion of the directors of the company the aggregate value of the assets of the company consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries is not less than the aggregate of the amounts at which those assets are stated or included in the balance sheet.

(8) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries (if any) whose financial years did not end with that of the company—

- (a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and
- (b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

20.—(1) The balance sheet of a company which is a subsidiary of another body corporate, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary and the aggregate amount of indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise, and the aggregate amount of assets consisting of shares in fellow subsidiaries.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

*Consolidated accounts of holding company and subsidiaries*

21. Subject to paragraphs 22 to 26, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

22. Subject to paragraphs 23 to 26 and Part III, consolidated accounts shall, in giving the said information, comply so far as practicable with the requirements of this Order as if they were the accounts of an actual company.

23. The following provisions of this Order, namely—

- (a) Article 239 as applying Schedule 5, but only Parts II, V and VI of that Schedule, and
- (b) Articles 240 to 242 and Schedule 6, so far as relating to accounts other than group accounts,

do not by virtue of paragraphs 21 and 22 apply for the purpose of the consolidated accounts.

24. Paragraph 22 is without prejudice to any requirement of this Order which applies (otherwise than by virtue of paragraph 21 or 22) to group accounts.

25. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts—

- (a) sub-paragraphs (2) and (3) of paragraph 19 shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries; and
- (b) there shall be annexed the like statement as is required by sub-paragraph (4) of that paragraph where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

26. In relation to any subsidiary (whether or not dealt with by the consolidated accounts), whose financial year did not end with that of the company, there shall be annexed the like statement as is required by sub-paragraph (6) of paragraph 19 where there are no group accounts.

**PART III**

**EXCEPTIONS FOR CERTAIN SPECIAL CATEGORY COMPANIES**

27.—(1) The following applies to a banking company which satisfies the Department that it ought to have the benefit of this paragraph.

(2) The company shall not be subject to the requirements of Part I other than—

- (a) as respects its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to assets), paragraph 10 (except sub-paragraphs (1)(d) and (4)), paragraphs 11 and 12 and paragraph 13 (except sub-paragraphs (9), (10), (11), (13) and (14)); and
- (b) as respects its profit and loss account, those of sub-paragraph (1)(h) and (k) of paragraph 14, paragraphs 15 and 16 and sub-paragraphs (1) and (5) of paragraph 18.

(3) But, where in the company's balance sheet reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are

not stated separately, any heading stating an amount arrived at after taking into account a reserve or such a provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(4) The company's accounts shall not be deemed, by reason only of the fact that they do not comply with any requirements of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Order.

28.—(1) Subject to sub-paragraph (2), an insurance company to which Part II of the Insurance Companies Act 1982 applies shall not be subject to the following requirements of Part I, that is to say—

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- (a) as respects its balance sheet, those of paragraphs 4 to 8, sub-paragraphs (1)(a) and (3) of paragraph 10 and sub-paragraphs (6), (7) and (9) to (13) of paragraph 13;
- (b) as respects its profit and loss account, those of paragraph 14 (except sub-paragraph (1)(b), (c), (d) and (k)) and paragraph 18(2);

but, where in its balance sheet reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account a reserve or such a provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

(2) The Department may direct that any such insurance company whose business includes to a substantial extent business other than insurance business shall comply with all the requirements of Part I or such of them as may be specified in the direction and shall comply therewith as respects either the whole of its business or such part thereof as may be so specified.

(3) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any requirement of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Order.

29.—(1) A shipping company shall not be subject to the following requirements of Part I, that is to say—

- (a) as respects its balance sheet, those of paragraph 4 (except so far as it relates to assets), paragraphs 5, 7 and 8 and sub-paragraphs (9) and (10) of paragraph 13;
- (b) as respects its profit and loss account, those of sub-paragraph (1)(a), (e) and (f) and sub-paragraphs (3) and (4) of paragraph 14 and paragraph 17.

(2) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any requirements of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Order.

30. Where a company entitled to the benefit of any provision contained in this Part is a holding company, the reference in Part II to consolidated accounts complying with the requirements of this Order shall, in relation to consolidated accounts of that company, be construed as referring to those requirements in so far only—

- (a) as they apply to the individual accounts of that company, and

- (b) as they apply (otherwise than by virtue of paragraphs 21 and 22) to the group accounts prepared by that company.

**PART IV**

**SPECIAL PROVISIONS WHERE THE COMPANY HAS ENTERED INTO  
ARRANGEMENTS SUBJECT TO MERGER RELIEF**

31.—(1) Where during the financial year the company has allotted shares in consideration for the issue, transfer or cancellation of shares in another body corporate ("the other company") in circumstances where by virtue of Article 141(2) (merger relief) Article 140 did not apply to the premiums on those shares, the following information shall be given by way of a note to the company's accounts—

- (a) the name of the other company;
- (b) the number, nominal value and class of shares so allotted;
- (c) the number, nominal value and class of shares in the other company so issued, transferred or cancelled;
- (d) particulars of the accounting treatment adopted in the company's accounts (including any group accounts) in respect of such issue, transfer or cancellation; and
- (e) where the company prepares group accounts, particulars of the extent to which and manner in which the profit or loss for the year of the group which appears in those accounts is affected by any profit or loss of the other company or any of its subsidiaries which arose at any time before the allotment.

(2) Where the company has during the financial year or during either of the two financial years immediately preceding it made such an allotment of shares as is mentioned in sub-paragraph (1) and there is included in the company's consolidated profit and loss account, or if it has no such account, in its individual profit and loss account, any profit or loss (or part thereof) to which this sub-paragraph applies then the net amount of any such profit or loss (or part thereof) shall be shown in a note to the accounts together with an explanation of the transactions to which that information relates.

(3) Sub-paragraph (2) applies—

- (a) to any profit or loss realised during the financial year by the company, or any of its subsidiaries, on the disposal of any shares in the other company or of any assets which were fixed assets of the other company, or of any of its subsidiaries at the time of the allotment; and
- (b) to any part of any profit or loss realised during the financial year by the company, or any of its subsidiaries, on the disposal of any shares (not being shares in the other company), which was attributable to the fact that at the time of the disposal there were amongst the assets of the company which issued those shares, or any of its subsidiaries, such shares or assets as are described in head (a).

(4) Where in pursuance of the arrangement in question shares are allotted on different dates, the time of allotment for the purposes of sub-paragraphs (1)(e) and (3)(a) is taken to be—

- (a) if the other company becomes a subsidiary of the company as a result of the arrangement—

- (i) if the arrangement becomes binding only upon the fulfilment of a condition, the date on which that condition is fulfilled, and
  - (ii) in any other case, the date on which the other company becomes a subsidiary of the company;
- (b) if the other company is a subsidiary of the company when the arrangement is proposed, the date of the first allotment pursuant to that arrangement.

## PART V

### INTERPRETATION OF SCHEDULE

32.—(1) For the purposes of this Schedule—

- (a) “provision” shall, subject to sub-paragraph (2), mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy; and
- (b) “reserve” shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability or any sum set aside for the purpose of its being used to prevent undue fluctuations in charges for taxation;

and in this paragraph “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

- (a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets; or
- (b) any amount retained by way of providing for any known liability;

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

33. For the purposes aforesaid, “listed investment” means an investment as respects which there has been granted a listing on a recognised stock exchange, or on any stock exchange of repute outside Northern Ireland and “unlisted investment” shall be construed accordingly.

34. For the purposes aforesaid, “long lease” means a lease in the case of which the portion of the term for which it was granted remaining unexpired at the end of the financial year is not less than 50 years, “short lease” means a lease which is not a long lease and “lease” includes an agreement for a lease.

35. For the purposes aforesaid, a loan shall be deemed to fall due for repayment; and an instalment of a loan shall be deemed to fall due for payment, on the earliest date on which the lender could require repayment or, as the case may be, payment if he exercised all options and rights available to him.

**SCHEDULE 10**

**ADDITIONAL MATTERS TO BE DEALT WITH IN DIRECTORS' REPORT  
ATTACHED TO SPECIAL CATEGORY ACCOUNTS**

*Recent issues*

1.—(1) If in the financial year to which the accounts relate the company has issued any shares, the directors' report shall state the reason for making the issue, the classes of shares issued and, as respects each class of shares, the number issued and the consideration received by the company for the issue.

(2) If in that year the company has issued any debentures, the report shall state the reason for making the issue, the classes of debentures issued, and, as respects each class of debentures, the amount issued and the consideration received by the company for the issue.

*Turnover and profitability*

2. If in the course of the financial year the company (being one subject to the requirements of paragraph 17 of Schedule 9, but not being one that has subsidiaries at the end of the year and submits in respect of that year group accounts prepared as consolidated accounts) has carried on business of two or more classes (other than banking or discounting or a class prescribed for the purposes of sub-paragraph (2) of that paragraph) that, in the opinion of the directors, differ substantially from each other, there shall be contained in the directors' report a statement of—

- (a) the proportions in which the turnover for the year (so far as stated in the accounts in respect of the year in pursuance of that Schedule) is divided amongst those classes (describing them), and
- (b) as regards business of each class, the extent or approximate extent (expressed, in either case, in monetary terms) to which, in the opinion of the directors, the carrying on of business of that class contributed to, or restricted, the profit or loss of the company for that year before taxation.

3.—(1) This paragraph applies if—

- (a) the company has subsidiaries at the end of the financial year and submits in respect of that year group accounts prepared as consolidated accounts, and
- (b) the company and the subsidiaries dealt with by the accounts carried on between them in the course of the year business of two or more classes (other than banking or discounting or a class prescribed for the purposes of paragraph 17(2) of Schedule 9) that, in the opinion of the directors, differ substantially from each other.

(2) There shall be contained in the directors' report a statement of—

- (a) the proportions in which the turnover for the financial year (so far as stated in the accounts for that year in pursuance of Schedule 9) is divided amongst those classes (describing them), and
- (b) as regards business of each class, the extent or approximate extent (expressed, in either case, in monetary terms) to which, in the opinion of the directors of the company, the carrying on of business of that class contributed to, or restricted, the profit or loss for that year (before taxation) of the company and the subsidiaries dealt with by the accounts.



4. For the purposes of paragraphs 2 and 3 classes of business which, in the opinion of the directors, do not differ substantially from each other, are to be treated as one class.

*Labour force and wages paid*

5.—(1) If at the end of the financial year the company does not have subsidiaries, there shall be contained in the directors' report a statement of—

- (a) the average number of persons employed by the company in each week in the year, and
- (b) the aggregate remuneration paid or payable in respect of the year to the persons by reference to whom the number stated under head (a) is ascertained.

(2) The number to be stated under sub-paragraph (1)(a) is the quotient derived by dividing, by the number of weeks in the financial year, the number derived by ascertaining, in relation to each of those weeks, the number of persons who, under contracts of service, were employed in the week (whether throughout it or not) by the company and adding up the numbers ascertained.

6.—(1) If at the end of the financial year the company has subsidiaries, there shall be contained in the directors' report a statement of—

- (a) the average number of persons employed between them in each week in that year by the company and the subsidiaries, and
- (b) the aggregate remuneration paid or payable in respect of that year to the persons by reference to whom the number stated under head (a) is ascertained.

(2) The number to be stated under sub-paragraph (1)(a) is the quotient derived by dividing, by the number of weeks in the financial year, the number derived by ascertaining, in relation to each of those weeks, the number of persons who, under contracts of service, were employed between them in the week (whether throughout it or not) by the company and its subsidiaries and adding up the numbers ascertained.

7. The remuneration to be taken into account under paragraph 5(1)(b) and 6(1)(b) is the gross remuneration paid or payable in respect of the financial year; and for this purpose "remuneration" includes bonuses (whether payable under contract or not).

8.—(1) Paragraphs 5 and 6 are qualified as follows.

(2) Neither paragraph applies if the number that, apart from this sub-paragraph, would fall to be stated under paragraph 5(1)(a) or 6(1)(a) is less than 100.

(3) Neither paragraph applies to a company which is a wholly-owned subsidiary of a company incorporated in Northern Ireland.

(4) For the purposes of both paragraphs, no regard is to be had to any person who worked wholly or mainly outside the United Kingdom.

*General matters*

9. The directors' report shall contain particulars of any matters (other than those required to be dealt with in it by Article 269(5) and the preceding provisions of this Schedule) so far as they are material for the appreciation of the state of the company's affairs by its members, being matters the disclosure of

SCH. 10            which will not, in the opinion of the directors, be harmful to the business of the company or of any of its subsidiaries.

Article 287

## SCHEDULE 11

### MODIFICATIONS OF PART IX WHERE COMPANY'S RELEVANT ACCOUNTS ARE SPECIAL CATEGORY

1. Article 272 applies as if in paragraph (2) for the words following "the aggregate of its liabilities" there were substituted "(“liabilities” to include any provision within the meaning of Schedule 9, except to the extent that that provision is taken into account in calculating the value of any asset of the company)".

2. Article 273 applies as if—

(a) for paragraph (2) there were substituted—

“(2) In paragraph (1)(a) “liabilities” includes any provision (within the meaning of Schedule 9) except to the extent that that provision is taken into account for the purposes of that paragraph in calculating the value of any asset of the company.”, and

(b) there were added at the end of the Article—

“(7) In determining capital and revenue profits and losses, an asset which is not a fixed asset or a current asset is treated as a fixed asset.”.

3. Article 277 does not apply.

4. Article 278 applies as if—

(a) in paragraph (2) the following were substituted for sub-paragraph (b)—  
“(b) provisions (within the meaning of Schedule 9)”;

(b) in paragraph (3), for the words from “which were laid” onwards there were substituted—

“which were laid or filed in respect of the last preceding accounting reference period in respect of which accounts so prepared were laid or filed; and for this purpose accounts are laid or filed if Article 249(1) or (as the case may be) (3) has been complied with in relation to them”;  
and

(c) in paragraph (4)(b) the words “or filed” were inserted after “laid”.

5. Article 279 applies as if—

(a) in paragraph (2), immediately before sub-paragraph (a) there were inserted “except where the company is entitled to avail itself, and has availed itself, of any of the provisions of Part III of Schedule 9”, and

(b) at the end of paragraph (4) there were added—

“or delivered to the registrar according as those accounts have been laid or filed”.

6. Articles 280 and 281 apply as if in Article 280(3)—

(a) for the references to Article 236 and Schedule 4 there were substituted references to Article 266 and Schedule 9, and

(b) immediately before sub-paragraph (a) there were inserted “except where the company is entitled to avail itself, and has availed itself, of any of the provisions of Part III of Schedule 9”.

7. Article 283 applies as if—

(a) for paragraph (1) there were substituted—

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“(1) For the purposes of Article 271, any provision (within the meaning of Schedule 9), other than one in respect of any diminution of value of a fixed asset appearing on a revaluation of all the fixed assets of the company, or of all its fixed assets other than goodwill, is to be treated as a realised loss.”; and

(b) “fixed assets” were defined to include any other asset which is not a current asset.

## SCHEDULE 12

Article 303

### SUPPLEMENTARY PROVISIONS IN CONNECTION WITH DISQUALIFICATION ORDERS

#### PART I

#### ORDERS UNDER ARTICLES 304 TO 307

##### *Application for order*

1. A person intending to apply for the making of an order under any of Articles 304 to 307 by the High Court shall give not less than 10 days' notice of his intention to the person against whom the order is sought; and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

2. An application to the High Court for the making of a disqualification order against any person may be made by the Department or the Official Assignee or by the liquidator or any past or present member or creditor of any company in relation to which that person has committed or is alleged to have committed an offence or other default.

##### *Hearing of application*

3. On the hearing of an application made by the Department or the Official Assignee or the liquidator the applicant shall appear and call the attention of the court to any matters which seem to it or him to be relevant, and may itself or himself give evidence or call witnesses.

##### *Application for leave under an order*

4.—(1) The court to which application must be made for leave under a disqualification order made under any of Articles 304 to 307, is the High Court.

(2) Sub-paragraph (1) applies to an application for leave to promote or form a company or to be a liquidator or a director of or otherwise take part in the management of a company or to be a receiver or manager of the property of a company.

5. On the hearing of an application for leave made by a person against whom a disqualification order has been made on the application of the Department, the Official Assignee or the liquidator, the Department, Official Assignee or liquidator shall appear and call the attention of the court to any matters which seem to it or him to be relevant, and may itself or himself give evidence or call witnesses.

*Application for order*

6.—(1) In the case of a person who is or has been a director of a company which has gone into liquidation as mentioned in Article 308(1) and is being wound up by the court, any application under that Article shall be made by the Official Assignee.

(2) In any other case an application shall be made by the Department.

7. Where the Official Assignee or the Department intends to make an application under Article 308 in respect of any person, he or it shall give not less than 10 days' notice of his or its intention to that person.

*Hearing of application*

8. On the hearing of an application under Article 308 by the Official Assignee or the Department, or of an application for leave by a person against whom an order has been made on the application of the Official Assignee or the Department—

- (a) the Official Assignee or the Department shall appear and call the attention of the court to any matters which seem to him or it to be relevant, and may give evidence or call witnesses, and
- (b) the person against whom the order is sought may appear and himself give evidence or call witnesses.

PART III

TRANSITIONAL PROVISIONS AND SAVINGS  
FROM ARTICLES 93 AND 94 OF THE ORDER OF 1982

9. Articles 304 and 306(1)(b) do not apply in relation to anything done before 1st July 1983 by a person in his capacity as liquidator of a company or as receiver or manager of a company's property.

10. Subject to paragraph 9—

- (a) Article 304 applies in a case where a person is convicted on indictment of an offence which he committed (and, in the case of a continuing offence, had ceased to commit) before 1st July 1983; but in such a case a disqualification order under that Article shall not be made for a period in excess of 5 years; and
- (b) that Article does not apply in a case where a person is convicted summarily if he had consented so to be tried before that date.

11. Subject to paragraph 9, Article 306 applies in relation to an offence committed or other thing done before 1st July 1983; but a disqualification order made on the grounds of such an offence or other thing done shall not be made for a period in excess of 5 years.

12. The powers of a court under Article 307 are not exercisable in a case where a person is convicted of an offence which he committed (and, in the case of a continuing offence, had ceased to commit) before 1st July 1983.

13. For the purposes of Articles 305(1) and 307, no account is to be taken of any offence which was committed, or any default order which was made, before 1st January 1982.

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PART III

14. An order made under Article 53 of the Order of 1978 has effect as if made under Article 305 of this Order; and an application made before 1st July 1983 for such an order is to be treated as an application for an order under Article 305.

15. The period which may be specified as the period of disqualification in an order under Article 308 may not exceed 5 years if none of the conduct to which the court has regard under paragraph (1) of that Article occurred on or after 1st July 1983.

16. Paragraph (1) of Article 308 does not apply unless at least one of the companies there mentioned has gone into liquidation on or after 1st January 1982; and the conduct to which regard may be had under that paragraph does not include conduct as director of a company that has gone into liquidation before that date.

### SCHEDULE 13

Articles 332, 333, 334,  
336, 354

#### PROVISIONS SUPPLEMENTING AND INTERPRETING ARTICLES 332 TO 336

##### PART I

##### RULES FOR INTERPRETATION OF THOSE ARTICLES AND ALSO ARTICLE 354(4) AND (5)

1.—(1) A reference to an interest in shares or debentures is to be read as including any interest of any kind whatsoever in shares or debentures.

(2) Accordingly, there are to be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

2. Where property is held on trust and any interest in shares or debentures is comprised in the property, any beneficiary of the trust who (apart from this paragraph) does not have an interest in the shares or debentures is to be taken as having such an interest; but this paragraph is without prejudice to the following provisions of this Part.

3.—(1) A person is taken to have an interest in shares or debentures if—

- (a) he enters into a contract for their purchase by him (whether for cash or other consideration), or
- (b) not being the registered holder, he is entitled to exercise any right conferred by the holding of the shares or debentures, or is entitled to control the exercise of any such right.

(2) For the purposes of sub-paragraph (1)(b), a person is taken to be entitled to exercise or control the exercise of a right conferred by the holding of shares or debentures if he—

- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
- (b) is under an obligation (whether or not so subject) the fulfilment of which would make him so entitled.

(3) A person is not by virtue of sub-paragraph (1)(b) taken to be interested in shares or debentures by reason only that he—

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- (a) has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting, or
- (b) has been appointed by a corporation to act as its representative at any meeting of a company or of any class of its members.

4. A person is taken to be interested in shares or debentures if a body corporate is interested in them and—

- (a) that body corporate or its directors are accustomed to act in accordance with his directions or instructions, or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

As this paragraph applies for the purposes of Article 354(4) and (5), “more than one-half” is substituted for “one-third or more”.

5. Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate, and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (“the effective voting power”), then, for the purposes of paragraph 4(b), the effective voting power is taken to be exercisable by that person.

As this paragraph applies for the purposes of Article 354(4) and (5), “more than one-half” is substituted for “one-third or more”.

6.—(1) A person is taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust—

- (a) he has a right to call for delivery of the shares or debentures to himself or to his order, or
- (b) he has a right to acquire an interest in shares or debentures or is under an obligation to take an interest in shares or debentures;

whether in any case the right or obligation is conditional or absolute.

(2) Rights or obligations to subscribe for shares or debentures are not to be taken, for the purposes of sub-paragraph (1), to be rights to acquire, or obligations to take, an interest in shares or debentures.

This is without prejudice to paragraph 1.

7. Persons having a joint interest are deemed each of them to have that interest.

8. It is immaterial that shares or debentures in which a person has an interest are unidentifiable.

9. So long as a person is entitled to receive, during the lifetime of himself or another, income from trust property comprising shares or debentures, an interest in the shares or debentures in reversion or remainder or (as regards Scotland) in fee, are to be disregarded.

10. A person is to be treated as uninterested in shares or debentures if, and so long as, he holds them under the law in force in any part of the United Kingdom as a bare trustee or as a custodian trustee, or under the law in force in Scotland, as a simple trustee.

11. There is to be disregarded an interest of a person subsisting by virtue of—

- (a) an authorised unit trust scheme within the meaning of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 or the Prevention of Fraud (Investments) Act 1958, or

- (b) a scheme made under section 25 of the Charities Act (Northern Ireland) 1964, section 22 of the Charities Act 1960, section 11 of the Trustee Investments Act 1961 or section 1 of the Administration of Justice Act 1965.

1964 c. 33 (N.I.)  
1960 c. 58  
1961 c. 62  
1965 c. 2

12. Delivery to a person's order of shares or debentures in fulfilment of a contract for the purchase of them by him or in satisfaction of a right of his to call for their delivery, or failure to deliver shares or debentures in accordance with the terms of such a contract or on which such a right falls to be satisfied, is deemed to constitute an event in consequence of the occurrence of which he ceases to be interested in them, and so is the lapse of a person's right to call for delivery of shares or debentures.

## PART II

### PERIODS WITHIN WHICH OBLIGATIONS IMPOSED BY ARTICLE 332 MUST BE FULFILLED

13.—(1) An obligation imposed on a person by Article 332(1) to notify an interest must, if he knows of the existence of the interest on the day on which he becomes a director, be fulfilled before the expiration of the period of 5 days beginning with the day following that day.

(2) Otherwise, the obligation must be fulfilled before the expiration of the period of 5 days beginning with the day following that on which the existence of the interest comes to his knowledge.

14.—(1) An obligation imposed on a person by Article 332(2) to notify the occurrence of an event must, if at the time at which the event occurs he knows of its occurrence and of the fact that its occurrence gives rise to the obligation, be fulfilled before the expiration of the period of 5 days beginning with the day following that on which the event occurs.

(2) Otherwise, the obligation must be fulfilled before the expiration of the period of 5 days beginning with the day following that on which the fact that the occurrence of the event gives rise to the obligation comes to his knowledge.

15. In reckoning, for the purposes of paragraphs 13 and 14, any period of 5 days, a day that is a Saturday or Sunday or a bank holiday is to be disregarded.

## PART III

### CIRCUMSTANCES IN WHICH OBLIGATION IMPOSED BY ARTICLE 332 IS NOT DISCHARGED

16.—(1) Where an event of whose occurrence a director is, by virtue of Article 332(2)(a), under obligation to notify a company consists of his entering into a contract for the purchase by him of shares or debentures, the obligation is not discharged in the absence of inclusion in the notice of a statement of the price to be paid by him under the contract.

(2) An obligation imposed on a director by Article 332(2)(b) is not discharged in the absence of inclusion in the notice of the price to be received by him under the contract.

17.—(1) An obligation imposed on a director by virtue of Article 332(2)(c) to notify a company is not discharged in the absence of inclusion in the notice of a

statement of the consideration for the assignment (or, if it be the case that there is no consideration, that fact).

(2) Where an event of whose occurrence a director is, by virtue of Article 332(2)(d), under obligation to notify a company consists in his assigning a right, the obligation is not discharged in the absence of inclusion in the notice of a similar statement.

18.—(1) Where an event of whose occurrence a director is, by virtue of Article 332(2)(d), under obligation to notify a company consists in the grant to him of a right to subscribe for shares or debentures, the obligation is not discharged in the absence of inclusion in the notice of a statement of—

- (a) the date on which the right was granted,
- (b) the period during which or the time at which the right is exercisable,
- (c) the consideration for the grant (or, if it be the case that there is no consideration, that fact), and
- (d) the price to be paid for the shares or debentures.

(2) Where an event of whose occurrence a director is, by virtue of Article 332(2)(d), under obligation to notify a company consists in the exercise of a right granted to him to subscribe for shares or debentures, the obligation is not discharged in the absence of inclusion in the notice of a statement of—

- (a) the number of shares or amount of debentures in respect of which the right was exercised, and
- (b) if it be the case that they were registered in his name, that fact, and, if not, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of 2 persons or more) with the number or amount registered in the name of each of them.

19. In this Part, a reference to price paid or received includes any consideration other than money.

#### PART IV

##### PROVISIONS WITH RESPECT TO REGISTER OF DIRECTORS' INTERESTS TO BE KEPT UNDER ARTICLE 333

20. The register must be so made up that the entries in it against the several names inscribed appear in chronological order.

21. An obligation imposed by Article 333(2) to (4) must be fulfilled before the expiration of the period of 3 days beginning with the day after that on which the obligation arises; but in reckoning that period, a day which is a Saturday or Sunday or a bank holiday is to be disregarded.

22. The nature and extent of an interest recorded in the register of a director in any shares or debentures shall, if he so requires, be recorded in the register.

23. The company is not, by virtue of anything done for the purposes of Article 333 or this Part, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or debentures.

24. The register shall—

- (a) if the company's register of members is kept at its registered office, be kept there;



(b) if the company's register of members is not so kept, be kept at the company's registered office or at the place where its register of members is kept;

and shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, but so that not less than 2 hours in each day are allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of 5 pence, or such less sum as the company may determine, for each inspection.

25.—(1) Any member of the company or other person may require a copy of the register, or of any part of it, on payment of 10 pence, or such less sum as the company may determine, for every 100 words or fractional part of 100 words required to be copied.

(2) The company shall cause any copy so required by a person to be sent to him within the period of 10 days beginning with the day after that on which the requirement is received by the company.

26. The company shall send notice in the prescribed form to the registrar of the place where the register is kept and of any change in that place, save in a case in which it has at all times been kept at its registered office.

27. Unless the register is in such a form as to constitute in itself an index, the company shall keep an index of the names inscribed in it, which shall—

- (a) in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found; and
- (b) be kept at the same place as the register;

and the company shall, within 14 days after the date on which a name is inscribed in the register, make any necessary alteration in the index.

28. The register shall be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

**SCHEDULE 14**

**EXTERNAL BRANCH REGISTERS**

**PART I**

**COUNTRIES AND TERRITORIES IN WHICH EXTERNAL BRANCH REGISTER MAY BE KEPT**

**Great Britain**

Any part of Her Majesty's dominions outside the United Kingdom, the Channel Islands or the Isle of Man

Bangladesh

Cyprus

Dominica

The Gambia

Ghana

Guyana

India

Kenya

Kiribati

Lesotho

Malawi

Malaysia

Malta

Nigeria

Pakistan

Republic of Ireland

Seychelles

Sierra Leone

Singapore

South Africa

Sri Lanka

Swaziland

Trinidad and Tobago

Uganda

Zimbabwe

**PART II**

**GENERAL PROVISIONS WITH RESPECT TO EXTERNAL BRANCH REGISTERS**

1.—(1) A company keeping an external branch register shall give to the registrar notice in the prescribed form of the situation of the office where any external branch register is kept and of any change in its situation, and if it is discontinued of its discontinuance.

(2) Any such notice shall be given within 14 days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with this paragraph, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

2.—(1) An external branch register is deemed to be part of the company's register of members ("the principal register").

(2) It shall be kept in the same manner in which the principal register is required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the external branch register is kept.

3.—(1) The company shall—

- (a) transmit to its registered office a copy of every entry in its external branch register as soon as may be after the entry is made, and
- (b) cause to be kept at the place where the company's principal register is kept a duplicate of its external branch register duly entered up from time to time.

Every such duplicate is deemed for all purposes of this Order to be part of the principal register.

(2) If default is made in complying with sub-paragraph (1), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(3) Where, by virtue of Article 361(1)(b), the principal register is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with sub-paragraph (1)(b), he is liable to the same penalty as if he were an officer of the company who was in default.

4. Subject to the above provisions with respect to the duplicate register, the shares registered in an external branch register shall be distinguished from those registered in the principal register; and no transaction with respect to any shares registered in an external branch register shall, during the continuance of that registration, be registered in any other register.

5. A company may discontinue to keep an external branch register, and thereupon all entries in that register shall be transferred to some other external branch register kept by the company in the same country or territory, or to the principal register.

6. Subject to the provisions of this Order, any company may, by its articles, make such provisions as it thinks fit respecting the keeping of external branch registers.

7. An instrument of transfer of a share registered in an external branch register (other than such a register kept in Great Britain) is deemed a transfer of property situated outside the United Kingdom and, unless executed in a part of the United Kingdom, is exempt from stamp duty chargeable in Northern Ireland.

## SCHEDULE 15

Article 371

### CONTENTS OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

1. The address of the registered office of the company.

2.—(1) If the register of members is, under the provisions of this Order, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

(2) If any register of holders of debentures of the company or any duplicate of any such register or part of any such register is, under this Order, kept elsewhere than at the registered office of the company, the address of the place where it is kept.

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3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying the following particulars—

- (a) the amount of the share capital of the company and the number of shares into which it is divided;
- (b) the number of shares taken from the commencement of the company up to the date of the return;
- (c) the amount called up on each share;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;
- (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures;
- (g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date on which the return is made;
- (h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return;
- (i) the total number of shares forfeited;
- (j) the total number of shares for which share warrants are outstanding at the date of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.

4. Particulars of the total amount of the company's indebtedness in respect of all mortgages and charges (whenever created) of any description specified in Article 403(1).

5. A list—

- (a) containing the names and addresses of all persons who, on the fourteenth day after the company's annual general meeting for the year, are members of the company, and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;
- (b) stating the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers;
- (c) if the names mentioned in sub-paragraph (a) are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Order required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company.

**SCHEDULE 16**

Articles 508, 548

**PROCEEDINGS OF COMMITTEE OF INSPECTION**

1. The committee shall meet at such times as it may from time to time appoint and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

2. The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee are present.

3. A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

4. If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from 5 consecutive meetings of the committee without leave of those members who together with himself represent the creditors or contributories (as the case may be), his office thereupon becomes vacant.

5. A member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors) or of contributories (if he represents contributories) of which 7 days' notice has been given, stating the object of the meeting.

6.—(1) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories (as the case may require) to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy.

(2) However, if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the court; and the court may make an order that the vacancy be not filled, or be not filled except in circumstances specified by the order.

(3) The continuing members of the committee, if not less than 2, may act notwithstanding any vacancy in the committee.

**SCHEDULE 17**

Article 567

**PROVISIONS OF PART XX NOT APPLICABLE IN WINDING UP SUBJECT TO  
SUPERVISION OF THE COURT**

<i>Article</i>	<i>Subject Matter</i>
489 )	Statement of company's affairs to be submitted
490 )	to Official Assignee.
491	Report by Official Assignee.
492	Power of court to appoint liquidators.
493	Appointment and powers of provisional liquidator.
494	Appointment, style, etc. of liquidators.
495	Provisions where person other than Official Assignee is appointed liquidator.
496 (Except para. (5))	General provisions as to liquidators.
500	Exercise and control of liquidator's powers.
501	Books to be kept by liquidator.
503	Payments into Insolvency Account or bank.
504	Audit of liquidator's accounts.
505	Control of Department over liquidators.
506	Release of liquidators.
507	Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.
508 ) (With	Constitution, proceedings, etc. of committee
509 ) Sch. 16)	of inspection; powers of Department where no committee of inspection.
517	Appointment of special manager.
523 )	Power to order public examination of promoters
524 )	and officers.
527	Delegation to liquidator of certain powers of the court.

SCHEDULE 18

Article 570

PREFERENCE AMONG CREDITORS IN COMPANY WINDING UP

*"The relevant date"*

1. For the purposes of this Schedule "the relevant date" is—
  - (a) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date, and
  - (b) otherwise, the date of the passing of the resolution for winding up the company.

*Debts to Inland Revenue*

2. All income tax, corporation tax, capital gains tax and other assessed taxes, assessed on the company up to 5th April next before the relevant date, and not exceeding in the whole one year's assessment.
3. Any sums due at the relevant date from the company on account of tax deductions for the 12 months next before that date.

The sums here referred to—

- (a) are those due by way of deduction of income tax from emoluments during the relevant period, which the company was liable to make under section 204 of the Income and Corporation Taxes Act 1970, less the amount of the repayments of income tax which the company was liable to make during the same period, and 1970 c. 10
- (b) include amounts due from the company in respect of deductions required to be made by it under section 69 of the Finance (No. 2) Act 1975 (construction industry contract workers). 1975 c. 45

*Debts due to Customs & Excise*

4. Any value added tax due at the relevant date from the company and having become due within the 12 months next before that date.

For the purposes of this paragraph, the tax having become due within those 12 months in respect of any prescribed accounting period falling partly within and partly outside those 12 months is taken to be such part of the tax due for the whole of that accounting period as is proportionate to that part of the period falling within the 12 months.

5. The amount of any car tax due at the relevant date from the company and having become due within the 12 months next before that date.

6. Any amount due by way of general betting duty under section 16 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 (general betting duty and pool betting duty recoverable from agent collecting stakes), or by virtue of section 24(1) of that Act from the company at the relevant date and which became due within the 12 months next before that date. 1972 c. 11 (N.I.)

7. All local rates, regional rate and district rate due from the company at the relevant date and having become due and payable within 12 months next before that date.

*Social security debts*

8. All the debts specified in section 144(2) of the Social Security (Northern Ireland) Act 1975, Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975, and any corresponding provisions in force in Great Britain.

1975 c. 15  
1975 NI 15

(This does not apply if the company is being wound up voluntarily merely for the purpose of reconstruction or amalgamation with another company.)

*Debts to and in respect of company's employees*

9. All wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during 4 months next before the relevant date, and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered.

10. All accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or, in the case of his death, to any other person in his right) on the termination of his employment before, or by the effect of, the winding-up order or resolution.

This includes in relation to any person all sums which, by virtue either of his contract of employment or of any statutory provision (including any order made or direction given under any statutory provision), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday.

11. The following amounts owed by the company to an employee are treated as wages payable by it to him in respect of the period for which they are payable—

1976 NI 28

- (a) a guarantee payment under Article 3(1) of the Industrial Relations (No. 2) (Northern Ireland) Order 1976 (employee without work to do for a day or part of a day);
- (b) remuneration on suspension on medical grounds under Article 9 of the said Order of 1976;
- (c) any payment for time off under Article 37(4) (trade union duties), 41(3) (looking for work, etc.), or 41A(4) (ante-natal care) of the said Order of 1976;

1982 NI 16

- (d) statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982; and

1976 NI 16

- (e) remuneration under a protective award made by an industrial tribunal under Article 51 of the Industrial Relations (Northern Ireland) Order 1976 (redundancy dismissal without compensation).

12. Any sum ordered to be paid under the legislation relating to reinstatement in civil employment by way of compensation where the default by reason of which the order for compensation was made occurred before the relevant date, whether or not the order was made before that date.



13.—(1) Subject to paragraph 14, the remuneration to which priority is to be given under paragraph 9 or 12 respectively shall not, in the case of any claimant, exceed £800.

(2) No increase or reduction of that money sum affects any case where the relevant date (or, where the provisions of this Schedule apply by virtue of Article 205, the date referred to in paragraph (4) of that Article) occurred before the coming into operation of the increase or reduction.

14. Where a claimant under paragraph 9 is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he has priority in respect of the whole of that sum, or a part of it, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

*Priority for third party advancing  
funds for wage-payments, etc.*

15. Where any payment has been made—

- (a) to any clerk, servant, workman or labourer in the employment of the company on account of wages or salary, or
- (b) to any such clerk, servant, workman or labourer, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced has in the winding up a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer or other person in his right would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

*Interpretation for the above paragraphs*

16. For the purposes of this Schedule—

- (a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages in respect of services rendered to the company in that period; and
- (b) references to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.

**SCHEDULE 19**

Article 575

**VESTING OF DISCLAIMED PROPERTY:  
PROTECTION OF THIRD PARTIES**

**DISCLAIMER BY LIQUIDATOR UNDER ARTICLE 574 OR 575;  
CROWN DISCLAIMER UNDER ARTICLE 607**

1. The court shall not under Article 575 (including that Article as applied by Article 608) make a vesting order, where the property disclaimed is of a leasehold nature, in favour of a person claiming under the company, except on the following terms.

2. The person must by the order be made subject—

SCH. 19

- (a) to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up, or
- (b) (if the court thinks fit) only to the same liabilities and obligations as if the lease had been assigned to him at that date;

and in either event (if the case so requires) the liabilities and obligations must be as if the lease had comprised only the property comprised in the vesting order.

3. A mortgagee or under-lessee declining to accept a vesting order on such terms is excluded from all interest in and security on the property.

4. If there is no person claiming under the company who is willing to accept an order on such terms, the court has power to vest the company's estate and interest in the property in any person liable (either personally or in a representative character, and either alone or jointly with the company) to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

Article 638

## SCHEDULE 20

### EFFECT OF REGISTRATION UNDER ARTICLE 629

#### *Interpretation*

1. In this Schedule—

“registration” means registration in pursuance of Article 629, and

“instrument” includes deed of settlement, contract of copartnership and letters patent.

#### *Vesting of property*

2. All property belonging to or vested in the company at the date of its registration passes to and vests in the company on registration for all the estate and interest of the company in the property.

#### *Existing liabilities*

3. Registration does not affect the company's rights or liabilities in respect of any debt or obligation incurred, or contract entered into by, to, with, or on behalf of, the company before registration.

#### *Pending actions at law*

4.—(1) All actions and other legal proceedings which at the time of the company's registration are pending by or against the company, or the public officer or any member of it, may be continued in the same manner as if the registration had not taken place.

(2) However, execution shall not issue against the effects of any individual member of the company on any judgment, decree or order obtained in such an action or proceeding; but in the event of the company's property and effects being insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

#### *The company's constitution*

5.—(1) All provisions contained in any statutory provision or other instrument constituting or regulating the company are deemed to be conditions and

regulations of the company, in the same manner and with the same incidents as if so much of them as would, if the company had been formed under this Order, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue were contained in registered articles.

(2) The provisions brought in under this paragraph include, in the case of a company registered as a company limited by guarantee, those of the resolution declaring the amount of the guarantee; and they include also the statement under Article 630(5)(a), and any statement under Article 633(2).

6.—(1) All the provisions of this Order apply to the company, and to its members, contributories and creditors, in the same manner in all respects as if it had been formed under this Order, subject as follows.

(2) Table A does not apply unless adopted by special resolution.

(3) Provisions relating to the numbering of shares do not apply to any joint stock company whose shares are not numbered.

(4) Subject to the provisions of this Schedule, the company does not have power—

- (a) to alter any provision contained in a statutory provision relating to the company,
- (b) without the sanction of the Department, to alter any provision contained in letters patent relating to the company.

(5) The company does not have power to alter any provision contained in a royal charter or letters patent with respect to the company's objects.

#### *Capital structure*

7. Provisions of this Order with respect to—

- (a) the registration of an unlimited company as limited,
- (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up, and
- (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in that event,

apply, notwithstanding any provisions contained in a statutory provision, royal charter or other instrument constituting or regulating the company.

#### *Supplementary*

8. Nothing in paragraphs 5 to 7 authorises a company to alter any such provisions contained in an instrument constituting or regulating the company as would, if the company had originally been formed under this Order, have been required to be contained in the memorandum and are not authorised to be altered by this Order.

9. None of the provisions of this Order (except Article 454(3)) derogates from any power of altering the company's constitution or regulations which may, by virtue of any statutory provision or other instrument constituting or regulating it, be vested in the company.

**SCHEDULE 21**

**PROVISIONS OF THIS ORDER APPLYING TO UNREGISTERED COMPANIES**

Provisions of this Order applied	Subject matter	Limitation and exceptions (if any)
Part I  In Part II Article 29 ..... Article 45 ..... Article 46(4) ..... Article 50 ..... Article 52 .....  In Part IV, Chapter I, with Schedule 3  In Part V, Articles 92, 96 and 97 ..... In Part VI— Article 195(4) .....  Article 196 .....	Interpretation.  Statutory and other amendments of memorandum and articles to be registered. Company's capacity; power of directors to bind it. Binding effect of contract made for company before its formation. Official seal for share certificates, etc. Events affecting a company's status to be officially notified.  Prospectus and requirements in connection with it.  Allotments.  Exemption from duty to prepare certificates where shares, etc. issued to stock exchange nominee. Certificate as evidence of title.	To apply so far as requisite for the interpretation of other provisions applied by Article 667 and this Schedule.  Subject to Article 667(3) Subject to Article 667(3) Subject to Article 667(3) Subject to Article 667(3) Subject to Article 667(3)  Subject to Article 667(3)  Subject to Article 667(3)  Subject to Article 667(3)

Provisions of this Order applied	Subject matter	Limitations and exceptions (if any)
Part VIII, with— Schedules 4 to 8 ..... Schedule 9 except paragraphs ..... 2(a) to (d); 3(c), (d) and ..... (e) and 10(1) (c), and ..... Schedule 10. ....	} Accounts and audit.	Subject to Article 667(3)
Part X— Article 295 ..... Articles 296 to 298 .....	Registered office. Register of directors and secretaries.	Subject to Article 667(3) Subject to Article 667(3)
In Part XI, Articles 351 to 355 .....	Register to be kept of certain transactions not disclosed in accounts; other related matters.	—
In Part XII— Article 359(1), (2) and (5)(a) .....	Particulars of company to be given in correspondence.	Subject to Article 667(3)
Articles 371 (with Schedule 15) to 373 ..... Articles 392 to 401 .....	Annual return. Appointment, qualifications, etc. of auditors.	Subject to Article 667(3) Subject to Article 667(3)
In Part XV, Articles 424 to 437 and 445(1) .....	Investigation of companies and their affairs. Effect of order imposing restrictions on shares.	— To apply so far only as relates to orders under Article 438.
Part XVI .....	Miscellaneous provisions about registration. Public notice by registrar with respect to certain documents.	— Subject to Article 667(3).
In Part XXIV Articles 655, 657 to 659, 661 and 662 ..... Article 660 .....		

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Provisions of this Order applied	Subject matter	Limitations and exceptions (if any)
<p>In Part XXV—            Article 669 .....            Article 670 .....              Article 671 .....            Article 672 .....            Article 673 .....            Article 678 with Schedule 23 .....</p>	<p>Companies to publish periodical statement.            Production and inspection of company's books.            Form of company registers, etc.            Use of computers for company records.            Service of documents.            Punishment of offences; meaning of "officer in default".            Summary proceedings.            Prosecution by public authorities.</p>	<p>Subject to Article 667(3)</p> <p>To apply so far only as these provisions have effect in relation to provisions applying by virtue of the foregoing provisions of this Schedule.</p>

SCHEDULE 22

Article 669

FORM OF STATEMENT TO BE PUBLISHED BY CERTAIN COMPANIES  
UNDER ARTICLE 669

\*The share capital of the company is \_\_\_\_\_, divided  
into \_\_\_\_\_ shares of \_\_\_\_\_ each.

The number of shares issued is \_\_\_\_\_  
Calls to the amount of \_\_\_\_\_ pounds per share have been made,  
under which the sum of \_\_\_\_\_ pounds has been received.

The liabilities of the company on 1st January (or July) were—

Debts owing to sundry persons by the company.

On judgment,	£
On specialty,	£
On notes or bills,	£
On simple contracts,	£
On estimated liabilities,	£

The assets of the company on that day were—

Government securities [ <i>stating them</i> ]	
Bills of exchange and promissory notes,	£
Cash at the bankers,	£
Other securities,	£

\*If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

SCHEDULE 23

PUNISHMENT OF OFFENCES UNDER THIS ORDER

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
17(3)	Company failing to deliver to registrar notice or other document, following alteration of its objects.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
29(3)	Company failing to notify registrar of change in memorandum or articles.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
30(2)	Company failing to send to one of its members a copy of the memorandum or articles, when so required by the member.	Summary.	One-fifth of the statutory maximum.	
31(2)	Where company's memorandum altered, company issuing copy of its memorandum without the alteration.	Summary.	One-fifth of the statutory maximum for each occasion on which copies are so issued after the date of the alteration.	
38(5)	Company failing to change name on direction of Department.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
41(5)	Company altering its memorandum or articles, so ceasing to be exempt from having "limited" as part of its name.	Summary.	The statutory maximum.	One-tenth of the statutory maximum.
41(6)	Company failing to change name, on Department's direction, so as to have "limited" at the end.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
42(4)	Company failing to comply with Department's direction to change its name, on grounds that the name is misleading.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.



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Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
43	Trading under misleading name (use of "public limited company") when not so entitled; purporting to be a private company.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
44	Trading or carrying on business with improper use of "limited".	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
64(10)	Public company failing to give notice, or office copy of court order, to registrar, concerning application to re-register as private company.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
66(4)	Issuing form of application for shares or debentures without accompanying prospectus.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
71	Issuing prospectus with expert's statement in it, he not having given his consent; omission to state in prospectus that expert has consented.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
74(5)	Issuing company prospectus without copy being delivered to registrar, or without requisite documents endorsed or attached.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
80(1)	Authorising issue of prospectus with false statement.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
88(1)	Being responsible for issue, circulation of prospectus, etc. contrary to Part IV, Chapter II (non-United Kingdom companies).	1. On indictment. 2. Summary.	A fine. The statutory maximum.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
90(9)	Directors exercising company's power of allotment without the authority required by Article 90(1).	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
91(2)	Private limited company offering shares to the public, or allotting shares with a view to their being so offered.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
92(5)	Allotting shares or debentures before third day after issue of prospectus.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
96(6)	Company failing to keep money in separate bank account, where received in pursuance of prospectus stating that stock exchange listing is to be applied for.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
97(4)	Offeror of shares for sale failing to keep proceeds in separate bank account.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
98(5)	Officer of company failing to deliver return of allotments, etc. to registrar.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
105(6)	Knowingly or recklessly authorising or permitting misleading, false or deceptive material in statement by directors under Article 105(5).	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
107(4)	Company failing to deliver to registrar the prescribed form disclosing amount or rate of share commission.	Summary.	One-fifth of the statutory maximum.	
120(2)	Making misleading, false or deceptive statement in connection with valuation under Article 113 or 114.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
121(3)	Officer of company failing to deliver copy of asset valuation report to registrar.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
121(4)	Company failing to deliver to registrar copy of resolution under Article 114(4), with respect to transfer of an asset as consideration for allotment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
124	Contravention of any of the provisions of Articles 109 to 114 and 116.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
127(7)	Company doing business or exercising borrowing powers contrary to Article 127.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
132(2)	Company failing to give notice to registrar of re-organisation of share capital.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
133(4)	Company failing to give notice to registrar of increase of share capital.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
137(5)	Company failing to forward to registrar office copy of court order, when application made to cancel resolution varying shareholders' rights.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
138(5)	Company failing to send to registrar statement of notice required by Article 138 (particulars of shares carrying special rights).	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
139(4)	Company failing to deliver to registrar statement or notice required by Article 139 (registration of newly created class rights).	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
151	Officer of company concealing name of creditor entitled to object to reduction of capital, willfully misrepresenting nature or amount of debt or claim, etc.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
152(3)	Director authorising or permitting non-compliance with Article 152 (requirement to convene company meeting to consider serious loss of capital).	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
153(2)	Company acquiring its own shares in breach of Article 153.	1. On indictment.  2. Summary.	In the case of the company, a fine. In the case of an officer of the company who is in default, 2 years or a fine; or both. In the case of the company, the statutory maximum. In the case of an officer of the company who is in default, 6 months or the statutory maximum; or both.	
159(2)	Company failing to cancel its own shares, acquired by itself, as required by Article 156(2); or failing to apply for re-registration as private company, as so required in the case there mentioned.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
161(3)	Company giving financial assistance towards acquisition of its own shares.	<ol style="list-style-type: none"> <li>1. On indictment.</li> <li>2. Summary.</li> </ol>	<p>Where the company is convicted, a fine.</p> <p>Where an officer is convicted, 2 years or a fine; or both.</p> <p>Where the company is convicted, the statutory maximum.</p> <p>Where an officer of the company is convicted, 6 months or the statutory maximum; or both.</p>	
166(6)	Company failing to register statutory declaration under Article 165.	Summary.	The statutory maximum.	One-fiftieth of the statutory maximum.
166(7)	Director making statutory declaration under Article 165 without having reasonable grounds for opinion expressed in it.	<ol style="list-style-type: none"> <li>1. On indictment.</li> <li>2. Summary.</li> </ol>	<p>2 years, or a fine; or both.</p> <p>6 months or the statutory maximum; or both.</p>	
179(6)	Default by company's officer in delivering to registrar the return required by Article 179 (disclosure by company of purchase of own shares).	<ol style="list-style-type: none"> <li>1. On indictment.</li> <li>2. Summary.</li> </ol>	A fine.	One-tenth of the statutory maximum.
179(7)	Company failing to keep copy of contract, etc. at registered office; refusal of inspection to person demanding it.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
183(6)	Director making statutory declaration under Article 183 without having reasonable grounds for the opinion expressed in the declaration.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
185(6)	Refusal of inspection of statutory declaration and auditors' report under Article 183, etc.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
186(4)	Company failing to give notice to registrar of application to court under Article 186, or to register court order.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
193(6)	Company failing to send notice of refusal to register a transfer of shares or debentures.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
195(5)	Company default in compliance with Article 195(1) (certificates to be made ready following allotment or transfer of shares, etc.).	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
199(5)	Failure to keep company's register of debenture holders, or any duplicate or part of that register, at a place specified in Article 199(1); failing to notify the registrar of the place, or of any change in the place, where the register or any duplicate is kept.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
199(6)	Default by person keeping the register of debenture holders of the company preventing company from complying with the requirements of Article 199.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

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Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
200(4)	Refusal of inspection or copy of register of debenture holders, etc.	Summary.	One-fifth of statutory maximum.	One-fiftieth of the statutory maximum.
218(3)	Failure to discharge obligation of disclosure under Part VII; other forms of non-compliance with that Part.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
219(10)	Company failing to keep register of interests disclosed under Part VII; other contraventions of Article 219.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
222(5)	Company failing to exercise powers under Article 220, when so required by the members.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
223(8)	Company default in compliance with Article 223 (company report of investigation of shareholdings on members' requisition).	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
224(3)	Failure to comply with company notice under Article 220; making false statement in response, etc.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
225(7)	Company failing to notify a person that he has been named as a shareholder; on removal of name from register, failing to alter associated index.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
226(3)	Improper removal of entry from register of interests disclosed; company failing to restore entry improperly removed.	Summary.	One-fifth of the statutory maximum.	For continued contravention of Article 226(2) one-fiftieth of the statutory maximum.

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Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
227(3)	Refusal of inspection of register or report under Part VII; failure to send copy when required.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
231(1)	Company failing to keep accounting records (liability of officers).	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
231(2)	Officer of company failing to secure compliance with or intentionally causing default under Article 230(4) (preservation of accounting records for requisite number of years).	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
239(3)	Company failing to annex to its annual return certain particulars required by Schedule 5 and not included in annual accounts.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
239(4)	Default by director or officer of a company in giving notice of matters relating to himself for the purposes of Schedule 5, Part V.	Summary.	One-fifth of the statutory maximum.	
243(7)	Non-compliance with the Article, as to directors' report and its content; directors individually liable.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
246(2)	Laying or delivery of unsigned balance sheet; circulating copies of balance sheet without signatures.	Summary.	One-fifth of the statutory maximum.	
248(5)	Failing to send company balance sheet, directors' report and auditors' report to those entitled to receive them.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	



Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
251(1)	Director in default as regards duty to lay and deliver company accounts.	Summary.	The statutory maximum.	One-tenth of the statutory maximum.
253(1)	Company's individual accounts not in conformity with requirements of this Order; directors individually liable.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
253(2)	Holding company's group accounts not in conformity with Articles 237 and 238 and other requirements of this Order; directors individually liable.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
254(2)	Company failing to supply copy of accounts to shareholder on his demand.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
262(6)	Company or officer in default contravening Article 262 as regards publication of full individual or group accounts.	Summary.	One-fifth of the statutory maximum.	
263(5)	Company or officer in default contravening Article 263 as regards publication of abridged accounts.	Summary.	One-fifth of the statutory maximum.	
268(3)	Director of special category company failing to secure compliance with special disclosure provision.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
295(3)	Company failing to have registered office; failing to notify change in its situation.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
296(4)	Default in complying with Article 296 (keeping register of directors and secretaries, refusal of inspection).	Summary.	The statutory maximum.	One-tenth of the statutory maximum.

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Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
299(5)	Acting as director of a company without having the requisite share qualification.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
302(4)	Director failing to give notice of his attaining retirement age; acting as director under appointment invalid due to his attaining it.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
303(7)	Acting in contravention of a disqualification order under Articles 303 to 308.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
310(1)	Undischarged bankrupt acting as director, etc.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
313(3)	Company default in complying with Article 313 (directors' names to appear on company correspondence, etc.).	Summary.	One-fifth of the statutory maximum.	
314(4)	Failure to state that liability of proposed director is unlimited; failure to give notice of that fact to person accepting office.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
322(3)	Director failing to comply with Article 322 (duty to disclose compensation payable on takeover, etc.); a person's failure to include required particulars in a notice he has to give of such matters.	Summary.	One-fifth of the statutory maximum.	
325(7)	Director failing to disclose interest in contract.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
326(8)	Company default in complying with Article 326(1) or (5) (directors' service contracts to be open to inspection); 14 days' default in complying with Article 326(4) (notice to registrar as to where copies of contracts and memoranda are kept); refusal of inspection required under Article 326(7).	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
331(2)	Director dealing in options to buy or sell company's listed shares or debentures.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
332(7)	Director failing to notify interest in company's shares; making false statement in purported notification.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
334(2), (3), (4), (5)	Various defaults in connection with company register of directors' interests.	Summary.	One-fifth of the statutory maximum.	Except in the case of Article 334(5), one-fiftieth of the statutory maximum.
336(6)	Director failing to notify company that members of his family have, or have exercised, options to buy shares or debentures; making false statement in purported notification.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
337(3)	Company failing to notify stock exchange of acquisition of its securities by a director.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
350(1)	Director of relevant company authorising or permitting company to enter into transaction or arrangement, knowing or suspecting it to contravene Article 338.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
350(2)	Relevant company entering into transaction or arrangement for a director in contravention of Article 338.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
350(3)	Procuring a relevant company to enter into transaction or arrangement known to be contrary to Article 338.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
351(8)	Company failing to maintain register of transactions, etc. made with and for directors and not disclosed in company accounts; failing to make register available at registered office or at company meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
356(2)	Company failing to paint or affix name; failing to keep it painted or affixed.	Summary.	One-fifth of the statutory maximum.	In the case of failure to keep the name painted or affixed, one-fiftieth of the statutory maximum.
357(2)	Company failing to have name on business correspondence, invoices, etc.	Summary.	One-fifth of the statutory maximum.	
357(3)	Officer of company issuing business letter or document not bearing company's name.	Summary.	One-fifth of the statutory maximum.	
357(4)	Officer of company signing cheque, bill of exchange, etc. on which company's name not mentioned.	Summary.	One-fifth of the statutory maximum.	
358(1)	Company failing to have its name engraved on company seal.	Summary.	One-fifth of the statutory maximum.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
358(2)	Officer of company, etc. using company seal without name engraved on it.	Summary.	One-fifth of the statutory maximum.	
359(3)(a)	Company failing to comply with Article 359(1) or (2) (matters to be stated on business correspondence, etc.).	Summary.	One-fifth of the statutory maximum.	
359(3)(b)	Officer or agent of company issuing, or authorising issue of, business document not complying with Article 359(1) or (2).	Summary.	One-fifth of the statutory maximum.	
360(5)	Company default in complying with Article 360 (requirement to keep register of members and their particulars).	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
361(4)	Company failing to send notice to registrar as to place where register of members is kept.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
362(4)	Company failing to keep index of members.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
364(5)	Refusal of inspection of members' register; failure to send copy on requisition.	Summary.	One-fifth of the statutory maximum.	
371(7)	Company with share capital failing to make annual return.	Summary.	The statutory maximum.	One-tenth of the statutory maximum.
372(4)	Company without share capital failing to make annual return.	Summary.	The statutory maximum.	One-tenth of the statutory maximum.
373(3)	Company failing to complete and send annual return to registrar in due time.	Summary.	The statutory maximum.	One-tenth of the statutory maximum.

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
374(4)	Company default in holding annual general meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
375(3)	Company default in complying with Department's direction to hold company meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
375(5)	Company failing to register resolution that meeting held under Article 375 is to be its annual general meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
380(4)	Failure to give notice to member entitled to vote at company meeting that he may do so by proxy.	Summary.	One-fifth of the statutory maximum.	
380(6)	Officer of company authorising or permitting issue of irregular invitations to appoint proxies.	Summary.	One-fifth of the statutory maximum.	
384(7)	Officer of company in default as to circulation of members' resolutions for company meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
388(5)	Company failing to comply with Article 388 (copies of certain resolutions, etc. to be sent to registrar).	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
388(6)	Company failing to include copy of resolution to which Article 388 applies in its articles; failing to forward copy to member on request.	Summary.	One-fifth of the statutory maximum for each occasion on which copies are issued or, as the case may be, requested.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
390(5)	Company failing to keep minutes of proceedings at company and board meetings, etc.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
391(4)	Refusal of inspection of minutes of general meeting; failure to send copy of minutes on member's request.	Summary.	One-fifth of the statutory maximum.	
392(6)	Company failing to give Department notice of non-appointment of auditors.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
394(2)	Failing to give notice to registrar of removal of auditor.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
397(9)	Person acting as company auditor knowing himself to be disqualified; failing to give notice vacating office when he becomes disqualified.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
398(7)	Company failing to forward notice of auditor's resignation to registrar or persons entitled under Article 248; failing to send to persons so entitled statement as to effect of court order or, if no such order, the auditor's resignation statement.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
399(4)	Directors failing to convene meeting requisitioned by resigning auditors.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	

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Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
400(2)	Failure of subsidiary to give its holding company, and failure of holding company to obtain from its subsidiary, information needed for purposes of audit; failure of subsidiary's auditors to give information and explanation to holding company's auditors.	Summary.	One-fifth of the statutory maximum.	
401	Company officer making misleading, false or deceptive statement to auditors.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
406(3)	Company failing to send to registrar particulars of charge created by it, or of issue of debentures which requires registration.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
407(4)	Company failing to send to registrar particulars of charge on property acquired.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
410(3)	Authorising or permitting delivery of debenture or certificate of debenture stock, without endorsement on it of certificate of registration of charge.	Summary.	One-fifth of the statutory maximum.	
413(4)	Failure to give notice to registrar of appointment of receiver or manager, or of his ceasing to act.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
415(3)	Authorising or permitting omission from company's register of charges.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
416(3)	Officer of company refusing inspection of charging instrument or of register of charges.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.



Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
418(4)	Company failing to annex to memorandum court order sanctioning compromise or arrangement with creditors.	Summary.	One-fifth of the statutory maximum.	
419(6)	Company failing to comply with requirements of Article 419 (information to members and creditors about compromise or arrangement).	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
419(7)	Director or trustee for debenture holders failing to give notice to company of matters necessary for purposes of Article 419.	Summary.	One-fifth of the statutory maximum.	
420(5)	Failure to deliver to registrar office copy of court order under Article 420 (company reconstruction or amalgamation).	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
437(3)	Failure to give Department, when required to do so, information about interests in shares, etc.; giving false information.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
440(6)	Failure to comply with requirement to produce books and papers imposed by Department under Article 440.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
441(5)	Obstructing the exercise of a right of entry or search, or a right to take possession of books or papers.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
442(2)	Wrongful disclosure of information or document obtained under Article 440 or 441.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	

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Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
443	Destroying or mutilating company documents; falsifying such documents or making false entries; parting with such documents or altering them or making omissions.	1. On indictment. 2. Summary.	7 years or a fine; or both. 6 months or the statutory maximum; or both.	
444	Making false statement or explanation in purported compliance with Article 440.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
448(1)	Exercising a right to dispose of, or vote in respect of, shares which are subject to restrictions under Part XVI; failing to give notice in respect of shares so subject; entering into agreement void under Article 447(2) or (3).	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
448(2)	Issuing shares in contravention of restrictions of Part XVI.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
451	Being a party to carrying on company's business with intent to defraud creditors, or for any fraudulent purpose.	1. On indictment. 2. Summary.	7 years or a fine; or both. 6 months or the statutory maximum; or both.	
454(5)	Failure to register office copy of court order under Part XVIII (protection of minorities) altering, or giving leave to alter, company's memorandum.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
455	Body corporate acting as receiver.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
456	Undischarged bankrupt acting as receiver or manager.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
459(2)	Company failing to state in its correspondence, etc. that a receiver has been appointed.	Summary.	One-fifth of the statutory maximum.	
461(7)	Receiver failing to notify his appointment to the company; failing to send company's statement of affairs to registrar and others concerned.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
462(6)	Default in relation to statement of affairs to be given to receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
463(7)	Receiver failing to send accounts of his receipts and payments to registrar and others concerned.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
464(4)	Receiver failing to send accounts to registrar for registration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
489(7)	Default in compliance with Article 489 (submission of statement of company's affairs to Official Assignee).	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
528(3)	Liquidator failing to send to registrar an office copy of court order dissolving company.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
530(2)	Company failing to give notice in Belfast Gazette of resolution for voluntary winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
534(4)	Director making statutory declaration of company's solvency without reasonable grounds for his opinion.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
534(6)	Declaration under Article 534 not delivered to registrar within prescribed time.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
541(2)	Liquidator failing to summon creditors' meeting in case of insolvency.	Summary.	One-fifth of the statutory maximum.	
542(2)	Liquidator failing to summon general meeting of company at end of each year from commencement of winding up.	Summary.	One-fifth of the statutory maximum.	
543(3)	Liquidator failing to send registrar a copy of the account of a winding up and return of final general meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
543(6)	Failing to deliver to registrar office copy of court order for registration made under the Article.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
543(7)	Liquidator failing to summon final meeting of company prior to dissolution.	Summary.	One-fifth of the statutory maximum.	
546(5)	Company or its directors failing to comply with the Article in relation to summoning or advertisement of creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	

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Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
552(2)	Liquidator failing to summon general meeting of company, and meeting of creditors, at end of each year.	Summary.	One-fifth of the statutory maximum.	
553(4)	Liquidator failing to send to registrar account of winding up and return of final company and creditors' meetings.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
553(7)	Failing to deliver to registrar office copy of court order for registration under the Article.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
553(8)	Liquidator failing to call final meeting of company or creditors.	Summary.	One-fifth of the statutory maximum.	
558(2)	Liquidator failing to publish notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
577(2)	Fraud, etc. in anticipation of winding up (offence under paragraph (1) or (2) of the Article).	1. On indictment. 2. Summary.	7 years or a fine; or both. 6 months or the statutory maximum; or both.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
578	Officer of company entering into transactions in fraud of company's creditors.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.	
579	Officer of company misconducting himself in course of winding up.	1. On indictment. 2. Summary.	7 years or a fine; or both. 6 months or the statutory maximum; or both.	
580	Officer or contributory destroying, falsifying, etc. company's books.	1. On indictment. 2. Summary.	7 years or a fine; or both. 6 months or the statutory maximum; or both.	
581	Officer of company making material omission from statement relating to company's affairs.	1. On indictment. 2. Summary.	7 years or a fine; or both. 6 months or the statutory maximum; or both.	
582	False representation or fraud for purpose of obtaining creditors' consent to an agreement in connection with winding up.	1. On indictment. 2. Summary.	7 years or a fine; or both. 6 months or the statutory maximum; or both.	
587(2)	Body corporate acting as liquidator.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	

Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
588	Giving, offering, etc. corrupt inducement affecting appointment of liquidator.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
590(2)	Default in compliance with the Article, as to notification that company is being wound up.	Summary.	One-fifth of the statutory maximum.	
593(4)	Contravention of winding-up rules as to disposal of company books and papers after winding up.	Summary.	One-fifth of the statutory maximum.	
594(2)	Liquidator failing to notify registrar as to progress of winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
602(3)	Person obtaining court order to declare company's dissolution void, then failing to send to registrar office copy of the order.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
647(1)	Part XXIII company failing to comply with any of Articles 641 to 643 or 646.	Summary.	For an offence which is not a continuing offence, one-fifth of the statutory maximum. For an offence which is a continuing offence, one-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
647(2)	Part XXIII company contravening Article 644(6) (carrying on business under its corporate name after Department's direction).	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.

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Article creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
652(1)	Part XXIII company failing to comply with Article 649 as respects delivery of annual accounts.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
659(3)	Person untruthfully stating himself to be a member or creditor of company, for purpose of obtaining or inspecting company documents.	Summary.	One-fifth of the statutory maximum.	
669(4)	Insurance company, etc. failing to send twice-yearly statement in form of Schedule 22.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
671(3)	Company failing to comply with Article 671(2), as regards the manner of keeping registers, minute books and accounting records.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. 14, Part II para. 1(3)	Company failing to give notice of location of external branch register, etc.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. 14, Part II para. 4(2)	Company failing to transmit to its registered office in Northern Ireland copies of entries in external branch register, or to keep a duplicate of that register.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.



SCHEDULE 24

Article 142(7)

ARTICLE 39 OF THE ORDER OF 1982, AS ORIGINALLY ENACTED

*Relief from section 56 in respect of group reconstructions*

39.—(1) This Article applies where the issuing company—

- (a) is a wholly-owned subsidiary of another company (“the holding company”); and
- (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to it of shares in another subsidiary (whether wholly-owned or not) of the holding company.

(2) Where the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company shall not be required by section 56 of the principal Act to transfer any amount in excess of the minimum premium value to the share premium account.

(3) In paragraph (2) “the minimum premium value” means the amount (if any) by which the base value of the shares transferred exceeds the aggregate nominal value of the shares allotted in consideration for the transfer.

(4) For the purposes of paragraph (3), the base value of the shares transferred shall be taken as—

- (a) the cost of those shares to the company transferring them; or
- (b) the amount at which those shares are stated in that company’s accounting records immediately before the transfer;

whichever is the less.

(5) Article 38 shall not apply in any case to which this Article applies.

**EXPLANATORY NOTE**

*(This Note is not part of the Order.)*

This Order consolidates the greater part of the Companies Acts (Northern Ireland) 1960 to 1983.

**This Table has no official status.**

**TABLE OF DERIVATIONS**

The following abbreviations are used in this Table:—

“1960”	= Companies Act (Northern Ireland) 1960 (c.22),
“1969 c.30 (N.I.)”	= Judgments (Enforcement) Act (Northern Ireland) 1969 (c.30),
“1978”	= Companies (Northern Ireland) Order 1978 (NI 12),
“1981”	= Companies (Northern Ireland) Order 1981 (NI 19),
“1981 NI 6”	= Judgments Enforcement (Northern Ireland) Order 1981 (NI 6),
“1982”	= Companies (Northern Ireland) Order 1982 (NI 17),
STA 1982	= Stock Transfer Act 1982 (c.41),
1982 c.50	= Insurance Companies Act 1982 (c.50),
1983 (B.I.)	= Companies (Beneficial Interests) (Northern Ireland) Order 1983 (NI 12),
S.R.	= Companies Acts (Pre-Consolidation Amendments) Order (Northern Ireland) 1986 (S.R. 1986/ ).

Derivations are quoted even though parts only of the sections and Articles are the source.

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Provision	Derivation
Article 1	Title and commencement.
2	General interpretation 1960 ss. 148(5), 364, 399(1), (6); 1978 Arts. 2, 65(1); 1981 Art. 2; 1982 Art. 2(2); S.R. 33.
3	1960 s. 399(1).
4	1960 ss. 144(5), 148(1)—(4), (5); 1978 Arts. 37, 47.
5	1981 Art. 2(2).
6	1960 s. 399(7), (8); 1981 Art. 2(5).
7	1981 Art. 2(2), (3)(a).
8	1960 s. 399(3); 1978 Art. 2(5).
9	1960 s. 399(1), (2); 1978 Art. 2(5); 1981 Art. 65(1), (5).
10	1960 s. 399(1), (5); 1978 Art. 2(4)(d); 1981 Art. 2(2); 1982 Art. 2(5), 23(1), (3).
11	1981 Art. 2(2); S.R. 41.
12	1960 s. 1; 1981 Arts. 3(1), (2), 4(1), Sch. 3 para. 2.
13	1960 ss. 2, 3, 4; 1981 Sch. 3 para. 3; S.R. 1.
14	1960 ss. 11(a)—(d), 398(2) (c); 1978 Art. 151; 1981 Art. 4(4), Sch. 3 para. 3.
15	1960 s. 5(1), (2).
16	1960 s. 5(2)—(6); 1981 Sch. 3 para. 4.
17	1960 s. 5(9)—(11); 1978 Sch. 4.
18	1960 ss. 6, 7, 9; 1970 c.21(NI) Sch. 3; 1978 Sch. 4; S.R. 2.
19	1960 ss. 8, 11(b)—(d), 398(2)(b); 1978 Art. 151.
20	1960 s. 10; 1981 Sch. 3 para. 2.
21	1960 s. 12; 1978 Arts. 57(1), (3), (4), (5); 131(2).
22	1981 Art. 5(2).
23	1960 s. 12; 1981 Art. 5(1), (5).
24	1960 s. 13; 1978 Art. 57(5); 1981 Art. 5(3), (4), Sch. 4.
25	1960 s. 20.
26	1960 s. 21; 1981 Art. 3(3).
27	1960 s. 22.
28	1960 s. 23(1)—(4); 1981 Sch. 3 para. 6.
29	1978 Art. 124.
30	1960 s. 24.
31	1960 s. 25.

Provision	Derivation
Article 32	1960 s. 26.
33	1960 s. 27; 1983 (B.I.) Art. 3.
34	1960 s. 31; 1981 Sch. 3 para. 7.
35	1960 s. 2(1)(a); 1981 Art. 4(2), Sch. 3 para. 3.
36	1982 Art. 24.
37	1981 Art. 79(1)—(3).
38	1982 Art. 26; S.R. 58.
39	1982 Arts. 33(1), (2), (4), 34; S.R. 60.
40	1982 Art. 27(1)—(4), (8).
41	1982 Art. 27(5)—(10).
42	1960 s. 18(2A), (2B), 2(C), (2D), (3), (4); 1978 Art. 136; S.R. 3.
43	1981 Art. 78(1), (2), (4); S.R. 54.
44	1960 s. 387.
45	1978 Art. 129.
46	1960 s. 32; 1978 Art 130.
47	1960 s. 33.
48	1960 s. 34.
49	1960 s. 35.
50	1978 Art. 132(1).
51	1960 s. 36.
52	1978 Art. 123(1), (2), (3).
53	1981 Arts. 4(3), 7(1)—(3), (10); S.R. 42.
54	1981 Art. 7(5) as applying Art. 26(2), (2A), (3), (11A), (12) (in part); 1982 Sch. 3 para. 33; S.R. 42.
55	1981 Arts. 7(1), 8.
56	1981 Art. 7(10), (11), (12); 1982 Sch. 2 para. 6(1).
57	1981 Art. 7(4), (6)—(9).
58	1981 Art. 9(1)—(3).
59	1978 Art. 118(1)—(3), (7); 1981 Sch. 3 para. 39; S.R. 39.
60	1978 Art. 118(4), (5).
61	1978 Art. 119(1)—(3); 1981 Art. 9(5), Sch. 3 para. 40; S.R. 40.
62	1978 Art. 119(4), (5).
63	1981 Art. 12(1),(2); S.R. 43.
64	1981 Art. 13.

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Provision	Derivation
Article 65	1981 Art. 12(3)—(5).
66	1960 s. 38(1), (3), (4), (7); 1978 Sch. 6; S.I. 1984/716 Art. 7(4)(c).
67	1960 s. 38(2).
68	1960 s. 45(1), (2), (3).
69	1960 s. 55(1).
70	1960 s. 55(2)—(4); 1981 Sch. 3 para. 11, Sch. 4; S.I. 1984/716 Art. 7(2); S.R. 5.
71	1960 s. 40(1), (2).
72	1960 ss 40(3), 43(8)(b), 367(2).
73	1960 s. 37.
74	1960 ss. 41(1)(a), (2)—(4), 45(3), (4).
75	1960 s. 41(1)(b), S.I. 1984/716 Art. 7(4)(c).
76	1960 s. 38(5), (6), (8).
77	1960 s. 43(1), (8)(a).
78	1960 s. 43(2)—(5).
79	1960 s. 43(6), (7).
80	1960 s. 44.
81	1960 s. 46.
82	1960 s. 365(1), (2), (4), (5), (8); 1978 Sch. 6.
83	1960 s. 365(3).
84	1960 s. 367(1), (2).
85	1960 s. 367(1).
86	1960 s. 366; 1978 Sch. 6.
87	1960 s. 368.
88	1960 ss. 365(6), (7), (9), 369, 370.
89	1960 s. 371.
90	1981 Art. 16; S.R. 44.
91	1981 Art. 17(1)—(4).
92	1960 s. 50(1)—(5), (6).
93	1960 s. 47; 1981 Sch. 4.
94	1981 Art. 18(1), (2), (3) (applying 1960 s. 47(4), (5)).
95	1960 s. 49; 1981 Art. 18(2), Sch. 3 para. 8, Sch. 4.
96	1960 ss. 50(6), 51(1)—(5), (6)(a); 1978 Sch. 6.
97	1960 s. 51(7) inserted by S.R. 4.

Provision	Derivation
Article 98	1960 s. 52; 1978 Schs. 4, 6.
99	1981 Art. 19(1)—(5).
100	1981 Art. 19(6)—(8); Table A Regs. 133, 134, 135.
101	1981 Art. 19(9).
102	1981 Art. 19(10).
103	1981 Art. 19(12).
104	1981 Art. 19(11), (13); 1982 Sch. 3 para. 31; S.R. 45.
105	1981 Art. 20.
106	1981 Art. 21(1)(b), (2)—(5).
107	1960 s. 53(1), (5); 1981 Sch. 3 para. 9.
108	1960 s. 53(2)—(4).
109	1981 Art. 22(1)—(3), (5), (6).
110	1981 Art. 23(1), (2); 1982 Sch. 3 para. 32.
111	1981 Art. 24(1)—(4).
112	1981 Art. 25(1)—(5), (7).
113	1981 Art. 26(1)—(3), (8), (9), (11A), (12)(aa), (a); 1982 Sch. 3 para. 33.
114	1981 Art. 28(1)—(4).
115	1981 Arts. 26(9) (as applied), 28(7), (8).
116	1981 Art. 31.
117	1981 Art. 2(2).
118	1981 Arts. 7(5), 26(4)—(7), (11), (12)(b).
119	1981 Arts. 28(5), (6), 29(3).
120	1981 Arts. 27(1), (3)—(5), 29(1).
121	1981 Arts. 27(2) (with 1960 s. 52(3) and (4) as applied), 29(2).
122(1)	1981 Arts. 22(4), (6), 23(3), 24(5), 25(6), 26(10), 28(8).
(2)	1981 Art. 28(8)(b) (applying Art 22(4)).
(3)	1981 Art. 22(4) (as applied).
(4)	1981 Art. 22(6).
(5)	1981 Art. 25(6) (applying Art. 22(4)).
123	1981 Art. 30.
124	1981 Art. 32(1).
125	1981 Art. 32(2).
126	1981 Art. 33(1).
127	1981 Art. 6.

Provision	Derivation
Article 128	1981 Art. 85.
129	1960 s. 59.
130	1960 s. 60.
131	1960 s. 61.
132	1960 s. 62; 1978 Sch. 4, 1982 Sch. 4.
133	1960 s. 63; 1978 Art. 137; S.R. 6.
134	1960 s. 64; 1978 Art. 119(6); 1981 Art. 9(4).
135	1981 Art. 34(1)—(7), (9).
136	1981 Art. 34(10).
137	1960 s. 72; 1981 Art. 34(8).
138	1981 Art. 35(1)—(4), (6).
139	1982 Art. 101(1)—(3), (5).
140	1960 s. 56(1), (2); 1981 Sch. 3 para. 12; 1982 Sch. 4.
141	1982 Arts. 37(2), 38, 41(6).
142	1982 Art. 39 inserted by S.R. 61.
143	1982 Art. 41(1), (4), (5), (7).
144	1982 Art. 42(1), (3).
145	1960 s. 66.
146	1960 s. 67.
147	1960 s. 68.
148	1960 s. 69.
149	1981 Art. 14 (with modified application of Article 12).
150	1960 s. 70.
151	1960 s. 71; 1981 Sch. 3 para. 15; S.I. 1984/703 Sch. 7.
152	1981 Art. 36(1)—(3).
153	1981 Art. 37; 1982 Sch. 3 para. 34.
154	1981 Art. 38(1)—(4).
155	1981 Art. 38(5) (with Art. 39(1)(d)), (6); 1983 (B.I.) Art. 3(c), 6(3)(a).
156	1981 Art. 39(1), (2), (3), (11); 1982 Sch. 3 para. 35; 1983 (B.I.) Art. 3(d), 6(3)(b).
157	1981 Art 39(2), (4), (5), (8) (applying 1981 Art. 12(3)—(5)).
158	1981 Art. 39(9), (10); S.R.s 46, 64.



Provision	Derivation
Article 159	1981 Art. 39(6), (7).
160	1981 Art. 40.
161	1982 Art. 43(1), (2), (12).
162	1981 Art. 2(3)(b); 1982 Arts. 43(8)—(10), 63(1).
163	1982 Art. 43(3)—(6).
164	1982 Art. 43(7), (11).
165	1982 Arts. 44(1)—(6), 45(8).
166	1982 Arts. 44(7), (8), 45(5)—(7).
167	1982 Art. 45(1)—(4).
168	1982 Art. 44(9).
169	1982 Art. 46(1)—(4).
170	1982 Art. 46(5)—(9).
171	1982 Art. 46(10)—(12); S.I. 1973 (N.I. 18).
172	1982 Art. 47.
173	1982 Arts. 48(2), (3), 50(2).
174	1982 Art. 48(1), (4)—(12).
175	1982 Art. 49.
176	1982 Art. 50(3)—(10).
177	1982 Art. 51.
178	1982 Art. 52.
179	1982 Art. 53.
180	1982 Arts. 54, 55(6)(b).
181	1982 Art. 55(1)—(6).
182	1982 Art. 55(7)—(10) (as applying 1981 Art. 45(8) (in part). 1982 Art. 61(1)(a), (b), (d), (e)).
183	1982 Art. 56(1)—(5), (9).
184	1982 Art. 56(6)—(8), (10).
185	1982 Art. 57.
186	1982 Art. 58(1)—(3), (7).
187	1982 Art. 58(4)—(6) (1981 Art. 13(7)—(9) as applied).
188	1982 Art. 60.
189	1982 Art. 62.

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Provision	Derivation
Article 190	1982 Art. 63(2)—(4).
191	1982 Art. 63(1).
192	1960 ss. 73, 74.
193	1960 ss. 75—78; STA 1982 Sch. 2.
194	1960 s. 79.
195	1960 s. 80; 1978 Art. 138; STA 1982 Sch. 2.
196	1960 s. 81; 1978 Art 153(1), Sch. 6.
197	1960 s. 82.
198	1960 s. 83.
199	1960 s. 85; 1978 Sch. 4; S.R. 7.
200	1960 s. 86; 1978 Art. 139(1).
201	1960 s. 87.
202	1960 s. 88.
203	1960 s. 89.
204	1960 s. 91.
205	1960 ss. 92, 287(8).
206	1982 Arts. 64(1), (4), (9), (10), 82(2).
207	1982 Art. 64(2), (3).
208	1982 Art. 64(7).
209	1982 Arts. 64(8), 65.
210	1982 Arts. 64(5), (6), 66.
211	1982 Art. 67; S.R. 62.
212	1982 Art. 68(1)—(5), (10).
213	1982 Art. 68(6)—(9).
214	1982 Art. 69.
215	1982 Art. 70.
216	1982 Art. 71.
217	1982 Art. 72.
218	1982 Arts. 2(6), 73(1)—(7), (9).
219	1982 Arts. 74, 83(8).
220	1982 Art. 75.
221	1982 Arts. 76, 83(8).
222	1982 Art. 77(1)—(4), (12).

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Article 223	1982 Art. 77(5)—(11), (12).
224	1982 Arts. 2(6), 78(1), (2), (5)—(7); S.R. 63.
225	1982 Art. 79.
226	1982 Art. 80.
227	1982 Art. 81.
228	1982 Art. 82(1), (3).
229	1978 Art. 25 (1)—(5).
230	1978 Art. 25(6)—(9).
231	1978 Art. 25(10), (11).
232	1978 Art. 4(1), (2), (4), (5).
233	1978 Art. 5(1)—(7).
234	1978 Art. 5(8)—(10).
235	1960 s. 147(1); 1978 Art. 3(1)—(4).
236	1960 s. 143(1)—(6) (inserted by 1982 Art. 3(1)).
237	1960 ss. 144(1) (sub. by 1978 Art. 10(1)), (2), (3), 145(1), (2), (3); 1978 Sch. 6.
238	1960 s. 146 (inserted by 1982 Art. 4); S.R. 17.
239	1960 s. 187(1) (sub. 1978 Art. 17); 1978 Arts. 14(1), 15(1), 16(1), 18(1), 19(1), 20(1); 1982 Art. 6(1), Sch. 3 paras. 8, 20, 22, 23.
(3)	1978 Arts. 14(5)(b), (6), 15(5)(b), (6); 1981 Sch. 3 para. 38; 1982 Art. 6 (8), (9).
(4)	1960 s. 189, 1978 Arts. 18(5), 19(3); 1981 Sch. 4.
240	1981 Arts. 56(1), (2), (2A), (3), (5), 65(1); 1982 Sch. 3 para. 42.
241	1981 Art. 58(2), (3), (4A), (6); 1982 Sch. 3 para. 43.
242	1981 Arts. 58(4), (4A), (6), 65(1) 1982 Sch. 3 para. 43.
243	1960 s. 151(1); 1978 Arts. 45(1), 45A(1), 48(1), 52, Sch. 6; 1982 Arts. 15(1), 16.
(6)	1982 Art. 18(1), (partially excluding 1978 Arts. 46, 47).
244	1978 Art. 33(1), (3); 1981 Sch. 3 para. 38(3);
245	1960 s. 187(8) (sub. 1978 Art. 17); 1978 Arts. 18(4), 19(3), 20(4), 33(4)—(6), 52A; 1981 Art. 61; 1982 Art. 17.
246	1960. ss. 149(1)—(3), 150(1), (2); 1978 Sch. 6.
247	1960 s. 144(1) (sub. 1978 Art. 10(1)); 1978 Art. 3(5).
248	1960 s. 152(1), (4)—(7); 1978 Art. 34(2)(a).
249	1978 Arts. 3(6)—(9), 33(2).

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Article 250	1978 Art. 8.
251	1978 Arts. 1(1), 6.
252	1978 Art. 7.
253	1960 ss. 143(5),(7) (sub. by 1982 Art. 3(1)), 144(4) (sub. by 1978 Art 10); 1982 Sch. 3 para. 3.
254	1960 s 152(3), (7); 1978 Art. 34(2), Sch. 7.
255	1982 Arts. 7(1)—(5), 8(1), 14(7), (9).
256	1982 Art. 10(1)—(3), (9)—(11).
257	1982 Arts. 8(1), 10(1), (5), (6), (7).
258	1982 Arts. 11(1)—(6), 12(1)—(3); S.R. 56.
259	1982 Art. 7(7), (8).
260	1982 Art. 14(1)—(6), (12), (13); S.R. 57.
261	1982 Art. 14(7), (8), (10), (11) (including Art. 9(2) as applied).
262	1982 Art. 13(1)—(5), (9), (10).
263	1982 Art. 13(6)—(8), (10).
264	1960 s. 398(1), (1A), (3); 1982 Art. 20.
265	1982 Sch. 2 paras. 1—3, 4(4), 8.
266	1960 s. 143A (1)—(5); 1982 Sch. 2 para. 4(1).
267	1960 s. 146A (inserted by 1982 Art. 4); 1978 Sch. 6; 1982 Sch. 2 para. 4(1); S.R. 18.
268	1978 Art. 23(1)—(3); 1982 Sch. 2 paras. 5(1), (2), 7(1).
269(2)	1960 s. 151(1); 1982 Sch. 2 para. 4(2).
(3)	1960 s. 157(2); 1982 Sch. 2 para. 4(3).
(4)	1978 Art. 51; 1982 Sch. 2 para. 5(6).
(5)	1978 Art. 45; 1982 Sch. 2 paras. 5(4), (5).
(6)	1978 Arts. 46, 47.
(7)	1982 Sch. 2 para. 5(5) (excluding 1978 Art. 52A).
270	1978 Art. 33(3)(b); 1982 Sch. 2 para. 5(3).
271	1981 Art. 41 (1)—(3), (7), 47(2); 1982 Sch. 3 para. 39(a).
272	1981 Art. 2(3), 42(1)—(3), (5).
273	1981 Art. 43(1), (2), (5), (6); 1982 Sch. 3 para. 37.
274	1981 Art. 43(3), (4), (7), (8).
275	1981 Art. 43(9), (10).
276	1981 Art. 44.
277	1981 Art. 44A (inserted by 1982 Art. 84.)
278	1981 Art. 45(1), (2), (8); 1982 Sch. 3 para. 38.

Provision	Derivation
Article 279	1981 Art. 45(3), (4), (8).
280	1981 Art. 45(5), (8), (9).
281	1981 Art. 45(6), (8), (9).
282	1981 Art. 45(7); 1982 Arts. 61(1), (3), 62(3).
283	1981 Arts. 41(4), (4A), (5), (6), 42(4); 45 (7A); 1982 Sch. 3 paras. 36(1), (2), 38.
284	1981 Art. 45A; 1982 Art. 85.
285	1981 Art. 46; 1982 Arts. 61(2), 62(3).
286	1981 Art. 47(1).
287	1982 Sch. 2 para. 6.
288	1981 Art. 47(3), (4); 1982 Sch. 3. para. 39(b), Sch. 4.
289	1981 Art. 47(5).
290	1960 s. 167.
291	1960 ss. 168, 169; 1978 Art. 59.
292	1960 s. 170.
293	1960 ss. 171, 174(3).
294	1981 Art. 80.
295	1978 Art. 131(1), (3), (4).
296	1960 s. 191(1), (6), (9), (10) (sub. 1982 Art. 95(4)), (11), (12)(a); 1978 Art. 58(1).
297	1960 s. 191(2), (3), (12)(b)—(d) 1982 Art. 95(2) (3); S.R.20.
298	1960 s. 191(4), (5), (12)(b)—(d).
299	1960 s. 173; 1981 Sch 4.
300	1960 s. 174 (1), (2), (4)—(6); 1981 Sch. 3 para. 21.
301	1960 s. 176(1)—(8), (9); 1981 Sch. 3 para. 22.
302	1960 ss. 176(9), 177.
303	1960 s. 179 (1B), (2D), (2E), (6); 1978 Arts. 54(1), (1A), 55(3), (4), (4A); 1982 Arts. 93, 94.
304	1960 s. 179(1) (a), (2D); 1982 Art. 93.
305	1960 s. 179(1)(b), (2C), (2D); 1982 Art. 93.
306	1960 s. 179(1)(c), (2D); 1982 Art. 93.
307	1960 s. 179(1A), (2D); 1982 Art. 93.
308	1978 Arts. 54(1), (2), (3), 55(4); 1982 Art. 94.
309	1978 Art. 56; 1982 Sch. 3 para. 27; S.R. 38.

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Article 310	1960 s. 178(1), (2A) (sub. by 1978 Art. 62), (3); 1982 Sch. 3 para. 7.
311	1960 s. 175 (1), (2), (5)—(7); 1978 Art. 61.
312	1960 s. 175(2), (3), (4).
313	1960 s. 192; 1982 Sch. 3 para. 9.
314	1960 s. 193.
315	1960 s. 194.
316	1960 s. 195.
317	1981 Art. 48, 65(1).
318	1960 s. 196; 1981 Sch. 3 para. 25.
319	1960 s. 180(1), (2).
320	1960 s. 182.
321	1960 s. 183.
322	1960 s. 184 (1), (2).
323	1960 s. 184 (3)—(5).
324	1960 s. 185.
325	1960 s. 190; 1981 Arts. 62, 65(3), Sch. 3 para. 24.
326	1978 Art. 36; 1981 Arts. 63, 65(4), Sch. 4.
327	1981 Arts. 49, 65(1).
328	1981 Arts. 50(1), (2), 65(1); 1982 Art. 107 (1), (2); S.R. 47.
329	1981 Art. 50(6)—(8); 1982 Art. 107(3).
330	1981 Art. 50(3), (4), (5); S.R. 47.
331	1978 Art. 35; 1982 Sch. 3 para. 24.
332	1978 Arts. 37(1), (2), (4), (9)—(12), (14), 38(1).
333	1978 Art. 39(1), (2), (19); 1982 Sch. 3 para. 24.
334	1978 Art. 39 (14)—(18).
335	1978 Art. 40.
336	1978 Art. 41.
337	1978 Art. 42.
338	1981 Arts. 51, 65(1).
339	1981 Arts. 2(2), 67(1), (2), (3), (6); 1982 Sch. 3 para. 47.
340	1981 Art. 52(2).
341	1981 Art. 52(1), (sub. by 1982 Sch. 3 para. 40).
342	1981 Art. 52(2A); 1982 Art. 108(1).

Provision	Derivation
Article 343	1981 Art. 52(3).
344	1981 Art. 52(4)(a), (b).
345	1981 Art. 52(4)(c), (5).
346	1981 Arts. 52(4)(d), (6), (7), 67(1).
347	1981 Art. 53; 1982 Art. 108(2), Sch. 3 para. 41.
348	1981 Art. 67(4), (5).
349	1981 Art. 54.
350	1981 Art. 55; S.R. 48.
351	1981 Art. 59(1)—(4), (6)—(8), 65(2); S.R. 51
352	1981 Art. 59(5), 60(4), 67(4).
353	1981 Art. 64.
354	1981 Art. 66; 1982 Sch. 3 paras. 45, 46; S.R. 53.
355	1981 Art. 67(8).
356	1960 s. 105(1)(a), (2).
357	1960 s. 105(1)(c), (3), (4)(b), (c).
358	1960 s. 105(1)(b), (3), (4)(a).
359	1978 Art. 128; 1981 Sch. 3 para. 42.
360	1960 s. 107(1), (2), (7)—(9); 1982 Art. 100.
361	1960 s. 107(3)—(7); 1978 Sch. 4.
362	1960 s. 108.
363	1960 s. 109.
364	1960 s. 110; 1978 Art. 139(2).
365	1960 s. 111.
366	1960 s. 112.
367	1960 s. 113.
368	1960 s. 114.
369	1960 s. 115.
370	1960 s. 116(1), (4).
371	1960 s. 119; 1982, Sch. 3 para. 1; S.R. 12.
372	1960 s. 120; 1978 Sch. 4; 1982 Sch. 3 para. 2; S.R. 13.
373	1960 s. 121; S.R. 14.
374	1960 s. 125(1), (2), (6).
375	1960 s. 125(3)—(6).

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Provision	Derivation
Article 376	1960 s. 126.
377	1960 s. 127; 1978 Art. 141.
378	1960 s. 128; 1981 Sch. 3 para. 17.
379	1960 s. 129.
380	1960 s. 130; 1978 Art. 142.
381	1960 s. 131.
382	1960 s. 132.
383	1960 s. 133.
384	1960 s. 134(1)—(3), (7), (8). <sup>-</sup>
385	1960 s. 134(4)—(6).
386	1960 s. 135.
387	1960 s. 136.
388	1960 s. 137; 1978 Art. 143; 1981 Art. 16(6), Sch. 3 para. 18; 1982 Arts. 27(6), 50(10); S.R. 15.
389	1960 s. 138.
390	1960 s. 139; 1981 Art. 65(3); S.R. 52.
391	1960 s. 140 S.R. 16.
392	1978 Art. 27(1)—(5), (7).
393	1978 Art. 27(8).
394	1978 Art. 27(6), (7), (10).
395	1978 Art. 28(6) 33(7).
396	1978 Art. 28(1)—(5).
397	1978 Art. 26(1)—(5), (9), (10); S.R. 37.
398	1978 Art. 29 (1)—(7).
399	1978 Art. 30.
400	1978 Art. 31.
401	1978 Art. 32.
402	1960 s. 93(1).
403	1960 s. 93(2), (6), (7), (10)(a); S.I. 1972/1268, Art. 16(2).
404	1960 s. 93(8), (9); 1978 Sch. 4; 1981 Sch. 3 paras. 16, 43.
405	1960 s. 93(3)—(5).
406	1960 s. 94.
407	1960 s. 95; 1963 c.25 (N.I.) s. 1(2).



Provision	Derivation
Article 408	1960 s. 95A (inserted by 1969 c. 30 (N.I.)s. 130, Sch. 4 Part II; 1981 NI 6 Art. 147(1), Sch. 2.
409	1960 s. 96; 1969 c. 30 (N.I.)s. 130, Sch. 4 Part II; 1981 NI 6 Art. 147(1), Sch. 2.
410	1960 s. 97.
411	1960 s. 98; 1978 Schs. 4, 6.
412	1960 s. 99.
413	1960 s. 100; 1978 Schs. 4, 7.
414	1960 s. 101; 1978 Sch. 6.
415	1960 s. 102.
416	1960 s. 103; 1978 Sch. 6.
417	1960 s. 103A (inserted by 1978 Art. 140); S.R. 8.
418	1960 s. 197.
419	1960 s. 198.
420	1960 s. 199.
421	1960 s. 200(1), (2), (7).
422	1960 s. 200(3); 1978 Sch. 4.
423	1960 s. 200(4)—(6).
424	1960 s. 158; 1982 Art. 86(1), (2).
425	1960 s. 159; 1978 Art. 100 (a), (b); 1981 Sch. 3 para. 20, Sch. 4; 1982 Sch. 4.
426	1960 ss. 160, 162(1A); 1978 Art. 102.
427	1960 s. 161(1), (1A), (2), (6); 1982 Art. 87(1), (2); S.R. 19.
428	1960 s. 161(1B); 1982 Art. 87(1).
429	1960 s. 161(3), (6); 1978 Art. 101(3); 1982 Art. 87(2).
430	1960 s. 162(1), (2); 1982 Art. 88(1).
431	1960 s. 163(1), (2) (sub. by 1978 Art. 103(1)).
432	1960 s. 164 (sub. by 1978 Art. 104; 1982 Sch. 3 para. 5).
433	1960 s. 163(3); 1978 Art. 103(1).
434	1960 s. 165; 1982 Art. 88(2).
435	1960 s. 165A(1)—(4); 1978 Art. 105; 1982 Sch. 3 para. 6
436	1960 s. 165A(5); 1978 Art. 105; 1982 Art. 89.
437	1960 s. 165B; 1978 Art. 105; 1982 Art. 90.
438	1960 s. 165C(1), (8); 1978 Art. 105; 1982 Art. 91.

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Article 439	1978 Art. 43(1)—(5), (7).
440	1978 Art. 107, 113.
441	1978 Art. 108, 113.
442	1978 Art. 109, 113; 1982 Art. 103(1)—(3); 1982 c. 50, Sch. 5 para. 19.
443	1978 Arts. 110, 113; 1982 c. 50 Sch. 5 para. 19.
444	1978 Arts. 111, 113.
445	1960 s. 166; 1978 Arts. 43(6), 112; 1982 Art. 102(1), (3).
446	1960 s. 166A; 1978 Art. 106.
447	1960 s. 165C(2), (2A), (2B); 1978 Art. 105; 1982 Art. 91(3).
448	1960 s. 165C(5)—(7); 1978 Art. 105; 1982 Arts. 73(8), 78(4), 91(7).
449	1960 s. 165C(3), (3A), (3B), (3C), (4), (4A); 1978 Art. 105; 1982 Arts 73(8), 78(3), (4), 91(4).
450	1960 s. 165C(3D), (3E), (3F); 1978 Art. 105; 1982 Arts. 73(8), 78(4), 91(4).
451	1960 s. 298(3); 1982 Art. 96.
452	1981 Art. 77(1), (9).
453	1981 Art. 77(2), (10).
454	1981 Art. 77(3)—(8).
455	1960 s. 318.
456	1960 s. 319(1), (2)(b).
457	1960 s. 319A; 1978 Art. 144.
458	1960 s. 320(1), (2).
459	1960 s. 321.
460	1960 s. 322(1)—(4).
461	1960 s. 323(1), (3)—(5), (7); 1978 Sch. 4.
462	1960 s. 324.
463	1960 s. 323(2)—(7); S.R. 24.
464	1960 s. 325; S.R. 25.
465	1960 s. 326.
466	1960 s. 327.
467	1960 s. 202.
468	1960 s. 203(1), (3).
469	1960 s. 203(2).

Provision	Derivation
Article 470	1982 Arts. 59(1)—(5), 62(3).
471	1978 Art. 119(7); 1981 Art. 9(5).
472	1978 Art. 118(6).
473	1960 s. 204; 1982 Arts. 59(6), 62(3).
474	1960 s. 205.
475	1960 s. 206.
476	1960 s. 207.
477	1960 s. 344(3)(f), (g).
478	1960 s. 209.
479	1960 s. 210(a)—(f); 1981 Sch. 3 para. 26, Sch. 4.
480	1960 s. 211; 1969 c. 30(N.I.); am. by 1981 NI 6 Sch. 2; 1978 Art. 98(2), Sch. 3.
481	1960 s. 212; 1978 Art. 68; 1981 Sch. 3 para. 27; 1982 Arts. 59(7), 62(3).
482	1960 s. 213; 1981 Sch. 4.
483	1960 ss. 214, 346.
484	1960 s. 215.
485	1960 s. 216; 1969 c. 30 (N.I.) s. 130, Sch. 4 Part II.
486	1960 s. 217.
487	1960 ss. 218, 219, 220, 347.
488	1978 Art. 65.
489	1978 Art. 66(1), (2), (3), (5), (8).
490	1978 Arts. 66(4), (6)—(7), 150.
491	1978 Art. 67.
492	1960 s. 221.
493	1960 s. 222; 1978 Art. 69.
494	1960 s. 222A; 1978 Art. 70.
495	1960 s. 223; 1978 Art. 71.
496	1960 s. 224; 1978 Art. 72.
497	1960 s. 225.
498	1960 s. 226.
499	1960 s. 227(1)—(3).
500	1978 Art. 73.
501	1978 Art. 74.

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Article 502	1978 Art. 93.
503	1978 Arts. 75, 98(2)(b).
504	1978 Art. 76.
505	1978 Art. 77.
506	1978 Art. 78.
507	1960 s. 228; 1978 Art. 79.
508	1960 s. 229(1).
509	1960 s. 229A; 1978 Art. 80.
510	1960 s. 230; 1978 Art. 81.
511	1960 s. 231.
512	1960 s. 232.
513	1960 s. 233.
514	1960 s. 234.
515	1960 s. 235.
516	1960 s. 236.
517	1960 s. 236A; 1978 Art. 82.
518	1960 s. 237.
519	1960 s. 238.
520	1960 s. 239.
521	1960 s. 240.
522	1960 s. 241.
523	1960 s. 242 (1)—(3); 1978 Art. 83.
524	1960 s. 242 (4)—(9); 1978 Art. 83.
525	1960 s. 243.
526	1960 s. 244.
527	1960 s. 244A; 1978 Art. 84.
528	1960 s. 245.
529	1960 ss. 137(5)(a), (b), (f), 248.
530	1960 s. 249.
531	1960 s. 250.
532	1960 s. 251.
533	1960 s. 252.
534	1960 s. 253(1)—(3), (4A); 1982 Art. 104(1).

Provision	Derivation
Article 535	1960 s. 253(4); 1982 Art 104(1)(c).
536	1960 s. 254.
537	1960 s. 255.
538	1960 s. 256.
539	1960 s. 257(1), (2), (5).
540	1960 s. 257(3), (4), (6).
541	1960 s. 258.
542	1960 s. 259.
543	1960 s. 260.
544	1960 s. 261.
545	1960 s. 262.
546	1960 s. 263; 1982 Art. 105.
547	1960 s. 264.
548	1960 s. 265.
549	1960 s. 266.
550	1960 s. 267.
551	1960 s. 268.
552	1960 s. 269.
553	1960 s. 270.
554	1960 s. 271.
555	1960 s. 272.
556	1960 s. 273.
557	1960 s. 274.
558	1960 s. 275.
559	1960 s. 276.
560	1960 s. 277.
561	1960 s. 278.
562	1960 s. 279.
563	1960 s. 280.
564	1960 s. 281.
565	1960 s. 282.
566	1960 s. 283.
567	1960 s. 284; 1978 Sch. 6.

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Article 568	1960 s. 285.
569	1960 s. 286.
570	1960 s. 287(1), (5), (6); 1978 Art. 85.
571	1960 s. 288; S.R. 21.
572	1960 s. 289.
573	1960 s. 290(1), (3).
574	1960 s. 291(1)—(3).
575	1960 s. 291(4)—(9).
576	1960 s. 291A; 1978 Art. 86.
577	1960 s. 294(1)(d), (e), (i), (j), (k), (o), (2), (3), (4); 1978 Sch. 3 Part I.
578	1960 s. 296.
579	1960 s. 294(1)(a)—(c), (g), (h), (l), (2), (4).
580	1960 s. 295.
581	1960 s. 294(1)(f), (2), (4).
582	1960 s. 294(1)(p), (4).
583	1960 s. 298 (1), (2), (2A), (4); 1978 Art. 87.
584	1960 s. 299; 1978 Art. 88.
585	1960 s. 300(1), (2), (3), (4); 1978 Sch. 6; 1982 Art. 92 (1), (4).
586	1960 s. 300(3), (3A), (5), (6); 1978 Sch. 6; 1982 Art. 92(1)—(3).
587	1960 s. 301.
588	1960 s. 302.
589	1960 s. 303.
590	1960 s. 304.
591	1960 s. 304A; 1978 Art. 89.
592	1960 s. 305.
593	1960 s. 306; 1978 Art. 90.
594	1960 s. 307.
595	1960 s. 308 (sub. by 1978 Art. 91).
596	1960 s. 309.
597	1960 s. 310.
598	1960 s. 311.
599	1960 s. 312; S.R. 22.
600	1960 s. 313(1), (2).

Provision	Derivation
Article 601	1960 s. 314; S.R. 23.
602	1960 s. 315.
603	1960 s. 316(1)—(7), (9), Recorded Delivery Services Act. 1962 (c. 27) s. 1(1).
604	1960 s. 316(8).
605	1960 s. 316A; 1978 Art. 92; 1982 Art. 106(3), Sch. 4.
606	1982 Art. 106(1), (2).
607	1960 s. 316B(1), (3)—(6); 1978 Art. 92.
608	1960 s. 316B(2); 1978 Art. 92.
609	1960 s. 316C; 1978 Art. 92.
610	1981 Art. 76(4), (5), (6)(b), (7), (8).
611	1978 Art. 94.
612	1978 Art. 95.
613	1960 s. 317(1)—(6) (sub by 1978 Art. 96); 1978 Art. 150(b).
614	1978 Art. 98(2), (4) Sch. 3.
615	1960 s. 348, 349(9); 1981 c. 65 Sch. 6.
616	1960 s. 349(1)—(4), (8), (9); 1981 c. 65 Sch. 6.
617	1960 s. 349(5)(a); 1978 Art. 98(2), Sch. 3.
618	1960 s. 349 (5)(b).
619	1960 s. 349(5)(bb), (c), (d), (e); 1969 c. 30 (N.I.), Sch. 2; 1981 N.I. 6 Sch 2.
620	1960 s. 349A; 1978 Art. 97.
621	1960 s. 350.
622	1960 s. 351.
623	1960 s. 352.
624	1960 s. 353.
625	1960 s. 328; 1982 Art. 111.
626	1960 s. 329.
627	1960 s. 330; 1978 Art. 145(2).
628	1960 s. 331.
629	1960 s. 332(1)—(5); 1978 Sch. 4; 1981 Sch. 3, para. 28.
630	1960 s. 332(6)—(11); 1981 Sch. 3 para. 28; 1982 Sch. 3 para. 10.
631	1982 Art. 28(1), (2).

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Article 632	1960 s. 333.
633	1960 s. 334; 1978 Sch. 4; 1982 Sch. 3 para. 11; S.R. 26.
634	1981 Arts. 4(3), 15(1)—(5), (7).
635	1960 ss. 335, 336, 337; 1978 Sch. 4; S.R. 27.
636	1960 s. 337A; 1982 Art. 28(3), Sch. 3 para. 11; S.R.s 28, 59.
637	1960 s. 340; 1981 Art. 15(6), Sch. 3 para. 30.
638	1960 ss. 341, 342, 343, 344.
639	1960 s. 345.
640	1960 s. 355.
641	1960 s. 356(1), (2), (2A), (3); 1978 Sch 4; 1982 Sch. 3 para. 12; S.R. 29.
642	1960 s. 358, 1978 Sch. 6; S.R. 1979/231, Reg. 3; S.R. 30.
643	1960 s. 360.
644	1978 Art. 121(excluding para (7)); 1982 Art. 29.
645	1960 s. 361.
646	1960 s. 362.
647	1960 s. 363; 1978 Art. 121(7).
648	1960 s. 364.
649	1978 Art. 11(1)—(3B); 1982 Art. 21; S.R. 36.
650	1978 Art. 12 (applying 1978 Arts. 4, 5).
651	1978 Art. 13(2), (3) (applying 1978 Art. 8).
652	1978 Art. 13(1), (4).
653	1960 s. 372; 1978 Art. 151(2)(b); S.R. 31.
654	1982 Art. 97.
655	1978 Art. 126.
656	1978 Art. 127; 1982 Sch. 4.
657	1960 s. 373; 1978 Art. 146; 1982 Sch. 3 para. 13.
658	1960 s. 374(1)—(3); 1982 Art. 98(1).
659	1960 s. 374(4)—(8); 1982 Art. 98(2).
660	1978 Art. 123(1); 1981 Sch. 3 para. 41.
661	1960 s. 375.
662	1960 s. 376; 1978 Art. 29(8); 1981 Art. 86(2); 1982 Art. 111(2).
663	1982 Art. 25; S.R. 1984/48.



Provision	Derivation
Article 664	1982 Art. 99.
665	1960 s. 382; 1978 Art. 134.
666	1978 Art. 135.
667	1960 s. 383(1), (2)—(4), Sch 10; 1978 Art. 147; 1981 Art. 69; 1982 Art. 22.
668	1981 Art. 76(1)—(3), (6)(a).
669	1960 ss. 381, 398(2)(a); 1978 Art. 151; 1982 c.50 Sch. 5; S.R. 32.
670	1960 s. 389; 1978 Art. 153(1), Sch 6.
671	1960 s. 384; 1978 Art. 151, Sch. 6.
672	1978 Art. 148.
673	1960 s. 385.
674	1960 s. 393.
675	1960 s. 394.
676	1960 s. 395; 1978 Art. 151(2)(g).
677	1960 s. 396; 1978 Art. 151(2)(h).
678(4)	1981 Art. 81(2).
(5)	1960 s. 388(2); 1978 Art. 151.
679	1978 Art. 149(2)—(4).
680	1960 ss. 165C(7), 392; 1978 Arts. 37(11), 42(4), 105, 113; 1982 Arts. 73(9), 102(2).
681	Regulations.

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Provision	Derivation
Sch. 1	1960 s. 191(2), (3), (4), (5), (12); 1978 Art. 57(2); 1982 Art. 95(2), (3).
Sch. 2	1983 (B.I.) Arts. 2, 4, 6, Sch.
Sch. 3	365(1)(b), (2), Sch. 3; 1978 Sch. 6 Part I.
para. 1	1960 s. 365 (2), Sch. 3 paras. 1—3, 22.
2	1960 Sch. 3 para. 4.
3	1960 Sch. 3 paras. 5, 6; 1978 Sch. 6.
4	1960 Sch. 3 paras. 7, 25.
5	1960 Sch. 3 para. 8.
6	1960 Sch. 3 para. 9(2).
7	1960 Sch. 3 para. 9(1).
8	1960 Sch. 3 para. 10.
9	1960 Sch. 3 paras. 23, 24, 26.
10	1960 Sch. 3 paras. 11—13, 22.
11	1960 Sch. 3 para. 14.
12	1960 Sch. 3 para. 15.
13	1960 Sch. 3 paras. 16, 22.
14	1960 Sch. 3 para. 17.
15	1960 Sch. 3 para. 18.
16	1960 Sch. 3 para. 19.
17	1960 Sch. 3 para. 20.
18	1960 Sch. 3 para. 21.
19	1960 Sch. 3 para. 27.
20	1960 Sch. 3 para. 28.
21	1960 Sch. 3 para. 29.
22(1),(2)	1960 Sch. 3 para. 30.
22(3)	1960 Sch. 3 para. 20, 21(1).
Sch. 4	1960 Sch. 6, substituted by 1982 Art. 3(2) & Sch. 1.
para. 38(2)	S.R. 34.
60	1983 (B.I.) Art. 3.
75(4)	S.R. 34.
Part VI	1960 Sch. 6 Part VA, inserted by S.R. 1983/314.
Sch. 5	
para. 1	1978 Art. 14(1); 1981 Sch. 3 para. 38; 1982 Sch. 3 para. 20.
2	1978 Art. 14(2); 1982 Sch. 3 para. 21.
3	1978 Art. 14(3).
4	1978 Art. 14(4).
5	1978 Art. 14(5).
6	1978 Art. 14(2).
7	1978 Art. 15(1); 1981 Sch. 3 para. 38; 1982 Sch. 3 paras. 20, 21.
8	1978 Art. 15(1A); 1982 Art. 5(1).
9	1978 Art. 15(2); 1981 Sch. 3 para. 38; 1982 Sch. 3 paras. 20, 21.
10	1978 Art. 15(3); 1982 Art. 5(2)(a).
11	1978 Art. 15(4); 1982 Art. 5(2)(b).
12	1978 Art. 15(5); 1982 Art. 5(2)(c).

Provision	Derivation
Sch. 5	
para. 13	1978 Art. 15(7).
14	1982 Art. 6(1).
15	1982 Art. 6(2).
16	1982 Art. 6(3); S.R. 55.
17	1982 Art. 6(4)—(7); S.R. 55.
18	1982 Art. 6(8).
19	1982 Art. 6(10).
20	1978 Art. 16(1); 1981 Sch. 3 para. 38; 1982 Sch. 3 para. 20.
21	1978 Art. 16(2).
22	1960 s. 187(1)(a), (2); 1978 Art. 17; 1982 Sch. 3 para. 8.
23	1978 Arts. 18(6), 19(3); 1982 Sch. 3 para. 22; S.R. 1983/136.
24	1978 Art. 18(1)(a), (7)(a).
25	1978 Art. 18(1)(b), (2), (7)(b); 1982 Sch. 3 para. 22; S.R. 1983/136.
26	1978 Art. 18(3).
27	1978 Art. 19(1), (2); 1982 Sch. 3 para. 23; S.R. 1983/136.
28	1960 s. 187(1)(b), (3); 1978 Art. 17.
29	1960 s. 187(1)(c), (4); 1978 Art. 17.
30	1960 s. 187(5); 1978 Art. 17.
31	1960 s. 187(6); 1978 Art. 17; 1982 Sch. 3 para. 8.
32	1960 s. 187(7); 1978 Art. 17.
33	1960 s. 187(3), (9); 1978 Art. 17.
34	1960 s. 187(1); 1978 Arts. 17, 18(1), 19(1).
35	1978 Art. 20(1); 1982 Sch. 3 para. 23; S.R. 1983/136.
36	1978 Art. 20(2), (3).
37	1978 Art. 20(5).
Sch. 6	
para. 1	1981 Art. 56(1); 1982 Sch. 3 para. 42.
2	1981 Art. 56(2).
3	1981 Art. 56(4).
4	1981 Art. 56(5).
5	1981 Art. 56(6); 1982 Sch. 3 para. 42.
6	1981 Art. 56(7).
7	S.R. 49.
8	S.R. 49.
9	1981 Art. 57; S.R. 50.
10	S.R. 50.
11	1981 Art. 60(1), (2).
12	1981 Art. 60(3), 1982 Sch. 3 para. 44.
13	1981 Art. 64(1).
14	1981 Arts. 66, 67(1), (3), (4), (6).
15	1981 Art. 58(1).
16	1981 Arts. 58(2), (2A), 64; 1982 Sch. 3 para. 43.
17	1981 Arts. 58(8), 67(1), (2), (3), (6).
18	1981 Art. 58(1), (4).
19	1981 Art. 58(4).
20	1981 Art. 58(5).
21	1981 Arts. 58(8), 66, 67(2), (6).

Provision	Derivation
Sch. 7	
para. 1	1978 Art. 45(1)(a).
2	1978 Art. 45(1)(e), (4), (4A); 1982 Art. 15(4).
3	1978 Art. 48(1); S.R. 1983/136.
4	1978 Art. 48(2); S.R. 1983/136.
5	1978 Art. 48(3)—(5).
6	1978 Art. 45(1)(f); 1982 Art. 15(3).
7	1978 Art. 45A(1); 1982 Art. 16.
8	1978 Art. 45A(2); 1982 Art. 16.
9	S.R. 1982/421.
10	1978 Art. 45(1)(g), (5), (6); S.I. 1978/1039 (N.I. 9).
Sch. 8	
Part I	
para. 1	1982 Arts. 8(2)—(8), 9(1)—(8).
2	1982 Arts. 8(2)(a), (3), 9(1).
3	1982 Art. 8(2)(b), (6).
4	1982 Art. 8(2)(b), (6).
5	1982 Art. 8(2)(c), (5).
6	1982 Art. 8(4).
7	1982 Art. 8(7)(a), (8).
8	1982 Art. 8(7)(b).
9	1982 Art. 9(2), (3).
10	1982 Art. 9(4)—(6), (8).
11	1982 Art. 9(7).
Part II	1982 Art. 12(4).
Part III	1982 Art. 12(3)—(5).
Sch. 9	1960 Sch. 6A (formerly Sch. 6, renumbered 6A by 1982 Art. 3(2) as amended by 1978 Art. 21, Sch. 1).
para. 2	1960 Sch. 6A para. 2(a), as modified by 1982 Sch. 2 para. 4(5); S.R. 35.
para. 10(1)(a)	1960 Sch. 6A para. 8(1)(c) as modified by 1982 Sch. 2 para. 4(5)(b).
13(3)	1960 Sch. 6A para. 11(2A) inserted by 1981 Sch. 3 para. 37(2), as amended by 1982 Sch. 2 para. 4(5)(c).
13(4)	1960 Sch. 6A para. 11(2B) inserted by 1981 Sch. 3 para. 37(2).
14(1)(d)	1960 Sch. 6A para. 12(1)(d) as modified by 1982 Sch. 2 para. 4(5)(d).
17(5)	1960 Sch. 6A para. 13A(5) as amended by S.R. 1983/136.
19(3)	1960 Sch. 6A as amended by 1983 B.I.
19(6)	1960 Sch. 6A para. 15(6) as amended by 1982 Art. 41(3).
22	1960 Sch. 6A para. 18 as modified by 1982 Sch. 2 para. 4(5)(e).
23	1960 Sch. 6A para. 19 as modified by 1982 Sch. 2 para. 4(5)(f).
24	1960 Sch. 6A para. 19A as inserted by 1982 Sch. 2 para. 4(5)(g).
27	1960 Sch. 6A para. 23 as modified by 1982 Sch. 2 para. 4(6).
28	1960 Sch. 6A para. 24 as modified by 1982 Sch. 2 para. 4(6)(b).

Provision	Derivation
Sch 9 para. 30 Part IV	1960 Sch. 6A para. 26 as modified by 1982 Sch. 2 para. 4(5). 1960 Sch. 6A, Part VA inserted by S.R. 1983/314 as amended by S.R. 35.
Sch. 10 para. 1	1978 Art. 45(1)(b); 1982 Sch. 2 para. 5(4).
2	1978 Art. 46(1); 1982 Sch. 2 para. 5(5).
3	1978 Art. 46(2); 1982 Sch. 2 para. 5(4).
4	1978 Art. 46(3).
5	1978 Art. 47(1), (3).
6	1978 Art. 47(2), (3).
7	1978 Art. 47(4).
8	1978 Art. 47(5), (6).
9	1978 Art. 45(1)(f), (savings 1982 Sch. 2 para. 5(4)).
Sch. 11	1982 Sch. 2 para. 6(1)—(4).
Sch. 12 Part I	1960 s. 179(2D), (3), (4), 1982 Art. 93.
Part II	1978 Arts. 54, 55.
Part III	1960 s. 179(1C), 2(a), (b), (2A), (2B); 1978 Art. 54(1A), (4); 1982 Arts. 93(4), 94(1).
Sch. 13	1978 Arts. 37—39; 1981 Art. 66(4); 1982 Sch. 3 paras, 24, 25.
Sch. 14 Part I	1960 s. 116(1).
Part II	1960 ss. 116(2), 117, 118; S.R.s. 9, 10, 11.
Sch. 15 para. 4	1960 Sch. 5 Part I. 1960 Sch. 5 para. 4.
Sch. 16	1960 ss. 229(2)—(9), 265(3).
Sch. 17	1960 s. 284(3), Sch. 11.
Sch. 18 para. 1	1960 s. 287 subs. 1978 Art. 85. 1960 s. 287(7)(e).
2	1960 s. 287(1)(a)(ii).
3	1960 s. 287(1)(a)(iii).
4	1960 s. 287(1)(a)(v), (7)(f).
5	1960 s. 287(1)(a)(v).
6	1960 s. 287(1)(a)(iv).
7	1960 s. 287(1)(a)(i).
8	1960 s. 287(1)(e).
9	1960 s. 287(1)(b), (c).
10	1960 s. 287(1)(f), (7)(b).
11	1960 s. 287(7)(d).
12	1960 s. 287(1)(d).
13	1960 s. 287(2) [1978 Sch. 3 Part II, para. 2].
14	1960 s. 287(3).
15	1960 s. 287(4).
16	1960 s. 287(7)(a), (c).

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Provision	Derivation
Sch. 19	1960 s. 291(8).
Sch. 20	
para. 1	1960 s. 344(1), (7).
2	1960 s. 341.
3	1960 s. 342.
4	1960 s. 343.
5	1960 s. 344(2); 1981 Sch. 3 para. 31(a).
6	1960 s. 344(3)(a)—(e).
7	1960 s. 344(4).
8	1960 s. 344(5).
9	1960 s. 344(6).
Sch. 21	1960 Sch. 10 (as substituted by 1978 Sch. 5); 1978 Art. 147; 1981 Art. 69; 1982 Art. 22.
Sch. 22	1960 Sch. 9.
Sch. 23	The derivation of any entry in this Schedule is the cumulative effect of the original provision of the Act of 1960 and the Orders of 1978, 1981 and 1982 in so far as it provided a penalty for contravention, with the effect (in certain cases) of Article 81 of, and Schedule 2 to, the Order of 1981. The derivation may also include provisions of the general law relating to the trial and punishment of statutory offences of greater or lesser gravity.
Sch. 24	1982 Art. 39.



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STATUTORY INSTRUMENTS

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