
STATUTORY INSTRUMENTS

2005 No. 1967

The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)

PART II

AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS

CHAPTER I

AUDITORS

Recognised supervisory bodies

Additional requirements for recognition of supervisory bodies

3.—(1) Part II of Schedule 11 to the 1990 Order (requirements for recognition of supervisory bodies for purposes of provisions relating to company auditors) is amended as follows.

(2) After paragraph 7(1) (body must have rules and practices for ensuring company audit work is carried out with integrity and without conflicts of interest) insert—

“(1A) The body must participate in arrangements within paragraph 17, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.”.

(3) In paragraph 8 (body must have rules and practices as to the technical standards to be applied in company audit work), the existing provisions become sub-paragraph (1), and after that sub-paragraph insert—

“(2) The body must participate in arrangements within paragraph 18, and the rules and practices mentioned in sub-paragraph (1) must include provision requiring compliance with any standards for the time being determined under such arrangements.”.

(4) After paragraph 10 insert—

“Independent monitoring of audits of listed and other major companies

10A.—(1) The body must—

- (a) participate in arrangements within paragraph 19(1), and
- (b) have rules designed to ensure that members of the body who perform any company audit functions in respect of major audits take such steps as may be reasonably required of them to enable their performance of any such functions to be monitored by means of inspections carried out under the arrangements.

(2) Any monitoring of such persons under the arrangements is to be regarded (so far as their performance of company audit functions in respect of major audits is concerned) as monitoring of compliance with the body's rules for the purposes of paragraph 10(1).

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(3) In this paragraph “company audit function” and “major audit” have the same meaning as in paragraph 19.”.

(5) After paragraph 12 insert—

“Independent investigation for disciplinary purposes of public interest cases

12A.—(1) The body must—

- (a) participate in arrangements within paragraph 20(1), and
- (b) have rules and practices designed to ensure that, where the designated persons have decided that any particular disciplinary action should be taken against a member of the body following the conclusion of an investigation under such arrangements, that decision is to be treated as if it were a decision made by the body in disciplinary proceedings against the member.

(2) In sub-paragraph (1) “the designated persons” means the persons who, under the arrangements, have the function of deciding whether (and, if so, what) disciplinary action should be taken against a member of the body in the light of an investigation carried out under the arrangements.”.

Arrangements to which additional requirements for recognition relate

4. After Part II of Schedule 11 to the 1990 Order (which is amended by Article 3) insert—

“PART III

ARRANGEMENTS IN WHICH SUPERVISORY BODIES ARE REQUIRED TO PARTICIPATE

Arrangements for setting standards relating to professional integrity and independence

17. The arrangements referred to in paragraph 7(1A) are appropriate funded arrangements—
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 7(1), and
 - (b) for ensuring that the determination of those standards is done independently of the body.

Arrangements for setting technical standards

18. The arrangements referred to in paragraph 8(2) are appropriate funded arrangements—
- (a) for the determining of standards for the purposes of the rules and practices mentioned in paragraph 8(1), and
 - (b) for ensuring that the determination of those standards is done independently of the body.

Arrangements for independent monitoring of audits of listed and other major companies

19.—(1) The arrangements referred to in paragraph 10A(1) are appropriate funded arrangements—

- (a) for enabling the performance by members of the body of company audit functions in respect of major audits to be monitored by means of inspections carried out under the arrangements, and
- (b) for ensuring that the carrying out of such monitoring and inspections is done independently of the body.

(2) In this paragraph—

“company audit function” means any function performed as a company auditor;

“major audit” means an audit conducted in respect of—

- (a) a company any of whose securities have been admitted to the official list (within the meaning of Part 6 of the Financial Services and Markets Act 2000 (c. 8)), or
- (b) any other company in whose financial condition there is a major public interest.

Arrangements for independent investigation for disciplinary purposes of public interest cases

20.—(1) The arrangements referred to in paragraph 12A(1) are appropriate funded arrangements—

- (a) for the carrying out of investigations into public interest cases arising in connection with the performance of company audit functions by members of the body,
- (b) for the holding of disciplinary hearings relating to members of the body which appear to be desirable following the conclusion of such investigations,
- (c) for requiring such hearings to be held in public except where the interests of justice otherwise require,
- (d) for the persons before whom such hearings have taken place to decide whether (and, if so, what) disciplinary action should be taken against the members to whom the hearings related, and
- (e) for ensuring that the carrying out of those investigations, the holding of those hearings, and the taking of those decisions are done independently of the body.

(2) In this paragraph—

“company audit function” means any function performed as a company auditor;

“public interest cases” means matters which raise or appear to raise important issues affecting the public interest.

Supplementary: arrangements to operate independently of body

21.—(1) This paragraph applies for the purposes of—

- (a) paragraph 17(b),
- (b) paragraph 18(b),
- (c) paragraph 19(1)(b), or
- (d) paragraph 20(1)(e).

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(2) Arrangements cannot be regarded as appropriate for the purpose of ensuring that the thing or things mentioned in that provision is or are done independently of the body unless they are designed to ensure that the body—

- (a) will have no involvement in the appointment or selection of any of the persons who are to be responsible for doing the thing or things in question, and
- (b) will not otherwise be involved in the doing of that thing or those things.

(3) Sub-paragraph (2) imposes a minimum requirement and does not preclude the possibility that additional criteria may need to be satisfied in order for the arrangements to be regarded as appropriate for the purpose in question.

Supplementary: “funded” arrangements etc.

22.—(1) For the purposes of any of paragraphs 17, 18, 19 and 20, arrangements are “funded” arrangements if, in the event of their providing for the payment of costs of maintaining the arrangements, such costs are to be paid by the body in accordance with the arrangements.

(2) Arrangements can qualify as arrangements within any of paragraphs 17, 18, 19(1) and 20(1) even though the matters for which they provide are more extensive in any respect than those mentioned in that provision.”.

Delegation of functions of Department in relation to auditors

Delegation of functions by Department to new or existing body

5.—(1) Article 48 of the 1990 Order (delegation of functions of Department) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The Department may make an order under this Article (a “delegation order”) for the purpose of enabling functions of the Department under this Part to be exercised by a body designated by the order.

(1A) The body so designated may be either—

- (a) a body corporate which is established by the order, or
- (b) subject to Article 48A, a body (whether a body corporate or an unincorporated association) which is already in existence (“an existing body”).”.

(3) In paragraph (2) (effect of delegation order on body established by it), for “established” substitute “designated”.

(4) For paragraph (6) substitute—

“(6) Where a delegation order is made, the provisions of Schedule 13 have effect with respect to—

- (a) the status of the body designated by the order in exercising functions of the Department under this Part;
- (b) the constitution and proceedings of the body where it is established by the order;
- (c) the exercise by the body of certain functions transferred to it; and
- (d) other supplementary matters.”.

Circumstances in which the Department may delegate functions to existing body

6. After Article 48 of the 1990 Order (which is amended by Article 5) insert—

“Circumstances in which the Department may delegate functions to existing body

48A.—(1) The Department's power to make a delegation order under Article 48 which designates an existing body is exercisable in accordance with this Article.

(2) The Department may make such an order if it appears to the Department—

- (a) that the body is willing and able to exercise the functions that would be transferred by the order; and
- (b) that the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in paragraph (3) are met.

(3) The conditions are—

- (a) that the functions in question will be exercised effectively; and
- (b) where the delegation order is to contain any requirements or other provisions specified under paragraph (4), that those functions will be exercised in accordance with any such requirements or provisions.

(4) The delegation order may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Department to be appropriate.

(5) An existing body—

- (a) may be designated by a delegation order under Article 48, and
- (b) may accordingly exercise functions of the Department in pursuance of the order,

despite any involvement of the body in the exercise of any functions under arrangements within any of paragraphs 17, 18, 19(1) or 20(1) of Schedule 11.”.

Supplementary provisions about delegation orders

7.—(1) Schedule 13 to the 1990 Order (supplementary provisions with respect to delegation orders) is amended as follows.

(2) For paragraph 1 substitute—

“Operation of this Schedule

1.—(1) This Schedule has effect in relation to a body designated by an order under Article 48 as follows—

- (a) paragraphs 2 to 12 have effect in relation to the body where it is established by the order;
- (b) paragraphs 2 and 6 to 11 have effect in relation to the body where it is an existing body (see Article 48(1A)(b)); and
- (c) paragraph 13 has effect in relation to the body where it is an existing body that is an unincorporated association.

(2) In their operation in accordance with sub-paragraph (1)(b), paragraphs 2 and 6 apply only in relation to—

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- (a) things done by or in relation to the body in or in connection with the exercise of functions transferred to it by the order, and
 - (b) functions of the body which are functions so transferred.
- (3) Any power conferred by this Schedule to make provision by order is a power to make provision by an order under Article 48.”
- (3) In paragraph 10 (report and accounts)—
- (a) after sub-paragraph (2) insert—
 - “(2A) The following provisions of this paragraph apply as follows—
 - (a) sub-paragraphs (3) and (4) apply only where the body is established by the order, and
 - (b) sub-paragraphs (5) and (6) apply only where the body is an existing body.”; and
 - (b) after sub-paragraph (4) insert—
 - “(5) Unless the body is a company to which Article 234 of the 1986 Order (duty to prepare individual company accounts) applies—
 - (a) the Department may, with the consent of the Department of Finance and Personnel, give directions to the body with respect to its accounts and the audit of its accounts, and
 - (b) it is the duty of the body to comply with the directions.
 - (6) Whether or not the body is a company to which Article 234 of the 1986 Order applies—
 - (a) the Department may give directions to the body providing that any provisions of that Order specified in the directions are to apply to the body, with or without any modifications so specified, and
 - (b) it is the duty of the body to comply with the directions.”.
- (4) In paragraph 11 (other supplementary provisions), for “established” (in both places) substitute “designated”.
- (5) After paragraph 12 insert—

“**13.**—(1) This paragraph applies where the body is an unincorporated association.

(2) Any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.

(3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any transferred function.

(4) In relation to proceedings brought as mentioned in sub-paragraph (2), any reference in paragraph 11(3)(e) or (4)(c) to the body replacing or being replaced by the Department in any legal proceedings is to be read with the appropriate modifications.”.

Auditors' qualifications

Approval of overseas qualifications for auditors

8.—(1) Article 36 of the 1990 Order (approval of overseas qualifications) is amended as follows.

(2) For paragraphs (1) and (2) substitute—

“(1) The Department may declare that the following are to be regarded for the purposes of this Part as holding an approved overseas qualification—

- (a) persons who are qualified to audit accounts under the law of a specified country or territory outside the United Kingdom;
 - (b) persons who hold a specified professional qualification in accountancy obtained in a specified country or territory outside the United Kingdom.
- (1A) Approval of a qualification under paragraph (1)(b) may be expressed to be subject to any specified requirement or requirements being satisfied.
- (2) A qualification must not be approved under paragraph (1) unless the Department is satisfied that the qualification, taken with any requirement or requirements to be specified under paragraph (1A), affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.”.
- (3) For paragraph (6) substitute—
- “(6) The Department may if it thinks fit, having regard to the considerations mentioned in paragraphs (2) and (3)—
- (a) withdraw its approval of an overseas qualification in relation to persons becoming qualified as mentioned in paragraph (1)(a), or obtaining such a qualification as is mentioned in paragraph (1)(b), after such date as it may specify; or
 - (b) vary or revoke a requirement mentioned in paragraph (1A) from such date as it may specify.”.

Services provided by auditors

Disclosure of services provided by auditors and related remuneration

9.—(1) For Article 398B of the 1986 Order (remuneration of auditors or their associates for non-audit work) substitute—

“Disclosure of services provided by auditors or associates and related remuneration

398B.—(1) The Department may make provision by regulations for securing the disclosure of—

- (a) the nature of any services provided for a company by the company's auditors (whether in their capacity as such or otherwise) or by their associates;
 - (b) the amount of any remuneration received or receivable by a company's auditors, or their associates, in respect of any services within sub-paragraph (a).
- (2) The regulations may provide—
- (a) for disclosure of the nature of any services provided to be made by reference to any class or description of services specified in the regulations (or any combination of services, however described);
 - (b) for the disclosure of amounts of remuneration received or receivable in respect of services of any class or description specified in the regulations (or any combination of services, however described);
 - (c) for the disclosure of separate amounts so received or receivable by the company's auditors or any of their associates, or of aggregate amounts so received or receivable by all or any of those persons.
- (3) The regulations may—
- (a) provide that “remuneration” includes sums paid in respect of expenses;

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- (b) apply to benefits in kind as well as to payments of money, and require the disclosure of the nature of any such benefits and their estimated money value;
 - (c) apply to services provided for associates of a company as well as to those provided for a company;
 - (d) define “associate” in relation to an auditor and a company respectively.
- (4) The regulations may provide that any disclosure required by the regulations is to be made—
- (a) in a note to the company's annual accounts (in the case of its individual accounts) or in such manner as is specified in the regulations (in the case of group accounts),
 - (b) in the directors' report required by Article 242, or
 - (c) in the auditors' report under Article 243.
- (5) If the regulations provide that any such disclosure is to be made as mentioned in paragraph (4)(a) or (b), the regulations may—
- (a) require the auditors to supply the directors of the company with any information necessary to enable the disclosure to be made;
 - (b) provide for any provision within paragraph (6) to apply in relation to a failure to make the disclosure as it applies in relation to a failure to comply with a requirement of this Order or (as the case may be) a provision of Part VIII.
- (6) The provisions are—
- (a) Articles 241(5) and 242(5); and
 - (b) any provision of Articles 253 to 253C.
- (7) Nothing in paragraphs (2) to (6) affects the generality of paragraph (1).
- (8) Regulations under this Article shall be subject to negative resolution.”
- (2) In Article 398A of the 1986 Order (remuneration of auditors)—
- (a) paragraph (3) (auditors' remuneration to be disclosed in note to accounts) accordingly ceases to have effect, and
 - (b) in paragraph (5) (application to benefits in kind), for the words from “payments in cash” onwards substitute “ payments of money. ”.
- (3) In paragraph 1(1) of Schedule 4A to that Order (form and contents of group accounts), omit “Article 398A(3) (amount of auditors' remuneration) and”.

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